ADVOCACY IN ARBITRATION

VACATING & CORRECTING AWARDS

AUGUST 21, 2006

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VACATING & CORRECTING AWARDS

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- **FEDERAL v. STATE LAW**
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- **BEWARE: CCP § 187.7**

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PRINCIPLES

A. PARTIES WHO AGREE TO ARBITRATION

1. ARE (GENERALLY) FREE TO STRUCTURE THEIR ARBITRATION AGREEMENTS AS THEY SEE FIT. "ARBITRATION IS SIMPLY A MATTER OF CONTRACT BETWEEN THE PARTIES." LAPINE v. KYOCERA (9TH CIR. 1997) 130 F. 3d 884, 888. CONTRACT VARIATIONS INCLUDE (1) PROCEDURAL RULES; (2) DISCOVERY; (3) RULES OF EVIDENCE; (4) JUDICIAL REVIEW; AND (5) SCOPE OF ARBITRATOR'S POWER. (SEE TAB 1.)

2. AGREE TO A FINAL AND BINDING DETERMINATION OF THEIR DISPUTE WITHOUT INTERCESSION OF THE COURTS. ADVANCED MICRO DEVICES, INC. v. INTEL CORP. (1994) 9 CAL. 4TH 362

3. AGREE TO BEAR THE RISK OF FACTUAL AND LEGAL ERROR BY THE ARBITRATOR IN RETURN FOR A "QUICK, INEXPENSIVE, AND CONCLUSIVE RESOLUTION TO THEIR DISPUTE." MONCHARSH v. HEILY & BLASÉ (1992) 3 CAL. 4TH 1, 11.

4. AGREE TO A "NON-TECHNICAL, SUMMARY PROCEDURE, AND TO BE BOUND BY AN AWARD NOT SUBJECT TO JUDICIAL REVIEW." MONCHARSH v. HEILY & BLASÉ (1992) 3 CAL. 4TH 1

5. AGREE THAT ARBITRATOR IS NOT BOUND TO AWARD ON PRINCIPLES OF DRY LAW, BUT MAY DECIDE ON "PRINCIPLES OF EQUITY AND GOOD CONSCIENCE...." MONCHARSH v. HEILY & BLASÉ (1992) 3 CAL. 4TH 1

6. AGREE THAT THE ARBITRATION AWARD IS GENERALLY IMMUNE FROM JUDICIAL REVIEW. MONCHARSH v. HEILY & BLASÉ (1992) 3 CAL. 4TH 1

7. AGREE THAT ARBITRAL ERROR DOES NOT AFFECT FINALITY BECAUSE "ARBITRATORS DO NOT EXCEED THEIR POWERS MERELY BECAUSE THEY ASSIGN AN ERRONEOUS REASON FOR THEIR DECISION." MONCHARSH v. HEILY & BLASÉ (1992) 3 CAL. 4TH 1

B. GIVEN THE FINALITY OF AN ARBITRATOR'S AWARD AND THE UNAVAILABILITY OF JUDICIAL REVIEW, THE NEED FOR ARBITRAL FAIRNESS, IMPARTIALITY AND DISCLOSURE ARE ESPECIALLY IMPORTANT.

FEDERAL V. STATE LAW

C. PRINCIPLES

1. CALIFORNIA ARBITRATION ACT ("CAA") (CCP § 1280 ET SEQ.)

2. FEDERAL ARBITRATION ACT ("FAA") (9 USC § 1 ET SEQ.)

a. FAA: OVERRIDING FEDERAL POLICY FAVORING ARBITRATION – OVERCOMES STATE LAW ARBITRATION HOSTILITY (9 USC § § 1, 2)

b. FAA PRE-EMPTS IF 9 USC § 2 APPLIES (SOUTHLAND v. KEATING (1984) 465 U.S. 1, ____.)

c. 9 USC § 2 APPLIES IF TRANSACTION AFFECTS INTERSTATE OR INTERNATIONAL COMMERCE (ALLIED-BRUCE TERMINEX COS., INC. v. DOBSON (1995) 513 U.S. 265, _____.).

d. FAA DOES NOT CONFER FEDERAL JURISDICTION. THUS (A) UNDERLYING FEDERAL CLAIM NEEDED TO CONFER JURISDICTION; (B) PENDING FEDERAL ACTION AND ARB.; (C) DIVERSITY; (D) "MANIFEST ERROR" AND "SUBSTANTIAL FEDERAL QUESTION."

