

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Dawn Valli; Anton S. Dubinsky, on behalf of herself and all others
similarly situated v. Avis Budget Group Inc.; Avis Rent A Car System,
LLC; Avis Budget Car Rental LLC; Budget Rent A Car System, Inc.

Valli v. Avis Budget Group Inc., No. 24-3025 (3d Cir. Dec. 16, 2025) · No. 24-3025 · Decided December 16, 2025

SUMMARY

The United States Court of Appeals for the Third Circuit considers whether Avis Budget Group and related entities waived their contractual right to compel arbitration through litigation conduct in a putative class action. The Court holds that pre-certification conduct may be considered in determining waiver, although seeking to compel arbitration against unnamed putative class members before class certification would have been futile. The Court vacates the District Court’s order denying the motion to compel arbitration and remands for consideration of enforceability issues.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Smith, Circuit Judge; Restrepo, Circuit Judge; McKee, Circuit Judge
JURISDICTION	United States Court of Appeals for the Third Circuit
DECIDED	December 16, 2025
DOCKET	24-3025
DISPOSITION	vacated
PROCEDURAL POSTURE	Avis appealed the District Court's order denying its motion to compel bilateral arbitration after the District Court concluded that Avis waived arbitration through its litigation conduct.
STANDARD OF REVIEW	Plenary review of whether litigation conduct waived the right to compel arbitration; clear-error review of factual findings underlying that determination.
PRECEDENTIAL VALUE	precedential
PARTIES	Avis Budget Group Inc., Avis Rent A Car System, LLC, Avis Budget Car Rental LLC, Budget Rent A Car System, Inc. v. Dawn Valli, Anton S. Dubinsky, on behalf of herself and all others similarly situated

TOPICS

arbitration

class actions

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PRACTICE AREAS

arbitration

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civil procedure

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QUESTIONS PRESENTED

1. Whether Avis waived its contractual right to compel arbitration of claims by unnamed members of a putative class through pre-certification litigation conduct.
2. Whether futility excuses Avis's failure to move to compel arbitration before class certification.
3. Whether the arbitration provision's small-claims carve-out excluded the aggregated class action from arbitration.
4. Whether the enforceability challenge based on Avis's addition of the arbitration provision during the litigation was preserved for appellate review.

HOLDINGS

1. Pre-certification conduct may be considered in determining whether a party waived arbitration even when a motion to compel arbitration directed at unnamed putative class members would have been futile before class certification.
2. Avis did not waive its right to compel arbitration because it promptly asserted arbitration as an affirmative defense, repeatedly preserved its prospective arbitration rights, did not specifically pursue discovery concerning arbitration-bound class members, and moved to compel promptly after certification made the motion viable.
3. The small-claims exception did not exclude this action from arbitration because the case was brought as an aggregated class action alleging more than \$5 million in controversy, rather than as an individual small-claims action.
4. The argument that Avis's addition of the arbitration provision during the litigation rendered it unenforceable was forfeited because Plaintiffs raised it for the first time on appeal.

KEY QUOTATIONS

“where an earlier motion to compel would have been “almost certain to fail,” the failure to file such a motion is not inconsistent with the right to arbitrate.” (at 13-14)

“We therefore hold that when enforceability of a right to arbitration hinges on the occurrence of a foreseeable procedural event—in this case, certification of a class—futility excuses only the failure to seek judicial action which the court could not then grant.” (at 23-24)

“In that setting, a party must give clear, reasonably prompt record notice of its intent to exercise its arbitration right and then promptly move to do so once the event occurs.” (at 24)

“In sum, and viewed in context, Avis’s conduct does not “evince a preference for litigation over arbitration.””
(at 30)

FACTUAL BACKGROUND

Valli rented a vehicle from Avis in June 2014, and the rental agreement required her to reimburse Avis for traffic fines and a reasonable administrative fee. After a camera-generated speeding infraction, Avis paid the \$150 fine, charged Valli a \$30 administrative fee, and sought reimbursement. Valli and later Dubinsky filed a putative class action concerning Avis's payment and collection practices. Avis added arbitration and class-waiver provisions to its rental terms prospectively in 2016, while the named Plaintiffs' rentals predated those provisions.

