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United States Court of Appeals
Tenth Circuit

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UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DODSON INTERNATIONAL PARTS, INC.,

Plaintiff - Appellant,

v.

WILLIAMS INTERNATIONAL COMPANY LLC, d/b/a Williams International,

Defendant - Appellee.

No. 20-3193

Appeal from the United States District Court
for the District of Kansas
(D.C. No. 2:16-CV-02212-JAR-ADM)

Edward A. McConwell (Laura L. McConwell, with him on the briefs), McConwell Law Offices, Mission, Kansas, for Appellant.

Alastair J. Warr (Paul J. Beard, II, FisherBroyles, LLP, Los Angeles, California, with him on the brief), FisherBroyles, LLP, Chicago, Illinois, for Appellee.

Before **HARTZ**, **MORITZ**, and **EID**, Circuit Judges.

HARTZ, Circuit Judge.

Williams International Company LLC designs, manufactures, and services small jet engines. Dodson International Parts, Inc., sells new and used aircraft and

aircraft parts. After purchasing two used jet engines that had been manufactured by Williams, Dodson contracted with Williams to inspect the engines and prepare an estimate of repair costs, intending to resell the repaired engines. Williams determined that the engines were so badly damaged that they could not be rendered fit for flying, but it refused to return one of the engines because Dodson had not paid its bill in full.

Dodson sued Williams in federal court alleging federal antitrust and state-law tort claims. Williams moved to compel arbitration under the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1–16, relying on an arbitration clause on the original invoices stating that "[a]ll disputes arising from or in connection with maintenance performed by Williams International shall be submitted to binding arbitration." Aplt. App. at 40, 42. The district court granted the motion, and the arbitrator resolved all of Dodson's claims in favor of Williams. Dodson then moved to reconsider the order compelling arbitration and to vacate the arbitrator's award. The court denied both motions and, construing Williams's opposition to the motion for vacatur as a request to confirm the award, confirmed the award. Dodson appeals, challenging the district court's order compelling arbitration and its order confirming the award and denying the motions for reconsideration and vacatur.

Exercising jurisdiction under 9 U.S.C. § 16 and 28 U.S.C. § 1291, we affirm. We hold that the claims in Dodson's federal-court complaint are encompassed by the arbitration clause; that the district court did not abuse its discretion in denying Dodson's untimely motion to reconsider; and that Dodson has failed to establish any

grounds for vacatur of the arbitrator's award or for denial of confirmation of the award.

I. BACKGROUND

A. Factual Background

In 2013 a Cessna aircraft bearing two Williams FJ44 jet engines crashed in Brazil. Dodson purchased the damaged plane, intending to resell the engines.

To prepare the engines for resale, Dodson contacted Williams in February 2014 to obtain an inspection and evaluation of the two engines. In response to Dodson's inquiry, Williams sent Dodson quotations for the cost of evaluating the engines and preparing a repair estimate. Dodson signed the quotations on March 7 and sent an accompanying repair order to Williams. The signed quotations contained the following arbitration clause:

> *All disputes arising from or in connection with maintenance performed by Williams International shall be submitted to binding arbitration* held in the County of Oakland, State of Michigan, U.S.A., in the English language in accordance with the rules of the American Arbitration Association. Williams International will designate the arbitration site.

Aplt. App. at 40, 42 (emphasis added). After signing the quotations, Dodson directed Williams to pause work after the evaluation and await Dodson's approval before beginning repair.

On April 9 Williams sent Dodson estimates exceeding $300,000 for repairing each engine, and Dodson elected not to have Williams undertake the repairs. In May Dodson directed Williams to return the engines, which Williams agreed to do after reassembling them (so that unrepairable parts could not be reused or resold).

Apparently Williams did not return the engines to Dodson because in August 2014 Dodson advised Williams that it was reconsidering having Williams repair the two engines in accordance with the earlier repair estimates. After further discussion Williams advised Dodson in December 2014 that it could potentially use parts from one engine to repair the other. On January 9, 2015, Williams gave Dodson an updated estimate of about $248,000 for repairing one engine using parts from the other. On February 9 Williams again updated its estimate, raising the price after determining that certain components of both engines were irreparable. Meanwhile, Dodson was discussing the sale of the engines with the Skyway Group of San Antonio, Texas, eventually signing a deal in early February.

On March 3, however, Williams advised Dodson that the engines were irreparably damaged and could not lawfully be reused. That July Dodson repurchased one of the engines from Skyway. Williams shipped the other engine to Skyway but never returned the second engine to Dodson because Dodson did not pay the requisite fees.

B. Procedural History

In April 2016 Dodson filed suit against Williams in the United States District Court for the District of Kansas. Its complaint asserted seven claims against Williams. Count I, for intentional misrepresentation, alleged that in the course of negotiating the engine evaluation with Dodson, Williams made representations regarding the extent of the evaluation work it would perform, the information it would provide to Dodson about the condition of the engines, and the cost estimates it

would provide after evaluating the engines. Williams also allegedly represented that in the event the cost of repair was too high, it would return the disassembled engines to Dodson. According to Dodson, these representations were false: Williams "did not proceed with a good faith evaluation of the engines, their component parts and/or accessories to determine a bona fide cost of repair," and later declined to return the engines in a disassembled state. *Id.* at 22.

Count II, for breach of bailment and conversion, alleged that Williams violated its duty as a bailee "to return the component parts of the two engines . . . in as good of condition as received," when, after Dodson declined to go ahead with the repair of the engines, Williams sent the engine Dodson had sold to Skyway reassembled and in "a non airworthy condition," and failed to return the other engine to Dodson altogether. *Id.* at 23.

Count III alleged that Williams had initiated a tying arrangement in violation of the Sherman Act, 15 U.S.C. § 1, and the Clayton Act, 15 U.S.C. § 3. It said that Williams had failed to provide owners with complete instruction manuals for its engines, failed to provide training on its engines for mechanics, and issued misleading service information about its engines, all to require owners of its engines to use Williams for all their repair and maintenance needs, rather than choosing a provider of that service "on the basis of quality, price or service." *Id.* at 25. It alleged that this antitrust violation allowed Williams to "substantially overcharge[]" Dodson for its services and prevented Dodson and others from providing such services themselves. *Id.* at 32.

