

Introduction to the 2026 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.

This edition incorporates recent case law addressing the following issues:

- **Validity of agreements**

Lahoud v. Anthony & Sylvan Corp., 481 N.J. Super. 29, 330 A.3d 803 (App. Div. 2025); Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024). Chapter 1.

- **Compelling arbitration**

Lahoud v. Anthony & Sylvan Corp., 481 N.J. Super. 29, 330 A.3d 803 (App. Div. 2025); Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024); Lowe Construction and Development, LLC v. Hudgins, 373 Ga. App. 730, 909 S.E.2d 451 (2024). Chapter 1.

- **Waiver**

Lahoud v. Anthony & Sylvan Corp., 481 N.J. Super. 29, 330 A.3d 803 (App. Div. 2025); Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Monarch Heating and Cooling, LLC v. Petra, Inc., 2025 MT 184, 573 P.3d 1217 (Mont. 2025); Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024). Chapters 1 and 3.

- **Attack on and enforcement of award**

Valencia v. Mendoza, 103 Cal.App.5th 427, 322 Cal.Rptr.3d 903 (2024); Twigg v. Admiral Insurance Company, 373 Or. 445, 475, 568 P.3d 156, 174 (2025). Chapters 1 and 12.

- **Appeal**

Nordic PCL Construction, Inc. v. LPIHGC, LLC, 156 Haw. 325, 574 P.3d 1273 (2025); Valencia v. Mendoza, 103 Cal.App.5th 427, 322 Cal.Rptr.3d 903 (2024). Chapters 1 and 13.

- **Application of the Federal Arbitration Act**

Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Monarch Heating and Cooling, LLC v. Petra, Inc., 2025 MT 184, 573 P.3d 1217 (Mont. 2025). Chapter 2.

- **Enforceability of Arbitration Agreements**

Restrictive agreement: Lahoud v. Anthony & Sylvan Corp., 481 N.J. Super. 29, 330 A.3d 803 (App. Div. 2025); Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024). **Delegation and consultation:** Smith v. Al Ross Luxury Homes LLC, 720 S.W.3d 149 (Tex. App. Houston 14th Dist. 2025); Coinbase, Inc. v. Suski, 602 U.S. 143, 144 S. Ct. 1186, 218 L. Ed. 2d 615 (2024). **Particular issues determined by court or arbitrator—Scope of arbitration clause—Determined by arbitrator:** Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024). **Particular issues determined by court or arbitrator—“Substantive” arbitrability:** Smith v. Al Ross Luxury Homes LLC, 720 S.W.3d 149 (Tex. App. Houston 14th Dist. 2025). **Particular issues determined by court or arbitrator—Scope of arbitration clause—Existence of agreement to arbitrate:** Coinbase, Inc. v. Suski, 602 U.S. 143, 144 S. Ct. 1186, 218 L. Ed. 2d 615 (2024); Smith v. Al Ross Luxury Homes LLC, 720 S.W.3d 149 (Tex. App. Houston 14th Dist. 2025). **Particular issues determined by court or arbitrator—Validity of the contract:** Smith v. Al Ross Luxury Homes LLC, 720 S.W.3d 149 (Tex. App. Houston 14th Dist. 2025). **Interpretation of arbitration agreements:** Lahoud v. Anthony & Sylvan Corp., 481 N.J. Super. 29, 330 A.3d 803 (App. Div. 2025); Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Smith v. Al Ross Luxury Homes

