

Introduction to the 2025 Edition of Construction Arbitration Handbook

This work provides an overview of all aspects of construction arbitration as determined by courts across the country to aid the practitioner in matters including drafting arbitrating agreements, stewarding a dispute through the arbitration process, or challenging an aspect of the arbitration process in court.

Note that the American Arbitration Association released its revised Construction Industry Arbitration Rules and Mediation Procedures, effective March 1, 2024. These Rules are included herein as **Appendix E**. Please refer to **Appendix E.1** for the AAA’s “Summary of Changes—Construction Industry Arbitration Rules” highlighting how the current version of the Rules differs from the 2015 version.

This edition incorporates recent case law addressing the following issues:

- **Validity of agreements**

Jones v. Solgen Construction, LLC, 99 Cal.App.5th 1178, 318 Cal.Rptr.3d 313 (2024); *Mogan v. Kellermeyer Godfryt Hart, P.C.*, 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. 1st Dist.); *West v. Solar Mosaic, LLC*, 105 Cal.App.5th 985, 326 Cal.Rptr.3d 383 (2024); *Swinerton Builders, Inc. v. Argonaut Ins. Co.*, 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024). Chapter 1.

- **Compelling arbitration**

Ramirez v. Charter Commc’ns, Inc., 16 Cal.5th 478, 322 Cal.Rptr.3d 825, 551 P.3d 520 (2024); *Lennar Homes of Texas, Inc. v. Rafiei*, 687 S.W.3d 726, 67 Tex. Sup. Ct. J. 509 (*per curiam*); *Mogan v. Kellermeyer Godfryt Hart, P.C.*, 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. 1st Dist.); *Swinerton Builders, Inc. v. Argonaut Ins. Co.*, 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024); *West v. Solar Mosaic, LLC*, 105 Cal.App.5th 985, 326 Cal.Rptr.3d 383 (2024). Chapter 1.

- **Multiple parties**
Mobile Enterprises, Inc. v. Briggs Brothers Enterprises Corporation, 389 So. 3d 135 (La. Ct. App. 1st Cir. 2024). Chapter 1.
- **Waiver**
Quach v. California Commerce Club, Inc., 16 Cal.5th 562, 323 Cal.Rptr.3d 126, 551 P.3d 1123 (2024). Chapters 1 and 3.
- **Evidence**
Jones v. Solgen Construction, LLC, 99 Cal.App.5th 1178, 318 Cal.Rptr.3d 313 (2024); West v. Solar Mosaic, LLC, 105 Cal.App.5th 985, 326 Cal.Rptr.3d 383 (2024). Chapter 1.
- **Application of the Federal Arbitration Act**
McCann Concrete Products, Inc. v. Raineri Construction, LLC, 685 S.W.3d 50 (Mo. Ct. App. E.D. 2024); Coinbase, Inc. v. Suski, et al., 144 S.Ct. 1186 (2024); Smith v. Spizzirri, 144 S. Ct. 1173 (2024); Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024). Chapter 2.
- **Federal jurisdiction**
Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024). Chapter 2.
- **Conflicting arbitration clauses**
Coinbase, Inc. v. Suski, et al., 144 S.Ct. 1186 (2024). Chapter 3.
- **Delegation and consultation**
Lennar Homes of Texas, Inc. v. Rafei, 687 S.W.3d 726, 67 Tex. Sup. Ct. J. 509 (*per curiam*). Chapter 3.
- **Particular issues determined by court or arbitrator**
Scope of arbitration clause—Determined by court: Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024)—Existence of agreement to arbitrate: Coinbase, Inc. v. Suski, et al., 144 S.Ct. 1186 (2024); Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024)—Unconscionable arbitration agreements: Ramirez v. Charter Commc'ns, Inc., 16 Cal.5th 478, 322 Cal.Rptr.3d 825, 551 P.3d 520 (2024). Chapter 3.
- **Interpretation of arbitration agreement**
Coinbase, Inc. v. Suski, et al., 144 S.Ct. 1186 (2024); Jones v. Solgen Construction, LLC, 99 Cal.App.5th 1178, 318 Cal.Rptr.3d 313 (2024); Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. 1st Dist.). Chapter 3.

