KeyCite Yellow Flag - Negative Treatment
Declined to Extend by American General Financial Services v. Jape, Ga., October 1, 2012

115 S.Ct. 834
Supreme Court of the United States

ALLIED-BRUCE TERMINIX COMPANIES, INC., and Terminix International Company, Petitioners
v.
G. Michael DOBSON et al.

No. 93-1001.
|
Argued Oct. 4, 1994.
|
Decided Jan. 18, 1995.

Synopsis

Homeowners brought action against termite control company under termite bond. Company moved to compel arbitration. The Baldwin Circuit Court, No. CV-91-796, James H. Reid, Jr., J., denied the motion. Company appealed. The Alabama Supreme Court, Almon, J., 628 So.2d 354, affirmed. Certiorari was granted. The Supreme Court, Justice Breyer, held that Federal Arbitration Act section making enforceable a written arbitration provision in a contract evidencing a transaction involving commerce is written broadly, extending Act's reach to limits of Congress' commerce clause power.

Reversed and remanded.

Justice O'Connor, filed a concurring opinion.

Justice Scalia, filed a dissenting opinion.

Justice Thomas filed a dissenting opinion in which Justice Scalia joined.

West Headnotes (4)

[1] Commerce
Arbitration

For purposes of Federal Arbitration Act section making enforceable a written arbitration provision in a contract evidencing a transaction involving commerce, the words "involving commerce" are broader than the often-found words of art "in commerce"; therefore, they cover more than "only persons or activities within the flow of interstate commerce." 9 U.S.C.A. § 2.

204 Cases that cite this headnote

[2] Commerce
Arbitration

For purposes of Federal Arbitration Act section making enforceable a written arbitration provision in a contract evidencing a transaction involving commerce, the word "involving" is broad and is the functional equivalent of "affecting commerce" which normally signals Congress' intent to exercise its commerce power to the full; a broad interpretation of this language is consistent with the Act's basic purpose, to put arbitration provisions on the same footing as a contract's other terms. 9 U.S.C.A. § 2.

744 Cases that cite this headnote

[3] Commerce
Arbitration

For purposes of Federal Arbitration Act section making enforceable a written arbitration provision in a contract evidencing a transaction involving commerce, "evidencing a transaction" means that the "transaction" must turn out, in fact, to have involved interstate commerce, even if the parties did not contemplate an interstate commerce connection. 9 U.S.C.A. § 2.

527 Cases that cite this headnote

[4] Commerce
Arbitration

Use in Federal Arbitration Act section, making enforceable a written arbitration provision in a contract evidencing a transaction involving commerce, of the words "evidencing" and "involving" does not restrict Act's application so as to allow a state to apply

its antiarbitration law or policy. 9 U.S.C.A. § 2.

548 Cases that cite this headnote

West Codenotes

Preempted
Code 1975, § 8-1-41(3).

****835** *Syllabus* [*]

The termite prevention contract between petitioner exterminators and respondent Gwin, a homeowner, specified that any controversy thereunder would be settled exclusively by arbitration. After respondents Dobson, who had purchased Gwin's home, sued in state court following a termite infestation, petitioners asked for, but were denied, a stay to allow for arbitration under the contract and § 2 of the Federal Arbitration Act, which makes enforceable a written arbitration provision in "a contract evidencing a transaction involving commerce." The Alabama Supreme Court affirmed on the basis of a state statute invalidating predispute arbitration agreements, ruling that the federal Act applies only if, at the time the parties entered into the contract and accepted the arbitration clause, they "contemplated" substantial interstate activity. Despite some such activities, the court found that these parties "contemplated" a transaction that was primarily local and not "substantially" interstate.

Held: Section 2's interstate commerce language should be read broadly to extend the Act's reach to the limits of Congress' Commerce Clause power. The use of the words "evidencing" and "involving" does not restrict the Act's application and thereby allow a State to apply its antiarbitration law or policy. Pp. 837-843.

(a) The legal background demonstrates that the Act has the basic purpose of overcoming judicial hostility to arbitration agreements and applies in both federal diversity cases and state courts, where it pre-empts state statutes invalidating such agreements. See, *e.g., Southland Corp. v. Keating,* 465 U.S. 1, 15-16, 104 S.Ct. 852, 860-61, 79 L.Ed.2d 1. It would be inappropriate to overrule *Southland* and permit Alabama to apply its antiarbitration statute, since the Court in that case considered the basic arguments now raised, and nothing significant changed subsequently; since, in the interim, private parties have likely written contracts relying on *Southland;* and since Congress, both before and after *Southland,* has enacted legislation extending, not retracting, the scope of arbitration. Pp. 837-839.

(b) The statute's language, background, and structure establish that § 2's "involving commerce" words are the functional equivalent of the phrase "affecting commerce," which normally signals Congress' intent to exercise its commerce power to the full, see ***266** *Russell v. United States,* 471 U.S. 858, 859, 105 S.Ct. 2455, 2456, 85 L.Ed.2d 829. The linguistic permissibility of this interpretation is demonstrated by dictionary definitions in which "involve" and "affect" mean the same thing. Moreover, the Act's legislative history, to the extent that it is informative, indicates an expansive congressional intent, and this Court has described the Act's ****836** reach expansively as coinciding with that of the Commerce Clause, see, *e.g., Southland, supra,* 465 U.S., at 14-15, 104 S.Ct., at 860. Finally, a broad interpretation of this language is consistent with the Act's basic purpose, while a narrower interpretation would create a new, unfamiliar test that would unnecessarily complicate the law and breed litigation. For these reasons, the Act's scope can be said to have expanded along with the commerce power over the years, even though the Congress that passed the Act in 1925 might well have thought the Commerce Clause did not stretch as far as has turned out to be so. *Mine Workers v. Coronado Coal Co.,* 259 U.S. 344, 410, 42 S.Ct. 570, 583, 66 L.Ed. 975; *Leather Workers v. Herkert & Meisel Trunk Co.,* 265 U.S. 457, 470, 44 S.Ct. 623, 627, 68 L.Ed. 1104; and *Bernhardt v. Polygraphic Co. of America, Inc.,* 350 U.S. 198, 200-202, 76 S.Ct. 273, 275-276, 100 L.Ed. 199, distinguished. Pp. 839-841.

(c) Section 2's "evidencing a transaction" phrase means that the "transaction" (that the contract "evidence") must turn out, in fact, to have involved interstate commerce. For several reasons, this "commerce in fact" interpretation is more faithful to the statute than the "contemplation of the parties" test adopted below and in other courts. First, the latter interpretation, when viewed in terms of the statute's basic purpose, seems anomalous because it invites litigation about what was, or was not, "contemplated," because it too often would turn the validity of an arbitration clause upon the happenstance of whether the parties thought to insert a reference to

interstate commerce in their document or to mention it in an initial conversation, and because it fits awkwardly with the rest of § 2. Second, the statute's language permits the "commerce in fact" interpretation. Although that interpretation concededly leaves little work for the word "evidencing," nothing in the Act's history suggests any other, more limiting, task for the language. Third, the force of the basic practical argument underlying the "contemplation of the parties" test, *i.e.,* that encroaching on powers reserved to the States must be avoided, has diminished following this Court's holdings that the Act displaces contrary state law. Finally, despite an *amicus*' claim, it is unclear whether an "objective" version of that test would better protect consumers asked to sign form contracts by businesses. In any event, § 2 authorizes States to invalidate an arbitration clause "upon such grounds as exist at law or in equity for the revocation of any contract," and thereby gives them a method for protecting consumers against unwanted arbitration provisions. Pp. 841-843.

***267** d) The parties do not contest that the transaction in this case, in fact, involved interstate commerce. P. 843.

628 So.2d 354, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined. O'CONNOR, J., filed a concurring opinion, *post,* p. 843. SCALIA, J., filed a dissenting opinion, *post,* p. 844. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, *post,* p. 845.

Attorneys and Law Firms

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Opinion

***268** Justice BREYER delivered the opinion of the Court.

This case concerns the reach of § 2 of the Federal Arbitration Act. That section makes enforceable a written arbitration provision in "a contract *evidencing* a transaction *involving* commerce." 9 U.S.C. § 2 (emphasis added). Should we read this phrase broadly, extending the Act's reach to the limits of Congress' Commerce Clause power? Or, do the two italicized words-"involving" and "evidencing"-significantly restrict the Act's application? We conclude that the broader reading of the Act is the correct one, and we reverse a State Supreme Court judgment to the contrary.

****837** I

In August 1987, Steven Gwin, a respondent who owned a house in Birmingham, Alabama, bought a lifetime "Termite Protection Plan" (Plan) from the local office of Allied-Bruce Terminix Companies, a franchise of Terminix International Company. In the Plan, Allied-Bruce promised "to protect" Gwin's house "against the attack of subterranean termites," to reinspect periodically, to provide any "further treatment found necessary," and to repair, up to $100,000, damage caused by new termite infestations. App. 69. Terminix International "guarantee[d] the fulfillment of the terms" of the Plan. *Ibid.* The Plan's contract document provided in writing that

> "*any controversy or claim* ... arising out of or relating to the interpretation, performance or breach of any provision of this agreement *shall be settled exclusively by arbitration.*" *Id.,* at 70 (emphasis added).

In the spring of 1991, Mr. and Mrs. Gwin, wishing to sell their house to Mr. and Mrs. Dobson, had Allied-Bruce reinspect the house. They obtained a clean bill of health. But no sooner had they sold the house and transferred the Plan to Mr. and Mrs. Dobson than the Dobsons found the house swarming with termites. Allied-Bruce attempted to treat ***269** and repair the house, but the Dobsons found Allied-Bruce's efforts inadequate. They therefore sued the Gwins, and (along with the Gwins, who cross-claimed) also sued Allied-Bruce and Terminix in Alabama state court. Allied-Bruce and Terminix, pointing to the Plan's arbitration clause and § 2 of the Federal Arbitration Act, immediately asked the court for a stay, to allow arbitration to proceed. The court denied the stay. Allied-Bruce and Terminix appealed.

The Supreme Court of Alabama upheld the denial of the stay on the basis of a state statute, Ala.Code § 8-1-41(3) (1993), making written, predispute arbitration agreements invalid and "unenforceable." 628 So.2d 354, 355 (1993). To reach this conclusion, the court had to find that the Federal Arbitration Act, which pre-empts conflicting state law, did not apply to the termite contract. It made just that finding. The court considered the federal Act inapplicable because the connection between the termite contract and interstate commerce was too slight. In the court's view, the Act applies to a contract only if " 'at the time [the parties entered into the contract] and accepted the arbitration clause, they *contemplated* substantial interstate activity.' " *Ibid.* (emphasis in original) (quoting *Metro Industrial Painting Corp. v. Terminal Constr. Co.,* 287 F.2d 382, 387 (CA2) (Lumbard, C.J., concurring), cert. denied, 368 U.S. 817, 82 S.Ct. 31, 7 L.Ed.2d 24 (1961)). Despite some interstate activities (*e.g.,* Allied-Bruce, like Terminix, is a multistate firm and shipped treatment and repair material from out of state), the court found that the parties "contemplated" a transaction that was primarily local and not "substantially" interstate.

Several state courts and Federal District Courts, like the Supreme Court of Alabama, have interpreted the Act's language as requiring the parties to a contract to have "contemplated" an interstate commerce connection. See, *e.g., Burke County Public Schools Bd. of Ed. v. Shaver Partnership,* 303 N.C. 408, 417-420, 279 S.E.2d 816, 822-823 (1981); ***270** *R.J. Palmer Constr. Co. v. Wichita Band Instrument Co.,* 7 Kan.App.2d 363, 367, 642 P.2d 127, 130 (1982); *Lacheney v. Profitkey Int'l, Inc.,* 818 F.Supp. 922, 924 (ED Va.1993). Several federal appellate courts, however, have interpreted the same language differently, as reaching to the limits of Congress' Commerce Clause power. See, *e.g., Foster v. Turley,* 808 F.2d 38, 40 (CA10 1986); *Robert Lawrence Co. v. Devonshire Fabrics, Inc.,* 271 F.2d 402, 406-407 (CA2 1959), cert. dism'd, 364 U.S. 801, 81 S.Ct. 27, 5 L.Ed.2d 37 (1960); cf. *Snyder v. Smith,* 736 F.2d 409, 417-418 (CA7), cert. denied, 469 U.S. 1037, 105 S.Ct. 513, 83 L.Ed.2d 403 (1984). We granted certiorari to resolve this conflict, 510 U.S. 1190, 114 S.Ct. 1292, 127 L.Ed.2d 646 (1994); and, as we said, we conclude that the broader reading of the statute is the right one.

II

Before we can reach the main issues in this case, we must set forth three items of legal background.

****838** First, the basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate. See *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.,* 489 U.S. 468, 474, 109 S.Ct. 1248, 1253, 103 L.Ed.2d 488 (1989). The origins of those refusals apparently lie in " 'ancient times,' " when the English courts fought " 'for extension of jurisdiction-all of them being opposed to anything that would altogether deprive every one of them of jurisdiction.' " *Bernhardt v. Polygraphic Co. of America, Inc.,* 350 U.S. 198, 211, n. 5, 76 S.Ct. 273, 280, n. 5, 100 L.Ed. 199 (1956) (Frankfurter, J., concurring) (quoting *United States Asphalt Refining Co. v. Trinidad Lake Petroleum Co.,* 222 F. 1006, 1007 (SDNY 1915, in turn quoting *Scott v. Avery,* 5 H.L.Cas. 811 (1856) (Campbell, L.J.)). American courts initially followed English practice, perhaps just " 'stand[ing] ... upon the antiquity of the rule' " prohibiting arbitration clause enforcement, rather than " 'upon its excellence or reason.' " *Bernhardt v. Polygraphic Co., supra,* 350 U.S., at 211, n. 5, 76 S.Ct., at 280, n. 5 (quoting *United States Asphalt Refining Co., supra,* at 1007). Regardless, when Congress passed the Arbitration Act in 1925, it was "motivated, first and foremost, by a ***271** ... desire" to change this antiarbitration rule. *Dean Witter Reynolds Inc. v. Byrd,* 470 U.S. 213, 220, 105 S.Ct. 1238, 1242, 84 L.Ed.2d 158 (1985). It intended courts to "enforce [arbitration] agreements into which parties had entered," *ibid.* (footnote omitted), and to "place such agreements 'upon the same footing as other contracts,' " *Volt Information Sciences, Inc., supra,* 489 U.S., at 474, 109 S.Ct., at 1253 (quoting *Scherk v. Alberto-Culver Co.,* 417 U.S. 506, 511, 94 S.Ct. 2449, 2453, 41 L.Ed.2d 270 (1974)).

Second, some initially assumed that the Federal Arbitration Act represented an exercise of Congress' Article III power to "ordain and establish" federal courts, U.S. Const., Art. III, § 1. See *Southland Corp. v. Keating,* 465 U.S. 1, 28, n. 16, 104 S.Ct. 852, 867, n. 16, 79 L.Ed.2d 1 (1984) (O'CONNOR, J., dissenting) (collecting cases). In 1967, however, this Court held that the Act "is based upon and confined to the incontestable federal foundations of 'control over interstate commerce and over admiralty.' " *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395, 405, 87 S.Ct. 1801, 1807, 18 L.Ed.2d 1270 (1967) (quoting H.R.Rep. No. 96, 68th Cong., 1st Sess., 1 (1924)). The Court considered the following

complicated argument: (1) The Act's provisions (about contract remedies) are important and often outcome determinative, and thus amount to "substantive," not "procedural," provisions of law; (2) *Erie R. Co. v. Tompkins,* 304 U.S. 64, 71-80, 58 S.Ct. 817, 819-823, 82 L.Ed. 1188 (1938), made clear that federal courts must apply *state* substantive law in diversity cases, see also *Hanna v. Plumer,* 380 U.S. 460, 465, 85 S.Ct. 1136, 1140-41, 14 L.Ed.2d 8 (1965); therefore (3) federal courts must not apply the Federal Arbitration Act in diversity cases. This Court responded by agreeing that the Act set forth substantive law, but concluding that, nonetheless, the Act applied in diversity cases because Congress had so intended. The Court wrote: "Congress may prescribe how federal courts are to conduct themselves with respect to subject matter over which Congress plainly has power to legislate." *Prima Paint, supra,* 388 U.S., at 405, 87 S.Ct., at 1806.

Third, the holding in *Prima Paint* led to a further question. Did Congress intend the Act also to apply in state courts? Did the Federal Arbitration Act pre-empt conflicting ***272** state antiarbitration law, or could state courts apply their antiarbitration rules in cases before them, thereby reaching results different from those reached in otherwise similar federal diversity cases? In *Southland Corp. v. Keating, supra,* this Court decided that Congress would not have wanted state and federal courts to reach different outcomes about the validity of arbitration in similar cases. The Court concluded that the Federal Arbitration Act pre-empts state law; and it held that state courts cannot apply state statutes that invalidate arbitration agreements. *Id.,* 465 U.S., at 15-16, 104 S.Ct., at 860-861.

