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The Assault of Jamie Leigh Jones: How One Woman's Horror Story Is Changing Arbitration in America

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I. INTRODUCTION

On July 28, 2005, Jamie Leigh Jones (Jones) woke up in her barracks naked and severely bruised.¹ Blood was running down her leg,² her breasts were badly mauled,³ and the date-rape drug she had unsuspectingly ingested the night before left her feeling groggy and confused.⁴ Unfortunately, Jones's horrifying situation was only beginning. Surprisingly, what was about to happen to Jones would not only affect her. Her unsettling experience would also stoke a national debate in America and lead to an amendment to the United States' national defense budget created practically in her honor.⁵ Moreover, Jones was about to be viewed by many U.S. lawmakers as a victim of a brutal gang rape *and* as a victim of an arbitration

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1. See, e.g., Chris McGreal, *Rape Case to Force US Defence Firms into the Open*, THE GUARDIAN, Oct. 15, 2009, available at <http://www.guardian.co.uk/world/2009/oct/15/defence-contractors-rape-claim-block>.

2. *Id.*

3. See, e.g., Wade Goodwyn, *Rape Case Highlights Arbitration Debate*, NAT'L PUB. RADIO, June 9, 2009, <http://www.npr.org/templates/story/story.php?storyId=105153315>. "Her breasts were so badly mauled that she is permanently disfigured." *Id.* As a result of the assault and rape her breast implants ruptured, her pectoral muscles were torn, and she would later need reconstructive surgery to repair the damage. See McGreal, *supra* note 1.

4. See, e.g., John R. Parkinson, *Naked, Sore, Bruised and Bleeding: Alleged U.S. Contractor Rape Victim Fights for Day in Court*, ABC NEWS, Oct. 7, 2009, <http://abcnews.go.com/Blotter/halliburton-employee-jamie-leigh-jones-testifies-senate-rape/story?id=8775641&page=1>.

5. See, e.g., Jennifer A. Dlouhy, *KBR Rape Case to Influence Rules for Contractors*, HOUSTON CHRONICLE, Dec. 16, 2009, available at <http://www.chron.com/disp/story.mpl/nation/6773870.html>.

culture in the U.S. legal system that denied her both justice and her rightful day in court.⁶

This article examines *Jones v. Halliburton Co.*,⁷ the “Al Franken Amendment” to the 2010 U.S. Defense Department Budget (Franken Amendment) that was created in response to *Jones*,⁸ and the impact that both could have on mandatory arbitration clauses in employment contracts in the future. Part II recounts the troubling events that led to *Jones* and the inclusion of the Franken Amendment in the 2010 Defense Department Budget. Part III details the arguments made for and against the inclusion of the Franken Amendment. Part IV analyzes the impact that the Franken Amendment could have on mandatory arbitration clauses in contracts in the future. Part V concludes this article.

II. BACKGROUND

A. *Jamie Leigh Jones*

On July 21, 2005, Jones signed an employment contract with Overseas Administrative Services (OAS), a foreign, wholly-owned subsidiary of Halliburton/Kellogg, Brown & Root (Halliburton/KBR).⁹ Jones was hired by OAS for employment as a clerical worker in Baghdad, Iraq.¹⁰ The relevant portion of Jones’ contract stated:

You . . . agree that you will be bound by and accept as a condition of your employment the terms of the Halliburton Dispute Resolution Program which are herein incorporated by reference. You understand that the Dispute Resolution Program requires, as its last step, *that any and all claims that you might have against Employer related to your employment, including your termination, and any and all personal injury claim[s] arising in the workplace, you have against other parent or affiliate of Employer, must be submitted to binding arbitration instead of to the court system.*¹¹

6. See, e.g., Parkinson, *supra* note 4. Senator Patrick Leahy (D-Vermont) stated at the Senate Judiciary Committee hearing about Jones, “There are no juries or independent judges in the arbitrations industry. There is no appellate review. There is no transparency. And . . . [for] Jamie Leigh Jones there is no justice.” *Id.* Senator Al Franken (D-Minnesota) argued, “Contractors are using fine print to deny women like Jamie Leigh Jones their day in court.” McGreal, *supra* note 1.

7. *Jones v. Halliburton Co.*, 583 F.3d 228 (5th Cir. 2009).

8. H.R. 3326, 111th Cong. § 8116 (2009).

9. See *Jones*, 583 F.3d at 231. Jones had already been employed by Halliburton/KBR since 2004 as an administrative assistant in Houston, Texas. See *id.* at 230. Jones alleged that while she was employed at Halliburton/KBR in Houston she was sexually harassed by her supervisor, and as a result demanded that she be relocated to another department. See *id.* at 230-31.

10. See *id.* at 231.

11. *Id.* (emphasis added).

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1. Jones in Iraq

Jones arrived in Baghdad on July 25, 2005.¹² Halliburton/KBR provided housing for Jones as determined in her employment contract.¹³ Jones asked for, and claimed that she was guaranteed, “a private billeting area to be shared only with women.”¹⁴ Instead, she was housed in barracks predominantly occupied by male employees.¹⁵

Jones alleged that she was immediately subjected to unwelcome sexual harassment in her barracks.¹⁶ On July 27, after just two nights in her barracks, Jones asked Halliburton/KBR managers to move her to a safer housing location because of the “sexually hostile” environment that pervaded her current housing situation.¹⁷ Despite her requests, Halliburton/KBR managers would not relocate Jones.¹⁸ Then, late the next day, just three days after her arrival in Iraq, Jones was allegedly “drugged, beaten, and gang-raped by multiple Halliburton/KBR employees in her barracks bedroom” following a social gathering near her barracks.¹⁹

The incorporated [Dispute Resolution Program] . . . provide[d]:

‘Dispute’ means all legal and equitable claims, demands, and controversies, of whatever nature or kind, whether in contract, tort, under statute, or regulation, or some other law, between persons bound by the Plan or by an agreement to resolve Disputes under the plan . . . including, but not limited to, any matters with respect to . . . any personal injury allegedly incurred in or about a Company workplace.

Id.

