PRE-HEARING REMOVAL OF ARBITRATORS

By

Robert M. Hall

[*Mr. Hall is an attorney, a former insurance and reinsurance executive and acts as an insurance consultant as well as an arbitrator and mediator of insurance and reinsurance disputes. The views expressed in this article are those of the author and do not reflect the views of his clients.* *Questions or comments may be addressed to the author at bob@robertmhall.com.*

I. Introduction

As reinsurance arbitrations have become more contentious, there has been a growing tendency to challenge not only the results of arbitrations but the arbitration process itself. In some cases, this takes the form of efforts to remove an arbitrator for alleged partiality or bias prior to the hearing on the merits.

Section 10 of the Federal Arbitration Act ("FAA") allows a court to *vacate* an *award* when: (1) the award was procured by corruption, fraud or undue means; (2) the arbitrators were partial or corrupt; (3) the arbitrators were guilty of misconduct in unreasonably refusing to postpone a hearing or hear pertinent evidence or of misbehavior by which the rights of parties were prejudiced; or (4) the arbitrators exceeded their power or so imperfectly executed them that a final and definitive award was not made.[i] The FAA thus provides specific bases to vacate an award after a hearing on the merits.[ii] It does not provide a specific basis to remove an arbitrator prior to a hearing on the merits.

There is a substantial body of case law on the issue of whether or not courts are authorized under the FAA to remove an arbitrator prior to the hearing. Not all of this case law is consistent, however. The purpose of this article is to summarize existing case law to determine the general rule and the parameters of any exceptions to the general rule.

II. Cases Recognizing No Right to Challenge Arbitrators Prior to a Hearing on the Merits

The largest group of cases recognizes no right to challenge arbitrators prior to a hearing on the merits. For instance, the parties entered into a contract naming three arbitrators in Dewart v. Northeastern Gas Transmission Co., 101 A.2d 299 (Conn.1953). One party later challenged the umpire on the basis that he acted as the umpire in another matter involving the other party and acted improperly to the benefit of that party. The court rejected the challenge ruling:

There is nothing in [the FAA] or any other [law] which gives the court the power, in a summary proceeding, to remove an arbitrator named in the arbitration agreement between the parties. . . .

The submission of disputed matters to the arbitration will not be encouraged, as it should be, if, during the proceedings and before an award, either party can come into court in a summary proceeding not sanctioned by statute and challenge the qualifications of an arbitrator.[iii]

Another case on point is Paul W. Davis of Northern Ill. v. Paul W. Davis Systems, Inc., 1998 WL 749041 (N.D.Ill.) which was a dispute between a franchiser and a franchisee. The franchisee argued that the arbitration panel structure by the franchise agreement produced a panel partial to the franchiser. The court rejected the pre-hearing challenge:

Indeed, the FAA permits us to consider arbitrator bias only in the context of a *post*-award challenge. (citation omitted) [The franchisee] argues that "[b]oth the Federal Arbitration Act and the Illinois Uniform Arbitration Act require a court to vacate an award on the grounds of 'evident partiality' by the arbitrator." (citation omitted) The key word in this sentence is *vacate* - it implies an existing award, which we do not have here. The "evident partiality" test is inapplicable at this stage of the proceedings. . . We hold that the parties have entered into a valid and enforceable agreement to arbitrate. (emphasis in the original)[iv]

A cedent asked the court to appoint an umpire in light of the alleged bias of the reinsurer's umpire candidates in Travelers Indemnity Co. v. Gerling Global Reins. Corp. 2001 WL 546600 (S.D.N.Y). The court declined to do so:

Challenging the neutrality of an arbitrator, and by logical extension a candidate to serve as an arbitrator, is only proper after an arbitration award has been entered. . . Therefore, if either party wishes to challenge the qualifications, including neutrality, of the selected umpire, or any candidate nominated to serve as umpire, that party may do so only after an arbitration award has been entered by the three person arbitration panel.[v]

Gulf Guaranty Life Ins. Co. v. Connecticut General Life Ins. Co., 304 F.3d 476 (5th Cir.2002) involved a challenge to an umpire who as an officer of a reinsurance company on the basis that the reinsurance contract called for arbitrators to be officers of life insurance companies. The court rejected the pre-hearing motion to remove:

