

# TEXAS CIVIL PROCEDURE UPDATE

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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/](http://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, aff’d, 518 S.W.3d 422 (Tex. 2017)) (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 lacked the power to commit a reversible error of law and provided the

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