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#SCOTUS Will Consider Whether Federal or State Law Governs Estoppel Under the NY Convention

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On Sept. 28, the U.S. Supreme Court is scheduled to consider whether to hear *Indian Harbor Ins. Co. v. Town of Vinton*, No. 25-1383, a case arising from Louisiana hurricane-damage insurance disputes that could resolve a question the Court left open in 2020: whether federal common law or state law governs when a nonsignatory to an international arbitration agreement invokes equitable estoppel to compel arbitration.

The insurers filed their certiorari petition on June 11 seeking review of a December 2025 Fifth U.S. Circuit Court of Appeals decision that denied their attempt to compel arbitration.

Four Louisiana public entities, the Town of Vinton, the Police Jury of Cameron Parish, Cameron Parish Recreation #6, and the Cameron Parish School Board, each bought surplus lines property coverage from a group of 10 insurers: eight domestic companies and two foreign ones, Certain Underwriters at Lloyd's, London, and HDI Global Specialty SE.

Each policy contained a broad arbitration clause, but also a "Contract Allocation Endorsement" providing that the policy should be construed “as a separate contract between the Insured and each of the Underwriters."

After Hurricanes Laura and Delta damaged their property in 2020, the four public entities filed suit against the domestic insurers in Louisiana state court, alleging the insurers underpaid their claims. None of the four fully pursued claims against the two foreign insurers. The claims against the foreign insurers were dismissed with prejudice after filing by Vinton, according to the public entities' filings, and the others never filed against the foreign insurers.

The domestic insurers removed the cases to federal court and moved to compel arbitration under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, best known as the New York Convention, the treaty governing international arbitration agreements.

Because the contract-allocation language meant each domestic insurer held its own all-American contract with no foreign party, the Convention didn't apply on its face, and Louisiana law separately bars arbitration clauses in Louisiana-issued insurance policies. So, the insurers argued that equitable estoppel should let them piggyback on the arbitration clauses in the public entities' now-abandoned contracts with the two foreign insurers, on the theory that the entities had alleged interdependent misconduct by all 10 insurers acting together.

A unanimous Fifth Circuit panel, with Circuit Judge James C. Ho writing and Circuit Judges Catharina Haynes and Andrew Oldham joining, rejected the argument. *Town of Vinton v. Indian Harbor Ins. Co.*, 161 F.4th 282 (5th Cir. 2025).

The insurers had raised three arguments on appeal. First, that the Convention applied to the policy directly. The panel disagreed, holding that the contract-allocation language created separate agreements to arbitrate between each insurer and each public entity, so no contract still at issue had a foreign party.

Second, that equitable estoppel should let them invoke the Convention anyway. The panel wrote that "[s]tate contract law determines whether a contract can be enforced by or against nonparties using equitable estoppel," citing the Supreme Court's *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624 (2009), and held that Louisiana's statutory bar on arbitration clauses in Louisiana-issued insurance policies, La. Rev. Stat. § 22:868(A)(2), forecloses using estoppel as a workaround.

Third, that a delegation clause in the arbitration provision required an arbitrator, not the court, to decide arbitrability. The panel held that argument had things backward: a court must find a valid arbitration agreement exists before any delegation clause within it can be enforced, and Louisiana law barred the agreement from validly forming at all.

The Louisiana Supreme Court had established the anti-estoppel rule the year before, in *Police Jury of Calcasieu Parish v. Indian Harbor Insurance Co.*, 395 So. 3d 717 (La. 2024), expressly abrogating an earlier Fifth Circuit prediction to the contrary in *Bufkin Enterprises L.L.C. v. Indian Harbor Insurance Co.*, 96 F.4th 726 (5th Cir. 2024) (per curiam).

The Fifth Circuit denied rehearing en banc in *Town of Vinton* on Jan. 12, 2026.

The insurers--Indian Harbor, a Delaware corporation based in Stamford, Conn., and co-petitioners Lexington Insurance Co., QBE Specialty Insurance Co., Steadfast Insurance Co., United Specialty Insurance Co., General Security Indemnity Co. of Arizona, Old Republic Union Insurance Co., Safety Specialty Insurance Co., Certain Underwriters at Lloyds London (subscribing to Policy Nos. AMR-60898-02, AMR42386-05, and AMR-41923-05), and HDI Global Specialty SE--want the Court to resolve what they frame as an entrenched, 4-1 circuit split. They argue the First, Second, Fourth, and Ninth Circuits have all held that federal common law, not state law, governs equitable estoppel under the Convention.

