Vanderbilt Law Review

Volume 10
Issue 4 *Issue 4 - A Symposium on Arbitration*

Article 13

6-1957

Vacation of Awards for Fraud, Bias, Misconduct and Partiality

Alan H. Rothstein

VACATION OF AWARDS FOR FRAUD, BIAS, MISCONDUCT AND PARTIALITY

ALAN H. ROTHSTEIN*

*Introduction***

The role of the arbitration process in today's society is to supplant the often laborious and time consuming procedures of the courts with a more informal process wherein the parties to a controversy, by agreement, give one or more individuals effective power to render a decision on a particular matter, or on future controversies as they arise. In order that the grant of the power be effective, and that a resulting award be obeyed, the courts will generally enforce a properly made award without examination of the underlying issues or evidence of the controversy developed during the arbitration.

Judicial prescriptions originally and, more recently, legislative prescriptions, have established limitations on the degree of informality with which an arbitration can be carried out. Minimum procedural safeguards have been established which must be followed in order for an arbitration to be valid. However, the parties may still alter these limits under the terms of the agreement, or by waiver while the arbitration is proceeding.

The validity of an arbitration may be attacked at various stages of the proceedings by different methods. After an award is granted by the arbitrators it can be avoided on a number of grounds. This article deals with some of those grounds, namely fraud, bias, misconduct, and partiality.

The emphasis of the article is on recent cases, but where proper to amplify doctrines, older decisions will be referred to and discussed. Mainly, the judicial applications of these grounds will be considered and not the procedural ramifications of vacation of awards. Since the arbitration statutes have mainly codified these particular common-law grounds for vacation, there would be very little, if any, practical benefit to be gained in differentiating the common-law from statutory vacation cases.

---

* Associate, Cypen, Salmon & Cypen, Miami Beach, Florida.

** The theory underlying this paper is that expounded by Professors McDougal and Lasswell of Yale University Law School. It involves a conception of law as a process of decision concerning community activity with the lawyer as a "decision-maker" in all aspects of the development of community policy. The flow of decisions is studied to establish trends in past decisions and to account for the variables which affect decisions. These patterns may be projected into the future and predictions made as to what decisions will be. Thus the "decision-maker" has a basis to clarify community policies with respect to decisions and what future decisions should be.

Matters in Controversy

The matters to be settled in arbitration, of course, will cover the entire range of community conflicts which are before the courts. It should be noted, however, that in cases concerning vacation of awards for fraud, bias, misconduct, and partiality, certain issues at arbitration appear prevelant, which is most likely due to the inclusion of arbitration agreements as part of the original dealings between the parties.

An important problem is the valuation of losses for insurance purposes, usually on damage claims against fire insurance policies (81, 69, 76, 60, 22, 102, 1, 39, 77, 78, 5, 101, 122, 87, 55, 56, 97).[a] These are considered appraisals since liability is not an issue but rather the amount of loss suffered. However, as will appear below, in considering the vacation of such an award, courts often prescribe similar doctrines for appraisals as for arbitrations, except in instances where the courts differentiate between the two on the basis of the appraiser's expertness in his field.

Another large arbitration area is disputes over performances in construction contracts (34, 12, 13, 68, 7, 59, 127, 95, 96, 80, 99, 130, 66, 111, 14, 47, 36, 60, 107, 37), repair contracts (45, 113), sales contracts (85, 83, 125, 31, 118, 82, 73, 75, 42), employment contracts (89, 90, 126, 67), and leases (116, 105, 24, 117, 19, 64, 33, 57).

In the construction and repair contract cases the issues include adjustment for extra items, proper completion and conformance of the construction, and the total amount due the contractor. In the sales contract situation the parties disagree on conformance to specifications, non-delivery of goods, or the valuation of the item involved. Under employment contracts there may be involved the full range of labor issues, such as compensation, hours, and working conditions. As to leases, the main problems are either the revision of rentals or settling the effect of a lease violation or termination.

Parties—Claims—Objectives

The party attacking an award will be the loser of the arbitration, who makes this last effort to reach the objective of preventing the effect or enforcement of the award. This party is the loser either because a verdict or too high an amount was given the other side, or because too low an amount was granted him. The party's objective is to have the award set aside. Occasionally a third person, not a party to the arbitration, has sought the vacation of an award (21).

The court's assistance is involved in a variety of ways to vacate an award on the claim of fraud, bias, misconduct, or partiality. A plea in equity may be made to set the award aside (12, 13, 67, 116, 31). A suit

[a] Each case has been given a symbolic notation and the key to the notations will be found in the case table arranged by jurisdictions at the end of the paper.

on the original cause in controversy can be started and to an answer alleging the award, a reply will be made citing the vacation claim (81 and other insurance cases). If the recipient of a favorable award sues to enforce it, the answer will plead the claim (84, 108, 118, 45, 59, 89). In the case of statutory arbitration proceedings, the loser will move to vacate the award, or defend against a motion to confirm it (85, 6, 66, 19, 99, 34).