3. STATE V. FEDERAL RULES – SIGNIFICANCE TO VACATION?

a. COMPARE GROUNDS FOR VACATION

b. FAA GROUNDS FOR VACATION – 9 USC § 10 PLUS COMMON LAW GROUND – AWARD RESULT OF "MANIFEST DISREGARD OF THE LAW" (TODD SHIPYARDS CORP. v. CUNARD LINE LTD. (9TH CIR. 1991) 943 F. 2d 1056; INTERNATIONAL TELEPASSPORT CORP. v. USFI, INC. (2d CIR. 1996) 89 F. 3d 82 – OBVIOUS ERROR OF LAW AND CAPABLE OF BEING INSTANTLY PERCEIVED BY AVERAGE ARBITRATOR BASIS FOR VACATION).

c. CAA GROUNDS – CCP § 1286.2 AND JUDICIAL INTERP.: MONCHARSH v. HEILY AND BLASÉ (1992) 3 CAL. 4TH 1, 33. (AWARD STANDS EVEN IF MANIFEST FACTUAL AND LEGAL ERROR ON FACE OF AWARD WHICH CAUSE SUBSTANTIAL INJUSTICE).

- CA MORE PROTECTIVE OF AWARDS AND, THEREFORE, NOT PREEMPTED.

d. OTHERWISE, 9 USC § 10 and CCP § 1286.2 SUBSTANTIALLY SIMILAR.

4. THEREFORE, FOR AWARD CHALLENGER THERE MAY BE SOME ADVANTAGE TO HAVING FAA APPLY IF "MANIFEST DISREGARD OF THE LAW" ARGUABLY APPLIES. (FEDERAL JURISDICTION BASED ON "DIVERSITY" OR "RESOLUTION OF A SUBSTANTIAL QUESTION OF FEDERAL LAW." (GREENBERG v. BEAR, STEARNS & CO. (2ND CIR. 2000) 220 F. 3d 22).

5. CALIFORNIA ETHICS RULES MAY, HOWEVER, PROVIDE MORE POTENTIAL FOR VACATION.

VACATION & CORRECTION

D. IN GENERAL

1. GENERALLY, 9 USC § 10 AND CCP § 1286.2 SET FORTH EXCLUSIVE GROUNDS FOR VACATING OF AWARD. ("CORRECTING" SEE CCP § 1286.6. AND 9 USC § 11.)

a. MONCHARSH (AWARD OTHERWISE IMMUNE FROM CHALLENGE.)

b. GIVES EFFECT TO ASSUMED PARTIES' INTENT OF FINALITY AND OF ACCORDING BROAD DISCRETION TO ARBITRATOR TO DECIDED.

c. NOTE: PARTIES HAVE NO DUE PROCESS RIGHT TO JUDICIAL REVIEW (RIFKIND & STERLING, INC. v. RIFKIND (1994) 28 CAL.APP. 4TH 128). CONFIRMATION NOT STATE ACTION. APPLIES TO PUNITIVE DAMAGES.

2. ARBITRATOR'S POWER TO DECIDE EXISTENCE, SCOPE, MEANING AND VALIDITY OF CONTRACT

a. ARBITRATOR'S ROLE! SCREEN ACTORS' GUILD v. SHANE CO. (1990) 225 CAL.APP. 3d 260.

b. AAA RULE 8 – ARBITRATOR'S POWER TO RULE ON ITS OWN JURISDICTION INCLUDING "EXISTENCE, SCOPE AND VALIDITY" OF CONTRACT.

