

Arbitrators' Authority to Reconsider and Modify Awards Under US Law: *Functus Officio* and Beyond

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An Article summarizing US law governing arbitrators' power to reconsider and modify their awards, examining the contours of the *functus officio* doctrine and other factors bearing on the arbitrators' authority.

The parties have submitted one or more issues for resolution and the arbitrators have issued their award. Because even a serious legal or factual error on the part of the arbitral tribunal will not alone justify the setting aside of an award by a US court (see *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 US 662, 671-72 (2010)), the question often arises whether and to what extent the arbitrator has the authority to reconsider and modify that award. The starting point for this analysis is the common law doctrine of *functus officio*, which provides that once arbitrators have issued a final award, they have exhausted their authority and are without power to reconsider and modify that award. However, this rule is subject to well-recognized, practical exceptions, such as the arbitrator's inherent authority to correct clerical errors and clarify ambiguities.

This Article examines:

- The scope and rationale for the common law *functus officio* doctrine (see The *Functus Officio* Doctrine).
- What constitutes a "final" award subject to the *functus officio* doctrine, including when interim or partial awards may be deemed final (see Determining What Constitutes a Final Award).
- The recognized exceptions to the *functus officio* doctrine (see Generally Recognized Exceptions to the *Functus Officio* Doctrine).
- The impact of institutional rules adopted by the parties on the arbitrators' authority to reconsider and modify their awards (see Authority to Modify Awards Under Arbitration Rules Adopted by the Parties).
- The arbitrators' authority to modify awards following court remand (see Authority to Modify Awards Following Court Ordered Remand).

The *Functus Officio* Doctrine

The concept of *functus officio*, Latin for "office performed," means that an officer is "without further authority or legal competence because the duties and functions of the original commission have been fully accomplished" (*Martel v. Ensco Offshore Co.*, 449 F. App'x 351, 354 (5th Cir. 2011) (quoting Black's Law Dictionary 743 (9th ed. 2009))). Commonly formulated, as applied to arbitration, the common law *functus officio* doctrine dictates that once an arbitral tribunal has made and published a final award, the tribunal's authority is exhausted (*Barousse v. Paper, Allied-Indus., Chem. & Energy Workers Int'l Union*, 265 F.3d 1059 n.3 (5th Cir. 2001)).

The rule recognizes that after arbitrators render the award, their contractual powers lapse (*Green v. Ameritech Corp.*, 200 F.3d 967, 977 (6th Cir. 2000)). The arbitrator has no power to reexamine the merits (*Trade & Transp., Inc. v. Nat. Petroleum Charterers Inc.*, 931 F.2d 191, 195 (2d Cir. 1991)). Where an arbitrator is *functus officio* regarding the matters addressed in a final award, subject to certain exceptions, any attempt by the arbitrator to modify that award is null and void (see *Salt Lake Pressmen & Platemakers, Local Union No. 28 v. Newspaper Agency Corp.*, 485 F. Supp. 511, 515 (D. Utah 1980) ("When the arbitrator renders his final award, his power under the agreement is exhausted, and, unless his subsequent attempts to act under the agreement and submission fall within a few very narrow categories ... they are null and void"); *Phila. Newspapers, Inc. v. Newspaper Guild of Greater Phila., Local 10*, 1987 WL 38, at *2 (E.D. Pa. Oct. 22, 1987) (where arbitrator was *functus officio* after he issued his first award, the second award was null and void)).

Courts routinely apply the *functus officio* doctrine in cases governed by the Federal Arbitration Act (FAA)



(*Colonial Penn Ins. Co. v. Omaha Indem. Co.*, 943 F.2d 327, 331 (3d Cir. 1991)). The doctrine also applies in cases brought under state arbitration law (*Hartford Steam Boiler Inspection & Ins. Co. v. Underwriters at Lloyd's & Cos. Collective*, 857 A.2d 893, 900 (Conn. 2004); *Ohio Office of Collective Bargaining v. Ohio Civil Serv. Emps. Ass'n, Local 11*, 127 N.E.3d 482, 490 (Ohio Ct. App. 2018); *Am. Int'l Specialty Lines Ins. Co. v. Allied Capital Corp.*, 125 N.Y.S.3d 340 (2020)). For more information on the FAA and the interplay between federal and state arbitration law, see [Practice Notes, Understanding the Federal Arbitration Act and Understanding US Arbitration Law](#).