In practically all the cases concerning valuation of insurance losses, the insured was contesting the award with such claims as fraud by the insurance adjuster or arbitrators, or misconduct or bias and partiality on the part of the arbitrators, or grossly inadequate valuation of the amount of loss.

After arbitrations involving construction contracts, both parties, the contractor and the person letting the contract, have seen fit to ask for the award to be set aside. The party having to pay the fee for the construction to the contractor, however, seems slightly more anxious to disagree with an award setting the amount than does the contractor. In this area claims are mainly based on procedural violations of the arbitration process rather than on intentional fraud, partiality, or misconduct.

The lease awards have been attacked by the lessees on grounds of grossly improper valuations, while vendees and vendors involved in sales contracts ask for vacation on all the grounds, as have both employers and employees.

Doctrines and Events Thereunder

In establishing the technical legal doctrines which control vacations of awards, the courts have prescribed the limits of proper procedure in the arbitration hearings, and proper behavior on the part of the arbitrators, appraisers, umpires, and parties. Therefore the informality of an arbitration is in reality only relative. Violation of any of these judicially established limits will give grounds for vacation of the award.

Violations of the correct procedures of the arbitration process have been variously treated by the courts doctrinally as legal, technical, or implied fraud, and as misconduct or legal misconduct, but in this article will be considered uniformly under the heading of Procedural Violations.

Improper conduct on the part of the parties or the arbitrators is held by the courts to be either fraud or misconduct. Fraud according to the courts tends to involve intentional, deliberate, and corrupt violations of a fair arbitration. On the other hand, misconduct is usually unintentional improper activities which prejudice the complaining party.

Awards are set aside if the arbitrators by their actions, or through their relationships with one of the parties, favored, or might have favored, that party. The effect of the doctrines of bias and partiality is to disqualify certain persons as arbitrators as a matter of law, or to disqualify them because of whom they are in the light of the circumstances of a particular arbitration. These doctrines will be treated together although in an opinion only one, or both together, may be stated as the doctrine on which the decision is based.

While courts state that they will not examine the issues or evidence of the arbitration hearing, this will actually be done if the complaining party alleges that the award is so grossly mistaken or inadequate or excessive as to imply the various vacation grounds. A limitation appears to be that from the allegations the so-called mistake has to be fairly obvious, completely unreasonable.

The party trying to void an award is faced with several doctrinal stumbling blocks. An award is to be favorably and liberally construed, and not to be set aside unless it is founded on grounds clearly illegal (105, 116). There is a presumption in favor of an award (105, 21, 120), and the burden of proof is on the party attacking an award (31, 59, 120).

The most significant obstacle to vacation of an award is the doctrine of waiver. The courts hold that bias or partiality on the part of an arbitrator can be waived (105, 116) as can misconduct (94) and procedural violations of an arbitration (113). Ratification of an award will be considered a waiver of any fraud (74).

1. *Fraud.*

Fraud or corruption on the part of the arbitrators or the parties is ground for vacation of an award (101, 21). The courts will not inquire if the conduct did actual harm if it had the tendency to improperly affect the decision of the arbitrators, and the same influence or misconduct that would avoid the verdict of a jury will avoid an award (101). Fraudulent claims, however, will not invalidate an award, for the arbitration hearing is the proper place for contesting them (21).

There is a confiict among the jurisdictions as to whether an award may be set aside for intrinsic fraud, such as perjury, or whether the fraud must be extrinsic or collateral to the proceedings and of such a nature that it prevented the loser from having a real contest on his full case (127). The states which would allow solely extrinsic fraud to invalidate an award are Georgia (21), New York (84), and Vermont (109). The states in which any fraud would be grounds for vacations are Alabama (3), Florida (20), New Hampshire (79), Oregon (97), Connecticut (17), and North Carolina (88).

Ratification of an award with knowledge that fraud had been practiced constitutes a waiver of the fraud (74).

Events. The following circumstances have been ruled by the courts to involve sufficient acts of fraud to justify the vacation of an award:

(a) The action of an insurance adjuster who, after telling the insured to leave the deliberations of the appraisers since he the adjuster, would not interfere with them, then tried to influence the decision. A jury verdict for punitive damages was upheld (101).

(b) The method by which an insolvent party induced the other party to submit to arbitration, which was to misrepresent having a solvent partner who could pay any award (30).

(c) When contrary to an agreement, one party and his attorney were present at the arbitrator's deliberation, it was held that a question of fraud arose to go to the jury (106).

(d) The bribery of one of the arbitrators (71).

(e) When a feebleminded person was persuaded and over-reached into an arbitration (65).

(f) The rendering of an award by one arbitrator and the umpire without the other arbitrator present, in violation of an agreement for all three to meet to make the necessary decisions (45).

(g) A conspiracy by a widow and the opposing side's arbitrator, who were later married, to give the proceeds of a large estate to the widow (4).

No fraud was established by the following circumstances:

(a) The sending of a letter by a party to the arbitrator without sending a copy to the other party as was agreed, when the letter merely reiterated the party's prior position on the issues (42).

(b) General correspondence between the arbitrator and a party (14).

