Second Circuit Joins Other Circuits in Finding Insurance Arbitration Agreements Enforceable Under New York Convention

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On May 8, 2025, the U.S. Court of Appeals for the Second Circuit resolved a significant source of uncertainty over the arbitrability of international insurance contracts in favor of arbitration. In *Certain Underwriters at Lloyd's, London v. 3131 Veterans Blvd LLC* ("*Certain Underwriters*"), the Court held that the provision of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") that requires courts to enforce arbitration agreements in international contracts takes priority over contrary state laws prohibiting arbitration of insurance contracts.[1] In so holding, the Second Circuit joined four other circuits in finding that the McCarran-Ferguson Act ("MFA"),[2] which uniquely permits states to "reverse preempt" federal law in the insurance realm, does not apply to the obligation to enforce arbitration agreements under the New York Convention.

With *Certain Underwriters*, arbitration agreements in international insurance contracts are now fully enforceable in the Second Circuit, in addition to the First, Fourth, Fifth, and Ninth Circuits. The decision also appears to reduce the grounds for challenging awards resulting from such agreements as compared with other U.S.-based arbitrations. Beyond the realm of insurance arbitration, *Certain Underwriters* also contributes to the harmonization of the enforcement of international arbitration agreements and awards across state and federal courts. In finding that the relevant provisions of the New York Convention take priority over restrictive state laws, the Court affirmed such provisions are self-executing—that is, they do not require implementing legislation to take effect in domestic courts. This finding raises the prospect of courts finding additional provisions of the Convention self-executing, thereby further strengthening the enforcement of arbitration agreements and awards across the United States. Parties nonetheless should continue to take care when drafting such agreements—not least because the remainder of circuits have yet to address the issue of preemption in this area. In those circuits, courts may still find arbitration agreements invalid where there is a sufficient

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1 No. 23-1268-CV, 2025 WL 1335829, at *9 (2d Cir. May 8, 2025).

2 15 U.S.C. § 1012(b).

connection between the international insurance contract or policy and a state with restrictive arbitration laws.

Background

The general rule that federal statutes preempt conflicting state laws under the Supremacy Clause of the U.S. Constitution applies equally in the context of arbitration. In line with this rule, the Federal Arbitration Act ("FAA") preempts state laws that restrict or withdraw the power of courts to enforce arbitration agreements.[3] The MFA, however, provides one notable exception. Enacted by Congress in 1945, the MFA states that a federal law will not preempt a state statute enacted "for the purpose of regulating the business of insurance," unless the federal law specifically relates to insurance.[4] In other words, a state law specific to insurance will displace a conflicting federal law of general application.[5] This effect is known as "reverse preemption."[6]

Understanding how reverse preemption works in the insurance arbitration context requires a brief dive into the structure of the FAA and how it relates to the New York Convention. The FAA contains distinct chapters on domestic and international arbitration.[7] Its domestic chapter governs arbitration agreements and awards "involving commerce" within the United States.[8] The international chapter of the FAA implements the New York Convention,[9] an international treaty that facilitates the enforcement of foreign arbitral awards and arbitration agreements with a foreign element.[10] As relevant here, Article II(3) of the New York Convention requires courts to recognize and enforce written agreements to arbitrate disputes with an international dimension.[11] Where a party seeks to enforce an arbitration clause, the court "shall . . . refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."[12]

In recent decades, courts have encountered the question of whether reverse preemption under the MFA applies equally to domestic and international arbitration agreements.

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3 *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 21(2012); *Southland Corp. v. Keating*, 465 U.S. 1, 16 n.10 (1984).

4 15 U.S.C. § 6701(e); *Humana Inc. v. Forsyth*, 525 U.S. 299, 307–08 (1999).

5 *Certain Underwriters*, 2025 WL 1335829, at *1.

6 *Id.*

7 *See* 9 U.S.C. §§ 1–16 (domestic arbitration), 201–08 (international arbitration).

8 9 U.S.C. § 2.

9 9 U.S.C. §§ 201–08.

10 New York Convention, *Contracting States*, https://www.newyorkconvention.org/contracting-states.

11 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) ("New York Convention"), Art. II(3); 9 U.S.C. §§ 201, 206, 208; *Certain Underwriters*, 2025 WL 1335829, at *4.

