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Arbitration and Its Collateral Estoppel Effect on Third Parties - Vandenberg v. Superior Court

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Arbitration and Its Collateral Estoppel Effect on Third Parties

Vandenberg v. Superior Court[1]

I. INTRODUCTION

Collateral estoppel is a theory of res judicata, which precludes the relitigation of an issue already decided in prior litigation. However, should judicially confirmed arbitration awards be given the same effect as traditional litigation for the sake of applying collateral estoppel to a controversy involving a third party? As arbitration becomes a more utilized form of dispute resolution, the benefits of applying collateral estoppel to arbitration awards could be plentiful. Most courts have recognized such benefits and, therefore, most jurisdictions in the United States have ruled that collateral estoppel applies to judicially confirmed arbitration decisions. However, California's supreme court has bucked this prevailing trend and ruled that arbitration proceedings should not have the power to bind third parties in future controversies involving the same issue.

This Note examines why California's supreme court chose not to allow judicially confirmed arbitration awards to apply to third parties. The court based its decision on the contract model of arbitration and determined that an agreement to arbitrate was not necessarily an agreement binding third parties. However, this decision undermines the credibility of the arbitration process and fails to consider the negative impact relitigation of issues will have on the California courts.

II. FACTS AND HOLDING

From 1958 to 1988 Vandenberg Motors, Inc. ("Vandenberg") operated an automobile sales and service business on property leased from Eugene and Kathryn Boyd ("Boyd").[2] In 1988, Vandenberg ceased its operations and the leased property reverted to Boyd.[3] In preparing to sell the property, Boyd removed three waste oil storage tanks that were allegedly installed on the property and operated by Vandenberg.[4] It was then determined that the soil and groundwater had been contaminated by a petroleum-based pollutant.[5] Boyd filed suit against Vandenberg on numerous grounds related to the contamination of the property by the oil tanks.[6]

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1. 982 P.2d 229 (Cal. 1999).
2. *Id.* at 234. Eugene Boyd died during the preceding litigation, therefore, the Boyds' interests are subsequently referred to in the singular. *Id.* at 235.
3. *Id.*
4. *Id.*
5. *Id.* at 234-35.
6. *Id.* at 235. Boyd filed an action against Vandenberg alleging causes of action for breach of contract, breach of the covenant of good faith and fair dealing, public and private nuisance, negligence, waste, trespass, strict liability, equitable indemnity, declaratory relief, and injunctive relief. *Id.*

Vandenberg referred the suit to its several insurance providers, but United States Fidelity and Guaranty Company ("USF & G"), with whom Vandenberg had a general commercial liability policy, was the only insurer who agreed to defend the Boyd suit.[7] However, the policies provided by USF & G and the other insurers had pollution exclusions, which exempted the insurance companies from covering any property damage caused by a pollutant that was not "sudden and accidental."[8]

As part of a settlement agreement, Vandenberg and Boyd consented to binding arbitration and USF & G agreed to defend Vandenberg in that proceeding.[9] However, USF & G and Vandenberg did not resolve the issue of whether the insurance policy would cover any potential liability on the part of Vandenberg.[10] Vandenberg was found negligent in the binding arbitration proceeding, and Boyd was awarded four million dollars for the damage caused to the property.[11] Furthermore, the arbitrator concluded that the contamination was not "sudden or accidental."[12]

Vandenberg sought indemnification from its insurers after the ruling in favor of Boyd, but the claims were rejected.[13] Vandenberg then sued its insurers for their failure to indemnify.[14] In response, the group of insurers filed motions for summary adjudication.[15] In one of the motions, USF & G and Centennial stated that they had neither a duty to defend nor a duty to indemnify because their policies' pollution exclusion clauses were activated when the arbitrator's findings determined that the contamination was not "sudden and accidental."[16] The two insurers claimed that the issue of whether the contamination was "sudden and accidental" could not be litigated again because the issue was precluded by collateral estoppel.[17]

The trial court granted the motion for summary adjudication on the basis of collateral estoppel.[18] However, the California Court of Appeal reversed the summary adjudication order holding that private arbitration does not bar relitigating an issue when the relitigation involves a different party and different causes of action.[19] In a decision contrary to the prevailing opinion of other jurisdictions, the California Supreme Court affirmed the appellate court's decision and issued a narrow holding that "a private arbitration award cannot have nonmutual collateral estoppel effect unless the arbitral parties so agree."[20]

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7. *Id.* Vandenberg also had general commercial liability policies with Phoenix Assurance Company of New York, the Glens Falls Insurance Company, Continental Insurance Company, TIG Insurance Corporation, and Centennial Insurance Company. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* A second motion for summary adjudication, filed by all of the insurers, claimed that the general commercial liability did not apply to Vandenberg because the arbitrator awarded damages on the grounds of breach of lease. *Id.*

17. *Id.* at 235-36.

