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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

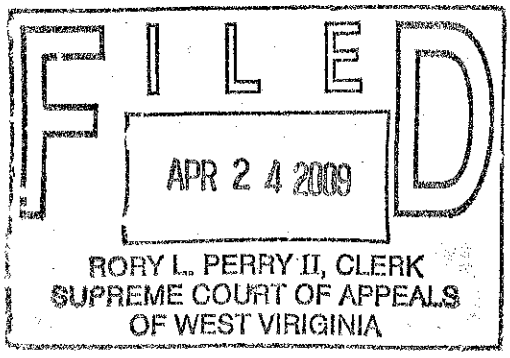
State ex rel. JILL CLITES,

Petitioner,

v.

THE HONORABLE RUSSELL M. CLAWGES, JR.
Chief Judge, 17th Judicial Division II,
TELETECH CUSTOMER CARE
MANAGEMENT (WEST VIRGINIA), INC.,
LOR WINDLE and MICHELLE EBERT,

Respondents.



RESPONDENTS' APPENDIX

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IN THE CIRCUIT COURT OF MONONGALIA COUNTY

WEST VIRGINIA

JILL CLITES,

Plaintiff,

VS Civil Action No. 08-C-201

The Honorable Russell M. Clawges, Jr.

TELETECH CUSTOMER CARE MANAGEMENT (WEST VIRGINIA), INC., LOR WINDLE and MICHELE EBERT,

Defendants.

DEPOSITION OF JILL CLITES,

a witness herein, called for examination by the Defendants, taken pursuant to the West Virginia Rules of Civil Procedure, by and before Susan E. Alldridge, a Registered Professional Reporter and Notary Public in and for the State of West Virginia, at the law offices of Georgia Lee Gates, 310 Adams Street, Fairmont, West Virginia on Thursday, 10 July 2008, at 10:00 a.m.

1 document; correct?
2 A. Correct.
3 Q. Okay. So it appears somewhere around
4 October 8th you were advised that you were going
5 to be hired by TeleTech as a customer service
6 representative.
7 Does that sound correct?
8 A. Sounds correct, yes.
9 Q. Okay. And what were you going to be doing
10 for TeleTech as a customer service representative?
11 Did you have a general understanding?
12 A. General understanding would be answering
13 phone calls related to banking customers.
14 Q. Okay. When a lot of people think about a
15 telephone calling center, they think about
16 telemarketing.
17 TeleTech is not a telemarketing company;
18 correct?
19 A. Correct.
20 Q. It's -- you're not making outgoing calls.
21 You're accepting phone calls from, like, Bank of
22 America customers?
23 A. Correct.
24 Q. And so that was your understanding of the

1 make a couple copies, we'll make it a -- we'll make
2 this 5.
3 (Deposition Exhibit No. 5 was marked
4 for identification.)
5 MS. GATES: That would be the easiest
6 way to refresh her recollection of the dates. I
7 mean, it says that -- the initial application date
8 has everything.
9 There's her social security
10 number again on the clearance application. It's on
11 the front. Yeah, it's also on the front one.
12 MR. ARCENEAUX: Yeah. Yeah.
13 Okay. So it was the first page
14 and then --
15 MS. GATES: And it's on the WOTC --
16 it's on 102. I'm going to have to do the same
17 thing, you know.
18 MR. ARCENEAUX: Yeah.
19 Oh, it's on the second -- it's
20 on the next page, too.
21 MS. GATES: Yeah.
22 MR. ARCENEAUX: It's on 117.
23 THE DEPONENT: Am I permitted to
24 speak to my lawyer?

