APPENDIX

TABLE OF CONTENTS

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-30758

United States Court of Appeals
Fifth Circuit
FILED
January 7, 2026
Lyle W. Cayce
Clerk

ONE LAKESIDE PLAZA, L.L.C.,

Plaintiff—Appellee,

versus

INDIAN HARBOR INSURANCE COMPANY; QBE SPECIALTY INSURANCE COMPANY; STEADFAST INSURANCE COMPANY GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA; UNITED SPECIALTY INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY; SAFETY SPECIALTY INSURANCE COMPANY; OLD REPUBLIC UNION INSURANCE COMPANY,

Defendants—Appellants,

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:21-CV-4050

Before HAYNES, HO, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

A group of insurance companies seek to compel a private company to arbitrate a dispute surrounding a surplus line insurance policy covering

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

property in Louisiana. We recently affirmed the district court's application of Louisiana law to a similar contract. *Town of Vinton v. Indian Harbor Ins. Co.*, __F.4th__, 2025 WL 3513954, *11 (5th Cir. Dec. 8, 2025). La. R.S. 22:868 expressly prohibits arbitration agreements for insurance contract covering property located in the state. *Id.* at *10. The private status of Appellee in this case presents no meaningful difference in the application of Louisiana law. Affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

ONE LAKESIDE PLAZA LLC	**CASE NO. 2:21-CV-04050**
VERSUS	**JUDGE JAMES D. CAIN, JR.**
INDIA HARBOR INSURANCE CO ET AL	**MAGISTRATE JUDGE LEBLANC**

MEMORANDUM ORDER

Before the Court is "Defendants' Motion to Compel Arbitration and Stay the Proceedings" (Doc. 5) filed by Indian Harbor Insurance Company, QBE Specialty Insurance Company, Steadfast Insurance Company, General Security Indemnity Company of Arizona, United Specialty Insurance Company, Lexington Insurance Company, Safety Specialty Insurance Company, and Old Republic Union Insurance Company (collectively, "Defendants" or "Domestic Insurers"). Plaintiff, One Lakeside Plaza LLC ("Lakeside") opposes the motion.

BACKGROUND

This suit arises from a commercial property insurance claim made by Lakeside based on damage it sustained as a result of Hurricane Laura in August 2020, and Hurricane Delta in October 2020. At the time of the loss, Lakeside's property was insured by

Defendants through a surplus lines commercial property insurance policy, which includes the following arbitration clause:

> C. ARBITRATION CLAUSE: All matters in difference between the Insured and the Companies (hereinafter referred to as the "parties") in relation to this insurance, including its formation and validity, and whether arising during or after the period of this insurance, shall be referred to an Arbitration Tribunal in the manner hereinafter set out
>
> ***
>
> The seat of the Arbitration shall be in New York and the Arbitration Tribunal shall apply the law of New York as the proper law of this insurance. . . .[1]

Lakeside filed this lawsuit alleging that Defendants failed to timely or adequately pay for its covered losses under the policies. Lakeside asserts claims of breach of contract and breach of the duty of good faith and fair dealing. Defendants have moved to stay the proceedings and compel arbitration pursuant to the arbitration clause.

LAW AND ANALYSIS

Defendants maintain that Lakeside is in direct violation of the arbitration clause because counsel for Plaintiff has refused Defendants' demand for arbitration. Defendants argue that the Federal Arbitration Act, 9 U.S.C. § § 201-208 (the "Convention") applies to the arbitration clause and moves to enforce it.

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[1] Defendant's exhibit A, p. 24.

The FAA places arbitration clauses on "the same footing as other contracts" and allows an aggrieved party to move to compel arbitration when the opposing party fails to comply with an arbitration clause. *American Bankers Ins. Co. of Fla. v. Inman*, 436 F.3d 490, 492–93 (5th Cir. 2006). The McCarran-Ferguson Act, 15 U.S.C. § 1101 *et seq.* provides, however, that state law regulating the business of insurance may reverse-preempt the FAA filed this lawsuit alleging that Defendants failed to timely or adequately pay for its covered losses under the policies. Lakeside asserts claims of breach of contract and breach of the duty of good faith and fair dealing. Defendants have moved to stay the proceedings and compel arbitration pursuant to the arbitration clause.