However, there is no authorization under the FAA's express terms for a court's power to *remove* an arbitrator from service. Rather, even where arbitrator bias is at issue, the FAA does not provide for removal of an arbitrator from service prior to an award, but only for potential vacatur of any award (Citation omitted). Thus, the FAA does not expressly endorse court inquiry into the capacity of any arbitrator to serve prior to issuance of an arbitral award. More importantly, the FAA appears not to endorse court power to remove an arbitrator for any reason prior to issuance of an arbitral award (emphasis in the original).[vi]

Essentially the same rulings have been made in many other cases: Certain Underwriters at Lloyd's v. Argonaut Ins. Co., 264 F.Supp. 2d 926 (N.D. Cal. 2003) (imposition of penalties for failure to post security); Folse v. Richard Wolfe Medical Instruments Corp., 56 F3d 603 (5th Cir.1995) (long delay in obtaining final award in arbitration); National Union Fire Ins. Co. of Pittsburgh v. Holt Cargo Systems, Inc., 2000 WL 328802 (S.D.N.Y.)(challenge to party arbitrator who served as opposing expert witness in previous matter and to umpire candidate who was a partner in the firm that handled previous matter); Ins. Co. of North America v. Pennant Ins. Co. Ltd., 1998 WL 103305 (E.D.Pa.) (challenge to qualifications of party arbitrator under arbitration clause); Roth v. Carvel Corp., 905 F.Supp. 196 (S.D.N.Y.1995) (party attempted to reverse its approval of umpire after learning of a tenuous connection with the other party); Alter v. Englander, 901 F.Supp. 151 (S.D.N.Y.1995) (arbitration facility allegedly previously demonstrated partiality to one of the parties); Old Republic Ins. Co. v. Meadows Indemnity Co. Ltd., 870 F.Supp. 210 (E.D.Ill.1994) (opposing party arbitrator was in litigation with the objecting party ten years previously); Corporate Printing Co. Inc. v. New York Typographical Union No. 6, 601 F.Supp. 323 (S.D.N.Y.1984) (collective bargaining agreement designated a specific arbitrator and objecting party argued institutional bias resulting from subsequent withdrawal from the association that was subject to the collective bargaining agreement); Petition of Dover Steamship Co., 143 F.Supp. 738 (S.D.N.Y.1956) (objection based on business connection); Application of Sunrise Undergarment Co, Inc., 419 F.Supp. 1282 (S.D.N.Y.1976) (bias of unspecified origin in arbitration over collective bargaining agreement); San Carlo Opera Co. v. Conley, 72 F.Supp. 825 (S.D.N.Y.1946) (business relationship between umpire and party arbitrator); Alexander v. Minnesota Vikings Football Club, 649 N.W.2d 464 (Minn.Ct.App.2002)(assistant coaches sought to remove commissioner of league as arbitrator).

III. Cases Following the General Rule but Which Acknowledge Exceptions

There is a group of cases which follow the general rule that challenges to arbitrators are improper until after a hearing on the merits but which acknowledge exceptions.

Aviall Inc. v. Ryder System, Inc., 110 F.3d 692 (2nd Cir.1997) involved a dispute in a spin-off transaction. The contract called for arbitration before KPMG which had been the outside auditor for both firms. Aviall had since hired a new auditor and argued that KPMG would be partial to Ryder. The court ruled that the FAA does not allow a pre-hearing challenge to arbitrators. As to the cases which might evoke exceptions to this rule, the court commented:

[Certain of] those cases simply manifest the FAA's directive that an agreement to arbitrate shall not be enforced when it would be invalid under general contract principles. . . .