3. NO EXCEPTION TO EXCLUSIVITY OF STATUTORY VACATION GROUNDS

a. CONTRACT PRESERVES PARTIES' RIGHT TO JUDICIAL APPELLATE REVIEW. (OR, PARTIES CONCERNED ABOUT HORROR STORIES OF ARBITRATORS RUNNING AMOK ENTER INTO POST-DISPUTE AGREEMENT.) NOT ENFORCEABLE.

b. AN ARBITRATION CONTRACT PROVISION WHICH DIRECTS ARBITRATOR TO DECIDE MATTER "PURSUANT TO THE LAW IN THE MANNER OF A COURT" WITHOUT PROVIDING FOR APPEAL DOES NOT PERMIT VACATION OF AWARD FOR ERROR. PG&E v. SUPERIOR COURT (1993) 15 CAL. APP. 4TH 576 CITING MONCHARSH. DOES AN ARBITRATOR WHO FAILS TO DECIDE "PURSUANT TO THE LAW..." EXCEED ITS POWER AS PROVIDED IN CCP § 1286.2(d)? NO. ID, 588.

c. COURT REPORTER! HAVE ONE.

d. JUDICIAL REVIEW PROVISION NOT ENFORCEABLE

i. FEDERAL COURTS

- DIRECTLY TO CIRCUIT COURT? NO – STATUTORY JURISDICTION
- TRIAL COURT. NO. KYOCERA CORP. v. PRUDENTIAL-BACHE TRADE SERVICE, INC. (9TH CIR. 1997) 130 F. 3d 884.

ii. STATE COURT

- NOT DIRECTLY TO COURT OF APPEAL! STATUTORY JURISDICTION.
- TRIAL COURT. CABLE CONNECTION, INC. v. DIRECTV, INC. 2006 Daily Journal D.A.R. 12.

e. AGREEMENT AND ARBITRAL APPELLATE PANEL

- JAMS. NOTE: "CONFLICT" OF PRIVATE FOR-PROFIT PANEL REVIEWING A PANEL ARBITRATOR'S DECISION. COULD ANY

CLIENT WHO IS AN "APPELLANT' HAVE A HIGH LEVEL OF COMFORT IN PROCESS?

E. GROUNDS FOR VACATION WHERE AGREEMENT SILENT (AND PARTIES DO NOT AGREE POST-DISPUTE).

1. **CCP § 1286.2**	**9 USC §§ 1-10**
(a) SUBJECT TO SECTION 1286.4, THE COURT SHALL VACATE THE AWARD IF THE COURT DETERMINES ANY OF THE FOLLOWING	(a) IN ANY OF THE FOLLOWING CASES THE UNITED STATES COURT IN AND FOR THE DISTRICT WHEREIN THE AWARD WAS MADE MAY MAKE AN ORDER VACATING THE AWARD UPON THE APPLICATION OF ANY PARTY TO THE ARBITRATION --
(1) THE AWARD WAS PROCURED BY CORRUPTION, FRAUD OR OTHER UNDUE MEANS.	(1) WHERE THE AWARD WAS PROCURED BY CORRUPTION, FRAUD, OR UNDUE MEANS.
(2) THERE WAS CORRUPTION IN ANY OF THE ARBITRATORS.	(2) WHERE THERE WAS EVIDENT PARTIALITY OR CORRUPTION IN THE ARBITRATORS, OR EITHER OF THEM.
(3) THE RIGHTS OF THE PARTY WERE SUBSTANTIALLY PREJUDICED BY MISCONDUCT OF A NEUTRAL ARBITRATOR.	(3) WHERE THE ARBITRATORS WERE GUILTY OF MISCONDUCT IN REFUSING TO POSTPONE THE HEARING, UPON SUFFICIENT CAUSE SHOWN, OR IN REFUSING TO HEAR EVIDENCE