Count IV alleged an abuse of monopoly power by Williams, in violation of the Sherman Act, 15 U.S.C. §§ 1–2. According to the complaint, Williams and several other aircraft manufacturers reduced or eliminated competition in the market for repair and maintenance of Williams engines, as well as in the second-hand parts market for those engines, by failing to provide instruction manuals for its engines, failing to provide training schools for maintenance of its engines, requiring its approval before secondhand parts could be installed in its engines, and falsely representing that its repair services were cheaper and more reliable than those available elsewhere. As a result, Dodson allegedly had to overpay for Williams's services, and could not fairly compete in reselling Williams engines and parts.

Count V, tortious interference with prospective economic advantage, allegedly arose when Williams, after becoming aware in June 2014 that Skyway wanted to purchase the engines from Dodson, "intentionally continued to refuse to return the component parts" of Dodson's engines, thereby interfering with Dodson's potential deal with Skyway. *Id.* at 29.

Count VI, tortious interference with contract, alleged that Williams, after having known by February 9, 2015, that Skyway had agreed to purchase the engines from Dodson based on Williams's estimate for using the parts of one engine to repair the second, increased the repair estimate by $500,000, thereby interfering with Dodson's contract with Skyway.

Count VII sought a declaratory judgment under 28 U.S.C. § 2201 that Williams had an obligation to provide a complete set of engine-overhaul instructions

to owners of its engines, which would inform Dodson how to disassemble, evaluate, repair, and reassemble Williams engines on its own. Dodson alleged that "[a]n actual controversy exists . . . over the rights of [Dodson] and [Federal Aviation Administration] certified mechanics it selects to perform maintenance and repairs on its . . . engine[s]." *Id.* at 32.

Williams moved to stay the case and compel arbitration under §§ 3 and 4 of the FAA, 9 U.S.C. §§ 3 and 4. In January 2017 the district court granted the motion, staying the case and ordering arbitration. In March Dodson initiated arbitration through the American Arbitration Association.

The parties conducted discovery under the auspices of the arbitrator. On February 20, 2018, Dodson filed a motion in the district court asking the court to modify its stay order to permit it to issue subpoenas to former employees, vendors, and customers of Williams—from whom Dodson wished to compel discovery. The arbitrator had issued subpoenas to witnesses who had refused to comply. The district court denied Dodson's motion on March 19, 2018, stating that if Dodson wished to compel compliance with the arbitrator's subpoenas, it was required by § 7 of the FAA to file suit in the United States District Court for the Eastern District of Michigan (the Michigan Court), where the arbitration was pending.

The arbitrator conducted hearings over the course of three weeks in April and June 2019, and a one-day hearing for rebuttal evidence that July. Dodson filed petitions in the Michigan Court in April and May 2019, seeking to compel testimony and documents from two nonparty companies—Triumph Engine Control Systems,

LLC (TECS) and Textron Aviation, Inc. On June 26, 2019, a magistrate judge recommended dismissing both petitions. Dodson objected on July 9, 2019. The arbitrator issued her award on September 24, and in October the Michigan Court denied Dodson's petitions as moot.

The arbitrator's award resolved all of Dodson's claims in favor of Williams. Williams had also filed a counterclaim against Dodson, which the arbitrator resolved in Dodson's favor.

Williams filed a petition in the Michigan Court seeking to confirm the award, after which Dodson filed a motion in that action seeking to vacate or modify the award. In January 2020 the Michigan Court dismissed the action for lack of subject-matter jurisdiction, because "the amount in controversy [was] less than the jurisdictional amount of $75,000." *Id.* at 174.

In February Williams filed in the Kansas district court a motion to dismiss Dodson's original lawsuit because of the arbitral award in its favor. Dodson responded with a motion to vacate or modify the award, and then filed an additional motion asking the court to reconsider its 2017 order compelling arbitration. The court denied both of Dodson's motions and, construing Williams's opposition to Dodson's motion for vacatur as a motion for confirmation, confirmed the award.

II. DISCUSSION

Dodson challenges three decisions of the district court: (1) the original order compelling arbitration; (2) the order denying Dodson's motion for reconsideration of the order compelling arbitration; and (3) the order confirming the award and denying

Dodson's motion to vacate or modify the award. We begin with the order compelling arbitration.

A. Order compelling arbitration

"[T]he first task of a court asked to compel arbitration of a dispute is to determine whether the parties agreed to arbitrate that dispute." *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 626 (1985); *see Granite Rock Co. v. Int'l Brotherhood of Teamsters*, 561 U.S. 287, 301 (2010) (ordinarily, "it is the court's duty to interpret the agreement and to determine whether the parties intended to arbitrate grievances concerning a particular matter" (internal quotation marks omitted)).[1] We review de novo the district court's order compelling arbitration. *See 1mage Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044, 1055 (10th Cir. 2006).

The arbitration clause in this case states, "All disputes arising from or in connection with maintenance performed by Williams International shall be submitted to binding arbitration." Aplt. App. at 40, 42. Dodson argues that the claims asserted in its complaint fell outside the scope of this clause, largely because they were not "arising from or in connection with *maintenance performed*" by Williams. *Id.* (emphasis added). In particular, it argues that its claims were not arbitrable because they arose either before the formation of the arbitration agreement or after the contracts had been fully performed.

[1] We cite both labor-arbitration cases and those applying the FAA, because both "employ the same rules of arbitrability." *Granite Rock*, 561 U.S. at 298 n.6.

"[A] court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate *that dispute*." *Granite Rock*, 561 U.S. at 297. The Supreme Court has recognized a presumption in favor of arbitrability, *see id.* at 300–01, which requires courts to rule a dispute arbitrable "where a validly formed and enforceable arbitration agreement is ambiguous about whether it covers the dispute at hand; and . . . the presumption is not rebutted," *id.* at 301. But the presumption is not a license to override the parties' expressed intent. We must not undermine "the first principle that underscores all [the Supreme Court's] arbitration decisions: Arbitration is strictly a matter of consent." *Id.* at 299 (internal quotation marks omitted).