12. *Id.* Jones’s assignment in Baghdad was located in the United States Army’s Central Command Area of Operations, an area within the “Green Zone.” *Id.* This area was initially the center of the Coalition Provisional Authority after America’s invasion in Iraq. *Id.* Jones was stationed at Camp Hope, which Jones alleged “was under the direct control and authority, collectively, of the United States Departments of State and Defense, and Halliburton/KBR.” *Id.*

13. *Id.*

14. *Id.*

15. *Id.* The barracks were also “some distance from her workplace.” *Id.*

16. *See id.*

17. *Id.*

18. *Id.* Jones alleged that Halliburton/KBR did not take any steps to move her to a different location; rather “she was, instead, allegedly advised to ‘go to the spa.’” *Id.*

19. *Id.* The last thing Jones remembers about the night of her alleged rape was taking two sips of a drink given to her by a co-worker. *See Goodwyn, supra* note 3. Jones was raped vaginally and anally. *See, e.g.,* Brian Ross, Maddy Sauer & Justin Rood, *Victim: Gang-Rape Cover-Up by U.S., Halliburton/KBR*, ABC NEWS, Dec. 10, 2007, <http://abcnews.go.com/blotter/story?id=3977702&page=2>. Though Jones was raped repeatedly, she does not know for certain how many men actually raped her. *See Goodwyn, supra* note 3. Some sources, however, have reported that as many as seven male employees were involved in Jones’s

Jones reported the rape to Halliburton/KBR medical personnel the next morning.²⁰ She was administered a rape-kit and given an examination at a U.S. Army-operated hospital.²¹ What purportedly followed this examination was a series of terrifying events for Jones. Jones was placed under armed-guard by Halliburton/KBR employees, locked in a shipping container, and not permitted to leave.²² Jones was also “interrogated by [Halliburton/KBR] management and human resource personnel for hours and was told that if she chose to return to the United States, she would not have the guarantee of a job upon [her] return.”²³ In addition, Halliburton/KBR refused to allow Jones to contact her family until she convinced a compassionate guard to allow her to telephone her father.²⁴ Jones’s father called his U.S. Congressman, Representative Ted Poe (R-Texas). Representative Poe called the U.S. State Department, and the State Department dispatched agents from the U.S. Embassy in Baghdad to rescue Jones and ensure her safe return to the United States.²⁵

2. Jones at Trial

Upon her return to the United States, Jones brought an action against Halliburton/KBR.²⁶ The U.S. Department of Justice declined to investigate

alleged gang-rape. See Parkinson, *supra* note 4. Jones’s numerous physical injuries included torn pectoral muscles that would later require reconstructive surgery to repair. See Jones, 583 F.3d at 232. She also had lacerations to her vagina and anus. McGreal, *supra* note 1.

20. See, e.g., Jones, 583 F.3d at 231. When she woke up, Jones found one of her alleged perpetrators lying in the lower bunk of her bedroom. See *id.* at 231. “At that time he allegedly admitted to having unprotected sex with her.” *Id.* at 231-32. According to Jones, “he knew he was beyond the reach of any jurisdiction, so he was still brazen enough to be there.” Goodwyn, *supra* note 3. Given the U.S. Department of Justice’s inaction in Jones’s case, Jones’s point is a strong one. See *infra* note 27 and accompanying text.

21. See, e.g., Jones, 583 F.3d at 232. Jones alleged that Halliburton/KBR mishandled the rape kit after it was administered to her. *Id.* For example, when the forensic evidence of her rape from her examination was given to investigators two years later, “crucial photographs and notes were missing.” McGreal, *supra* note 1.

22. See, e.g., Jones, 583 F.3d at 232. Jones described the container as “sparely furnished with a bed, table and lamp.” See Ross *supra* note 19. Jones was left in the container for at least twenty-four hours without food or water. *Id.*

23. Jones v. Halliburton Co., 625 F. Supp. 2d 339, 343 (S.D. Tex. 2008). Jones alleged that her KBR supervisors “gave her two options: to stay and ‘get over it;’ or to return home without the ‘guarantee’ of a job on return.” Jones, 583 F.3d at 232.

24. See, e.g., Jones, 583 F.3d at 232.

25. See Ross, *supra* note 19. Representative Poe said in an interview, “‘We contacted the State Department first, and told them of the urgency of rescuing an American citizen’—from her American employer.” *Id.*

26. See Jones, 583 F.3d at 232. Jones first filed a complaint with the Equal Employment Opportunity Commission, who determined that Jones had been “sexually assaulted by one or more

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Jones' claims; therefore, she was limited to a civil action against her former employer.²⁷ The problematic issue facing Jones, however, was that before leaving for Iraq she had signed the contract that provided that all claims against Halliburton/KBR would be settled through arbitration and not through litigation in the court system.²⁸ Consequently, when Jones filed an action against Halliburton/KBR in the Southern District of Texas in May 2007,²⁹ Halliburton/KBR "moved to compel arbitration of Jones's claims and stay the proceedings."³⁰

The district court concluded that a valid agreement to arbitrate existed between Jones and Halliburton/KBR.³¹ But, the court also found that the

employees; physical trauma was apparent; and Halliburton/KBR's investigation had been inadequate." *Id.* Then, in February 2006, Jones filed a demand for arbitration against Halliburton/KBR, but upon retaining new counsel, filed the action in district court. *See id.*

27. *See Ross supra* note 19. "Legal experts say Jones' alleged assailants will likely never face a judge and jury, due to an enormous loophole that has effectively left contractors in Iraq beyond the reach of United States law." *Id.* Dean John Hutson of the Franklin Pierce Law Center said, "It's very troubling, the way the law presently stands, I would say that [Jones and those like her] don't have, at least in the criminal justice system, the opportunity for justice." *Id.*

28. *Jones*, 583 F.3d at 231-33. *See also supra* note 11 and accompanying text. However, Jones testified before a Senate committee, "I had no idea that the clause was part of the contract, what the clause actually meant, or that I would eventually end up in this horrible situation." McGreal, *supra* note 1. Jones has also stated, "I didn't even know that I had signed such a clause, but even if I had known, I would never have guessed that it would prevent me from bringing my claims to court after being brutally sexually harassed and assaulted." Parkinson, *supra* note 4. Notably, Jones's employment contract with Halliburton/KBR was eighteen pages long. *See Dlouhy, supra* note 5.