12 New York Convention, Art. II(3).

Applying reverse preemption, courts have regularly held that state laws restricting insurance arbitration, of which there are some nearly two dozen,[13] preempt the FAA.[14] However, the question of whether such laws can also preempt New York Convention obligations has generated more uncertainty due to the MFA's application to "Act[s] of Congress" specifically.[15] Courts have accordingly debated whether the New York Convention, as a treaty, has legal force on account of the FAA's implementing provisions, or whether the Convention is self-executing—that is, applies directly without the need for implementing legislation.

The Second Circuit's First Cut: State Law Prevails

The Second Circuit considered reverse preemption of the New York Convention for the first time in its 1995 decision in *Stephens v. American International Insurance* ("*Stephens*").[16] With little discussion, the Court found that "because the [New York] Convention is not self-executing, and therefore, relies upon an Act of Congress for its implementation," the MFA applied.[17] The Court accordingly determined that a Kentucky state law prohibiting arbitration in select insurance contexts preempted the Convention, thus rendering the parties' arbitration agreement unenforceable.[18]

While *Stephens* remained the law of the Second Circuit in the decades since, intervening developments cast doubt on its holding. Most importantly, in 2008, the U.S. Supreme Court provided critical guidance in *Medellín v. Texas* ("*Medellín*") on the analysis that courts should undertake when determining whether a treaty or certain of its provisions are self-executing.[19] First, *Medellín* affirmed that rather than analyzing a treaty as a whole, courts may assess self-execution on a provision-by-provision basis.[20] Second, *Medellín* clarified that certain hallmarks may determine whether a provision is self-executing. These include whether the provision is a directive to domestic courts,

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13 *See, e.g.*, ARK. CODE ANN. § 16-108-233(b)(3) (2025); HAW. REV. STAT. § 431:10-221(a)(2) (2025); MO. REV. STAT. § 435.350 (2024); S.C. CODE ANN. § 15-48-10(b)(4) (2025); VA. CODE ANN. § 38.2-312 (2025).

14 *See, e.g.*, *State, Dep't of Transp. v. James River Ins. Co.*, 176 Wash. 2d 390, 392 (2013); *Am. Bankers Ins. Co. of Fla. v. Inman*, 436 F.3d 490, 494 (5th Cir. 2006); *McKnight v. Chicago Title Ins. Co., Inc.*, 358 F.3d 854, 859 (11th Cir. 2004); *Standard Sec. Life Ins. Co. of N.Y. v. West*, 267 F.3d 821, 823 (8th Cir. 2001); *Mut. Reins. Bureau v. Great Plains Mut. Ins. Co., Inc.*, 969 F.2d 931, 934 (10th Cir. 1992).

15 15 U.S.C. § 1012(b).

16 66 F.3d 41, 45–46 (2d Cir. 1995), *abrogated by Certain Underwriters*, 2025 WL 1335829.

17 *Stephens*, 66 F.3d at 45, *abrogated by Certain Underwriters*, 2025 WL 1335829.

18 *Id.* at 45–46.

19 552 U.S. 491.

20 *Id.* at 508.

whether the provision is mandatory, and whether there is support for self-execution in the treaty's drafting and ratification history.[21]

Stephens, by contrast, had failed to examine any of these factors. Instead, the Second Circuit had simply made a blanket determination about the status of the New York Convention. In expressly declining to follow *Stephens*, several circuit courts observed as much, noting that the Second Circuit decided *Stephens* without the benefit of *Medellín*.[22]

The Second Circuit Aligns with Other Circuits on Reverse Preemption

On May 8, 2025, the Second Circuit abrogated its decision in *Stephens*. *Certain Underwriters* concerned contracts for surplus insurance covering properties in Louisiana damaged by Hurricane Ida. While the contracts provided for arbitration in New York and selected New York law as the governing law,[23] Louisiana law prohibits the arbitration of insurance disputes. When the insureds filed suit in Louisiana state court, the insurers countersued in the Southern District of New York to compel arbitration.[24] The district courts in each of the two parallel cases followed *Stephens* and denied the insurer's petitions, concluding that Louisiana law reverse preempted the FAA and New York Convention.[25]

The Second Circuit reversed, holding that *Stephens* no longer constituted good law and finding Article II(3) of the New York Convention self-executing. Applying *Medellín*, the Court reasoned that because Article II(3) requires courts to refer disputes to arbitration if covered by a valid agreement, the United States ratified the Convention with the understanding that it would have direct effect in U.S. courts.[26] Therefore, because

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21 *Id.*at 508, 523.