1 BY MR. ARCENEAUX:
2 Q. Okay. Would it be fair to say that you
3 voluntarily signed all of the documents you were
4 presented on that day, October 25th, 2004?
5 A. Can you rephrase the question, please?
6 Q. Would it be fair to say that you agreed to
7 sign all of the documents that you were presented
8 that day?
9 A. I don't remember signing all of the
10 documents I was presented that day.
11 Q. All right. But did you -- do you recall
12 being presented with a packet of documents?
13 A. Yes.
14 Q. And of your own free will, did you sign
15 all those documents that you were presented?
16 A. It appears that I did, yes.
17 Q. Okay. I mean, there's not any document
18 that you can remember saying "I'm not going to sign
19 this one" and setting it aside?
20 A. No.
21 Q. Okay. Did you have an understanding that
22 these documents were going to be put in your
23 personnel file?
24 MS. GATES: Object to the form of the

1 '04 as well?
2 A. Correct.
3 Q. Okay. This appears to be another
4 employment at-will acknowledgment form.
5 And you said you do recall Ms. Trovato
6 discussing that West Virginia was an employment
7 at-will state?
8 A. Correct.
9 Q. Okay. And then do you recall signing this
10 document?
11 A. Yeah. It appears to be my signature.
12 Yes.
13 Q. Okay.
14 MS. GATES: The question was do you
15 recall signing this document.
16 THE DEPONENT: Specifically, no.
17 BY MR. ARCENEAUX:
18 Q. Okay. All right. The next document is an
19 arbitration agreement.
20 Do you recall this document?
21 A. No.
22 Q. Okay. Do you recall any conversation
23 about arbitration at that time?
24 A. No.

1 Q. Okay. Do you recall Ms. Trovato saying
2 anything about arbitration?
3 A. No.
4 Q. Okay. I'd ask you to turn to page 6 of 6
5 which has got the Bates stamp number 130 on it.
6 Is that your signature?
7 A. It appears to be, yes.
8 Q. Okay. And it's dated October 25th of
9 '04?
10 A. Yes.
11 Q. Okay. Now, sitting here today, you don't
12 have any recollection of having signed this
13 document; is that correct?
14 A. Correct.
15 Q. Okay. What about the concept of
16 arbitration? Had you ever heard of arbitration
17 before?
18 A. No.
19 Q. Sitting here today, what do you know about
20 arbitration?
21 A. All I know is anything that I've learned
22 from my lawyer or what's in front of me right now.
23 Q. Okay. I certainty won't want to ask you
24 anything about your conversations with your lawyer,

1 MS. GATES: Objection. Asked and
2 answered, but go ahead.
3 BY MR. ARCENEAUX:
4 Q. Okay.
5 A. No.
6 Q. All right. Do you believe that anybody
7 misled you into signing this document?
8 A. No.
9 Q. Do you believe that anybody pressured you
10 to sign this document?
11 A. No. I remember signing it.
12 Q. All right. But you're not denying that on
13 page 6 it appears to be your signature; correct?
14 A. Yes, it does appear to be my signature.
15 Q. All right. Do you believe that anybody
16 tricked you into signing this document?
17 A. I don't remember signing the document.
18 Q. Okay. Do you think it was unfair for you
19 to be asked to sign this document?
20 MS. GATES: Objection to the form of
21 the question, but go ahead.
22 THE DEPONENT: I don't remember
23 signing the document.
24

1 THE DEPONENT: I don't know.
2 BY MR. ARCENEAUX:
3 Q. Okay. Then why don't you just tell me how
4 your employment came to be terminated --
5 MS. GATES: No.
6 BY MR. ARCENEAUX:
7 Q. -- and what date.
8 MS. GATES: You know the termination
9 date. We've already discussed that. That's her
10 last pay. This is going into the merits of the
11 case.
12 MR. ARCENEAUX: I'm not trying to go
13 there, believe me.
14 MS. GATES: Well, I'm going to tell
15 her not to respond unless -- you can step out again
16 and he can explain to me.
17 BY MR. ARCENEAUX:
18 Q. Well, let me just ask you this: Will you
19 tell me the date -- do you remember the date you
20 were terminated?
21 A. I believe it was July 12th of 2007.
22 Q. Okay. I'll leave it there.
23 Did you sign a fee agreement with your
24 counsel?