When deciding whether the parties consented to arbitrate a certain matter, we "generally . . . apply ordinary state-law principles that govern the formation of contracts." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). In the district court both parties agreed, and the court held, that Kansas law governed the dispute.[2] Kansas interprets contracts by "assigning the words used their plain and ordinary meaning." *Pfeifer v. Fed. Exp. Corp.*, 304 P.3d 1226, 1229 (Kan. 2013).

Courts have generally interpreted language such as "arising from or in connection with" quite expansively. *See Brown v. Coleman Co.*, 220 F.3d 1180,

[2] Dodson argues on appeal that Michigan law applies. But because in the district court it said that Kansas law should apply, the issue was waived. *See ClearOne Commc'ns, Inc. v. Bowers*, 643 F.3d 735, 771 (10th Cir. 2011) (defendants' argument on appeal that Massachusetts law applied to their claims was "barred by the invited error doctrine" since they had argued at summary judgment and at trial that Utah law applied).

1184 (10th Cir. 2000) (arbitration clause in employment contract stating that "all disputes or controversies arising under or in connection with this Agreement will be settled exclusively by arbitration" was "the very definition of a broad arbitration clause as it covers not only those issues arising under the employment contract, but even those issues with any connection to the contract" (ellipsis and internal quotation marks omitted)); *Williams v. Imhoff*, 203 F.3d 758, 765 (10th Cir. 2000) ("'arising out of'" term in arbitration clause "must be broadly construed to mean 'originating from,' 'growing out of,' or 'flowing from'"); *P & P Indus., Inc. v. Sutter Corp.*, 179 F.3d 861, 871 (10th Cir. 1999) (stating that arbitration clause covering "any controversy, claim, or breach arising out of or relating to this Agreement," was "a broad one," and emphasizing the "arising out of or relating to" language (brackets, emphasis, and internal quotation marks omitted)); *cf. Fed. Ins. Co. v. Tri-State Ins. Co.*, 157 F.3d 800, 804 (10th Cir. 1998) (in insurance-contract context, stating that "the phrase 'arising out of' should be given a broad reading such as 'originating from' or 'growing out of' or 'flowing from' or 'done in connection with'—that is, it requires some causal connection to the injuries suffered, but does not require proximate cause in the legal sense"). To say that a dispute is one "arising from or in connection with maintenance performed by Williams" is to say that it had some causal connection to—that it originated from, grew out of, or flowed from—such maintenance.

What then is "maintenance performed by Williams"? *Maintenance* means "[t]he care and work put into property to keep it operating and productive; general

repair and upkeep." *Maintenance*, Black's Law Dictionary (11th ed. 2019). "While maintenance doubtless includes the idea of keeping in repair it has a very much broader meaning which . . . involves the concept of supporting, sustaining, carrying on and continuing the system [to be maintained]." *Automatic Fire Alarm Co. v. Bowles*, 143 F.2d 602, 605–06 (Emer. Ct. App. 1944). Further, in common usage, maintenance does not require actual repair work. Just inspecting machinery is typically referred to as maintenance (consider an owner's manual's description of annual maintenance for an automobile). As Dodson acknowledges, "the inspection of each engine . . . and the preparation of Repair Estimates" constituted "maintenance." Aplt. Br. at 31 (internal quotation marks omitted); *see Sec'y of Lab. v. Ohio Valley Coal Co.*, 359 F.3d 531, 535 (D.C. Cir. 2004) (performing maintenance included assessing machinery to determine what repair may be needed).[3] This conception of

[3] Dodson appears to suggest that the definition of *maintenance* should be taken from 14 C.F.R. § 1.1, a Federal Aviation Administration regulation stating that *maintenance* means "inspection, overhaul, repair, preservation, and the replacement of parts, but excludes *preventive maintenance*," and separately defining *preventive maintenance* to mean "simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations." *See* U.S. Dep't of Transp., Fed. Aviation Admin., Legal Interpretation, 2009 WL 599824, at *1 (Feb. 26, 2009) ("Preventive maintenance, in general, includes tasks that are less complex than those deemed to be maintenance, and requires less sophistication in terms of the knowledge, skill, and tools required."). The purpose of the exclusion of preventive maintenance from the general definition of *maintenance* appears to be to allow simple preventive maintenance to be performed by persons, such as pilots, not licensed to perform more technical maintenance. Under the relevant regulations those who are not licensed to perform *maintenance* can still sometimes perform the more routine tasks associated with *preventive maintenance*. *See* 14 C.F.R. § 43.3. In any event, Dodson points to nothing in the quotations, or elsewhere, indicating that

maintenance is supported by the context of the arbitration clause. The clause appears in each of the quotations submitted to Dodson by Williams, which describes the work to be performed by Williams as inspecting an engine and preparing an estimate for the cost of repair. If that is not maintenance, one wonders what the purpose of the arbitration clause in the quotation would be.

All the claims Dodson alleged in its complaint are clearly encompassed by the arbitration clause because each is connected to Williams's work in inspecting the engines and preparing an estimate for the repair work. Count I—intentional misrepresentation—alleges false statements by Williams employees regarding the "evaluation of the engines" and the "cost of repair and return to service," made "for the purpose of inducing [Dodson] to deliver the two engines to Williams." Aplt. App. at 22. Count II—breach of bailment and conversion—stems from Williams's alleged breach of its "duty to return the component parts of the two engines" to Dodson after evaluation, *id.* at 23, when Dodson "requested that [the] engines . . . be redelivered" because it "declined to authorize work pursuant to the estimates," *id.* at 47. Counts III and IV assert federal antitrust claims. Count III alleges that Williams created an unlawful tying arrangement in violation of the Sherman Act and Clayton Act, which "induce[d] owners and operators of Williams . . . engines" to take their engines to Williams for repair. *Id.* at 24. And Count IV alleges an abuse-of-

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the term *maintenance* in the arbitration clause was adopting the regulation's technical meaning.

monopoly-power claim relating to Williams's alleged monopoly "over replacement parts," "repairs," and "overhauls" of its engines, which "effectively requir[es] [Williams] engine owners and operators to use only services provided by Williams." *Id.* at 26–27. Dodson's alleged injury from these anticompetitive practices—an essential element of the antitrust claims, *see Reazin v. Blue Cross & Blue Shield of Kan., Inc.*, 899 F.2d 951, 960–63 (10th Cir. 1990)—arose when it contracted with Williams for evaluation of the engines, *see In re Cox Enterprises, Inc. Set-top Cable Television Box Antitrust Litig.*, 835 F.3d 1195, 1201–02 (10th Cir. 2016) (arbitration agreement, which covered "any and all claims or disputes between us that arise out of or in any way relate to . . . any services or goods that Cox or any of its affiliated entities provide to [the plaintiffs]," "encompassed Plaintiffs' antitrust claim" alleging unlawful tying (original ellipsis and internal quotation marks omitted)).