Defendants argue that the Convention applies. There are no foreign insurers who could be held liable, only domestic insurers in this matter. The purpose of the Convention is "to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced by signatory countries." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15, 94 S.Ct. 2449 (1974). The contractual agreements with the domestic insurers are expressly declared to be separate contracts. Because the agreements at issue in this matter are "entirely between citizens of the United States," they "shall be deemed not to fall under the Convention." 9 U.S.C. § 202.

Lakeside argues that Louisiana Revised Statute § 22:868 bars insurance policies from ousting

Louisiana courts of jurisdiction. Section 22:868, in relevant part, provides as follows:

> A. No insurance contract delivered or issued for deliver in this state and covering subjects located, resident, or to be performed in this state, or any group health and accident policy insuring a resident of this state regardless of where made or delivered, shall contain any condition, stipulation, or agreement either ...
>
> (2) Depriving the courts of this state of the jurisdiction or venue of action against the insurer....
>
> D. The Provisions of Subsection A of this Section shall not prohibit a forum or venue selection clause in a policy from that is not subject to approval by the Department of Insurance.

Recently, in *S.K.A.V.L.L.C. v. Independent Specialty Insurance Company*, the Fifth Circuit court concluded, based on its opinion as to how the Louisiana Supreme Court would read § 22:868 in the context of arbitration clauses, that the arbitration clause is not valid because the statute expressly "prevents the valid formation of an arbitration agreement." 103 F.4th 1121, 1125 (5th Cir. June 5, 2024). Even more recently, this Court certified the following question to the Louisiana Supreme Court in *Police Jury of Calcasieu Parish v. Indian Harbor Insurance Co., et al*, 2024 WL 4579035 (La. October 25, 2024):

> Whether the 2020 amendment adding Subsection D (Act No. 307 § 1 of 2020) to La. R.S. 22:868 to allow forum and venue selection clauses in limited circumstances implicitly repealed Subsection A's longstanding prohibition of arbitration clauses in all insurance policies in Louisiana?

The Louisiana Supreme Court answered in the negative, noting that the prohibition concerning arbitration clauses in insurance policies is rooted in public policy because they operate to deprive courts of jurisdiction over actions against insurers, and Louisiana jurisprudence has historically held that arbitration clauses within insurance policies are unenforceable. *Calcasieu Parish*, 2024 WL 4579035 at *5 (La. October 25, 2024) citing *Courville v. Allied Professionals Ins. Co.*, 218 So.3d 144, 148 (La. App. 1 Cir. 4/12/17); *Doucet v. Dental Health Plans Mgmt. Corp.*, 412 So.2d 1383, 1384 (La. 1982).

Likewise, the Court finds that the arbitration clause in Defendants' contracts are unenforceable as they are against Louisiana's public policy.

Next, Defendants rely on the doctrine of equitable estoppel to order arbitration. Lakeside argues that equitable estoppel cannot be used to preempt state insurance law under the McCarran-Ferguson Act. The Court notes that again the Louisiana Supreme Court has spoken. This Court also certified the following question to the Louisiana Supreme Court in *Police Jury of Calcasieu Parish*, supra:

> If arbitration continues to be prohibited in all insurance policies delivered or issued for delivery in Louisiana, whether a domestic insurer may resort to equitable estoppel under state law to enforce an arbitration clause in another insurer's policy in contravention of the positive law prohibiting arbitration in La. R.S. 22:868(A)(2); and related, whether estoppel can be applied to political subdivisions without satisfying the distinct and heightened standard otherwise required by the Louisiana Supreme Court for application of estoppel to public bodies?

The Louisiana Supreme Court answered this question in the negative, noting that the United States Fifth Circuit correctly applied Louisiana law in *S.K.A.V., LLC,* supra, in finding that a domestic insurer may not use estoppel under Louisiana law to enforce arbitration via a foreign insurer's policy. The Louisiana Supreme Court opined that the doctrine of equitable estoppel is not available under these circumstances because it conflicts with the positive law of Louisiana Revised Statute § 22:868, which prohibits the use of arbitration clauses in Louisiana-issued insurance policies. Notably, "[a] contrary finding would (1) violate Louisiana's positive law prohibiting arbitration in Louisiana-issued insurance policies; and (2) invite domestic insurers' misuse a doctrine of "last resort" to ceaselessly rely on insurance policies of foreign insurers to compel arbitration." *Police Jury of Calcasieu Parish*, 2024 WL 4579035 at *15. Here, this Court finds that under Louisiana law, Defendants may not resort to equitable estoppel to enforce the arbitration clause in contravention of the positive law prohibiting arbitration in Louisiana Revised Statute 22:868(A)(2).

