

# “Reasoned” Arbitration Awards

By

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## Abstract

The FAA requires that arbitration awards be "in writing". Some arbitration rules -- such as the AAA Employment Arbitration Rules -- require that awards be "reasoned", while other rules -- such as the AAA Commercial Arbitration Rules -- permit awards that are merely dispositional. An award may be unenforceable in court if the applicable rules or an agreement of the parties require reasoned awards, but the award is sparsely or poorly reasoned, or is conclusory or merely dispositional. However, there is no consensus on the standards that courts use to judge whether an arbitration award is sufficiently "reasoned." This article will review and evaluate the existing caselaw and propose meaningful standards for evaluating whether an award is "reasoned".

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## I. INTRODUCTION

In arbitration, the arbitrator often has the final word on the outcome of a given case. This final word is disseminated to the parties in the form of an arbitration award, which at the very minimum contains a simple dispositional explanation of the results of the arbitration in writing.<sup>1</sup> However, when the parties agree to arbitrate with other rules,<sup>2</sup> such as the American Arbitration Association Employment Arbitration Rules, the arbitrator can be required to provide a “reasoned” arbitration award.<sup>3</sup> Similarly, if the parties’ arbitration agreement requires a reasoned award, or if the parties subsequently agree to a reasoned award, the award must be reasoned.

The issue at the center of this article arises when one party does not believe that the “reasoned” arbitration award contains enough information about the arbitrator’s reasoning behind a decision. The aggrieved party will often challenge the arbitration award in the hope that the court will find it unenforceable. However, though the issue has arisen in many court cases, there has been no definitive answer on what constitutes a “reasoned” arbitration award.

Part II of this article will discuss the background of arbitration awards and where the requirement for the arbitrator to release a reasoned arbitration award can come from. Part III will review cases, both state and federal, that have attempted to answer the question of what constitutes a “reasoned” arbitration award. Part IV will analyze the case law and various arbitration group requirements for a reasoned award and propose a framework for what a reasoned arbitration award should look like and what information it should contain to meet the heightened standard. Part V will conclude.

## II. BACKGROUND OF REASONED ARBITRATION AWARDS

### A. *Arbitration Awards Under the United States Arbitration Act*

Since the passage of the United States Arbitration Act in 1925, commonly known as the Federal Arbitration Act (FAA), the use of alternative dispute resolution – and arbitration in particular – has increased greatly.<sup>4</sup> However, the FAA has remained mostly unchanged. The text of the FAA contains little explanation of what exactly an arbitration award is to look like. The only textual requirement in the FAA is that an arbitration award must be in writing.<sup>5</sup>

While this provides a bare minimum for what an arbitration award should look like, it in no way covers the issue of what the content must be. However, this is a good basis from which to start. While the FAA represents the bare minimum for arbitration awards, when the parties agree

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<sup>1</sup> United States Arbitration Act, 68 Pub. L. 401, 43 Stat. 883 (1925).

<sup>2</sup> AMERICAN ARBITRATION ASSOCIATION, COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES 27 (Oct. 1, 2013), available at [https://www.adr.org/sites/default/files/CommercialRules\\_Web.pdf](https://www.adr.org/sites/default/files/CommercialRules_Web.pdf).

<sup>3</sup> AMERICAN ARBITRATION ASSOCIATION, EMPLOYMENT ARBITRATION RULES AND MEDIATION PROCEDURES 23 (Nov. 1, 2009), available at [https://www.adr.org/sites/default/files/EmploymentRules\\_Web2119.pdf](https://www.adr.org/sites/default/files/EmploymentRules_Web2119.pdf).

<sup>4</sup> Michael McManus & Brianna Silverstein, *Brief History of Alternative Dispute Resolution in the United States*, CADMUS 100, 102 (Oct. 2011).

<sup>5</sup> United States Arbitration Act, 68 Pub. L. 401, 43 Stat. 883 (1925).

to arbitrate under American Arbitration Association (AAA) rules or the rules of other arbitration groups, there frequently will be additional requirements placed upon the arbitrator.

#### B. *Arbitration Awards Under the AAA Employment Rules*

When the parties are arbitrating an employment dispute, they will often be arbitrating under the rules of one of many arbitration groups' set of rules. One such group is the AAA, whose Employment Arbitration Rules can be referenced within an arbitration agreement which binds the parties to use the rules in their arbitration. As with the FAA, the stated rules are limited, but they provide another basis from which to work towards the definition of a reasoned award.

