



## California Supreme Court Clears the Way for Increased Judicial Review of Arbitration Awards

*By Neil R. Bardack  
Hanson Bridgett LLP*

Judicial review of arbitration awards is not permitted under the Federal Arbitration Act beyond the limited grounds in the statute, which grounds cannot be expanded by agreement of the parties; however, the California Supreme Court in *Cable Connection, Inc. v. DIRECTV, Inc.*, 44 Cal. 4th 1334 (2008) recently held that under California law, parties can contract to permit broader judicial review of contractual arbitration awards than the limited statutory grounds for vacating an award in the California Arbitration Act (CAA).

Now, parties can agree to judicial review of an arbitrator's decision by challenging the award on the merits in addition to the validity of the arbitrator's reasoning or the sufficiency of the

evidence. By agreement, the parties can stipulate that legal errors will be in excess of the arbitrator's authority and are reviewable by courts. Awards which are brought before a California state court for confirmation will still be controlled by the CAA.

Generally, parties are free to structure their arbitration agreements as they see fit; however, arbitration clauses are interpreted like any other contractual language. Thus, expanding the scope of judicial review should be approached cautiously and perhaps even avoided, unless the drafters are confident they are able to craft language that is explicit and unambiguous. In considering its use, the drafter should at a minimum:

- Require that California substantive law be applied;
- Consider whether to include a prevail-

ing party attorneys fee shifting provision;

- Envision what aspect of an arbitration result requires this extra added protection.

Otherwise, the value of a speedy and certain result in arbitration may be lost to post award judicial review and appeal, creating a situation that is not unlike litigation.



*Neil R. Bardack, Hanson Bridgett LLP, is a litigator who has handled numerous court and jury trials, appeals and arbitrations in state and federal courts. He is an arbitrator, with over 25 years on the American Arbitration Association Commercial Panel. Neil can be reached at [nbardack@hansonbridgett.com](mailto:nbardack@hansonbridgett.com).*