For the reasons explained herein,

IT IS ORDERED that Defendants' Motion to Compel Arbitration and Stay the Proceedings (Doc.5) is **DENIED.**

THUS DONE AND SIGNED in Chambers on this 19th day of November, 2024.

JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-30758

United States Court of Appeals
Fifth Circuit
FILED
February 9, 2026
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ONE LAKESIDE PLAZA, L.L.C.,

Plaintiff—Appellee,

versus

INDIAN HARBOR INSURANCE COMPANY; QBE SPECIALTY INSURANCE COMPANY; STEADFAST INSURANCE COMPANY GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA; UNITED SPECIALTY INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY; SAFETY SPECIALTY INSURANCE COMPANY; OLD REPUBLIC UNION INSURANCE COMPANY,

Defendants—Appellants,

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:21-CV-4050

ON PETITION FOR REHEARING EN BANC

Before HAYNES, HO, and OLDHAM, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. App. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

JAMES C. HO, *Circuit Judge*, concurring in the denial of rehearing en banc:

The court is right to deny rehearing en banc and thus leave intact our unpublished panel decision in *One Lakeside Plaza, L.L.C. v. Indian Harbor Insurance Co.*, 2026 WL 50022 (5th Cir.).

After all, as counsel acknowledges, our panel decision in *One Lakeside* faithfully applied our controlling precedent in *Town of Vinton v. Indian Harbor Insurance Co.*, 161 F.4th 282 (5th Cir. 2025). In *Town of Vinton*, we rejected the same arguments, made by the same group of insurance defendants and counsel, as in *One Lakeside*.

And as counsel further acknowledges, we denied their rehearing en banc petition in *Town of Vinton* last month, without a single dissenting vote

So why file another petition for rehearing en banc in *One Lakeside*?

Counsel claims that it was necessary "to exhaust their remedies," citing 5th Cir. I.O.P. 35.1.

But that's plainly wrong. The provision cited by counsel (recently renumbered 5th Cir. I.O.P. 40.1) says precisely the opposite of what counsel claims. As that provision has long made clear, it is "not necessary" to seek rehearing "as a prerequisite" to seeking cert. To the contrary, rehearing en banc is an "extraordinary procedure"—indeed, it's "the most abused prerogative of appellate advocates in the Fifth Circuit."

So it's hard to understand counsel's claim that they needed to file a rehearing en banc petition to "exhaust their remedies."

* * *

APPENDIX

PETITION FOR REHEARING

. . . **Necessity for Filing** – It is not necessary to file a petition for rehearing in the court of appeals as a prerequisite to filing a petition for certiorari in the Supreme Court of the United States . . . .

PETITION FOR REHEARING EN BANC

Extraordinary Nature of Petitions for Rehearing En Banc – A petition for rehearing en banc is an extraordinary procedure . . . .

The Most Abused Prerogative – Petitions for rehearing en banc are the most abused prerogative of appellate advocates in the Fifth Circuit. Fewer than 1% of the cases decided by the court on the merits are reheard en banc; and frequently those rehearings granted result from a request for en banc reconsideration by a judge of the court rather than a petition by the parties.

APPENDIX D

9 U.S.C. § 201. Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

9 U.S.C. § 202. Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

9 U.S.C. § 203. Jurisdiction; amount in controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

9 U.S.C. § 204. Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

9 U.S.C. § 205. Removal of cases from State courts

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

9 U.S.C. § 206. Order to compel arbitration; appointment of arbitrators

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

9 U.S.C. § 207. Award of arbitrators; confirmation; jurisdiction; proceeding

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

9 U.S.C. § 208. Application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States. This chapter applies to the extent that this chapter is not in conflict with chapter 4.

APPENDIX E

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517 (New York Convention), Articles II(1)-(2), XI(a).

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

…

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;