APPENDIX A-(2)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-1128

Rosalind D. Harris, on behalf of Bettie

Plaintiff - Appellant

v.

AT&T

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:24-cv-01252-NCC)

JUDGMENT

Before SHEPHERD, KELLY, and KOBES, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

May 12, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

APPENDIX A-C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-1128

Rosalind D. Harris, on behalf of Bettie

Appellant

v.

AT&T

Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:24-cv-01252-NCC)

ORDER

The petition for rehearing by the panel is denied.

June 24, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-1128

Rosalind D. Harris, on behalf of Bettie

Appellant

v.

AT&T

Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:24-cv-01252-NCC)

ORDER

The $605 appellate filing and docketing fee has not been paid and is due. Appellant is directed to either pay the fee in the district court or file a motion for leave to proceed in forma pauperis in the district court within 21 days of the date of this order. If appellant does not pay the fee or move for IFP status by February 14, 2025, an order will be entered directing the appellant to show cause why this appeal should not be dismissed for failure to prosecute.

January 24, 2025

Order Entered Under Rule 27A(a):
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

APPENDIX B-(1)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROSALIND D. HARRIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:24-CV-01252-NCC
	)	
AT&T, INC.,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

This matter is before the Court for the purpose of case management. Self-represented Plaintiff Rosalind D. Harris filed this action against Defendant AT&T, Inc. on September 12, 2024 (Doc. 1). In her notices of process server, Plaintiff purported to use the United States Postal Service to serve Defendant (Docs. 10, 12). On November 8, 2024, the Court ordered Plaintiff to properly serve Defendant by December 11, 2024, in accordance with Federal Rule of Civil Procedure 4(m) (Doc. 11). The Court warned that, absent good cause shown, the failure to timely serve Defendant would result in dismissal of Plaintiff's claims without prejudice (*id.* at 3). The Court noted that a related action filed by Plaintiff, 4:22-CV-1246-NCC, had been dismissed for failure to effectuate service (*id.*).

Plaintiff failed to timely serve Defendant in this action and has not shown good cause for the failure.

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED, without prejudice** pursuant to Federal Rule of Civil Procedure 4(m).

Dated this 16th day of December, 2024.

John A. Ross

JOHN A. ROSS
UNITED STATES DISTRICT JUDGE

APPENDIX B-(2)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROSALIND D. HARRIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:24-CV-01252-NCC
	)	
AT&T, INC.,	)	
	)	
Defendant.	)	

ORDER

This matter comes before the Court on self-represented Plaintiff Rosalind D. Harris' Notice of Intent to Use Process Server (Doc. 10). Plaintiff states that she intends to use the United States Postal Service Registered or Certified Mail to serve Defendant. That is not a valid method of service.

While Plaintiff is self-represented, "'[e]ven pro se litigants must comply with court rules and directives.'" *Wertz v. Mercy Health*, No. 4:23-CV-00579-NCC, 2024 WL 3427218, at *2 (E.D. Mo. July 16, 2024) (citing *Soliman v. Johanns*, 412 F.3d 920, 922 (8th Cir. 2005)). "[A]lthough pro se pleadings are to be construed liberally, pro se litigants are not excused from compliance with relevant rules of the procedural and substantive law." *Schooley v. Kennedy*, 712 F.2d 372, 373 (8th Cir. 1983) (per curiam). The Court directs Plaintiff to the following federal rules of civil procedure.

Federal Rule of Civil Procedure 4(c), governing service, provides in relevant part:

(c) Service.

> **(1) In General.** A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

> **(2) By Whom.** Any person who is at least 18 years old and not a party may serve a summons and complaint.

Rule 4(m), governing the time limit for service, provides:

> **(m) Time Limit for Service.** If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

Rule 4(h), governing service of a corporation, provides in relevant part:

> **(h) Serving a Corporation, Partnership, or Association.** Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:
>
> > **(1)** in a judicial district of the United States:
> >
> > > **(A)** in the manner prescribed by Rule 4(e)(1) for serving an individual; or
> >
> > > **(B)** by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant;

Rule 4(e)(1), referenced in Rule 4(h)(1)(A), provides:

> **(e) Serving an Individual Within a Judicial District of the United States.** Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

> **(1)** following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made;

A related action was dismissed for failure to effectuate service. *See* 4:22-CV-1246-NCC. In that action, Plaintiff served the wrong registered agent for Defendant AT&T, Inc., and then attempted to use the Missouri Secretary of State's Office as a process server. This Court explicitly directed Plaintiff to use an appropriate private process server and to serve the correct registered agent for Defendant.