18. *Id.* The trial court also granted the second motion for summary adjudication. *Id.*

19. *Id.*

20. *Id.* at 242-43.

III. LEGAL BACKGROUND

Collateral estoppel is a subset of the doctrine of res judicata, which precludes parties from relitigating an issue that has already been determined by a court.[21] Res judicata is deemed to have a high public policy value because it keeps parties from being pulled back into a controversy after they have already litigated the issue to a fair conclusion.[22] Under collateral estoppel, a party to prior litigation may be precluded from relitigating issues that were already decided against that party.[23] Collateral estoppel is designed to maintain judicial integrity, preserve limited judicial resources, and prevent harassing litigation.[24]

The only requirements by California courts for the application of collateral estoppel are that: (1) the issue being precluded is identical to the previously decided issue, (2) the issue must have been litigated in the prior preceding, (3) the former decision must have been final and based on the merits, and (4) the party against whom collateral estoppel is sought must have been directly involved in the preceding litigation.[25] Thus, collateral estoppel can be nonmutual and a party seeking to enforce it may not have been a party in the original litigation.[26]

However, despite the fairly simple requirements for collateral estoppel, California courts have ruled that this is not an inflexible, universally applied principle.[27] Instead, each court must weigh the policy considerations when determining whether to apply collateral estoppel.[28] A court may choose not to apply collateral estoppel in cases where the benefits of enforcing it are outweighed by other specific factors present in a particular case.[29] One issue that courts often consider in determining whether to apply collateral estoppel is the judicial integrity of the forum which first decided the issue.[30] For instance, in *Sanderson v. Nieman*, the California Supreme Court held that decisions from small claims court were not given the effect of collateral estoppel because of the informal nature of the proceeding and the limited possibility of judicial review.[31]

Courts have acknowledged, however, that certain pitfalls exist within the doctrine of collateral estoppel.[32] In *Kelly v. Trans Globe Travel Bureau, Inc.*, the California Court of Appeal noted that collateral estoppel can skew the weight of a judicial proceeding because the outcome may have a disproportionate impact on one of the parties due to possible outside litigation.[33] In *Parklane Hosiery Co. v. Shore*,[34] the United States Supreme Court was concerned that "[i]f a defendant in the first

21. Bernhard v. Bank of Am., 19 Cal. 2d 807, 810 (1942).
22. *Id.* at 811.
23. *Vandenberg*, 982 P.2d at 236.
24. Lucido v. Superior Court, 795 P.2d 1223, 1227 (Cal. 1990).
25. *Id.* at 1225.
26. *Vandenberg*, 982 P.2d at 236.
27. Kelly v. Trans Globe Travel Bureau, Inc., 60 Cal. App. 3d 195, 202 (1976).
28. *Id. See also Lucido*, 795 P.2d at 1226.
29. Jackson v. City of Sacramento, 117 Cal. App. 3d 596, 603. (1981).
30. *Vandenberg*, 982 P.2d at 237.
31. 17 Cal. 2d 563 (1941).
32. *Kelly*, 60 Cal. App. 3d at 202.
33. *Id.*
34. 439 U.S. 322 (1979).

action is sued for small or nominal damages, he may have little incentive to defend vigorously, particularly if future suits are not foreseeable."[35]

With courts expressing concerns over the application and ramifications of collateral estoppel in judicial proceedings, courts would understandably apply even greater scrutiny to collateral estoppel of private arbitration decisions. In California, Title IX of the California Code of Civil Procedure governs private arbitration.[36] Through these statutory enactments, the California legislature has expressed a "strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution."[37] Section 1281 of the California Code of Civil Procedure states that "a written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract."[38] The statutes also provide mechanisms for enforcing arbitration agreements;[39] rules for arbitration proceedings;[40] provisions for vacating, correcting, confirming, and enforcing arbitration awards;[41] and guidelines for the judicial oversight of arbitration matters.[42]

