

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTER FOR DISPUTE RESOLUTION

AFILIAS DOMAINS NO. 3 LTD.,

Claimant,

and

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS,

Respondent,

and

VERISIGN, INC. and NU DOTCO, LLC.

Proposed *Amicus Curiae*.

ICDR CASE NO: 01-18-0004-2702

VERISIGN, INC.'S POST-HEARING BRIEF (PHASE I)

15 November 2019

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INTRODUCTION

1. VeriSign, Inc. (“Verisign”) respectfully submits its post-hearing brief on the three issues identified in the Panel Chair’s letter dated 9 October 2019.

2. Verisign’s prior briefing and the arguments presented at the 2 October 2019 telephonic Phase 1 Hearing demonstrate that Verisign is entitled to broad participation as *amicus curiae* in these proceedings, and that such broad participation is the only outcome that will “ensure fundamental fairness and due process” and “[s]ecure the accessible, transparent, efficient, coherent, and just resolution of Disputes” provided for by ICANN’s Bylaws and the norms of international arbitration. (*See, e.g.*, Bylaws, § 4.3(a)(viii) & n(iv)).

3. Following the conclusion of the Phase I Hearing, the Panel asked the Parties and Proposed *Amici* for their views on the three issues set forth in the Panel Chair’s letter dated 9 October 2019. Verisign’s position on each of these issues is set forth below.

ARGUMENT

I. ISSUE 1

“[T]he status of the IRP Implementation Oversight Team (IOT) and its relationship with ICANN and its Board, including the recourses available to a party wishing to challenge the IOT’s conduct or decisions.”

4. The IRP-IOT was created in early 2016 by ICANN’s Cross-Community Working Group-Accountability (“CCWG-Accountability”)¹ to work on updating the Supplementary Rules of Procedure for IRPs. *See* <https://www.icann.org/public-comments/irp-iot-recs-2018-06-22-en>. As required by ICANN’s Bylaws, the IRP-IOT is comprised of 27 members of the global ICANN community who serve in a volunteer capacity. (*See* Bylaws, § 4.3(n)(i) (“An IRP Implementation Oversight Team shall be established in consultation with the Supporting

¹ The CCWG-Accountability is itself a multi-stakeholder organization convened, designed and approved by five ICANN SOs and ACs, *not* the ICANN Board or Staff. *See* <https://www.icann.org/public-comments/ccwg-accountability-draft-proposal-2015-05-04-en>.

Organizations and Advisory Committees and comprised of members of the global Internet community.”) & <https://community.icann.org/display/IRPIOTI/Independent+Review+Process+-+Implementation+Oversight+Team+%28IRP-IOT%29+Home>)).²

5. While the IRP-IOT was formed pursuant to a directive in ICANN’s Bylaws, it is part of the ICANN *community* rather than an arm of ICANN itself. The IRP-IOT is neither ICANN’s Board nor a Board committee authorized to act on behalf of the Board. As a committee comprised of community volunteers, the IRP-IOT also is not “Staff” as defined in the Bylaws.³ (Bylaws, § 4.2(a) (““Staff” includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.”)). While the IRP-IOT is charged with developing new rules of procedure for the IRP process, it lacks authority to implement process changes without ICANN’s approval; the IRP-IOT’s recommended Interim Supplementary Procedures only became effective when approved by ICANN’s Board. (Bylaws, § 4.3(n)(ii) (Supplementary Procedures will “take effect upon approval by the Board, such approval not to be unreasonably withheld.”)).

6. As a committee comprised of members of the global ICANN community, the IRP-IOT is neither the Board nor Staff and thus its actions, rules or practices cannot form the basis for an IRP or, stated differently, a claim against ICANN. Other procedures exist to resolve complaints regarding such a committee’s actions. Afilias has chosen not to pursue such proper avenues for consideration of its complaint.