Plaintiff has until December 11, 2024 to properly serve Defendant in this action. Failure to properly serve Defendant will result in the dismissal of Plaintiff's claims without prejudice, unless Plaintiff demonstrates good cause for the failure.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff shall properly serve Defendant **no later than December 11, 2024**. In the absence of good cause shown, failure to timely serve Defendant will result in the dismissal of Plaintiff's claims without prejudice.

Dated this 8th day of November, 2024.

/s/ Noelle C. Collins
NOELLE C. COLLINS
UNITED STATES MAGISTRATE JUDGE

APPENDIX B (3)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROSALIND D. HARRIS and BETTIE J. HARRIS,	)	
Plaintiffs,	)	
v.	)	No. 4:22-CV-01246-NCC
AT&T, INC.,	)	
Defendant.	)	

ORDER OF DISMISSAL

This matter is before the Court on review of the file. Self-represented Plaintiffs Rosalind D. Harris and Bettie J. Harris filed this action against Defendant AT&T, Inc. on November 22, 2022. (Doc. 1). Plaintiffs attempted service on Defendant using the Missouri Secretary of State's Office as their process server. (Docs. 2, 5). On March 23, 2023, the Court ordered Plaintiffs to properly serve Defendant within 30 days, stating that, in the absence of good cause shown, the failure to timely serve Defendant would result in dismissal of Plaintiffs' claims without prejudice. (Doc. 7).

Plaintiffs have again failed to serve Defendant. In their second attempt at service, Plaintiffs used an appropriate private process server, Missouri Process Serving, LLC (MPS), and MPS attempted service on the CT Corporation as Defendant's agent. (Doc. 10 at 14-15). However, service was rejected on March 30, 2023, with the following reason: "According to our records and/or the records of the Secretary of State, we are not the registered agent for the company you are attempting to serve." (*Id.* at 14). Plaintiffs then again attempted to use the Missouri Secretary of State's Office as their process server. (*Id.* at 2). Plaintiffs have failed to effectuate service or demonstrate good cause for this failure given ample time and opportunity.

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED without prejudice** pursuant to Federal Rule of Civil Procedure 4(m).

Dated this 1st day of May 2023.

John A. Ross

JOHN A. ROSS
UNITED STATES DISTRICT JUDGE

APPENDIX B-(4)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROSALIND D. HARRIS and BETTIE J. HARRIS,	)	
Plaintiffs,	)	
v.	)	No. 4:22-CV-01246-NCC
AT&T, INC.,	)	
Defendant.	)	

MEMORANDUM AND ORDER

This matter comes before the Court on its own motion. Self-represented Plaintiffs Rosalind D. Harris and Bettie J. Harris have paid the filing fee in this case. Because Plaintiffs paid the full filing fee, they are responsible for properly serving Defendant AT&T, Inc. pursuant to Rule 4 of the Federal Rules of Civil Procedure. Plaintiffs have not properly served Defendant.

To serve Defendant with a summons, Plaintiffs must submit to the Clerk of Court:

1) a file-stamped copy of the complaint;

2) a completed summons form (AO Form 440); and

3) a completed "Notice of Intent to Use Private Process Server" form.

See Fed. R. Civ. P. 4(b); E.D. Mo. L.R. 2.02(B). The "Notice of Intent to Use Private Process Server" form must include the name and address of the process server who will be serving Defendant. "Any person who is at least 18 years old and not a party may serve a summons and complaint." *See* Fed. R. Civ. P. 4(c)(2). Plaintiffs must complete these forms and return them to the Clerk's Office. Once Plaintiffs submit these forms, the Clerk's Office will sign and seal the summons and return it to Plaintiffs. The summons must then be served upon Defendant by an appropriate server; and return of service must be filed with the Court.

In this case, Plaintiffs attempted to use the Missouri Secretary of State's Office as their process server and did not file a server's affidavit (Docs. 2, 5). **Plaintiffs must use an appropriate private process server and file the server's affidavit as their proof of service.** *See* Fed. R. Civ. P. 4(l)(1) ("Unless service is waived, proof of service must be made to the court. ... [P]roof must be by the server's affidavit.").

Plaintiffs may also wish to consider the Missouri Secretary of State's Service of Process Checklist as a resource. The Checklist indicates service of an active corporation requires proof of prior attempted service upon the registered agent. *See Mo. Sec'y of State, Serv. of Process*, https://www.sos.mo.gov/serviceofprocess (last visited March 21, 2023). For additional guidance, Plaintiffs should review Federal Rule of Civil Procedure 4(h) regarding serving a corporation and the remaining provisions of Federal Rule of Civil Procedure 4.