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

JILL CLITES,

Plaintiff,

vs. CIVIL ACTION NO. 08-C-201

TELETECH CUSTOMER CARE
MANAGEMENT (WEST VIRGINIA), INC.,
LOR WINDLE and MICHELE EBERT,

Defendant.

* * *

Transcript of the motion hearing had on the 11th day of September, 2008, commencing at 12:12 p.m.

* * * * *

APPEARANCES:

GEORGIA LEE GATES,
Law Offices of Ron L. Tucker
310 Adams Street
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Counsel for the plaintiff;

WEBSTER ARCENEAUX, III
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Charleston, WV 25326
Counsel for defendants.

* * * * *

SHARON L. VINCENT, OFFICIAL COURT REPORTER

1 documents in response to the discovery. We took two
2 depositions; the deposition of Ellen Trovato and Ms.
3 Cliles, the plaintiff. These were limited, solely, to the
4 issue of the arbitration agreement. And, then, I had a
5 conversation with Ms. Gates on how we were going to bring
6 this to a conclusion, whether we needed to have an
7 evidentiary hearing, how best to deal with it. She didn't
8 feel we needed to have an evidentiary hearing. At the
9 time, we had a discovery issue, burdensomeness, that we
10 needed to have an affidavit, so we ended up filing an
11 affidavit of Julie Curtis and producing it during
12 discovery, and then I produced it to you. We kind of used
13 it as a dual purpose, both for talking about discovery
14 issues and then also talking about some of the issues that
15 are -- go to the merits of the case.
16 Your Honor, if I might approach, the two
17 critical documents -- and I just showed Ms. Gates and
18 she's had these as well -- for your review are the
19 arbitration agreement and the affidavit of Ms. Curtis.
20 You have these in the exhibits to our supplemental
21 memorandum, but I wanted to make sure that you can refer
22 to them and that's why I had extra copies for you today
23 The employer is here seeking to enforce the
24 arbitration agreement. We initially saw this case as one

1 where we were asking you for a stay and we felt compelled
2 to litigate it in federal court because of the Conley case
3 and other cases. If you will recall, when we were here on
4 May 29th, you recognized that you had concurrent
5 jurisdiction and you said let's go ahead and deal with
6 this here and you would decide this issue. So, we spent
7 the period of time doing the discovery and then we agreed
8 to a supplemental briefing schedule, and we now have a
9 total of five memos responding to this.
10 And, what I want to do -- and I know it's
11 your lunch hour, so I'm going to try to be as concise as I
12 can and just hit the highlights of what I think the issues
13 are. The first thing I want to do is just kind of make
14 sure you have an understanding of what happened.
15 There's a suggestion, I think erroneously,
16 based on the document that we think is -- it's pretty
17 clear was never used at Morgantown. We produced documents
18 based on their discovery. It was anything that you have.
19 So, we gave them anything we had, but we think it's clear
20 that there was no particular document, this Exhibit 5,
21 that was ever given to the employer.
22 Neither of the two witnesses, Ms. Cliles or
23 Ms. Trovato have a clear recollection of what happened on
24 October 24, 2005. Ms. Cliles was in the classroom. She

1 was being trained. Ms. Trovato, it appears undisputed,
2 that she was the trainer. She did trainings every Monday.
3 They would have a class of 25, 30 people every Monday go
4 through the facility there. That was the kind of turnover
5 they had. So, she's testifying based upon her
6 recollection of what she normally did in the training.
7 Ms. Cliles has testified that she has no
8 recollection of the arbitration agreement being discussed.
9 She didn't feel that she was misled or pressured, and she
10 agreed that she signed that agreement of her own free
11 choice, and she agreed that if she didn't want to sign any
12 of those documents that she could get up and leave at any
13 point in time. She didn't have to take this job.
14 Now, the two cases that we're going to be
15 looking at that are most significant, I think, in West
16 Virginia are the Saylor case and the Wells case, and I
17 want to kind of draw between those two cases. The Saylor
18 case, of course, is a case that Ms. Gates mostly relies
19 on, and in that case you have Ryans Steakhouse. You had a
20 waitress and you had an entry level person making minimum
21 wage. The arbitration agreement with that situation was
22 not even with the employer. It was an entirely different
23 entity, and there were lots of issues that were going on
24 in that case.