29. *Jones*, 583 F.3d at 232. This complaint, Jones's Fourth Amended Complaint, asserted claims for: "negligence . . . negligent undertaking; sexual harassment and hostile work environment under Title VII; retaliation; breach of contract; fraud in the inducement to agree to arbitration; assault and battery; intentional infliction of emotional distress; and false imprisonment." *Id.* Moreover, "[Jones] contended Halliburton/KBR was vicariously liable for the torts committed by its employees." *Id.*

30. *Id.* at 233. Halliburton and KBR separated into two companies in April 2007, and Halliburton has declined to comment on the case. McGreal, *supra* note 1. KBR, however, has defended its arbitration procedures as a "fair process" by arguing: "Most large companies have a dispute resolution [program] which is mandatory and is designed to address employee complaints quickly and efficiently. Under KBR's dispute resolution [program] 95% of all employee complaints are resolved quickly to the employees' satisfaction without a mediation or an arbitration." *Id.* The company has thus denied liability in the suit. *Id.* KBR has also sought to discredit Jones by arguing that she was seen flirting with co-workers, drinking, and leaving the party with a co-worker. *Id.* According to KBR, that co-worker claims to have had consensual sex with her. *Id.* Furthermore, KBR "denies that Jones was held prisoner, but not that her injuries indicated serious sexual assault." *Id.*

31. *See Jones v. Halliburton Co.*, 625 F. Supp. 2d 339, 356-57 (S.D. Tex. 2008); *see also Jones*, 583 F.3d at 233. In holding that a valid agreement to arbitrate existed, the district court

arbitration provision in the contract was “very broad.”³² Because of the broadness of the provision, the court ruled that the four claims related to Jones’s alleged rape (assault and battery; intentional infliction of emotional distress; negligent hiring, retention, and supervision of the employees involved; and false imprisonment) fell “beyond the outer limits of even a broad arbitration provision” and were “not related to Ms. Jones’s employment.”³³ Consequently, the district court compelled arbitration for all of Jones’s claims except for the four claims related to her alleged rape.³⁴ The Fifth Circuit Court of Appeals affirmed and remanded the case in September 2009.³⁵ In December 2009, a federal judge set a date for Jones’s trial on the four issues surrounding her rape claim for February 7, 2011.³⁶

B. The “Al Franken” Amendment

Prompted by *Jones*, in 2009 the U.S. Congress looked to pass a measure that would prevent private defense contractors from compelling their employees to use arbitration to resolve cases of sexual assault.³⁷ Congress wanted to pass this measure even though the Fifth Circuit Court of Appeals had already ruled in favor of Jones by allowing her rape-related claims against Halliburton/KBR to go to trial.³⁸ Accordingly, then newly-elected Minnesota senator,³⁹ Al Franken, introduced an amendment to the 2010

rejected Jones’s claims that “there was no meeting of the minds; the arbitration clause was fraudulently induced; the provision was contrary to public policy; and enforcing the agreement would be unconscionable.” *Jones*, 583 F.3d at 233. The district court also rejected Jones’s claim that the arbitration agreement should not be enforced based on the equitable doctrine of unclean hands. *Id.*

32. *Jones*, 625 F. Supp. 2d at 352; *see also Jones*, 583 F.3d at 233.

33. *Jones*, 625 F. Supp. 2d at 252; *see also Jones*, 583 F.3d at 233. The *Jones* court did, however, note that “two other district courts had found that sexual assault allegations fell within the scope of [an] employment agreement.” *Coffey v. Kellogg Brown & Root*, No. 1:08-CV-2911-JOF, 2009 WL 2515649 (N.D. Ga. 2009) (referencing the two following cases: *Cravetz v. Halliburton*, No. 7-20285-CIV-ZLOCH (S.D. Fla. 2007); and *Barker v. Halliburton Co.*, 541 F. Supp. 2d 879 (S.D. Tex. 2008)).

34. *See Jones*, 583 F.3d at 233.

35. *Id.* at 242. To view the court’s reasoning in affirming and remanding the case, *see id.* at 233-42 (utilizing a two-part analysis to determine whether a party should be compelled to arbitrate a claim).

36. *See Associated Press, Judge Sets 2011 Trial Date for Iraq Rape Case*, ABC NEWS, Dec. 8, 2009, <http://abcnews.go.com/Business/wireStory?id=9282190>.

37. *See, e.g., Dlouhy, supra* note 5.

38. *See Kathleen Parker, The ‘Rape Supporter’ Ploy*, WASH. POST, Oct. 25, 2009, [available at http://www.washingtonpost.com/wp-dyn/content/article/2009/10/23/AR2009102303191.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/10/23/AR2009102303191.html).

39. Senator Franken was elected after a drawn out process with Norm Coleman after recounts and legal battles postponed Minnesota from declaring victory for either candidate for months. *See John W. Mashek, Franken Finally Nearing Victory over Coleman in Minnesota Senate Race*, U.S.

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Defense Appropriations Bill which would have barred the U.S. Department of Defense from working with any private defense contractor that required their employees to settle all discrimination claims, including those of sexual assault, through mandatory arbitration.⁴⁰ Because Senator Franken authored the amendment, it became known as the “Al Franken Amendment.” From its inception the Amendment was controversial.⁴¹ Support for, and opposition against, the Amendment fell almost strictly along party lines.⁴²

The original Amendment, as passed in the Senate, was a short, strict prohibition on the Department of Defense from employing any private defense contractors that included mandatory arbitration clauses in their contracts with employees.⁴³ However, neither the Department of Defense nor President Barack Obama and his administration fully supported the

NEWS & WORLD REPORT, June 16, 2009, <http://www.usnews.com/opinion/mashek/articles/2009/06/16/franken-finally-nearing-victory-over-coleman-in-minnesota-senate-race.html>.

40. See Stephen Clark, *For Franken, No More Mr. Funny Guy*, FOXNEWS.COM, Dec. 18, 2009, <http://www.foxnews.com/politics/2009/12/18/franken-mr-funny-guy>. Senator Franken stated that he was moved to act on this matter after hearing about Jones’s experience. Al Franken, *Remarks on Defense Contractor Mandatory Arbitration Amendment*, Oct. 6, 2009, <http://franken.senate.gov/?p=news&id=710>.

41. See Parker, *supra* note 38.

42. See *id*. The Senate vote on the amendment on October 6, 2009, passed sixty-eight to thirty; all thirty votes against the amendment were cast by Republicans. *Id*.

43. See H.R. 3326, 111th Cong. § 8118 (2009), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3326eas.txt.pdf. The exact text of the amendment read:

SEC. 8118. (a) None of the funds appropriated or otherwise made available by this Act may be used for any existing or new Federal contract if the contractor or a subcontractor at any tier requires that an employee or independent contractor, as a condition of employment, sign a contract that mandates that the employee or independent contractor performing work under the contract or subcontract resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention. (b) The prohibition in subsection (a) does not apply with respect to employment contracts that may not be enforced in a court of the United States.

