



- > action for
- > damages arising out of a dispute concerning defendants' allegedly wrongful
- > billing practices. Defendants Twinstar Leasing, Limited and Arthur C.
- > Schmidt,
- > Jr. (hereinafter collectively "Twinstar"), now move to stay [\*2] these
- > proceedings pending arbitration, pursuant to Federal Rule of Civil
- > Procedure
- > 12(b)(1). Plaintiff respond to this motion by claiming that the issues to
- > be
- > arbitrated are beyond the scope of the arbitration agreement. Because the
- > Court
- > finds that the issues are within the scope of the arbitration agreement,
- > the
- >
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- > motion to stay proceedings pending arbitration is GRANTED.
- >
- > Agreements to arbitrate are heavily favored and rigorously enforced by
- > the
- > courts. See e.g. 9 U.S.C. @ 1 et seq; Shearson/American Express Inc. v.
- > McMahon,
- > 482 U.S. 220, 226, 96 L. Ed. 2d 185, 107 S. Ct. 2332 (1987); Mitsubishi
- > Motors
- > Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 625, 87 L. Ed. 2d
- > 444, 105
- > S. Ct. 3346 (1985); Moses H. Cone Memorial Hospital v. Mercury
- > Construction
- > Corp., 460 U.S. 1, 74 L. Ed. 2d 765, 103 S. Ct. 927 (1983); Southern
- > Constructors Group v. Dynalectric Co., 2 F.3d 606, 610, n. 15 (5th
- > Cir.1993);
- > Hartford Lloyd's Insurance Co. v. Teachworth, 898 F.2d 1058, 1061 (5th
- > Cir.1990). "As a matter of federal law, any doubts concerning the scope of
- > arbitrable issues should be resolved in favor of arbitration...." Moses H.
- > Cone
- > Memorial Hospital, 460 U.S. at [\*3] 24. This is especially true in
- > agreements
- > affecting interstate and foreign commerce. "Concerns of international
- > comity,
- > respect for the capacities of foreign and transnational tribunals, and
- > sensitivity to the need of the international commercial system for
- > predictability in the resolution of disputes require that we enforce the
- > parties' agreement [for foreign arbitration], even assuming that a
- > contrary
- > result would be forthcoming in a domestic context." Mitsubishi Motors
- > Corp., 473
- > U.S. at 629 (1985). The Federal Arbitration Act ("FAA"), specifically 9
- > U.S.C. @

- > 3 n2 and 9 U.S.C. @ 4 n3, provides this Court with the general authority
- > to
- > order compulsory arbitration in London and to stay these proceedings
- > pending the
- > disposition of the London arbitration. The Convention on Recognition and
- > Enforcement of Foreign Arbitral Awards ["Convention"] also requires Courts
- > to
- > enforce any written agreement which provides arbitration as the mechanism
- > to
- > resolve international commercial disputes. 9 U.S.C. @ 201.

> -----Footnotes-----

> n2 9 U.S.C. @ 3 provides:

- > If any suit or proceeding be brought in any of the courts of the United
- > States
- > upon any issue referable to arbitration under an agreement in writing for
- > such
- > arbitration, the court in which such suit is pending, upon being satisfied
- > that
- > the issue involved in such suit or proceeding is referable to arbitration
- > under
- > such an agreement, shall on application of one of the parties stay the
- > trial on
- > the action until such arbitration has been had in accordance with the
- > terms of
- > the agreement, providing that the applicant for the stay is not in default
- > in
- > proceeding with such arbitration.
- > [\*4]

> n3 9 U.S.C. @ 4 provides:

- > The Court shall hear the parties, and upon being satisfied that the making
- > of
- > the agreement for arbitration or the failure to comply therewith is not an
- > issue, the Court shall make an order directing the parties to proceed to
- > arbitration in accordance with the terms of the agreement. s >>

- > This language requires an evidentiary hearing when there is a dispute
- > over
- > an agreement to arbitrate, but appellate courts have not held district
- > courts to
- > the letter of the law where "the parties were afforded the opportunity, of
- > which
- > they ... took full advantage, exhaustively to brief the issues to the
- > district

> court ..." Commerce Park at DFW Freeport v. Mardian Const. Co., 729 F.2d  
> 334,  
> 340 (5th Cir.1984); Accord Mowbray v. Moseley, Hallgarten, Estabrook &  
> Weeden,  
> Inc., 795 F.2d 1111, 1115 n. 7 (1st Cir.1986). Such is the case here.