Under the AAA Employment Rules, arbitration awards must be submitted in writing and signed on to by a majority of the arbitrators.<sup>6</sup> In the arbitration award, the arbitrator must provide written reasons for the award.<sup>7</sup>

While this does not provide exactly what the award should contain, the use of the word "reason" seems to require that the arbitrator explain why s/he has decided the case in a certain way. This likely means that a simple arbitration award that states the outcome of an arbitration would not meet the requirements and could be considered unenforceable if one party challenges the ruling. While parties that agree to arbitrate under the AAA Employment Rules would be entitled to receive a "reasoned" arbitration award from the arbitrator, parties that agree to arbitrate under other rules may not receive the same entitlement.

#### C. *Arbitration Awards Under the AAA Commercial Rules*

Unlike under the AAA Employment Rules, the AAA Commercial Rules explicitly state that an arbitrator need not provide a reasoned arbitration award.<sup>8</sup> Thus, an arbitrator need only release a determination of what the outcome of the arbitration is, without explaining the arbitrator's reasoning. However, if the parties agree to require a reasoned award, or the arbitrator determines that a reasoned award is appropriate, the arbitrator may provide a reasoned award.<sup>9</sup>

As with the AAA Employment Rules, there is no definition of what a reasoned arbitration award must look like. However, some other sets of arbitration rules contain more detailed descriptions of what is required when a reasoned arbitration award is determined to be necessary.

#### D. *Reasoned Arbitration Awards Under Other Rules*

Arbitration service providers have promulgated many sets of arbitration rules that parties can agree to arbitrate under. Often, the same arbitration service provider will promulgate several sets of rules, each to be used to resolve a certain type of dispute. For example, in addition to AAA's employment and commercial arbitration rules, AAA also has rules for construction industry disputes, labor disputes, consumer disputes, and international disputes. Some of these sets of rules require reasoned awards; some do not. Of those requiring reasoned awards, some provide more guidance than others of what a reasoned arbitration award must look like.

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<sup>6</sup> American Arbitration Association, *Employment Rules*, *supra* note 3, at 23.

<sup>7</sup> *Id.*

<sup>8</sup> AMERICAN ARBITRATION ASSOCIATION, *supra* note 2, at 27.

<sup>9</sup> *Id.*

One example is the AIDA Reinsurance and Insurance Arbitration Society of the United States, or ARIAS • U.S.. This group certifies arbitrators to resolve matters in the insurance and reinsurance realm with ethical and procedural guidelines for arbitration.<sup>10</sup>

When arbitrating under the ARIAS • U.S. Rules for the Resolution of U.S. Insurance and Reinsurance Disputes, the arbitrator is required to release a written disposition of the claims and the relief to be granted in the award.<sup>11</sup> Additionally, parties may submit a written request that the arbitrator provide the rationale for the decision,<sup>12</sup> which equates to requiring the arbitrator to release a reasoned arbitration award. Much like the AAA rules described previously, the ARIAS Rules do not explain what a reasoned award looks like.

However, ARIAS • U.S. has released an advisory Checklist for Arbitration Reasoned Awards. This Checklist provides numerous elements that a reasoned award should contain, but is not an exhaustive list of all requirements.<sup>13</sup> Among the elements is the requirement that the arbitrator identify each issue that was necessary to the decision, state the determination on each issue, and provide the reasoning for the resolution of each issue.<sup>14</sup> The arbitrator may also describe any issue that the parties raised that did not factor into the decision and why disposing of that issue was not necessary to the outcome.<sup>15</sup>

Another element is the inclusion of a statement of facts for the arbitration.<sup>16</sup> This is not required, except “to the extent any factual finding presents a significant reason for the panel’s resolution of a contested issue...the finding should be included in the award.”<sup>17</sup> While the rules do not require a statement of facts for all issues, the rules do require that, for any contested issue, the arbitrator must include in the award a description of the reasoning necessary.

A further element that is also recommended is the inclusion of conclusions of law.<sup>18</sup> While this is not required, a reasoned arbitration agreement may need to provide this to thoroughly explain an award.