(c) Threats made by a party to the other side's arbitrator against an unfavorable decision when there was no attempt to influence the other two arbitrators who signed the award (53).

(d) When an adjuster obtained the insured's signature to a submission agreement by saying it was a matter of form and not binding, even though it appeared that the insured could read and was not prevented from reading the clear submission agreement (22).

2. *Misconduct.*

Misconduct or misbehavior on the part of the arbitrators is ground for vacation of an award (67, 19). It may, however, be waived by the parties (94, 63, 62, 82). Some courts will not set aside an award unless the misconduct influenced the judgment of the arbitrators or was harmful to the complaining party (6) and most statutes provide that the misbehavior be prejudicial.

Independent examinations by the arbitrators, or discussion of the matters with third persons, or with the parties is considered misconduct which may vitiate an award (80, 83, 18). The doctrine is that the arbitrators cannot delegate powers of decision to others since the parties chose them for their particular abilities and judgment (12). If the investigation is not prejudicial it may not be held to be misconduct (85, 130).

If an arbitrator decides an issue without any evidence being presented on the issue, this is grounds for setting the award on this point aside (34); however, where the arbitrator is in the trade and chosen for his peculiar knowledge, the award will be upheld on the theory that an arbitrator of the trade is chosen purposely because he is familiar with the practices, customs, terms, merchantable quality, and current market prices (125).

The Rhode Island Supreme Court ruled that under its arbitration statute a mistake of law is not "other misbehavior" under Rhode Island General Laws Annotated, Chapter 475, section 10(c) (99).

An exclusion by two of the arbitrators of the third from hearings or deliberations is misbehavior since all the arbitrators must be present at the hearings to consider the evidence and then be present to participate in discussing and making the award (28, 19, 45).

If the award itself is given by the arbitrators to someone else to draft, it is not misconduct if it is done as they directed, since it is similar to common court procedure to have one of the parties draft the order (117).

If a prior award is vacated for misconduct and the parties agree to use the same arbitrators, this is a waiver of all the misconduct claims of the original award (8).

It is misconduct for one of the arbitrators to accept the hospitality of one of the parties while engaged in the arbitration (29) but this may depend on actual attempts to influence the arbitrator in the process (32).

Events. The following activities have been treated by the courts as misconduct:

(a) A visit by one arbitrator alone to a construction site in violation of the submission agreement along with the obtaining of additional information from one of the parties on the equipment used, which information influenced the award (80).

(b) Where submission agreement did not permit independent investigations, yet the arbitrators used on their own an engineer's report (127).

(c) An *ex parte* submission of a memorandum of authorities to the arbitrator after the hearing had been closed (54).

(d) The rendering of an award by one arbitrator alone, without consultation with the other arbitrators (67).

(e) The conduct of an arbitrator in agreeing to allow a party to give certain evidence, then not telling the other arbitrator about it so that the award was made without the evidence (108).

(f) An arbitrator's independent investigation into the marketability of an item by offering samples for sale (83).

(g) The action of an arbitrator in hearing *ex parte* about a material map after the evidence was closed (35).

(h) While engaged in the arbitration one of the arbitrators remained at a party's home several nights and another arbitrator dined at the same party's expense.

(i) When the arbitrators excluded both parties from the hearing, and then took evidence from a secret partner of one of the parties (112).

(j) The intoxication of one of the three arbitrators during the hearings (28).

These events were not considered misconduct:

(a) When there was no attempt to influence the arbitrator though he and his wife stayed at a party's house (32).

(b) The submission of account books by the arbitrator to a party for an explanation of differences in the balances when the explanation was given in the presence of the other party and it was not adopted (26).

(c) The actions of an arbitrator in bargaining for employment with a party after the award was rendered (82).

(d) When the arbitrators outside inquiries resulted favorably to the complaining party (4).

(e) When the only benefit of independent investigations after the close of the hearing could have been to the complaining party (85).

(f) Under the submission agreement allowing independent investigation, the arbitrators obtained an independent survey (13).

(g) One of the arbitrators was missing from only one meeting (117, 131).

(h) Architects who were acting as experts consulted with a trained appraiser (7).

3. *Procedural Violations.*

The courts prescribe the minimum procedural safeguards which must be followed in an arbitration to prevent the award rendered being set aside. The procedural violation is usually considered under the doctrine of misconduct (19, 78) although it has been termed implied fraud (5) or legal misconduct (81) or constructive fraud (66).

There are grounds for vacation when the complaining party has been given no hearing (19, 96, 115, 5), or when there is an *ex parte* hearing (43, 97, 54), or if the arbitrator refuses to hear material evidence (78, 81, 124), or refuses to continue a hearing to enable further material testimony (8).

For a refusal to hear evidence to be misconduct, a definite offer to prove specific material facts must be made at the hearing (70) and, similarly, to obtain a continuance (8, 41, 6). The arbitrators need make no finding of the facts on which their award is based (15). Denial of an attorney to a party is not in itself grounds for vacation (2) nor is a refusal to hear the counsel of a party (75).

All procedural violations may be waived by the parties (113, 9, 73, 7).