Counts V and VI claim tortious interference with prospective economic advantage and tortious interference with contract because Dodson's plan to sell the repaired engines to Skyway was stymied when Williams declared the engines unrepairable, which was clearly contemplated by the parties as a potential result of the inspection to be performed by Williams.

And finally, Count VII seeks a declaratory judgment that Williams has no right, through conduct such as not providing service manuals, "to restrict or determine the identity or qualifications of persons who perform maintenance, disassembly, inspection, repair, hot sections and/or overhauls of Williams engines." Aplt. App. at 33. Dodson's complaint describes the actual controversy to be resolved

by the declaratory judgment as "the rights of [Dodson] and [Federal Aviation Administration] certified mechanics it selects to perform maintenance and repairs on its [own] engine[s]." *Id.* at 32.[4]

Thus, for each count of the complaint an essential component of the cause of action—that is, an element of the claim—was closely connected to some action by Williams in performing maintenance (inspecting the engines or preparing estimates for repairs) on Dodson's engines. That relationship easily satisfies the "arising from or in connection with" requirement in the arbitration clause. *Id.* at 40, 42.

Dodson argues, however, that its claims are not encompassed by the arbitration clause because each of its claims arose either before its contracts with Williams were executed or after they terminated. The argument fails, both factually and legally.

We first summarize Dodson's position with respect to the five claims that, it asserts, "existe[d] prior to formation of the . . . contracts" that included the arbitration clause. Aplt. Br. at 25. Dodson says that the claim for intentional misrepresentation "arose in February 2014[,] prior to" contract formation, presumably because that was when Williams made some of the alleged misrepresentations. *Id.* The antitrust claims also arose before contract formation, according to Dodson, because the claims

[4] In the arbitration proceedings Dodson's operative complaint was a Second Amended Complaint, which omitted a claim for tortious interference with contract and a separate antitrust claim alleging an unlawful tying arrangement. But Dodson has not sought to amend its district-court complaint, and we have no occasion to consider what impact the arbitration pleading would have if we determined that the arbitration award must be set aside.

relate to Williams's "unlawful business practices in regard to the . . . engines at issue in this case, [which] began upon certification of the . . . engines on July 30, 2007 and continue currently." *Id.* Dodson also asserts that there is "no evidence that the antitrust claims arose or are connected to the . . . [i]nspections performed from March 24, 2014, through April 2, 2014." *Id.* at 26. And Dodson asserts that "[t]he tortious interference with prospective business advantage claim . . . arose in May 2013 when Dodson contacted Williams . . . concerning the engines and again in February 2014 to discuss the history of the engines and actions needed to return them to service." *Id.* at 27. Finally, Dodson says that its declaratory-judgment claim "relate[s] to Williams' business practices and conduct prior to the formation of the evaluation agreement and/or arbitration clause." *Id*.

We reject Dodson's arguments as a factual matter. For each of the above claims, at least one element of the claim (the injury to Dodson) arose after the contract was executed, so the claim itself arose (accrued) after that point as well. *See City of Wichita v. U.S. Gypsum Co.*, 72 F.3d 1491, 1498 (10th Cir. 1996) ("Kansas law provides a cause of action does not accrue until substantial injury is caused or, if the injury is not immediately reasonably ascertainable, until the injury becomes reasonably ascertainable to the injured party."); *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 338 (1971) ("Generally, a[n] [antitrust] cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business."). With respect to the intentional-misrepresentation claim, Williams's alleged representations about the evaluation it would perform on the

engines did not cause harm until Williams "did not proceed with a good faith evaluation of the engines . . . to determine a bona fide cost of repair and return to service," Aplt. App. at 22, which did not occur until after the contracts were signed. Similarly, Dodson's alleged injury from Williams's anticompetitive practices arose when the alleged lack of market "competition concerning the sale, disassembly, inspection, repair, . . . overhaul and return to service of Williams . . . engines" caused Dodson to be "substantially overcharged" for those services, *id.* at 32, which did not occur until Dodson signed the contracts for engine evaluation, *see Zenith Radio*, 401 U.S. at 338 (an antitrust "cause of action accrues" when "a plaintiff is injured by an [anticompetitive] act of the defendants"); *Sports Racing Servs., Inc. v. Sports Car Club of Am., Inc.*, 131 F.3d 874, 889 (10th Cir. 1997) ("An illegal tie is not consummated, and its anticompetitive effects are not realized, until the tied purchaser is forced to forego his free choice among competitors, and . . . [is] required to purchase the tied product from a designated source as a condition to being able to purchase the tying product."). The claim of tortious interference with a prospective advantage likewise did not accrue until events that occurred after the signing of the arbitration agreement in March 2014, as Dodson's own complaint points to Williams's refusal to return the engines to Dodson after it became aware in "June 2014" that Dodson was in talks with Skyway for the sale of the engines. Aplt. App. at 29. And, finally, the controversy underlying Dodson's declaratory-judgment claim concerned its inability to freely "select[]" its own mechanics "to perform maintenance and repairs on its . . . engine[s]," *id.* at 32, which materialized when

Dodson was allegedly compelled to sign the contracts with Williams for evaluation of the engines. Thus, Dodson has not shown that any of these claims accrued before the arbitration clause was agreed to.

Dodson's argument that its remaining two claims—for conversion and tortious interference with contract—arose after the contracts were fully performed is similarly belied by the record. Dodson asserts that its contracts with Williams were fully performed by April 2, 2014, and that the conversion claim arose after this, on May 20, 2014, when Williams failed to return the two engines. But the record shows that the parties continued to discuss, and Williams continued to perform under the contract by preparing, new repair estimates for the engines as late as February 2015. As for the claim of tortious interference with contract, the complaint alleges that the act causing a breach was Williams's announcement "that the repair and return to service cost had been increased by $500,000" on February 24, 2015. *Id.* at 30. Yet that announcement was undeniably a "repair estimate" under the contract. *Id.* at 40, 42.