While some of the various rules that parties may agree to arbitrate under provide a very basic view on what a reasoned arbitration award must look like, others provide much more guidance for the arbitrator. However, courts have also looked at what it means for an arbitration award to be reasoned.

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<sup>10</sup> See generally ARIAS • US, *About ARIAS • US*, ARIAS • US (2019), <https://www.arias-us.org/about-arias-us/>.

<sup>11</sup> ARIAS • US, ARIAS • U.S. Rules for the Resolution of U.S. Insurance and Reinsurance Disputes (Sept 2016), <http://www.arias-us.org/wp-content/uploads/2016/09/ARIASU.S.-Rules.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> ARIAS • US, *Checklist for Arbitration Reasoned Awards*, ARIAS • US (Oct 2017), [https://www.arias-us.org/wp-content/uploads/2017/10/Checklist-for-Arbitration-Reasoned-Awards\\_1.pdf](https://www.arias-us.org/wp-content/uploads/2017/10/Checklist-for-Arbitration-Reasoned-Awards_1.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

### III. CASES DISCUSSING REASONED ARBITRATION AWARDS

The U.S. Supreme Court has not ruled on what a reasoned arbitration award should look like. However, several other courts have discussed the issue.<sup>19</sup> This article describes cases in which the issue has arisen in one of two ways: either the arbitration rules the parties have agreed to require reasoned awards, or the parties have requested a reasoned arbitration award from the arbitrator.

Of the cases that have discussed the issue of what makes an arbitration award reasoned, this article uses three United States Court of Appeals cases and one Texas Court of Appeals case as a basis for the proposed framework.<sup>20</sup> Each of these cases provides a portion of the proposed framework, and the various means that courts have taken to determine whether an arbitration award is reasoned. In *Leeward Construction Co. v. American University of Antigua- College of Medicine*, the court determined a basic formula for deciding whether an award is considered reasoned.<sup>21</sup> In *Rain CII Carbon, LLC v. ConocoPhillips Co.*, the court determined that the length of an award could be a basis for deciding that an award was reasoned.<sup>22</sup> In *Cat Charter, LLC v. Schurtenberger*, the court decided that for an award to be reasoned it must contain an explanation of any conclusions that the arbitrator is making.<sup>23</sup> Finally, in *Stage Stores, Inc. v. Gunnerson*, the court determined that a reasoned award should mention all significant arguments made by the parties.<sup>24</sup>

While these cases represent a cross-section of the court decisions regarding reasoned arbitration awards, several other cases at the state and federal level also have made determinations on the issue.<sup>25</sup>

#### A. Basic Formulation of a Reasoned Arbitration Award

In *Leeward Construction*, the arbitration agreement originated out of an agreement for Leeward Construction Company to construct a medical school for American University of Antigua in 2008.<sup>26</sup> In 2011, Leeward filed an arbitration claim to address disputes that arose during the construction process.<sup>27</sup> The arbitration agreement in question did not specify whether the

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<sup>19</sup> See, e.g., *Leeward Constr. Co. v. Am. Univ. of Antigua - Coll. of Med.*, 826 F.3d 634 (2d Cir. 2016), *Rain CII Carbon, LLC v. ConocoPhillips Co.*, 674 F.3d 469 (5th Cir. 2012), *Cat Charter, LLC v. Schurtenberger*, 646 F.3d 836 (11th Cir. 2011), *Stage Stores, Inc. v. Gunnerson*, 477 S.W.3d 848 (Tex. App. 2015).

<sup>20</sup> *Id.*

<sup>21</sup> *Leeward Constr.*, 826 F.3d at 634.

<sup>22</sup> *Rain CII Carbon*, 674 F.3d at 469.

<sup>23</sup> *Cat Charter*, 646 F.3d at 844.

<sup>24</sup> *Stage Stores*, 477 S.W.3d at 861.

<sup>25</sup> See, e.g., *Tully Constr. Co. v. Canam Steel Corp.*, 684 F. App'x 24, 28 (2d Cir. 2017) (court determined that an award containing a factual history of the parties' dealings and discussion of damages awarded and why on individual claims was reasoned), *Trina Solar US, Inc. v. JRC-Services LLC*, 229 F. Supp. 3d 176, 192 (S.D.N.Y. 2017) (an arbitration award need not be reasoned when the parties agree to an unreasoned award), *Rich v. Spartis*, 516 F.3d 75, 83 (2d Cir. 2008) (indefinite, incomplete, and ambiguous awards can be remanded to sufficiently allow for judicial review even if allowed to be unreasoned).