There are two commonly cited policy rationales for the *functus officio* doctrine. The first is the need for finality in arbitration (see *Teamsters Local 312 v. Matlack, Inc.*, 916 F. Supp. 482, 485 (E.D. Pa. 1996), *aff'd*, 118 F.3d 985 (3d Cir. 1997)). Arbitrators' repeated reconsideration and revision of their awards would undermine the usefulness of arbitration as a means of efficient and effective dispute resolution (see *Dreis & Krump Mfg. Co. v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 8*, 802 F.2d 247, 250 (7th Cir. 1986)). The second is the need "to prevent re-examination of an issue by a non-judicial officer potentially subject to outside communication and unilateral influence" (*LLT Int'l Inc. v. MCI Telecomms. Corp.*, 69 F. Supp. 2d 510, 515 (S.D.N.Y. 1999) (internal quotation marks omitted)). Courts have referred to the potential "evil of outside communication" and *ex parte* influences (see *Glass, Molders, Pottery, Plastics & Allied Workers Int'l Union, Local 182B v. Excelsior Foundry Co.*, 56 F.3d 844, 847 (7th Cir. 1995)).

Determining What Constitutes a Final Award

The threshold question in determining whether arbitrators have the authority to reconsider and modify an award is whether that award is final (*Colonial Penn Ins.*, 943 F.2d at 331-32). Generally, an award is final once the arbitrators determine liability and damages (see *McGregor Van De Moere, Inc. v. Paychex, Inc.*, 927 F. Supp. 616, 617 (W.D.N.Y. 1996)). An award may also be final regarding the matters it decides even where it does not resolve all the issues the parties presented in the arbitration (*In re Rollins, Inc. (Black)*, 552 F. Supp. 2d 1318, 1324 (M.D. Fla. 2004), *rev'd in part on other grounds*, 167 F. App'x 798 (11th Cir. 2006)). Therefore, an interim or partial award may be deemed final for purposes of *functus officio*, and not subject to reconsideration or modification (see, for example, *Trade & Transport*, 931 F.2d at 195 (holding that, when parties agreed to bifurcate liability and damages only, liability

award was final and the arbitral tribunal lacked authority to revisit liability issues)).

An interim award will be deemed final where either:

- The parties have agreed to bifurcate the proceeding, submitting a severable portion of their dispute to the arbitral tribunal for separate, final disposition (see *Bifurcated Proceedings; Bailey Shipping Ltd. v. Am. Bureau of Shipping*, 2014 WL 1282504, at *4 (S.D.N.Y. Mar. 28, 2014)).
- The interim award finally and conclusively disposes of a separate and independent claim and was subject to neither abatement nor set-off (*Metallgesellschaft A.G. v. M/V Capitan Constante*, 790 F.2d 280, 283 (2d Cir. 1986)).

Bifurcated Proceedings

Where the parties agree to bifurcation, they need not expressly agree that the partial award on the issue submitted will be "final" or that the award be labeled as such, if the circumstances are clear that this was the intent of the parties and the arbitrators (*Bridgeview Aerosol, LLC v. Black Flag Brands, LLC*, 2009 WL 10678555, at *4 (D. Minn. Sept. 18, 2009); *Publicis Commc'n v. True N. Commc'ns Inc.*, 206 F.3d 725, 729 (7th Cir. 2000)). The most common example of interim awards that are deemed final are those issued under the parties' agreement to bifurcate liability and damages, intending for the arbitrators to issue a final determination of liability, and then later, if necessary, address damages (see *Hart Surgical, Inc. v. Ultracision, Inc.*, 244 F.3d 231, 235 (1st Cir. 2001); *Universitas Educ., LLC v. Nova Grp., Inc.*, 2012 WL 2045942, at *1 (S.D.N.Y. June 5, 2012), *aff'd*, 513 F. App'x 62 (2d Cir. 2013)). Where the parties agree to bifurcate liability and damages, the arbitral tribunal is generally without authority to revisit its liability award when later deciding the issue of damages (see, for example, *Int'l Ass'n of Machinists & Aerospace Workers v. Lockheed Martin Space Sys. Co.*, 2010 WL 11523903, at *3 (C.D. Cal. Jan. 22, 2010) (where initial award conclusively determined issue of liability, arbitrator exceeded his authority by later awarding damage based on a different legal theory)).