Events. The procedural violations of an arbitration before the courts are usually similar in effect in that the complaining party alleges that in some manner his side of the issues was not given a fair hearing. The cases discussed below are those whose fact circumstances are not as clear cut as an obvious no hearing situation.

The award was vacated when the arbitrators of a state construction contract, based their award solely on an expert's soil conditions report which the complainant contractor was not permitted to see or refute (36, 3). Similarly, allegations that an uncontested expert appraiser's valuation was the basis of an award were upheld as making out a prima facie case of misbehavior (19). When two appraisers decided an award on the loss on a fire insurance policy without notice to the insured or the umpire, the award was set aside (5).

The refusal of appraisers to let the insured present witnesses to give evidence on the value of and damage to a completely burned night club, although snow conditions prevented a proper viewing of the damage, was ruled misconduct voiding the award (78). It was improper procedure for a settlement committee in admirality to refuse to view the documents pertaining to the value of a claim (124).

The procedure of two arbitrators in a construction contract conflict, who considered the evidence individually, reached tentative conclusions, then discussed them, further deciding tentatively, and reached a final award by then discussing the evidence with the third arbitrator, was upheld (66).

A waiver ruling prevented awards from being set aside when both parties of a ship repair arbitration acquiesced in the arbitrators making informal, separate investigations of the claims of both sides (113), and when the parties to a conformance of building completion arbitration attended informal hearings (7).

4. *Bias and Partiality.*

The courts declare that a party is entitled to a fair and impartial hearing without any favor to either side (11). An arbitrator or appraiser must not be interested or biased, and though in a case the evidence may not show conscious or actual bias, prejudice, influence, or fraud, yet public policy and an unconscious predilection to favor one's interest renders an arbitrator, directly or indirectly interested in the result of an arbitration, partial, incompetent, and unqualified (69). Such an interest or bias must be definite and capable of demonstration and not remote, uncertain, or speculative (24).

Where arbitrators of each side act in a partisan manner, or take a positive stand, or participate by presenting the case of one side, the courts will not allow a party to complain of this behavior later (1, 68). The bias of an arbitrator in favor of the complaining party will not void an award (47).

An arbitrator may be disqualified because of a business (76) or family (44) relationship. The fact that an arbitrator had acted in that capacity on prior occasions for a party does not automatically disqualify him (24, 39).

An arbitrator with prior information or a prior opinion on the issue may be disqualified (4, 100) but some courts will not set the award aside if at arbitration he had an open mind (4, 57, 46) or if the opinion was based on honest facts (52). The mere indebtedness of an arbitrator to a party will not cause an award to be set aside if the debt is not insecure, or dependent on the result of the award (37, 51).

There is a waiver of an arbitrator's disqualification if the complaining party had knowledge and notice of it and continued with the arbitration (68, 105, 116, 31). Further, the parties may agree to submit to a partisan arbitrator (68, 116).

Events. The courts have vacated awards in the following circumstances:

(a) When the arbitrator had a relationship with a party such as a brother (33), brother-in-law (104), first cousin of his wife (44), attorney for some of the parties (124), partner (98), sponsored politically by the party (87), or close business relationship (126).

(b) When in insurance arbitrations the arbitrator was under the adjuster's control (102), or was an indirect agent for the insurance company (76), or was a paid insurance adjuster (69).

(c) When an arbitrator misconceived his duty and believed himself a representative of his party (11, 36).

(d) The assignment of the award by a party to the arbitrator (110).

(e) Allegations that an arbitrator misstated the evidence in a party's

favor was a good cause of action for vacation (72).

(f) The failure of an arbitrator to disclose that he was president of a corporation which fourteen months previously had received a large award in arbitration from a board of arbitrators among whom was the president of one of the parties (86).

In the following events the awards were upheld:

(a) Certain relationships did not disqualify the arbitrators such as, a former attorney of a party (49, 50, 1, 129), an attorney in another matter (10), a party's landlord (16), persons formerly engaged in litigation against the complaining party (24, 48), when the arbitrator's nephew was married to a party's sister (107), or a party's employee who was administering a trust fund (90).

5. *Manifest Injustice.*

There is a clear cut doctrine that once an award is made by the arbitrators, the courts will not examine the issue or the evidence that was presented (15, 63, 58). To mitigate the severity of this rule, a doctrine has evolved which enables a court to examine the issues and evidence on which the award is based on the policy of preventing manifest injustice but on the legal theory of implied fraud, partiality or misconduct.

In valuation cases mere inadequacy or excessiveness of the award is not sufficient ground for setting it aside, but in particular cases it may be so grossly inadequate or excessive as to evidence or to establish or imply or infer partiality, corruption, fraud, or misconduct on the part of the appraisers (60, 24, 87, 55, 64). If an appraiser, without knowledge, basis of fact, or information on the subject sets a valuation, or does so on a mistake of law, and in doing so acts arbitrarily and to the harm of a party, this is misconduct on which the award will be set aside (77).