1 The Court -- the Supreme Court found in
2 that case that the arbitration agreement failed both for
3 unconscionability grounds and for lack of consideration
4 grounds. They found there really wasn't a mutuality in
5 the arbitration agreement.
6 Whereas, in the Wells case, they found that
7 the agreement was enforceable and they looked at the Wells
8 case and found that here we have a TV news anchor, he
9 participated in the negotiation of the agreement and they
10 found that the arbitration was enforceable. There weren't
11 consideration issues, there weren't unconscionability
12 issues, and we think that this case falls somewhere in the
13 middle.
14 Teletech had an all-day training session --
15 actually, had a two week training session, but they had an
16 all-day training session in which there was a segment of
17 two and a half hours where, I believe it's undisputed,
18 they went through 30 some documents. And, Ms. Trovato
19 testified that it was her position that, if somebody
20 didn't feel they had time to review a document, she would
21 tell them, any document you don't feel comfortable signing
22 today, I know I'm going through them quickly, just don't
23 sign it, we'll go through them later, we'll call you back
24 in, you can read it and you can sign it. And, so, I

1 understanding, and Ms. Travato is providing the
2 information to the new hires.
3 THE COURT: My understanding is that Ms.
4 Cliles never testified that that was her impression based
5 on --
6 MS. GATES: Ms. Cliles -- no, she
7 didn't. That's correct. But what Ms. Cliles does say is
8 that she never remembers anybody talking about an
9 arbitration agreement.
10 Now, it makes sense that if Ms. Travato's
11 understanding of this agreement is that you're signing an
12 agreement that has to with disputes between you and
13 Teletech and it provides for a third-party mediator, if
14 she's thinking of it as a mediation agreement that just
15 kind of brings somebody in and let's everybody just get
16 along, then that's probably why Ms. Cliles never had any
17 understanding that there was an arbitration agreement
18 involved. The only information Ms. Cliles is getting is
19 from Ms. Travato.
20 THE COURT: No, she's signing a document
21 that's pretty specific about what it is.
22 MS. GATES: She's signing a document
23 that's an adhesion document in a pile of 30.
24 THE COURT: Well, anytime you go to a

1 loan closing, they're all adhesion documents and they're
2 in piles deeper than 30, and I haven't seen too many of
3 those called into --
4 MS. GATES: I agree, but the point is,
5 is that if the contract didn't have unfair terms, yes,
6 she'd be bound by it, but the contract --
7 THE COURT: What this comes down to is
8 whether or not the terms of this arbitration agreement are
9 unconscionable.
10 MS. GATES: That's exactly right.
11 THE COURT: And the fact that it's an
12 adhesion contract doesn't, in and of itself, make it
13 unconscionable.
14 MS. GATES: That's exactly right.
15 THE COURT: Until you go one step
16 further and make the finding that the terms of the
17 contract or -- and, again, unreasonably favorable. I
18 mean, it's not even -- it's not that strong a definition
19 of unconscionable.
20 MS. GATES: That's right, and that's the
21 whole point. We have an adhesion contract that's been
22 conceded to that it is an adhesion contract and it
23 unreasonably favors Teletech, therefore, under Saylor, it
24 is unconscionable. Wells is out of the picture because

