

RATNERPRESTIA LITIGATION & DISPUTE RESOLUTION UPDATE

HALL STREET V. MATTEL:

SUPREME COURT MAINTAINS ARBITRATION'S ESSENTIAL VIRTUE - SPEED

27 MARCH 2008

Whether an arbitration award can be appealed may be a factor in choosing between arbitration and litigation. In contrast to litigation, arbitration is often thought of as having little or no right to appeal. The Federal Arbitration Act ("FAA"), which often governs arbitration agreements involving intellectual property, significantly limits any right of appeal. Parties to such agreements sometimes broaden the FAA's narrow statutory bases for appeal by agreement. That is no longer possible. On March 25, 2008 the Supreme Court ruled that the FAA provides exclusive grounds to confirm, vacate or modify arbitration awards for parties seeking expedited review under the FAA, rejecting Hall Street's arguments that those grounds for review may be expanded by the parties' arbitration agreement. *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. ____ (2008).

The FAA governs the enforcement and review of arbitration agreements and awards. Under the FAA, an arbitration award may be vacated on appeal as follows: (1) the award was procured by corruption, fraud or undue means; (2) the arbitrators exhibit "evident partiality" or "corruption"; (3) the arbitrators were guilty of misconduct; or (4) the arbitrators exceeded their power. Before the Supreme Court's pronouncement in *Hall Street*, the Courts of Appeals were split on whether these grounds for review are exclusive. Some courts held that they are exclusive, reasoning that allowing private parties to expand the FAA's grounds for review could jeopardize the benefits of arbitration, rendering informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process. Other courts held that the grounds for review are merely a threshold open to expansion by agreement.

The issue decided in the *Hall Street* case arose from a unique procedural history. Hall Street sued Mattel over the right to terminate a lease to property. After a trial on this issue, the parties proposed to arbitrate an outstanding indemnification issue. The district court approved, and entered as an order the parties' arbitration agreement, which included a provision requiring the court to vacate, modify, or correct any award if the Arbitrator's conclusions of law are "erroneous." The Arbitrator decided the indemnification issue in Mattel's favor, but the district court vacated the award for "legal error." On remand, the Arbitrator ruled for Hall Street and the district court largely upheld the award. On appeal, the Ninth Circuit reversed, finding the judicial review provision unenforceable as exceeding FAA's exclusive grounds for appeal.

The Supreme Court agreed with the Ninth Circuit that the grounds for modification and vacatur enumerated in the FAA were the exclusive grounds for parties seeking review. The Court rejected the argument that parties should be able to expand the grounds for judicial review of arbitration decisions under the FAA simply because there is a general policy of treating arbitration agreements as enforceable. The Court reasoned that applying this policy to the issue before it was at odds with "textual features" in the FAA requiring the more limited review. According to the Court, it makes more sense to see the relevant provisions of the FAA as substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway. And as many other lower courts had previously expressed, any other reading of the FAA opens the door to a more cumbersome and time-consuming judicial review process.

The Court further noted that this decision regarding the scope of judicial review under the FAA would not necessarily exclude a more expansive review outside the statute, for example, under state statutory or common law. The Supreme Court made clear that it was not deciding anything about those other avenues of review.

In *Hall Street*, the Supreme Court has clarified the federal law of arbitration establishing that the FAA provides exclusive grounds for expedited review. What impact will this ruling have, if any, on the willingness of parties to use arbitration to resolve their disputes? Will it mark the beginning of the end of arbitration as a cost-effective method of resolving disputes outside the traditional civil litigation system, as predicted by Hall Street and its *amic*? Will the use of arbitration increase because this decision clarifies the expedited review under the FAA and promotes speed in dispute resolution, what the Supreme Court states is arbitration's essential virtue. Or, will parties choose to have other laws, such as state arbitration statutes, govern their arbitration proceedings which may provide for broader grounds for review. Time will tell.