

Second Circuit Holds That the Federal Arbitration Act Does Not Authorize a Court To Compel a Party To Pay Arbitration Fees in an Ongoing Arbitration

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On September 2, 2025, the U.S. Court of Appeals for the Second Circuit held in *Frazier v. X Corp.*, No. 24-1948, --- F.4th ---, 2025 WL 2502133 (2d Cir. Sept. 2, 2025), that a district court cannot intervene in an ongoing arbitration to compel a party to pay arbitration fees. *Frazier* harmonizes Second Circuit authority with decisions of the Third, Fifth, Ninth and Eleventh Circuits. This uniform body of law has the potential to thwart attempts by mass arbitration claimants' counsel to coerce windfall settlements by leveraging arbitration fees that are not mandated under an arbitration agreement or applicable arbitral rules.

After Elon Musk acquired Twitter (now X Corp.), thousands of former Twitter employees filed arbitrations asserting employment-related claims against Twitter before JAMS. The arbitration agreements between the former employees and Twitter provided that arbitration fees would be "apportioned between the parties." Twitter took the position that the fees must be split pro rata under the agreements. The former employees, on the other hand, argued that Twitter must pay all of the fees other than a limited case initiation fee, under the JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness and Rules. The general counsel of JAMS made an initial administrative determination that Twitter must pay the fees. Twitter objected and declined to pay fees beyond the pro rata allocation that the company asserted it owed under the applicable agreements. Because the former employees refused to pay the fees necessary to advance the arbitrations, JAMS halted the proceedings. Several claimants then filed a petition to compel payment under Section 4 of the FAA.

The district court granted the petition and ordered Twitter to advance all of the arbitration fees pending a final determination regarding the fee allocation by merits arbitrators. The court found that the JAMS rules conferred on JAMS the ability to make an initial decision regarding the proper allocation of fees. The court further concluded that it could enforce JAMS' initial decision through an order to compel payment under Section 4 of the FAA.

The Second Circuit reversed with instructions to deny the petition. The court explained that "a court's role under the FAA is limited to that relatively narrow category of issues that includes disputes about whether the parties are bound by a given arbitration clause and whether an arbitration clause in a concededly binding contract applies to a particular type of controversy." Procedural questions "are presumptively *not* for the judge, but for an arbitrator, to decide." After surveying case law from other circuits, the Second Circuit concluded that an arbitrator or arbitration forum's decision regarding the allocation of fees is a procedural question that the court is not empowered to review.

The Second Circuit observed that the FAA authorizes a court to compel arbitration in the face of a refusal to arbitrate. But Twitter's decision not to "abide by the procedural determination[]" of JAMS with respect to fees was not "a ... refusal to arbitrate." Rather, it was "simply an *intra*-arbitration delinquency that arbitral bodies, like JAMS here, are empowered to manage." Accordingly, the Second Circuit held that "the district court lacked authority under 9 U.S.C. § 4 to order Twitter to pay the arbitral fees."

Frazier echoes the reasoning in *Wallrich v. Samsung Electronics America, Inc.*, 106 F.4th 609 (7th Cir. 2024). There, the Seventh Circuit reversed a district court order compelling Samsung to arbitrate and to pay arbitration fees because (i) the arbitration agreements at issue delegated threshold fee-related questions to the arbitrator and (ii) the arbitration provider had decided the fee dispute by terminating proceedings after giving the claimants the opportunity to advance the fees. As the court explained, the court did not have the power to "flout" the arbitration provider's discretionary decision to close the arbitrations.

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These decisions provide a powerful defense to companies confronted with mass arbitration tactics. In a typical mass arbitration, claimants' counsel submits or threatens to submit thousands or even tens or hundreds of thousands of identical claims to trigger an assessment for the business to pay millions of dollars in arbitration fees. The goal is to use the threat of such fees to force companies to settle the claims en masse, regardless

of the underlying merits or legitimacy of the claimants involved. Claimants' counsel routinely conscript the courts in these efforts, seeking orders under the FAA to "compel" a company to pay arbitration fees. As *Frazier* and *Wallrich* hold, however, the FAA does not permit a court to intervene to order the payment of fees either in an ongoing arbitration (as in *Frazier*) or where the arbitration is closed for nonpayment (as in *Wallrich*).