Id. See also Michael M. Rosen, *Franken’s Craven “Anti-Rape” Amendment*, NAT’L REV., Nov. 17, 2009, <http://article.nationalreview.com/?q=NTikNDRIZWExNzdiNTkzYmI5MmQxNGVjYjQ5SMTYzNjI>.

strong language of the Amendment.⁴⁴ Both the Defense Department and the White House expressed concern that the Amendment was overbroad and could be unenforceable.⁴⁵ The Defense Department was particularly worried that “the Pentagon and its contractors ‘may not be in a position to know’” whether private defense companies that they subcontracted with utilized mandatory arbitration clauses in their employees’ contracts.⁴⁶

In response to these concerns, members of the House and Senate narrowed the final language of the Franken Amendment in two ways: (1) arbitration was to be allowed in cases where the defense secretary or a deputy “personally determines [it] necessary to avoid harm to the national security interests of the United States”; and (2) the scope of the Amendment was limited so that only companies that had contracts with the federal government that are worth one million dollars or more were required to comply with the mandate.⁴⁷

President Obama signed the Department of Defense Appropriations Act 2010, including the revised Franken Amendment, into law in December 2009.⁴⁸ A review of the Amendment demonstrates how influential Jones’s claims against Halliburton/KBR may have been to this legislation, as many of her tort claims against Halliburton/KBR are specifically listed in the Amendment.⁴⁹ The pertinent part of the final version of the Amendment reads:

(a) None of the funds appropriated . . . by this Act may be expended for any Federal contract for an amount in excess of \$1,000,000 . . . unless the contractor agrees not to:

(1) enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising . . . out of sexual assault or harassment, including

44. Rosen, *supra* note 43. The Obama Administration would only support the “intent” and not the “content” of the amendment. *Id.* Senator Daniel Inouye (D-Hawaii), chairman of the Senate Appropriations Committee, also “raised concerns that it could leave defense contractors vulnerable.” Dlouhy, *supra* note 5.

45. *See* Parker, *supra* note 38.

46. *Id.* The Department of Defense wrote a letter to numerous senators stating that the Pentagon and its contractors “may not be in a position to know about such things. Enforcement would be problematic.” *Id.* The Defense Department additionally stated, “It may be more effective to seek a statutory prohibition of all such arrangements in any business transaction entered into within the jurisdiction of the United States, if these arrangements are deemed to pose an unacceptable method of recourse.” *Id.*

47. Dlouhy, *supra* note 5.

48. Amanda Terkel, *Obama Signs Franken’s Anti-Rape Amendment into Law*, THINKPROGRESS.ORG, Dec. 21, 2009, <http://thinkprogress.org/2009/12/21/obama-franken>.

49. *See* H.R. 3326, 111th Cong. § 8116 (2009). *See also* Rosen, *supra* note 43.

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assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

(2) take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention

(d) The Secretary of Defense may waive the application of subsection (a) or (b) to a particular contractor or subcontractor for the purposes of a particular contract or subcontract if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is not longer than necessary to avoid such harm.⁵⁰

III. ANALYSIS

A. *The Arguments in Favor of the Franken Amendment*

Mandatory arbitration clauses in employment contracts certainly suffered a “black eye” after the negative publicity that they received throughout *Jones* and the Franken Amendment enactment process.⁵¹ The holding of *Jones* itself evinces a potential weakening of mandatory arbitration clauses in employment contracts because the court allowed some of *Jones*’s claims to be litigated even though the contract called for them to be resolved through arbitration.⁵² Consequently, a valid question arises as to why Congress felt it necessary to enact legislation that reigns in mandatory arbitration clauses in employment contracts if they are already losing public and legal support.

1. Preempt the Courts

One reason why Congress may have wanted to enact the Franken Amendment is because in *Jones*, both the district court and the Fifth Circuit disagreed with an analogous case that the same district court had ruled on

50. H.R. 3326, 111th Cong. § 8116 (2009).

51. See generally Parkinson, *supra* note 4; McGreal, *supra* note 1 (highlighting the arguments used against mandatory arbitration clauses in employee contracts).

52. See *Jones v. Halliburton Co.*, 583 F.3d 228, 242 (5th Cir. 2009).

just over a year before in *Barker v. Halliburton Co.*⁵³ Thus, Congress may have wanted to preempt the Fifth Circuit from overturning its own decision again.⁵⁴ Congress also might have wanted to extend the ruling from *Jones* so that it applied to other courts in the country as well.⁵⁵

In *Barker*, the district court reviewed arbitration language in an employment contract similar to the arbitration language in *Jones*.⁵⁶ Like *Jones*, the plaintiff in *Barker*, Tracy Barker, brought suit against Halliburton for claims stemming from alleged sexual harassment she experienced while working for Halliburton in Baghdad.⁵⁷ However, unlike in *Jones*, the *Barker* court concluded that Barker's claims *did* fall within the scope of the mandatory arbitration provision in her employment contract.⁵⁸ The court's logic in so holding was that Barker's claims were "predicated on the failure of the Halliburton defendants' employees to follow company policies regarding, among other things, sexual harassment."⁵⁹ As an example of this predication, the court specifically pointed to Barker's negligent-undertaking claim because in that claim Barker herself alleged that Halliburton "negligently undertook to provide proper training, adequate and sufficient safety precautions . . . [and] adequate sufficient policies in the recruitment,

53. See *Barker v. Halliburton Co.*, 541 F. Supp. 2d 879 (S.D. Tex. 2008) (granting defendant Halliburton's motion to compel arbitration against an employee who filed a complaint claiming that the defendant retaliated against her following her reporting sexual harassment). The trial court in *Jones* distinguished *Jones* from *Barker* on the grounds that the perpetrators' conduct was outside the scope of the arbitration clause, stating, "Just because an assailant's actions happen to be in violation of his employer's policies, and those policies also govern plaintiff's behavior, does not necessarily render the assault related to plaintiff's employment for purposes of arbitration." *Jones v. Halliburton Co.*, 625 F. Supp. 2d 339, 353 (S.D. Tex. 2008).

54. See generally Franken, *supra* note 40. Compare *Jones*, 583 F.3d at 242 (ruling that the rape-related claims were not arbitrable), with *Barker*, 541 F. Supp. 2d at 890 (holding that the rape-related claims were arbitrable).

55. See Franken, *supra* note 40.

56. See *Barker*, 541 F. Supp. 2d at 883. The arbitration clause at issue read:

You also agree that you will be bound by and accept as a condition of your employment the terms of the Halliburton Dispute Resolution Program which are herein incorporated by reference [A]ny and all claims that you might have against Employer related to your employment, including your termination, and any and all personal injury claim[s] arising in the workplace, [or claims] you have against [any] other parent or affiliate of Employer, must be submitted to binding arbitration instead of the court system.

Id.