PROCEDURAL HISTORY

Valli filed a putative class action in the District of New Jersey in 2014 asserting New Jersey consumer-fraud and unjust-enrichment claims arising from Avis's payment of traffic fines and collection of administrative fees. Avis litigated through motions to dismiss, answers asserting arbitration as an affirmative defense, discovery, mediation, and class-certification proceedings. After the District Court certified a subclass in October 2023, Avis moved to compel individual arbitration in February 2024. The District Court denied that motion on September 30, 2024, finding waiver. The Third Circuit vacated and remanded for consideration of enforceability issues not reached below.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the District Court's September 30, 2024 order denying Avis's motion to compel arbitration and remand for further proceedings. The District Court must address enforceability issues not previously reached, including any properly presented challenge under Rule 23(d), in the first instance.

CASES CITED

- Morgan v. Sundance, Inc., 596 U.S. 411, 417-19 (2022)
- Chassen v. Fidelity National Financial, Inc., 836 F.3d 291, 293-303 (3d Cir. 2016)
- White v. Samsung Electronics America, Inc., 61 F.4th 334, 339-41 (3d Cir. 2023)
- Gray Holdco, Inc. v. Cassady, 654 F.3d 444, 450-54 (3d Cir. 2011)
- Trippe Manufacturing Co. v. Niles Audio Corp., 401 F.3d 529, 532 (3d Cir. 2005)
- Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 75 (2013)
- United States v. Sanchez-Gomez, 584 U.S. 381, 387 (2018)
- In re Currency Conversion Fee Antitrust Litigation, 361 F. Supp. 2d 237, 243-53 (S.D.N.Y. 2005)
- Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 349 (2011)
- Harris v. Medical Transportation Management, Inc., 77 F.4th 746, 757 n.1 (D.C. Cir. 2023)
- N. Sound Capital LLC v. Merck & Co., Inc., 938 F.3d 482, 492-93 (3d Cir. 2019)

- Devlin v. Scardelletti, 536 U.S. 1, 9-10 (2002)
- Smith v. Bayer Corp., 564 U.S. 299, 313 (2011)
- In re Checking Account Overdraft Litigation, 780 F.3d 1031, 1037-39 (11th Cir. 2015)
- Hill v. Xerox Business Services, LLC, 59 F.4th 457, 469, 475, 481-82 (9th Cir. 2023)
- Degidio v. Crazy Horse Saloon & Restaurant, Inc., 880 F.3d 135, 141 (4th Cir. 2018)
- Gutierrez v. Wells Fargo Bank, N.A., 889 F.3d 1230, 1236-37 (11th Cir. 2018)
- In re Cox Enterprises, Inc. Set-Top Cable Television Box Antitrust Litigation, 790 F.3d 1112, 1119 (10th Cir. 2015)
- Hoxworth v. Blinder, Robinson & Co., 980 F.2d 912, 925 (3d Cir. 1992)
- PaineWebber Inc. v. Faragalli, 61 F.3d 1063, 1068 (3d Cir. 1995)
- AT&T Mobility LLC v. Concepcion, AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339, 348, 352 (2011)
- Granite Rock Co. v. Teamsters, 561 U.S. 287, 302 (2010)
- Ehleiter v. Grapetree Shores, Inc., 482 F.3d 207, 223 (3d Cir. 2007)
- Nesslage v. York Securities, Inc., 823 F.2d 231, 234 (8th Cir. 1987)
- National Foundation for Cancer Research v. A.G. Edwards & Sons, Inc., 821 F.2d 772, 775 (D.C. Cir. 1987)
- Comcast Corp. v. Behrend, 569 U.S. 27, 33-34 (2013)
- United States v. Cammarata, 145 F.4th 345, 372 (3d Cir. 2025)
- In re Baby Products Antitrust Litigation, 708 F.3d 163, 179 (3d Cir. 2013)
- Samuel v. University of Pittsburgh, 538 F.2d 991, 994 (3d Cir. 1976)
- Holk v. Snapple Beverage Corp., 575 F.3d 329, 335 (3d Cir. 2009)
- Cameron v. EMW Women's Surgical Center, P.S.C., 595 U.S. 267, 275 (2022)
- Barna v. Board of School Directors of Panther Valley School District, 877 F.3d 136, 147 (3d Cir. 2017)
- Gulf Oil Co. v. Bernard, 452 U.S. 89, 100, 102 (1981)
- In re School Asbestos Litigation, 842 F.2d 671, 679-80 (3d Cir. 1988)
- E.E.O.C. v. Kronos Inc., 694 F.3d 351, 370 (3d Cir. 2012)