The Court will order that Plaintiffs properly serve Defendant within thirty (30) days from the date of this order. *See* Fed. R. Civ. P. 4(m) ("If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time."). Failure to properly serve Defendant will result in the dismissal of Plaintiffs' claims without prejudice, unless Plaintiffs demonstrate good cause for the failure.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall send to Plaintiffs: (i) a file-stamped copy of the complaint; (ii) a summons form; and (iii) a "Notice of Intent to Use Private Process Server" form.

IT IS FURTHER ORDERED that Plaintiffs serve Defendant **no later than thirty (30) days from the date of this order**. In the absence of good cause shown, failure to timely serve Defendant will result in the dismissal of Plaintiffs' claims without prejudice.

Dated this 23rd day of March, 2023.

/s/ Noelle C. Collins
NOELLE C. COLLINS
UNITED STATES MAGISTRATE JUDGE

APPENDIX C-(1)

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Case Number: 01-14-0001-3429

Bettie Harris
-vs-
AT&T

AWARD OF ARBITRATOR

I, THOMAS M. BLUMENTHAL, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties, do hereby, AWARD, as follows:

By consent and order of the Arbitrator, on March 10, 2015, Rosalind Harris was added as a Claimant due to her claiming some damage through her mother, Bettie, as detailed below. Any prior demand by Rosalind for fees for assisting her mother in bringing this arbitration demand was withdrawn as a result.

The parties appeared on September 16, 2015 for hearing, presenting evidence and introducing exhibits. Bettie Harris and Rosalind Harris appeared personally without counsel. They had been advised on more than one occasion of their right to retain counsel. AT&T appeared by Susan Ward with counsel, Len G. Briley, Jr. The hearing was closed at the conclusion of their presentations.

Bettie Harris has service through AT&T for a telephone land line and a DSL internet line. Bettie Harris has had this phone account for decades, and while it was originally placed in her husband's name, "R-Harris," upon his passing AT&T has refused to change the account name to Bettie Harris' name. She is therefore not technically listed as the account holder on the records but has been treated as the account holder by AT&T.

Bettie Harris uses the DSL line for her work, for which she telecommutes. On March 1, 2014, AT&T sent Bettie Harris a bill showing that a total of $332.58 was owed. (Resp. Ex. A) The bill showed a Past Due amount of $175.75, including a $7.19 late fee, and a current amount of $156.83. Bettie admitted in her testimony that because of her limited finances, her habit was to pay the bill when she had the funds, sometime between the due date and the next 30 days, which she believed to be the grace period. She was therefore frequently in arrears one month as reflected on each month's bill.

The March 1, 2014 bill, as shown in Respondent's Exhibit A, shows that although the past due amount has a legend in two places which reads: "Please Pay Immediately;" it also has a legend which reads: "Total Amount **DUE BY** March 31, 2014." (emphasis in original)

On March 14, 2014, Bettie Harris attempted to pay a portion of her bill by use of a telephonic Interactive Voice Recognition System (IVR). Bettie's testimony, which was credible, was that she had previously successfully used this IVR service and programed her bank account information into the system so that she did not have to do so on this occasion. She scheduled a payment in the amount of $168.56 to be made on March 21, 2014.

On March 15, 2014, AT&T alleges that it sent Bettie Harris a Disconnection Notice (Resp Ex E). The Notice may have included information stating "Suspension Notice for $168.56 – Deniable amount $49.94 due by 03/21/14," though that information was added to the exhibit, which was just a form, after the fact. AT&T did not keep a completed copy of the actual notice sent, and only produced the exhibit form with the quoted notation added for the hearing. The form does not use the term "Suspension Notice" or "Deniable amount" in its contents, and there was no evidence of where these amounts would be filled into the form, nor was there anything in the exhibit that would tie this form to Bettie Harris' account. The Notice allegedly stated that service would be terminated in ten days if payment was not made, though no date is filled in on the form. AT&T makes no effort

to keep records to show proof of delivery of a notice of this kind. but depends on an entry into its computer system that shows that the notice was sent. The form, while presented as a business record, does not really meet any evidentiary standard for business records.

On March 21, 2014, AT&T sought to effect the payment transaction with US Bank through its automated system. On March 28, 2014, US Bank rejected the payment but did not give a reason for the rejection. A notation states the reason was "Miscellaneous." AT&T determined after the fact that the last four numbers of Bettie Harris' bank account number were transposed to read "3826" when they should have read "3286." AT&T posits that Bettie Harris was the only one who could have transposed these numbers, but this is in conflict with Ms. Harris' testimony, and there was no evidence presented of how the bank account number gets transmitted to the bank. While AT&T testified that there is no human intervention in its IVR system which could have transposed the numbers, there is no clear evidence for how the transposition occurred, only conjecture.