[For other cases], the touchstone . . . was that the arbitrator's relationship to one party was undisclosed, or unanticipated and unintended thereby invalidating the contract.[vii]

A similar fact situation was presented by In the Matter of the Arbitration between Siegel and Lewis, 389 N.Y.S. 2d 800 (1976). A stock purchase agree named the attorney and accountant for the corporation as the arbiters. The party purchasing the stock challenged these individuals as partial to the seller. The court ruled for the seller:

Therefore, strange as it may seem to those steeped in the proscriptions of legal and judicial ethics, a fully known relationship between an arbitrator and a party, including one as close as employer and employee (citation omitted) or attorney and client (citation omitted) will not in and of itself disqualify the designee. Of course, if there has been a failure to disclose such an existing or past relationship between the arbitrator and a party as is likely to affect the arbitrator's impartiality, the situation would be different.[viii]

In J & M Knitting Mills Co., Inc. v Knitgoods Workers' Union Local 115, 1995 WL 905528 (S.D.N.Y.) a former attorney for the union was named as the arbitrator in a collective bargaining agreement. While this individual was barred from so serving in a virtually identical case fifteen years earlier,[ix] the court denied the petition to remove him based on changes in the law on "evident partiality", the passage of fifteen years and the fact that the individual had been named as arbitrator in six successive collective bargaining agreements.[x]

Smith v. Arbenbright, Inc., 1999 WL 1270674 (N.D.Ill.) involved a gender bias complaint about the arbitration panel. The panel appointed by the AAA did not contain women. The court ruled against the complaining party:

Where the parties have agreed to arbitration, parties may only bring claims of panel (or arbitrator) bias under certain circumstances. Here, Smith pursues a bias claim before proceedings have concluded (or even begun). But both federal and Minnesota law allow courts to make a determination of panel bias only upon a finding of "evident partiality." (citations omitted) Absent extraordinary circumstances not present here, such a finding must necessarily come after the conclusion of proceedings. Under neither law can courts make speculative determinations of potential bias. Upon the conclusion of proceedings, parties may obtain a remedy where arbitrators have actually exhibited "evident partiality."[xi]

Another AAA administered arbitration was the subject of Diemaco v. Colt's Manufacturing Co., Inc., 11 F.Supp.2d 228 (D.Conn.1998). A panel was selected pursuant to court order but it was subsequently decided by the AAA that the selection procedure was not in accordance with the order and a new panel was selected. One of the parties petitioned the court to order the arbitration before the original panel. The court denied the petition noting the limited nature of a court's ability to become involved in pre-award disputes.[xii]

Marc Rich & Co. v. Transmarine Seaways Corp. of Monrovia, 443 F.Supp. 386 was a challenge to a party arbitrator who was an opponent of the other party in another arbitration. The court rejected the challenge on the basis that:

(A) just and expeditious [arbitration] result . . . can best be achieved by requiring an arbitrator . . . to declare any possible disqualification, and then to leave it to his or her sound judgment to determine whether to withdraw. The arbitrator must of course be aware that such a decision would be subject to judicial review after the award had been made. (citation omitted) Any other rule might spawn endless applications and indefinite delay. For example, should we . . . ultimately find Mr. Nelson disqualified, there could be no assurance that Rich would be satisfied with his successor and would not bring yet another proceeding to disqualify him.[xiii]

The court distinguished a case which ordered the pre-hearing replacement of an arbitrator on the basis that the court named a new arbitrator rather than let the cycle repeat itself.[xiv]

In Underwriters at Lloyd's, London v. Continental Casualty Co., 1997 WL 461035 (N.D.Ill.) Continental appointed as its party arbitrators in two separate arbitrations two officers of Travelers Insurance Company. Lloyd's petitioned for their removal due to bias since both Travelers officers were involved in similar disputes with Lloyd's and counsel representing Continental also represented Travelers. The court denied this petition. The court: (a) noted that party arbitrators are held to a lower standard of impartiality than neutrals; (b) followed the general rule that arbitrators may not be challenged for bias prior to the hearing; and (c) observed that case law allowing such a challenge "are simply examples of the court's enforcement of an arbitration agreement."[xv]

In Instituto de Resseguros do Brasil v. First State Ins. Co., 577 N.Y.S.2d 287 (Sup.Ct.App.Div.1991) the reinsurer challenged the cedent's party arbitrator on the basis that he served in the same role for the cedent in another arbitration with another reinsurer on a similar dispute on the same contract. The court rejected this challenge not on the FAA but on the basis that "a party designated member of a tripartite arbitration tribunal . . . is not expected to be neutral in the same sense as a judge or arbitral umpire."[xvi]