In *Trade & Transport*, the Second Circuit held that where the parties asked the arbitrators to immediately decide the issue of liability, the resulting partial award resolving liability was final. The court explained, "the submission by the parties determines the scope of the arbitrators' authority" (*Trade & Transport*, 931 F.2d at 195). The parties sought a final determination of liability, thereby precluding the arbitrators from reconsidering that issue,

absent further agreement of the parties. Another common situation in which an interim award is deemed final is where the arbitrators decide all the parties' substantive claims, but bifurcate the issue of the prevailing party's attorneys' fees and costs for later resolution (see, for example, *Day & Zimmerman, Inc. v. SOC-SMG, Inc.*, 2012 WL 5232180, at *7 (E.D. Pa. Oct. 22, 2012); *Rollins*, 552 F. Supp. 2d at 1324 (after interim award finally resolved parties' claims but left the issue of attorneys' fees for later resolution, arbitrator's subsequent award of attorneys' fees did not violate *functus officio*)).

Arbitrators' Retention of Jurisdiction

Because arbitration is a creature of contract, an arbitrator's retention of jurisdiction for any purpose agreed to by the parties does not implicate or violate the *functus officio* doctrine (*Eatoni Ergonomics, Inc. v. Research in Motion Corp.*, 2011 WL 2437416, at *8 (S.D.N.Y. June 1, 2011), *aff'd*, 486 F. App'x 186 (2d Cir. 2012) ("Because the Arbitrator retained jurisdiction based on an explicit agreement by the parties to subject future disputes to arbitration, the doctrine of *functus officio* does not apply").

Similarly, arbitrators may retain jurisdiction to decide matters not previously determined. One example of where the arbitrators' retention of jurisdiction to rule on the undecided claims is proper is when the parties have agreed to the issuance of a partial final award deciding certain issues or claims and subsequent proceedings to determine others (see, for example, *Allstate Ins. Co. v. Amerisure Mut. Ins. Co.*, 2020 WL 1445615, at *5 (N.D. Ill. Mar. 25, 2020)).

Some courts have recognized an exception to the requirement of express party consent where arbitrators retain jurisdiction to deal with issues regarding the implementation or enforcement of the remedy awarded (see *SBC Advanced Sols., Inc. v. Commc'ns Workers of Am., Dist. 6*, 44 F. Supp. 3d 914, 925 (E.D. Mo. 2014) *aff'd*, 794 F.3d 1020 (8th Cir. 2015) ("[A]rbitrators frequently retain limited jurisdiction to resolve issues related to the implementation of a remedy ordered by the arbitrator, both at the request of the parties and *sua sponte*"). Prohibiting arbitrators to retain jurisdiction as needed to enforce their awards "would needlessly undermine the arbitration process by requiring either perpetual judicial intervention or the selection of additional arbitrators to resolve future enforcement disputes" (*Engis Corp. v. Engis Ltd.*, 800 F. Supp. 627, 632 (N.D. Ill. 1992)). However, retained jurisdiction to oversee the enforcement of an award is generally not a license to resolve additional

disputes (*Stone v. Theatrical Inv. Corp.*, 64 F. Supp. 3d 527, 541 (S.D.N.Y. 2014) (upholding award installing receiver on a prospective basis, but noting that the arbitrator would have violated *functus officio* had she "install[ed] herself as a referee over further claims involving the receiver").

In a recent case, an arbitral tribunal issued a final award resolving certain disputed claims for reinsurance coverage and retained jurisdiction over any dispute "arising out of" the final award. The tribunal was not *functus officio* regarding a dispute over subsequent billings made under the award because "[t]he *functus officio* doctrine is applicable only once the arbitrator's assigned duties have come to an end," and "[d]ue to the retention of jurisdiction in the Final Award, the arbitrators' duties have definitionally not come to an end if the current dispute 'arises out' of the Final Award" (*Chi. Ins. Co. v. Gen. Reinsurance Corp.*, 2019 WL 5387819, *2 (S.D.N.Y. Oct. 22, 2019)).