In any event, even were we to accept the factual bases for Dodson's arguments, we would still reject the arguments because the arbitration clause has no temporal element. All that is required for a dispute to be arbitrable is that it be one "arising from or in connection with maintenance performed by Williams." *Id.* *In re Cox* is instructive. The plaintiffs in *Cox* were customers who paid a monthly rental fee for Cox's set-top cable box. *See* 835 F.3d at 1199. Their subscription agreements contained an arbitration clause that covered "any and all claims or

disputes between [the parties] . . . that arise out of or in any way relate to . . . any services or goods that Cox or any of its affiliated entities provide to [the customer]." *Id.* at 1201. The plaintiffs sued Cox for antitrust violations, alleging illegal tying of Cox's premium-cable service to rental of a set-top cable box. *See id.* at 1199. Cox moved to compel arbitration, and the district court granted the motion. *See id.* On appeal the plaintiffs argued that their claims were not within the scope of the arbitration clause because they predated when the clause came into force. *See id.* at 1201–02. We rejected this argument, holding that the arbitration-clause language "'aris[ing] out of or in any way relat[ing] to' any Cox goods or services . . . encompassed [the] Plaintiffs' antitrust claim even though it arises out of events that predated the agreement." *Id.* at 1202 (emphasis omitted). We noted that the word *relate* in the arbitration clause "includes a relationship in subject matter that is independent of time." *Id.*

Similar reasoning applies here. The arbitration clause in this case, like the relevant portions of the arbitration clause in *Cox*, applies to "[a]ll disputes arising from or in connection with" maintenance—a service provided by Williams. Aplt. App. at 40, 42. And like the word *relate* in the *Cox* clause, the phrase *in connection with* has no apparent temporal limitation. The most reasonable reading of the arbitration provision is that it encompasses the claims in Dodson's complaint. *See Zink v. Merrill Lynch Pierce Fenner & Smith*, 13 F.3d 330, 332 (10th Cir. 1993) (arbitration clause covering "[a]ny controversy between the parties arising out of plaintiff's business or this agreement" was "clearly broad enough to cover the

[securities claims] at issue despite the fact that the dealings giving rise to the dispute occurred prior to the execution of the agreement" (emphasis and original brackets omitted)); *Watson Wyatt & Co. v. SBC Holdings, Inc.*, 513 F.3d 646, 652 (6th Cir. 2008) ("broadly worded" arbitration clause "encompasse[d] all claims 'arising from or in connection with the services provided by Watson Wyatt'" and required retroactive enforcement of the arbitration agreement (ellipsis omitted)).

Dodson cites several cases in its temporal argument, but in most of them the courts in fact ordered arbitration, and Dodson has not explained how the language or reasoning of these decisions supports its argument. Thus, we need address only the two cited cases in which the court refused to order arbitration. But those cases are readily distinguishable. In *Cummings v. FedEx Ground Package Sys., Inc.*, 404 F.3d 1258 (10th Cir. 2005), former employees alleged that FedEx representatives had promised them a certain minimum weekly income if they became FedEx truck drivers, and that FedEx would assist them in reselling their trucks if they left FedEx. *See id.* at 1259–60. The arbitration clause "[b]y its [own] terms . . . only cover[ed] acts by FedEx to terminate the Operating Agreement [under which the employees worked] or acts claimed by plaintiffs to constitute a constructive termination of the Operating Agreement." *Id.* at 1261.[5] We held that the claims were nonarbitrable

[5] The arbitration clause read in full:

> *Arbitration of Asserted Wrongful Termination*. In the event FedEx Ground acts to terminate this Agreement (which acts shall include any claim by plaintiff of constructive termination) and plaintiff disagrees

because the employees did "not allege that FedEx actually or constructively terminated the Operating Agreement, which, according to its unambiguous terms, are the only disputes subject to arbitration," and "[t]he subject matter of the claims . . . [was] not reasonably factually related to a dispute over the termination, direct or otherwise, of the Operating Agreement." *Id.* at 1262. No issue was raised with respect to the temporal scope of the arbitration clause, and the language of the clause was much more limited than the *arising from or in connection with* language present here. We think the opinion teaches us nothing that affects our analysis in this case.

Finally, Dodson's reliance on *Russell v. Citigroup, Inc.*, 748 F.3d 677 (6th Cir. 2014), is misplaced. The court in that case held that an arbitration agreement covering "employment-related disputes . . . which . . . arise between" the employer and employee did not compel arbitration of a wage-and-hour lawsuit that had been filed and was being litigated before the agreement was executed. *See id.* at 678–79. One part of the court's opinion is of some help to Dodson. The opinion stated that "[t]he use of the present-tense 'arise,' rather than the past-tense 'arose' or present-perfect 'have arisen,' suggests that the contract governs only disputes that begin—that arise—in the present or future." *Id.* at 679. As we explained in *Cox*, however,

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> with such termination or asserts that the actions of defendant are not authorized under the terms of this Agreement, then each such disagreement (but no others) shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA).

Id. at 1260 (brackets and ellipsis omitted).

that conclusion conflicts with this court's construction of *arising* in *Zink*, 13 F.3d at 332; and in any event it does not apply to terms with no temporal connotations such as *in connection with*, *see In re Cox*, 835 F.3d at 1202. Perhaps more importantly, as we also noted in *Cox*, there was extrinsic evidence supporting the court's conclusion in *Russell*—the employee had already sued the employer when he signed the arbitration agreement and there was no evidence that either party had consulted an attorney before executing the arbitration agreement, which was unlikely if either party had understood the agreement to cover the dispute being litigated. *See id.* For these reasons, we do not think *Russell* compels a contrary conclusion with respect to Dodson's temporal argument.

We reject Dodson's temporal argument and perceive no error in the district court's decision to compel arbitration.