57. *Id.* at 882. Barker's complaints were "negligence, negligent undertaking, sexual harassment and hostile work environment, retaliation, fraud, and intentional infliction of emotional distress, arising from, *inter alia*, an alleged sexual assault by a State Department employee while in plaintiff's living quarters in Iraq." *Id.* at 887.

58. *Id.*

59. *Id.*

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training, and placement of personnel in Iraq.”⁶⁰ Thus, inapposite to *Jones*, the *Barker* court ruled that the plaintiff employee’s complaints were arbitrable.⁶¹

2. Protect Future Employees

Because both cases brought nearly identical claims against the same company, *Barker* and *Jones* may also be indicative of the frequency with which mandatory arbitration clauses are utilized in employment contracts.⁶² Thus, though some may argue that mandatory arbitration clauses are losing public and legal support, the regularity with which companies still utilize them may evince that such claims are either erroneous or insignificant. *Jones* and *Barker* give credence to the argument made by proponents of the Franken Amendment that *Jones*’s and *Barker*’s claims are not unique; therefore, legislative action was necessary to protect future employees from any unfair effects of mandatory arbitration clauses that could arise given their continued, incessant use.⁶³

60. *Id.* In holding these conclusions, the court in *Barker* noted the unique nature of *Barker*’s overseas work environment. See *Jones v. Halliburton Co.*, 583 F.3d 228, 238 (5th Cir. 2009). The court commented that there is no bright line between work and leisure time. See *id.* The court in *Jones*, however, disagreed with this approach and did not utilize it. See *id.*

61. See *Jones*, 583 F.3d at 238. The Fifth Circuit Court of Appeals also distinguished *Barker* from *Jones* by noting that *Jones*, unlike *Barker*, made a claim that Halliburton/KBR was vicariously liable for the assault. *Id.* This fact, the court stated, “coupled with our concluding that the district court in this action properly analyzed and deemed as non-arbitrable claims that overlap with those analyzed in *Barker* . . . strengthens our holding that *Jones*’s claims were beyond the scope of the arbitration clause regarding the ‘related to’ portion.” *Id.* But cf. *Gentry v. Superior Court*, 165 P.3d 556 (Cal. 2007) (limiting the strength of class arbitration waivers in consumer contracts). See also, Michael B. Cooper, *Class-Less? An Analysis of the California Supreme Court’s Denial of Employers’ Right to Use Class Arbitration Waivers in Employment Agreements in Gentry v. Superior Court*, 2 PEPP. J. BUS. ENTREPRENEURSHIP & L., 459 (2009) (discussing cases wherein the California Supreme Court has limited the validity of arbitration in consumer contracts).

62. See generally McGreal, *supra* note 1 (outlining other sexual assault claims made by women against Halliburton/KBR). “If *Jones*’ case is remarkable, the fact that arbitration is involved is not. In the past [twenty] years it has become a dominant feature in the legal relationship between American corporations, their employees, and their customers.” Goodwyn, *supra* note 3.

63. See Franken, *supra* note 40. For example, Mary Beth Kineston, a former KBR employee in Iraq who also made allegations of sexual assault against KBR told *The New York Times*, “At least if you got in trouble on a convoy, you could radio the army and they would come and help you out. But when I complained to KBR, they didn’t do anything. I still have nightmares. They changed my life forever, and they got away with it.” McGreal, *supra* note 1. Linda Lindsey, another former KBR employee in Iraq reported that “male supervisors regularly offered promotions and other

For example, in outlining his support for the Franken Amendment, Senator Leahy estimated that “at least [thirty] million workers have unknowingly signed employment contracts and waived their constitutional rights to have their civil rights claims resolved by a jury.”⁶⁴ In addition, Jones’s attorney, Todd Kerry, argued: “I’ve received upwards of [forty] calls to my office [about assault cases] in the last two years. A good number of them had been disposed of under arbitration.”⁶⁵ Kerry further contended that if there had “been public scrutiny to prevent [assault] and these cases [were] taken to court, [the sexual assaults] might not have been repeated. Instead one of the men who raped Jamie was so confident that nothing would happen that he was lying in the bed next to her the morning after.”⁶⁶ By forcing previous cases of assault into arbitration, according to Kerry, private defense firms created a climate “in which some workers came to believe they could get away with sexual assaults and other crimes.”⁶⁷ Consequently, Congress may have felt it was necessary to take the decision to compel arbitration claims away from the courts by deciding the issue legislatively.

3. Narrow Targeting

Another argument made by proponents of the Franken Amendment was that arbitration may in fact have a proper place in the U.S. legal system, but that place does not include claims of sexual assault or violations of civil rights.⁶⁸ These proponents raised concerns about the lack of transparency that exists in arbitration procedures.⁶⁹ For example, they pointed to characteristics of arbitration such as no jury of peers and no establishment of precedent as examples of a lack of transparency.⁷⁰ They argued that by

benefits in exchange for sex.” *Id.* She also alleged that she filed complaints with KBR, but they “were never acted on.” *Id.*

64. Parkinson, *supra* note 4.

65. McGreal, *supra* note 1.

66. *Id.*

67. *Id.*

68. *See, e.g.*, Franken, *supra* note 40. Senator Franken argued, “For two companies haggling over the price of goods, arbitration is an efficient forum, and the arbitrator will undoubtedly have the appropriate expertise. The privacy that arbitration offers can protect their proprietary business information.” *Id.* “Arbitration does have its place in our system, but handling claims of sexual assault and egregious violations of civil rights is not its place.” *Id.* Senator Leahy argued before the Senate Judiciary Committee that arbitration was “meant to ‘provide sophisticated businesses an alternative venue to resolve their disputes’ but instead has ‘become a hammer for corporations to use against their employees.’” Parkinson, *supra* note 4.

69. *See, e.g.*, Parkinson, *supra* note 4.

70. *See* Franken, *supra* note 40. Senator Leahy argued, “There is no rule of law in arbitration. There are no juries or independent judges in the arbitrations industry. There is no appellate review. There is no transparency. And [for] Jamie Leigh Jones there is no justice.” Parkinson, *supra* note 4.

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determining cases under such conditions, the arbitration system could lead to individuals compromising their civil rights.⁷¹ Therefore, according to proponents of the Franken Amendment, the Amendment was created to “narrowly target the most egregious violations” in contracts where “women are the most vulnerable and least likely to have support resources.”⁷²

B. Arguments Against the Franken Amendment

Those who challenged the passage of the Franken Amendment placed themselves in an unenviable position. By criticizing the Amendment, these opponents risked appearing as though they did not support policies that protect women and that they actually encouraged rape.⁷³ Nonetheless, opponents of the Franken Amendment made several arguments against its enactment.