	PERTINENT AND MATERIAL TO THE CONTROVERSY; OR OF ANY OTHER MISBEHAVIOR BY WHICH THE RIGHTS OF ANY PARTY HAVE BEEN PREJUDICED.
(4) THE ARBITRATORS EXCEED THEIR POWERS AND THE AWARD CANNOT BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION UPON THE CONTROVERSY SUBMITTED.	(4) WHERE THE ARBITRATORS EXCEEDED THEIR POWERS, OR SO IMPERFECTLY EXECUTED THEM THAT A MUTUAL, FINAL, AND DEFINITE AWARD UPON THE SUBJECT MATTER SUBMITTED WAS NOT MADE.
(5) THE RIGHTS OF A PARTY WERE SUBSTANTIALLY PREJUDICED BY THE REFUSAL OF THE ARBITRATORS TO POSTPONE THE HEARING UPON SUFFICIENT CAUSE BEING SHOWN THEREFORE OR BY THE REFUSAL OF THE ARBITRATORS TO HEAR EVIDENCE MATERIAL TO THE CONTROVERSY OR BY OTHER CONDUCT OF THE ARBITRATORS CONTRARY TO THE PROVISIONS OF THIS TITLE.	(5) WHERE AN AWARD IS VACATED AND THE TIME WITHIN WHICH THE AGREEMENT REQUIRED THE AWARD TO BE MADE HAS NOT EXPIRED THE COURT MAY, IN ITS DISCRETION, DIRECT A REHEARING BY THE ARBITRATORS.

(6) AN ARBITRATORS MAKING THE AWARD **EITHER: (A) FAILED TO DISCLOSE WITHIN THE TIME REQUIRED FOR DISCLOSURE A GROUND FOR DISQUALIFICATION OF WHICH THE ARBITRATOR WAS THEN AWARE; OR (B)** WAS SUBJECT TO DISQUALIFICATION UPON GROUNDS SPECIFIED IN SECTION 1281.91 BUT FAILED UPON RECEIPT OF TIMELY DEMAND TO DISQUALIFY HIMSELF OR HERSELF AS REQUIRED BY THAT PROVISION. HOWEVER, THIS SUBDIVISION DOES NOT APPLY TO ARBITRATION PROCEEDINGS CONDUCTED UNDER A COLLECTIVE BARGAINING AGREEMENT BETWEEN EMPLOYERS AND EMPLOYEES OR BETWEEN THEIR RESPECTIVE REPRESENTATIVES.	
(b) **PETITIONS TO VACATE AN ARBITRATION AWARD PURSUANT TO SECTION 1285 ARE SUBJECT TO THE PROVISIONS OF SECTION 187.7**	(b) THE UNITED STATES DISTRICT COURT FOR THE DISTRICT WHEREIN AN AWARD WAS MADE THAT WAS ISSUED PURSUANT TO SECTION 580 OF TITLE 5 MAY MAKE AN ORDER VACATING THE AWARD UPON THE APPLICATION OF A

[ATTORNEY CERTIFIES TO MERITS AND SANCTIONS.]	PERSON, OTHER THAN A PARTY TO THE ARBITRATION, WHO IS ADVERSELY AFFECTED OR AGGRIEVED BY THE AWARD, IF THE USE OF ARBITRATION OR THE AWARD IS CLEARLY INCONSISTENT WITH THE FACTORS SET FORTH IN SECTION 572 OF TITLE 5.

2. "FRAUD, CORRUPTION OR OTHER UNDUE MEANS" GROUNDS TO VACATE [CCP § 1286.2(a)(1); 9 USC § 10 (a)(1)].

   a. APPLIES TO ARBITRATOR OR PARTY FRAUD.

   b. MUST BE EXTRINSIC, NOT INTRINSIC, FRAUD DEPRIVING LOSER OF FAIR HEARING

      i. POST-HEARING INTRODUCTION OF NEW THEORY WITHOUT REBUTTAL OPPORTUNITY.

      ii. EX PARTE COMMUNICATIONS

      iii. FRAUD IN INDUCEMENT OF CONTRACT NOT BASIS TO VACATE.

   c. "<u>CORRUPTION</u>" NOT DEFINED – SEE JUDICIAL COUNCIL ETHICS AND CCP § 170.1.

   d. "UNDUE MEANS" – "IMMORAL, ILLEGAL."

