

[New Decision on Arbitrators' Authority](#)

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Recent [Barger & Wolen](#) Victory Answers Who Decides What to Do After Hall Street

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In March 2008, the [United States Supreme Court](#) held that parties may not contractually expand the scope of judicial review to include “errors of law.” [Hall Street Assocs., LLC v. Mattel, Inc.](#), 128 S. Ct. 1396 (2008). Therefore, the Supreme Court declined to enforce an arbitration clause provision that allowed judicial review of an arbitrator’s errors of law.

In the wake of *Hall Street*, parties have disputed whether an “error of law” provision in an arbitration clause invalidates the entire arbitration agreement, and whether such a dispute should be decided by the courts or by arbitrators.

A Barger & Wolen victory this month in a New York appellate court has answered who should decide the issue. See [Life Receivables Trust v. Goshawk Syndicate 102 at Lloyd’s](#), __, N.Y.S.2d. __, No. 602934/08, 2009 WL 3255942 (1st Dep’t Oct. 13, 2009). That question is for the arbitrators where the arbitration clause incorporates AAA or similar rules.

In *Life Receivables*, the arbitration clause contained an “errors of law” provision. The appellants asked the court to enjoin pending arbitrations, arguing that *Hall Street* invalidated the arbitration clause. The motion court refused to enjoin the arbitrations, and the appellate court affirmed. The arbitration clause at issue provided for arbitration of all disputes and incorporated the AAA rules by reference. Noting that the AAA rules authorize arbitrators to determine the “existence, scope or validity” of an arbitration agreement, the appellate court held that the arbitrators would determine what to do in light of *Hall Street*, even though that question is usually for the court:

Although the question of arbitrability is generally an issue for judicial determination, when the parties’ agreement specifically incorporates by reference the AAA rules, which provide that the tribunal shall have the power to rule on its own jurisdiction, including objections with respect to the existence, scope or validity of the arbitration agreement, and employs language referring all disputes to arbitration, courts will leave the question of arbitrability to the arbitrators. *Id.* (internal citations omitted).

As a result, the appellate court ordered that the disputes return to arbitration, as Barger & Wolen’s client had argued.

For additional information about this decision, or the *Hall Street* arguments considered by the court, please contact [Steven Anderson](#) (sanderson@bargerwolen.com) or [Evan Smoak](#) (esmoak@bargerwolen.com) in Barger & Wolen’s New York office (212-557-2800).