We have set forth this background because respondents, supported by 20 state attorneys general, now ask us to overrule *Southland* and thereby to permit Alabama to apply its ****839** antiarbitration statute in this case irrespective of the proper interpretation of § 2. The *Southland* Court, however, recognized that the pre-emption issue was a difficult one, and it considered the basic arguments that respondents and *amici* now raise (even though those issues were not thoroughly briefed at the time). Nothing significant has changed in the 10 years subsequent to *Southland;* no later cases have eroded *Southland* 's authority; and no unforeseen practical problems have arisen. Moreover, in the interim, private parties have likely written contracts relying upon *Southland* as authority. Further, Congress, both before and after *Southland,* has enacted legislation extending, not retracting, the scope of arbitration. See, *e.g.,* 9 U.S.C. § 15 (eliminating the Act of State doctrine as a bar to arbitration); 9 U.S.C. §§ 201-208 (international arbitration). For these reasons, we find it inappropriate to reconsider what is by now well-established law.

We therefore proceed to the basic interpretive questions aware that we are interpreting an Act that seeks broadly to overcome judicial hostility to arbitration agreements and that applies in both federal and state courts. We must decide in this case whether that Act used language about interstate commerce that nonetheless limits the Act's application, ***273** thereby carving out an important statutory niche in which a State remains free to apply its antiarbitration law or policy. We conclude that it does not.

III

[1] The Federal Arbitration Act, § 2, provides that a

> "written provision in any maritime transaction or *a contract evidencing a transaction involving commerce* to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (emphasis added).

The initial interpretive question focuses upon the words "involving commerce." These words are broader than the often-found words of art "in commerce." They therefore cover more than " 'only persons or activities *within the flow* of interstate commerce.' " *United States v. American Building Maintenance Industries,* 422 U.S. 271, 276, 95 S.Ct. 2150, 2154, 45 L.Ed.2d 177 (1975) (quoting *Gulf Oil Corp. v. Copp Paving Co.,* 419 U.S. 186, 195, 95 S.Ct. 392, 398, 42 L.Ed.2d 378 (1974)) (defining "in commerce" as related to the "flow" and defining the "flow" to include "the generation of goods and services for interstate markets and their transport and distribution to the consumer"); see also *FTC v. Bunte Brothers, Inc.,* 312 U.S. 349, 351, 61 S.Ct. 580, 582, 85 L.Ed. 881 (1941). But how far beyond the flow of commerce does the word "involving" reach? Is "involving" the functional equivalent of the word "affecting"? That phrase-"affecting commerce"-normally signals Congress' intent to exercise its Commerce Clause powers to the full.

See *Russell v. United States,* 471 U.S. 858, 859, 105 S.Ct. 2455, 2456, 85 L.Ed.2d 829 (1985). We cannot look to other statutes for guidance for the parties tell us that this is the only federal statute that uses the word "involving" to describe an interstate commerce relation.

[2] After examining the statute's language, background, and structure, we conclude that the word "involving" is broad ***274** and is indeed the functional equivalent of "affecting." For one thing, such an interpretation, linguistically speaking, is permissible. The dictionary finds instances in which "involve" and "affect" sometimes can mean about the same thing. V Oxford English Dictionary 466 (1st ed. 1933) (providing examples dating back to the mid-19th century, where "involve" means to "include or affect in ... operation"). For another, the Act's legislative history, to the extent that it is informative, indicates an expansive congressional intent. See, *e.g.,* H.R.Rep. No. 96, *supra,* at 1 (the Act's "control over interstate commerce reaches not only the actual physical interstate shipment of goods but also contracts relating to interstate commerce"); 65 Cong.Rec. 1931 (1924) (the Act "affects contracts relating to interstate subjects and contracts in admiralty") (remarks of Rep. Graham); Joint Hearings on S. 1005 and ****840** H.R. 646 before the Subcommittees of the Committees on the Judiciary, 68th Cong., 1st Sess., 7 (1924) (hereinafter Joint Hearings) (testimony of Charles L. Bernheimer, chairman of the Committee on Arbitration of the Chamber of Commerce of the State of New York, agreeing that the proposed bill "relates to contracts arising in interstate commerce"); *id.,* at 16 (testimony of Julius H. Cohen, drafter for the American Bar Association of much of the proposed bill's language, that the Act reflects part of a strategy to rid the law of an "anachronism" by "get[ting] a Federal law to cover interstate and foreign commerce and admiralty"); see also 9 U.S.C. § 1 (defining the word "commerce" in the language of the Commerce Clause itself).

Further, this Court has previously described the Act's reach expansively as coinciding with that of the Commerce Clause. See, *e.g., Perry v. Thomas,* 482 U.S. 483, 490, 107 S.Ct. 2520, 2525-26, 96 L.Ed.2d 426 (1987) (the Act "embodies Congress' intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause"); *Southland Corp. v. Keating,* 465 U.S., at 14-15, 104 S.Ct., at 860 (the " 'involving commerce' " requirement is a constitutionally "necessary qualification" on the Act's reach, ***275** marking its permissible outer limit); see also *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S., at 407, 87 S.Ct., at 1807-08 (Harlan, J., concurring) (endorsing *Robert Lawrence Co. v. Devonshire Fabrics, Inc.,* 271 F.2d 402, 407 (CA2 1959) (Congress, in enacting the FAA, "took pains to utilize as much of its power as it could")).

Finally, a broad interpretation of this language is consistent with the Act's basic purpose, to put arbitration provisions on " 'the same footing' " as a contract's other terms. *Scherk v. Alberto-Culver Co.,* 417 U.S., at 511, 94 S.Ct., at 2453. Conversely, a narrower interpretation is not consistent with the Act's purpose, for (unless unreasonably narrowed to the flow of commerce) such an interpretation would create a new, unfamiliar test lying somewhere in a no man's land between "in commerce" and "affecting commerce," thereby unnecessarily complicating the law and breeding litigation from a statute that seeks to avoid it.

We recognize arguments to the contrary: The pre-New Deal Congress that passed the Act in 1925 might well have thought the Commerce Clause did not stretch as far as has turned out to be the case. But, it is not unusual for this Court in similar circumstances to ask whether the scope of a statute should expand along with the expansion of the Commerce Clause power itself, and to answer the question affirmatively-as, for the reasons set forth above, we do here. See, *e.g., McLain v. Real Estate Bd. of New Orleans, Inc.,* 444 U.S. 232, 241, 100 S.Ct. 502, 508-509, 62 L.Ed.2d 441 (1980); *Hospital Building Co. v. Trustees of Rex Hospital,* 425 U.S. 738, 743, n. 2, 96 S.Ct. 1848, 1852, n. 2, 48 L.Ed.2d 338 (1976).

Further, the Gwins and Dobsons point to two cases containing what they believe to be favorable language. In *Mine Workers v. Coronado Coal Co.,* 259 U.S. 344, 42 S.Ct. 570, 66 L.Ed. 975 (1922), and then again in *Leather Workers v. Herkert & Meisel Trunk Co.,* 265 U.S. 457, 44 S.Ct. 623, 68 L.Ed. 1104 (1924), they say, this Court said that one might draw a distinction between, on the one hand, cases that "*involve* interstate commerce intrinsically," and, on the other hand, cases "*affecting* interstate commerce so directly ***276** as to be within the federal regulatory power." *Mine Workers, supra,* 259 U.S., at 410, 42 S.Ct., at 583 (emphasis added); *Leather Workers, supra,* 265 U.S., at 470, 44 S.Ct., at 627 (same). One could read these cases as driving a wedge between "involve" and "affecting." Yet, in these cases, the

Court was not construing a statute containing the words "involving commerce." Furthermore, nothing suggests the drafters of the Act looked to these cases as a source. And, these cases themselves use the phrase "involve ... intrinsically," not the word "involving" alone. In sum, these cases do not support respondents' position.

The Gwins and Dobsons, with far better reason, point to a different case, *Bernhardt v. Polygraphic Co. of America, Inc.,* 350 U.S. 198, 76 S.Ct. 273, 100 L.Ed. 199 (1956). In that case, Bernhardt, a New York resident, ****841** had entered into an employment contract (containing an arbitration clause) in New York with Polygraphic, a New York corporation. But, Bernhardt "was to perform" that contract after he "later became a resident of Vermont." *Id.,* at 199, 76 S.Ct., at 274. This Court was faced with the question whether, in light of *Erie,* a federal court should apply the Federal Arbitration Act in a diversity case when faced with state law hostile to arbitration. 350 U.S., at 200, 76 S.Ct., at 274-75. The Court did not reach that question, however, for it decided that the contract itself did not "involv[e]" interstate commerce and therefore fell outside the Act. *Id.,* at 200-202, 76 S.Ct., at 274-276. Since Congress, constitutionally speaking, *could* have applied the Act to Bernhardt's contract, say the parties, how then can we say that the Act's word "involving" reaches as far as the Commerce Clause itself?

The best response to this argument is to point to the way in which the Court reasoned in *Bernhardt,* and to what the Court said. It said that the *reason* the Act did not apply to Bernhardt's contract was that there was

> "*no showing that petitioner* while performing his duties under the employment contract was working 'in' commerce, was producing goods for commerce, or *was engaging in activity that affected commerce,* within the ***277** meaning of our decisions." *Id.,* at 200-201, 76 S.Ct., at 274-275 (emphasis added) (footnote omitted).

Thus, the Court interpreted the words "involving commerce" as broadly as the words "affecting commerce"; and, as we have said, these latter words normally mean a full exercise of constitutional power. At the same time, the Court's opinion does not discuss the implications of the "interstate" facts to which the respondents now point. For these reasons, *Bernhardt* does not require us to narrow the scope of the word "involving." And, we conclude that the word "involving," like "affecting," signals an intent to exercise Congress' commerce power to the full.

IV

[3] Section 2 applies where there is "a contract *evidencing a transaction* involving commerce." 9 U.S.C. § 2 (emphasis added). The second interpretive question focuses on the italicized words. Does "evidencing a transaction" mean only that the transaction (that the contract "evidences") must turn out, *in fact,* to have involved interstate commerce? Or, does it mean more?

Many years ago, Second Circuit Chief Judge Lumbard said that the phrase meant considerably more. He wrote:

> "The significant question ... is not whether, in carrying out the terms of the contract, the parties *did* cross state lines, but whether, *at the time they entered into it* and accepted the arbitration clause, they *contemplated* substantial interstate activity. Cogent evidence regarding their state of mind at the time would be the terms of the contract, and if it, on its face, evidences interstate traffic ..., the contract should come within § 2. In addition, evidence as to how the parties expected the contract to be performed and how it was performed is relevant to whether substantial interstate activity was contemplated." *Metro Industrial Painting Corp.* ***278** *v. Terminal Constr. Co.,* 287 F.2d 382, 387 (CA2 1961) (concurring opinion) (second emphasis added).

The Supreme Court of Alabama and several other courts have followed this view, known as the "contemplation of the parties" test. See *supra,* at 837.

We find the interpretive choice difficult, but for several reasons we conclude that the first interpretation ("commerce in fact") is more faithful to the statute than the second ("contemplation of the parties"). First, the "contemplation of the parties" interpretation, when viewed in terms of the statute's basic purpose, seems anomalous. That interpretation invites litigation about what was, or was not, "contemplated." Why would

Congress intend a test that risks the very kind of costs and delay through litigation (about the circumstances of contract formation) that Congress wrote the Act to help the parties avoid? See *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.,* 460 U.S. 1, 29, 103 S.Ct. 927, 944, 74 L.Ed.2d 765 (1983) (the Act "calls for a summary and speedy disposition ****842** of motions or petitions to enforce arbitration clauses").

Moreover, that interpretation too often would turn the validity of an arbitration clause on what, from the perspective of the statute's basic purpose, seems happenstance, namely, whether the parties happened to think to insert a reference to interstate commerce in the document or happened to mention it in an initial conversation. After all, parties to a sales contract with an arbitration clause might naturally think about the goods sold, or about arbitration, but why should they naturally think about an interstate commerce connection?

Further, that interpretation fits awkwardly with the rest of § 2. That section, for example, permits parties to agree to submit to arbitration "an existing controversy arising out of" a contract made earlier. Why would Congress want to risk nonenforceability of this *later* arbitration agreement (even if fully connected with interstate commerce) simply because the parties did not properly "contemplate" (or write ***279** about) the interstate aspects of the earlier contract? The first interpretation, requiring only that the "transaction" *in fact* involve interstate commerce, avoids this anomaly, as it avoids the other anomalous effects growing out of the "contemplation of the parties" test.

Second, the statute's language permits the "commerce in fact" interpretation. That interpretation, we concede, leaves little work for the word "evidencing" (in the phrase "a contract evidencing a transaction") to perform, for every contract evidences some transaction. But, perhaps Congress did not want that word to perform much work. The Act's history, to the extent informative, indicates that the Act's supporters saw the Act as part of an effort to make arbitration agreements universally enforceable. They wanted to "get a Federal law" that would "cover" areas where the Constitution authorized Congress to legislate, namely, "interstate and foreign commerce and admiralty." Joint Hearings 16 (testimony of Julius H. Cohen). They urged Congress to model the Act after a New York statute that made enforceable a written arbitration provision "in a written contract," Act of Apr. 19, 1920, ch. 275, § 2, 1920 N.Y.Laws 803, 804. Hearing on S. 4213 and S. 4214 before the Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess., 2 (1923) (testimony of Charles L. Bernheimer). Early drafts made enforceable a written arbitration provision "in *any contract* or maritime transaction *or* transaction involving commerce." S. 4214, 67th Cong., 4th Sess., § 2 (1922) (emphasis added); S. 1005, 68th Cong., 1st Sess. (1923); H.R. 646, 68th Cong., 1st Sess. (1924). Members of Congress, looking at that phrase, might have thought the words "any contract" standing alone went beyond Congress' constitutional authority. And, if so, they might have simply connected those words with the later words "transaction involving commerce," thereby creating the phrase that became law. Nothing in the Act's history suggests any other, more limiting, task for the language.

***280** Third, the basic practical argument underlying the "contemplation of the parties" test was, in Chief Judge Lumbard's words, the need to "be cautious in construing the act lest we excessively encroach on the powers which Congressional policy, if not the Constitution, would reserve to the states." *Metro Industrial Painting Corp., supra,* at 386 (concurring opinion). The practical force of this argument has diminished in light of this Court's later holdings that the Act does displace state law to the contrary. See *Southland Corp. v. Keating,* 465 U.S., at 10-16, 104 S.Ct., at 858-861; *Perry v. Thomas,* 482 U.S., at 489-492, 107 S.Ct., at 2525-2527.

Finally, we note that an *amicus curiae* argues for an "objective" ("reasonable person" oriented) version of the "contemplation of the parties" test on the ground that such an interpretation would better protect consumers asked to sign form contracts by businesses. We agree that Congress, when enacting this law, had the needs of consumers, as well as others, in mind. See S.Rep. No. 536, 68th Cong., 1st Sess., 3 (1924) (the Act, by avoiding "the delay and expense of litigation," will appeal "to big business and little business alike, ... corporate interests [and] ... individuals"). Indeed, arbitration's advantages often would seem helpful to individuals, ****843** say, complaining about a product, who need a less expensive alternative to litigation. See, *e.g.,* H.R.Rep. No. 97-542, p. 13 (1982) ("The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more

flexible in regard to scheduling of times and places of hearings and discovery devices ...”). And, according to the American Arbitration Association (also an *amicus* here), more than one-third of its claims involve amounts below $10,000, while another third involve claims of $10,000 to $50,000 (with an average processing time of less than six ***281** months). App. to Brief for American Arbitration Association as *Amicus Curiae* 26-27.

We are uncertain, however, just how the “objective” version of the “contemplation” test would help consumers. Sometimes, of course, it would permit, say, a consumer with potentially large damages claims to disavow a contract's arbitration provision and proceed in court. But, if so, it would equally permit, say, local business entities to disavow a contract's arbitration provisions, thereby leaving the typical consumer who has only a small damages claim (who seeks, say, the value of only a defective refrigerator or television set) without any remedy but a court remedy, the costs and delays of which could eat up the value of an eventual small recovery.

[4] In any event, § 2 gives States a method for protecting consumers against unfair pressure to agree to a contract with an unwanted arbitration provision. States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause “upon such grounds as exist at law or in equity for the revocation of *any* contract.” 9 U.S.C. § 2 (emphasis added). What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal “footing,” directly contrary to the Act's language and Congress' intent. See *Volt Information Sciences, Inc.,* 489 U.S., at 474, 109 S.Ct., at 1253.

For these reasons, we accept the “commerce in fact” interpretation, reading the Act's language as insisting that the “transaction” in fact “involv [e]” interstate commerce, even if the parties did not contemplate an interstate commerce connection.

***282** V

The parties do not contest that the transaction in this case, in fact, involved interstate commerce. In addition to the multistate nature of Terminix and Allied-Bruce, the termite-treating and house-repairing material used by Allied-Bruce in its (allegedly inadequate) efforts to carry out the terms of the Plan, came from outside Alabama.

Consequently, the judgment of the Supreme Court of Alabama is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice O'CONNOR, concurring.