22 *Green Enters., LLC v. Hiscox Syndicates Ltd. at Lloyd's of London*, 68 F.4th 662, 668 (1st Cir. 2023); *CLMS Mgmt. Serv. Ltd. P'ship v. Amwins Brokerage of Ga., LLC*, 8 F.4th 1007, 1015–16 (9th Cir. 2021); *Safety Nat'l Cas. Corp. v. Certain Underwriters at Lloyd's, London*, 587 F.3d 714, 737 (5th Cir. 2009) (en banc).

23 Petition to Compel Arbitration at ¶ 34, *Certain Underwriters at Lloyds v. 3131 Veterans Blvd LLC*, No. 22-CV-9849 (LAP), 2023 WL 5237514 (S.D.N.Y. Aug. 15, 2023), *rev'd and remanded*, No. 23-1268-CV, 2025 WL 1335829 (2d Cir. May 8, 2025); Petition to Compel Arbitration at ¶ 18, *Certain Underwriters at Lloyd's v. Mpire Props., LLC*, No. 22-CV-9607 (RA), 2023 WL 6318034 (S.D.N.Y. Sept. 28, 2023), *rev'd and remanded sub nom. Certain Underwriters at Lloyds, London v. 3131 Veterans Blvd LLC*, No. 23-1268-CV, 2025 WL 1335829 (2d Cir. May 8, 2025).

24 *Certain Underwriters at Lloyds v. 3131 Veterans Blvd LLC*, 2023 WL 5237514, at *1; *Certain Underwriters at Lloyd's v. Mpire Props., LLC*, 2023 WL 6318034, at *1.

25 2025 WL 1335829, at *1–2.

26 *Id.* at *7.

Article II(3) does not rely on an "Act of Congress," the Louisiana law did not have reverse-preemptive effect under the MFA.[27]

With this holding, *Certain Underwriters* brings the Second Circuit in line with the First, Fourth, Fifth, and Ninth Circuits. These circuits have all reached the same outcome—that reverse preemption does not apply to arbitration clauses in international insurance contracts—though they have differed on the underlying reasoning. The Second Circuit's approach follows that of the First and Ninth Circuits, both of which have agreed that Article II(3) of the New York Convention is not reverse preempted by the MFA.[28] By contrast, the Fifth Circuit has reasoned that the MFA does not reverse preempt the New York Convention's implementing legislation in the FAA, while the Fourth Circuit has reasoned that the MFA does not implicate international insurance contracts at all.[29]

Takeaways and Practical Implications

The decision in *Certain Underwriters* resolves a significant source of uncertainty over the arbitrability of international insurance contracts. Following *Certain Underwriters*, arbitration agreements in international insurance contracts are now fully enforceable in five circuits, including the Second Circuit.

The decision also appears to reduce the grounds for challenging the validity of awards resulting from international insurance contracts subject to the MFA as compared with other U.S.-seated arbitrations. By finding arbitration agreements in such contracts enforceable under the New York Convention, as opposed to under the FAA, the decision effectively closes off resort to the grounds for vacatur in the domestic chapter of the FAA that would otherwise apply.[30] While the grounds for vacatur in the FAA and the grounds for refusing to enforce awards under the New York Convention are similar,[31] the Convention grounds are narrower, including in relation to challenges to the scope of arbitral jurisdiction.[32] Likewise, the Convention does not allow courts to decline recognition on the basis of the arbitrators' alleged "manifest disregard" of applicable law, a ground that some federal courts have applied as an additional "gloss" on the FAA vacatur provisions.[33]

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27 *Id.* at *4.

