Dissecting The Case Law On Automaker Arbitration Provisions

By **Ellisse Thompson and Brandon Boxler** (May 25, 2023)

Ellisse Thompson

Brandon Boxler

Automakers are increasingly turning to arbitration agreements as a tool for trimming and defending putative class action lawsuits, but their efforts have been met with mixed results.

The argument for compelling arbitration seems simple enough: The plaintiffs cannot pursue a class action in court because they agreed to arbitrate their claims. And because at least some of the plaintiffs agreed to arbitration, a class cannot be certified because individual issues predominate — namely, whether each plaintiff has agreed to arbitrate.

But the simple quickly becomes complicated because consumers and automakers rarely have a direct contractual relationship. Consumers typically buy or lease a vehicle from a dealership, and those underlying sales or lease agreements — to which the automaker is not a signatory — contains the relevant arbitration provision.

Automakers, then, must try to enforce arbitration provisions in contracts they did not sign. That extra step has taken courts into a thorny thicket of unsettled legal questions.

The result is a growing and conflicting body of law.

Last month, for example, the Superior Court of the State of California in Avendano v. Nissan North America denied Nissan's motion to compel arbitration based on an arbitration agreement in the sales contract between the plaintiff and a dealership.[1]

In March, the U.S. District Court for the Middle District of Florida in Riley v. General Motors LLC similarly refused to let General Motors compel arbitration based on an arbitration provision in the purchase agreement between the plaintiff and a dealership.[2]

On the other hand, the U.S. District Court for the Eastern District of Michigan in Harper v. GM LLC recently granted General Motors' motion to compel arbitration based on an arbitration provision in the sales agreement between a dealership and the plaintiff.[3]

One week later, the Eastern District of Michigan again compelled arbitration in Lyman v. Ford Motor Co., granting Ford's request to send claims to arbitration based on a sales agreement between certain plaintiffs and third-party dealerships.[4]

In this article, we try to make sense of these seemingly conflicted cases and highlight some of the factors courts are emphasizing when resolving an automaker's motion to compel arbitration.

The "Arbitrability" Question and Confusion

The Federal Arbitration Act provides that arbitration agreements "shall be valid, irrevocable, and enforceable."[5]

The U.S. Supreme Court's 2011 decision in AT&T Mobility LLC v. Concepcion emphasized that the act reflects "both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract."[6]

The U.S. Supreme Court also explained in 2019's Henry Schein Inc. v. Archer & White Sales Inc. that, as a matter of contract, parties can craft agreements that require an arbitrator to "decide not only the merits of a particular dispute but also gateway questions of arbitrability, such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy."[7]

So when a contract delegates arbitrability disputes to an arbitrator, courts must send such disputes to arbitration. This holds true "even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless."[8]

This guidance from the Supreme Court seems to require arbitration of any arbitrability dispute, including whether an automaker can compel arbitration based on an agreement between the plaintiff and a dealership. Some courts, however, have hesitated to follow such a rule, refusing to send arbitrability disputes to arbitration.

On March 17, in Miranda-Trujillo v. Ford Motor Co., for example, the Los Angeles County Superior Court denied Ford's motion to compel arbitration, reasoning that, "[s]ince this matter involves an attempt to enforce an arbitration provision by a non-signatory, this court accordingly makes the determination concerning arbitrability."[9]

The Middle District of Florida used similar reasoning in Riley, denying an automaker's motion to compel and reasoning that, whether a nonsignatory can compel a signatory to arbitration "is a question of whether the parties have agreed to arbitrate, and that is a question for the Court."[10]

Yet other courts are more faithful to the Supreme Court's guidance.

In Harper, for example, the Eastern District of Michigan highlighted language in the agreement between a plaintiff and a dealership requiring arbitration of "[a]ny and all claims or disputes of any kind," including disputes concerning "the arbitrability of the claim or dispute."[11] The court followed Supreme Court precedents in 2019's Lamps Plus Inc. v. Varela, and held that this language delegated to arbitration all "gateway" questions of arbitrability.[12]

Likewise, in 2021, the U.S. District Court for the Southern District of Florida in Tyman v. Ford Motor Co. granted a motion to compel arbitration pursuant to arbitration clauses in agreements between the plaintiff and a dealership.[13] The automaker could enforce the arbitration agreements pursuant to the doctrine of "equitable estoppel" because the plaintiff's claims flowed from the two underlying contracts containing the arbitration agreements.[14]

Another example is 2012's Mance v. Mercedes-Benz USA, where the U.S. District Court for the Northern District of California allowed Mercedes-Benz to enforce an arbitration provision in the sales contract between a dealer and the plaintiff.[15] The court also applied equitable estoppel, reasoning that the sales contract allowed the plaintiff to obtain a warranty for his vehicle, and the plaintiff was alleging violations of that warranty.