I agree with the Court's construction of § 2 of the Federal Arbitration Act. As applied in federal courts, the Court's interpretation comports fully with my understanding of congressional intent. A more restrictive definition of “evidencing” and “involving” would doubtless foster prearbitration litigation that would frustrate the very purpose of the statute. As applied in state courts, however, the effect of a broad formulation of § 2 is more troublesome. The reading of § 2 adopted today will displace many state statutes carefully calibrated to protect consumers, see, *e.g.,* Mont.Code Ann. § 27-5-114(2)(b) (1993) (refusing to enforce arbitration clauses in consumer contracts where the consideration is $5,000 or less), and state procedural requirements aimed at ensuring knowing and voluntary consent, see, *e.g.,* S.C.Code Ann. § 15-48-10(a) (Supp.1993) (requiring that notice of arbitration provision be prominently placed on first page of contract). I have long adhered to the view, discussed below, that Congress designed the Federal Arbitration Act to apply only in federal ****844** courts. But if we are to apply the Act in state courts, it makes little sense to read § 2 differently in that context. In the end, my agreement with the Court's construction of § 2 rests largely on the wisdom of maintaining a uniform standard.

***283** I continue to believe that Congress never intended the Federal Arbitration Act to apply in state courts, and that this Court has strayed far afield in giving the Act so broad a compass. See *Southland Corp. v. Keating,* 465 U.S. 1, 21-36, 104 S.Ct. 852, 863-871, 79 L.Ed.2d 1 (1984) (O'CONNOR, J., dissenting); see also *Perry v. Thomas,* 482 U.S. 483, 494-495, 107 S.Ct. 2520, 2528, 96 L.Ed.2d 426 (1987) (O'CONNOR, J., dissenting); *York International v. Alabama Oxygen Co.,* 465 U.S. 1016, 104 S.Ct. 1260, 79 L.Ed.2d 668 (1984) (O'CONNOR, J., dissenting from remand). We have often said that the

pre-emptive effect of a federal statute is fundamentally a question of congressional intent. See, *e.g., Cipollone v. Liggett Group, Inc.,* 505 U.S. 504, 516, 112 S.Ct. 2608, 2617, 120 L.Ed.2d 407 (1992); *English v. General Elec. Co.,* 496 U.S. 72, 78-79, 110 S.Ct. 2270, 2274-2275, 110 L.Ed.2d 65 (1990); *Schneidewind v. ANR Pipeline Co.,* 485 U.S. 293, 299, 108 S.Ct. 1145, 1150, 99 L.Ed.2d 316 (1988); *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447 (1947). Indeed, we have held that " '[w]here ... the field which Congress is said to have pre-empted' includes areas that have 'been traditionally occupied by the States,' congressional intent to supersede state laws must be 'clear and manifest.' " *English, supra,* 496 U.S., at 79, 110 S.Ct., at 2275, quoting *Jones v. Rath Packing Co.,* 430 U.S. 519, 525, 97 S.Ct. 1305, 1309, 51 L.Ed.2d 604 (1977). Yet, over the past decade, the Court has abandoned all pretense of ascertaining congressional intent with respect to the Federal Arbitration Act, building instead, case by case, an edifice of its own creation. See *Perry v. Thomas, supra,* 482 U.S., at 493, 107 S.Ct., at 2527-2528 (STEVENS, J., dissenting) ("It is only in the last few years that the Court has effectively rewritten the statute to give it a pre-emptive scope that Congress certainly did not intend"). I have no doubt that Congress could enact, in the first instance, a federal arbitration statute that displaces most state arbitration laws. But I also have no doubt that, in 1925, Congress enacted no such statute.

Were we writing on a clean slate, I would adhere to that view and affirm the Alabama court's decision. But, as the Court points out, more than 10 years have passed since *Southland,* several subsequent cases have built upon its reasoning, and parties have undoubtedly made contracts in reliance ***284** on the Court's interpretation of the Act in the interim. After reflection, I am persuaded by considerations of *stare decisis,* which we have said "have special force in the area of statutory interpretation," *Patterson v. McLean Credit Union,* 491 U.S. 164, 172-173, 109 S.Ct. 2363, 2370-2371, 105 L.Ed.2d 132 (1989), to acquiesce in today's judgment. Though wrong, *Southland* has not proved unworkable, and, as always, "Congress remains free to alter what we have done." *Ibid.*

Today's decision caps this Court's effort to expand the Federal Arbitration Act. Although each decision has built logically upon the decisions preceding it, the initial building block in *Southland* laid a faulty foundation. I acquiesce in today's judgment because there is no "special justification" to overrule *Southland. Arizona v. Rumsey,* 467 U.S. 203, 212, 104 S.Ct. 2305, 2310-11, 81 L.Ed.2d 164 (1984). It remains now for Congress to correct this interpretation if it wishes to preserve state autonomy in state courts.

Justice SCALIA, dissenting.

I have previously joined two judgments of this Court that rested upon the holding of *Southland Corp. v. Keating,* 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984). See *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.,* 489 U.S. 468, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989); *Perry v. Thomas,* 482 U.S. 483, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987). In neither of those cases, however, did any party ask that *Southland* be overruled, and it was therefore not necessary to consider the question. In the present case, by contrast, one of respondents' central arguments is that *Southland* was wrongly decided, and their ****845** request for its overruling has been supported by an *amicus* brief signed by the attorneys general of 20 States. For the reasons set forth in Justice THOMAS' opinion, which I join, I agree with the respondents (and belatedly with Justice O'CONNOR) that *Southland* clearly misconstrued the Federal Arbitration Act.

I do not believe that proper application of *stare decisis* prevents correction of the mistake. Adhering to *Southland* ***285** entails a permanent, unauthorized eviction of state-court power to adjudicate a potentially large class of disputes. Abandoning it does not impair reliance interests to a degree that justifies this evil. Primary behavior is not affected: No rule of conduct is retroactively changed, but only (perhaps) the forum in which violation is to be determined and remedied. I doubt that many contracts with arbitration clauses would have been forgone, or entered into only for significantly higher remuneration, absent the *Southland* guarantee. Where, moreover, reliance on *Southland* did make a significant difference, rescission of the contract for mistake of law would often be available. See 3 A. Corbin, Corbin on Contracts § 616 (1960 ed. and Supp.1992); Restatement (Second) of Contracts § 152 (1979).

I shall not in the future dissent from judgments that rest on *Southland.* I will, however, stand ready to join four other Justices in overruling it, since *Southland* will not become more correct over time, the course of future

lawmaking seems unlikely to be affected by its existence, cf. *Pennsylvania v. Union Gas Co.,* 491 U.S. 1, 34-35, 109 S.Ct. 2273, 2298-2299, 105 L.Ed.2d 1 (1989) (SCALIA, J., concurring in part and dissenting in part), and the accumulated private reliance will not likely increase beyond the level it has already achieved (few contracts not terminable at will have more than a 5-year term).

For these reasons, I respectfully dissent from the judgment of the Court.

Justice THOMAS, with whom Justice SCALIA joins, dissenting.

I disagree with the majority at the threshold of this case, and so I do not reach the question that it decides. In my view, the Federal Arbitration Act (FAA) does not apply in state courts. I respectfully dissent.

I

In *Southland Corp. v. Keating,* 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984), this Court concluded that § 2 of the FAA "appl[ies] in state as ***286** well as federal courts," *id.,* at 12, 104 S.Ct., at 859, and "withdr [aws] the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration," *id.,* at 10, 104 S.Ct., at 858. In my view, both aspects of *Southland* are wrong.

A

Section 2 of the FAA declares that an arbitration clause contained in "a contract evidencing a transaction involving commerce" shall be "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; see also § 1 (defining "commerce," as relevant here, to mean "commerce among the several States or with foreign nations"). On its face, and considered out of context, § 2 draws no apparent distinction between federal courts and state courts. But not until 1959-nearly 35 years after Congress enacted the FAA-did any court suggest that § 2 applied in state courts. See *Robert Lawrence Co. v. Devonshire Fabrics, Inc.,* 271 F.2d 402, 407 (CA2 1959), cert. dism'd, 364 U.S. 801, 81 S.Ct. 27, 5 L.Ed.2d 37 (1960). No state court agreed until the 1960's. See, *e.g., REA Express v. Missouri Pacific R. Co.,* 447 S.W.2d 721, 726 (Tex.Civ.App.1969) (stating that the FAA applies but noting that it had been waived in the case at hand); cf. *Rubewa Products Co. v. Watson's Quality Turkey Products, Inc.,* 242 A.2d 609, 613 (D.C.1968) (same). This Court waited until 1984 to conclude, over a strong dissent by Justice O'CONNOR, that § 2 extends to the States. See *Southland, supra,* 465 U.S., at 10-16, 104 S.Ct., at 858-861.

The explanation for this delay is simple: The statute that Congress enacted actually applies only in federal courts. At the time of the FAA's passage in 1925, laws governing the enforceability of arbitration agreements ****846** were generally thought to deal purely with matters of procedure rather than substance, because they were directed solely to the mechanisms for resolving the underlying disputes. As then-Judge Cardozo explained: "Arbitration is a form of procedure whereby differences may be settled. It is not a definition of ***287** the rights and wrongs out of which differences grow." *Berkovitz v. Arbib & Houlberg, Inc.,* 230 N.Y. 261, 270, 130 N.E. 288, 290 (1921) (holding the New York arbitration statute of 1920, from which the FAA was copied, to be purely procedural).[1] It would have been extraordinary for Congress to ***288** attempt to prescribe procedural rules for *state* courts. See, *e.g., Ex parte Gounis,* 304 Mo. 428, 437, 263 S.W. 988, 990 (1924) (describing the rule that Congress cannot "regulate or control [state courts'] modes of procedure" as one of the "general principles which have come to be accepted as settled constitutional law"). And because the FAA was enacted against this general background, no one read it as such an attempt. See, *e.g.,* Baum & Pressman, The Enforcement of Commercial Arbitration Agreements in the Federal Courts, 8 N.Y.U.L.Q.Rev. 428, 459 (1931) (noting that the FAA "does not purport to extend its teeth to state proceedings," though arguing that it constitutionally could have done so); 6 S. Williston & G. Thompson, Law of Contracts 5368 (rev. ed. 1938) ("Inasmuch as arbitration acts are deemed procedural, the [FAA] applies only to the federal courts ..." (footnote omitted)); cf. *Southland,* 465 U.S., at 25-29, 104 S.Ct., at 865-868 (O'CONNOR, J., dissenting) (describing "unambiguous" legislative history to this effect).

Indeed, to judge from the reported cases, it appears that no state court was even *asked* to enforce the statute for many years after the passage of the FAA. Federal courts, for their part, refused to apply state arbitration statutes in cases to which the FAA was inapplicable.

See, *e.g., California Prune & Apricot Growers' Assn. v. Catz American Co.,* 60 F.2d 788 (CA9 1932). Their refusal was not the outgrowth of this Court's decision in *Swift v. Tyson,* 41 U.S. (16 Pet.) 1, 10 L.Ed. 865 (1842), which held that certain categories of state judicial decisions were not "laws" for purposes of the Rules of Decisions Act and hence were not binding in federal courts; even under *Swift,* state statutes unambiguously constituted "laws." Rather, federal courts did not apply the state arbitration statutes because the statutes were not considered *substantive* laws. See *California* ****847** *Prune, supra,* at 790 ("It is undoubtedly true that a federal court in proper cases may enforce state laws; but this principle is applicable only when the state legislation invoke[d] creates or establishes a substantive ***289** or general right"). In short, state arbitration statutes prescribed rules for the state courts, and the FAA prescribed rules for the federal courts.

It is easy to understand why lawyers in 1925 classified arbitration statutes as procedural. An arbitration agreement is a species of forum-selection clause: Without laying down any rules of decision, it identifies the adjudicator of disputes. A strong argument can be made that such forum-selection clauses concern procedure rather than substance. Cf. Fed.Rules Civ.Proc. 73 (district court, with consent of the parties, may refer case to magistrate for resolution), 53 (district court may refer issues to special master). And if a contractual provision deals purely with matters of judicial procedure, one might well conclude that questions about whether and how it will be enforced also relate to procedure.

The context of § 2 confirms this understanding of the FAA's original meaning. Most sections of the statute plainly have no application in state courts, but rather prescribe rules either for federal courts or for arbitration proceedings themselves. Thus, § 3 provides:

> "If any suit or proceeding be brought in *any of the courts of the United States* upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." 9 U.S.C. § 3 (emphasis added).

Section 4 addresses the converse situation, in which a party breaches an arbitration agreement not by filing a lawsuit but rather by refusing to submit to arbitration:

> ***290** "A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition *any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties,* for an order directing that such arbitration proceed in the manner provided for in such agreement.... The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." (Emphasis added.)

The Act then turns its attention to the covered arbitration proceedings themselves, treating the arbitration forum as an extension of the federal courts. Section 7, for instance, provides that the fees for witnesses "shall be the same as the fees of witnesses before masters of the United States courts"; it adds that if a witness neglects a summons to appear at an arbitration hearing,

> "upon petition the United States district court for the district in which such arbitrators ... are sitting may compel the attendance of such person ... or punish said person ... for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States."

Likewise, when the arbitrator eventually issues an award, either party (absent contrary directions in the agreement) may apply to "the United States court in and for the district within which such award was made" for an order confirming the award. § 9. The district court may also vacate or modify the award in a few specified circumstances, §§ 10-11, but ***291** generally it will simply enter a confirmatory judgment, § 9, which is then docketed

and given the same effect as a judgment in an ordinary civil case, § 13.

Despite the FAA's general focus on the federal courts, of course, § 2 itself contains **848 no such explicit limitation. But the text of the statute nonetheless makes clear that § 2 was not meant as a statement of substantive law binding on the States. After all, if § 2 really was understood to "creat[e] federal substantive law requiring the parties to honor arbitration agreements," *Southland, supra,* 465 U.S., at 15, n. 9, 104 S.Ct., at 860, n. 9, then the breach of an arbitration agreement covered by § 2 would give rise to a federal question within the subject-matter jurisdiction of the federal district courts. See 28 U.S.C. § 1331. Yet the ensuing provisions of the Act, without expressly taking away this jurisdiction, clearly rest on the assumption that federal courts have jurisdiction to enforce arbitration agreements only when they would have had jurisdiction over the underlying dispute. See 9 U.S.C. §§ 3, 4, 8. In other words, the FAA treats arbitration simply as one means of resolving disputes that lie within the jurisdiction of the federal courts; it makes clear that the breach of a covered arbitration agreement does not itself provide any independent basis for such jurisdiction. Even the *Southland* majority was forced to acknowledge this point, conceding that § 2 "does not create any independent federal-question jurisdiction under 28 U.S.C. § 1331 or otherwise." 465 U.S., at 15, n. 9, 104 S.Ct., at 860, n. 9. But the *reason* that § 2 does not give rise to federal-question jurisdiction is that it was enacted as a purely procedural provision. For the same reason, it applies only in the federal courts.

The distinction between "substance" and "procedure" acquired new meaning after *Erie R. Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). Thus, in 1956 we held that for *Erie* purposes, the question whether a court should stay litigation brought in breach of an arbitration agreement is one of "substantive" law. *292 *Bernhardt v. Polygraphic Co. of America, Inc.,* 350 U.S. 198, 203-204, 76 S.Ct. 273, 276-277, 100 L.Ed. 199. But this later development could not change the original meaning of the statute that Congress enacted in 1925. Although *Bernhardt* classified portions of the FAA as "substantive" rather than "procedural," it does not mean that they were so understood in 1925 or that Congress extended the FAA's reach beyond the federal courts.

When Justice O'CONNOR pointed out the FAA's original meaning in her *Southland* dissent, see 465 U.S., at 25-30, 104 S.Ct., at 865-868, the majority offered only one real response. If § 2 had been considered a purely procedural provision, the majority reasoned, Congress would have extended it to *all* contracts rather than simply to maritime transactions and "contract[s] evidencing a transaction involving [interstate or foreign] commerce." See *id.,* at 14, 104 S.Ct., at 860. Yet Congress might well have thought that even if it *could* have called upon federal courts to enforce arbitration agreements in every single case that came before them, there was no federal interest in doing so unless interstate commerce or maritime transactions were involved. This conclusion is far more plausible than *Southland* 's idea that Congress both viewed § 2 as a statement of substantive law and believed that it created no federal-question jurisdiction.

Even if the interstate commerce requirement raises uncertainty about the original meaning of the statute, we should resolve the uncertainty in light of core principles of federalism. While "Congress may legislate in areas traditionally regulated by the States" as long as it "is acting within the powers granted it under the Constitution," we assume that "Congress does not exercise [this power] lightly." *Gregory v. Ashcroft,* 501 U.S. 452, 460, 111 S.Ct. 2395, 2400, 115 L.Ed.2d 410 (1991). To the extent that federal statutes are ambiguous, we do not read them to displace state law. Rather, we must be "absolutely certain" that Congress intended such displacement before we give preemptive effect to a federal statute. *Id.,* at 464, 111 S.Ct., at 2403. In 1925, the enactment of a "substantive" arbitration statute *293 along the lines envisioned by *Southland* would have displaced an enormous body of state law: Outside of a few States, predispute arbitration agreements either were wholly unenforceable or at least were not subject to specific performance. See generally Note to *Williams v. Branning Mfg. Co.,* 47 L.R.A. (n.s.) 337 (1914) (detailed listing of state cases). Far from being "absolutely certain" **849 that Congress swept aside these state rules, I am quite sure that it did not.