Following notice of the rejected payment on March 28, 2014, an unidentified employee (Employee #CM1518 was provided in exhibits) made a decision that the DSL service would be cut off, but not the land line service. AT&T maintains it had the right to cut off both services but chose as a courtesy not to do so. CM1518 made one attempt to call Bettie Harris to advise her of the cutoff. There is no indication any message was left although Bettie Harris subscribes to CallNote® Plus service. At 1:43 p.m. a suspension order was issued which cut off the DSL service. At 7:00 p.m. Bettie Harris attempted to log on to her work site but received a legend on her computer screen that her DSL service was disconnected for failure to pay the bill. After learning of the disconnect, at 7:26 p.m. Rosalind Harris successfully completed a credit card payment in the amount of $332.58. At 7:30 p.m. the DSL service was restored. The disconnect lasted seven hours, but was known about for thirty minutes.

The Harrises claim that Bettie suffered emotional distress and embarrassment because her employer could see on the computer that her DSL service was suspended for failure to pay the bill. However, there was no direct evidence that her employer did see this, only conjecture. They also complain that Rosalind Harris' credit rating was impaired because she had to put a higher amount on her credit card than she traditionally does each month, but there was no evidence that she didn't pay this amount off in the time frame required by her credit card company, or that her credit rating changed.

The Harrises seek the following relief:

(1) $75,000 actual damages;
(2) A punitive award of $2.5 million;
(3) A credit to the account of $30.00 for the reconnection fee;
(4) A clarification as to why Bettie was not afforded the 24 hour period of correction provided in Missouri Public Service Commission ("MPSC") Consumer Rights found in the telephone book;
(5) A written assurance that Bettie Harris will not endure retaliation for filing this arbitration demand;
(6) A written assurance that the MPSC Consumer Rights will be honored;
(7) "[D]etailed instruction as to how to verify speed as a component of the service relationship with AT&T."

The parties agreed at hearing that Respondent's Exhibit K, AT&T High Speed Internet Terms of Service/ att.net Terms of Use contains the arbitration agreement and controls the authority of the Arbitrator in this matter as it is the agreement between the parties.

(1) The request for $75,000 actual damages is DENIED.

Claimants' justification for actual damages was testified to be based on emotional distress, loss of reputation to both Bettie and Rosalind Harris, and loss of the use of the internet service. There was no proof of the damage, or testimony as to the value of any of these items. Claimants maintain the burden of proof, and Section 19 of Exhibit K expressly excludes liability of AT&T for indirect, incidental, special, consequential or other exemplary damages. Claimants present no evidence or argument as to why this exclusion does not apply.

(2) The request for a punitive damage award of $2.5 million is DENIED.

In addition to the exclusion in Exhibit 19. punitive damages are generally not allowed at law for breach of contract, and this is a breach of contract action since the contract, Exhibit K, has been agreed by the parties to control. The arbitrator is bound by the terms of the Agreement, as set out in Paragraph 13 of Section K, and can only award remedies or relief that a party could receive in court, AAA Consumer Rules R-44(a).

(3) The request for credit to the account of $30.00 for the reconnection fee is DENIED as moot.

The parties agreed that as shown in Resp. Exhibit M an adjustment of $38.01 had already been made to Claimants' account, representing a refund of the reconnection fee.

(4) The request for a clarification as to why Bettie was not afforded the 24 hour period of correction provided in Missouri Public Service Commission ("MPSC") Consumer Rights found in the telephone book is DENIED.

As shown on the document, Resp. Ex. J, the terms are found in a telephone book and 4 CSR 240-33.010 et seq., and specifically 4 CSR 386.020(4) (cited in Respondent's Answer), the rules only apply to "basic telecommunications service" and not to special services like internet services.

(5) The requests for written assurance that Bettie Harris will not endure retaliation for filing this arbitration demand; written assurance that the MPSC Consumer Rights will be honored; and "[D]etailed instruction as to how to verify speed as a component of the service relationship with AT&T," are DENIED.

These are requests for relief that could not be ordered by a court of law.

(6) Respondent seeks sanctions pursuant to Section 13 of Exhibit K for sanctions due to Claimants' seeking relief which is frivolous. The request is DENIED.