The manifest injustice of an award gives grounds for vacation if it is so at variance with any legitimate conclusion which could be drawn from the facts and evidence as to imply bad faith, fraud, or a failure to exercise judgment on the part of the arbitrators (59, 63, 64). It has been suggested that this terminology is unfortunate and that a more realistic doctrine would be along the lines of "fundamental error" rather than upon fraud (61). As a limitation on this rule the courts will uphold the award if there is any reasonable basis for it in the evidence before the arbitrator.

A gross mistake of law or of fact constituting evidence of misconduct amounting to fraud or undue partiality is a similar doctrine used to impeach an award, provided there is clear evidence supporting the grounds of impeachment (38, 40). Another doctrine is that a palpable

mistake or substantial error in an award which would work injustice or a fraud on either party would vitiate the award (122, 56, 123, 96, 87, 119).

A detailed examination of the events of manifest injustice which have been before the courts will not be considered here since it is without the purview of this article.

Trend of Decisions

Through the decisions on vacation of awards, there appear to run two conflicting general attitudes. The first is that there shall be strict enforcement of whatever the court considers the proper arbitration limits, both as to procedure and as to the conduct of the participants. As a result, at any suggestion that these boundaries have been overstepped, the award is vacated on one of the grounds, either fraud, bias, misconduct or partiality.

There also exists a more liberal approach which, although the courts remain displeased with improper activities, looks for actual prejudice resulting from the irregularities. These courts examine the entire context of the arbitration to see if the position of the complaining party actually was damaged, or if the arbitrator's judgment was influenced in any harmful manner. This attitude is usually applied where the irregularity took place without a positive intent to gain advantage for one side. The use of doctrines along these lines seems to be growing more prevalent, and its effect is to make it increasingly difficult to set awards aside unless the factual basis of a vacation ground is quite clear cut.

A further protection of the validity of awards is the readiness with which the courts apply the doctrine of waiver. Waiver will be found to any of the grounds for vacation upon the complaining party having continued in the arbitration with knowledge of the irregularity of procedure or conduct.

It is quite apparent from the cases that a party dissatisfied with an award usually uses the buckshot approach in his allegations, including this area, in an attempt to overthrow it. The success of this strategy has been at the most mixed, and in some instances has met with judicial disfavor.

In fire insurance cases the courts tend to rule in favor of the insured, especially where the complained of activity is by insurance adjusters or appraisers who do a great deal of work for insurance companies. Although this in itself will not disqualify the appraiser, any departure from normal procedures is looked upon with suspicion. On the other hand, if the appraisers are independent, well reputed businessmen, a court is less likely to set the award aside.

In the more recent cases the pattern of attack on awards is mainly for procedural violations and for independent investigations by the arbitrators. Partiality of an arbitrator was the second most significant claim for vacation.

While the doctrine that the arbitrators must be impartial and without favor is still recited by the courts, in fact, the cases show a different situation in surprising numbers. Very often each party has chosen an arbitrator who will represent his side in attempting to reach the award. In some instances this representation has gone so far as to have the arbitrator conduct his party's case and cross-examine the witnesses of the other side. In this situation the key position is held by the third arbitrator or umpire, presumably impartial. The courts rule that, in spite of the partiality doctrine, awards in these circumstances will be upheld due to both parties submitting to this type of procedure. Even in much less extreme cases courts recognize that some partiality is bound to exist since a party is likely to choose as his arbitrator someone whom he found to be capable in some past relationship.

Recommendations To Arbitration Participants

The submission agreement or future-disputes provision of a commercial contract should be drafted clearly and in contemplation of the arbitration procedure the parties desire since, within limits, it will be controlling as to the conduct of the arbitrators and the parties.

The arbitrators should disclose any former business or personal relationships with the parties before beginning the arbitration or appraisal. The subject matter at issue should not be considered before the start of the arbitration. The parties should be given hearings and no independent investigations should be made by the arbitrators unless it is otherwise provided in the arbitration agreement. The arbitrators should act impartially, listen to and consider all of the evidence offered, and decide together on the award after due deliberation. All expert opinions and technical reports should be treated as evidence and the parties given the opportunity to consider and controvert them. The arbitrators should remain aloof from the parties during the arbitration.

A party should refrain from attempting to infiuence an arbitrator's decision outside the hearings even in the most above-board manner and with the most honest intent. If a party meets with an arbitrator *ex parte,* this may give grounds for vacation or be a waiver of the rights to a formal hearing. If during the arbitration proceedings a party feels that one of the grounds for vacation has occurred, steps should be taken to protect his rights, for they may be waived by continuing with the hearing.

Conclusions

The value the courts put on a fair arbitration conflicts with the goal of ending litigation through informal, rapid arbitration. The main court concern with arbitration is in the method by which an award was reached, and not how the issues were decided. Nevertheless, an extremely unfair response on the merits will be rejected by the courts by the use of improper method doctrines.

There is an interchange of the doctrines of fraud, misconduct, bias, and partiality so that in similar fact situations, decisions may recite one or more different doctrines as controlling. Where the arbitrators are obviously impartial but have committed improprieties in the proceedings, the courts will try to prevent besmirching or tainting their reputations by prefacing with "legal" or "technical" the finding of misconduct or fraud.