3. § 1286.2(a)(2) (CORRUPTION IN ARBITRATOR) AND (a)(3) ("MISCONDUCT SUBSTANTIALLY PREJUDICED") DISCUSSED BELOW.

4. "EXCEEDED THEIR POWERS" AND AWARD CANNOT BE CORRECTED WITHOUT AFFECTING MERITS OF AWARD (CCP § 1286.2(a)(4); 9 USC § 4).

a. AGAIN "ERROR OF LAW OR FACT" NOT SUFFICIENT IN CALIFORNIA ["MANIFEST DISREGARD" UNDER FAA DISCUSSED BELOW].

b. FOCUS UNDER 1286.2(a)(4) IS POWER OF ARBITRATOR BASED ON AGREEMENT AND SUBMISSION.

c. LACK OF SUBJECT MATTER JURISDICTION JUDICIALLY REVIEWABLE. NATIONAL UNION FIRE INS. CO. v. STITES PROFESSIONAL LAW CORP. (1991) 235 CAL.APP. 3d 1718. [AAA RULE 8 ARBITRATOR'S DECISION ON HIS JURISDICTION REVIEWABLE. NOTE RULE 8 REQUIRES PARTY CHALLENGING JURISDICTION TO RAISE ISSUE.]

d. AWARD UPHOLDING ILLEGAL CONTRACT WILL BE VACATED.

e. LEGALITY DETERMINATION JUDICIAL FUNCTION. ARBITRATOR'S FINDING OF LEGALITY NOT BINDING. PARTIAL ILLEGALITY, HOWEVER, IS AN ARBITRAL ISSUE [GENERALLY UPHELD UNLESS STATUTORY RIGHT VIOLATED].

f. AWARD WHICH VIOLATES A WELL-DEFINED AND DOMINANT PUBLIC POLICY [MONCHARSH; and CITY OF PALO ALTO v. SERVICE EMPLOYEES INT'L UNION, LOCAL 715 (1999) 77 CAL.APP. 4TH 327].

g. DECISION BEYOND ISSUES SUBMITTED. MICHIGAN MUT. INS. CO. v. UNIGARD SEC. INS. CO.(1995) 44 F. 3d 826 (AWARD MUST "DRAW ITS ESSENCE" FROM THE CONTRACT AND ITS ARBITRATION PROVISION).

h. ARBITRATOR'S INTERPRETATION OF AUTHORITY DEFERRED TO. (PACIFIC CROWN DISTRIBUTORS v. BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS (1986) 183 CAL.APP. 3d 1138.)

i. AWARD VACATED BECAUSE IT "EXCEEDS POWER OF ARBITRATOR" WHERE IT DOES NOT COMPLY WITH ARBITRATION PROVISION REQUIRING FINDINGS OF FACT AND CONCLUSIONS OF LAW VACATED. (WESTERN EMPLOYERS INS. CO. v. JEFFRIES & CO. (9TH CIR. 1992) 958 F. 2d 258.) (WESTERN ARGUED THAT (1) FINDINGS AND CONCLUSIONS WOULD HAVE PERMITTED "HIGHER LEVEL OF JUDICIAL SCRUTINY"; AND (2) BUT FOR PROVISION WESTERN WOULD NOT HAVE ENTERED INTO AGREEMENT. NINTH CIRCUIT REJECTS FIRST GROUND BECAUSE ONLY "MANIFEST DISREGARD" OF LAW PERMITS VACATION FOR ERROR. HOWEVER, WESTERN HAS "A RIGHT TO ARBITRATION ACCORDING TO THE TERMS FOR WHICH IT CONTRACTED." 96 USC § 10(d). ARBITRATORS "EXCEEDED POWERS" BY NOT FULFILLING THEIR OBLIGATION.) BUT SEE PG&E v. SUPERIOR COURT (1993) 15 CAL. APP. 4TH 576, 589, THAT EVEN IF ARBITRATION