Given the ambiguous nature of AT&T's bill, as stated above, concerning when payment is due, the lack of clarity of AT&T's payment process, including issuing confirmation of payment numbers which are apparently meaningless, the failure of AT&T to adequately prove that a Disconnection Notice was actually sent to and received by Claimant Bettie Harris, the refusal to place the account name in Bettie Harris' name for no valid reason, the failure to employ the use of litigation holds on Electronically Stored Information (ESI), and the subsequent difficulty in producing the simplest of document requests, AT&T is hardly in a position to seek an award of sanctions. AT&T's request for sanctions is therefore DENIED.

The administrative fees of the American Arbitration Association (AAA) totaling $2,200.00 shall be borne by AT&T, and the compensation of the arbitrator totaling $1,500.00 shall be borne by AT&T.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

October 7, 2015
Date

Thomas M Blumenthal, Arbitrator

APPENDIX C-(2)

AMERICAN ARBITRATION ASSOCIATION
CONSUMER ARBITRATION RULES

IN THE MATTER OF THE ARBITRATION BETWEEN

BETTIE HARRIS, and
ROSALIND HARRIS, her daughter,
Claimanst,

and

AT&T,
Respondent.

Case No. **01-14-0001-3429**
RULING ON REQUEST FOR
INTERIM INJUNCTIVE RELIEF
AND DISCOVERY

Heather Pope, Case Manager

I. REQUEST FOR INTERIM INJUNCTIVE RELIEF

Respondent seeks an injunction as an Interim Measure pursuant to Rule R-37 enjoining Claimants from pursuing their complaint to the Missouri Attorney General, and from contacting any personnel at AT&T concerning the subject of this arbitration other than counsel for Respondent in this matter, Gregory Amsel.

In response, Claimants refer to Paragraph 13 of Respondent's Exhibit K, Terms of Use, which expressly state: "*This arbitration agreement does not preclude you from bringing issues to the attention of federal, state or local agencies.*" This sentence unambiguously reserves to Claimant the right to file a complaint with the state attorney general, a state agency.

Paragraph 13(f) of Exhibit K further states: "*The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party individual's claim.*" This subparagraph precludes the arbitrator from entering injunctive relief in favor of AT&T as AT&T is not the individual party *with a claim* seeking relief in this arbitration. While that might not have been the intent of the paragraph, it was written by AT&T and any ambiguity must be construed against AT&T.

Finally, Claimants having filed the complaint, this Arbitrator does not have authority to enjoin the Missouri Attorney General, who may proceed on the complaint without regard to whether Claimants request a stay, or withdraw the complaint. Any injunction entered would therefore be of no effect.

For these reasons, the request for injunctive relief is DENIED IN PART, and an injunction will not be entered.

Respondent does appropriately assert that Claimants should only be contacting counsel for Respondent concerning the subject matter of this arbitration. Respondent is a large company, and while it may be reasonable to assume they have placed some notice on this account in Respondent's electronic system precluding anyone on behalf of Respondent from communicating with Claimants, it is also reasonable to request that Claimants make all contacts concerning this matter through Respondent's counsel, including new issues which arise. We may assume that counsel will forward any issues to the appropriate party within AT&T if the issue does not impact this proceeding.

While Claimants are pro se, without counsel, they are not held to a different standard concerning communications with the opposing party in a dispute. If they had counsel, counsel would be required to direct all communications through Respondent's counsel, and would require Claimants to communicate only through counsel.

For these reasons the request for injunctive relief is GRANTED IN PART, and Claimants are enjoined from contacting anyone at AT&T during the pendency of this arbitration except Respondent's counsel, Gregory Amsel. Mr Amsel shall in turn direct any issues that do not impact this proceeding to the appropriate party within AT&T.

II DISCOVERY REQUEST

Claimants have requested that Respondents provide certain documents which are attached to Respondents Answer to the Demand due to the illegibility of the documents as attached: in part due to the manner of copying and in part due to highlighting which appears as redactions. This request is reasonable and shall be granted.

Respondents are ORDERED to produce by no later than June 12, 2015, legible versions of Exhibits E, F, G, H, I, J and L without redaction or highlighting. Claimants have not sought Exhibits H, I , J or L specifically in their request, but upon review, these exhibits suffer from the same problem as the exhibits sought by Claimant.

Claimants also seek copies of audio recordings by "wave sound," payment confirmation records, and phone logs on three specific dates, March 14, 21 and 28, 2014, for two telephone numbers: 314-521-7964 and 314-522-1742. These numbers and dates are directed at Claimants' phones on the dates in question when Claimants attempted to rectify the billing discrepancies which are the crux of the dispute in this case. The requests are therefore reasonable. Respondents shall produce copies of recordings in the media format requested, payment confirmation records and phone logs showing the numbers called and the numbers from which

calls were received on the three dates in question. The productions identified here shall be produced by no later than June 12, 2015.

