



## Client Alert

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### California Supreme Court Allows Judicial Review of Arbitration Decisions for Errors of Law

In a ground breaking decision, the California Supreme Court in *Cable Connections, Inc., v. DirectTV* decided that parties to arbitration agreements are now free, under California law, to agree that: (1) the arbitrator may not commit errors of law; and (2) the court may review and vacate or correct an arbitration decision that contains legal error.

The principle of arbitral finality has long been interpreted to mean that courts may not correct an arbitration award merely because the arbitrator's decision is clearly erroneous. Consequently, parties have long sought to contract their way around that rule by agreeing in their arbitration provisions that the courts may review the arbitration decision for legal error.

In case after case, the courts have refused to enforce such provisions. Indeed, the United States Supreme Court, in *Hall Street Associates, LLC v. Mattel, Inc.*, recently held that, under the Federal Arbitration Act, such provisions are not enforceable. But the California Supreme Court held that the Federal Arbitration Act does not preempt the California Arbitration Act, and the California Arbitration Act does not preclude such provisions.

The Court held that parties drafting such provisions, however, must "clearly agree that legal errors are an excess of arbitral authority that is reviewable by the courts." The specific contractual language used by the parties in the *Cable Connections* case, which the Court endorsed as sufficiently "clear," provided that:

"The arbitrators shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error."

The Court acknowledged the criticisms of adopting this new rule – primarily that the new rule would lead to the "judicialization" of arbitration awards. The Court responded to that criticism by noting that "the desire for protection afforded by review for legal error has evidently developed from the experience of sophisticated parties in high stakes cases, where the arbitrator's awards deviated from the parties' expectations in startling ways. The judicial system reaps little benefit from forcing parties to choose between the risk of an erroneous arbitration award and the burden of litigating their dispute entirely in court."

Parties wishing to control run-away arbitration decisions may want to consider seriously this new option, but only after having carefully considered the increased costs associated with a review of the merits of the arbitration decision by the trial and possibly appellate courts.