B

Suppose, however, that the first aspect of *Southland* was correct: § 2 requires States to enforce the covered arbitration agreements and pre-empts all contrary state

law. There still would be no textual basis for *Southland* 's suggestion that § 2 requires the States to enforce those agreements through the remedy of specific performance-that is, by forcing the parties to submit to arbitration. A contract surely can be "valid, irrevocable, and enforceable" even though it can be enforced only through actions for damages. Thus, on the eve of the FAA's enactment, this Court described executory arbitration agreements as being "valid" and as creating "a perfect obligation" under federal law even though federal courts refused to order their specific performance. See *Red Cross Line v. Atlantic Fruit Co.,* 264 U.S. 109, 120-123, 44 S.Ct. 274, 275-277, 68 L.Ed. 582 (1924). [2]

To be sure, §§ 3 and 4 of the FAA require that *federal* courts specifically enforce arbitration agreements. These provisions deal, respectively, with the potential plaintiffs and the potential defendants in the underlying dispute: § 3 holds ***294** the plaintiffs to their promise not to take their claims straight to court, while § 4 holds the defendants to their promise to submit to arbitration rather than making the other party sue them. Had this case arisen in one of the "courts of the United States," it is § 3 that would have been relevant. Upon proper motion, the court would have been obliged to grant a stay pending arbitration, unless the contract between the parties did not "evidenc[e] a transaction involving [interstate] commerce." See *Bernhardt, supra,* 350 U.S., at 202, 76 S.Ct., at 275-276 (holding that § 3 is limited to the arbitration agreements that § 2 declares valid). Because this case arose in the courts of Alabama, however, petitioners are forced to contend that § 2 imposes precisely the same obligation on *all* courts (both federal and state) that § 3 imposes solely on *federal* courts. Though *Southland* supports this argument, it simply cannot be correct, or § 3 would be superfluous.

Alabama law brings these issues into sharp focus. Citing "public policy" grounds that reach back to *Bozeman v. Gilbert,* 1 Ala. 90 (1840), Alabama courts have declared that predispute arbitration agreements are "void." See, *e.g., Wells v. Mobile County Bd. of Realtors,* 387 So.2d 140, 144 (Ala.1980). But a separate state statute also includes "[a]n agreement to submit a controversy to arbitration" among the obligations that "cannot be specifically enforced" in Alabama. Ala.Code § 8-1-41 (1975). Especially in light of the *Gregory v. Ashcroft* presumption, § 2-even if applicable to the States-is most naturally read to pre-empt only Alabama's common-law rule and not the state statute; the statute does not itself make executory arbitration agreements invalid, revocable, or unenforceable, any more than the inclusion of "[a]n obligation to render personal service" in the same statutory provision means that employment contracts are invalid in Alabama. In the case at hand, the specific-enforcement statute appears to provide an adequate ground for the denial of petitioners' motion for a stay.

***295** II

Rather than attempting to defend *Southland* on its merits, petitioners rely chiefly on the doctrine of *stare decisis* in urging us to adhere to our mistaken interpretation of the FAA. See Reply Brief for Petitioners 3-6. In my view, that doctrine is insufficient to save *Southland.*

The majority (*ante,* at 838-839) and Justice O'CONNOR (*ante,* at 844) properly focus on whether overruling *Southland* would frustrate the legitimate expectations of people who have drafted and executed contracts in the belief that even state courts will strictly enforce arbitration clauses. I do not doubt ****850** that innumerable contracts containing arbitration clauses have been written since 1984, or that arbitrable disputes might yet arise out of a large proportion of these contracts. Some of these contracts might well have been written differently in the absence of *Southland.* Still, I see no reason to think that the costs of overruling *Southland* are unacceptably high. Certainly no reliance interests are involved in cases like the present one, where the applicability of the FAA was not within the contemplation of the parties at the time of contracting. In many other cases, moreover, the parties will simply comply with their arbitration agreement, either on the theory that they should live up to their promises or on the theory that arbitration is the cheapest and best way of resolving their dispute. In a fair number of the remaining cases, the party seeking to enforce an arbitration agreement will be able to get into federal court, where the FAA will apply. And even if access to federal court is impossible (because § 2 creates no independent basis for federal-question jurisdiction), many cases will arise in States whose own law largely parallels the FAA. Only Alabama, Mississippi, and Nebraska still hold all executory arbitration agreements to be unenforceable, though some other States refuse to enforce particular classes of such agreements. See Strickland, The Federal Arbitration Act's Interstate Commerce Requirement:

What's Left for State ***296** Arbitration Law?, 21 Hofstra L.Rev. 385, 401-403, and n. 93 (1992).

Quoting *Arizona v. Rumsey,* 467 U.S. 203, 212, 104 S.Ct. 2305, 2310-2311, 81 L.Ed.2d 164 (1984), Justice O'CONNOR nonetheless acquiesces in the majority's judgment "because there is no 'special justification' to overrule *Southland.*" *Ante,* at 844. Even under this approach, the necessity of "preserv[ing] state autonomy in state courts," *ibid.,* seems sufficient to me.

But suppose that *stare decisis* really did require us to abide by *Southland* 's holding that § 2 applies to the States. The doctrine still would not require us to follow *Southland* 's suggestion that § 2 requires the specific enforcement of the arbitration agreements that it covers. We accord no precedential weight to mere dicta, and this latter suggestion was wholly unnecessary to the decision in *Southland.* The arbitration agreement at issue there, if valid at all with respect to the particular claims in dispute, clearly was subject to specific performance under state law; indeed, the state trial court had already compelled arbitration for all the other claims raised in the complaint. See *Southland,* 465 U.S., at 4, 104 S.Ct., at 855; Cal.Civ.Proc.Code Ann. §§ 1281.2, 1281.4 (West 1982). Accordingly, the only question properly before the *Southland* Court was whether § 2 pre-empted a separate state law declaring the arbitration agreement "void" as applied to the remaining claims. See 465 U.S., at 10, 104 S.Ct., at 858 (discussing Cal.Corp.Code Ann. § 31512 (West 1977)). The same can be said for *Perry v. Thomas,* 482 U.S. 483, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987), in which we again held that § 2 pre-empted a California statute that (as we had observed in a prior case, see *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware,* 414 U.S. 117, 133, 94 S.Ct. 383, 392-393, 38 L.Ed.2d 348 (1973)) made certain arbitration clauses "unenforceable." We have subsequently reserved judgment about the extent to which state courts must enforce arbitration agreements through the mechanisms that §§ 3 and 4 of the FAA prescribe for the *federal* courts. See ***297** *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.,* 489 U.S. 468, 477, 109 S.Ct. 1248, 1254-1255, 103 L.Ed.2d 488 (1989). Cf. *McDermott Int'l, Inc. v. Lloyds Underwriters of London,* 944 F.2d 1199, 1210 (CA5 1991) ("We conclude from the Supreme Court's opinions that state courts do not necessarily have to grant stays of conflicting litigation or compel arbitration in compliance with the FAA's sections 3 and 4"). In short, we have never actually held, as opposed to stating or implying in dicta, that the FAA requires a state court to stay lawsuits brought in violation of an arbitration agreement covered by § 2.

Because I believe that the FAA imposes no such obligation on state courts, and indeed that the statute is wholly inapplicable in ****851** those courts, I would affirm the Alabama Supreme Court's judgment.

All Citations

513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753, 63 USLW 4079

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 See also, *e.g., Atlantic Fruit Co. v. Red Cross Line,* 276 F. 319, 323 (SDNY 1921) ("Arbitration statutes or judicial recognition of the enforceability of such provisions do not confer a substantive right, but a remedy for the enforcement of the right which is created by the agreement of the parties"), aff'd, 5 F.2d 218 (CA2 1924); Cohen & Dayton, The New Federal Arbitration Law, 12 Va.L.Rev. 265, 276 (1926) ("[W]hether or not an arbitration agreement is to be enforced is a question of the law of procedure and is determined by the law of the jurisdiction wherein the remedy is sought. That the enforcement of arbitration contracts is within the law of procedure as distinguished from substantive law is well settled by the decisions of our courts" (footnote omitted)); Baum & Pressman, The Enforcement of Commercial Arbitration Agreements in the Federal Courts, 8 N.Y.U.L.Q.Rev. 428, 430 (1931) (referring uncritically to "the prevalent notions that arbitration legislation affects merely the remedy or procedural aspects and not substance"); 2 J. Beale, Conflict of Laws 1245-1246 (1935) ("American courts, without exception, hold that arbitration agreements pertain to remedy or procedure. Consequently, the law of the for[u]m determines their enforceability ..." (footnote omitted)); cf. *Alexandria Canal Co. v. Swann,* 46 U.S. (5 How.) 83, 87-88, 12 L.Ed. 60 (1847) (whether a court should grant the parties' motion to refer a lawsuit to a panel of arbitrators, and then should enter judgment on the arbitrators' award, was "not [a question] upon the rights

of the respective parties, but upon the mode of proceeding by which they were determined," and hence was governed by the law of the forum).

The prevalent view that arbitration statutes were purely procedural does conflict with this Court's reasoning in *Red Cross Line v. Atlantic Fruit Co.,* 264 U.S. 109, 44 S.Ct. 274, 68 L.Ed. 582 (1924), a case that in other respects undermines *Southland* 's position. See *infra,* Part I-B. Without analyzing the question, our opinion in *Red Cross Line* assumed that the threshold validity of an arbitration agreement (like the validity of other sorts of contracts) is a matter of "substantive" law. See 264 U.S., at 122-123, 44 S.Ct., at 276-277. But our actual holding-that the remedies available to enforce a valid arbitration agreement do *not* involve "substantive" law, see *id.,* at 124-125, 44 S.Ct., at 277-278-was perfectly consistent with the customary view. As discussed below, moreover, the FAA's text clearly reflects Congress' view that the statute it enacted was purely procedural.

2 At the time, indeed, federal courts would award only *nominal* damages for the breach of such agreements. See *Aktieselskabet Korn-Og Foderstof Kompagniet v. Rederiaktiebolaget Atlanten,* 250 F. 935, 937 (CA2 1918), aff'd on other grounds *sub nom. The Atlanten,* 252 U.S. 313, 40 S.Ct. 332, 64 L.Ed. 586 (1920); *Munson v. Straits of Dover S. S. Co.,* 99 F. 787, 790-791 (SDNY), aff'd, 102 F. 926 (CA2 1900).

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

INTERNATIONAL DISPUTE RESOLUTION PROCEDURES

(Including Mediation and Arbitration Rules)

Rules Amended and Effective June 1, 2014
Fee Schedule Amended and Effective July 1, 2016

available online at
icdr.org

Table of Contents

International Dispute Resolution Procedures

(Including Mediation and Arbitration Rules)

Introduction

These Procedures are designed to provide a complete dispute resolution framework for disputing parties, their counsel, arbitrators, and mediators. They provide a balance between the autonomy of the parties to agree to the dispute resolution process they want and the need for process management by mediators and arbitrators.

The International Centre for Dispute Resolution® ("ICDR®") is the international division of the American Arbitration Association® ("AAA®"). The ICDR provides dispute resolution services around the world in locations chosen by the parties. ICDR arbitrations and mediations may be conducted in any language chosen by the parties. The ICDR Procedures reflect best international practices that are designed to deliver efficient, economic, and fair proceedings.

International Mediation

The parties may seek to settle their dispute through mediation. Mediation may be scheduled independently of arbitration or concurrently with the scheduling of the arbitration. In mediation, an impartial and independent mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. The Mediation Rules that follow provide a framework for the mediation.

The following pre-dispute mediation clause may be included in contracts:

> *In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by the International Centre for Dispute Resolution under its Mediation Rules, before resorting to arbitration, litigation, or some other dispute resolution procedure.*

The parties should consider adding:

a. *The place of mediation shall be [city, (province or state), country]; and*

b. *The language(s) of the mediation shall be _____.*

If the parties want to use a mediator to resolve an existing dispute, they may enter into the following submission agreement:

> *The parties hereby submit the following dispute to mediation administered by the International Centre for Dispute Resolution in accordance with its International Mediation Rules. (The clause may also provide for the qualifications of the mediator(s), the place of mediation, and any other item of concern to the parties.)*

International Arbitration

A dispute can be submitted to an arbitral tribunal for a final and binding decision. In ICDR arbitration, each party is given the opportunity to make a case presentation following the process provided by these Rules and the tribunal.

Parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

> *Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.*

The parties should consider adding:

a. *The number of arbitrators shall be (one or three);*

b. *The place of arbitration shall be [city, (province or state), country]; and*

c. *The language(s) of the arbitration shall be _____.*

For more complete clause-drafting guidance, please refer to the *ICDR Guide to Drafting International Dispute Resolution Clauses* on the Clause Drafting page at **www.icdr.org.** When writing a clause or agreement for dispute resolution, the parties may choose to confer with the ICDR on useful options. Please see the contact information provided in *How to File a Case with the ICDR.*

International Expedited Procedures

The Expedited Procedures provide parties with an expedited and simplified arbitration procedure designed to reduce the time and cost of an arbitration.

The Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds USD $250,000 exclusive of interest and the costs of arbitration. The parties may agree to the application of these Expedited Procedures on matters of any claim size.

Where parties intend that the Expedited Procedures shall apply regardless of the amount in dispute, they may consider the following clause:

> *Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Expedited Procedures.*

The parties should consider adding:

a. *The place of arbitration shall be (city, [province or state], country); and*

b. *The language(s) of the arbitration shall be _____.*

Features of the International Expedited Procedures:

- Parties may choose to apply the Expedited Procedures to cases of any size;
- Comprehensive filing requirements;
- Expedited arbitrator appointment process with party input;
- Appointment from an experienced pool of arbitrators ready to serve on an expedited basis;
- Early preparatory conference call with the arbitrator requiring participation of parties and their representatives;
- Presumption that cases up to $100,000 will be decided on documents only;
- Expedited schedule and limited hearing days, if any; and
- An award within 30 calendar days of the close of the hearing or the date established for the receipt of the parties' final statements and proofs.

Whenever a singular term is used in the International Mediation or International Arbitration Rules, such as "party," "claimant," or "arbitrator," that term shall include the plural if there is more than one such entity.

The English-language version of these Rules is the official text for questions of interpretation.

How to File a Case with the ICDR

Parties initiating a case with the International Centre for Dispute Resolution or the American Arbitration Association may file online via AAAWebFile® (File & Manage a Case) at **www.icdr.org,** by mail, or facsimile (fax). For filing assistance, parties may contact the ICDR directly at any ICDR or AAA office.

Mail:
International Centre for Dispute Resolution Case Filing Services
1101 Laurel Oak Road, Suite 100
Voorhees, NJ, 08043
United States

AAAWebFile: www.icdr.org
Email: casefiling@adr.org
Phone: +1.856.435.6401
Fax: +1.212.484.4178
Toll-free phone in the U.S. and Canada: +1.877.495.4185
Toll- free fax in the U.S. and Canada: +1.877.304.8457

For further information about these Rules, visit the ICDR website at **www.icdr.org** or call +1.212.484.4181.

International Mediation Rules

1. Agreement of Parties

Whenever parties have agreed in writing to mediate disputes under these International Mediation Rules or have provided for mediation or conciliation of existing or future international disputes under the auspices of the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA), or the AAA without designating particular Rules, they shall be deemed to have made these Rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement. The parties by mutual agreement may vary any part of these Rules including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

2. Initiation of Mediation

1. Any party or parties to a dispute may initiate mediation under the ICDR's auspices by making a request for mediation to any ICDR or AAA office or case management center via telephone, email, regular mail, or fax. Requests for mediation may also be filed online via AAA WebFile at **www.icdr.org.**
2. The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the ICDR and the other party or parties as applicable:
   - **a.** a copy of the mediation provision of the parties' contract or the parties' stipulation to mediate;
   - **b.** the names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation;
   - **c.** a brief statement of the nature of the dispute and the relief requested;
   - **d.** any specific qualifications the mediator should possess.
3. Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the ICDR, a party may request the ICDR to invite another party to participate in "mediation by voluntary submission." Upon receipt of such a request, the ICDR will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the ICDR.

4. Appointment of the Mediator

If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

a. Upon receipt of a request for mediation, the ICDR will send to each party a list of mediators from the ICDR's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the ICDR of their agreement.

b. If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the ICDR. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the ICDR shall invite a mediator to serve.

c. If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the ICDR shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

5. Mediator's Impartiality and Duty to Disclose

1. ICDR mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Rules, these Mediation Rules shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

2. Prior to accepting an appointment, ICDR mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. ICDR mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time frame desired by the parties. Upon receipt of such disclosures, the ICDR shall immediately communicate the disclosures to the parties for their comments.

3. The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the

event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

6. Vacancies

If any mediator shall become unwilling or unable to serve, the ICDR will appoint another mediator, unless the parties agree otherwise, in accordance with Rule 4.

7. Duties and Responsibilities of the Mediator

1. The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, un-coerced decision in which each party makes free and informed choices as to process and outcome.
2. The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person, or otherwise.
3. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
4. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
5. In the event that a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation conference(s), the mediator may continue to communicate with the parties for a period of time in an ongoing effort to facilitate a complete settlement.
6. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

8. Responsibilities of the Parties

1. The parties shall ensure that appropriate representatives of each party having authority to consummate a settlement attend the mediation conference.
2. Prior to and during the scheduled mediation conference(s), the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

9. Privacy

Mediation conferences and related mediation communications are private proceedings. The parties and their representatives may attend mediation conferences. Other persons may attend only with the permission of the parties and with the consent of the mediator.