The composition of a panel for an arbitration between baseball teams was at issue in Greater Miami Baseball Club Ltd. v. Selig, 171 F.R.D. 73 (S.D.N.Y.1997). One party argued that the appointee of the Professional Baseball Executive Council would be inherently biased. The court noted its ability remove an arbitrator under proper circumstances but ruled that the petitioner had presented insufficient evidence of bias.[xvii]

Black v. National Football League Players Association, 87 F.Supp.2d 1 (S.D.N.Y.2000) involved an arbitration over disciplinary action taken by the association against a player's agent. Regulations of the association, to which the agent submitted, called for arbitration of disputes in front of a skilled and experienced outside arbitrator. Citing the ruling of the WEDGE court,[xviii] the agent objected to the person so chosen arguing that the court has the power to remove an arbitrator where his potential bias makes the arbitration proceedings a prelude to later litigation. The Black court criticized the ruling of the WEDGE court and rejected its application to this fact situation:

Mr. Black admits that he was aware of and freely agreed to the arbitration terms contained in the regulations, and he makes no allegation about infirmities in the drafting of the regulations. . . Mr Black's peremptory challenge to the neutrality of the NFLPA arbitrator must accordingly be rejected.[xix]

Another professional sports arbitration was the subject of Alexander v. Minnesota Vikings Football Club, 649 N.W.2d 464 (Ct.App.Minn.2002). Coaches had signed a contract calling for arbitration of disputes before the league commissioner. The coaches sought another arbitrator on the basis that the commissioner would be biased. The court rejected this motion and found not basis to remove an arbitrator prior to an award except for an undisclosed relationship with a party or fraud, duress or unconscionability of the contract.

IV. Cases Which Allow Pre-Hearing Removal of Arbitrators

A. Problems Produced by Arbitration Clauses

Most of the cases approving pre-hearing removal of arbitrators are ones in which the specific language of the arbitration clause, or its operation in the factual context, creates a problem for one of the parties. Perhaps the

leading case in this regard is Erving v. Virginia Squires Basketball Club, E.D.N.Y. 1972). Julius Erving had signed a contract which called for arbitration before the Commissioner of the American Basketball Association. By happenstance, the newly appointed commissioner of the ABA was a partner in law firm which represented the Virginia Squires. Erving requested that a neutral arbitrator be appointed. Without elaboration, the court ruled for Erving: "Under the circumstances, arbitration should proceed before a neutral arbitrator and the order so provides."[xx]

Another arbitration clause case is Bennish v. North Carolina Dance Theater, 422 S.E.2d 335 (N.C.Ct.App.1992). The contact between a dancer and a dance theater contained an arbitration clause which allowed the dance theater to appoint two of three members of the panel. The dancer challenged such appointment and the court upheld the challenge ruling:

Finally, we hold that the trial court has the authority to substitute a neutral third arbitrator to insure a fair and impartial hearing. . . To allow defendant to have two representatives . . . would make the proceedings inherently unfair and would tip the balance decidedly in favor of defendant. Accordingly, the trial court is to substitute a neutral third arbitrator for one of the defendant's representatives.[xxi]

Third National Bank v. WEDGE Group Inc., 749 F.Supp. 851 (M.D.Tenn.1990) involved a tax sharing agreement between a former parent and subsidiary. The arbitration clause named as the arbitrator WEDGE's accounting firm. The former subsidiary challenged the role of the accounting firm as arbitrator arguing that the propriety and fiduciary relationship with WEDGE would taint the process. The court ruled for the former subsidiary:

Given the business connection between Ernst & Young and WEDGE and the resulting fiduciary duties Ernst & Young owes to WEDGE as the company's agent, it is reasonable to conclude that Ernst & Young would be partial to WEDGE in the arbitration of this dispute. Where the potential bias of a named arbitrator makes arbitration proceedings a prelude to later judicial proceedings challenging the arbitration award, a court can appoint a neutral substitute arbitrator.[xxii]

The arbitrator named in a collective bargaining agreement was a former attorney for the defendant union in Cristina Blouse Corp. v. International Ladies Garment Workers' Union Local 162, 492 F.Supp. 508 (S.D.N.Y.1980). Upon objection, the court ruled that a new arbitrator should be appointed:

[The arbitrator] may not be considered . . . as impartial and must be disqualified to serve as an arbitrator in this matter. A person or tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias. A former attorney for a party to the arbitration up until his designation as [arbitrator] in the collective bargaining agreement does not qualify as a proper arbitrator of its grievances . . . .[xxiii]