1 that was a negotiated contract; different concept is going
2 on. Although, in Wells, had there been -- well, even
3 then, it's a little different because it was negotiated,
4 and, here, we don't have people that are at arm's length,
5 so that makes a difference.
6 THE COURT: Certainly this is not
7 negotiated, and I gather from what I've read and from what
8 both parties are saying that these 30 documents were not
9 negotiable. In other words, if an employee said, I'm not
10 going to sign the arbitration agreement, then the
11 alternative was not to be employed.
12 MS. GATES: I would say that that's my
13 understanding of what Teletech has been saying, and it's
14 certainly my understanding of the way it would work if --
15 when you have this many documents and you're signing 30
16 documents and you're moving that many employees in and out
17 all the time, you don't have time to negotiate, and the
18 only person that can negotiate the terms of this contract
19 is the president of Teletech. It's not anybody that would
20 be available to the employee -- new employee at Morgantown
21 Teletech.
22 THE COURT: They weren't involved in
23 negotiations. It would just involve Ms. Travato going to
24 the boss and saying Ms. Cliles doesn't want to sign this

1 agreement, can we still hire her
2 MS. GATES: And by saying it's an
3 adhesion contract, by definition, Teletech has admitted
4 that it's a take-it-or-leave-it. I mean, that's part of
5 the definition of adhesion contract, it's provided on a
6 take-it-or-leave-it basis.
7 THE COURT: And, I guess, when you put
8 it in that context, then are we talking about -- are we
9 having to decide this just on the basis of the four
10 corners of the arbitration agreement or are we really
11 talking about the employment agreement between Teletech
12 and Ms. Cliles, of which, the arbitration agreement is
13 just a part?
14 MS. GATES: Well, no, because -- I mean,
15 we're really just talking about the arbitration agreement,
16 I think.
17 THE COURT: And if we're just talking
18 about the arbitration agreement, then I don't think it
19 really becomes that much of an issue whether or not -- in
20 the broader scope of things.
21 MS. GATES: I think the point is, when
22 Teletech brings up this idea that there was a duty to
23 read. Under this circumstance there's no -- there's not a
24 duty to read in the classic sense, and I think that -- I

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

JILL CLITES,

Plaintiff,

v. CIVIL ACTION NO. 08-C-201

TELETECH CUSTOMER CARE MANAGEMENT
(WEST VIRGINIA), INC.,
LOR WINDLE
and, MICHELE EBERT,

Defendants.

REPONSES TO PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO THE DEFENDANTS, TELETECH CUSTOMER CARE MANAGEMENT (WEST VIRGINIA), INC. REGARDING THE ARBITRATION CLAUSE, ONLY

COMES NOW the Defendants, TeleTech Customer Management (West Virginia), Inc. ("TeleTech WV"), by and through counsel, pursuant to Rule 34 of the West Virginia Rules of Civil Procedure, and for their responses to Plaintiff's Request for Production of Documents to the Defendants state as follows:

GENERAL OBJECTIONS

Defendants generally object to Plaintiff's Request for Production of Documents as set forth below. These general objections shall be deemed to be interposed to each question, irrespective of whether Defendants repeats such objections, unless the context indicates otherwise;

(a) Defendants object to all Requests for Production of Documents to the extent that such call for information protected from discovery by the attorney/client privilege, the work product doctrine, or any other applicable privilege or immunity from discovery;

(b) Defendants object to all Requests for Production of Documents to the extent that such do not limit requests for information to time periods which may be relevant to the causes of action herein;

(c) Where the Request for Production of Document seek particulars concerning the identity or nature of specified documents, and Defendants have agreed to produce any such

documents, rather than attempt to identify or characterize any document by verbal description in response to the Interrogatory in question, Defendants undertake only to produce at a mutually agreeable place and time the particular document(s); and,

(d) Where stated, answers contained herein are based upon information and belief and do not necessarily represent first hand knowledge of the Defendants.

REQUEST FOR PRODUCTION NO. 1: Please produce the TeleTech Human Resources Policy Manual, revised February 2002.

RESPONSE: **Please see attached as Bates stamped, "Teletech000552-Teletech000727."**

REQUEST FOR PRODUCTION NO. 2: Please produce any and all Teletech Human Resources Policy Manuals with a revision date **after** February 2002.