<sup>26</sup> *Leeward Const. Co.*, 826 F.3d at 636.

<sup>27</sup> *Id.* at 636-37.

arbitration award was to be reasoned. However, at a preliminary hearing, the arbitral panel decided it would issue a reasoned arbitration award, and the parties did not object.<sup>28</sup>

Following written and oral testimony, and the submission of proposed findings of fact and conclusions of law by the parties, the panel issued an initial award in June 2012, followed by a modified award in August 2012.<sup>29</sup> The award contained several findings, including that the agreement was a fixed-price contract that was subject to additions and deletions that would occur through formal change orders, that both parties had waived the requirement to process additions and deletions through formal change orders, and amounts for the damages that Leeward suffered.<sup>30</sup>

Following the arbitration award, AUA petitioned the District Court to modify the award, stating that the arbitral panel exceeded its authority by failing to issue a reasoned arbitration award.<sup>31</sup> The District Court disagreed, stating that the award provided sufficient analysis to constitute a reasoned award.<sup>32</sup> AUA appealed to the Second Circuit Court of Appeals.<sup>33</sup>

The court considered several arguments made by the parties. First, Leeward argued that because a reasoned arbitration award was not required by the arbitration agreement, a reasoned arbitration award was not required.<sup>34</sup> The court, however, disagreed.<sup>35</sup> It stated that because the arbitrators decided during preliminary hearings that a reasoned arbitration award would be provided and neither party objected, a reasoned arbitration award was required.<sup>36</sup>

The second major argument was AUA's contention that the award was not sufficiently reasoned.<sup>37</sup> The court looked to other circuits for guidance.<sup>38</sup> It concluded that while generally an arbitrator need not explain the rationale behind her decisions, when a reasoned arbitration award is required, as in this case, the award must contain "something short of findings [of fact] and conclusions [of law] but more than a simple result."<sup>39</sup> Though the court did not specify how long an arbitration award must be to be considered reasoned, it stated that "a reasoned award is something more than a line or two of unexplained conclusions, but something less than full

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<sup>28</sup> *Id.* at 637.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 638.

<sup>35</sup> *Id.* at 638.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 638-40.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

findings of fact and conclusions of law on each issue raised before the panel.”<sup>40</sup> The arbitration award in question met that requirement because, while it did not discuss every argument made by the parties, it did set forth relevant facts and key factual findings that supported its conclusions.<sup>41</sup> Because of this, the Circuit Court affirmed the decision of the District Court.<sup>42</sup>

*B. Award Length Alone Can Indicate an Award Is Reasoned*

In *Rain CII Carbon*, the parties were involved in a long-term supply agreement.<sup>43</sup> Conoco had agreed to sell to Rain all green anode coke produced at one of its refineries from August 2005 to December 2015.<sup>44</sup> The 2005 agreement contained a formula for calculating the market price of green anode coke, and stated that if one party believed the formula no longer yielded market price, the party could reopen negotiations.<sup>45</sup> If those negotiations were unsuccessful, the matter would be submitted to a final-offer (“baseball”<sup>46</sup> style) arbitration where both parties would submit a proposal and the arbitrator would pick one.<sup>47</sup> After the negotiations broke down, Conoco submitted the matter to arbitration.<sup>48</sup> Both parties requested a reasoned arbitration award.<sup>49</sup>

Rain’s proposal to the arbitrator contained the original formula as written in the initial agreement.<sup>50</sup> The arbitrator adopted this proposal and awarded over \$17 million. In an eight-page award, the arbitrator described the contentions of the two parties and then included Rain’s price formula, but inadvertently also contained language from Conoco’s draft proposal which seemed to say that Rain was to pay Conoco nearly \$1.4 million.<sup>51</sup> Rain moved to have the inconsistencies removed from the award, and the arbitrator granted the motion.<sup>52</sup> Conoco sued in federal court and

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<sup>40</sup> *Id.* at 640.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 641.