7. Under the Bylaws, an Independent Review Process (“IRP”) may only be brought with respect to “any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute.” (Bylaws, § 4.3(b)(ii)). Requests for Reconsideration (“RFR”) are similarly limited in scope. (*Id.*, § 4.2(a)

² The membership list identifies several attorneys with ICANN’s law firm Jones Day, but Jones Day has never been considered a participant in the IRP-IOT. IRP-IOT meeting transcript, 27 April 2017 (ICANN Ex. 15, available at https://community.icann.org/pages/viewpage.action?pageId=64077897&preview=/64077897/64948112/IOT-IRP_0427ICANN1900UTCfinal%5B1%5D.pdf).

³ As noted during the Hearing, certain members of ICANN’s Staff do participate in IRP-IOT meetings but the vast majority of that organization’s membership is not affiliated with ICANN.

(“ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request (“Requestor”) the review or reconsideration of that action or inaction by the Board.”)).

8. The limitation of IRPs and RFRs to ICANN Board or Staff action or inaction is consistent with the purpose of the accountability mechanisms provided for in the Bylaws – making ICANN accountable *to* the community, rather than making ICANN accountable *for* the actions of the community. (Bylaws, § 4.1 (“In carrying out its Mission, ICANN shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws...”). Thus, for example, an IRP may be brought based on Board or Staff action or inaction *in response* to advice or input from an ICANN Supporting Organization (“SO”) or Advisory Committee (“AC”), but cannot be brought directly based on the conduct of the SOs and ACs themselves. (*See Id.*, 4.3(b)(iii)(A)(2) (Claims may be brought based on Board or Staff action or inaction that “resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization ...”). This is the case even though, much like the IRP-IOT, SOs and ACs exist pursuant to the Bylaws (*see* Bylaws, Arts. 11 & 12) and function within ICANN’s multi-stakeholder operating model.

9. That said, the Bylaws do provide mechanisms by which concerns regarding the conduct of the global Internet community, acting within ICANN’s multi-stakeholder model, can be raised. ICANN has established an Office of Ombudsman, whose role is to “act as a neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in Section 4.3 have not been invoked.” (Bylaws, § 5.2). “The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board *or an ICANN constituent body* has treated them unfairly.” (*Id.* (Emphasis added)). One of the examples identified by ICANN of the “Ways the Ombudsman May Help” is assisting parties with “[p]roblems with unfair procedure in ICANN and the community,” which appears squarely to

describe precisely the types of concerns raised by Afilias with respect to the IRP-IOT. (See <https://www.icann.org/ombudsman>).

10. Thus, Afilias could have raised its alleged concerns regarding the internal workings of the IRP-IOT with ICANN's Ombudsman instead of improperly filing, in the first instance, an IRP with respect to the committees' purported conduct.⁴ If the response by the Ombudsman was not to Afilias' satisfaction, Afilias might then escalate its complaint by filing an RFR or IRP to challenge the results of the Ombudsman investigation.⁵

11. Similarly, Afilias could have availed itself of ICANN's Complaints Office to challenge the IRP-IOT's conduct or decisions. "The Complaints Office handles complaints regarding the ICANN org *that don't fall into an existing complaints mechanism*, such as Contractual Compliance, Request for Reconsideration and the Ombudsman. This may include complaints about how a request has been handled, *a process that appears to be broken*, insufficient handling of an issue, *or something that may be an indication of a systemic issue*, among other things." (<https://www.icann.org/complaints-office>. (Emphasis added)). Complaints submitted to the Complaints Office are reviewed by an ICANN Complaints Officer, and a written response is provided that is published on ICANN's website. (*Id.*). Afilias could have used this mechanism to bring to ICANN's attention its concerns regarding the IRP-IOT's rule-making process. The response by ICANN's Complaints Officer, if unsatisfactory to Afilias, could then potentially have been escalated through ICANN's RFR and IRP accountability mechanisms. (See Bylaws, §§ 4.2 & 4.3 (providing that RFRs and IRPs both can be brought with respect to action or inaction by ICANN's Board or Staff that violate ICANN's Mission, Commitments, Core Values and/or established ICANN policies)).

⁴ Afilias clearly is familiar with ICANN's Ombudsman complaint process. In 2016, Afilias submitted a complaint to ICANN's Ombudsman regarding the .WEB auction and NDC's and Verisign's alleged Guidebook violations. (See 15 October 2018 Witness Statement of John L. Kane at ¶ 32 (<https://www.icann.org/en/system/files/files/irp-afili-as-witness-statement-kane-redacted-26nov18-en.pdf>)).