10. Confidentiality

1. Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.
2. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.
3. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:
    a. views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
    b. admissions made by a party or other participant in the course of the mediation proceedings;
    c. proposals made or views expressed by the mediator; or
    d. the fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

11. No Stenographic Record

There shall be no stenographic record of the mediation process.

12. Termination of Mediation

The mediation shall be terminated:

- **a.** by the execution of a settlement agreement by the parties; or
- **b.** by a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- **c.** by a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or

d. when there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

13. Exclusion of Liability

Neither the ICDR nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the ICDR nor any mediator shall be liable to any party for any error, act, or omission in connection with any mediation conducted under these Rules.

14. Interpretation and Application of Rules

The mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other Rules shall be interpreted and applied by the ICDR.

15. Deposits

Unless otherwise directed by the mediator, the ICDR will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

16. Expenses

All expenses of the mediation, including required travel and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

17. Cost of Mediation

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT ***www.adr.org/internationalfeeschedule.***

18. Language of Mediation

If the parties have not agreed otherwise, the language(s) of the mediation shall be that of the documents containing the mediation agreement.

International Arbitration Rules

Article 1: Scope of These Rules

1. Where parties have agreed to arbitrate disputes under these International Arbitration Rules ("Rules"), or have provided for arbitration of an international dispute by the International Centre for Dispute Resolution (ICDR) or the American Arbitration Association (AAA) without designating particular rules, the arbitration shall take place in accordance with these Rules as in effect at the date of commencement of the arbitration, subject to modifications that the parties may adopt in writing. The ICDR is the Administrator of these Rules.
2. These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
3. When parties agree to arbitrate under these Rules, or when they provide for arbitration of an international dispute by the ICDR or the AAA without designating particular rules, they thereby authorize the ICDR to administer the arbitration. These Rules specify the duties and responsibilities of the ICDR, a division of the AAA, as the Administrator. The Administrator may provide services through any of the ICDR's case management offices or through the facilities of the AAA or arbitral institutions with which the ICDR or the AAA has agreements of cooperation. Arbitrations administered under these Rules shall be administered only by the ICDR or by an individual or organization authorized by the ICDR to do so.
4. Unless the parties agree or the Administrator determines otherwise, the International Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds USD $250,000 exclusive of interest and the costs of arbitration. The parties may also agree to use the International Expedited Procedures in other cases. The International Expedited Procedures shall be applied as described in Articles E-1 through E-10 of these Rules, in addition to any other portion of these Rules that is not in conflict with the Expedited Procedures. Where no party's claim or counterclaim exceeds USD $100,000 exclusive of interest, attorneys' fees, and other arbitration costs, the dispute shall be resolved by written submissions only unless the arbitrator determines that an oral hearing is necessary.

Commencing the Arbitration

Article 2: Notice of Arbitration

1. The party initiating arbitration ("Claimant") shall, in compliance with Article 10, give written Notice of Arbitration to the Administrator and at the same time to the party against whom a claim is being made ("Respondent"). The Claimant may also initiate the arbitration through the Administrator's online filing system located at **www.icdr.org.**

2. The arbitration shall be deemed to commence on the date on which the Administrator receives the Notice of Arbitration.

3. The Notice of Arbitration shall contain the following information:

   a. a demand that the dispute be referred to arbitration;

   b. the names, addresses, telephone numbers, fax numbers, and email addresses of the parties and, if known, of their representatives;

   c. a copy of the entire arbitration clause or agreement being invoked, and, where claims are made under more than one arbitration agreement, a copy of the arbitration agreement under which each claim is made;

   d. a reference to any contract out of or in relation to which the dispute arises;

   e. a description of the claim and of the facts supporting it;

   f. the relief or remedy sought and any amount claimed; and

   g. optionally, proposals, consistent with any prior agreement between or among the parties, as to the means of designating the arbitrators, the number of arbitrators, the place of arbitration, the language(s) of the arbitration, and any interest in mediating the dispute.

4. The Notice of Arbitration shall be accompanied by the appropriate filing fee.

5. Upon receipt of the Notice of Arbitration, the Administrator shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

Article 3: Answer and Counterclaim

1. Within 30 days after the commencement of the arbitration, Respondent shall submit to Claimant, to any other parties, and to the Administrator a written Answer to the Notice of Arbitration.

2. At the time Respondent submits its Answer, Respondent may make any counterclaims covered by the agreement to arbitrate or assert any setoffs and Claimant shall within 30 days submit to Respondent, to any other parties, and to the Administrator a written Answer to the counterclaim or setoffs.

3. A counterclaim or setoff shall contain the same information required of a Notice of Arbitration under Article 2(3) and shall be accompanied by the appropriate filing fee.

4. Respondent shall within 30 days after the commencement of the arbitration submit to Claimant, to any other parties, and to the Administrator a response to any proposals by Claimant not previously agreed upon, or submit its own proposals, consistent with any prior agreement between or among the parties, as to the means of designating the arbitrators, the number of arbitrators, the place of the arbitration, the language(s) of the arbitration, and any interest in mediating the dispute.

5. The arbitral tribunal, or the Administrator if the tribunal has not yet been constituted, may extend any of the time limits established in this Article if it considers such an extension justified.
6. Failure of Respondent to submit an Answer shall not preclude the arbitration from proceeding.
7. In arbitrations with multiple parties, Respondent may make claims or assert setoffs against another Respondent and Claimant may make claims or assert setoffs against another Claimant in accordance with the provisions of this Article 3.

Article 4: Administrative Conference

The Administrator may conduct an administrative conference before the arbitral tribunal is constituted to facilitate party discussion and agreement on issues such as arbitrator selection, mediating the dispute, process efficiencies, and any other administrative matters.

Article 5: Mediation

Following the time for submission of an Answer, the Administrator may invite the parties to mediate in accordance with the ICDR's International Mediation Rules. At any stage of the proceedings, the parties may agree to mediate in accordance with the ICDR's International Mediation Rules. Unless the parties agree otherwise, the mediation shall proceed concurrently with arbitration and the mediator shall not be an arbitrator appointed to the case.

Article 6: Emergency Measures of Protection

1. A party may apply for emergency relief before the constitution of the arbitral tribunal by submitting a written notice to the Administrator and to all other parties setting forth the nature of the relief sought, the reasons why such relief is required on an emergency basis, and the reasons why the party is entitled to such relief. The notice shall be submitted concurrent with or following the submission of a Notice of Arbitration. Such notice may be given by email, or as otherwise permitted by Article 10, and must include a statement certifying that all parties have been notified or an explanation of the steps taken in good faith to notify all parties.
2. Within one business day of receipt of the notice as provided in Article 6(1), the Administrator shall appoint a single emergency arbitrator. Prior to accepting appointment, a prospective emergency arbitrator shall, in accordance with Article 13, disclose to the Administrator any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the Administrator to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

3. The emergency arbitrator shall as soon as possible, and in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard and may provide for proceedings by telephone, video, written submissions, or other suitable means, as alternatives to an in-person hearing. The emergency arbitrator shall have the authority vested in the arbitral tribunal under Article 19, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Article.

4. The emergency arbitrator shall have the power to order or award any interim or conservancy measures that the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measures may take the form of an interim award or of an order. The emergency arbitrator shall give reasons in either case. The emergency arbitrator may modify or vacate the interim award or order. Any interim award or order shall have the same effect as an interim measure made pursuant to Article 24 and shall be binding on the parties when rendered. The parties shall undertake to comply with such an interim award or order without delay.

5. The emergency arbitrator shall have no further power to act after the arbitral tribunal is constituted. Once the tribunal has been constituted, the tribunal may reconsider, modify, or vacate the interim award or order of emergency relief issued by the emergency arbitrator. The emergency arbitrator may not serve as a member of the tribunal unless the parties agree otherwise.

6. Any interim award or order of emergency relief may be conditioned on provision of appropriate security by the party seeking such relief.

7. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this Article 6 or with the agreement to arbitrate or a waiver of the right to arbitrate.

8. The costs associated with applications for emergency relief shall be addressed by the emergency arbitrator, subject to the power of the arbitral tribunal to determine finally the allocation of such costs.

Article 7: Joinder

1. A party wishing to join an additional party to the arbitration shall submit to the Administrator a Notice of Arbitration against the additional party. No additional party may be joined after the appointment of any arbitrator, unless all parties, including the additional party, otherwise agree. The party wishing to join the additional party shall, at that same time, submit the Notice of Arbitration to the additional party and all other parties. The date on which such Notice of Arbitration is received by the Administrator shall be deemed to be the date of the commencement of arbitration against the additional party. Any joinder shall be subject to the provisions of Articles 12 and 19.

2. The request for joinder shall contain the same information required of a Notice of Arbitration under Article 2(3) and shall be accompanied by the appropriate filing fee.

3. The additional party shall submit an Answer in accordance with the provisions of Article 3.

4. The additional party may make claims, counterclaims, or assert setoffs against any other party in accordance with the provisions of Article 3.

Article 8: Consolidation

1. At the request of a party, the Administrator may appoint a consolidation arbitrator, who will have the power to consolidate two or more arbitrations pending under these Rules, or these and other arbitration rules administered by the AAA or ICDR, into a single arbitration where:

   a. the parties have expressly agreed to consolidation; or

   b. all of the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or

   c. the claims, counterclaims, or setoffs in the arbitrations are made under more than one arbitration agreement; the arbitrations involve the same parties; the disputes in the arbitrations arise in connection with the same legal relationship; and the consolidation arbitrator finds the arbitration agreements to be compatible.

2. A consolidation arbitrator shall be appointed as follows:

   a. The Administrator shall notify the parties in writing of its intention to appoint a consolidation arbitrator and invite the parties to agree upon a procedure for the appointment of a consolidation arbitrator.

   b. If the parties have not within 15 days of such notice agreed upon a procedure for appointment of a consolidation arbitrator, the Administrator shall appoint the consolidation arbitrator.

   c. Absent the agreement of all parties, the consolidation arbitrator shall not be an arbitrator who is appointed to any pending arbitration subject to potential consolidation under this Article.

   d. The provisions of Articles 13-15 of these Rules shall apply to the appointment of the consolidation arbitrator.

3. In deciding whether to consolidate, the consolidation arbitrator shall consult the parties and may consult the arbitral tribunal(s) and may take into account all relevant circumstances, including:

   a. applicable law;

   b. whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different persons have been appointed;

   c. the progress already made in the arbitrations;

   d. whether the arbitrations raise common issues of law and/or facts; and

e. whether the consolidation of the arbitrations would serve the interests of justice and efficiency.

4. The consolidation arbitrator may order that any or all arbitrations subject to potential consolidation be stayed pending a ruling on a request for consolidation.

5. When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties or the consolidation arbitrator finds otherwise.

6. Where the consolidation arbitrator decides to consolidate an arbitration with one or more other arbitrations, each party in those arbitrations shall be deemed to have waived its right to appoint an arbitrator. The consolidation arbitrator may revoke the appointment of any arbitrators and may select one of the previously-appointed tribunals to serve in the consolidated proceeding. The Administrator shall, as necessary, complete the appointment of the tribunal in the consolidated proceeding. Absent the agreement of all parties, the consolidation arbitrator shall not be appointed in the consolidated proceeding.

7. The decision as to consolidation, which need not include a statement of reasons, shall be rendered within 15 days of the date for final submissions on consolidation.

Article 9: Amendment or Supplement of Claim, Counterclaim, or Defense

Any party may amend or supplement its claim, counterclaim, setoff, or defense unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement because of the party's delay in making it, prejudice to the other parties, or any other circumstances. A party may not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate. The tribunal may permit an amendment or supplement subject to an award of costs and/or the payment of filing fees as determined by the Administrator.

Article 10: Notices

1. Unless otherwise agreed by the parties or ordered by the arbitral tribunal, all notices and written communications may be transmitted by any means of communication that allows for a record of its transmission including mail, courier, fax, or other written forms of electronic communication addressed to the party or its representative at its last- known address, or by personal service.

2. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is made. If the last day of such period is an official holiday at the place received, the period is extended until the first business day that follows. Official holidays occurring during the running of the period of time are included in calculating the period.

The Tribunal

Article 11: Number of Arbitrators

If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the Administrator determines in its discretion that three arbitrators are appropriate because of the size, complexity, or other circumstances of the case.

Article 12: Appointment of Arbitrators

1. The parties may agree upon any procedure for appointing arbitrators and shall inform the Administrator as to such procedure. In the absence of party agreement as to the method of appointment, the Administrator may use the ICDR list method as provided in Article 12(6).
2. The parties may agree to select arbitrators, with or without the assistance of the Administrator. When such selections are made, the parties shall take into account the arbitrators' availability to serve and shall notify the Administrator so that a Notice of Appointment can be communicated to the arbitrators, together with a copy of these Rules.
3. If within 45 days after the commencement of the arbitration, all parties have not agreed on a procedure for appointing the arbitrator(s) or have not agreed on the selection of the arbitrator(s), the Administrator shall, at the written request of any party, appoint the arbitrator(s). Where the parties have agreed upon a procedure for selecting the arbitrator(s), but all appointments have not been made within the time limits provided by that procedure, the Administrator shall, at the written request of any party, perform all functions provided for in that procedure that remain to be performed.
4. In making appointments, the Administrator shall, after inviting consultation with the parties, endeavor to appoint suitable arbitrators, taking into account their availability to serve. At the request of any party or on its own initiative, the Administrator may appoint nationals of a country other than that of any of the parties.
5. If there are more than two parties to the arbitration, the Administrator may appoint all arbitrators unless the parties have agreed otherwise no later than 45 days after the commencement of the arbitration.
6. If the parties have not selected an arbitrator(s) and have not agreed upon any other method of appointment, the Administrator, at its discretion, may appoint the arbitrator(s) in the following manner using the ICDR list method. The Administrator shall send simultaneously to each party an identical list of names of persons for consideration as arbitrator(s). The parties are encouraged to agree to an arbitrator(s) from the submitted list and shall advise the Administrator of their agreement. If, after receipt of the list, the parties are unable to agree upon an arbitrator(s), each party shall have 15 days from the transmittal date in which

to strike names objected to, number the remaining names in order of preference, and return the list to the Administrator. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on the parties' lists, and in accordance with the designated order of mutual preference, the Administrator shall invite an arbitrator(s) to serve. If the parties fail to agree on any of the persons listed, or if acceptable arbitrators are unable or unavailable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator shall have the power to make the appointment without the submission of additional lists. The Administrator shall, if necessary, designate the presiding arbitrator in consultation with the tribunal.

7. The appointment of an arbitrator is effective upon receipt by the Administrator of the Administrator's Notice of Appointment completed and signed by the arbitrator.

Article 13: Impartiality and Independence of Arbitrator

1. Arbitrators acting under these Rules shall be impartial and independent and shall act in accordance with the terms of the Notice of Appointment provided by the Administrator.

2. Upon accepting appointment, an arbitrator shall sign the Notice of Appointment provided by the Administrator affirming that the arbitrator is available to serve and is independent and impartial. The arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence and any other relevant facts the arbitrator wishes to bring to the attention of the parties.

3. If, at any stage during the arbitration, circumstances arise that may give rise to such doubts, an arbitrator or party shall promptly disclose such information to all parties and to the Administrator. Upon receipt of such information from an arbitrator or a party, the Administrator shall communicate it to all parties and to the tribunal.

4. Disclosure by an arbitrator or party does not necessarily indicate belief by the arbitrator or party that the disclosed information gives rise to justifiable doubts as to the arbitrator's impartiality or independence.

5. Failure of a party to disclose any circumstances that may give rise to justifiable doubts as to an arbitrator's impartiality or independence within a reasonable period after the party becomes aware of such information constitutes a waiver of the right to challenge an arbitrator based on those circumstances.

6. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any arbitrator, or with any candidate for party-appointed arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or impartiality and independence in relation to the parties, or to

discuss the suitability of candidates for selection as a presiding arbitrator where the parties or party-appointed arbitrators are to participate in that selection. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any candidate for presiding arbitrator.

Article 14: Challenge of an Arbitrator

1. A party may challenge an arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party shall send a written notice of the challenge to the Administrator within 15 days after being notified of the appointment of the arbitrator or within 15 days after the circumstances giving rise to the challenge become known to that party. The challenge shall state in writing the reasons for the challenge. The party shall not send this notice to any member of the arbitral tribunal.

2. Upon receipt of such a challenge, the Administrator shall notify the other party of the challenge and give such party an opportunity to respond. The Administrator shall not send the notice of challenge to any member of the tribunal but shall notify the tribunal that a challenge has been received, without identifying the party challenging. The Administrator may advise the challenged arbitrator of the challenge and request information from the challenged arbitrator relating to the challenge. When an arbitrator has been challenged by a party, the other party may agree to the acceptance of the challenge and, if there is agreement, the arbitrator shall withdraw. The challenged arbitrator, after consultation with the Administrator, also may withdraw in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.

3. If the other party does not agree to the challenge or the challenged arbitrator does not withdraw, the Administrator in its sole discretion shall make the decision on the challenge.

4. The Administrator, on its own initiative, may remove an arbitrator for failing to perform his or her duties.

Article 15: Replacement of an Arbitrator

1. If an arbitrator resigns, is incapable of performing the duties of an arbitrator, or is removed for any reason and the office becomes vacant, a substitute arbitrator shall be appointed pursuant to the provisions of Article 12, unless the parties otherwise agree.