On the other hand, the arbitral tribunal's retention of jurisdiction exceeded its authority where, over one party's objection, the tribunal purported to remain constituted with the authority to decide new claims "until such time as all parties request that we step down." The court vacated that portion of the award retaining jurisdiction because, "[t]he specific issues submitted to the Panel define and delineate its powers; by definition, it has no jurisdiction over any potential future disputes" (*KX Reinsurance Co. v. Gen. Reinsurance Corp.*, 2008 WL 4904882, at *5 (S.D.N.Y. Nov. 14, 2008)).

Generally Recognized Exceptions to the *Functus Officio* Doctrine

Party Consent

Because arbitration is a matter of contract, the parties may empower the arbitrators to reconsider an award (*T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 342-43 (2d Cir. 2010); see *Int'l Bhd. of Elec. Workers, Local Union 824 v. Verizon Fla. LLC*, 803 F.3d 1241, 1249 (11th Cir. 2015)). While technically not an "exception," where the parties so agree, the *functus officio* doctrine is displaced, and the parties' agreement defines the arbitrators' authority to reconsider or modify their awards. Parties may grant arbitrators this power in either:

- The parties' arbitration agreement (*Veliz v. Cintas Corp.*, 273 F. App'x., 608, 609 (9th Cir. 2008); *United Bhd. of Carpenters & Joiners of Am. v. Tappan Zee Constructors, LLC*, 804 F.3d 270, 277 (2d Cir. 2015)).

- An after-the-fact submission of a matter for reconsideration (*Legion Ins. Co. v. VCW, Inc.*, 198 F.3d 718, 720 (8th Cir. 1999); *Colonial Penn*, 943 F.2d at 333 n.5; *Brown v. Witco Corp.*, 340 F.3d 209, 219 (5th Cir. 2003)).

Conversely, where the parties agree that an arbitrator cannot revisit decisions in interim or partial awards, even where permitted under the *functus officio* doctrine, the arbitrator lacks authority to reconsider those awards (see *US Life Ins. Co. v. Superior Nat'l Ins. Co.*, 591 F.3d 1167, 1178 (9th Cir. 2010); *Smith v. Transp. Workers Union of Am. AFL-CIO Air Transp. Local 556*, 374 F.3d 372, 375 (5th Cir. 2004)).

For a further discussion of drafting arbitration agreements, see [Practice Note, Drafting Arbitration Agreements Calling for Arbitration in the US](#).

Common Law Exceptions

Even when it applies (because a final award has been issued and the parties have not agreed otherwise), the *functus officio* doctrine is subject to three well-recognized exceptions. Arbitrators have the inherent authority to modify their awards either to:

- Correct a mistake that is apparent on the face of the award (see [Correcting a Clerical Error Obvious on the Face of the Award](#)).
- Decide an issue that has been submitted but that has not been completely adjudicated by the original award (see [The Award Does Not Adjudicate an Issue Submitted to the Arbitrators](#)).
- Clarify or construe an arbitration award that seems complete but proves to be ambiguous in its scope and implementation (see [Clarifying Ambiguity in the Award](#)).

(*Colonial Penn*, 943 F.2d at 331-32; *Play Star, S.A. De C.V. v. Haschel Exp. Corp.*, 2003 WL 1961625, at *3 nn.5-6 (S.D.N.Y. Apr. 28, 2003); see also *Gen. Re Life Corp. v. Lincoln Nat'l Life Ins. Co.*, 909 F.3d 544 (2d Cir. 2018); *E. Seaboard Constr. Co. v. Gray Constr., Inc.*, 553 F.3d 1, 6 (1st Cir. 2008).)

Where one of these exceptions applies, the arbitrators may make appropriate modifications to their award without express party consent, because “[t]o hold that a joint request is required before an arbitrator may clarify or complete an award would empower a party that would benefit from an error to prevent its correction (*Int'l Bhd. of Teamsters, Local 631 v. Silver State Disposal Serv., Inc.*, 109 F.3d 1409, 1412 (9th Cir. 1997)). Nevertheless, these exceptions are narrowly construed “to prevent arbitrators from engaging in practices that might encourage them to change their reasoning about a decision, to redirect

a distribution of an award, or to change a party’s expectations about its rights and liabilities contained in an award” (*Matlack*, 118 F.3d at 992; see *WMA Sec., Inc. v. Wynn*, 105 F. Supp., 2d 833 (S.D. Ohio 2000), *aff'd*, 32 F. App’x 726, 729-30 (6th Cir. 2002)).