INTRODUCTION

- **Incorporation of arbitration agreement by reference**
Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024); PowerCom, Inc. v. Valley Electric Co. of Mt. Vernon, Inc., 540 P.3d 1181 (Wash. App. Div. 1 2024). Chapters 3 and 5.
- **American Arbitration Association (AAA) Rules**
Lennar Homes of Texas, Inc. v. Rafiei, 687 S.W.3d 726, 67 Tex. Sup. Ct. J. 509 (*per curiam*); Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. 1st Dist.). Chapter 3.
- **Scope of arbitration agreement**
Arbitrability: Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024); Tort Claim: Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. 1st Dist.). Chapter 3.
- **Stay orders**
Smith v. Spizzirri, 144 S. Ct. 1173 (2024), Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024). Chapter 3.
- **Arbitration of statutory claims**
PowerCom, Inc. v. Valley Electric Co. of Mt. Vernon, Inc., 540 P.3d 1181 (Wash. App. Div. 1 2024). Chapter 3.
- **Effect of arbitration agreement on third parties**
Nonsignatory: Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. 1st Dist.); *Pass-through Claims*: Powe, *Sureties*: Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024). Chapter 3.
- **Surety**
Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024). Chapter 3.
- **The Miller Act**
PowerCom, Inc. v. Valley Electric Co. of Mt. Vernon, Inc., 540 P.3d 1181 (Wash. App. Div. 1 2024). Chapters 3 and 4.
- **Enforcement of arbitration agreement denied**
Jones v. Solgen Construction, LLC, 99 Cal.App.5th 1178, 318 Cal.Rptr.3d 313 (2024); West v. Solar Mosaic, LLC, 105 Cal.App.5th 985, 326 Cal.Rptr.3d 383 (2024). Chapter 3.

- **Unconscionability and Severability**
Ramirez v. Charter Commc'ns, Inc., 16 Cal.5th 478, 322 Cal.Rptr.3d 825, 551 P.3d 520 (2024); Lennar Homes of Texas, Inc. v. Rafiei, 687 S.W.3d 726, 67 Tex. Sup. Ct. J. 509 (per curiam); Mogan v. Keller-meyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. 1st Dist.). Chapter 3.
- **Parties to the arbitration agreement**
Mobile Enterprises, Inc. v. Briggs Brothers Enterprises Corporation, 389 So. 3d 135 (La. Ct. App. 1st Cir. 2024); Swinerton Builders, Inc. v. Argonaut Ins. Co., 2024 WL 1057473 (N.D. Cal. Mar. 11, 2024); West v. Solar Mosaic, LLC, 105 Cal.App.5th 985, 326 Cal.Rptr.3d 383 (2024). Chapter 3.
- **[New] Ratification**
West v. Solar Mosaic, LLC, 105 Cal.App.5th 985, 326 Cal.Rptr.3d 383 (2024). Chapter 3.
- **Immunity**
Hill Country Preservation, LLC v. Philip G. King, 2024 WL 1893635 (Tex. App. April 30, 2024). Chapter 7.
- **Arbitration fees and Costs**
Lennar Homes of Texas, Inc. v. Rafiei, 687 S.W.3d 726, 67 Tex. Sup. Ct. J. 509 (per curiam); Mogan v. Keller-meyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. 1st Dist.). Chapters 9 and 13.
- **Award exceeded arbitrator's powers**
Mobile Enterprises, Inc. v. Briggs Brothers Enterprises Corporation, 389 So. 3d 135 (La. Ct. App. 1st Cir. 2024). Chapter 10.
- **Vacating award**
Mobile Enterprises, Inc. v. Briggs Brothers Enterprises Corporation, 389 So. 3d 135 (La. Ct. App. 1st Cir. 2024). Chapter 10.
- **Motion to compel arbitration denied**
Smith v. Spizzirri, 144 S. Ct. 1173 (2024). Chapter 11.

As the costs of litigation and the time it takes to see a case through to resolution continue to rise, arbitration has become an increasingly attractive and expeditious alternative. This is as true in the arena of construction disputes as in any other. An agreement to arbitrate can invest the parties with far greater control over the resolu-

INTRODUCTION

tion of their dispute—such as through the selection of an arbitrator and the process the arbitration will follow—than surrendering their claims to the court. Because arbitration is such an attractive option, however, there is no shortage of opportunities for conflict to arise between opposing parties regarding matters ranging from whether arbitration was required in the first place to the appropriate ground on which to base an attack on an award once rendered. We work diligently each year to make this publication the most important resource available on these and other topics and hope that you will find it valuable in your practice.

Should you have any questions or comments or notice anything you think is not accurate, please let me know at annettedavisp@aol.com.

Thank you for your subscription.
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