⁵ Verisign understands that ICANN's Ombudsman is a paid position and thus qualifies as "Staff" under the Bylaws' definition.

12. Finally, such concerns can be raised within the IRP-IOT itself. Indeed, that is precisely what has happened with respect to one of the issues raised by Afilias regarding the IRP-IOT – that meetings of the IRP-IOT were held without a proper quorum.⁶ As Afilias noted in its Response to the Requests of Verisign and NDC to Participate as *Amicus Curiae*, two IRP-IOT members raised concerns regarding whether ICANN’s Legal Department and outside counsel should participate as full members of the IRP-IOT and whether their participation should count towards achieving a quorum. (See Afilias’ 28 January 2019 Response, ¶¶ 78-81). After these concerns were raised, ICANN took steps to expand participation in the IRP-IOT⁷ and the IRP-IOT is continuing to discuss the issue of the participation of ICANN’s legal counsel, with the intention of escalating the issue to ICANN and/or ICANN’s SOs and ACs.⁸ Again, assuming ICANN’s Staff or Board decisions regarding these issues were or are not to the satisfaction of the complainants, they could then invoke a formal accountability mechanism (e.g., a RFR or IRP) to challenge that decision.

II. ISSUE 2

“[T]he timeliness of Afilias’ Rule 7 Claim, in light of the arguments set out in para. 31–32 of ICANN’s Supplementary Brief.”

13. In Afilias’ Amended IRP, Afilias asserts that “ICANN’s effectuation of the rule [7] changes in this manner for the benefit of VeriSign is part of a course of conduct dating back to at least August 2016...” (21 March 2019 Amended Request by Afilias Domains No. 3 Limited for Independent Review, ¶¶ 88). Based on Afilias’ allegation, the “conduct” on which

⁶ Amended Request by Afilias Domains No. 3 Limited for Independent Review, 21 March 2019, ¶ 86.

⁷ See 26 June 2019 Letter from Leon Sanchez, Chair, ICANN Board Accountability Mechanisms Committee, to the leadership of ICANN’s SOs and ACs, at <https://community.icann.org/display/IRPIOTI/Independent+Review+Process+-+Implementation+Oversight+Team+%28IRP-IOT%29+Home?preview=/96211302/111390805/2019-06-26LeonSancheztoSOAC-Leaders-Repulating-IOT-0001.pdf>.

⁸ See 25 June 2019 email from David McAuley to members of the IRP-IOT, at <https://mm.icann.org/pipermail/iot/2019-June/000515.html>.

its Rule 7 claim is based occurred more than three years ago and thus is clearly time barred under Rule 4 of the Supplementary Procedures, which establishes an absolute bar for IRP claims brought more than 12 months after the date of the action or inaction upon which the claim is based. (Interim Supplementary Procedures, Rule 4 (“[A] statement of a d DISPUTE may not be filed more than twelve (12) months from the date of such action or inaction.”)). By Afilias’ own calculation, its Rule 7 claim is untimely.

14. Alternatively, if Afilias claims that the limitations period was somehow tolled or otherwise did not run because the adoption of Rule 7 was a further act as part of the “course of conduct” within the limitations period, the alleged last act in that course of conduct was ICANN’s Board’s adoption of the Interim Supplementary Procedures on 21 October 2018. As discussed *infra* at Paragraph 21, Afilias has not alleged that it has suffered any cognizable injury or harm directly and causally connected to ICANN’s adoption of Rule 7. Thus, any harm upon which Afilias bases its standing to bring its Rule 7 claim must be the same harm claimed with respect to the other Bylaws’ violations asserted in its Amended IRP. Assuming for purposes of argument that such harm is sufficient to state a claim based on Rule 7, that harm existed as of the date of the Board’s adoption of the Interim Supplementary Procedures. Accordingly, Afilias’ Rule 7 Claim also is untimely as it was filed more than 120 days after Afilias became aware of the purported harm from ICANN’s alleged Rule 7 violation. (*See* Interim Supplementary Procedures, Rule 4 (“A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 120 days after a CLAIMANT becomes aware of the material effect of the action or inaction giving rise to the DISPUTE...”)).