The California Supreme Court in *Utah Construction Co. v. Western Pacific Railway* discussed the policy reasons for recognizing arbitration and enacting a statutory scheme.[43] The court in *Utah Construction Co.* said, "the policy of the law in recognizing arbitration agreements and in providing by statute for their enforcement is to encourage persons who wish to avoid delays incident to a civil action to obtain an adjustment of their differences by a tribunal of their own choosing."[44] The United States Supreme Court supported the rationale for statutory arbitration guidelines by stating that these statutes serve as a good mechanism for discouraging courts from overlooking the contractual relationship in the arbitration process in favor of judicial discretion.[45]

Although arbitration is heavily governed by contract, it is still subject to limited judicial review, especially in cases of final or binding awards.[46] The question of whether arbitration awards should have the effect of nonmutual collateral estoppel arises in these cases of limited judicial review. Many jurisdictions in the United States have ruled that unless parties otherwise agree, private arbitration awards will have nonmutual collateral estoppel effect if they are judicially confirmed.[47]

In *Witkowski v. Welch*,[48] the Third Circuit Court of Appeals addressed the issue of whether collateral estoppel was effective in barring a claim when an arbitrator had

35. *Id.* at 330.
36. Moncharsh v. Heily & Blase, 3 Cal. 4th 1, 9-10 (1992).
37. Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street, 35 Cal. 3d. 312, 322 (1983).
38. CAL. CIV. PROC. CODE § 1281 (West 1999).
39. CAL. CIV. PROC. CODE §§ 1281.2-1281.95 (West 1999).
40. CAL. CIV. PROC. CODE §§ 1282-1284.2 (West 1999).
41. CAL. CIV. PROC. CODE §§ 1285-1288.8 (West 1999).
42. CAL. CIV. PROC. CODE §§ 1290-1294.2 (West 1999).
43. 174 Cal. 156, 159 (1916).
44. *Id.*
45. Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 219-21 (1985).
46. *Moncharsh*, 3 Cal. 4th at 9, 10.
47. *Vandenberg*, 982 P.2d at 240.
48. 73 F.3d 192 (3d Cir. 1999).

dismissed the issue in question in the decision.[49] The court stated that for collateral estoppel to apply there must have been a final judgment on the merits of the issue.[50] Applying federal and Pennsylvania law, the Third Circuit determined that "arbitration proceedings and their findings are considered final judgments for the purposes of applying collateral estoppel."[51] In reaching its decision in the *Witkowski* case, the court citied the Restatement (Second) of Judgments section 84 which states that "a valid and final award by arbitration has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court."[52]

In *Mandich v. Watters*,[53] the Eighth Circuit Court of Appeals applied Minnesota law to determine whether a district court could apply collateral estoppel against a party based on an arbitration decision.[54] Under Minnesota law, one of the elements needed for collateral estoppel is a prior adjudication.[55] The *Mandich* court determined that arbitration was a prior adjudication under the collateral estoppel criteria and, therefore, the district court properly applied collateral estoppel to the issue decided in the private arbitration proceeding.[56]

The *Witkowski* and *Mandich* decisions are typical of several federal and state decisions giving collateral estoppel effect to private arbitration decisions.[57] The *Vandenberg* court acknowledged the prevailing view on this issue, but dismissed the majority approach in its decision.[58]

IV. INSTANT DECISION

Contrary to most United States jurisdictions, the California Supreme Court held in *Vandenberg v. Superior Court*[59] that arbitration awards only have the effect of collateral estoppel if the parties agree to such an effect.[60] In *Vandenberg*, the California Supreme Court noted three main policy reasons other courts have offered for applying collateral estoppel to arbitration decisions.[61] First, the California Supreme Court recognized a general policy preference among courts to avoid relitigating issues and noted that applying collateral estoppel to arbitration decisions can fulfill this policy goal.[62] The court cited the New York Court of Appeals

49. *Id.*
50. *Id.* at 199.
51. *Id.*
52. *Id.* (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 84 (1982)).
53. 970 F.2d 462, 465 (8th Cir. 1992).
54. *Id.*
55. *Id.*
56. *Id.* at 466.
57. *See* Guaranty Nat'l. Ins. v. Williams, 982 P.2d 306 (Colo. 1999); Western Indus. Envtl. Servs. v. Kaldveer Assocs., 887 P.2d 1048 (Idaho 1994); Aufderhar v. Data Dispatch, Inc., 452 N.W.2d 648 (Minn. 1990); Clemens v. Apple, 481 N.E.2d 560 (N.Y. 1985); Cities Service Co. v. Gulf Oil Corp., 980 P.2d 116 (Okla. 1999); Konieczny v. Micciche, 702 A.2d 831 (N.J. Super. Ct. App. Div. 1997).
58. *Vandenberg*, 982 P.2d at 241.
59. 982 P.2d 229.
60. *Id.* at 242-43.
61. *Id.* at 241.
62. *Id.*