B. Order denying reconsideration

Dodson challenges the district court's order denying its motion to reconsider the order staying the litigation and ordering arbitration. We review for abuse of discretion a district court's decision to deny a motion for reconsideration. *See Wright ex rel. Tr. Co. of Kan. v. Abbott Lab'ys, Inc.*, 259 F.3d 1226, 1235 (10th Cir. 2001). "Under an abuse of discretion standard, a trial court's decision will not be disturbed unless the appellate court has a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *Id.* (internal quotation marks omitted).

Dodson filed its motion for reconsideration under District of Kansas Local Rule 7.3(b), which states:

> **(b) Non-Dispositive Orders.** Parties seeking reconsideration of non-dispositive orders must file a motion within 14 days after the order is filed unless the court extends the time. A motion to reconsider must be based on:
>
> (1) an intervening change in controlling law;
> (2) the availability of new evidence; or
> (3) the need to correct clear error or prevent manifest injustice.

D. Kan. Rule 7.3(b); *see Alpenglow Botanicals, LLC v. United States*, 894 F.3d 1187, 1203 (10th Cir. 2018) ("Grounds warranting a motion to alter or amend the judgment pursuant to [Fed. R. Civ. P.] 59(e) include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." (internal quotation marks omitted)). The motion argued two grounds for reconsideration: (1) that "an intervening change in controlling law occurred," Dist. Ct. Doc. 64 at 6 (internal quotation marks omitted), because the Supreme Court's recent decision in *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019), had stated the proposition that "the foundational FAA . . . principle is that arbitration is a matter of consent," Aplt. App. at 122 (brackets and internal quotation marks omitted); and (2) that reconsideration was necessary to "prevent manifest injustice," Dist. Ct. Doc. 64 at 11, primarily because Dodson was unable to obtain evidence from third parties during the arbitration proceedings.

The district court denied the motion for reconsideration on procedural and substantive grounds. To begin with, because Dodson filed its motion in March 2020, more than three years after entry of the order compelling arbitration, the court held

that Dodson's motion was untimely under Rule 7.3(b), which sets a 14-day deadline for such motions. Then the court rejected both grounds for Dodson's motion on the merits. On the first ground, it ruled that *Lamps Plus* had not created any material change in the law because the opinion "cite[d] cases dating back as far as 1985 when discussing the foundational FAA principle that consent to arbitration is required"; and it noted that Dodson's briefing on the motion appeared to acknowledge this by "expressly stat[ing] that *Lamps Plus* 'reaffirmed' and 'confirmed' the foundational requirement of unambiguous consent to arbitration." Addendum to Aplt. Br. at 28 (quoting Dist. Ct. Doc. 64 at 9) (further internal quotation marks omitted). And on the second ground in Dodson's motion, the court pointed out that Dodson's manifest-injustice arguments were relevant only to whether the court should vacate or modify the award, not to whether the court should have compelled arbitration in the first place.

We see no abuse of discretion in any of these rulings. Dodson tries to excuse its untimeliness by stating that its manifest-injustice argument was dependent on its knowledge of a document (the internal work order Williams created for the evaluation of Dodson's engines) that it had not obtained in discovery before expiration of the 14-day deadline for motions for reconsideration. It is hard to see how the document is relevant to the decision to order arbitration or why the motion for reconsideration could not have been filed significantly sooner. But we need not resolve those matters. The district-court order denying the motion for reconsideration states that Dodson provided no explanation for its delay, and

Dodson's opening brief on appeal does not argue, much less demonstrate, that it presented the above explanation to the district court. We therefore decline to consider the excuse. *See Tele-Commc'ns, Inc. v. Comm'r*, 12 F.3d 1005, 1007 (10th Cir. 1993) ("The general rule is that an appellate court will not consider an issue raised for the first time on appeal."). Moreover, the district court's substantive grounds for denying the motion were clearly correct.

C. Order confirming the award

Dodson challenges the district court's order confirming the arbitration award on the grounds that the court lacked subject-matter jurisdiction to confirm the award and that the confirmation order is improper on the merits.

1. Subject-matter jurisdiction

The district court unquestionably had federal-question jurisdiction over the initial suit, as Dodson asserted federal claims arising under the Sherman and Clayton Acts. *See Comanche Indian Tribe Of Okla. v. 49, L.L.C.*, 391 F.3d 1129, 1131 n.4 (10th Cir. 2004) (district court had federal-question jurisdiction to stay proceedings and order arbitration where complaint was based in part on federal statutory claim). Dodson does not dispute that point but challenges the court's jurisdiction over postaward motions to vacate or confirm the arbitration award. Dodson relies on several cases holding that "independent jurisdiction must be established" for petitions filed under §§ 9 and 10 of the FAA. Aplt. Reply Br. at 5 (citing cases).

We are not persuaded. There appears to be no dispute that when a court with subject-matter jurisdiction orders arbitration and then stays the suit pending

resolution of the arbitral proceedings, that court retains jurisdiction to confirm or set aside the arbitral award. *See Marine Transit Corp. v. Dreyfus*, 284 U.S. 263, 275–76 (1932) ("We do not conceive it to be open to question that, where the court has authority under the [FAA] . . . to make an order for arbitration, the court also has authority to confirm the award or to set it aside."); *Quezada v. Bechtel OG & C Constr. Servs., Inc.*, 946 F.3d 837, 843 (5th Cir. 2020) ("[A] litigant [is] able to preserve federal jurisdiction over a motion to vacate, modify, or confirm an arbitration award by first filing a motion to compel arbitration under section 4 [of the FAA]"); *McCormick v. Am. Online, Inc.*, 909 F.3d 677, 683 (4th Cir. 2018) ("[T]he court that has jurisdiction to compel arbitration under § 4 also has jurisdiction to . . . confirm, vacate, modify, and enforce the resulting arbitration award."); *Davis v. Fenton*, 857 F.3d 961, 962 (7th Cir. 2017) (where the district court "had [federal-question] jurisdiction over the case at the time it was filed," the court's earlier "order staying the case . . . retained jurisdiction to confirm or vacate [the] arbitral award"); *Doscher v. Sea Port Grp. Sec., LLC*, 832 F.3d 372, 386 (2d Cir. 2016) ("If . . . a case were stayed, it could provide . . . an independent jurisdictional basis sufficient to permit the federal court to entertain . . . petitions under [FAA] §§ . . . 9–11."); *cf.* 13D Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 3569 at 500 (3d ed. 2008) (stating, with respect to diversity cases, that when the "underlying litigation . . . was stayed pending arbitration . . . , the jurisdiction invoked in the underlying litigation is retained").