2. If a substitute arbitrator is appointed under this Article, unless the parties otherwise agree the arbitral tribunal shall determine at its sole discretion whether all or part of the case shall be repeated.

3. If an arbitrator on a three-person arbitral tribunal fails to participate in the arbitration for reasons other than those identified in Article 15(1), the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling, order, or award, notwithstanding the failure of

the third arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling, order, or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the Administrator on proof satisfactory to it shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of Article 12, unless the parties otherwise agree.

General Conditions

Article 16: Party Representation

Any party may be represented in the arbitration. The names, addresses, telephone numbers, fax numbers, and email addresses of representatives shall be communicated in writing to the other party and to the Administrator. Unless instructed otherwise by the Administrator, once the arbitral tribunal has been established, the parties or their representatives may communicate in writing directly with the tribunal with simultaneous copies to the other party and, unless otherwise instructed by the Administrator, to the Administrator. The conduct of party representatives shall be in accordance with such guidelines as the ICDR may issue on the subject.

Article 17: Place of Arbitration

1. If the parties do not agree on the place of arbitration by a date established by the Administrator, the Administrator may initially determine the place of arbitration, subject to the power of the arbitral tribunal to determine finally the place of arbitration within 45 days after its constitution.
2. The tribunal may meet at any place it deems appropriate for any purpose, including to conduct hearings, hold conferences, hear witnesses, inspect property or documents, or deliberate, and, if done elsewhere than the place of arbitration, the arbitration shall be deemed conducted at the place of arbitration and any award shall be deemed made at the place of arbitration.

Article 18: Language of Arbitration

If the parties have not agreed otherwise, the language(s) of the arbitration shall be the language(s) of the documents containing the arbitration agreement, subject to the power of the arbitral tribunal to determine otherwise. The tribunal

may order that any documents delivered in another language shall be accompanied by a translation into the language(s) of the arbitration.

Article 19: Arbitral Jurisdiction

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement(s), or with respect to whether all of the claims, counterclaims, and setoffs made in the arbitration may be determined in a single arbitration.
2. The tribunal shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the tribunal that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
3. A party must object to the jurisdiction of the tribunal or to arbitral jurisdiction respecting the admissibility of a claim, counterclaim, or setoff no later than the filing of the Answer, as provided in Article 3, to the claim, counterclaim, or setoff that gives rise to the objection. The tribunal may extend such time limit and may rule on any objection under this Article as a preliminary matter or as part of the final award.
4. Issues regarding arbitral jurisdiction raised prior to the constitution of the tribunal shall not preclude the Administrator from proceeding with administration and shall be referred to the tribunal for determination once constituted.

Article 20: Conduct of Proceedings

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
2. The tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute. The tribunal may, promptly after being constituted, conduct a preparatory conference with the parties for the purpose of organizing, scheduling, and agreeing to procedures, including the setting of deadlines for any submissions by the parties. In establishing procedures for the case, the tribunal and the parties may consider how technology, including electronic communications, could be used to increase the efficiency and economy of the proceedings.
3. The tribunal may decide preliminary issues, bifurcate proceedings, direct the order of proof, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues whose resolution could dispose of all or part of the case.
4. At any time during the proceedings, the tribunal may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate. Unless the parties agree otherwise in writing, the tribunal shall apply Article 21.

5. Documents or information submitted to the tribunal by one party shall at the same time be transmitted by that party to all parties and, unless instructed otherwise by the Administrator, to the Administrator.
6. The tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence.
7. The parties shall make every effort to avoid unnecessary delay and expense in the arbitration. The arbitral tribunal may allocate costs, draw adverse inferences, and take such additional steps as are necessary to protect the efficiency and integrity of the arbitration.

Article 21: Exchange of Information

1. The arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining efficiency and economy. The tribunal and the parties should endeavor to avoid unnecessary delay and expense while at the same time avoiding surprise, assuring equality of treatment, and safeguarding each party's opportunity to present its claims and defenses fairly.
2. The parties may provide the tribunal with their views on the appropriate level of information exchange for each case, but the tribunal retains final authority. To the extent that the parties wish to depart from this Article, they may do so only by written agreement and in consultation with the tribunal.
3. The parties shall exchange all documents upon which each intends to rely on a schedule set by the tribunal.
4. The tribunal may, upon application, require a party to make available to another party documents in that party's possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the case.
5. The tribunal may condition any exchange of information subject to claims of commercial or technical confidentiality on appropriate measures to protect such confidentiality.
6. When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form (which may be paper copies) most convenient and economical for it, unless the tribunal determines, on application, that there is a compelling need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible. The tribunal may direct testing or other means of focusing and limiting any search.
7. The tribunal may, on application, require a party to permit inspection on reasonable notice of relevant premises or objects.

8. In resolving any dispute about pre-hearing exchanges of information, the tribunal shall require a requesting party to justify the time and expense that its request may involve and may condition granting such a request on the payment of part or all of the cost by the party seeking the information. The tribunal may also allocate the costs of providing information among the parties, either in an interim order or in an award.
9. In the event a party fails to comply with an order for information exchange, the tribunal may draw adverse inferences and may take such failure into account in allocating costs.
10. Depositions, interrogatories, and requests to admit as developed for use in U.S. court procedures generally are not appropriate procedures for obtaining information in an arbitration under these Rules.

Article 22: Privilege

The arbitral tribunal shall take into account applicable principles of privilege, such as those involving the confidentiality of communications between a lawyer and client. When the parties, their counsel, or their documents would be subject under applicable law to different rules, the tribunal should, to the extent possible, apply the same rule to all parties, giving preference to the rule that provides the highest level of protection.

Article 23: Hearing

1. The arbitral tribunal shall give the parties reasonable notice of the date, time, and place of any oral hearing.
2. At least 15 days before the hearings, each party shall give the tribunal and the other parties the names and addresses of any witnesses it intends to present, the subject of their testimony, and the languages in which such witnesses will give their testimony.
3. The tribunal shall determine the manner in which witnesses are examined and who shall be present during witness examination.
4. Unless otherwise agreed by the parties or directed by the tribunal, evidence of witnesses may be presented in the form of written statements signed by them. In accordance with a schedule set by the tribunal, each party shall notify the tribunal and the other parties of the names of any witnesses who have presented a witness statement whom it requests to examine. The tribunal may require any witness to appear at a hearing. If a witness whose appearance has been requested fails to appear without valid excuse as determined by the tribunal, the tribunal may disregard any written statement by that witness.
5. The tribunal may direct that witnesses be examined through means that do not require their physical presence.

6. Hearings are private unless the parties agree otherwise or the law provides to the contrary.

Article 24: Interim Measures

1. At the request of any party, the arbitral tribunal may order or award any interim or conservatory measures it deems necessary, including injunctive relief and measures for the protection or conservation of property.
2. Such interim measures may take the form of an interim order or award, and the tribunal may require security for the costs of such measures.
3. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.
4. The arbitral tribunal may in its discretion allocate costs associated with applications for interim relief in any interim order or award or in the final award.
5. An application for emergency relief prior to the constitution of the arbitral tribunal may be made as provided for in Article 6.

Article 25: Tribunal-Appointed Expert

1. The arbitral tribunal, after consultation with the parties, may appoint one or more independent experts to report to it, in writing, on issues designated by the tribunal and communicated to the parties.
2. The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the tribunal for decision.
3. Upon receipt of an expert's report, the tribunal shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion of the report. A party may examine any document on which the expert has relied in such a report.
4. At the request of any party, the tribunal shall give the parties an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

Article 26: Default

1. If a party fails to submit an Answer in accordance with Article 3, the arbitral tribunal may proceed with the arbitration.
2. If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the tribunal may proceed with the hearing.

3. If a party, duly invited to produce evidence or take any other steps in the proceedings, fails to do so within the time established by the tribunal without showing sufficient cause for such failure, the tribunal may make the award on the evidence before it.

Article 27: Closure of Hearing

1. The arbitral tribunal may ask the parties if they have any further submissions and upon receiving negative replies or if satisfied that the record is complete, the tribunal may declare the arbitral hearing closed.
2. The tribunal in its discretion, on its own motion, or upon application of a party, may reopen the arbitral hearing at any time before the award is made.

Article 28: Waiver

A party who knows of any non-compliance with any provision or requirement of the Rules or the arbitration agreement, and proceeds with the arbitration without promptly stating an objection in writing, waives the right to object.

Article 29: Awards, Orders, Decisions and Rulings

1. In addition to making a final award, the arbitral tribunal may make interim, interlocutory, or partial awards, orders, decisions, and rulings.
2. When there is more than one arbitrator, any award, order, decision, or ruling of the tribunal shall be made by a majority of the arbitrators.
3. When the parties or the tribunal so authorize, the presiding arbitrator may make orders, decisions, or rulings on questions of procedure, including exchanges of information, subject to revision by the tribunal.

Article 30: Time, Form, and Effect of Award

1. Awards shall be made in writing by the arbitral tribunal and shall be final and binding on the parties. The tribunal shall make every effort to deliberate and prepare the award as quickly as possible after the hearing. Unless otherwise agreed by the parties, specified by law, or determined by the Administrator, the final award shall be made no later than 60 days from the date of the closing of the hearing. The parties shall carry out any such award without delay and, absent agreement otherwise, waive irrevocably their right to any form of appeal, review, or recourse to any court or other judicial authority, insofar as such waiver can validly be made. The tribunal shall state the reasons upon which an award is based, unless the parties have agreed that no reasons need be given.
2. An award shall be signed by the arbitrator(s) and shall state the date on which the award was made and the place of arbitration pursuant to Article 17. Where there

is more than one arbitrator and any of them fails to sign an award, the award shall include or be accompanied by a statement of the reason for the absence of such signature.

3. An award may be made public only with the consent of all parties or as required by law, except that the Administrator may publish or otherwise make publicly available selected awards, orders, decisions, and rulings that have become public in the course of enforcement or otherwise and, unless otherwise agreed by the parties, may publish selected awards, orders, decisions, and rulings that have been edited to conceal the names of the parties and other identifying details.
4. The award shall be transmitted in draft form by the tribunal to the Administrator. The award shall be communicated to the parties by the Administrator.
5. If applicable law requires an award to be filed or registered, the tribunal shall cause such requirement to be satisfied. It is the responsibility of the parties to bring such requirements or any other procedural requirements of the place of arbitration to the attention of the tribunal.

Article 31: Applicable Laws and Remedies

1. The arbitral tribunal shall apply the substantive law(s) or rules of law agreed by the parties as applicable to the dispute. Failing such an agreement by the parties, the tribunal shall apply such law(s) or rules of law as it determines to be appropriate.
2. In arbitrations involving the application of contracts, the tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
3. The tribunal shall not decide as *amiable compositeur* or *ex aequo et bono* unless the parties have expressly authorized it to do so.
4. A monetary award shall be in the currency or currencies of the contract unless the tribunal considers another currency more appropriate, and the tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law(s).
5. Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary, or similar damages unless any applicable law(s) requires that compensatory damages be increased in a specified manner. This provision shall not apply to an award of arbitration costs to a party to compensate for misconduct in the arbitration.

Article 32: Settlement or Other Reasons for Termination

1. If the parties settle the dispute before a final award is made, the arbitral tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of a consent award on agreed terms. The tribunal is not obliged to give reasons for such an award.

2. If continuation of the arbitration becomes unnecessary or impossible due to the non-payment of deposits required by the Administrator, the arbitration may be suspended or terminated as provided in Article 36(3).
3. If continuation of the arbitration becomes unnecessary or impossible for any reason other than as stated in Sections 1 and 2 of this Article, the tribunal shall inform the parties of its intention to terminate the arbitration. The tribunal shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.

Article 33: Interpretation and Correction of Award

1. Within 30 days after the receipt of an award, any party, with notice to the other party, may request the arbitral tribunal to interpret the award or correct any clerical, typographical, or computational errors or make an additional award as to claims, counterclaims, or setoffs presented but omitted from the award.
2. If the tribunal considers such a request justified after considering the contentions of the parties, it shall comply with such a request within 30 days after receipt of the parties' last submissions respecting the requested interpretation, correction, or additional award. Any interpretation, correction, or additional award made by the tribunal shall contain reasoning and shall form part of the award.
3. The tribunal on its own initiative may, within 30 days of the date of the award, correct any clerical, typographical, or computational errors or make an additional award as to claims presented but omitted from the award.
4. The parties shall be responsible for all costs associated with any request for interpretation, correction, or an additional award, and the tribunal may allocate such costs.

Article 34: Costs of Arbitration

The arbitral tribunal shall fix the costs of arbitration in its award(s). The tribunal may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case.

Such costs may include:

a. the fees and expenses of the arbitrators;
b. the costs of assistance required by the tribunal, including its experts;
c. the fees and expenses of the Administrator;
d. the reasonable legal and other costs incurred by the parties;
e. any costs incurred in connection with a notice for interim or emergency relief pursuant to Articles 6 or 24;

f. any costs incurred in connection with a request for consolidation pursuant to Article 8; and

g. any costs associated with information exchange pursuant to Article 21.

Article 35: Fees and Expenses of Arbitral Tribunal

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the time spent by the arbitrators, the size and complexity of the case, and any other relevant circumstances.

2. As soon as practicable after the commencement of the arbitration, the Administrator shall designate an appropriate daily or hourly rate of compensation in consultation with the parties and all arbitrators, taking into account the arbitrators' stated rate of compensation and the size and complexity of the case.

3. Any dispute regarding the fees and expenses of the arbitrators shall be determined by the Administrator.

Article 36: Deposits

1. The Administrator may request that the parties deposit appropriate amounts as an advance for the costs referred to in Article 34.

2. During the course of the arbitration, the Administrator may request supplementary deposits from the parties.

3. If the deposits requested are not paid promptly and in full, the Administrator shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the proceedings. If the tribunal has not yet been appointed, the Administrator may suspend or terminate the proceedings.

4. Failure of a party asserting a claim or counterclaim to pay the required deposits shall be deemed a withdrawal of the claim or counterclaim.

5. After the final award has been made, the Administrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Article 37: Confidentiality

1. Confidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by an arbitrator or by the Administrator. Except as provided in Article 30, unless otherwise agreed by the parties or required by applicable law, the members of the arbitral tribunal and the Administrator shall keep confidential all matters relating to the arbitration or the award.

2. Unless the parties agree otherwise, the tribunal may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

Article 38: Exclusion of Liability

The members of the arbitral tribunal, any emergency arbitrator appointed under Article 6, any consolidation arbitrator appointed under Article 8, and the Administrator shall not be liable to any party for any act or omission in connection with any arbitration under these Rules, except to the extent that such a limitation of liability is prohibited by applicable law. The parties agree that no arbitrator, emergency arbitrator, or consolidation arbitrator, nor the Administrator shall be under any obligation to make any statement about the arbitration, and no party shall seek to make any of these persons a party or witness in any judicial or other proceedings relating to the arbitration.

Article 39: Interpretation of Rules

The arbitral tribunal, any emergency arbitrator appointed under Article 6, and any consolidation arbitrator appointed under Article 8, shall interpret and apply these Rules insofar as they relate to their powers and duties. The Administrator shall interpret and apply all other Rules.

International Expedited Procedures

Article E-1: Scope of Expedited Procedures

These Expedited Procedures supplement the International Arbitration Rules as provided in Article 1(4).

Article E-2: Detailed Submissions

Parties are to present detailed submissions on the facts, claims, counterclaims, setoffs and defenses, together with all of the evidence then available on which such party intends to rely, in the Notice of Arbitration and the Answer. The arbitrator, in consultation with the parties, shall establish a procedural order, including a timetable, for completion of any written submissions.

Article E-3: Administrative Conference

The Administrator may conduct an administrative conference with the parties and their representatives to discuss the application of these procedures, arbitrator selection, mediating the dispute, and any other administrative matters.

Article E-4: Objection to the Applicability of the Expedited Procedures

If an objection is submitted before the arbitrator is appointed, the Administrator may initially determine the applicability of these Expedited Procedures, subject to the power of the arbitrator to make a final determination. The arbitrator shall take into account the amount in dispute and any other relevant circumstances.

Article E-5: Changes of Claim or Counterclaim

If, after filing of the initial claims and counterclaims, a party amends its claim or counterclaim to exceed USD $250,000.00 exclusive of interest and the costs of arbitration, the case will continue to be administered pursuant to these Expedited Procedures unless the parties agree otherwise, or the Administrator or the arbitrator determines otherwise. After the arbitrator is appointed, no new or different claim, counterclaim or setoff and no change in amount may be submitted except with the arbitrator's consent.

Article E-6: Appointment and Qualifications of the Arbitrator

A sole arbitrator shall be appointed as follows. The Administrator shall simultaneously submit to each party an identical list of five proposed arbitrators. The parties may agree to an arbitrator from this list and shall so advise the Administrator. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the Administrator within 10 days from the transmittal date of the list to the parties. The parties are not required to exchange selection lists. If the parties fail to agree on any of the arbitrators or if acceptable arbitrators are unable or unavailable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator may make the appointment without the circulation of additional lists. The parties will be given notice by the Administrator of the appointment of the arbitrator, together with any disclosures.