The likelihood of an improper arbitration through lack of knowledge of the correct procedures are lessoned by the increased use of Trade Associations' Arbitration Boards and of independent arbitration associations. In areas without such associations perhaps judicially appointed arbitration panels could provide trained personnel to explain and carry out a fair and valid arbitration. In any event, it should be a positive goal that the parties be encouraged to submit to arbitration and the arbitrators they choose, should receive information as to the proper procedures to be followed in arbitration.

Alabama

1. Glens Falls Ins. Co. v. Garner, 229 Ala. 39, 155 So. 533 (1934).
2. Gardner v. Newman, 135 Ala. 522, 33 So. 179 (1902).
3. Chambers v. Crook, 42 Ala. 171 (1868).

Arizona

None

Arkansas

4. National Fire Ins. Co. v. O'Bryan, 75 Ark. 198, 87 S.W. 129 (1905).

California

5. Stockwell v. Equitable Fire and Marine Ins. Co., 134 Cal. App. 534, 25 P.2d 873 (1933).
6. Pacific Vegetable Oil Corp. v. C.S.T., Ltd., 29 Cal. 2d 228, 174 P.2d 441 (1946).
7. Sapp v. Barenfeld, 34 Cal. 2d 515, 212 P.2d 233 (1949).
8. *In re* Moore, 51 Cal. App. 2d 386, 124 P.2d 900 (1942).
9. See number 7 *supra.*
10. Riccomini v. Pierucci, 54 Cal. App. 531, 202 Pac. 344 (1921).

Colorado

11. Noffsinger v. Thompson, 98 Colo. 154, 54 P.2d 683 (1936).
12. Twin Lakes Resevoir and Canal Co. v. Platt Rogers, Inc., 105 Colo. 49, 94 P.2d 1090 (1939).
13. Twin Lakes Resevoir and Canal Co. v. Platt Rogers, Inc., 112 Colo. 155, 147 P.2d 828 (1944).

Connecticut

14. Whitney Co. v. Church, 91 Conn. 684, 101 Atl. 329 (1917).
15. *In re* Curtis, 64 Conn. 501, 30 Atl. 769 (1894).
16. Fisher v. Towner, 14 Conn. 26 (1840).
17. Bulkley v. Starr, 2 Day 552 (Conn. 1807).

Delaware

18. Jessup and Moore Paper Co. v. A.S. Reed & Bro. Co., 10 Del. Ch. 146, 87 Atl. 1011 (1913).

Florida

19. Cassara v. Wofford, 55 So. 2d 102 (Fla. 1951).
20. Johnson v. Wells, 72 Fla. 290, 73 So. 188 (1916).

Georgia

21. Barnes v. Avery, 192 Ga. 874, 16 S.E.2d 861 (1941).
22. Johns v. Security Ins. Co., 49 Ga. App., 174 S.E. 215, 125 (1934).
23. Lipford v. Stephens, 30 Ga. App. 146, 117 S.E. 259 (1923).

Idaho

None

Illinois

24. Giddens v. Board of Educ., 398 Ill. 157, 75 N.E.2d 286 (1947).
25. Stone v. Baldwin, 226 Ill. 338, 80 N.E. 890 (1907).
26. Seaton v. Kendall, 171 Ill. 410, 49 N.E. 561 (1898).
27. Woods v. Roberts, 185 Ill. 489, 57 N.E. 426 (1900).

Indiana

28. Smith v. Smith, 28 Ill. 56 (1862).
29. Robinson v. Shanks, 118 Ind. 125, 20 N.E. 713 (1889).
30. Rice v. Loomis, 28 Ind. 339 (1867).

Iowa

31. First Nat'l Bank v. Clay, 231 Iowa 703, 2 N.W.2d 85 (1942).
32. Ames Canning Co. v. Dexter Seed Co., 195 Iowa 1285, 190 N.W. 167 (1922).
33. Pool v. Hennessy, 39 Iowa 192 (1874).

Kansas

34. Gillioz v. City of Emporia, 149 Kan. 539, 88 P.2d 1014 (1939).
35. Whitehair v. Kansas Flour Mills Corp., 127 Kan. 877, 275 Pac. 190 (1929).
36. Lantry Contracting Co. v. Atchison, T. & S. F. Ry., 102 Kan. 799, 172 Pac. 527 (1918).
37. Anderson v. Burchett, 48 Kan. 153, 29 Pac. 315 (1892).

Kentucky

38. Smith v. Hillerick and Bradsby, 253 S.W.2d 629 (Ky. 1952).
39. Upington v. Commonwealth Ins. Co., 298 Ky. 210, 182 S.W.2d 648 (1944).
40. Reager's Adm'x. v. Pennsylvania Co., 184 S.W. 395 (Ky. 1916).
41. Thompson v. Edwards, 220 Ky. 239, 294 S.W. 1095 (1927).
42. Campbell v. Walker, 32 Ky. L. Rep. 327, 105 S.W. 959 (1907).
43. Thornton v. Thornton, 154 Ky. 692, 159 S.W. 532 (1913).
44. Wylie v. Thorton, 20 Ky. L. Rep. 1942, 50 S.W. 550 (1899).