Correcting a Clerical Error Obvious on the Face of the Award

Arbitrators may correct “clerical mistakes or obvious errors in arithmetic computation” (*Matlack*, 118 F.3d at 991) because corrections do not modify “the spirit and basic effect of the award” (*Waveform Telemedia, Inc. v. Panorama Weather N. Am.*, 2007 WL 678731, at *8 (S.D.N.Y. Mar. 2, 2007)) but instead interpret the arbitrators’ intent (*Clarendon Nat'l Ins. Co. v. TIG Reinsurance Co.*, 183 F.R.D. 112, 116 (S.D.N.Y. 1998)).

The Award Does Not Adjudicate an Issue Submitted to the Arbitrators

Under this exception, arbitrators may decide an issue submitted by the parties but not adjudicated by the award because for that issue, arbitrators have not exhausted their function (*La Vale Plaza, Inc. v. R. S. Noonan, Inc.*, 378 F.2d 569, 573 (3d Cir. 1967); *Silver State*, 109 F.3d at 1411). For example, the arbitrator had authority to issue a second award ordering back pay where his initial award reinstated an employee with a three-day suspension, but did not address the employee’s entitlement to back pay. It was clear that the award was incomplete because it did not address whether the employee was entitled to compensation for the rest of the time since his termination (*Silver State*, 109 F.3d at 1411-12).

Clarifying Ambiguity in the Award

Arbitrators may clarify an arbitration award that seems complete but is ambiguous (see, for example, *Gen. Re Life Corp. v. Lincoln Nat'l Life Ins. Corp.*, 909 F.3d 544 (2d Cir. 2018); *Sterling China Co. v. Glass, Molders, Pottery, Plastics & Allied Workers Local No. 24*, 357 F.3d 546, 554 (6th Cir. 2004)). Permitting arbitrators to clarify ambiguous awards does not undermine the policy behind the *functus officio* doctrine, because “there is no opportunity for redetermination on the merits of what has already been decided” (*Local 825 of Int'l Union of Operating Eng'rs v. Tuckahoe Sand & Gravel*, 2007 WL 1797657, at * 8 (D.N.J. June 20, 2007)).

A later award may clarify a prior award without violating the *functus officio* doctrine only where:

- The final award is ambiguous.
- The clarification merely clarifies the award instead of substantively modifying it.

- The clarification comports with the parties' intent as set out in the agreement that gave rise to arbitration.

(*Gen. Re.*, 909 F.3d at 549-50.)

This exception applied, for example, where the original award required the parties to refund premium and loss payments before the "recapture" date in a reinsurance agreement, and the arbitrators' subsequent award clarified that the reinsurer could retain premium paid before the recapture date and covering losses occurring after the recapture date, but also remained liable for these post-recapture losses (see [Legal Update, In Exception to *Functus Officio*, Arbitrators Retain Authority to Clarify Ambiguous Award: Second Circuit](#)).

On the other hand, where the arbitrator issued an award providing for the payment of compensatory damages in connection with a securities fraud claim, his subsequent "clarification" ordering that the sale also be rescinded and the securities at issue be returned exceeded his authority and violated *functus officio* because there was no ambiguity in the initial award that required clarification (*Wynn*, 105 F. Supp. 2d at 840).

Authority to Modify Awards Under Arbitration Rules Adopted by the Parties

Parties often adopt a set of institutional rules to govern their arbitration, such as those of the American Arbitration Association (AAA) and its International Centre for Dispute Resolution (ICDR), the International Chamber of Commerce (ICC), [International Institute for Conflict Prevention & Resolution \(CPR\)](#), or JAMS (see [Practice Note, Introduction to US Arbitral Institutions and Their Rules](#)). These rules address the arbitrators' authority to reconsider and modify their awards (see [AAA: Commercial Arbitration Rules: R-50](#); [ICDR: International Dispute Resolution Procedures: Article 33](#); [International Court of Arbitration: Arbitration Rules: Article 36\(1\)](#); [CPR: Administered Arbitration Rules: Rule 15.6](#); [JAMS: Comprehensive Arbitration Rules & Procedures: Rule 24\(j\)](#)). Parties may also proceed ad hoc, often under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, which has similar provisions ([UNCITRAL: Arbitration Rules: Articles 37 and 38](#)). (See [Practice Note, Ad hoc arbitrations without institutional support](#).)