Article E-7: Procedural Conference and Order

After the arbitrator's appointment, the arbitrator may schedule a procedural conference call with the parties, their representatives, and the Administrator to discuss the procedure and schedule for the case. Within 14 days of appointment, the arbitrator shall issue a procedural order.

Article E-8: Proceedings by Written Submissions

In expedited proceedings based on written submissions, all submissions are due within 60 days of the date of the procedural order, unless the arbitrator determines otherwise. The arbitrator may require an oral hearing if deemed necessary.

Article E-9: Proceedings with an Oral Hearing

In expedited proceedings in which an oral hearing is to be held, the arbitrator shall set the date, time, and location of the hearing. The oral hearing shall take place within 60 days of the date of the procedural order unless the arbitrator deems it necessary to extend that period. Hearings may take place in person or via video conference or other suitable means, at the discretion of the arbitrator. Generally, there will be no transcript or stenographic record. Any party desiring a stenographic record may arrange for one. The oral hearing shall not exceed one day unless the arbitrator determines otherwise. The Administrator will notify the parties in advance of the hearing date.

Article E-10: The Award

Awards shall be made in writing and shall be final and binding on the parties. Unless otherwise agreed by the parties, specified by law, or determined by the Administrator, the award shall be made not later than 30 days from the date of the closing of the hearing or from the time established for final written submissions.

Administrative Fees

Administrative Fee Schedules

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT ***www.adr.org/internationalfeeschedule.***

MARITIME ARBITRATION RULES
SOCIETY OF MARITIME ARBITRATORS, INC.

These Rules apply to contracts entered into on or after March 14, 2018

P R E A M B L E
INTERPRETATION AND APPLICATION OF RULES

The powers and duties of the Arbitrator(s) shall be interpreted and applied in accordance with these Rules and Title 9 of the United States Code. Whenever there is more than one Arbitrator, and a difference arises among them concerning the meaning or application of these Rules, the difference shall be resolved by majority vote or in the case of a two Arbitrator Panel by an Umpire, chosen by the two Arbitrators.

In all matters not expressly addressed in these Rules, the Arbitrator(s) shall act in the spirit of these Rules and make every effort to ensure that an award is legally enforceable.

All references to Arbitrator(s) are deemed gender neutral. All references to Arbitrator~~(s)~~ in the singular shall apply to the plural if the Panel consists of more than one Arbitrator.

All references to the "Act" are to the - Federal Arbitration Act (Title 9 of the United States Code).

All references to a third Arbitrator or Panel Chair shall, where applicable, also apply to an Umpire.

All references to "SMA" are to the Society of Maritime Arbitrators, Inc.

I. RULES A PART OF THE ARBITRATION AGREEMENT

Section 1. **Agreement of Parties**

Wherever parties have agreed to arbitration under the Rules of the Society of Maritime Arbitrators, Inc., these Rules, including any amendment(s) in force on the date of the agreement to arbitrate shall be binding on the parties and constitute an integral part of that agreement.

Nevertheless, except for those Rules which empower the Arbitrators to administer the arbitration proceedings, the parties may mutually alter or modify the application of these Rules.

Unless stipulated in advance to the contrary, the parties, by consenting to these Rules, agree that the Award issued may be published by the Society of Maritime Arbitrators, Inc. and/or its correspondents.

Section 2. **Consolidation**

Whenever a dispute or disputes arise under two or more contracts that are subject to these Rules and concern a common question of fact or law or to a substantial degree involve the same transactions or series of transactions, the parties, at the request of any of them, agree to resolve all such disputes in a consolidated arbitration before a consolidated panel of arbitrators selected pursuant to the immediately following paragraph. The method of arbitrator selection contained in this Section shall supersede any conflicting method of arbitrator selection contained in the contracts. The consolidated panel shall for all purposes be deemed the parties' duly appointed panel to hear and decide all qualifying disputes under the multiple contracts in a consolidated proceeding and render a final and binding consolidated award that may be made a rule of the court.

Whenever consolidation is required by this Section, the parties are free to agree upon a sole arbitrator, failing which the dispute(s) are to be submitted to a consolidated panel consisting of three arbitrators, one selected by the primary claimant, one by the ultimate defending party, and the third selected by the remaining intermediate or "pass-along" party or parties. If, for any reason, the consolidated panel has not been constituted within 30 days of a party requesting consolidation, then at the request of any interested party, the unfilled Arbitrator position(s) shall be completed by and at the discretion of the then President of the Society of Maritime Arbitrators, Inc. or in the event of a conflict, by and at the discretion of the SMA's then Vice-President from the SMA's current roster of members. Time limits specified in Rule 10 shall not apply to disputes subject to this clause.

In the event of a disagreement as to whether a dispute is or is not subject to consolidation under this provision, that threshold issue shall be promptly submitted to the then President (or in the event of a conflict, to the then Vice-President) of the Society of Maritime Arbitrators, Inc. for immediate resolution. The decision of the President (or Vice-President as appropriate) in the form of a reasoned arbitration award, shall be final and binding and may, itself, be made a rule of court in the same manner as accorded any final arbitration award. The President or Vice-President shall be entitled to charge and allocate a reasonable fee for rendering such award.

Notwithstanding anything contained herein, these Rules expressly exclude and do not apply to claims made by or on behalf of a particular class or group of similarly situated claimants or against a particular class or group of similarly situated respondents (so called "Class Action Claims").

II. TRIBUNALS

Section 3. **Name of Tribunal**

The "Panel" is any Tribunal created under the parties' agreement, to resolve disputes by arbitration under these Rules.

Section 4. **Roster of Arbitrators**

The SMA shall establish and maintain a roster of persons with qualifications to act as Maritime Arbitrators from which Arbitrators may be chosen.

Section 5. **Office of Tribunal**

Office of the Panel - Depending upon the number of Arbitrators, the office of the Panel shall be as follows:

(a) *Sole Arbitrator* - The home address or place of business of the sole arbitrator.

(b) *Two Arbitrators* - The home or business address of either of the Arbitrators, as decided by them.

(c) *Three Arbitrators* - The home or business address of the Arbitrator chosen by the other Panel members to act as Chair of the Panel.

III. INITIATION OF THE ARBITRATION

Section 6. **Initiation Under an Arbitration Agreement**

Any party to an agreement for arbitration under SMA Rules may initiate an arbitration by giving written notice to the other party of its demand for arbitration and naming its chosen arbitrator.

In its demand for arbitration, the party initiating the process shall set forth the nature of the dispute, the amount of damages involved, if any, and the remedy sought.

The parties shall be free to amend or add to their claims until the proceedings are closed pursuant to Section 25.

Section 7. **Site of the Arbitration**

Unless otherwise provided in the arbitration clause, arbitration hearings are to be held in the City of New York at a location chosen by the Panel, in consultation with the parties. However, the Panel may convene one or

more hearings at any alternate location to view physical evidence or to receive testimony and/or documents from any non-party witness. The Panel may, pursuant to Section 23, issue a subpoena to compel such person to appear and/or produce documents at such alternate hearing location. The Panel shall be deemed to remain seated at any such alternate location to compel compliance with such a subpoena in the appropriate local court.

The parties shall be given sufficient notice to enable them to appear or be represented at the proceedings.

IV. APPOINTMENT OF ARBITRATORS

Section 8. **Disqualification**

No person shall serve as an Arbitrator who has or who has had a financial or personal interest in the outcome of the arbitration or who has acquired from an interested source detailed prior knowledge of the matter in dispute.

Section 9. **Disclosure by Arbitrators of Disqualifying Circumstances**

Prior to the first hearing or initial submissions, all Arbitrators are required to disclose any circumstance which could impair their ability to render an unbiased award based solely upon an objective and impartial consideration of the evidence presented to the Panel.

Such disclosure shall include close personal ties and business relations with any one of:

(a) the parties to the arbitration;

(b) other affiliates or associated companies of the parties;

(c) counsel for the parties;

(d) the other Arbitrators on the Panel.

No Arbitrator shall accept an appointment or sit on a Panel, where the Arbitrator or the Arbitrator's current employer has a direct or indirect interest in the outcome of the arbitration.

Upon receipt of the disclosure statement(s) from the Arbitrator(s), the parties may accept the Panel or challenge any (or all) of the Arbitrators.

If challenged, the grounds for it shall be made known to the Arbitrator(s), who may withdraw from the Panel and be replaced pursuant to Sections 13a and 13b as appropriate. However, if the challenged Arbitrator(s) consider(s) the challenge to be without merit and declines to withdraw, the arbitration shall proceed with due reservation of the challenger's right to seek recourse from the appropriate United States District Court after the Award has been issued.

Section 10. **Direct Appointment by Parties**

If the arbitration agreement specifies a method by which Arbitrators are to be appointed, that method shall be followed and in the event of a conflict, its terms shall prevail over this section of the Rules.

When requested by a party, the SMA shall submit its then current roster of members from which arbitrators may be appointed.

If a party fails to appoint its Arbitrator within the time frame specified in the arbitration agreement, the party demanding arbitration may resort to Section 5 of the Act.

If no such time frame is specified, the party demanding the arbitration shall give the other written notice that the appointment of its Arbitrator is made pursuant to Section 10 of these Rules which requires the other to appoint an arbitrator within twenty days of receipt of that notice, failing which the party demanding arbitration may appoint a second Arbitrator with the same force and effect as if that second Arbitrator were appointed by the other party. Any thus chosen second Arbitrator shall be a disinterested person with the same qualifications, if any, required by the arbitration agreement. If the arbitration agreement provides for three Arbitrators, the two so chosen shall appoint the third. Notwithstanding anything contained in this section to the contrary, if the party demanding arbitration seeks to compel the appointment of a second Arbitrator sooner than the stipulated twenty days, it is free to proceed under the Act.

Section 11. **Appointment of Additional Arbitrator by Named Arbitrators**

If the two party-appointed Arbitrators fail to appoint a third Arbitrator within a reasonable time, any party may petition the Court under the Act to make such an appointment after advising the Arbitrators.

Section 12. **Notice of Appointment to Arbitrator(s)**

Arbitrators may be appointed by the parties or their counsel, orally or in writing. If an oral appointment is made, it should be confirmed in writing as soon as practicable. The Chair shall promptly notify the parties or their counsel that the Panel is complete and ready to proceed with the arbitration.

Section 13. **Vacancies**

If an Arbitrator is unable to serve, the vacancy shall be filled as follows:

(a) If the vacancy is created by a party-appointed Arbitrator, that party shall promptly name a replacement. The previously-selected Chair will continue to serve in that capacity unless the two party-appointed Arbitrators choose a replacement Chair before the hearings have commenced or, if the

arbitration is conducted on documents alone, before the first submissions or documents are received by the Panel.

(b) If the office of Chair becomes vacant, the two party-appointed Arbitrators shall appoint a replacement Chair.

(c) Following the replacement of Arbitrator(s), the arbitration shall resume on the existing record, unless the Panel directs or the parties agree otherwise.

V. PROCEDURE FOR ORAL HEARING

Section 14. **Representation**

Any party has the option to be represented in the arbitration proceedings by counsel or any other duly-appointed representative.

Section 15. **Stenographic Record**

Unless otherwise agreed by the parties, a stenographic record of all hearings shall be arranged. The parties shall initially share the cost of the stenographic record, subject to final apportionment by the Arbitrator(s).

Section 16. **Interpreters**

If required, the party presenting shall furnish and initially pay for an interpreter. The interpreter shall be independent of both parties.

Section 17. **Attendance at Hearings**

Persons having a direct interest in the arbitration are entitled to attending hearings. The Panel has the power to compel witnesses to leave the hearing room during the testimony of other witnesses.

Section 18. **Adjournments**

The panel may grant adjournments upon a showing of good cause. If all parties jointly request an adjournment, it shall be granted.

Section 19. **Oaths**

After the Panel has been accepted by the parties, each Arbitrator shall take the oath set forth in Appendix A hereto. If the arbitration is to be conducted without hearings, the Arbitrator(s) may make the oath in writing.

The Arbitrators shall require witnesses to testify under oath administered by any duly qualified person (see Appendix A). The form of oath may be amended to include an affirmation under penalty of perjury.

Section 20. **Majority Decision**

Unless the arbitration agreement requires a unanimous decision, the decision and Award of the Arbitrators shall be by majority vote. In cases where the arbitration clause calls for two party-appointed Arbitrators and an Umpire, should the two party-appointed Arbitrators be unable to agree, they shall promptly appoint an Umpire. The Umpire shall take into account the reasons for the Arbitrators' disagreement and decide the matter(s) in controversy as if he/she were a sole Arbitrator, unless the arbitration agreement provides differently.

Section 21. **Order of Proceedings**

If hearings are scheduled, the first hearing of the arbitration shall be at the time and place designated by the Chair. The Chair shall instruct each party or their counsel to deliver to each member of the Panel a statement identifying the other interested parties so that the Arbitrator(s) may determine whether grounds for voluntary withdrawal exist.

Each claimant should submit a pre-hearing statement of claim not less than twenty (20) business days prior to the first hearing. The respondent should submit its pre-hearing statement of defense (and counter claim, if any) not more than ten (10) business days thereafter.

At the first hearing, each party, or their counsel, may make an opening statement setting forth its position.

The arbitration proceeding shall be conducted in an orderly manner appropriate to judicial proceedings. Rules of evidence used in judicial proceedings need not be applied.

If it is not clear which party is the claimant, the Panel shall make that determination. Arbitrators shall apply burdens of proof and if by majority vote, the Panel concludes that the claimant has not made its case, no further evidence need be taken from the respondent, unless that respondent is asserting a counterclaim.

Copies of any documents, exhibits and accounts intended to be introduced at a particular hearing should be supplied to the other party or opposing counsel and to Panel members at least ten business days prior to the date of that hearing. Any fact or expert witness intended to testify before the Panel should likewise be identified and a brief description of his/her testimony given at least one week in advance of the scheduled hearing date.

All mentioned time limits are subject to Section 34.

Following the presentation of all evidence, the parties may elect to present their arguments in a final oral hearing rather than in written briefs. However, the Panel retains the privilege to direct the parties to submit supplementary

briefs or appear for an oral argument on any issue(s) the Panel considers necessary or in need of clarification or further argument.

Section 22. **Arbitration in the Absence of a Party**

After a default has been established under the provisions of Section 4 of the Act or after the Panel has been completed pursuant to these Rules, the arbitration may proceed in the absence of the defaulting party, who, after due notice, failed to be present or failed to obtain an adjournment.

Section 23. **Evidence**

The parties may offer such evidence as they desire and shall produce such additional evidence as the Panel may deem necessary to an understanding and determination of the dispute. The Arbitrator(s) may subpoena witnesses and/or documents (including those in electronic form) at their own initiative or at the request of a party (see Appendix B).

The Panel shall be the judge of the relevancy and materiality of the evidence offered.

All evidence shall be taken in the presence of the Arbitrator(s) and of all the parties, except in the case of depositions or where any of the parties is absent without reasonable cause, in default, or has waived its right to be present or where submission of evidence by mail or in other form has been agreed by both parties.

The Panel has the power to direct that depositions be taken from witnesses who cannot testify in person.

In those circumstances it deems appropriate, the Panel has the discretion to direct that the testimony of witnesses be taken by video conference or such other electronic means. Should a party object to taking testimony by such means, the Panel will hear the objection and make a ruling which will be final and binding.

All evidence submitted to the Panel, as well as all written communications between any party and the Panel, after it has been constituted, shall be shared with all parties.

Section 24. **Evidence by Affidavit**

The Panel may receive evidence by affidavit and shall give such affidavits appropriate weight in light of any objections made by opponents.

Section 25. **Closing of Proceedings**

Upon completion of submission of evidence, the parties may submit briefs on an agreed schedule. If the parties cannot agree, the schedule shall be established by the Panel. Once all submissions are completed, the Chair shall declare the proceedings closed.

Section 26. **Reopening of Proceedings**

Following the submission of briefs, the Panel may require the parties to provide clarifications concerning their claims or defenses and may order additional hearings for that purpose.

At any time prior to the issuance of an Award, hearings may be reopened on the application of any party provided the Panel agrees that good cause has been shown.

VI. PROCEDURE FOR OTHER THAN ORAL HEARINGS

Section 27. **Arbitration on Documents Alone**

The parties, by written agreement, may submit their disputes to arbitration on documents alone. In such case, the Panel members shall make their disclosures in writing to all parties, pursuant to Section 9 and communicate the written oath (see Appendix A attached) to the parties. Thereafter, the parties shall make their submissions of documents and briefs, on such schedule as they agree. If the parties cannot agree, the Panel will establish the schedule.

VII. THE AWARD

Section 28. **Time**

The Panel has the collective duty to issue awards not later than 120 days after the final evidence or brief has been received and the parties have been notified that the proceedings have been closed. Failure of the Panel to abide by this provision shall not be grounds for challenge of the Award.

Section 29. **Form**

The Award and the Arbitrator(s)' reasons for same shall be made in writing and signed either by the sole Arbitrator or Umpire or by a majority, if more than one, or by all, if unanimous. A partial or total dissent shall be signed by the dissenter and included with the majority Award.