<sup>43</sup> *Rain CII Carbon*, 674 F.3d at 471.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See Richard A. Bales & Michael Carrell, *Using Final-Offer Arbitration to Resolve Public Sector Impasses in Times of Concession Bargaining*, 28 OHIO ST. J. DISP. RESOL. 1 (2013), for a discussion of baseball arbitration.

<sup>47</sup> *Rain CII Carbon*, 674 F.3d at 471.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*



moved to have the arbitration award vacated, while Rain cross-moved to have it confirmed.<sup>53</sup> The District Court ruled in favor of Rain, and Conoco appealed to the Circuit Court.<sup>54</sup>

At the Fifth Circuit, Conoco raised two arguments that the arbitrator had exceeded his authority. First, Conoco argued that the arbitrator had failed to select only one proposal, and that the award was therefore inconsistent with the final-offer arbitration to which the parties had agreed. On this issue, the court considered whether the arbitrator's inadvertent use of language from the Conoco proposal and his subsequent removal of that language constituted choosing more than one proposal.<sup>55</sup> Conoco did not cite to any caselaw for the proposition that corrections of errors by an arbitrator was tantamount to exceeding authority, and the court ruled that because the final award did not contain the errors, Conoco's argument failed.<sup>56</sup>

Conoco's second argument was that the arbitration award could not be considered reasoned because it did not contain findings of fact and conclusions of law. Conoco cited to *Western Employers Insurance Co.*, a Ninth Circuit case in which an arbitration award was vacated due to not having those characteristics.<sup>57</sup> However, the court distinguished that case because Conoco and Rain had merely requested a "reasoned" award, without elaboration on what that would entail, while in *Western* the parties had specifically requested that findings of fact and conclusions of law be included in the award.<sup>58</sup> The court found that the mere length of the arbitration award – eight pages – demonstrated that the award was more than just a standard award announcing the decision of the arbitrator.<sup>59</sup> However the court also considered the content of the arbitration award, in which the arbitrator "laid out the facts, described the contentions of the parties, and decided which of the two proposals should prevail."<sup>60</sup> The court therefore affirmed the District Court's ruling that the award was sufficiently reasoned.<sup>61</sup>

### C. Reasoned Arbitration Awards Should Contain Explanations for All Conclusions

The Eleventh Circuit case of *Cat Charter* arose from a dispute over the payment for construction, and subsequent non-delivery, of a vessel that was to be called the Magic.<sup>62</sup> Daniel and Patricia Ryan formed a Delaware limited liability corporation, Cat Charter, and agreed to pay Multihull Technologies (MTI), a Florida business solely owned by Walter Schurtenberger, to build

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 472-73.

<sup>56</sup> *Id.* at 473.

<sup>57</sup> *Id.* at 474, discussing *Western Employers Insurance Co. v. Jefferies & Co.*, 958 F.2d 258 (9th Cir. 1992).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 474-75.

<sup>62</sup> *Cat Charter*, 646 F.3d at 839.



the vessel.<sup>63</sup> Despite receiving roughly \$2 million in payments towards the vessel, MTI never delivered, leading to binding arbitration pursuant to the agreement.<sup>64</sup> The arbitration went forward under the AAA Commercial Rules, with both parties agreeing that the arbitrators would issue a reasoned arbitration award.<sup>65</sup>

Following a five-day hearing, the arbitrators issued an arbitration award, which covered the claims of both parties, and awarded Cat Charter more than \$2 million in damages, fees, costs, and interest.<sup>66</sup> Cat Charter filed a motion to confirm the award in the federal district court, while MTI moved to vacate the award on the ground that the arbitrators exceeded their authority by failing to issue a reasoned arbitration award.<sup>67</sup> The District Court agreed with MTI, finding that the arbitrators exceeded their power by failing to issue a satisfactorily reasoned award.<sup>68</sup> The court also found that the award was so deficient that it ordered the arbitration to start over.<sup>69</sup> Cat Charter appealed.<sup>70</sup>

In determining whether the arbitration award was reasoned, the Circuit Court first considered what constituted a reasoned arbitration award.<sup>71</sup> Looking to previous cases for guidance,<sup>72</sup> the court found that a “reasoned award is something short of findings and conclusions but more than a simple result.”<sup>73</sup> However, the court viewed this broad spectrum as insufficient to evaluate the arbitration award at hand.<sup>74</sup> Looking to Webster’s Third New International Dictionary: Unabridged, the court determined that “reason”—as used in this context—means “an expression or statement offered as an explanation of a belief or assertion or as a justification of an act or procedure.”<sup>75</sup> Therefore, a reasoned arbitration award is an award that provides a detailed listing or mention of expressions or statements offered as justification.<sup>76</sup>

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 840.