The First Circuit, in *InterGen N.V. v. Grina*, 344 F.3d 134 (1st Cir. 2003), held that the Convention "demands national uniformity," so federal common law supplies the estoppel rule. The Second Circuit reached the same conclusion earlier still, in *Smith/Enron Cogeneration L.P. v. Smith Cogeneration International, Inc.*, 198 F.3d 88 (2d Cir. 1999). The Fourth Circuit applied federal estoppel principles in *Aggarao v. MOL Ship Management Co.*, 675 F.3d 355 (4th Cir. 2012). And the Ninth Circuit, in *Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166 (9th Cir. 2021), held that the Convention's "need for uniformity" requires federal law to govern.

The Fifth Circuit, the petitioners argue, broke from all four by extending *Arthur Andersen* beyond its proper scope. That decision, they say, addressed only domestic arbitration agreements under Chapter 1 of the Federal Arbitration Act, where Congress expressly incorporated state contract law. Chapter 2, which implements the Convention, contains no comparable language, so there's no basis to import Arthur Andersen's state-law rule into Convention cases, according to the petitioners' brief.

The petitioners argue the case sits squarely within a question the Court intentionally left open in *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA, LLC*, 590 U.S. 432 (2020). There, the Court held only that the Convention doesn't conflict with nonsignatory enforcement under domestic equitable estoppel doctrines, but expressly declined to decide "which body of law governs" that determination. (See Russ Bleemer, "Holding There Is No Treaty-FAA Conflict, Supreme Court Permits Equitable Estoppel for International Arbitration Parties," *CPR Speaks* (June 1, 2020) (available here).)

This case, the petitioners say, is the chance to finally answer the question *GE Energy* left open.

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At this writing, two amicus briefs backing the petition have been filed.

The American Property Casualty Insurance Association, a Chicago-based group representing insurers writing roughly two-thirds of the U.S. property-casualty market, argue that letting state law govern estoppel leaves foreign insurers with only "half a loaf" of the arbitration rights they bargained for.

A separate brief from a group of eight international arbitration scholars, led by Dr. Crina Baltag of Queen Mary University of London and retired Iran-U.S. Claims Tribunal Judge Charles N. Brower, argue that the Convention requires the United States to "speak with one voice," and that letting individual states' policies govern estoppel would make the same arbitration agreement enforceable in one state and not the next.

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The Town of Vinton and the other three public entities urged the Court to deny review in an Aug. 26 brief in opposition. They argue there's no real circuit split because none of the petitioners' four cited cases actually presented the question the Fifth Circuit decided. Each involved a "paradigmatic Convention case" with live claims by or against a genuinely foreign party, unlike this "all-American affair," where only Louisiana public entities and U.S. insurers, each holding a separate arbitration agreement, remain in the case.

On the merits, the entities lean on *GE Energy*'s observation that the Convention is "simply silent" on nonsignatory-enforcement doctrines. That silence, they argue, means no conflict exists between the Convention and FAA Chapter 1's incorporation of state law, so *Arthur Andersen*'s rule should carry over by default.

They also point to a fresh authority on their side: a Seventh Circuit decision handed down while the petition was pending, *Kim v. Jump Trading LLC*, No. 25-1964, 2026 WL 2348464 (7th Cir. Aug. 13, 2026), in which Circuit Judge Frank Easterbrook wrote that "state law controls disputes about estoppel under Chapter 2."

Even if the Court disagreed on the law, the entities argue the case is a poor vehicle to decide it. Their brief says that three of the four respondents never filed suit against the foreign insurers at all, and the fourth dismissed its claims against them with prejudice before service. Therefore, the "intertwined claims" theory of estoppel the insurers rely on would fail for lack of any live claim against a foreign party.

The briefs discussed here can be found on the Court's docket page, here. The docket shows the petition distributed for the Sept. 28 conference.

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