III. ISSUE 3

“[T]he relevance (if any) to the resolution of Phase I issues, of the authority given to IRP Panels under section 4.3(o)(v) of the Bylaws, to ‘take such other actions as are necessary for the efficient resolution of Disputes.’”

15. As set forth below, the broad discretion afforded to the Panel by Section 4.3(o)(v) of the Bylaws allows the Panel to readily resolve each of the two primary Phase I issues—*i.e.*, (1) whether Verisign and NDC should be permitted to participate in the IRP as *amici* at all, and (2) if so, what the scope of their participation should be. Afilias has conceded the broad discretion this Bylaw provides the Panel with respect to *amici* participation. During the Phase 1 Hearing, Afilias in fact argued that this Panel has broad discretion regarding *amici* participation:

[I]t’s up to you, the Panel to decide what it is that you want them—where you would need assistance—*amici*, where you need assistance. So if you—if you believe that you—the assistance that you need is broad, and is assistance that you need on a variety of factual and legal issues in order to decide the dispute, ***that’s within your discretion.***⁹ (Emphasis added).

16. The broad discretion granted by Section 4.3(o)(v)—which expressly permits the Panel to “take such other actions as are necessary for the efficient resolution of Disputes”¹⁰—allows the Panel to grant NDC and Verisign *amici* status and tailor the scope of their participation in any way that the Panel believes would be necessary for the efficient resolution of the dispute. Section 4.3(o)(v) reflects the broad discretion granted to IRP panels—and to arbitrators more generally¹¹—to adapt the applicable procedure to the specific circumstances of the proceeding, absent party agreement to the contrary. Such broad discretion is also explicitly

⁹ Phase 1 Hearing Tr., 2 October 2019, at 112:11-15.

¹⁰ Bylaws, § 4.3(o)(v).

¹¹ GARY BORN, INTERNATIONAL COMMERCIAL ARBITRATION 2145–46 (2d ed. 2014) (“**BORN**”) (“The arbitrators’ discretion to determine the arbitral procedure, in the absence of agreement between the parties on such matters, is one of the foundational elements of the international arbitral process. . . . The tribunal’s procedural authority is an implicit part of the parties’ agreement to arbitrate and is an indispensable precondition for an effective arbitral process.”).

provided for in the ICDR International Arbitration Rules (which apply to this case),¹² and it is widely included in institutional rules around the globe.¹³ In the circumstances of this case, that discretion must include the Panel’s right to grant broad *amici* participation sufficient to afford “fundamental fairness and due process” to both *amici* and the parties.¹⁴

17. Rule 7 of the Interim Supplementary Procedures does not in any way constrain the Panel’s discretion to order whatever scope of *amici* participation it deems appropriate and necessary. Nor does any other Rule of the Interim Supplementary Procedures or Section of the Bylaws. In fact, Rule 7 confirms the breadth of the Panel’s discretion regarding the scope of *amici* participation, referring directly to the Panel’s “discretion” in this regard *four times*.¹⁵ In short, Afiliis cannot dispute—and, in fact, explicitly conceded during the Phase I Hearing—that this Panel has discretion to order broad *amici* participation: “[I]f you believe that your—the assistance that you need is broad, and is assistance that you need on a variety of factual and legal issues in order to decide the dispute, that’s within your discretion.”¹⁶

18. As Verisign has previously explained, the following scope of *amicus* participation is appropriate in the context of this case and, indeed, it is “necessary for the efficient resolution”¹⁷ of this dispute consistent with due process: Briefing, argument, evidence

¹² ICDR Rules, Arts. 20(1)–(2) (“Subject to these Rules, *the arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate*, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case. The tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute. . . .” (Emphasis added.)).

¹³ BORN at 2153 (“[T]he provisions of these institutional rules [including those of the LCIA, ICDR, HKIAC, SIAC, VIAC, and SCC] all provide the arbitrators with the ultimate authority over the arbitral procedure, subject to mandatory law protections and to the parties’ power to agree on basic structural aspects of the arbitration.”).