In a related subject area, the AAA appointed a second arbitration panel after it concluded that the first had not been appointed in accordance with a court interpretation of the arbitration clause in Jefferson-Pilot Life Ins. Co. v. Leafre Reinsurance Co., 2000 WL 1724661 (N.D.Ill.). The court rejected the argument that it lacked pre-hearing authority to rule on the appropriateness of the second panel:

Jefferson-Pilot does not ask this court to undertake the difficult task of determining whether an arbitrator is impermissibly biased. Plaintiff merely asks that he be entitled to a benefit explicitly conferred by a provision of an agreement negotiated in an arm's length transaction between two sophisticated parties. The Federal Arbitration Act clearly states that contractual provisions for the appointment of an arbitrator "shall be followed."[xxiv]

B. Non-Disclosure of Relationship with Arbitrator

A second exception to the general rule against pre-hearing challenges to an arbitrator is the non-disclosure of a relationship with the named arbitrator. In Masthead Mac Drilling Corp. v. Fleck, 549 F.Supp. 854 (S.D.N.Y.1982), several contracts between the parties named specific individuals to arbitrate disputes under the contracts. After the

contracts were executed, it was revealed that the arbitrators had certain business relationships with the party which proposed them as arbitrators. The court ruled that new arbitrators should be appointed:

[T]he plaintiffs [allege] that defendants misrepresented the impartiality of the designated arbitrators by failing to disclose that the arbitrators are or have been business associates of defendants. The connections between the defendants and the named arbitrators do raise troubling questions as to possible bias . . . Such authority [for the court to appoint a different arbitrator] is in any case inherent when the potential bias of a designated arbitrator would make arbitration proceedings simply a prelude to later judicial proceedings challenging the arbitration award.[xxv]

C. Misbehavior of an Arbitrator

A third exception to the general rule against pre-hearing challenges to arbitrators may be the misbehavior of an arbitrator to the prejudice of a party.[xxvi] This possible exception is represented by Metropolitan Property and Casualty Co. v. J.C. Penney Cas. Ins. Co., 780 F.Supp. 885 (D.Conn.1991). The procedural history of this case is important to evaluate the weight to be given this case.

Metropolitan, the reinsurer, sought an injunction to prohibit Penney's party appointed arbitrator from serving in that capacity. Penney removed to federal court where two questions where presented: (1) whether there was complete diversity of citizenship (naming the arbitrator as a party destroyed it); and (2) "whether the injunctive relief sought by (Metropolitan) is precluded categorically as a matter of law and that there is no reasonable basis upon which (Metropolitan) can prevail in this action."[xxvii] The court found that diversity was lacking and, therefore, did not need to opine on injunctive relief. As a result, the court's comments on disqualification of the arbitrator are *dicta* and the procedural standards applied to Metropolitan's arguments for an injunction are very low *i.e.* "the court resolves all disputed facts and any uncertainties or doubts about the state of the controlling law in favor of (Metropolitan)."[xxviii]

Metropolitan's factual allegations to support the injunction were that prior to his appointment, Penney's party arbitrator traveled to Penney's office, received hospitality, reviewed relevant document and discussed the merits of the case with Penney officials. It was alleged further that the arbitrator attempted to discuss the substance of the dispute with Metropolitan's party arbitrator and engaged in deliberations before the panel was complete. Citing to the ethical guidelines for arbitrators of several states, the court found it questionable whether such activities, if proved, would be in compliance with such guidelines.[xxix]

More to the point, the court rejected the argument that it lacked the authority to make such a finding in a pre-hearing context:

Admittedly, it is theoretically possible that the granting of injunctive relief against (the arbitrator) "might spawn endless applications and indefinite delay" by encouraging [Metropolitan] to challenge Penney's selection to the panel repeatedly. (citation omitted) However, it is more likely, indeed, a virtual certainty, that [Metropolitan] will seek to vacate any award, short of total victory that [the arbitrator] participates in once the arbitration concludes. Thus, (Metropolitan) will litigate the propriety of [the arbitrator's] conduct *after* the arbitration even if it is precluded from disqualifying him *prior* to the process. In light of this reality, it simply does not follow that the policy objective of an expeditious and just arbitration with minimal judicial interference is furthered by categorically prohibiting a court from disqualifying an arbitrator prior to arbitration.(emphasis in the original)[xxx]

So saying the district court remanded the matter back to state court to determine whether there was a sufficient factual and legal basis to issue the injunction.