Without regard to the prior orders in this case, it is suggested that the audio recordings be produced by email delivery to Claimants by "wave" recording as requested by Claimants. The paper documents shall be produced by regular mail, with Claimants notifying the Case Manager if the documents are not received by June 17, 2015. Should Respondent not have the "wave" ability to transmit the recordings, Respondent shall advise the Case Manager and work out an alternate form of delivery. Copies of documents produced need not be provided to the Arbitrator or the Case Manager.

SO ORDERED.
May 22, 2015

/s/ Thomas M. Blumenthal
Thomas M. Blumenthal, Arbitrator

APPENDIX C-(3)

AMERICAN ARBITRATION ASSOCIATION
CONSUMER ARBITRATION RULES

IN THE MATTER OF THE ARBITRATION BETWEEN

BETTIE HARRIS, and
ROSALIND HARRIS, her daughter,
Claimanst,

and

Case No. 01-14-0001-3429
CASE MANAGEMENT ORDER

AT&T,
Respondent.

Heather Pope, Case Manager

A Case Management Conference was held on March 10, 2015, by telephone at 2:00 p.m., C.D.T. Participating were Claimant's daughter, Rosalind Harris; Counsel for Respondent, Geoffrey Amsel and his legal assistant, Jamal Brown; and Thomas M. Blumenthal, Arbitrator. Due to the necessity to exchange pleadings and exhibits, the conference was continued. A second conference was held on April 8, 2015, by telephone at 2:00 p.m. CDT. Participating were Claimant, Bettie Harris, her daughter, Rosalind Harris; Counsel for Respondent, Geoffrey Amsel and his legal assistant, Jamal Brown; and Thomas M. Blumenthal, Arbitrator.

This case is being administered under the Consumer Rules of the American Arbitration Association. This Case Management Order shall control the schedule for this proceeding.

No discovery other than that set out in this Order was requested by either party.

Claimant's Claim has been orally amended at the conference to add Rosalind Harris as a party due to her having paid some of the bill to AT&T involved in this dispute. Any damage incurred by Ms. Rosalind Harris shall be considered damage of Ms. Bettie Harris, and no separate claim of Rosalind Harris shall be entertained. As a result of being joined as a party, Rosalind Harris has withdrawn as moot her request for her fees for assisting her mother, and considers herself a "pro se" Claimant. The Harris Claimants were advised they could hire an attorney of their choice if they so choose.

Should the Harris Claimants desire any other changes to the Claim, they must request permission of the Arbitrator to file for such an amendment, stating why the amendment could not have been included in the earlier Claim. This requirement is found in Rule R-8. The request must be made no later than **May 8, 2015**.

Ms. Rosalind Harris has had an issue in communicating by email. She indicated she was most comfortable communicating by regular mail. Because she said she had not received some information, and because she has sent everything by certified mail return receipt requested, she asked that all communication with her be by certified mail. Because this was not entirely practical or cost efficient, the parties have agreed that Ms. Harris will communicate with the Case Administrator by regular mail, and call the Case Administrator to advise her to expect a mailing. The Case Administrator will then scan the received material and forward it as appropriate to opposing counsel and the Arbitrator.

Communication by Mr. Amsel to others will be by email to the Case Administrator on behalf of AAA, only. The Case Administrator will in turn send anything to Ms. Harris by regular mail and call her to advise her to expect a mailing, and shall forward any communication as appropriate to the Arbitrator by email.

By no later than **September 2, 2015,** the parties shall have received from each other a **copy of any affidavit** they wish to use at the hearing. Affidavits shall be admitted into evidence pursuant to Rule 35(a).

By no later than **September 7, 2015**, the parties shall have received from each other **a list of witnesses** to be called at the hearing, together with a short summary of the subject matter about which each witness shall testify. Witnesses shall be limited in the scope of their testimony to the subject matter of the summary submitted except for good cause shown. The parties shall provide the Arbitrator (through the Case Administrator) a copy of the witness lists.

By no later than **September 7, 2015**, the parties shall have received from each other **a list of documents** to be used in the hearing, together with a copy of the documents. The parties shall provide the list, but not the documents to the Arbitrator unless they wish the Arbitrator to specifically review any document prior to hearing. The parties shall be limited at hearing to the use of the exhibits listed except for rebuttal or good cause shown.

The parties have been advised that if any party wishes to employ a court reporter, that party must comply with Rule R-27.