Thus, "it would not be fair to allow [the plaintiff] to rely upon his signing the contract to buy the car and get the warranty but to prevent Mercedes-Benz from attempting to enforce the

contract's arbitration clause."[16]

The Northern District of California also relied on equitable estoppel when compelling arbitration in 2021's Reykhel v. BMW of North America LLC.[17] The plaintiff sued BMW for breach of an express warranty in a lease agreement with the dealership, and the court reasoned that the plaintiff could not evade one term of that agreement — e.g., arbitration — while seeking to enforce its other terms — e.g., warranties.[18]

Five Factors Driving Judicial Outcomes

A close reading of the cases reveals five factors that are driving the seeming disparate outcomes in this developing area of law.

First, does the underlying contract have an express delegation clause? In Harper, the contract expressly required arbitration of "the arbitrability of the claim or dispute."[19] Courts generally agree that such language clearly delegates the arbitrability question to an arbitrator.

Yet even without such express language, a contract might still require arbitration of disputes about validity, enforceability, or scope of the arbitration agreement. Some courts have found such language sufficient to require arbitration of threshold arbitrability disputes.[20]

Some courts also have found significant whether the underlying contracts incorporate the rules of the American Arbitration Association. Those rules provide that the arbitrator "shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim."[21]

Thus, according to the U.S. Court of Appeals for the Sixth Circuit, "incorporation of the AAA Rules shows that the parties 'clearly and unmistakably' agreed that the arbitrator would decide questions of arbitrability."[22]

Second, does the underlying contract cover disputes relating to the "condition" of the vehicle, as opposed to only those disputes relating to the "purchase" or "lease" of the vehicle?

Some courts — like the Court of Appeal of the State of California, Third Appellate District in its 2020 decision in Felisilda v. FCA US LLC — have reasoned that language covering the condition of the vehicle expands the arbitration provision beyond just the immediate relationship between the consumer and the dealership.[23]

Third, does the arbitration provision cover claims against a "non-party" or any "relationship" that results from the underlying sale or lease agreement? Some courts, like the Fifth Circuit in its 2008 decision in Sherer v. Green Tree Servicing LLC, have reasoned that such language signals an intent for the arbitration agreement to cover claims against nonparties, as concluding otherwise would render such "non-party" language superfluous.[24]

Fourth, does the applicable state law allow a nonsignatory to use equitable estoppel to compel a signatory to arbitration? The contract might have a choice-of-law provision; if not, a choice-of-law analysis is required.

The substantive law matters because states have different rules for equitable estoppel — and as noted in the Eastern District of Michigan's 2021 decision in Straub v. Ford Motor

Co. — whether "a nonsignatory to an agreement containing an arbitration clause may compel a signatory to arbitrate pursuant to equitable estoppel is governed by state law."[25]

Notably, the law here is developing too. Some states have not clearly resolved whether equitable estoppel allows a nonsignatory to compel a signatory to arbitration.[26]

Fifth, did the automaker timely move to compel arbitration? If not, the automaker might be vulnerable to waiver arguments.

Here again, the law of waiver is still developing.

Some cases, including Lyman, hold that waiver questions are an arbitrability issue that must be resolved in arbitration.[27] But other cases, including Speerly v. General Motors LLC, also from the Eastern District of Michigan, have refused to send waiver questions to arbitration when the automaker engaged in litigation and sought "dispositive rulings from the Court" before moving to compel.[28]

Conclusion

Although the case law in this area is developing rapidly, anyone evaluating the viability of a motion to compel arbitration should start in the usual places: the language of the contract and the governing law. Those things might not provide a clear answer in every case, but they at least provide some guideposts for what will drive the court's legal analysis.

Ellisse Thompson is an associate at Klein Thomas Lee & Fresard.

Brandon Boxler is a partner and leads the appeals and advanced motions practice group at the firm.