decision in *American Insurance Co. v. Messinger* as an instance where the decision to preclude an issue against arbitration parties was justified by the court's interest in preventing the relitigation of issues.[63] Second, the *Vandenberg* court acknowledged the argument that collateral estoppel does not cause any type of injustice when the parties have had an opportunity to fully and fairly litigate the issue.[64] Third, the court recognized the argument by courts in other jurisdictions that "final" and "binding" arbitration inherently implies the application of collateral estoppel because judicially confirmed arbitration decisions are given the same force and effect as civil judgments.[65] The California Supreme Court cited the *Witkowski* decision as an instance in which a court applied collateral estoppel because it determined an arbitration award to be a final judgment under the provisions of the Federal Arbitration Act.[66]

Despite the three rationales offered by other courts for upholding the application of collateral estoppel to arbitration decisions, the California Supreme Court found these justifications unpersuasive.[67] The court stated that the arguments favoring the application of collateral estoppel to arbitration decisions disregard the "voluntary, contractual, and informal nature of private arbitration, and the consequent reasonable expectations of the arbitral parties."[68]

The court further dismissed the application of collateral estoppel to private arbitration decisions because private arbitration does not have the same force and effect as civil judgments under California law.[69] Based on *Lucido v. Superior Court*,[70] the *Vandenberg* court stated that collateral estoppel only applies under California law if it "comports with fairness and sound public policy."[71] Because the enabling arbitration statute does not warn that collateral estoppel may apply, the court in *Vandenberg* concluded that the standard of "fairness and sound public policy" is not reached.[72]

The court also stated that there should be no implied acceptance of a collateral estoppel effect when parties submit to private arbitration.[73] The court justified its position by noting that arbitrators can base their decisions on the principles of justice and equity, which may not have been admissible in a trial.[74] The court also stated

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63. *Id. See Messinger*, 371 N.E.2d 798 (N.Y. 1977).
64. *Vandenberg*, 982 P.2d at 241.
65. *Id.*
66. *Id. See Witkowski*, 173 F.3d at 199-200.
67. *Vandenberg*, 982 P.2d at 241.
68. *Id.*
69. *Id.*
70. 795 P.2d 1223.
71. *Vandenberg*, 982 P.2d at 241.
72. *Id.* Section 1287.4 of the California Code of Civil Procedure, as amended in 1998, states the following:

> If [a private arbitration] award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification; and it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification.

Id. (quoting CAL. CIV. PROC. CODE § 1287.4 (West 1998)).
73. *Vandenberg*, 982 P.2d at 242.
74. *Id.*

that because the justifications made in arbitration decisions are not necessarily disclosed, these decisions do not lend themselves to accurate judicial review.[75] Finally, the court noted that the party who lost the arbitration would bear a greater burden and, thus, arbitration could be discouraged.[76]

Based on these arguments, the California Supreme Court in *Vandenberg* held: "we adopt, for California purposes, the rule that a private arbitration award cannot have nonmutual collateral estoppel effect unless the arbitral parties so agree."[77] However, the court was not unanimous in this decision.[78] In a lengthy concurring and dissenting opinion, Justice Brown strongly opposed the rule that nonmutual collateral estoppel only applies to judicially confirmed arbitration decisions when the parties agree.[79]

Initially, Justice Brown disagreed with the majority's interpretation of section 1287.4 of the California Code of Civil Procedure.[80] Justice Brown concluded that the statutory language was clear and unambiguously means that judicially confirmed arbitration decisions should have the same effect as all other court judgments.[81]

Next, Justice Brown outlined three reasons why the majority's ruling on the collateral estoppel issue was contrary to public policy.[82] First, he contended that by not granting collateral estoppel to judicially confirmed rulings, the court was promoting inconsistent decisions.[83] Second, Justice Brown stated that it was ill-advised to allow the parties to determine whether an arbitration proceeding will have the effect of collateral estoppel because it may give judicial credence to proceedings that lack "judicial character" and may, therefore, undermine judicial integrity.[84] Third, Justice Brown stated that the denial of collateral estoppel to judicially confirmed arbitration will undermine judicial economy and cause a greater strain on judicial resources.[85] In dismissing the majority's concern that collateral estoppel will make arbitration more like litigation, Justice Brown stated that the inherent flexibility and simplicity of arbitration will always make it an attractive alternative to litigation.[86]