The parties shall simultaneously exchange and provide to the Arbitrator and each other any **pre-hearing briefs** (legal arguments in writing) by no later than **September 11, 2015,** together with any objections to the exhibits listed or witnesses to be called.

The hearing shall be scheduled for one day on **Wednesday, September 16, 2015,** beginning at 9:00 a.m., and continuing at the discretion of the Arbitrator. The hearing shall take place at the offices of the Arbitrator:

Paule, Camazine & Blumenthal, P.C.
Conference Center, First Floor, Conference Room 1
165 North Meramec Ave
St. Louis, MO 63105.

Pursuant to the Rule R-43 the award shall be a concise written award with the reasoning set out.

This Case Management Order shall stand until further order of the Arbitrator. No continuances shall be granted except for good cause shown and only upon submission by the requesting party(ies) of written acknowledgement from the representative of the party(ies) that counsel has discussed the continuance with that representative and the representative consents to the continuance.

SO ORDERED.

April 8, 2015

/s/ Thomas M. Blumenthal
Thomas M. Blumenthal, Arbitrator

APPENDIX D-(1)

RULES OF CIVIL PROCEDURE

FOR THE

UNITED STATES DISTRICT COURTS[1]

Effective September 16, 1938, as amended to December 1, 2024

TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

Rule 2. One Form of Action

There is one form of action—the civil action.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

TITLE II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 4. Summons

(a) CONTENTS; AMENDMENTS.

(1) *Contents.* A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

[1] Title amended December 29, 1948, effective October 20, 1949.

APPENDIX D -(3)

Courts with the approval of the Judicial Conference of the United States. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) *Items to be Entered.* The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) *Contents of Entries; Jury Trial Demanded.* Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment. When a jury trial has been properly demanded or ordered, the clerk must enter the word "jury" in the docket.

(b) CIVIL JUDGMENTS AND ORDERS. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(c) INDEXES; CALENDARS. Under the court's direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and

(2) prepare calendars of all actions ready for trial, distinguishing jury trials from nonjury trials.

(d) OTHER RECORDS. The clerk must keep any other records required by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 80. Stenographic Transcript as Evidence

If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Apr. 30, 2007, eff. Dec. 1, 2007.)

TITLE XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; Removed Actions

(a) APPLICABILITY TO PARTICULAR PROCEEDINGS.

(1) *Prize Proceedings.* These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§7651–7681.

(2) *Bankruptcy.* These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

(3) *Citizenship.* These rules apply to proceedings for admission to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. §1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

(4) *Special Writs.* These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:

(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

(B) has previously conformed to the practice in civil actions.

(5) *Proceedings Involving a Subpoena.* These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by a United States officer or agency under a federal statute, except as otherwise provided by statute, by local rule, or by court order in the proceedings.

(6) *Other Proceedings.* These rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures:

(A) 7 U.S.C. §§292, 499g(c), for reviewing an order of the Secretary of Agriculture;

(B) 9 U.S.C., relating to arbitration;

(C) 15 U.S.C. §522, for reviewing an order of the Secretary of the Interior;

(D) 15 U.S.C. §715d(c), for reviewing an order denying a certificate of clearance;

(E) 29 U.S.C. §§159, 160, for enforcing an order of the National Labor Relations Board;

(F) 33 U.S.C. §§918, 921, for enforcing or reviewing a compensation order under the Longshore and Harbor Workers' Compensation Act; and

(G) 45 U.S.C. §159, for reviewing an arbitration award in a railway-labor dispute.

(b) SCIRE FACIAS AND MANDAMUS. The writs of scire facias and mandamus are abolished. Relief previously available through them may be obtained by appropriate action or motion under these rules.

(c) REMOVED ACTIONS.

(1) *Applicability.* These rules apply to a civil action after it is removed from a state court.

(2) *Further Pleading.* After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 7 days after the notice of removal is filed.

(3) *Demand for a Jury Trial.*

APPENDIX E

9 USC Ch. 1: GENERAL PROVISIONS

From Title 9—ARBITRATION

CHAPTER 1—GENERAL PROVISIONS

Sec.

1. "Maritime transactions" and "commerce" defined; exceptions to operation of title.
2. Validity, irrevocability, and enforcement of agreements to arbitrate.
3. Stay of proceedings where issue therein referable to arbitration.
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.
5. Appointment of arbitrators or umpire.
6. Application heard as motion.
7. Witnesses before arbitrators; fees; compelling attendance.
8. Proceedings begun by libel in admiralty and seizure of vessel or property.
9. Award of arbitrators; confirmation; jurisdiction; procedure.
10. Same; vacation; grounds; rehearing.
11. Same; modification or correction; grounds; order.
12. Notice of motions to vacate or modify; service; stay of proceedings.
13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement.
14. Contracts not affected.
15. Inapplicability of the Act of State doctrine.
16. Appeals.