The questionable precedential value of Metropolitan should be read in light of the numerous cases cited in §§ II and III, *supra*. A particularly relevant case is Nationwide Mutual Ins. Co. v. Home Ins. Co., 90 F.Supp.2d 893 (S.D.Ohio) *aff'd* 278 F.3d 621 (6th Cir. 2002) in which a unanimous panel issued two interim orders denying Home's motion for recission and ordering that Home post security. Immediately after the second order, counsel for Home began a series of very strong letters to the panel accusing it of bias, blatant disregard of the evidence and

exceeding the clear limits of the panel's authority.[xxxi] The panel denied these accusations and eventually, the entire panel resigned in protest, before Home could seek pre-hearing removal.

Home sought to vacate the interim orders of the panel on the basis of bias and partiality and to obtain discovery from panelists in support of such motion. In support of its position, Home argued: (1) that the order for security was without legal or factual support; (2) that one of the party arbitrators had improper *ex parte* contact with counsel and a party; and (3) that a series of letters from the panel demonstrated its bias.

The district court denied discovery and declined to vacate the orders. In doing so, the court summarily dismissed Home's argument on the pre-hearing security order:

"An adverse award in and of itself is no evidence of bias absent some evidence of improper motivation." (citation omitted) The policies underlying federal preference for arbitration are wholly defeated if one party can overturn a decision claiming evident partiality simply because it disagrees with conclusions reached by the arbitrators. Further, it is not for this court to interpret the contract and sit as a reviewing court as to orders issued by the panel.[xxxii]

The district court likewise rejected Home's argument on *ex parte* contact. The court found that: (1) the arbitrator notified Home's counsel prior to the contact and counsel did not then object; (2) there is no evidence that this dispute was discussed; (3) counsel for Home also offered meet with the arbitrator; (4) there was no business relationship between the arbitrator and Nationwide; and (5) counsel for Home did not raise this issue until the panel issued two orders adverse to Home.[xxxiii]

Finally, the district court rejected the argument that the panel demonstrated bias when it responded to a provocative series of letter from Home's counsel after the two adverse orders were entered.

This argument is the least persuasive and, in the Court's view, borders on the frivolous. Home's counsel engaged in an unrelenting, unremitting barrage of invectives impugning the integrity of the Panel members, including a panelist selected by Home itself. It is difficult to imagine how Home can complain when the members of the Panel responded by noting their disagreement with Home's unsupported accusations which essentially called into question the ethics of all three members of the Panel. The Court further notes that the language used by the Panel in responding to the charges was far more temperate, professional and appropriate than the hyper-inflated, disparaging rhetoric used by Home's counsel against the Panel.[xxxiv]

The Nationwide case suggests that panelists may not be removed from a panel for misbehavior or bias prior the hearing simply for making interim rulings which are adverse to one party or for responding in appropriate fashion to the provocative actions of counsel for such party.

V. Conclusion

Quite a large number of cases seem unequivocal in their holdings that there is no basis to mount a pre-hearing challenge to an arbitrator. A somewhat lesser number of decisions take the judicially cautious approach that there may be exceptions to the general rule, but they do not apply to the case at hand. The issue, of course, is the proper basis for exceptions.

There is significant justification for an exception when the operation of a relatively neutral arbitration creates a one-sided panel through happenstance, as was the case facing the Ervingcourt. There is perhaps equal justification for an exception where the arbitration clause produces a one-sided panel due to unequal bargaining power as was probably the situation in Bennish. There is significantly less justification to disqualify on a pre-hearing basis arbitrators for whom parties of relatively equal bargaining power negotiated and contracted, as was the case in Cristina Blouse and WEDGE,[xxxv]notwithstanding the distasteful conflicts of interest presented for attorneys and accountants in these cases. Two courts have criticized WEDGEand, by implication, Christina Blouse and articulated the proper exception as one in which the arbitrator's relationship to a party was undisclosed, or

unanticipated and unintended.[xxxvi] Other courts characterized the exception as based on the invalidity of the arbitration agreement based on contract principles.[xxxvii]