1. The Court Already Determined the Issue

The opponent’s first argument was that the Franken Amendment was unnecessary because the courts had previously ruled on the issue; thus the law already protected defense contract employees from overbroad mandatory arbitration clauses in employment contracts.⁷⁴ The Franken Amendment opponents argued that the Fifth Circuit had already ruled in *Jones* that torts arising out of sexual assault cases cannot be arbitrated

71. See Franken, *supra* note 40. Specific concerns about arbitration procedures in sexual assault and civil rights claims included the fact that arbitration is performed in private, behind closed doors; there is no jury of peers in arbitration; no precedent is established through arbitration; and arbitration does not “bring persistent, recurring and egregious problems to the attention of the public.” *Id.*

72. Franken, *supra* note 40. According to Senator Franken, the Amendment was meant to apply to “defense contracts, many of which are administered abroad, where women are the most vulnerable and least likely to have support resources.” *Id.* Senator Franken continued by arguing that the Amendment was to apply to “many contractors that have already demonstrated their incompetence in efficiently carrying out defense contracts, and have further demonstrated their unwillingness and their inability to protect women from sexual assault.” *Id.*

73. See Parker, *supra* note 38. For an example of criticisms of the legislators who voted against the Franken Amendment, see *The Daily Show with Jon Stewart* (Comedy Central broadcast Oct. 14, 2009), available at <http://www.thedailyshow.com/watch/wed-october-14-2009/rape-nuts>. Perhaps the most difficult criticism of the legislators who opposed the Franken Amendment in the Senate was that all thirty senators were white, Republican males. See, e.g., Parker, *supra* note 38.

74. See Rosen, *supra* note 43. Rosen’s concern was that “[f]ederal law already precludes arbitration for such serious crimes, and the amendment would sweep in all manner of ordinary employment disputes.” *Id.*

because they are not related to a worker's employment and accordingly they fall outside of the scope of mandatory arbitration agreements.⁷⁵ Consequently, according to some, "the very relief that Franken's amendment [sought] to provide already exist[ed] under federal law: Employees cannot be required to arbitrate civil actions stemming from criminal conduct."⁷⁶

2. Financial Costs

An alternative problem opponents of the Franken Amendment raised was the financial cost of the Amendment.⁷⁷ According to these opponents, more employment tort cases would be litigated in the courts rather than resolved through arbitration.⁷⁸ As such, there were two reasons that the Amendment would prove to be financially costly: (1) litigation in the courtroom is more expensive than arbitration outside of the courtroom;⁷⁹ and (2) because juries tend to be more sympathetic to plaintiff employees than are arbiters, juries are more likely to award large sums in damages to plaintiff employees, even in cases that are arguably frivolous.⁸⁰ The problem with higher damage awards is that these costs to the private defense contractors would get passed along to the Defense Department.⁸¹ These additional costs to the Defense Department would in turn be transferred to the tax payers.⁸² Franken Amendment opponents argued, "if labor costs increase across the board for all contractors, bids will be higher and taxpayers will shell out more for the same goods and services."⁸³

Other opponents pointed not only to the heightened cost to taxpayers that could result from the Franken Amendment, but also to the heightened cost to plaintiff employees wishing to bring an action against their employers as well.⁸⁴ This concern would be particularly true if the courts interpret the Franken Amendment to mean that even if employees want to arbitrate their sexual assault claims they are precluded from doing so. Mark

75. *See id.*

76. *Id.* Rosen included torts such as battery, false imprisonment, and intentional infliction of emotional distress in his list of torts arising out of sexual assault that could not be arbitrated. *See id.* Rosen also acknowledged that while the Fifth Circuit is the only Circuit to have addressed this issue recently, the Fifth Circuit is "considered the most conservative of the courts of appeals." *Id.*

77. *See, e.g., id.*

78. *Id.*

79. *Id.* This is due to the extra expenses that result from the cost of judges, juries, and "lengthy proceedings." *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *See generally* Parkinson, *supra* note 4.

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de Bernardo, the executive director of the Council for Employment Law Equity defended the use of arbitration clauses before the Senate Judiciary Committee during its investigation of arbitration clauses as “decisively in the employees’ best interests” because it offers a less expensive alternative to pricey jury trials.⁸⁵ He also stated before the Senate Committee that “[Alternative Dispute Resolution] is an effective tool for both management and employees The opponents of arbitration have simply not demonstrated that the drastic, sweeping changes they seek to enact are necessary [or] appropriate.⁸⁶ To the contrary, for the average employee, the elimination of arbitration will do more harm than good.”⁸⁷

3. Other Arguments

Some opponents of the Franken Amendment dismissed it based on what they perceived as the impractical logistics of implementing it.⁸⁸ Someone in the Defense Department will have to parse through the employment contracts of every single one of the Defense Department’s contractors and subcontractors at all tiers to ensure that they are in compliance with the Franken Amendment.⁸⁹ This situation may have been what the Defense Department had in mind when it argued that the enforcement of the Franken Amendment would be problematic.⁹⁰

Finally, other opponents of the Franken Amendment attacked the Amendment not based on the merits of the Amendment, but based on what they charged were Senator Franken’s ulterior motives for creating the Amendment.⁹¹ These opponents alleged that Senator Franken and those who supported the Amendment did so strictly to reward members of the legal profession who want to abolish arbitration clauses for supporting their campaigns.⁹² However, this criticism is only brought up in the interest of

85. *Id.*

86. *Id.*

87. *Id.* Senator Franken and de Bernardo clashed frequently throughout the Senate Judiciary Committee meeting. *Id.* Franken is reported as stating, “[Jones] has not had her day in court, she has litigated for four years to have her day in court. She was drugged, she was raped, and she had to have reconstructive surgery. If that’s a better workplace, what was the workplace like before?” *Id.*

88. *See generally* Rosen, *supra* note 43.

89. *See id.*

90. *See id.*

91. *See, e.g., id.*

92. *See id.* Between 2005 and 2009, Senator Franken received over \$1.2 million in campaign contributions from the members of the legal industry. *Id.* That total is more contribution than from

highlighting all the reservations of those against the Amendment, and will not be analyzed because of its political, rather than legal, nature.