The purported contrary authority relied on by Dodson concerns only freestanding suits to confirm or set aside an award when a court had not ordered the arbitration in the first place. There is a circuit split on whether a court presented with a freestanding motion to vacate or confirm an arbitration award can base federal-question jurisdiction on federal-law claims in the underlying complaint; but because this case does not raise the issue, we need not pick a side today.[6] *See* 1 Jay E. Grenig, Alt. Disp. Resol. § 26:3.50 (4th ed.) ("The circuits are split on the analysis that should be made in determining whether federal question jurisdiction exists" over "post-award petition[s]"); *compare Magruder v. Fid. Brokerage Servs. LLC*, 818 F.3d 285, 288 (7th Cir. 2016) (no federal-question jurisdiction because "a federal issue resolved by the arbitrator does *not* supply subject-matter jurisdiction for review or enforcement of the award") *with Doscher*, 832 F.3d at 373 (court may "'look through'" a freestanding petition to confirm or vacate an arbitral award and exercise jurisdiction if the "underlying dispute . . . involved substantial questions of federal law"). Because the district court in this case was properly vested with federal-question jurisdiction when the action was initially filed, and because it merely stayed the action during the pendency of arbitration proceedings, it retained subject-matter jurisdiction to confirm the award.

[6] The Supreme Court will be picking a side soon enough. It recently granted a petition for certiorari on the issue. *See Badgerow v. Walters*, 975 F.3d 469 (5th Cir. 2020), *cert granted*, No. 20-1143, 2021 WL 1951795 (May 17, 2021).

2. Merits

"In reviewing the confirmation of an arbitration award, we review the district court's factual findings for clear error and its legal determinations de novo." *Burlington N. & Santa Fe Ry. Co. v. Pub. Serv. Co. of Okla.*, 636 F.3d 562, 567 (10th Cir. 2010). "Though we do not owe deference to the district court's legal conclusions, we afford maximum deference to the arbitrators' decisions," and will vacate an award "only [under] extraordinary circumstances." *THI of N.M. at Vida Encantada, LLC v. Lovato*, 864 F.3d 1080, 1083 (10th Cir. 2017) (brackets and internal quotation marks omitted).

Dodson challenges the district court's confirmation order on three grounds: (1) Williams failed to file a petition for confirmation of the award under 9 U.S.C. § 9; (2) the district court's "confirmation order contained relief not granted in the award," Aplt. Br. at 41; and (3) Dodson "was prevented from effectively vindicating" its antitrust and declaratory-judgment claims by its inability to obtain certain third-party discovery in the arbitration proceedings, *id.* at 41.

We reject each challenge. Dodson is correct that Williams did not file a pleading captioned as a motion to confirm the award. But its intention was clear. The last two sentences of the first paragraph of its brief in opposition to Dodson's motion to vacate state, "The Court should deny Dodson's Motion to Vacate as time-barred and as substantively unavailing. Pursuant to § 9 of the FAA, the Court should confirm the Award." Dist. Ct. Doc. 58 at 1. And the final sentence of the brief's conclusion states, "Thus, the Court is warranted in denying Dodson's Motion to

Vacate and in confirming the Award." *Id.* at 25. We need not consider whether the district court would have abused its discretion if it had ignored Williams's request to confirm the arbitration award, because it considered and granted the request. It explained:

> Federal courts have been understandably liberal in their view on what types of motions, filings or pleadings will be construed to be the equivalent of a motion to confirm, and no magic words are required by the confirmation provisions of 9 U.S.C. § 9. In many respects, motions to vacate and motions to confirm analytically are the opposite sides of the same coin, and when a court denies a motion to vacate an arbitration award, the court's judgment has the effect of collateral estoppel; the parties cannot relitigate the validity of the award. It is therefore sensible for the court to treat a party's opposition to a motion to vacate as a request to confirm the award.

Addendum to Aplt. Br. at 31–32 (quoting at length from *Gen. Elec. Co. v. Anson Stamping Co.*, 426 F. Supp. 2d 579 (W.D. Ky. 2006)) (brackets, footnotes, and internal quotation marks omitted). Applying that approach to this case, the court continued:

> Williams and Dodson have both briefed whether there is a basis for vacatur or modification here and, as discussed below, in the absence of grounds for vacatur or modification, the Award must be confirmed. Requiring the filing of yet another pleading in this already overlitigated case would serve no purpose but delay. In the interests of judicial economy and to promote the fundamental policy of the FAA for the speedy and efficient resolution of arbitration disputes, the Court construes Williams's opposition to Dodson's motion to vacate or modify as a request to confirm the Award.

Id. at 32 (internal quotation marks omitted).

The district court did not abuse its discretion. Delaying the proceedings to require Williams to correct the caption on its pleading would have served no purpose.

We agree with the district court and the Seventh Circuit that "the district court applies the same test whether reviewing a petition to confirm or a petition to vacate." *Yasuda Fire & Marine Ins. Co. of Eur., Ltd v. Cont'l Cas. Co.*, 37 F.3d 345, 347 n.4 (7th Cir. 1994) (petitions filed under §§ 9 and 10 of the FAA "are the same as a practical matter. The district court must confirm an award unless that award must be vacated under section 10."). Dodson has not pointed to any prejudice it suffered from the district court's treatment of Williams's brief as a motion to confirm the arbitration award, nor do we perceive any. This is an appropriate circumstance to recognize the proposition that "[a] pleading will be judged by the quality of its substance rather than according to its form or label." 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1286 at 758 (3d ed. 2004); *see Elm Ridge Expl. Co., LLC v. Engle*, 721 F.3d 1199, 1220 (10th Cir. 2013) (in construing a party's motion under Rule 59(e) as a Rule 50(b) motion, stating "a caption should not control the outcome"); *Conrad v. Phone Directories Co.*, 585 F.3d 1376, 1385 (10th Cir. 2009) (a "court must look beyond the caption to the essential attributes of the motion itself"; the caption "is not dispositive" and "to look only at the caption of a motion would violate the spirit of notice pleading embodied in our Federal Rules of Civil Procedure"); *Alpine Bank v. Hubbell*, 555 F.3d 1097, 1107–08 (10th Cir. 2009) ("We must construe pleadings so as to do justice, which requires that we not rely solely on labels in a complaint, but that we probe deeper and examine the substance." (citation and internal quotation marks omitted)).