RESPONSE: **Based upon information and belief, a revised manual was issued in 2005 and it will be produced at a later date.**

REQUEST FOR PRODUCTION NO. 3: Please produce all human resource/human capital manuals, memorandums, emails, letters, or other writings related to the proper procedures for submission of all those form documents with the following Bates numbers Teletech 000007-18; Teletech 000076; Teletech 000086-89; Teletech 000124-131; Teletech 000170-74; Teletech 000189, which employees hired to work in the Greenbag Road Teletech facility in Morgantown, WV, in October 2004, were required to sign.

RESPONSE: **Upon information and belief, the Morgantown facility did not use such manuals, memorandums or other writings in October 2004 and such were not on the premises. However, see attached Bates stamped, "Teletech000205-Teletech000551,"**

which some members of the TeleTech family of companies may have used. As Ms. Trovato testified in her deposition, the HR person presenting the information at the new employee orientation, used a three ring binder with all of the forms in it. (Travato Depo. at pp. 26-27). No copies of that binder now exist as the process has been changed to an online "self-directed tutorial type of process." (*Id.* at pp. 30-31).

REQUEST FOR PRODUCTION NO. 4: Please produce any and all human resource/human capitol (HR) checklists routinely completed by an HR employees in connection with the submission of the immediately foregoing form Bates numbered documents to employees of the Greenbag Road TeleTech facility in Morgantown, WV, in October 2004.

RESPONSE: **See response to Request No. 3.**

REQUEST FOR PRODUCTION NO. 5: Please produce any and all training materials provided to HR Personal of the Greenbag Teletech facility in Morgantown, WV between October 2003, and July 2007 concerning explanations provided to employees in connection with the presentation of the foregoing Bates numbered forms provided to employees for their signatures.

RESPONSE: **See response to Request No. 3.**

REQUEST FOR PRODUCTION NO. 6: Please produce any and all human resources/human capitol (HR) "scripts" utilized by any HR employee in connection with the submission of the immediately foregoing forms Bates numbered documents to employees of the Greenbag Road TeleTech facility in Morgantown, WV in October 2004.

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

JILL CLITES,
Plaintiff,

v. **CIVIL ACTION NO. 08-C-201**
(Clawges, J.)

TELETECH CUSTOMER CARE MANAGEMENT (WEST VIRGINIA), INC., *et al.*
Defendants.

MEMORANDUM OPPOSING DEFENDANTS' MOTION TO DISMISS AND/OR STAY

I. PROCEDURAL HISTORY

Plaintiff, Jill Clites, commenced this cause of action against the Defendant TeleTech Customer Care Management (West Virginia) Inc.(TeleTech) and others, on March 21, 2008, when she filed her Complaint with the Circuit Clerk of this Honorable Court. Ms. Clite's Complaint is grounded solely within the West Virginia Human Rights Act (HRA) and arises from the sexual harassment to which she was directly subjected by the Defendant Windle.

Specifically, upon proper notice of the sexual harassment of Ms. Clites, the Defendants, TeleTech and Ebert, failed to take timely, requisite, remedial actions both to prevent and to correct the same, in violation of the HRA. Moreover, after notice of the sexual harassment to which Ms. Clites was subjected, the Defendant Teletech through its supervisory employees, the Defendants Windle and Ebert, in direct contravention of the HRA, retaliated against Ms. Clites by unlawfully subjecting her to a reduction in force, as both a factual and legal result of her complaints of sexual harassment concerning the Defendant Windle.