¹⁴ Bylaws, § 4.3(n)(iv).

¹⁵ Interim Supplementary Procedures, Rule 7 (p. 12 & n.4).

¹⁶ Phase 1 Hearing Tr., 2 October 2019, at 112:11-15.

¹⁷ Bylaws, § 4.3(o)(v).

presentation, participation at hearings on relevant issues,¹⁸ and access (with reasonable confidentiality restrictions) to all pleadings and evidence filed in this IRP.¹⁹

19. In ICANN’s words, such scope of participation as *amici* by Verisign and NDC not only comports with “fundamental fairness and due process,” but it “will also result in providing the Panel with a more comprehensive record on which to evaluate and determine Afilias’ .WEB claims, and will thus serve to enhance the rigor of the Panel’s factual and legal analysis while also improving the quality of [the] Panel’s final decision.”²⁰ Put another way, such participation is necessary for the efficient and fair resolution of the present dispute, and—pursuant to each of Rule 7 and Section 4.3(o)(v)—such participation is plainly within the Panel’s authority to grant.

20. *Second*, the discretion granted by Section 4.3(o)(v) is sufficiently broad that the Panel could accept *amici* submissions from Verisign and NDC *even if* Rule 7 of the Interim Supplementary Procedures did not exist, or *even if* the Panel were to declare Rule 7 unenforceable (as unjustifiably demanded by Afilias²¹). In fact, commentators have advocated for interpreting the discretion of the type granted by Section 4.3(o)(v) to mean that IRP panels may order “whatever measures they deem fit for the effective resolution of the dispute.”²² In this

¹⁸ As explained in Verisign’s Supplemental Brief, relevant issues include any issue that may impact Verisign’s interests, including (i) the Domain Acquisition Agreement between Verisign and NDC; (ii) NDC’s or Verisign’s alleged failure to comply with the Guidebook or other ICANN rules based on the DAA; and (iii) the alleged competitive concerns with Verisign’s proposed operation of .WEB. *See* Verisign’s Supplemental Brief in Support of Its Request to Participate as *Amicus Curiae* in Independent Review Process, 27 September 2019 (“**Verisign’s Supplemental Brief**”), ¶ 21.

¹⁹ Verisign’s Supplemental Brief, ¶ 22.

²⁰ ICANN’s Supplemental Brief Regarding Phase I Issues, 27 September 2019, ¶ 9.

²¹ *See* Afilias’ Amended Request for Independent Review, 21 March 2019, ¶ 89(5).

²² FLIP PETILLION & JAN JANSSEN, *COMPETING FOR THE INTERNET: ICANN GATE — AN ANALYSIS AND PLEA FOR JUDICIAL REVIEW THROUGH ARBITRATION* 387 (2017).

case, such measures should include fulsome submissions and participation by Verisign and NDC on matters concerning their actions and implicating their interests.²³

21. Section 4.3(o)(v) also undermines any claim that Afilias has standing as a “Claimant” to challenge ICANN’s adoption of Rule 7. Afilias has no such standing. Pursuant to the Bylaws, a proper “Claimant” “must suffer an injury or harm that is directly and causally connected to the alleged violation.”²⁴ Afilias has not alleged that it has suffered any injury or harm directly and causally connected to ICANN’s adoption of Rule 7.²⁵ Afilias instead alleges only that Rule 7 has “significantly increased Afilias’ costs associated with prosecuting this IRP,”²⁶ and that, “but for” the adoption of Rule 7, “neither [Verisign or NDC] would have been able to even claim a right to *amicus* status.” Both of these arguments are without merit. First, the alleged increased costs are the result of Verisign’s and NDC’s decision and action to intervene as *amici*. Thus, the costs are not the direct and causal result of ICANN’s adoption of Rule 7; they are the result of third-parties’ actions – parties totally unaffiliated with ICANN, *i.e.*, Verisign and NDC. Such alleged harm is not “directly and causally connected to the alleged violation” by ICANN. Second, Verisign and NDC could have sought to intervene as *amici* even in the absence of Rule 7, and the Panel could have permitted such intervention pursuant to its broad discretion under Section 4.3(o)(v). In other words, even if (*quod non*) Afilias had properly

