

If You Seek to Limit the Authority of Your Arbitrators, Your Arbitration Clause Must Be Clear

“In 2020, the Fifth Circuit Court of Appeals issued its decision in *Soaring Wind Energy LLC (SWE) v. CATIS USA Inc., et al.* In that case, the various members of a limited liability company (LLC) entered into an agreement to provide worldwide marketing of wind energy equipment and services. The agreement contained an arbitration clause that required all disputes between the parties to be arbitrated,” writes Allison J. Snyder in *Porter Hedges’ Texas Construction Law Blog*.

“The arbitration clause contained the following language:”

“17.10 No Consequential or Punitive Damages. IN NO EVENT SHALL ANY MEMBER OR ANY OF ITS RESPECTIVE REPRESENTATIVES OR AFFILIATES BE LIABLE TO THE COMPANY OR TO ANY OTHER MEMBER OR ITS REPRESENTATIVES OR AFFILIATES FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE OR SPECULATIVE DAMAGES.”

“After an evidentiary hearing lasting several days, the Arbitration Panel awarded SWE \$62.9 million in lost profits. The losing party sought to overturn the Award arguing that the Panel exceeded its powers by awarding lost profits damages. Arbitration awards are difficult to overturn and only a few narrow grounds exist to ask a court to vacate an award. However, one of the most powerful grounds is a showing that the Arbitration Panel exceeded the authority granted to them by the arbitration clause.”

Read the article.