In a footnote to the majority opinion in *Vandenberg*, Justice Baxter addressed the concerns of Justice Brown.[87] The majority stated that section 1281.2(c) of the California Code of Civil Procedure gives courts the authority to ensure that private arbitration does not unfairly infringe on the rights of the courts or third parties.[88]

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75. *Id.*
76. *Id.*
77. *Id.* at 242-43.
78. *Id.* at 246.
79. *Id.*
80. *Id. See supra* note 72.
81. *Vandenberg*, 982 P.2d at 246.
82. *Id.* at 247.
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.* at 247-48.
87. *Id.* at 242.
88. *Id.* California Code of Civil Procedure section 1287.4 (West 1998) states:

> A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or

The majority also stated that parties are free to determine that an arbitration decision will bind them in other related cases.[89] Finally, the majority dismissed Justice Brown's concerns as speculative and not warranting of an imposition of mandatory collateral estoppel on parties to private arbitration.[90]

Therefore, based on the above stated rationales of the majority, the California Supreme Court in *Vandenberg* adopted "the rule that a private arbitration award cannot have nonmutual collateral estoppel effect unless the arbitral parties so agree."[91] However, in a footnote by the majority, the court carefully outlined the limitations to the scope and application of the decision.[92] The court stated that "[o]ur holding is narrowly circumscribed."[93] First, the court narrowed its decision by stating that the decision does not limit claim preclusion between parties in private arbitration.[94] Second, the court pointed out that *Vandenberg* does not address the issue of whether collateral estoppel applies when the same parties in one arbitration enter into subsequent litigation.[95] Third, the court stated that its decision does not consider any aspect of the Federal Arbitration Act.[96] Fourth, the California Supreme Court said that its decision did not consider the application of collateral estoppel to arbitration awards under collective bargaining statutes.[97] Fifth, the court stated that its decision does not cover the application of collateral estoppel to any arbitration required under a specific California statute.[98]

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fact. For purposes of this section a pending court action or special proceeding includes an action or proceeding initiated by the party refusing to arbitrate after the petition to compel arbitration has been filed, but on or before the date of the hearing on the petition. This subdivision shall not be applicable to an agreement to arbitrate disputes as to the professional negligence of a health care provider made pursuant to Section 1295.

If the court determines that a written agreement to arbitrate a controversy exists, an order to arbitrate such controversy may not be refused on the ground that the petitioner's contentions lack substantive merit.

If the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies.

If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.

CAL. CIV. PROC. CODE § 1287.4.

89. *Vandenberg*, 982 P.2d at 242.
90. *Id.*
91. *Id.* at 242-43.
92. *Id.* at 234 n.2.
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*; 9 U.S.C. §§ 1-14 (1994).
97. *Vandenberg*, 982 P.2d at 234 n.2.
98. *Id.*

V. COMMENT

The California Supreme Court's decision in *Vandenberg,* not to apply nonmutual collateral estoppel to judicially confirmed arbitration awards, should be scrutinized for three reasons. First, according to the concurring and dissenting opinion, the majority completely ignored a California statute, which clearly and unambiguously authorizes the application of nonmutual collateral estoppel in cases of judicially confirmed arbitration awards.[99] Second, the majority offered several limitations on the scope and application of its decision.[100] These limitations actually serve as an admission by the court that valid reasons exist for allowing the application of collateral estoppel to arbitration decisions in some instances. Third, the court's decision on collateral estoppel contradicts a majority of jurisdictions, federal civil procedure, scholarly opinion and the Restatement (Second) of Judgments.[101]

A. Ambiguity

The minority's accusation in *Vandenberg* is that the majority disregards section 1287.4 of the California Code of Civil Procedure.[102] Writing for the minority, Justice Brown asserted that the statute clearly and unambiguously grants a confirmed arbitration award the same status as other civil court judgments.[103] Therefore, Justice Brown concluded that a confirmed arbitration award unquestionably has the effect of nonmutual collateral estoppel.[104] Justice Brown contended that the majority overstepped its role and infringed on the autonomy of the legislative branch by interpreting a statute that was neither unclear nor ambiguous.[105] Justice Brown cited *Lungren v. Deukmejian* to support his argument that the majority had no right to interpret the statute.[106] *Lungren* states that "[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) . . . ."[107] Furthermore, Justice Brown cited *People v. Garcia,* which says "we [the Court] must limit ourselves to interpreting the law as written and leave for the People and the Legislature the task of revising it as they deem wise."[108]