²³ Alleged actions by Verisign and NDC are at the core of Afilias’ claims against ICANN, and those claims seek to undermine rights in the .WEB gTLD that properly belong to Verisign and NDC. Afilias is incentivized only to criticize Verisign’s and NDC’s actions and undermine their rights, and ICANN has little incentive, and insufficient knowledge, to explain their actions or protect their rights. To fairly and efficiently assess Afilias’ claims, the Panel needs to hear from Verisign and NDC.

²⁴ Bylaws, § 4.3(b)(i).

²⁵ See generally Afilias’ Amended Request for Independent Review, 21 March 2019, ¶¶ 84–88. The absence of any allegation of injury or harm as a result of an action or inaction by ICANN is sufficient for the Panel to summarily dismiss Afilias’ Rule 7 Claim for lack of standing. Bylaws, § 4.3(o)(i) (“[E]ach IRP Panel shall have the authority to: (i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious; . . .” (Emphasis added)).

²⁶ Afilias’ Amended Request for Independent Review, 21 March 2019, ¶ 88.

alleged a harm as a result of ICANN’s adoption of Rule 7 (i.e., increased costs of this proceeding), such harm is not attributable to ICANN and would have resulted even absent adoption of Rule 7.

22. Under any circumstances, the fact remains that ICANN did adopt Rule 7, including the *amicus* provisions, and those provisions *require*—in circumstances that exist in this case—that Verisign and NDC “*shall be* deemed to have a material interest relevant to the Dispute,” and therefore they “*shall be* permitted to participate as an *amicus* before the IRP Panel.”²⁷ (Emphasis added.) In view of such mandatory provisions, and as anticipated during the Phase I Hearing,²⁸ a decision by the Panel denying the right of Verisign and/or NDC to participate as *amici* would be subject to a challenge, including through the IRP Appeal Process established by the Bylaws and Interim Supplementary Procedures,²⁹ and/or before the courts.³⁰ Such challenges, although necessary in the event that the Panel were to deny Verisign and/or NDC the right to participate as *amici*, would result in inefficient delay and costs that would be avoided if the Panel were to simply permit Verisign and NDC to participate as *amici*, as Rule 7 mandates, and as the discretion inherent in Section 4.3(o)(v) otherwise allows.

²⁷ Interim Supplementary Procedures, Rule 7 (p. 12). *See also, e.g.*, ICANN’s Reply to Afiliats’ Response to the Requests of Verisign and NDC to Participate as *Amicus Curiae*, 5 February 2019, ¶¶ 8, 17 (explaining that Verisign and NDC indisputably constitute mandatory *amici* under Rule 7 and there is no discretion to deny their participation); Verisign’s Supplemental Brief, ¶¶ 5, 16 (same); Afiliats’ Response to Verisign’s and NDC’s Requests to Participate as *Amicus Curiae* in IRP, 28 January 2019, ¶ 56 (stating that the “categories of mandatory participants” in Rule 7 “covered NDC’s and Verisign’s situation with respect to Afiliats’ IRP against ICANN”).

²⁸ *See* Phase I Hearing, 2 October 2019, Tr. at 111:7–11 (Panelist Chernick: “I understand that, reasonable people can differ about a lot of these issues, but at the end of the day you can’t deny that there is at least some significant risk that proceeding in the absence of those two parties [i.e., Verisign and NDC] might have a — an outcome that makes all of what we have done and will do wasted.”).

²⁹ *See* Bylaws, § 4.3(w); Interim Supplementary Procedures, Rule 14.

³⁰ *See, e.g.*, U.S. Federal Arbitration Act, § 10(a) (“In any of the following cases the United States court . . . may make an order vacating the award upon the application of any party to the arbitration . . . (3) Where the arbitrators . . . refus[ed] to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced. (4) Where the arbitrators exceeded their powers . . .”).

Dated: November 15, 2019

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