Section 30. **Scope**

The Panel shall grant any remedy or relief which it deems just and equitable including, but not limited to, specific performance and the posting of security for part or all of a claim or counterclaim in an amount determined by and in a form acceptable to the Panel. The Panel, in its Award, shall assess arbitration expenses and fees as provided in Sections 15, 36 and 37 and shall address the issue of attorneys' fees and costs incurred by the parties. The Panel

is empowered to award reasonable attorneys' fees and expenses or costs incurred by a party or parties in the prosecution or defense of the case.

Together with their reply briefs, counsel should submit an affidavit describing the case activity and accounting for the hours and rates charged. Any attorneys' fees or party costs awarded shall be quantified in the Award.

The Panel shall retain jurisdiction to modify the Award for the sole purpose of correcting obvious clerical and/or arithmetical errors.

Section 31. **Award upon Settlement**

Should the parties settle their dispute during the course of arbitration, the Panel may, upon the request of the parties, set forth the terms of the settlement in an Award.

Section 32. **Delivery of Award to Parties**

The parties accept that legal delivery of the Award may be accomplished:

(a) By mailing of the Award or a true copy thereof to the parties at their last known addresses or that of their counsel; or

(b) By personal service of the Award.

VIII. SPECIAL PROVISIONS

Section 33. **Waiver**

Any party with knowledge that a provision of these Rules has been breached, but who continues with the arbitration without registering an official objection with the Panel shall be deemed to have waived any right to object.

Section 34. **Time Periods**

The parties may modify any period of time by mutual agreement and consent of the Panel. The Panel may extend or shorten any period of time established by the Rules upon a showing of good cause and shall notify the parties accordingly.

Section 35. **Service of Documents**

Wherever parties have agreed to arbitration under these Rules, they shall be deemed to have consented to service of any papers, notices or process necessary to initiate or continue an arbitration under these Rules or a court action to confirm judgment on the Award issued. Such documents may be served:

(a) By mail addressed to such party or counsel at their last known address; or

(b) By personal service.

Counsel for either party may be utilized by the Panel to implement subpoenas or other legal procedures instituted by the Panel. The expenses and fees for such services are to be allocated as the Panel members direct.

IX. EXPENSES AND FEES

Section 36. **Expenses**

The expenses of witnesses shall be paid by the party producing or requiring the production of such witnesses subject to allocation by the Panel.

Expenses incurred at the request of the Panel shall initially be borne equally by the parties subject to final allocation by the Panel. These include required travel and out-of-pocket expenses of the Panel members, the expense of producing witnesses requested by the Panel, including subpoenaed witnesses and the cost of providing any proofs produced at the direct request of the Panel. The Panel may require an advance deposit for any sums it may reasonably have to expend.

The travel and living expenses of a party-appointed Arbitrator located outside the area named in the arbitration agreement shall be borne by the party who appointed such Arbitrator.

Section 37. **Arbitrator(s)' Fees**

Each Panel member shall determine the amount of his/her compensation. When determining the fee, the Arbitrator(s) shall take into account the complexity, urgency and time spent on the matter.

At any time prior to issuance of the Award, the Panel may require that the parties post security for its estimated fees and expenses. Upon such request, each party shall promptly deposit the required amount into a segregated interest-bearing escrow account administered by the SMA (See Appendix C). Alternatively, such deposits may be held in any other escrow account or in any other manner, if agreed to by the Arbitrator(s).

If the dispute is settled during the course of the arbitration, a fee commensurate with work already performed in the arbitration is due to the Arbitrator(s).

Effective as of May 10, 1994; Revised September 1, 2003, September 15, 2010, October 23, 2013, February 10, 2016, March 14, 2018.

APPENDIX A

OATHS

These Oaths may be administered by the Recorder, or in the case of a hearing without recorder, by any one person to another, the affiant raising his right hand when being sworn.

1. Oath to be taken by Arbitrator:

   "Do you solemnly swear that you will faithfully and fairly hear and examine the matter in controversy and make a just Award, according to the best of your understanding?"

2. Oath to be taken by Witness:

   "Do you solemnly swear that the testimony you are about to give shall be the whole truth?"

3. Oath to be taken by Interpreter:

   "Do you solemnly swear that you will faithfully and fairly translate in a verbatim and objective manner from the - - - - - - - - - - - - - language to the - - - - - - - - - - - - - language or vice versa the oral or written communications you will be called upon to interpret?"

SMA ARBITRATION RULES
APPENDIX B

SUBPOENA

In the Matter of Arbitration
between

and

_____

TO: (Name)
(Address)
(City and State)

You are Hereby Summoned to appear at an arbitration proceeding to be held at _____ on the _____ day of _____A.D. 20_____ at _____m. of said day and bring with you

then and there to testify in the above entitled Matter, wherein the disputant parties and their addresses are as follows:

_____ _____
_____ _____
_____ _____
_____ _____

_____
Arbitrator

_____
Arbitrator

_____
Arbitrator and Panel Chair
(NOTE: Only majority need sign.
See §7 of the Federal Arbitration Act)

_____
Attorney for _____

_____
Address

NOTE: Report to Arbitrator(s) in Room No. _____

Appendix C

STANDARD TERMS FOR THE ADMINISTRATION OF FUNDS DEPOSITED IN ESCROW WITH THE SOCIETY OF MARITIME ARBITRATORS, INC. (SMA) AS SECURITY FOR ARBITRATORS' FEES AND EXPENSES

1. The Panel Chair or Sole Arbitrator shall notify the parties/counsel in writing of the exact sum each is to deposit with specific banking instructions. A copy of this letter must simultaneously be sent to the SMA. This notification shall incorporate these SMA Standard Escrow Terms by reference.

2. The amount of security for the Arbitrators' fees shall not necessarily be indicative of the Arbitrators' ultimate fees nor of the allocation of such fees and expenses between or among the parties.

3. The Escrow Agent will maintain an Escrow Management Account with a first class financial institution designated by the Board of Governors and into which all received funds will be deposited. The designated bank will assign each deposit a separate interest-bearing Subsidiary Escrow Account. Any additional or supplementary funds required by the Arbitrators as security for their fees and expenses shall likewise be held in the same Escrow Account.

4. The Escrow Agent shall be responsible for the proper administration of funds in its care.

5. The Escrow Agent will confirm when the designated bank has received the funds.

6. Unless sooner directed to the contrary by a court of competent jurisdiction, the Escrow Agent will disburse funds on deposit not earlier than 30 days from receipt of written instructions from the Chair/Sole Arbitrator as stipulated in an Award, whether final or partial, or Appendix thereto (which must be initialed by each Arbitrator)

7. Concurrent with the payments described above, the Escrow Agent will prepare an "Escrow Distribution Statement" to the parties, counsel and the arbitrators, showing actual sums received, sums disbursed, interest accrued. Any balance due to the depositors will be remitted with this statement and the account closed.

8. In the event the Escrow Agent receives written advice by or

on behalf of the parties that conflicting claims exist to the funds on deposit, the Escrow Agent will have the right to file an interpleader action.

9. Deposit of the security with the Escrow Agent shall be in accordance with these terms.

10. These terms may only be amended by written agreement of the Arbitrators, the parties and/or their counsel.

WESTLAW

Home > Statutes & Court Rules > United States Code Annotated (USCA)

Title 9. Arbitration

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Effective Date: 04/17/2018 Go ☑ Specify Content to Search

Effective date versioning not available for certain content such as court rules and Federal Sentencing Guidelines

☐ Select all content | No items selected | Clear Selection Collapse All

9 U.S.C.A. Ch. 1, Refs & Annos
Currentness

9 U.S.C.A. Ch. 1, Refs & Annos, 9 USCA Ch. 1, Refs & Annos
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 1

§ 1. “Maritime transactions” and “commerce” defined; exceptions to operation of title

Currentness

“Maritime transactions”, as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; “commerce”, as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 670.)

9 U.S.C.A. § 1, 9 USCA § 1
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 2

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

Currentness

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 670.)

9 U.S.C.A. § 2, 9 USCA § 2
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 3

§ 3. Stay of proceedings where issue therein referable to arbitration

Currentness

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 670.)

9 U.S.C.A. § 3, 9 USCA § 3
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 4

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

Currentness

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 671; Sept. 3, 1954, c. 1263, § 19, 68 Stat. 1233.)

9 U.S.C.A. § 4, 9 USCA § 4
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 5

§ 5. Appointment of arbitrators or umpire

Currentness

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 671.)

9 U.S.C.A. § 5, 9 USCA § 5
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 6

§ 6. Application heard as motion

Currentness

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 671.)

9 U.S.C.A. § 6, 9 USCA § 6
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 7

§ 7. Witnesses before arbitrators; fees; compelling attendance

Currentness

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 672; Oct. 31, 1951, c. 655, § 14, 65 Stat. 715.)

9 U.S.C.A. § 7, 9 USCA § 7
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 8

§ 8. Proceedings begun by libel in admiralty and seizure of vessel or property

Currentness

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 672.)

9 U.S.C.A. § 8, 9 USCA § 8
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 9

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure

Currentness

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 672.)

9 U.S.C.A. § 9, 9 USCA § 9
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 10

§ 10. Same; vacation; grounds; rehearing

Effective: May 7, 2002
Currentness

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 672; Pub.L. 101-552, § 5, Nov. 15, 1990, 104 Stat. 2745; Pub.L. 102-354, § 5(b)(4), Aug. 26, 1992, 106 Stat. 946; Pub.L. 107-169, § 1, May 7, 2002, 116 Stat. 132.)

9 U.S.C.A. § 10, 9 USCA § 10
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 11

§ 11. Same; modification or correction; grounds; order

Currentness

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration--

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 673.)

9 U.S.C.A. § 11, 9 USCA § 11
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 12

§ 12. Notice of motions to vacate or modify; service; stay of proceedings

Currentness

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 673.)

9 U.S.C.A. § 12, 9 USCA § 12
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 13

§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement

Currentness

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 673.)

9 U.S.C.A. § 13, 9 USCA § 13
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 14

§ 14. Contracts not affected

Currentness

This title shall not apply to contracts made prior to January 1, 1926.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 674.)

9 U.S.C.A. § 14, 9 USCA § 14
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 15

§ 15. Inapplicability of the Act of State doctrine

Currentness

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

CREDIT(S)

(Added Pub.L. 100-669, § 1, Nov. 16, 1988, 102 Stat. 3969.)

9 U.S.C.A. § 15, 9 USCA § 15
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 16

§ 16. Appeals

Currentness

(a) An appeal may be taken from--

(1) an order--

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order--

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

CREDIT(S)

(Added Pub.L. 100-702, Title X, § 1019(a), Nov. 19, 1988, 102 Stat. 4670, § 15; renumbered § 16, Pub.L. 101-650, Title III, § 325(a)(1), Dec. 1, 1990, 104 Stat. 5120.)

9 U.S.C.A. § 16, 9 USCA § 16
Current through P.L. 115-140.

End of Document

9 U.S.C.A. Ch. 2, Refs & Annos
Currentness

9 U.S.C.A. Ch. 2, Refs & Annos, 9 USCA Ch. 2, Refs & Annos
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Refs & Annos)

9 U.S.C.A. § 201

§ 201. Enforcement of Convention

Currentness

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

CREDIT(S)

(Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S.C.A. § 201, 9 USCA § 201
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Refs & Annos)

9 U.S.C.A. § 202

§ 202. Agreement or award falling under the Convention

Currentness

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

CREDIT(S)

(Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S.C.A. § 202, 9 USCA § 202
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Refs & Annos)

9 U.S.C.A. § 203

§ 203. Jurisdiction; amount in controversy

Currentness

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

CREDIT(S)

(Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S.C.A. § 203, 9 USCA § 203
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Refs & Annos)

9 U.S.C.A. § 204

§ 204. Venue

Currentness

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

CREDIT(S)

(Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S.C.A. § 204, 9 USCA § 204
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Refs & Annos)

9 U.S.C.A. § 205

§ 205. Removal of cases from State courts

Currentness

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

CREDIT(S)

(Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 692.)

9 U.S.C.A. § 205, 9 USCA § 205
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Refs & Annos)

9 U.S.C.A. § 206

§ 206. Order to compel arbitration; appointment of arbitrators

Currentness

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

CREDIT(S)

(Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 693.)

9 U.S.C.A. § 206, 9 USCA § 206
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Refs & Annos)

9 U.S.C.A. § 207

§ 207. Award of arbitrators; confirmation; jurisdiction; proceeding

Currentness

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

CREDIT(S)

(Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 693.)

9 U.S.C.A. § 207, 9 USCA § 207
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Refs & Annos)

9 U.S.C.A. § 208

§ 208. Chapter 1; residual application

Currentness

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States.

CREDIT(S)

(Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 693.)

9 U.S.C.A. § 208, 9 USCA § 208
Current through P.L. 115-140.

End of Document

9 U.S.C.A. Ch. 3, Refs & Annos
Currentness

9 U.S.C.A. Ch. 3, Refs & Annos, 9 USCA Ch. 3, Refs & Annos
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 3. Inter-American Convention on International Commercial Arbitration (Refs & Annos)

9 U.S.C.A. § 301

§ 301. Enforcement of Convention

Currentness

The Inter-American Convention on International Commercial Arbitration of January 30, 1975, shall be enforced in United States courts in accordance with this chapter.

CREDIT(S)

(Added Pub.L. 101-369, § 1, Aug. 15, 1990, 104 Stat. 448.)

9 U.S.C.A. § 301, 9 USCA § 301
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 3. Inter-American Convention on International Commercial Arbitration (Refs & Annos)

9 U.S.C.A. § 302

§ 302. Incorporation by reference

Currentness

Sections 202, 203, 204, 205, and 207 of this title shall apply to this chapter as if specifically set forth herein, except that for the purposes of this chapter "the Convention" shall mean the Inter-American Convention.

CREDIT(S)

(Added Pub.L. 101-369, § 1, Aug. 15, 1990, 104 Stat. 448.)

9 U.S.C.A. § 302, 9 USCA § 302
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 3. Inter-American Convention on International Commercial Arbitration (Refs & Annos)

9 U.S.C.A. § 303

§ 303. Order to compel arbitration; appointment of arbitrators; locale

Currentness

(a) A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. The court may also appoint arbitrators in accordance with the provisions of the agreement.

(b) In the event the agreement does not make provision for the place of arbitration or the appointment of arbitrators, the court shall direct that the arbitration shall be held and the arbitrators be appointed in accordance with Article 3 of the Inter-American Convention.

CREDIT(S)

(Added Pub.L. 101-369, § 1, Aug. 15, 1990, 104 Stat. 448.)

9 U.S.C.A. § 303, 9 USCA § 303
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 3. Inter-American Convention on International Commercial Arbitration (Refs & Annos)

9 U.S.C.A. § 304

§ 304. Recognition and enforcement of foreign arbitral decisions and awards; reciprocity

Currentness

Arbitral decisions or awards made in the territory of a foreign State shall, on the basis of reciprocity, be recognized and enforced under this chapter only if that State has ratified or acceded to the Inter-American Convention.

CREDIT(S)

(Added Pub.L. 101-369, § 1, Aug. 15, 1990, 104 Stat. 449.)

9 U.S.C.A. § 304, 9 USCA § 304
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 3. Inter-American Convention on International Commercial Arbitration (Refs & Annos)

9 U.S.C.A. § 305

§ 305. Relationship between the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958

Currentness

When the requirements for application of both the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, are met, determination as to which Convention applies shall, unless otherwise expressly agreed, be made as follows:

(1) If a majority of the parties to the arbitration agreement are citizens of a State or States that have ratified or acceded to the Inter-American Convention and are member States of the Organization of American States, the Inter-American Convention shall apply.

(2) In all other cases the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall apply.

CREDIT(S)

(Added Pub.L. 101-369, § 1, Aug. 15, 1990, 104 Stat. 449.)

9 U.S.C.A. § 305, 9 USCA § 305
Current through P.L. 115-140.

End of Document

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 3. Inter-American Convention on International Commercial Arbitration (Refs & Annos)

9 U.S.C.A. § 306

§ 306. Applicable rules of Inter-American Commercial Arbitration Commission

Currentness

(a) For the purposes of this chapter the rules of procedure of the Inter-American Commercial Arbitration Commission referred to in Article 3 of the Inter-American Convention shall, subject to subsection (b) of this section, be those rules as promulgated by the Commission on July 1, 1988.

(b) In the event the rules of procedure of the Inter-American Commercial Arbitration Commission are modified or amended in accordance with the procedures for amendment of the rules of that Commission, the Secretary of State, by regulation in accordance with section 553 of title 5, consistent with the aims and purposes of this Convention, may prescribe that such modifications or amendments shall be effective for purposes of this chapter.

CREDIT(S)

(Added Pub.L. 101-369, § 1, Aug. 15, 1990, 104 Stat. 449.)

9 U.S.C.A. § 306, 9 USCA § 306
Current through P.L. 115-140.

End of Document

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Proposed Legislation

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 3. Inter-American Convention on International Commercial Arbitration (Refs & Annos)

9 U.S.C.A. § 307

§ 307. Chapter 1; residual application

Currentness

Chapter 1 applies to actions and proceedings brought under this chapter to the extent chapter 1 is not in conflict with this chapter or the Inter-American Convention as ratified by the United States.

CREDIT(S)

(Added Pub.L. 101-369, § 1, Aug. 15, 1990, 104 Stat. 449.)

9 U.S.C.A. § 307, 9 USCA § 307
Current through P.L. 115-140.

End of Document