Dodson's second argument is that "the arbitrator's award did not give Williams the right to possession and ownership of the engine and accessories" remaining at Williams's facility, and that, therefore, the district court erred in ordering such relief. Aplt. Br. at 41. To begin with, the argument is confusing. It appears to say that the district court ordered relief beyond what was ordered by the arbitrator. But the court order says only "the Award is confirmed." Addendum to Aplt. Br. at 58. We must therefore assume that what Dodson is saying is that the arbitrator should not have awarded[7] or did not award the engine to Williams. We fail to see the problem. Dodson's conversion claim alleged that Williams "breached its duty concerning" the engine remaining in Williams's possession "by failing to return the engine . . . and thereby intentionally and without authorization, maintaining control and making use of the property contrary to the terms of the bailment, appropriating the property to its own use and/or withholding the property from [Dodson]." Aplt. App. at 23. The arbitrator rejected these contentions, finding that "Dodson decided to leave [the] engine . . . at Williams" "[o]n its own volition"; that after "reacquir[ing] [the engine] from Skyway in July 2015, [Dodson] never asked Williams to return [it]"; that "Williams did not wrongfully exert control of [the] engine . . . in denial of, or inconsistent with, Dodson's rights"; and that "Dodson

[7] One sentence of Dodson's brief asserts that the award should be vacated under § 10(a)(4) of the FAA, which permits vacation of an award if arbitrators exceeded their powers. But it fails to develop that argument or cite any authority interpreting that provision of the FAA. Dodson has not shouldered the "heavy burden" of establishing grounds for relief under this section. *Goldgroup Res., Inc. v. DynaResource de Mex., S.A. de C.V.*, 994 F.3d 1181, 1190 (10th Cir. 2021).

abandoned [the engine] at Williams." Addendum to Aplee. Br. at 76. The arbitrator concluded by stating that "Dodson's evidence failed to show that Williams wrongfully exerted unauthorized control over either engine." *Id.* The arbitrator's rejection of Dodson's conversion claim is functionally equivalent in this context to granting Williams possession and control of the engine. Dodson offers no argument or explanation challenging the arbitrator's findings and has therefore failed to show any error.

Dodson's third argument is likewise unavailing. It complains that the arbitrator decided to issue the award without waiting for the Michigan Court to resolve Dodson's request to subpoena Textron and TECS for testimony regarding the antitrust claims. It insists that this decision denied it "a full and fair opportunity to present evidence relating to the antitrust claims," Aplt. Br. at 42, apparently relying on the lack-of-fundamental-fairness ground for vacatur of an arbitral award, *see Bowles Fin. Grp., Inc. v. Stifel, Nicolaus & Co.*, 22 F.3d 1010, 1012 (10th Cir. 1994) ("Courts have created a basic requirement that an arbitrator must grant the parties a fundamentally fair hearing."). But Dodson has failed to demonstrate a lack of fundamental fairness in the arbitration proceedings.

"[A] fundamentally fair [arbitration] hearing requires only notice, opportunity to be heard and to present relevant and material evidence and argument before the decision makers, and that the decisionmakers are not infected with bias." *Bowles*, 22 F.3d at 1013. Dodson's argument suggests that it was prevented from presenting "relevant material evidence" to the arbitrator because of a "lack of access" to third

parties for purposes of discovery and at the arbitration hearing. Aplt. Br. at 43. But one cannot expect full discovery in arbitration proceedings, as extensive discovery could undermine much of the advantage of arbitration. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991) ("Although [discovery] procedures [in arbitration] might not be as extensive as in the federal courts, by agreeing to arbitrate, a party trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." (internal quotation marks omitted)); *Mitsubishi Motors*, 473 U.S. at 633 (in upholding arbitration of antitrust claims, stating that "it is often a judgment that streamlined proceedings and expeditious results will best serve their needs that causes parties to agree to arbitrate their disputes."); *In re Cox*, 835 F.3d at 1202, 1206 (compelling arbitration of antitrust claims despite more limited discovery available in arbitral proceedings). Although we do not foreclose the possibility that failure to provide discovery could make an arbitration fundamentally unfair, Dodson has made nothing approaching the necessary showing. It does little more than assert that it "needed" discovery and testimony from third parties with "relevant information." Aplt. Br. at 41–42. It fails to explain specifically what information it sought or why that information was relevant and material to its antitrust claims.[8] Dodson thus "lacks

[8] In an attempt to remedy this defect, Dodson submitted a letter under Fed. R. App. P. 28(j) after oral argument. The letter attempted to draw our attention to portions of the record that, Dodson says, explain the materiality and relevance of the evidence it sought from third-party witnesses. We decline to consider Dodson's belated submission. By its terms, Rule 28(j) is for the submission of legal "authorit[y]," not

any allegations that would support . . . an argument" that the arbitration proceedings were fundamentally unfair. *Lewis v. Cir. City Stores, Inc.*, 500 F.3d 1140, 1150–51 n.13 (10th Cir. 2007) (although witness subpoenaed by plaintiff "refused to appear at the arbitration," plaintiff did not establish unfairness when he failed to explain "how the witness's testimony would have made a difference to the outcome of the proceeding" (internal quotation marks omitted)).

In sum, Dodson has failed to demonstrate the "extraordinary circumstances" that would "warrant vacatur [or denial of confirmation] of an arbitral award." *THI of N.M.*, 864 F.3d at 1083 (internal quotation marks omitted).

III. CONCLUSION

We **AFFIRM** the orders of the district court.

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new evidence. *See Utah v. U.S. Dep't of Interior*, 535 F.3d 1184, 1195–96 n.7 (10th Cir. 2008) ("Rule 28(j) permits a party to bring new authorities to the attention of the court; it is not designed to bring new evidence through the back door." (emphasis and internal quotation marks omitted)).