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> -----End Footnotes-----

> [2] Whether parties should generally be compelled to arbitrate involves a  
> two-step inquiry. "First, the court must determine whether the parties  
> agreed  
> to arbitrate the dispute. [ Mitsubishi Motors Corp., 473 U.S. at 625, 105  
> S. Ct.  
> at 3353.] ... [\*5] [Then] it must consider whether any federal statute  
> or  
> policy renders the claims nonarbitrable.<sup>3</sup> Id., at 628; R.M. Perez &  
> Assoc., Inc.  
> v. Welch, 960 F.2d 534, 538 (5th Cir.1992). n3 In determining whether the  
> parties have agreed to arbitrate a dispute, the court must conduct a  
> limited  
> inquiry into whether dispute falls within the scope of the arbitration  
> clause.  
> Sedco v. Petroleos Mexicanos Mexican National Oil, 767 F.2d 1140 (5th Cir.  
> 1985). Any doubts regarding the scope of the arbitration clause should be  
> resolved in favor of arbitration. First Options of Chicago, Inc. v.  
> Kaplan, 514  
> U.S. 938, 131 L. Ed. 2d 985, 115 S. Ct. 1920 (1995). A motion to arbitrate  
> should not be denied "unless it can be said with positive assurance that  
> an  
> arbitration clause is not susceptible of an interpretation that could  
> cover the  
> dispute at issue." Commerce Park at DFW Freeport v. Mardian Const. Co.,  
> 729 F.2d  
> 334, 338 (5th Cir. 1984), quoting, Wick v. Atlantic Marine, Inc., 605 F.2d  
> 166,  
> 168 (5th Cir. 1979).

> -----Footnotes-----

> n3 In the current dispute Twinstar presents no statutory argument or  
> policy  
> argument why this matter should not be referred to arbitration. Therefore  
> the

> Court need not further address this issue.

>

> -----End Footnotes-----

> ...  
> [\*6]

> It is clear that the Current dispute falls within the scope of the  
> agreement  
> to arbitrate. Language indicating this intent to arbitrate is contained in  
> clause 18 of the agency agreement, which states:

> In the event of there being a dispute or difference between the  
> Principal and  
> the Agent in connection with the agency agreement, including its validity,  
> construction and performance, shall be determined by arbitration. . . . n4

> -----Footnotes-----

> ...

> n4 The full text of clause 18 is as follows:

> Choice of Law

> The governing law of this Agreement shall be English Law.

> In the event of there being a dispute or difference between the  
> Principal and  
> the Agent in connection with the agency agreement, including its validity,  
> construction and performance, shall be determined by arbitration under the  
> rules  
> of the London Court of Arbitration at the date hereof which Rules, with  
> respect  
> to matters not regulated by them, incorporate the Arbitration Rules of the  
> United Nations Commission on International Trade Law in force at the time  
> of the  
> commencement of the arbitration. The arbitration shall be held in England  
> at  
> London and the parties agree to be bound by the decision of the Arbitrator  
> and  
> the parties agree that service of any notices in reference to such  
> arbitration

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> at their addresses as given under Clause 20 shall be valid and sufficient.

> -----End Footnotes-----

> ...

> [4] In their opposition, Multistar contends that in order to trigger  
> arbitration,  
> any dispute "must arise out of the validity, construction or performance  
> of the  
> agreement." This reading interprets the word "including" as placing  
> limitations  
> on the types of dispute to be arbitrated. The plain language of the clause  
> implies no such limitation. The clause states that "a dispute or  
> difference  
> between the Principal and the Agent in connection with the agency  
> agreement"  
> necessitates arbitration, and that disputes concerning the agreement's  
> "validity, construction and performance" shall be included in the types of  
> dispute which trigger arbitration.

> [5] Multistar further asserts that because it alleges that Twinstar has  
> committed  
> fraud in the performance of the agency agreement, the dispute is beyond  
> the  
> scope of arbitration. This assertion is contrary to both case law, as well  
> as  
> policy. The agency agreement clearly refers to disputes arising in  
> connection  
> with performance. An assertion of non payment by one side or the other is  
> a  
> classic dispute concerning performance. To allow one party to evade  
> arbitration  
> proceedings simply by using words like fraud or embezzlement would  
> diminish the  
> power of arbitration clauses. It would also go against the presumption  
> that  
> disputes should be resolved in favor of arbitration. See Prima Paint  
> Corporation  
> v. Flood & Conklin Mfg. Co., 388 U.S. 395, 18 L. Ed. 2d 1270, 87 S. Ct.  
> 1801  
> (1967) (arbitration proper for claim of fraud in the inducement).<sup>37</sup>

> Accordingly, defendant's motion to stay these proceedings pending  
> arbitration  
> [\*7] is hereby GRANTED. This matter shall be statistically closed, to be  
> reopened upon motion by the parties at a later date, if appropriate.

> New Orleans, Louisiana, this 26 day of August, 1998

> HELEN G. BERRIGAN

> UNITED STATES DISTRICT JUDGE