Louisiana

45. S.J. Stewart v. Mansura Cotton Oil Mill, Inc., 148 So. 496 (La. App. 1933).

Maine

46. Graves v. Fisher, 5 Me. 69 (1827).

Maryland

47. Dominion Marble Co. v. Morrow, 130 Md. 255, 100 Atl. 292 (1917).

Massachusetts

48. Thomajanian v. Odabashian, 272 Mass. 19, 172 N.E. 232 (1930).
49. Goodrich v. Hulbert, 123 Mass. 190 (1877).
50. Cheney v. Martin, 127 Mass. 304 (1879).
51. Wallis v. Carpenter, 95 Mass. (13 Allen) 19 (1866).
52. Morville v. American Tract Society, 123 Mass. 129 (1877).

Michigan

53. Bolhuis Lumber and Mfg. Co. v. Brower, 252 Mich. 562, 233 N.W. 415 (1930).
54. Hewitt v. Village of Reed City, 124 Mich. 6, 82 N.W. 616 (1900).
55. Michels v. Western Underwriter's Ass'n, 129 Mich. 417, 89 N.W. 56 (1902).

56. Howe v. Patron's Mut. Fire Ins. Co., 216 Mich. 560, 185 N.W. 864 (1921).
57. Brush v. Fisher, 70 Mich. 469, 38 N.W. 446 (1888).
58. Chicago & M.L.S. R.R. v. Hughes, 28 Mich. 186 (1873).

Minnesota
59. Park Constr. Co. v. Independent School Dist. No. 32, 216 Minn. 27, 11 N.W.2d 649 (1943).
60. Mork v. Eureka-Security Fire and Marine Ins. Co., 42 N.W.2d 33 (Minn. 1950).
61. Kaufman Jewelry Co. v. Insurance Co., 172 Minn. 314, 215 N.W. 65 (1927).
62. Lampert Bros. Lumber Co. v. Jake Lampert Yards Inc., 176 Minn. 622, 224 N.W. 248 (1929).
63. Larson v. Nygaard, 148 Minn. 104, 180 N.W. 1002 (1921).
64. Goddard v. King, 40 Minn. 164, 41 N.W. 659 (1889).

Mississippi
65. Elledge v. Polk, 48 So. 241 (Miss. 1909).

Missouri
66. Higgins-Wall-Dyer Co. v. City of St. Louis, 331 Mo. 454, 53 S.W.2d 864 (1932).
67. Continental Bank Supply Co. v. International Brotherhood, 239 Mo. App. 1247, 201 S.W.2d 531 (1947).
68. Pope Constr. Co. v. State Highway Comm'n, 230 Mo. App. 502, 92 S.W.2d 974 (1936).
69. Orr v. Farmers Mut. Hail Ins. Co., 356 Mo. 372, 201 S.W.2d 952 (1947).
70. Dickens v. Luke, 2 S.W.2d 161 (Mo. 1928).
71. Holt v. Williams, 212 Mo. App. 470, 240 S.W. 864 (1922).
72. Gipson v. Owens, 286 Mo. 33, 226 S.W. 856 (1920).
73. Fernandes Grain Co. v. Hunter, 217 Mo. App. 187, 274 S.W. 901 (1925).
74. Stone v. Johnston, 167 Mo. App. 456, 151 S.W. 987 (1912).
75. Penn Iron Works Co. v. East St. Louis Ice & Cold Storage Co., 96 Mo. App. 563, 70 S.W. 903 (1902).
76. Schwartzman v. London & Lancashire Fire Ins. Co., 318 Mo. 1089, 2 S.W.2d 593 (1927).

Montana
77. McIntosh v. Hartford Fire Ins. Co., 106 Mont. 434, 78 P.2d 82 (1938).

Nebraska
None

Nevada
78. Agricultural Ins. Co. of Watertown v. Blitz, 57 Nev. 370, 64 P.2d 1042 (1937).

New Hampshire
79. Craft v. Thompson, 51 N.H. 536 (1872).

New Jersey
80. Fred J. Brotherton, Inc. v. Kreielsheimer, 8 N.J. 66, 83 A.2d 707 (1951).

New Mexico
None

New York
81. Gervant v. New England Fire Ins. Co., 306 N.Y. 393, 118 N.E.2d 574 (1954).
82. Robins Silk Mfg. Co. v. Consolidated Piece Dye Works, 251 N.Y. 87, 167 N.E. 181 (1929).
83. Stefano Berizzi Co. v. Krausz, 239 N.Y. 315, 146 N.E. 436 (1925).
84. Jacobowitz v. Metselaar, 268 N.Y. 130, 197 N.E. 169 (1935).
85. E. Gerli & Co. v. Oscar Heineman Corp., 258 N.Y. 484, 180 N.E. 243 (1932).
86. Shirley Silk Co. v. American Silk Mills, Inc. 260 App. Div. 572, 23 N.Y.S.2d 254 (1st Dep't 1940).