<sup>66</sup> *Id.* at 841.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 842.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 843-44.

<sup>72</sup> See, e.g., *United Steelworkers v. Enterprise Wheel & Car Co.*, 363 U.S. 593 (1960), *ARCH Dev. Corp. v. Biomet, Inc.*, No. 02 C 9013, 2003 U.S. Dist. LEXIS 13118, 2003 WL 21697742, at \*4 (N.D. Ill. July 30, 2003), *Sarofim v. Trust Co. of the West*, 440 F.3d 213, 215 n.1 (5th Cir. 2006).

<sup>73</sup> *Cat Charter*, 646 F.3d at 844.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

With the definition of a reasoned arbitration award determined, the court next considered the arbitration award in the case.<sup>77</sup> The court viewed the arbitrators' decision as based primarily on credibility determinations by the arbitration panel, a result of what the court deemed a "swearing match" between the parties.<sup>78</sup> The court found that the arbitrators simply found Cat Charter's witnesses more credible.<sup>79</sup> The court ruled that while the arbitration panel could have provided more information in the arbitration award, the award contained enough reasoning to be considered more than a simple decision-only award, and that if the parties expected greater explanation in the award they should have requested it when agreeing to the type of award they wanted.<sup>80</sup>

Furthermore, the court found the arbitration panel provided a detailed explanation for the only conclusion that truly required it, which was the determination of the prevailing party for each claim and the awarding of attorney's fees.<sup>81</sup> The statements made by the arbitration panel provided justification for its decision, and therefore the award was reasoned.<sup>82</sup> Consequently, the Circuit Court reversed and remanded the decision of the district court.<sup>83</sup>

#### *D. Reasoned Awards Should Mention All Significant Arguments*

*Stage Stores* is a Texas appellate decision originating from a termination-of-contract claim.<sup>84</sup> Jon Gunnerson had entered into an employment contract following his promotion to Senior Vice President Director of Stores for the Houston Division of Stage Stores.<sup>85</sup> The employment contract contained an arbitration agreement that incorporated by reference AAA rules, and also contained various methods of terminating the contract.<sup>86</sup> In July 2012, Gunnerson submitted a letter of resignation, invoking the "By the Executive for Good Reason" method of terminating the contract.<sup>87</sup> Despite the contract stating that this method of termination would permit Gunnerson to receive certain financial benefits upon termination, Stage Stores refused to

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 845.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Stage Stores*, 477 S.W.3d at 852-53.

<sup>85</sup> *Id.* at 852.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

pay the benefits. Gunnerson initiated arbitration.<sup>88</sup> At a preliminary hearing, both parties agreed that the award would be in the form of a reasoned arbitration award.<sup>89</sup>

At the final arbitration hearing, Stage Stores raised notice and cure requirements from the contract as a basis for rejecting Gunnerson's claim.<sup>90</sup> During Gunnerson's testimony, he was questioned about the notice and cure requirements, and whether he satisfied them.<sup>91</sup> After the hearing, the arbitrator issued an initial award determining that Gunnerson was entitled to recover his attorney's fees but did not specify the amount.<sup>92</sup> After obtaining briefs from both parties concerning the costs and fees, the arbitrator issued a final award, which contained the amounts of the costs and fees and was four pages in length.<sup>93</sup> The award "contain[ed] a statement of jurisdiction, an identification of the parties, a statement of the issues, a recitation of certain procedural facts, the arbitrator's rulings, and the arbitrator's damage awards."<sup>94</sup>

The award identified Gunnerson's main argument, which was that he had "good reason" to resign because Stage Stores had restructured the company organization chart to have him report to another Senior V.P. rather than the CEO, thus diminishing his status within the company.<sup>95</sup> The award also identified two of Stage Stores's main arguments: that Gunnerson voluntarily left the company due to another job offer, and that the changes to the organization chart did not result in a material diminution of Gunnerson's status within the company and therefore was not a "good reason".<sup>96</sup>

