

FORD & HARRISON<sup>LLP</sup>  
THE RIGHT RESPONSE AT THE RIGHT TIME

LEGAL ALERT



## Legal Alert: Supreme Court Reaffirms Limited Judicial Review of Arbitration Decisions Under FAA

3/31/2008

The U.S. Supreme Court recently issued a decision reaffirming the limited grounds for judicial review of an arbitrator's decision under the Federal Arbitration Act (FAA). See *Hall Street Associates, L.L.C. v. Mattel, Inc.* (March 25, 2008). Although *Hall Street* is not an employment case, the Court's decision is relevant to employers because its reaffirmation of the limited grounds for judicial review of an arbitration award applies to awards issued by arbitrators in employment-related matters.

Sections 9-11 of the FAA provide for expedited judicial review to confirm, vacate, or modify arbitration awards. Section 10 provides for specific grounds for vacating such awards where: (1) the award was procured by corruption, fraud, or undue means; (2) there is evident partiality or corruption in the arbitrators; (3) there is misconduct of the arbitrators in conducting the arbitration; (4) arbitrators exceeded their powers. Section 11 permits courts to modify arbitration awards for mistakes in calculations or descriptions; where the arbitrators awarded on matters not submitted to them (unless it is a matter that does not affect the merits of the decision); or to correct the form of the award, if this does not affect the merits of the controversy.

The arbitration agreement in *Hall Street* permitted the federal court to vacate, modify or correct the arbitrator's award "(i) where the arbitrator's findings of facts are not supported by substantial evidence, or (ii) where the arbitrator's conclusions of law are erroneous." The Supreme Court held that this provision is not valid and that parties to an arbitration agreement cannot contractually expand the statutory grounds for modifying or vacating an arbitration award. The Court's decision resolves a split of authority among the federal appeals courts. Some courts have interpreted a 1953 U.S. Supreme Court decision as adding "manifest disregard of the law" as another ground for vacating an arbitrator's award. *Hall Street* argued that if courts could add to the statutory reasons for vacating an award, parties could provide for additional reasons in an arbitration contract. The Supreme Court rejected this argument, holding that the grounds for modification and vacatur of an arbitration award found in §§ 10 and 11 of the FAA are exclusive. The Court noted that even if it assumed §§ 10 and 11 could be supplemented to some extent, these provisions could not be expanded to include evidentiary and legal review generally. According to the Court, the FAA provides for vacatur only for egregious reasons; "Fraud" and a mistake of law are not cut from the same cloth." Further, the Court held that § 9's provision for judicial confirmation "carries no hint of flexibility." When a party applies for a court order affirming the arbitration award, the court "must grant" the order "unless

the award is vacated, modified, or corrected as prescribed in sections 10 and 11” of the FAA. The Court found the term “must grant” to be unequivocal, holding that it “does not sound remotely like a provision meant to tell a court what to do just in case the parties say nothing else.”

Accordingly, the Court held that it makes more sense to “see the three provisions, §§ 9-11, as substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration’s essential virtue of resolving disputes straightaway.” The Court also noted that it is not holding that narrow interpretation of the three provisions in the FAA excludes more searching review based on authority outside the statute. **Employers’ Bottom Line:** The decision in *Hall Street Associates* is important for employers because it underscores the limited scope of judicial review of an arbitrator’s decision, ensuring greater finality of such decisions. If you have any questions regarding this decision or other issues relating to alternative dispute resolution, please contact the Ford & Harrison attorney with whom you usually work or John Allgood, an attorney in our Atlanta office, at [jallgood@fordharrison.com](mailto:jallgood@fordharrison.com) or 404-888-3832.