

## Can A Nonsignatory Compel Another Nonsignatory To Arbitrate?

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Disputes over whether arbitration may be compelled generally fall into four categories. First, a signatory to an arbitration agreement may seek to compel another signatory to arbitrate. Second, a signatory may seek to compel a nonsignatory to arbitrate. Third, a nonsignatory may seek to compel a signatory to arbitrate. Finally, a nonsignatory may seek to compel another nonsignatory to arbitrate. This last case would seem to be the most problematical.

In *Ruag Ammotec GMBH v. Archon Firearms, Inc.*, 139 Nev. Adv. Op. 48 (Nov. 16, 2023), the Nevada Supreme Court tackled the last situation. The Court noted that in *Truck Insurance Exchange v. Palmer J. Swanson, Inc.*, 124 Nev. 629 (2008), it had identified the following five theories under which a nonsignatory to an arbitration agreement may be compelled to arbitrate:

- incorporation by reference;
- assumption;
- agency;
- veil - piercing/alter ego; and
- estoppel.

The Court then held that these same five theories should be used to determine whether a nonsignatory has the right to enforce an arbitration agreement:

Although *Truck Insurance Exchange* considered a situation where a signatory sought to compel a nonsignatory, we take the opportunity to clarify that a nonsignatory can be compelled to arbitrate by another nonsignatory after demonstrating both the right to enforce the contract and that compelling another nonsignatory to arbitration is warranted under one of the five theories. We determine such a result is provided for by principles of contract and agency law because, whether it is a signatory or nonsignatory seeking to compel the arbitration, the justification for compelling a nonsignatory to arbitration is the same. Thus, the five theories for binding a nonsignatory to an arbitration agreement apply whether it is a signatory or nonsignatory seeking to compel arbitration.

Because the trial court had not considered the five theories listed above, the Nevada Supreme Court remanded the case for reconsideration.

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National Law Review, Volume XIII, Number 321

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