IV. IMPACT

A. *No Employees May Have Mandatory Arbitration Agreements in Their Contracts*

The immediate impact of the Franken Amendment will be most strongly felt by private defense contractors who want to contract with the Department of Defense.⁹³ This is because the reach of the Amendment is especially broad. The Amendment applies “with respect to *all* of a federal defense prime contractor’s employees and contract workers.”⁹⁴ It is not limited to “employees or independent contractors assigned to a covered Department of Defense contract.”⁹⁵ In other words, even employees of private defense contractors who do not work on any projects for the Defense Department must not have a mandatory arbitration clause in their contract if the defense contractor wants to obtain a contract with the Defense Department.⁹⁶

B. *Any Claim Under Title VII*

Another major impact that the Franken Amendment will have on Department of Defense contracts stems from the Amendment’s significant scope.⁹⁷ In the original version passed by the Senate, the Amendment specifically stated that its purpose was “intended to prevent government contractors from requiring the victims of alleged sexual assault [to] submit their claims to mandatory arbitration.”⁹⁸ However, the final version of the Amendment expanded the scope of coverage. The enacted Franken Amendment includes “a broad reference to ‘any claim’ that arises under Title VII.”⁹⁹ Accordingly, the language of the Amendment appears to cover

any other industry group. *Id.* In addition, Senator Mary Landrieu (D- Louisiana), who co-sponsored the Amendment in the Senate with Senator Franken, raised over four million dollars from lawyers. *Id.* This was “four times more money than she raised from any other industry.” *Id.*

93. See Ronda Brown Esaw & Melissa L. Taylormoore, *New Mandatory Arbitration Restrictions for Federal Contractors Signal Things to Come*, MARTINDALE.COM, Jan. 8, 2010, http://www.martindale.com/government-contracts-law/article_McGuireWoods-LLP_887518.htm.

94. *Id.*

95. *Id.* “However, for covered defense *subcontractors*, limits on mandatory arbitration only apply to individuals performing work on a covered subcontract.” *Id.*

96. *See id.*

97. *See, e.g., id.*

98. *Id.* *See also supra* note 43 and accompanying text.

99. Esaw, *supra* note 93. *See also supra* note 50 and accompanying text.

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all claims that arise under Title VII, not only claims that arise based on charges of sexual assault as the language of the original amendment described.¹⁰⁰

C. A Harbinger of Future Legislation

Moreover, even though the short, strict language in the Senate version of the Franken Amendment was tempered by the two provisions included in its final version,¹⁰¹ the Franken Amendment is still significant for the shift in labor policy that it represents.¹⁰² The Franken Amendment has been called the harbinger of future legislation in the mandatory arbitration clause area.¹⁰³ Some commentators have predicted that though the Franken Amendment is currently limited to federal defense contractors, “other federal contractors should be wary that legislation and amendments like the Franken Amendment will be added to more general appropriations bills in the future, imposing similar mandatory arbitration restrictions on all federal contractors and subcontractors.”¹⁰⁴

The best example of legislation for which the Franken Amendment may be a harbinger is the Arbitration Fairness Act of 2009.¹⁰⁵ The Arbitration Fairness Act of 2009 is currently before Congress,¹⁰⁶ and it would hold invalid or unenforceable *any* pre-dispute arbitration agreement in contracts in any employment, consumer, franchise, or civil rights dispute.¹⁰⁷ The Act contends that the original Federal Arbitration Act (FAA)¹⁰⁸ “was intended to apply to disputes between commercial entities of similar sophistication and

100. See Esaw, *supra* note 93. Furthermore, Esaw also cautioned other federal contractors to be wary that similar legislation could target their industries as well. *Id.*; see *infra* note 104 and accompanying text.

101. See *supra* note 47 and accompanying text.

102. See Esaw, *supra* note 93.

103. See *id.*

104. *Id.*

105. See *id.*

106. There is a House and a Senate version of the bill. For the House version, see H.R. 1020, 111th Cong. (2009). For the Senate version, see S. 931, 111th Cong. (2009).

107. See H.R. 1020, 111th Cong. (2009); S. 931, 111th Cong. (2009). The actual text of the proposed act reads, “Notwithstanding any other provision of this title, no pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment, consumer, franchise, or civil rights dispute.” *Id.* “The Arbitration Fairness Act has not moved out of committee. However, given the passage of the Franken Amendment, some form of the Arbitration Fairness Act may proceed in the upcoming year.” Esaw, *supra* note 91.

108. Federal Arbitration Act, 9 U.S.C. § 1 (2000).

power,” but decisions of the Court have changed the FAA’s meaning so that “it now extends to disputes between parties of greatly disparate economic power, such as consumer disputes and employment disputes.”¹⁰⁹ Supporters of the Arbitration Fairness Act hope to restore to consumers and employees their choice in disputes about whether to take their case to court.¹¹⁰ Notably, Jones has been a major supporter of the Act, and she has testified on Capitol Hill to bring about its passage.¹¹¹

In April 2009, Senator Russ Feingold (D-Wisconsin) introduced a modified version of the Arbitration Fairness Act in the Senate to quell criticisms that the proposed act was “overbroad and potentially detrimental to commercial arbitration.”¹¹² The amended version makes clear that the Act will “only apply to protected classes of arbitrations and not to commercial arbitration,” but it “fails to address concerns about its impact on international arbitration and its retroactive applicability.”¹¹³ Consequently, if the Arbitration Fairness Act of 2009 is enacted into law, not only would employment contracts be affected as they were in the Franken Amendment, but consumer, commercial, and international contracts could be profoundly impacted as well.¹¹⁴

D. The Courts

The Franken Amendment and *Jones* should not be interpreted to mean that the courts will invalidate all mandatory arbitration clauses from now on. In three recent cases specifically citing Jones’s experience in Iraq, courts have upheld and enforced mandatory arbitration clauses in employee contracts. First, in *Coffey v. Kellogg Brown & Root*, an employee of KBR brought suit against KBR for claims stemming from injuries he received in Iraq when another employee crushed his finger with a wrecker’s boom.¹¹⁵ The plaintiff employee explicitly referenced *Jones* to make his case that “the claims raised in his complaint [were] not within the scope of the arbitration

109. H.R. 1020, 111th Cong. (2009).

110. See Goodwyn, *supra* note 3.

111. See, e.g., Hailey Branson, Jamie Leigh Jones Fights to Bring Halliburton Rape Claims to Court, http://blogs.chron.com/txpotomac/2009/04/jamie_leigh_jones_fights_to_br.html (Apr. 15, 2009, 16:02 CST).

112. Victoria Salem, *The Potential Impact of the US Arbitration Fairness Act of 2009*, LEXOLOGY, Jan. 20, 2010, <http://www.lexology.com/library/detail.aspx?g=83814eae-0872-4fae-91ac-b59e1a509731>.

