

TEXAS CIVIL PROCEDURE UPDATE

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Professional Appointments:

Member, American Law Institute. Appointee: Supreme Court of Texas Advisory Committee on Rules of Practice and Procedure 1986-present; Texas Supreme Court Task Force on Ancillary Proceedings, Chair 2009-2012; Texas Supreme Court Task Force: Code of Judicial Conduct Member 2003-2004; State Bar of Texas Appellate Council 2005-2008, Texas Supreme Court Task Force: Judicial Speech Advisory Committee 2002; Texas Supreme Court Task Force on Civil Reform 2002-2003; Past member of Appellate Practice Specialist Exam Commission; Civil Trial Law Specialist Exam Commission; Personal Injury Trial Law Specialist Exam Commission.

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Author, McDonald and Carlson, Texas Civil Practice, West Publishing (six volume treatise): Co-author with Professors William Dorsaneo, David Crump, and Elizabeth Thornburg: Texas Pretrial and Trial & Appellate Practice texts, Lexis Publishing Co.; Author of numerous articles focusing upon civil procedure and related topics, including publications with Baylor Law Review, Texas Tech Law Review, St. Mary's Law Review, South Texas Law Review; Texas Bar Journal, and others. State Bar of Texas, Litigation Section, Contributing Author on Civil Procedure Update for Section Quarterly Publication "The Advocate" 1987-1999.

Honors: Texas Extraordinary Women in Texas Law, Texas Lawyer Award 2008; Distinguished Alumna, South Texas College of Law 2008; State Bar of Texas Bar Foundation Outstanding Law Review Article of the Year, 1995; Vinson & Elkins Faculty Excellence Award; South Texas College of Law Outstanding Professor Award.

Visiting Professor and CLE Lecturer, University of Texas School of Law; Continuing Legal Education Author and Frequent Lecturer, State Bar of Texas, Southern Methodist University School of Law, South Texas College of Law, Houston Bar Association, Travis County Bar Association; Internal Seminars: First and Fourteenth Court of Appeals, Texas Association of Defense Counsel, Texas College of Trial Advocacy, Texas Judicial Conference. Advisor to Texas Legislature, Joint Special Committee on Security for Judgment, Texas Legislation 1987, as well as Commission on Federal Courts 1990.

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Admitted to Bar 1979. Admitted to practice before all Texas Courts, the U.S. Supreme Court; U.S. Court of Appeals, Fifth and Eleventh Circuits; U.S. District Court, Southern District of Texas.

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Courtney Taylor Carlson was born in Houston, Texas, in 1983. She received her Bachelor of Business Administration from the University of Texas at Austin in 2005 and her Doctor of Jurisprudence from South Texas College of Law in 2008. She currently is a partner in the litigation section of Jackson Walker in the Houston office. Ms. Carlson's practice focuses on civil litigation and appellate issues. She has served on the adjunct faculty of South Texas College of Law teaching Texas Procedure as well as Appellate Advocacy.

Ms. Carlson was a Briefing Attorney to Justice David M. Medina of the Supreme Court of Texas from 2008-2009. While at South Texas College of Law, Ms. Carlson was a Staff Member on the Texas Journal of Business Law and a Member of Phi Delta Phi Legal International Fraternity. She received an American Jurisprudence Award in 2005 for obtaining the highest grade in her Legal Research and Writing course.

Ms. Carlson was a member of three varsity appellate advocacy teams, including the William B. Spong, Jr. National Moot Court Competition where her team won first place and received the Best Brief award, the Burton D. Wechsler First Amendment Moot Court Competition where her team received the Best Brief award and she was named the Third Best Speaker, and the American Bar Association National Appellate Advocacy Competition where her team won at the regional level. As a result of Ms. Carlson's active involvement in South Texas College of Law's Advocacy Program, she was honored with the Dean's Student Advocacy Service Award for Most Outstanding Female Varsity Moot Court Advocate.

Ms. Carlson is a member of the American Bar Association, the State Bar of Texas (Litigation and Appellate sections), the Houston Bar Association (Litigation and Appellate sections), and the Houston Young Lawyers Association. Ms. Carlson is also a Texas Bar Foundation Fellow and serves on the Nominating Committee. She is also a Founding Member of both the South Texas College of Law Young Alumni Council and the Central Houston, Inc. Millennial Enterprise, or CHIME, for short. She is a current member of the State Bar of Texas Standing Committee on Women in the Profession. Ms. Carlson has co-authored several CLE papers for the State Bar of Texas as well as the University of Texas School of Law. Ms. Carlson was awarded the 2012 Young Alumni of the Year award from South Texas College of Law and currently serves on the Alumni Board of Directors.