28 *Green Enters.*, 68 F.4th at 676–77; *CLMS Mgmt.*, 8 F.4th at 1017–18.

29 *Safety Nat'l*, 587 F.3d at 728–29; *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 390 (4th Cir. 2012).

30 *See* 9 U.S.C. § 10.

31 *Compare id.*, *with* New York Convention, Art. V.

32 *See Mgmt. & Technical Consultants S.A. v. Parsons-Jurden Int'l Corp.*, 820 F.2d 1531, 1534 (9th Cir. 1987).

33 *See Weiss v. Sallie Mae, Inc.*, 939 F.3d 105, 109 (2d Cir. 2019).

At the same time, parties should be aware of three key limitations that remain relevant to the enforceability of arbitration agreements in international insurance disputes.

First, there remains a risk of invalidity in the remaining circuits that have not addressed the issue of reverse preemption in international insurance arbitration. While district courts in these circuits have tended to reach the same outcome as the Second Circuit,[34] one district court in the Tenth Circuit has disagreed. This court found that reverse preemption *did* apply to the New York Convention and thus that the arbitration agreement at issue was invalid.[35]

Second, *Certain Underwriters* only applies to *international* insurance contracts. As mentioned, the New York Convention covers arbitration clauses in contracts with an international dimension,[36] such as contracts involving a foreign party or foreign seat of arbitration, or contemplating commercial activity outside of the United States.[37] While contracts calling for insurance arbitration with such an international connection are now enforceable under *Certain Underwriters*, restrictive state laws may continue to pose validity challenges for agreements to arbitrate purely domestic insurance disputes governed by the FAA.

Third, restrictive state laws may apply regardless of what law the parties choose in their contract. In particular, restrictive state laws may apply when there is a sufficient factual connection with the contract, such as a policy insuring persons or property in the state. While parties may seek to avoid the application of such laws by selecting the law of an arbitration-friendly jurisdiction (including, for example, the law of New York, New Jersey, or Texas, among others) to govern the arbitration agreement, ultimately, choice of law may be insufficient to ward off validity challenges.

Outside of the insurance context, *Certain Underwriters*' holding that certain obligations in the New York Convention are self-executing may also have broader implications for the enforcement of agreements to arbitrate international disputes. Although courts have consistently held that the international chapter of the FAA preempts conflicting state laws, state courts asked to enforce international arbitration agreements or awards continue to apply state law in limited contexts. *Certain Underwriters* accordingly helps

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[34] *See, e.g.*, *12260 Grp., LLC v. Indep. Specialty Ins. Co.*, 705 F. Supp. 3d 1335, 1342–43 (M.D. Fla. 2023); *Foresight Energy, LLC v. Ace Am. Ins. Co.*, 663 F. Supp. 3d 980, 987 (E.D. Mo. 2023); *J.B. Hunt Transp., Inc. v. Steadfast Ins. Co.*, 470 F. Supp. 3d 936, 943 (W.D. Ark. 2020).

[35] *Krohmer Marina, LLC v. Certain Underwriters at Lloyd's, London*, 655 F. Supp. 3d 1124, 1140–43 (E.D. Okla. 2023).

[36] *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co., Ltd.*, 241 F.3d 135, 146 (2d Cir. 2001).

[37] *See Vitol, Inc. v. Produtos de Petróleo Ltda.*, No. 22 Civ. 10569, 2024 WL 1216660, at *7 (S.D.N.Y. Mar. 21, 2024); *R.J. Wilson & Assocs., Ltd. v. Underwriters at Lloyd's London*, No. Civ. 08–0322, 2009 WL 3055292, at *3 (E.D.N.Y. Sept. 21, 2009).

harmonize the enforcement of international arbitration agreements and awards across state and federal courts, particularly in states that have not adopted laws aligning their enforcement procedures with federal law.[38] Looking ahead, *Certain Underwriters* raises the possibility of courts finding other provisions of the New York Convention self-executing, thereby further strengthening the enforcement of international arbitration agreements and awards in the United States.

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[38] *See, e.g.*, Md. Code Ann., Cts. & Jud. Proc. Sect. 3-2B-03(a) (2012); N.C. Gen. Stat. Sect. 1-567.31(a) (1999).