On April 23, 2008, the Defendants moved to dismiss the instant case, pursuant to W.V.R. Civ.P., Rule 12(b)(6), or in the alternative for a stay of these proceedings. As grounds for this motion, the Defendants aver the existence of a legally enforceable Arbitration Agreement which purportedly forecloses the institution of Ms. Clites' claims in this forum. Although Defendants

to enforce arbitration agreements against prospective civil rights litigants, "so long as the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum." Gilmer v. Interstate/Johnson Lane Corporation, 500 US 20, 28 (1991). In this regard, the court has also opined that "it may well be that the existence of large arbitration costs could preclude a litigant . . . from effectively vindicating her federal statutory rights in the arbitral forum." Green Tree Financial Corp. - Alabama v. Randolph, 531 US 79, 90 (2000); *see also* Dunlap, 567 S.E.2d at 282. In the instant case, the "agreement" imposes expenses and fees upon Ms. Clites far in excess of those she would be required to pay to effectively vindicate her rights under the HRA, before this Court. As a consequence, the "agreement," if enforced, would effectively close the doors to both this Court's forum and the arbitral forum because the unemployed Ms. Clites cannot afford the additional expenses of arbitration.

Initially, the "agreement" selects a locale which will inevitably add expenses Ms. Clites would not be required to pay if permitted to pursue her claim in this Court. "The Company and the Employee agree that any disputes that arise between the Employee, . . . and the Company, . . . shall be submitted to binding arbitration . . . in Denver Colorado, in the city in which Employee is employed by the Company."[6] [7] As the forum is that of Denver, Colorado, Ms. Clites would

---

[6]TeleTech Holdings, Inc.'s principal office is in Denver, Colorado. The AAA regional office for West Virginia is in Philadelphia. Consequently, this provision of the "agreement" provides yet another unfair term by which it might be rendered unconscionable and unenforceable. *See* Ex. C.

[7]This interpretation of the locale selection provision of the "agreement" is consistent with the AAA Q&A concerning Locale Determinations: Employment because the phrase "in Denver, Colorado," is used. Ex.E. However, assuming ambiguity such that the agreement might be read to require the AAA Denver, Colorado arbitrator to travel to Morgantown, West Virginia, the city in which Ms. Clites was employed, Ms. Clites would incur significant additional expense beyond that which she might expect to incur were her claims heard by this Court because the AAA rules direct that "all expenses of the arbitrator, including required travel and other expenses, and any

necessarily incur airfare, lodging, meals, cab fares, long distance phone calls, postage and other expenses she would not incur while pursuing her claims in this Court.

Moreover, as the "agreement," is not the result of an employer Plan, but an individual agreement between employer and employee, the AAA Rules for Employment Disputes, direct that "unless the parties agree otherwise, arbitrator compensation, and expenses as defined in section (v) below, shall be borne equally by the parties." Ex. D, (Costs of Arbitration) (Including AAA Administrative Fees) *13. The "agreement" provides only that the arbitrator's fees (compensation) shall be paid by TeleTech Holdings, Inc.

> **Costs** Each party shall bear its own fees and costs incurred in connection with the arbitration. The, arbitrator, however, shall have the discretion to award fees and costs to the prevailing part in accordance with prevailing law.
> **Fee of the Arbitrator** The arbitrator's fees shall be paid by the Company.

Ex. A, 5 ¶11. As a consequence, pursuant to the express terms of the "agreement" Ms. Clites would be responsible for one half of all expenses incurred by the arbitrator.

The AAA rules also provide that absent an agreement, "the expenses of witnesses for either side shall be borne by the party producing such witnesses." Ex. D (Individual Employment Agreements), 45 (Expenses) *13. Accordingly, Ms. Clites will be required, to pay for the travel, lodging, and meal expenses of her witnesses traveling to Denver, Colorado.[8]

AAA expenses, . . . shall be borne equally by the parties." Ex. D (Individual Employment Agreements) (vi) *16. However, this alternate construction of the "agreement" not only requires disregard of AAA locale determinations but necessitates the inclusion of additional phrases, such as: "before a sole neutral arbitrator of the American Arbitration Association (AAA) in Denver, Colorado, [who will hear the matter] in the city in which Employee is employed by the Company;" or, "before a sole neutral arbitrator of the [Denver Colorado office of] the American Arbitration Association (AAA), in the city in which Employee is employed by the Company."

[8]Assuming *arguendo* that these witnesses might appear by video conferencing, this too would add a significant expense which Ms. Clites would not be forced to bear in this Court.