North Carolina
87. Perry v. Greenwich, Inc., 137 N.C. 204, 49 S.E. 889 (1905).

88. Eaton v. Eaton, 43 N.C. 102 (1851).

North Dakota

None

Ohio

89. Polk v. Cleveland Ry., 20 Ohio App. 317, 151 N.E. 808 (1925).

Oklahoma

None

Oregon

90. Rueda v. Union Pac. R.R., 180 Ore. 133, 175 P.2d 778 (1946).
91. Jacob v. Pacific Export Lumber Co., 136 Ore. 622, 297 Pac. 848 (1931).
92. Oregon-Washington Ry. & Nav. Co. v. Spokane P. & S. Ry., 83 Ore. 528, 163 Pac. 989 (1917).
93. Fire Ass'n of Philadelphia v. Allesina, 49 Ore. 316, 89 Pac. 960 (1907).

Pennsylvania

94. Rosenbaum v. Drucker, 346 Pa. 434, 31 A.2d 117 (1943).
95. Seaboard Surety Co. v. Commonwealth, 345 Pa. 147, 27 A.2d 27 (1942).
96. Seaboard Surety Co. v. Commonwealth, 350 Pa. 87, 38 A.2d 58 (1944).
97. Curran v. City of Philadelphia, 264 Pa. 111, 107 Atl. 636 (1919).
98. Connor v. Simpson, 7 Atl. 161 (Pa. 1886).

Rhode Island

99. Loretta Realty Corp. v. Mass. Bond & Ins. Co., 114 A.2d 846 (R.I. 1955).
100. Bowen v. Steere, 6 R.I. 251 (1859).

South Carolina

101. Smith v. Home Ins. Co., 175 S.C. 436, 183 S.E. 166 (1936).
102. Fass v. Liverpool, London & Globe Fire Ins. Co., 105 S.C. 364 89 S.E. 1040 (1916).

South Dakota

103. None

Tennessee

104. Stephenson v. Oatman, 71 Tenn. 462 (1879).

Texas

105. Johnson v. Korn, 117 S.W.2d 514 (Tex. Civ. App. 1938).
106. Anderson Bros. v. Parker Constr. Co., 222 S.W. 677 (Tex. Civ. App. 1920).
107. Bell v. Campbell, 143 S.W. 953 (Tex. Civ. App. 1912).

Utah

108. Giannopulos v. Pappas, 80 Utah 442, 15 P.2d 353 (1932).

Vermont

109. French v. Raymond, 82 Vt. 156, 72 Atl. 324 (1909).
110. Woodworth v. McGovern, 52 Vt. 318 (1880).

Virginia

111. Adams v. Tri-City Amusement Co., 124 Va. 473, 98 S.E. 647 (1919).
112. Shipman v. Fletcher, 82 Va. 601 (1886).

Washington

113. Puget Sound Bridge and Dredging Co. v. Lake Washington Shipyards, 1 Wash. 2d 401, 96 P.2d 257 (1939).
114. Hatch v. Cole, 128 Wash. 107, 222 Pac. 463 (1924).
115. McDonald v. Lewis, 18 Wash. 300, 51 Pac. 387 (1897).

West Virginia

116. Hughes v. National Fuel Co., 121 W. Va. 392, 3 S.E.2d 621 (1939).
117. Boomer Coal & Coke Co. v. Osenton, 101 W. Va. 683, 133 S.E. 381 (1926).
118. Brodhead-Garrett Co. v. Davis Lumber Co., 97 W. Va. 165, 124 S.E. 600 (1924).
119. Raleigh Coal & Coke Co. v. Man Kin, 83 W. Va. 54, 97 S.E. 299 (1918).
120. Eureka Pipe Line Co. v. Simms, 62 W. Va. 628, 59 S.E. 618 (1907).

121. Billmyer v. Hanburg-Bremen Fire Ins. Co., 57 W. Va. 42, 49 S.E. 901 (1905).
122. Providence Washington Ins. Co. v. Board of Educ., 49 W. Va. 360, 38 S.E. 679 (1901).

Wisconsin
None

Wyoming
123. Waisner v. Waisner, 15 Wyo. 420, 89 Pac. 580 (1907).

Federal
124. Hyman v. Pottberg's Ex'rs, 101 F.2d 262 (2d Cir. 1939).
125. American Almond Products Co. v. Consolidated Pecan Sales Co., 144 F.2d 448 (2d Cir. 1944).
126. American Guaranty Co. v. Caldwell, 72 F.2d 209 (9th Cir. 1934).
127. Texas Development Co. v. McGough Bros., 165 F.2d 276 (5th Cir. 1947).
128. Karppinen Kiefer Machine Co., 187 F.2d 32 (2d Cir. 1950).
129. Dulien Steel Products, Inc., v. M/S The Ogeka, 147 F. Supp. 167 (W. D. Wash. 1956).

Addendum
130. Griffith Co. v. San Diego College for Women, 45 Cal. 2d 501, 289 P.2d 476 (1955).
131. Cecil v. Bank of America Nat'l Trust & Sav. Ass'n 297 P.2d 810 (Cal. App. 1956).