The arbitration award contained four specific rulings: (1) that a valid contract existed between the parties; (2) that Stage's "actions in restructuring the organization and removing [Gunnerson] from a direct reporting relationship to the CEO diminished [Gunnerson's] status, thereby allowing [Gunnerson] to terminate his position for good reason ..."; (3) that Gunnerson was entitled to recover attorneys' fees; and (4) that Gunnerson "failed to meet his burden of proof regarding the present value of future stock options."<sup>97</sup> The arbitration award then specified the amount of damages awarded to Gunnerson.<sup>98</sup>

Stage Stores sued in state court to vacate the award. Gunnerson filed a motion for the award to be confirmed and requested that the trial court grant him attorneys' fees because Stage Stores's

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 853.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

motion for vacatur was “without justification.”<sup>99</sup> The trial court denied Stage's application to vacate the award, denied Gunnerson's request for attorneys' fees, and granted Gunnerson's application to confirm the award.<sup>100</sup>

On appeal to the Texas Court of Appeals [First District], Stage Stores argued, among other things, that the arbitration award was not reasoned as the two parties had agreed to in the preliminary hearing.<sup>101</sup> The court determined that the arbitration award “was in the form of a reasoned award.” However, the court stopped short of stating that the arbitration award was “reasoned.”<sup>102</sup> At the arbitration hearing, in testimony and in opening and closing statements, Stage Stores had argued that Gunnerson had failed to provide the requisite notice and cure needed to take advantage of the good-cause termination provision.<sup>103</sup> The arbitration award, however, made no mention of this key defense.<sup>104</sup>

The court agreed with Stage Stores that because this issue had been thoroughly discussed in the arbitration hearing, it was significant enough to warrant some mention in the arbitration award.<sup>105</sup> Due to this, the court held that while the award “generally conforms with the requirements for an award to be reasoned but that the award's failure to provide any reasoning regarding Stage's...contention prevents a determination that the award is reasoned.”<sup>106</sup> The court therefore reversed the trial court and remanded the case, with instructions that the arbitration award be returned to the arbitrator for resolution of the defense that had been omitted from the original award.

#### IV. ANALYSIS AND FRAMEWORK PROPOSAL

The wide gulf between a simple decision-only award and an award containing comprehensive findings of facts and conclusion of law has led to frequent confusion over what the parties are entitled to expect – and a court is likely to require – when the parties agree to a reasoned arbitration award. While none of the cases discussed in Part III establish a rock-solid framework with which to judge whether an arbitration award is reasoned, collectively they provide a good indication of what an award needs to contain to satisfy courts that it is “reasoned”.

This article argues that the following elements should be viewed to determine whether an arbitration award is indeed reasoned and whether a reasoned arbitration award is required: (A) An arbitration award must be “reasoned” if the parties agree to a reasoned award at any time, if the parties have agreed to the rules of an arbitration service provider and those rules require a reasoned award, or if the arbitrator tells the parties (perhaps at a preliminary hearing) that the award will be reasoned and neither party objects. (B) The length of the award must be at least long enough to

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 856.

<sup>102</sup> *Id.* at 858-59.

<sup>103</sup> *Id.* at 861.

<sup>104</sup> *Id.* at 860.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 863.

correspond to the amount of information involved in the hearing. (C1) The contents of the award must address all issues and arguments that were heard during an arbitration hearing and affect the outcome; particular attention should be given to the rejected arguments of the losing party. (C2) A reasoned award does not necessarily need to contain express findings of fact or conclusions of law, unless (C3) a finding of fact is distinctly determinative of an outcome for a particular issue. (C4) If money damages or attorney's fees are awarded, there must be an explanation of why the damages/fees are appropriate and how the dollar amount was calculated.

#### A. *Request for Reasoned Arbitration Award*

An arbitration award must be "reasoned" if the arbitration agreement requires a reasoned award or if the parties have agreed to the rules of an arbitration service provider and those rules require a reasoned award. Even if the rules to which the parties have agreed do not require a reasoned award, such a requirement may arise if the parties subsequently agree to a reasoned award. Similarly, an award must be reasoned if the arbitrator determines that a reasoned arbitration award is appropriate, announces this to the parties, and neither party objects.