AGREEMENT REQUIRES ARBITRATORS TO "STATE THE REASONS FOR THE AWARD IN THE MANNER OF A STATEMENT OF DECISION" SUCH DOES NOT PROVIDE FOR BROAD RANGING JUDICIAL REVIEW. (NOTE: IN WESTERN, AT THE HEARING WESTERN TIME AND AGAIN DEMANDED FINDINGS AND CONCLUSIONS. QUERY – WHAT HAPPENS AFTER VACATION?)

j. AWARD BASED ON CONTRACT WITH INTEGRATION CLAUSE AND ARBITRATOR CONSIDERS EXTRINSIC EVIDENCE TO CONTRADICT CONTRACT VACATED. (CALIFORNIA FACULTY ASSOCIATION v. SUPERIOR COURT (1998) 63 CAL. APP. 4TH 935.)

k. AWARD CONSTRUING CONTRACT MAY BE VACATED ONLY IF THE AWARD MAKES AN "EGREGIOUS MISTAKE" – THAT IT AMOUNTS TO AN ARBITRARY REMAKING OF THE CONTRACT. THIS GROUND IS "NARROW." "THE STANDARD IS SO STRICT THAT IS SHOULD DISCOURAGE ALL BUT THE MOST SERIOUS CLAIMS OF ABUSE." (PG&E v. SUPERIOR COURT (1993) 15 CAL. APP. 4TH 576.)

l. REMEDY BEARING NO RATIONAL RELATIONSHIP TO CONTRACT BREACH. (ADVANCED MICRO DEVICES, INC. v. INTEL CORP. (1994) 9 CAL. 4TH 312 [JUDICIAL POWER NOT DETERMINATIVE].)

5. FEDERAL MAJORITY: "MANIFEST DISREGARD OF THE LAW": ARBITRATOR (1) MUST HAVE KNOWN OF GOVERNING

PRINCIPLE AND MUST HAVE REFUSED TO APPLY; AND (2) LAW IS CLEAR.

6. CCP § 1286.2(5) – PARTY'S RIGHTS SUBSTANTIALLY AFFECTED BY "REFUSAL OF CONTINUANCE" OR "EXCLUSION OF EVIDENCE" OR "OTHER CONDUCT OF THE ARBITRATORS CONTRARY TO THE PROVISION OF THIS TITLE." (SEE ALSO 9 USC § 10(a)(3).)

   a. "NO CONTINUANCE."

      - SHOWING REQUIRED "NO REASONABLE BASIS EXISTS FOR ARBITRATOR'S DECISION NOT TO POSTPONE HEARING." (SEE COLWELL BANKER, ETC. v. ROITZ (1998) 62 CAL. APP. 4TH 716.)

   b. "EVIDENCE" – ALL THAT IS REQUIRED IS "FUNDAMENTALLY FAIR" HEARING AND RULES OF EVIDENCE DO NOT APPLY UNLESS PARTIES PROVIDE OTHERWISE.