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–650, title III, §325(a)(2), Dec. 1, 1990, 104 Stat. 5120, added item 15 "Inapplicability of the Act of State doctrine" and redesignated former item 15 "Appeals" as 16.

1988—Pub. L. 100–702, title X, §1019(b), Nov. 19, 1988, 102 Stat. 4671, added item 15 relating to appeals.

1970—Pub. L. 91–368, §3, July 31, 1970, 84 Stat. 693, designated existing sections 1 through 14 as "Chapter 1" and added heading for Chapter 1.

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

"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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §1, 43 Stat. 883.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–90, §1, Mar. 3, 2022, 136 Stat. 26, provided that: "This Act [enacting chapter 4 of this title, amending sections 2, 208, and 307 of this title, and enacting provisions set out as a note under section 401 of

this title] may be cited as the 'Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021'."

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

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 or as otherwise provided in chapter 4.

(July 30, 1947, ch. 392, 61 Stat. 670; Pub. L. 117–90, §2(b)(1)(A), Mar. 3, 2022, 136 Stat. 27.)

DERIVATION

Act Feb. 12, 1925, ch. 213, §2, 43 Stat. 883.

EDITORIAL NOTES

AMENDMENTS

2022—Pub. L. 117–90 inserted "or as otherwise provided in chapter 4" before period at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–90 applicable with respect to any dispute or claim that arises or accrues on or after Mar. 3, 2022, see section 3 of Pub. L. 117–90, set out as an Effective Date note under section 401 of this title.

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

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §3, 43 Stat. 883.

§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

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §4, 43 Stat. 883.

EDITORIAL NOTES

REFERENCES IN TEXT

Federal Rules of Civil Procedure, referred to in text, are set out in Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1954—Act Sept. 3, 1954, brought section into conformity with present terms and practice.

§5. Appointment of arbitrators or umpire

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §5, 43 Stat. 884.

§6. Application heard as motion

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §6, 43 Stat. 884.

§7. Witnesses before arbitrators; fees; compelling attendance

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §7, 43 Stat. 884.

EDITORIAL NOTES

AMENDMENTS

1951—Act Oct. 31, 1951, substituted "United States district court for" for "United States court in and for", and "by law for" for "on February 12, 1925, for".

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

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §8, 43 Stat 884.

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

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §9, 43 Stat. 885.

§10. Same; vacation; grounds; rehearing

(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.

(July 30, 1947, ch. 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.)

DERIVATION

Act Feb. 12, 1925, ch. 213, §10, 43 Stat. 885.

EDITORIAL NOTES

AMENDMENTS

2002—Subsec. (a)(1) to (4). Pub. L. 107–169, §1(1)–(3), substituted "where" for "Where" and realigned margins in pars. (1) to (4), and substituted a semicolon for period at end in pars. (1) and (2) and "; or" for the period at end in par. (3).

Subsec. (a)(5). Pub. L. 107–169, §1(5), substituted "If an award" for "Where an award", inserted a comma after "expired", and redesignated par. (5) as subsec. (b).

Subsec. (b). Pub. L. 107–169, §1(4), (5), redesignated subsec. (a)(5) as (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–169, §1(4), redesignated subsec. (b) as (c).

1992—Subsec. (b). Pub. L. 102–354 substituted "section 580" for "section 590" and "section 572" for "section 582".

1990—Pub. L. 101–552 designated existing provisions as subsec. (a), in introductory provisions substituted "In any" for "In either", redesignated former subsecs. (a) to (e) as pars. (1) to (5), respectively, and added subsec. (b) which read as follows: "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."

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

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §11, 43 Stat. 885.

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

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §12, 43 Stat. 885.

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

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.

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §13, 43 Stat. 886.

§14. Contracts not affected

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

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

DERIVATION

Act Feb. 12, 1925, ch. 213, §15, 43 Stat. 886.

EDITORIAL NOTES

PRIOR PROVISIONS

Act Feb. 12, 1925, ch. 213, §14, 43 Stat. 886, former provisions of section 14 of this title relating to "short title" is not now covered.

§15. Inapplicability of the Act of State doctrine

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.

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

EDITORIAL NOTES

CODIFICATION

Another section 15 of this title was renumbered section 16 of this title.

§16. Appeals

(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.

(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.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–650 renumbered the second section 15 of this title as this section.