113. *Id.* Even though the Act in the Senate has been altered, the House version remains unchanged. *Id.*

114. *Id.*

115. *Coffey v. Kellogg Brown & Root*, No. 1:08-CV-2911-JOF, 2009 WL 2515649 (N.D. Ga. 2009).

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provision outlined in his [e]mployment [a]greement.”¹¹⁶ Without ruling on the “correctness of the outcome in *Jones*,”¹¹⁷ the court determined that *Jones* was “clearly distinguishable from [the] [p]laintiff’s allegations” in this case.¹¹⁸ The court reasoned that unlike *Jones*, who was in her barracks when her assault took place, the plaintiff in *Coffey* was “working on a military base in Iraq recovering vehicles,” performing functions that he and his co-worker were hired to do.¹¹⁹ The court stated, “[i]t is hard to imagine an injury any more closely related to Plaintiff’s workplace than this,”¹²⁰ and accordingly granted KBR’s motion to dismiss and compel arbitration.¹²¹

The two other recent cases involve commercial arbitration, so it is less surprising that the courts upheld the arbitration clause because courts and legislators tend to view commercial arbitration clauses more favorably than employment and civil rights arbitration clauses.¹²² Nonetheless, the courts cited *Jones*, and thus the courts’ reasoning is instructive. The Fifth Circuit Court of Appeals, inapposite to their decision in *Jones*, affirmed a district court’s decision to compel arbitration in *Bell v. Koch Foods of Mississippi, LLC*.¹²³ Quoting language directly from *Jones*, the court noted that in determining if a party must be compelled to arbitrate, the court needed to consider: “(1) whether there is a ‘valid agreement to arbitrate the claims and

116. *Id.* at *13. Paragraph 26 of the plaintiff employee’s employment agreement reads:

Employee also agrees that they will be bound by and accept as a condition of employment the terms of the KBR Dispute Resolution Program which are herein incorporated by reference. Employee understands that the dispute resolution program requires, as its last step, that any and all claims that employee might have against the company . . . for personal injuries arising in the workplace, be submitted to binding arbitration instead of the court system.

Id. at *3.

117. *Id.* at *14.

118. *Id.*

119. *Id.*

120. *Id.* The court also reasoned, “This, clearly, is not a situation of an injury that occurred outside of normal working hours, not at the place of employment (although in a living space provided by the employer), and perpetrated by tortfeasors most certainly not performing their job functions.” *Id.*

121. *Id.* at *15. The court additionally found that the employee plaintiff’s “claims that his harm was ‘not within the job description’ or that the incident was ‘patently outside the norm for any wrecker’ [were] wholly unavailing.” *Id.* at *14.

122. See Franken, *supra* note 40. See also *supra* note 68 and accompanying text.

123. *Bell v. Koch Foods of Mississippi, LLC*, No. 09-60433, 2009 WL 4885174 (5th Cir. 2009).

(2) [whether] the dispute in question fall[s] within the scope of that arbitration agreement.”¹²⁴ In *Bell*, twenty-two poultry growers brought suit in district court against Koch Foods for breach of contract and state law violations.¹²⁵ Koch Foods “filed a motion to compel arbitration, pursuant to the arbitration clause[s] that [were] contained in each of the agreements.”¹²⁶ The court denied both of the plaintiffs’ arguments regarding why the arbitration agreements were invalid¹²⁷ and compelled arbitration between the two parties.¹²⁸

Most recently, in *Lake Texoma Highport, LLC v. Certain Underwriters at Lloyd’s of London*, the District Court for the Eastern District of Texas stated, “In *Jones*, the Fifth Circuit noted that ‘courts distinguish narrow arbitration clauses that only require arbitration of disputes’ arising out of the contract from broad arbitration clauses governing disputes that ‘relate to’ or ‘are connected with’ the contract.”¹²⁹ The court then used this language to reject the plaintiff’s claims that the arbitration agreement it signed with the insurance company was invalid.¹³⁰ The court held that the arbitration clause was broad enough to be valid because the agreement stated that any dispute “of any kind . . . arising out of or in any way related to this

124. *Id.* at *501.

125. *See id.* at *500.

126. *Id.* at *501. The arbitration clause was the same in each of the agreements. It stated:

‘All disputes or controversies arising under this agreement, including termination thereof, shall be determined by a three member arbitration panel,’ in accordance with the rules and procedures of the American Arbitration Association. The findings of the panel are binding on the parties. The agreements provide that each party shall pay the costs associated with one of the three arbitrators and that the parties shall share equally the costs associated with the third arbitrator. Also, ‘[i]n the event of a final adjudication by the panel, all fees, costs, and expenses incurred by the successful party as a result of the dispute, including attorney’s fees and arbitrator fees, shall be bourn [sic] by the unsuccessful party.’ The clause also stipulates ‘that the business of raising, processing, and producing poultry products is extensively involved in interstate commerce,’ ‘that the Federal Arbitration Act is applicable to this agreement,’ and that the arbitration clause provides a complete defense to any proceeding before a court or administrative tribunal.

Id.

127. The poultry growers initially charged that the arbitration agreements were not properly authenticated and consequently were “not evidence of a valid agreement to arbitrate between the parties.” *Id.* Alternatively, the poultry growers argued “that if the arbitration agreements were properly authenticated, the agreements [were] not valid because they were fraudulently procured.” *Id.* at *502.

128. *Id.* at *505.

129. *Lake Texoma Highport, LLC v. Certain Underwriters at Lloyd’s of London*, No. 4:08cv285, 2010 WL 302785, at *7 (E.D. Tex. 2010).

130. *Id.* at *7-8.

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agreement” was subject to arbitration, and in this case the dispute arose directly out of the agreement.¹³¹ Therefore, the three cases indicate that despite legislative enactments otherwise, there are still cases in which mandatory arbitration clauses in employment contracts will pass judicial scrutiny.

V. CONCLUSION

The assault and subsequent alleged mistreatment that Jamie Leigh Jones suffered in Iraq changed the way legislators and courts in the United States view mandatory arbitration clauses in employment contracts. Her distressing experience directly influenced the enactment of the Franken Amendment and its attendant restrictions on defense a contractor’s use of arbitration to settle employee claims.¹³² This Amendment could induce the enactment of other legislation, such as the Arbitration Fairness Act of 2009, which would further reduce the validity of arbitration clauses in franchise, consumer, civil rights, and other types of contracts.¹³³ Consequently, one woman’s tragic experience has brought new fuel to America’s debate about the benefits and detriments of the arbitration culture in the U.S. legal system.

131. *Id.* at *7.

132. *See supra* notes 37-50 and accompanying text.

133. *See supra* notes 105-14 and accompanying text.