The Masthead case suggests another exception to the general rule for failure to disclose the relationship between an arbitrator and a party. However, the Aviall court interprets this case as within the exception for those instances in the arbitrator's relationship to a party was undisclosed, or unanticipated and unintended.[xxxviii] The Masthead case can better fit within this exception if one regards the court's language about arbitration as a prelude to litigation as a rhetorical flourish rather than a holding. The willingness of counsel to litigate even frivolous claims cannot be a standard for removal of arbitrators.[xxxix]

It is possible that some level of misbehavior by arbitrators would permit removal of an arbitrator prior to a hearing on the merits. However, the Metropolitan case is very weak authority for what that level might be.
The Nationwide case indicates that rulings adverse to a certain party and measured reactions to provocative behavior by a party do not amount to misbehavior by the arbitrators or bias toward such party.

ENDNOTES

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[i]. 9 U.S.C.A. Sec. 10.

[ii]. For an article on post-hearing vacation of awards due to partiality of arbitrators, *see* Robert M. Hall and Paige D. Waters, Partiality Among Arbitration Panelists, VIII Mealey's Reins. Rpt. No. 3 (1997).

[iii]. 101 A.2d at 301.

[iv]. 1998 WL 749041*6.

[v]. 2001 WL 546600*2.

[vi]. 304 F.3d at 490.

[vii]. 110 F.3d at 896.

[viii]. 389 N.Y.S. at 802.

[ix]. Cristina v. Blouse Corp. v. Internat'l Ladies Garment Workers' Union, Local 162, 492 F.Supp. 508 (S.D.N.Y.1980).

[x]. 1995 WL *905528.

[xi]. 1999 WL 1270674*2

[xii]. 11 F.Supp. at 232.

[xiii]. 443 F.Supp. at 387 - 8.

[xiv]. *Id.*

[xv]. 1997 WL 461035 *3-5.

[xvi]. 577 N.Y.S.2d at 288.

[xvii]. 171 F.R.D. at 79.

[xviii]. Third National Bank v. WEDGE Group, Inc., 749 F.Supp. 851 (M.D.Tenn.1990). *See also,* section IV, *infra.*

[xix]. 87 F.Supp. at 6.

[xx]. 349 F.Supp. at 719.

[xxi]. 422 S.E.2d at 337.

[xxii]. 749 F.Supp. at 855.

[xxiii]. 492 F.Supp. at 510

[xxiv]. 2000 WL 1724661 *2.

[xxv]. 549 F. Supp. at 856.

[xxvi]. Such misbehavior is named as a specific basis for a court to vacate an arbitration order under the FAA. *See* section I, *infra*.

[xxvii]. 780 F.Supp. at 896.

[xxviii]. *Id.*

[xxix]. *Id.* at 890 - 3.

[xxx]. *Id.* at 893 - 4.

[xxxi]. 90 F.Supp. at 900.

[xxxii]. *Id.* at 901.

[xxxiii]. *Id.*

[xxxiv]. *Id.* at 902.

[xxxv]. *But see* J & M Knitting Mills v. Knitgoods Workers' Union, 1995 WL 905528 (S.D.N.Y.); Aviall v. Ryder Systems, Inc. , 110 F.3d 692 (2nd Cir.1997); In re the Matter of the Arbitration between Siegel and Lewis, 389 N.Y.S. 800 (1976).

[xxxvi]. Aviall, Inc. v. Ryder System, Inc., 110 F.3d 892 at 896 (2nd Cir.1997); Black v. National Football League Players Association, 87 F.Supp. 1 at 5 (D.C.2000).

[xxxvii]. National Union Fire Ins. Co. of Pittsburgh v. Holt Cargo Systems, Inc., 2000 WL 328802 *2 n.1 (S.D.N.Y.).

[xxxviii]. Aviall, Inc. v Ryder System, Inc. 110 F.3d 892 at 896 (2nd Cir.1997).

[xxxix]. *See* Nationwide Mutual Ins. Co. v. Home Ins. Co., 90 F.Supp. 893 (S.D.Ohio2000).