7. FAILURE TO DISCLOSE: 1286.2(6) INCORPORATES CCP § 1281.9.

   a. CCP § 1281.9 PROVIDES:

      (a) IN GENERAL: "ALL MATTERS THAT COULD CAUSE A PERSON AWARE OF THE FACTS TO REASONABLY DOUBT THAT THE PROPOSED NEUTRAL ARBITRATOR WOULD BE ABLE TO BE IMPARTIAL."

      i. (a)(1) MATTERS SPECIFIED IN CCP § 170.1.

ii. (a)(2) JUDICIAL COUNCIL ETHICS GUIDELINES. COMMENT TO STANDARD 1: "AN ARBITRATOR'S VIOLATION OF THESE STANDARDS MAY...BE BASIS FOR VACATION."

iii. (a)(3) ACTED AS PARTY ARBITRATOR FOR PARTY OR LAW.

iv. (a)(4) ACTED AS NEUTRAL ARBITRATOR IN PROCEEDING IN WHICH PARTY OR LAWYER IN PRESENT PROCEEDING WAS INVOLVED.

v. (a)(5) ATTORNEY/CLIENT RELATIONSHIP.

vi. (a)(6) ANY PROFESSIONAL OR SIGNIFICANT RELATIONSHIP

b. AAA R-19 DISCLOSURE AND CHALLENGE PROCEDURE.

- REQUIRES DISCLOSURE...

- "UPON OBJECTION OF A PARTY TO THE CONTINUED SERVICE OF A NEUTRAL ARBITRATOR, THE AAA SHALL DETERMINE WHETHER THE ARBITRATOR SHOULD BE DISQUALIFIED AND SHALL INFORM THE PARTIES OF ITS DECISION, WHICH SHALL BE CONCLUSIVE." (EMPHASIS ADDED.) IS THIS DETERMINATIVE WITH A MOTION TO VACATE?

- JUDICIAL TREATMENT OF FOREGOING WOULD SEEMINGLY BE DE NOVO REVIEW. STRATEGY OF

NON-CHALLENGING PARTY – PROCEED WITH CHALLENGED ARBITRATOR?

- POST AWARD CHALLENGE TO ARBITRATOR FOR BIAS AND PREJUDICE. INTERNATIONAL ALLIANCE OF THEATRICAL STATE EMPLOYEES, ET AL. V. LAUGHON (2004) 118 CAL. APP. 4TH 1380.

c. DISQUALIFICATION PROCEDURE

1. § 1281.91

- IF ARBITRATOR FAILS TO PROVIDE ANY DISCLOSURE UNDER § 1281.9 THEN PARTY HAS 15 DAYS TO SERVE NOTICE OF DISQUALIFICATION OR WAIVES RIGHT TO DISQUALIFY. [QUERY, DOES "WAIVER" WAIVE ANY TRUE BASIS FOR DISQUALIFICATION DISCOVERY ONLY AFTER AWARD RENDERED?
- IF ARBITRATOR SERVES DISCLOSURE UNDER § 1281.9 PARTY HAS 15 DAYS TO DISQUALIFY (OR WAIVES RIGHT TO DISQUALIFY).
- NO WAIVER OF RIGHT TO DISQUALIFY IF ARBITRATOR "MAKES A MATERIAL OMISSION OR MATERIAL MISREPRESENTATION IN HIS OR HER DISCLOSURE. EXCEPT AS PROVIDED IN

SUBDIVISION (d). IN NO EVENT MAY A NOTICE OF DISQUALIFICATION BE GIVEN AFTER A HEARING OF ANY CONTESTED ISSUE RELATING TO THE MERITS OR AFTER A RULING ON ANY CONTESTED MATTER. NOTHING IN THIS SUBDIVISION SHALL LIMIT THE POWER OF A PARTY TO VACATE AN AWARD PURSUANT TO SECTION 1286.2… ."

- SUBDIVISION (d) PROVIDES 170.1 DISQUALIFICATION GROUND APPLIES UNTIL THERE IS AN AWARD.