In *Cat Charter*, where under the AAA Commercial Rules there is no requirement that awards be reasoned, the court ruled that the parties had validly modified the arbitration agreement when they opted to receive a reasoned arbitration award.<sup>107</sup> This article argues that if both parties agree to a reasoned arbitration agreement at any point before the hearing begins, a timeframe which includes any preliminary hearings, a reasoned arbitration award is required.

#### B. *Length of Reasoned Arbitration Award*

This article argues that there is no across-the-board length that must be reached for an arbitration award to be considered reasoned. To require a specific page length would be burdensome on arbitrators in limited-scope arbitration, where the information available may simply not be enough to reach a preordained page requirement. However, this article argues that the length of a reasoned award should be consistent with the number and complexity of issues and the length and depth of the hearing.

For example, in *Rain*, the length of the arbitration award was eight pages,<sup>108</sup> while in *Stage Stores* the award was only four pages.<sup>109</sup> The arbitration award in *Rain* was determined to be reasoned,<sup>110</sup> and the award in *Stage Stores* was determined to be in the form of a reasoned arbitration award but deficient because it omitted any mention of a critical argument raised by the losing party.<sup>111</sup>

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<sup>107</sup> *Cat Charter*, 646 F.3d at 840 n.6.

<sup>108</sup> *Rain CII Carbon*, 674 F.3d at 471.

<sup>109</sup> *Stage Stores*, 477 S.W.3d at 853.

<sup>110</sup> *Rain CII Carbon*, 674 F.3d at 474.

<sup>111</sup> *Stage Stores*, 477 S.W.3d at 863.

### *C. Contents of Reasoned Arbitration Award*

Though there is not a minimum-page-length requirement for reasoned awards, the content of the award may be critical. The following sections describes the minimum components of a reasoned award.

#### 1. Award Must Address All Issues and Major Arguments

A reasoned arbitration award will address all major issues and arguments that were heard during an arbitration hearing and affect the outcome. Particular attention should be given to the rejected arguments of the losing party. A winning party may not be concerned with the arbitrator's reasoning, especially if the parties do not have an ongoing relationship. The losing party, however, has an interest in knowing that the arbitrator heard and considered her arguments and learning why the arbitrator did so. For this reason, a well-drafted arbitration award is written with the losing party in mind.

#### 2. Does Not Need to Fully Explain Facts and Conclusions

A reasoned arbitration award need not contain explicit findings of fact and conclusions of law. Frequently, the parties agree on most or all the underlying facts, making findings of fact superfluous. Similarly, sometimes the parties agree on the applicable law but disagree on the underlying facts, in which case findings of law would be superfluous. However, as described below, any finding of fact or conclusion of law that affects the outcome of the case should be addressed in the award. If the parties have agreed that the award should contain explicit findings of fact and conclusions of law, the award should comply with the parties' agreement.

#### 3. Findings of Fact That Are Determinative Must Be Included

As stated above, detailed findings of fact need not be included for an arbitration award to be considered reasoned. However, if a particular finding of fact is determinative of the decision an arbitrator reaches on an issue, it should be addressed in the award.

#### 4. Money Damages

This article argues that an additional requirement for an arbitration award to be considered reasoned is for any money damages or attorney's fees awarded to be accompanied by an explanation of why the damages/fees are appropriate and how the dollar amounts were calculated. In furtherance of the goal of giving parties to arbitration an informed arbitration award, the arbitrator should explain the reasoning behind the awarding of any money damages or attorney's fees.

## **V. CONCLUSION**

Parties to an arbitration agreement often agree, or the rules they adopt may require, that any award issued to resolve their dispute be a "reasoned" award. However, there currently is no extant legal standard, in either the FAA or the caselaw, on what an arbitration award must contain to be a "reasoned" award. This article addresses that issue. It draws from a disparate body of caselaw a set of elements that any well-reasoned award will contain. It argues that a reasoned award should address all issues and arguments that were heard during an arbitration hearing and

affect the outcome, and that particular attention should be given to the rejected arguments of the losing party. A reasoned award need not necessarily contain express findings of fact or conclusions of law, unless such a fact or conclusion affects the outcome. Additionally, the arbitration agreement need not be a certain length to be considered “reasoned”, it only has to be as long as it needs to be consistent with the number of issues and the length of the hearing. Finally, if money damages or attorney’s fees are awarded, the award should explain why the damages/fees are appropriate and how the dollar amount was calculated.