[1] 2023 Cal. Super. LEXIS 21188 (Cal. Sup. Ct., Los Angeles Cnty., Apr. 12, 2023).

[2] 2023 U.S. Dist. LEXIS 79829 (M.D. Fla. Mar. 28, 2023).

[3] 2023 U.S. Dist. LEXIS 47532 (E.D. Mich. Mar. 21, 2023).

[4] 2023 U.S. Dist. LEXIS 52875 (E.D. Mich. Mar. 28, 2023).

[5] 9 U.S.C. § 2.

[6] 563 U.S. 333, 339 (2011) (citations and quotation marks omitted).

[7] Henry Schein, Inc. v. Archer & White Sales, Inc., -- U.S. --, 139 S. Ct. 524, 529 (2019) (quotation marks omitted).

[8] Id.

[9] 2023 Cal. Super. LEXIS 19390 at *6 (Cal. Sup. Ct., Los Angeles Cnty. Mar. 17, 2023) (emphasis added).

[10] U.S. Dist. LEXIS 79829, at *17 n.14.

[11] 2023 U.S. Dist. LEXIS 47532, at *4-5

[12] Id. (citing Lamps Plus, Inc. v. Varela, ___ U.S. ___, 139 S. Ct. 1407, 1416, 203 L.Ed.2d 636 (2019)).

[13] 521 F. Supp. 3d 1222 (S.D. Fla. 2021).

[14] Id. at 1227.

[15] 901 F. Supp. 2d 1147 (N.D. Cal. 2012).

[16] Id. at 1157.

[17] 2019 U.S. Dist. LEXIS 233073 (N.D. Cal. Aug. 12, 2019).

[18] Id. at *11-12.

[19] 2023 U.S. Dist. LEXIS 47532 at *4.

[20] See, e.g., Swiger v. Rosette, 989 F.3d 501, 506 (6th Cir. 2021); Danley v. Encore Capital Grp., Inc., 680 F. App'x 394, 398 (6th Cir. 2017) (holding that arbitration agreement "clearly and unmistakably" delegated the issue of arbitrability because it provided for arbitration of any disputes about its "application, enforceability, or enforceability").

[21] AAA, Commercial Arbitration Rules and Mediation Procedures, at R-7 (Sept. 1, 2022)

[22] Blanton v. Domino's Pizza Franchising LLC, 962 F.3d 842, 846 (6th Cir. 2020); see also Ciccio v. SmileDirectClub, LLC, 2 F.4th 577, 582 (6th Cir. 2021) ("By incorporating the AAA rules, the parties agreed that an arbitrator would decide gateway questions of arbitrability.").

[23] See, e.g., Felisilda v. FCA US LLC, 53 Cal. App. 5th 486, 496 (2020).

[24] See, e.g., Sherer v. Green Tree Servicing LLC, 548 F.3d 379 (5th Cir. 2008).

[25] Straub v. Ford Motor Co., 2021 U.S. Dist. LEXIS 211130, at *21 (E.D. Mich. Nov. 2, 2021) (quotation marks omitted).

[26] For example, some Illinois courts have refused to allow a non-signatory to compel a signatory to arbitration, see, e.g., Guarantee Tr. Life Ins. Co. v. Platinum Supplemental Ins., Inc., 2016 IL App (1st) 161612, ¶¶ 42-43, but others recognize "that a nonsignatory can enforce an arbitration clause if it is determined that the nonsignatory qualifies as a third-party beneficiary of the agreement," Ervin v. Nokia, Inc., 349 Ill. App. 3d 508, 514 (2004) (citing cases).

[27] 2023 U.S. Dist. LEXIS 52875, at *16 (citing Hilton v. Midland Funding, LLC, 687 F. App'x 515, 519 (6th Cir. 2017)); see also Hilton v. Midland Funding, LLC, 687 F. App'x 515,

519 (6th Cir. 2017) ("Because the arbitration provision states that issues related to the provision's enforceability (such as waiver) could themselves be arbitrated, Defendants were entitled to elect to arbitrate the waiver issue.").

[28] Speerly v. Gen. Motors, LLC, 2023 U.S. Dist. LEXIS 46437, at *91-92 (E.D. Mich. Mar. 20, 2023) (citing Roman v. Jan-Pro Franchising Int'l, Inc., 342 F.R.D. 274, 292 (N.D. Cal. 2002)).