F. PROCEDURE FOR VACATION

a. CALIFORNIA (HIGHLIGHTS)

i. § 1285 – "PETITION" TO VACATE "SHALL NAME AS RESPONDENTS ALL PARTIES TO THE ARBITRATION…"

ii. § 1285.4 CONTENTS OF PETITION

iii. § 1285.8 – PETITION MUST IDENTIFY GROUNDS TO VACATE.

iv. § 1288 – 100 DAYS TO <u>FILE AND SERVE</u> AFTER SERVICE OF SIGNED COPY OF AWARD ON PETITIONER; UNLESS PETITION TO CONFIRM FILED, THEN RESPONSE SEEKING TO VACATE MUST BE FILED WITHIN 10 DAYS OF SERVICE OF

PETITION. (CCP § 1290.6 – MUST STILL BE FILED WITHIN 100 DAYS.)

v. § 1288.4 – "NO PETITION MAY BE SERVED AND FILED…UNTIL AT LEAST 10 DAYS AFTER SERVICE OF THE SIGNED COPY OF THE AWARD UPON THE PETITIONER (GIVES TIME FOR REQUEST OT ARBITRATOR TO CORRECT).

b. FED: 90 DAYS

G. GROUNDS FOR CORRECTION

1. **CCP § 1286.6**	**9 USC § 11**
SUBJECT TO SECTION 1286.8, THE COURT, UNLESS IT VACATES THE AWARD PURSUANT TO SECTION 1286.2, SHALL CORRECT THE AWARD AND CONFIRM IT AS CORRECTED IF THE COURT DETERMINES THAT:	IN EITHER OF THE FOLLOWING CASES THE UNITED STATES COURT IN AND FOR THE DISTRICT WHEREIN THE AWARD WAS MADE MAY MAKE AN ORDER MODIFYING OR CORRECTING THE AWARD UPON THE APPLICATION OF ANY PARTY OT THE ARBITRATION -
(a) THERE WAS AN EVIDENT MISCALCULATION OF FIGURES OR AN EVIDENT MISTAKE IN THE DESCRIPTION OF ANY PERSON, THING OR PROPERTY REFERRED TO IN THE AWARD;	(a) WHERE THERE WAS AN EVIDENT MATERIAL MISCALCULATION OF FIGURES OR AN EVIDENT MATERIAL MISTAKE IN THE DESCRIPTION OF ANY PERSON, THING, OR PROPERTY REFERRED TO IN THE AWARD.

(b) THE ARBITRATORS EXCEEDED THEIR POWERS BUT THE AWARD MAY BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION UPON THE CONTROVERSY SUBMITTED; OR	(b) WHERE THE ARBITRATORS HAVE AWARDED UPON A MATTER NOT SUBMITTED TO THEM, UNLESS IT IS A MATTER NOT AFFECTING THE MERITS OF THE DECISION UPON THE MATTER SUBMITTED.
(c) THE AWARD IS IMPERFECT IN A MATTER OF FORM, NOT AFFECTING THE MERITS OF THE CONTROVERSY.	(c) WHERE THE AWARD IS IMPERFECT IN MATTER OF FORM NOT AFFECTING THE MERITS OF THE CONTROVERSY. THE ORDER MAY MODIFY AND CORRECT THE AWARD, SO AS TO EFFECT THE INTENT THEREOF AND PROMOTE JUSTICE BETWEEN THE PARTIES.

2. CORRECTION GROUNDS EXPLAINED

a. AWARD MAY BE CORRECTED TO MAKE IT CONSISTENT WITH INSURANCE POLICY LIMITS. (CAMPBELL v. FARMERS INS. EXCHANGE (1968) 260 CAL. APP. 2d 105.)

b. AWARD AGAINST A NONPARTY TO ARBITRATION PROCEEDING MAY BE CORRECTED TO DELETE AWARD AGAINST NONPARTY. (IKERD v. T. MERRILL & SONS (1992) 9 CAL. APP. 4TH 1833.)

c. CORRECTION TO REQUIRE INCLUSION OF ATTORNEY FEE AWARD WHERE CONTRACT SO PROVIDED AN ARBITRATOR DETERMINED "PREVAILING PARTY."

3. CORRECTION PROCEDURE

- SUBSTANTIALLY IDENTICAL TO VACATION PROCEDURES EXCEPT CORRECTION APPLICATION MADE FIRST TO ARBITRATOR.