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LLC, 720 S.W.3d 149 (Tex. App. Houston 14th Dist. 2025); Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024); Lowe Construction and Development, LLC v. Hudgins, 373 Ga. App. 730, 909 S.E.2d 451 (2024). **Scope of arbitration agreement, [New] Purchase and Sale Agreement:** Lowe Construction and Development, LLC v. Hudgins, 373 Ga. App. 730, 909 S.E.2d 451 (2024). **Scope of arbitration agreement, Arbitrability:** Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Taylor Building Corporation of America v. Milton, 271 N.E.3d 626 (Ind. Ct. App. 2025); Gila, LLC v. Kapsch Trafficcom USA, Inc., 917 S.E.2d 842 (Ga. Ct. App. 2025). **Waiver of right to demand arbitration:** Monarch Heating and Cooling, LLC v. Petra, Inc., 2025 MT 184, 573 P.3d 1217 (Mont. 2025). **Waiver of right to litigate:** Lahoud v. Anthony & Sylvan Corp., 481 N.J. Super. 29, 330 A.3d 803 (App. Div. 2025); Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024). **Breach of ADR contract:** Gila, LLC v. Kapsch Trafficcom USA, Inc., 917 S.E.2d 842 (Ga. Ct. App. 2025). **Effect of arbitration agreement on third parties, Sureties:** RLI Insurance Company v. National Construction & Development, Inc., 258 Ariz. 504, 560 P.3d 330 (Ct. App. Div. 2 2024). **Third-party beneficiary:** RLI Insurance Company v. National Construction & Development, Inc., 258 Ariz. 504, 560 P.3d 330 (Ct. App. Div. 2 2024). **Surety:** RLI Insurance Company v. National Construction & Development, Inc., 258 Ariz. 504, 560 P.3d 330 (Ct. App. Div. 2 2024). **Unconscionability:** Lahoud v. Anthony & Sylvan Corp., 481 N.J. Super. 29, 330 A.3d 803 (App. Div. 2025); Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024). **Mutuality of obligation:** Lahoud v. Anthony & Sylvan Corp., 481 N.J. Super. 29, 330 A.3d 803 (App. Div. 2025); Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024). **Provisions void:** Smith v. Al Ross Luxury Homes LLC, 720 S.W.3d 149 (Tex. App. Houston 14th Dist. 2025). **Parties to**

the arbitration agreement: RLI Insurance Company v. National Construction & Development, Inc., 258 Ariz. 504, 560 P.3d 330 (Ct. App. Div. 2 2024). ***Nonsignatories to arbitration agreement:*** RLI Insurance Company v. National Construction & Development, Inc., 258 Ariz. 504, 560 P.3d 330 (Ct. App. Div. 2 2024). ***Equitable estoppel:*** RLI Insurance Company v. National Construction & Development, Inc., 258 Ariz. 504, 560 P.3d 330 (Ct. App. Div. 2 2024). ***Severability:*** Coinbase, Inc. v. Suski, 602 U.S. 143, 144 S. Ct. 1186, 218 L. Ed. 2d 615 (2024); Lahoud v. Anthony & Sylvan Corp., 481 N.J. Super. 29, 330 A.3d 803 (App. Div. 2025); Estate of Bender v. BQ Basements and Concrete, 2025 WL 2115506 (N.J. Super. Ct. App. Div. 2025); Smith v. Al Ross Luxury Homes LLC, 720 S.W.3d 149 (Tex. App. Houston 14th Dist. 2025); Hamilton v. Fischer Single Family Homes IV, LLC, 743 F. Supp. 3d 958 (S.D. Ohio 2024). ***Prejudice may not be considered when determining waiver:*** Monarch Heating and Cooling, LLC v. Petra, Inc., 2025 MT 184, 573 P.3d 1217 (Mont. 2025). Chapter 3.

- **The Award**

Motion to vacate: Valencia v. Mendoza, 103 Cal.App.5th 427, 322 Cal.Rptr.3d 903 (2024). ***Vacating award:*** Valencia v. Mendoza, 103 Cal.App.5th 427, 322 Cal.Rptr.3d 903 (2024). ***Res judicata and collateral estoppel:*** Design Gaps, Inc. v. Distinctive Design & Construction LLC, 162 F.4th 452 (4th Cir. 2025). ***Error of law:*** Valencia v. Mendoza, 103 Cal.App.5th 427, 322 Cal.Rptr.3d 903 (2024). Chapter 10.

- **Appealable and Nonappealable Orders**

Order confirming or refusing to confirm an award: Nordic PCL Construction, Inc. v. LPIHGC, LLC, 156 Haw. 325, 574 P.3d 1273 (2025). ***Scope of review expanded by agreement:*** Valencia v. Mendoza, 103 Cal.App.5th 427, 322 Cal.Rptr.3d 903 (2024). ***Court's jurisdiction to review or modify award:*** Nordic PCL Construction, Inc. v. LPIHGC, LLC, 156 Haw. 325, 574 P.3d 1273 (2025). 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-

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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 annettedavis@aol.com.

Thank you for your subscription.
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