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TEXAS CIVIL PROCEDURE UPDATE

Arbitration

Hoskins v. Hoskins, 497 S.W.3d 490, 496 (Tex. 2016) (The Texas Supreme Court addressed, as a matter of first impression, whether the Texas General Arbitration Act (hereafter “TAA”) permits vacatur of an arbitration award on common-law grounds not enumerated in the statute. Resolving the split in the lower courts of appeals, the Court concludes that section 171.088 of the Texas Civil Practice and Remedies Code provides the *exclusive* grounds for vacatur of an arbitration award. Accordingly, manifest disregard and all other common-law vacatur doctrines are not viable grounds for vacating an arbitration award under the TAA. The Court notes:

In sum, the TAA mandates that, *unless* a statutory vacatur ground is offered, the court *shall* confirm the award. TEX. CIV. PRAC. & REM. CODE ANN. § 171.087 (West 2011). Thus, a party may avoid confirmation only by demonstrating a ground expressly listed in section 171.088. Leonard complains that “the TAA contains gaps that need [common-law] supplementation” in order to foreclose arbitration awards that are “unquestionably” improper. But we may not rewrite or supplement a statute to overcome its perceived deficiencies. The parties signed an agreement to arbitrate under the TAA, and that agreement contained no limitations on the arbitrator’s authority beyond those enumerated in the statute. Because manifest disregard is not an enumerated vacatur ground under section 171.088, the court of appeals correctly declined to consider it in affirming the trial court’s confirmation order.

The concurrence highlights the advantages in establishing the exclusivity of the TAA’s vacatur grounds. Not only does the Court’s decision provide lower courts with clear instruction, it also eradicates the ambiguity surrounding vacatur grounds that is still present in the Federal Arbitration Act. (at *6)

The American Arbitration Association adopted rules allowing parties to agree to submit commercial arbitration decisions to appellate review before an appellate arbitral panel. www.adr.org/ If the parties have not appointed an appeal tribunal nor not provided for any other method of appointment, the appeal tribunal will be appointed by the AAA. A notice of appeal must be filed with the AAA within thirty days of the arbitration agreement. The rules call for the filing of briefs and permit review of errors of law that are material and prejudicial, and determinations of fact that are clearly erroneous.

See also: <http://www.lexology.com/library/detail.aspx?g=1d466bd0-aeff-43e5-96b9-def338ff7baf>.

Good Times Stores, Inc. v. Macias, 355 S.W.3d 240, 244 (Tex. App.--El Paso 2011, pet. denied) (The grounds to vacate an arbitration award under the Federal Arbitration Act are exclusive under the U.S. Supreme Court decision of *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 128 S. Ct. 1396, 1404, 170 L.Ed.2d 254 (2008) and forecloses any common law grounds for vacatur. The FAA applies to maritime transactions and actions involving interstate commerce.).

Nafta Traders, Inc. v. Quinn, 339 S.W.3d 84, 97 (Tex. 2011) (The Texas Arbitration Act presents no impediment to an agreement that limits the arbitrator's authority and allows for judicial review of an arbitration award for reversible error. When an arbitration agreement is covered by both state and federal law, state law is preempted to the extent that it actually conflicts with federal law. While acknowledging judicial review of an arbitration award is not allowed under the Federal Arbitration Act, Texas law does not conflict with that law).

Forest Oil Corp. v. El Rucio Land, 446 S.W. 3d 58, 73-74, 81-87 (Tex. App.—Houston [1st Dist.] 2014, pet. abated) (The judicially created primary jurisdiction doctrine operates to allocate power between courts and agencies when both have authority to make initial determinations in a dispute. The Railroad Commission does not have primary jurisdiction over a landowner's non-regulatory based claims for injuries caused to the landowner's property by environmental contamination incident to oil and gas production. Simply because the Railroad Commission might have jurisdiction to determine some facts related to a controversy does not oust a court or the arbitrators of jurisdiction to make the underlying factual determinations.

The parties' arbitration agreement provided: "The arbitrators will have the authority to award punitive damages where allowed by Texas substantive law". This does not support the argument the parties agreed to expanded judicial review of the sufficiency of the evidence to support the arbitrator's award of exemplary damages. The supreme court's decision in *Nafta Traders* is distinguished:

There, the supreme court determined that parties, by contract, may agree to allow for judicial review of an arbitration award for reversible error. *See Nafta Traders*, 339 S.W.3d at 101. In that case, the arbitration agreement stated, "The arbitrator does not have authority (i) to render a decision which contains a reversible error of state or federal law, or (ii) to apply a cause of action or remedy not expressly provided for under existing state or federal law." *Id.* at 88. The supreme court concluded this language meant that the arbitrator

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