Where adopted by the parties, these rules, and not the common law *functus officio* doctrine, should define the arbitrators' authority to reconsider and modify their

awards (see, for example, *T.Co Metals, LLC*, 592 F.3d at 344-45). Nevertheless, these rules generally proceed from the same premise as the *functus officio* doctrine, permitting arbitrators to correct errors but not reconsider the merits of their decisions. Accordingly, in many cases, courts find that the applicable institutional rule merely codifies the common law rule (including the recognized exceptions), and refer to *functus officio* precedent to inform the interpretation of the rules adopted by the parties (see, for example, *Bosack v. Soward*, 586 F.3d 1096 (9th Cir. 2009)).

In interpreting whether an arbitrator has authority to modify an award, under institutional rules, court generally defer to the arbitrators' interpretation of those rules for the scope of their authority to make the correction or modification (see *T.Co Metals*, 592 F.3d at 344). US courts hold that the adoption of institutional rules providing arbitrators with jurisdiction to determine their own jurisdiction constitutes such "clear and unmistakable" agreement to delegate arbitrability to the arbitrators (see [Practice Note, Arbitrability Issues in US Arbitration: Determination by a Court or Arbitrator: Adopting Institutional Rules That Delegate Arbitrability](#)).

It follows that where the parties adopt rules that both provide the arbitrators' authority to modify their awards and the authority to interpret the rules themselves, the parties have delegated the authority to the arbitrators to determine whether the rules authorize them to modify an award. As stated in *T.Co Metals*, "given that the FAA permits parties to authorize an arbitrator to determine the scope of his own jurisdiction, [there is] no justification for [a] court [to] interfer[e] with the power granted to an arbitrator to interpret his powers of reconsideration under the applicable arbitral rules of procedure (*T.Co Metals*, 592 F.3d at 345; see also *US Life Ins. Co. v. Superior Nat. Ins. Co.*, 591 F.3d at 1178 ("The panel's understanding of its scope of authority is entitled to the 'same level of [great] deference as [its] determination on the merits'")).

The Fifth Circuit Court of Appeals reached a similar conclusion in *Communications Workers of America v. Southwestern Bell Telephone Co.*, where it held that the arbitrator's conclusion that his amendment to his original award corrected a "technical" error, as permitted by [AAA Labor Rule 40](#), was conclusive (953 F.3d 822 (5th Cir. 2020)). The court reasoned that "the arbitrator's determination that he had committed a 'technical' error was an arguable interpretation of the contract" (*Sw. Bell*, 953 F.3d at 828).

However, in another recent decision, a federal district court held that AAA arbitrators do not have the power to

correct an award where they determined they had erred in applying pre-payments to principal rather than accrued interest (*Crédit Agricole Corp. & Inv. Bank v. Black Diamond Capital Mgmt., LLC*, 2019 WL 1316012, at *6-8 (S.D.N.Y. Mar. 22, 2019)).

Authority to Modify Awards Following Court Ordered Remand

In addition to their inherent authority to modify an award to correct an error, complete their assignment or clarify an ambiguous award, arbitrators may also clarify their awards on remand from a court. Although the FAA does not address remand explicitly, courts remand ambiguous awards to arbitrators. Remand is appropriate because “[i]t is not the court’s place to determine the intent of an

arbitrator when the award fails to make the arbitrator’s intent clear” as doing so would “undermine the authority of arbitrators” (*Barousse*, 265 F.3d at 1059). For a detailed discussion of the procedure and scope of review following court remand to the arbitrators, see [Practice Note, Correction, Modification, and Remand of Arbitral Awards in the US](#).

On remand, the arbitrator’s review is limited to the specific matter remanded for clarification (*Swenson v. Bushman Inv. Props., Ltd.*, 2013 WL 3811825, at *12 (D. Idaho July 22, 2013)), in keeping with the limitations of the *functus officio* doctrine (see *Sodexo Mgmt. Inc. v. Detroit Pub. Sch.*, 200 F. Supp. 3d 679, 696 (E.D. Mich. 2016); see also *M & C Corp. v. Erwin Behr GmbH & Co.*, 326 F.3d 772, 782 (6th Cir. 2003); *Hyle v. Doctor’s Assocs., Inc.*, 198 F.3d 368, 371-72 (2d Cir. 1999)).

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