

# Not So Fast Fifth Circuit — Louisiana Supreme Court Reaffirms Statutory Prohibition on Insurance Policy Arbitration Clauses

Article By:

Robert B. House

Henry "Hank" Rauschenberger

---

On October 25, 2024, the Louisiana Supreme Court issued its opinion in *Police Jury of Calcasieu Parish v. Indian Harbor Insurance Co., et al.*, No. 2024-CQ-00449, answering three questions regarding the permissibility of arbitration and forum selection clauses that had been certified to it by the US District Court for the Western District of Louisiana, Lake Charles Division. As detailed below, the court answered these questions in the negative, finding that arbitration clauses in Louisiana insurance policies remain prohibited under Louisiana law. The court's responses to these questions appear to conflict with recent decisions by the US Court of Appeals for the Fifth Circuit, which have found arbitration clauses contained in Louisiana insurance policies to be enforceable under certain circumstances. While the full impact of this decision by the Louisiana Supreme Court is not yet clear, it certainly does not bode well for parties that may be inclined to seek enforcement of an arbitration or a forum selection clause in a dispute concerning a Louisiana insurance policy.

## The Court's Decision

In *Indian Harbor*, the Louisiana Supreme Court answered three certified questions from a federal district court regarding the validity of arbitration clauses in insurance policies issued to political subdivisions of the state. The court found that the 2020 amendment to La. R.S. 22:868 did not implicitly repeal the prohibition of arbitration clauses in insurance contracts. Additionally, the court found that La. R.S. 9:2778 applies to all contracts with political subdivisions of the state, including insurance contracts, prohibiting venue or arbitration outside Louisiana or the application of foreign law in claims involving the state and its political subdivisions. Furthermore, the court found that domestic insurers cannot resort to equitable estoppel under state law to enforce an arbitration clause in another insurer's policy because it contravened the law prohibiting arbitration in La. R.S. 22:868(A)(2).

## Background

The case involved damage caused by hurricanes to properties owned by the Police Jury of Calcasieu Parish, a political subdivision of Louisiana. Insurers sought to compel arbitration in New York before an arbitration tribunal applying New York law, relying on arbitration clauses in policies issued by alien

(non-US) insurers. The federal district court certified three questions to the Louisiana Supreme Court concerning the validity of arbitration clauses in insurance policies issued to Louisiana political subdivisions.

## Analysis

The court analyzed the statutory provisions, legislative intent, and public policy considerations behind La. R.S. 22:868 and La. R.S. 9:2778. It distinguished between forum or venue selection clauses and arbitration clauses, which deprive courts of jurisdiction. The court found that the 2020 amendment to La. R.S. 22:868 did not permit arbitration clauses, as it explicitly allowed only forum or venue selection clauses in limited circumstances. Regarding La. R.S. 9:2778, the court held that insurance contracts with political subdivisions are public contracts subject to the prohibition of venue or arbitration outside Louisiana or the application of foreign law. Finally, the court rejected the application of equitable estoppel by insurers to enforce arbitration clauses in contravention of Louisiana law.

© 2025 Jones Walker LLP

---

National Law Review, Volume XIV, Number 316

Source URL: <https://natlawreview.com/article/not-so-fast-fifth-circuit-louisiana-supreme-court-reaffirms-statutory-prohibition>