Based on Justice Brown's recitation and interpretation of the law, it appears that the majority in *Vandenberg* overstepped its authority and usurped the will of the California legislature. The majority stated that section 1287.4 clearly authorizes that confirmed arbitration awards be treated as any other judgments and admitted that

99. *Vandenberg,* 982 P.2d at 246 (Brown, J., dissenting).
100. *Id.* at 234 n.2.
101. RESTATEMENT (SECOND) OF JUDGMENTS § 84 (1982).
102. *Vandenberg,* 982 P.2d at 246 (Brown, J., dissenting). *See supra* note 72.
103. *Vandenberg,* 982 P.2d at 246.
104. *Id.*
105. *Id.*
106. *Id. See* Lungren v. Deukmejian, 755 P.2d 299 (Cal. 1988).
107. *Lungren,* 755 P.2d at 303-04.
108. 980 P.2d 829, 838 (Cal. 1999).

judgments are to be given the effect of nonmutual collateral estoppel.[109] However, Justice Brown pointed out that the majority did not even provide a statutory analysis of the language of section 1287.4 even though it quoted the statute.[110] The majority contended that it found fairness and public policy reasons for not applying collateral estoppel to confirmed arbitration awards, but public policy is not a permissible basis for interpreting a clear, unambiguous and constitutional statute.[111] *Lungren* and *Garcia* established that a court can only offer its interpretation of a statute when the meaning of the statute cannot be discerned, and nowhere do these decisions allow for a court's notion of fairness and public policy to replace this standard.[112]

B. A "Narrowly Circumscribed" Holding

An examination of the limitations and narrowing language placed on the *Vandenberg* court's opinion is necessary because it raises the question of what distinguishes these exceptions from the court's decision. First, the court noted that its decision does not limit the application of strict res judicata or claim preclusion to private arbitration awards.[113] The Court cited *Thibodeau v. Crum* and *Sartor v. Superior Court* as instances in which res judicata would be appropriate for third parties who were in privity with the prevailing party to the original arbitration awards.[114] The court in *Thibodeau* justified the application of res judicata to an unconfirmed arbitration award based on the desire of the judiciary to avoid multi-stepped litigation processes.[115] The *Sartor* court stated that it was the policy of California to give effect to arbitration decisions.[116] As a result, the *Sartor* court found that the application of collateral estoppel to a petitioner that was in privity with the prevailing party in a judicially confirmed arbitration proceeding would promote this policy.[117]

By citing *Thibodeau* and *Sartor*, the *Vandenberg* court was trying to narrow the scope of its decision by illustrating instances where res judicata would apply to arbitration awards. However, the court has inadvertently undermined the credibility of its own decision because *Thibodeau* and *Sartor* show a recognition and acceptance by California courts of the application of res judicata to arbitration awards. The next logical step in this line of cases would have been for the California Supreme Court to apply nonmutual collateral estoppel in *Vandenberg*. Instead, the court drew an arbitrary and illogical line at which the doctrine of res judicata would no longer apply to arbitration decisions. The policy justifications of judicial economy and the judicial effect to arbitration awards adopted in *Thibodeau* and *Sartor* are just as valid and applicable in *Vandenberg*.

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109. *Vandenberg*, 982 P.2d at 241.
110. *Id.* at 247.
111. *Id.* at 237-40.
112. *Lungren*, 755 P.2d at 303-04; *Garcia*, 980 P.2d at 838.
113. *Vandenberg*, 982 P.2d at 234 n.2 ("Our holding is narrowly circumscribed.")
114. *Id. See* Thibodeau v. Crum, 6 Cal. Rptr. 2d 27 (Cal. Ct. App. 1992); Sartor v. Superior Court, 187 Cal. Rptr. 247 (Cal. Ct. App. 1982).
115. *Thibodeau*, 6 Cal. Rptr. 2d at 30.
116. *Sartor*, 187 Cal. Rptr. at 250.
117. *Id.*

Second, the court stated that it does not "address the circumstances, if any, in which a private arbitration award may have 'issue preclusive' effect in subsequent litigation between the same parties on different causes of action."[118] The court did not elaborate on this statement, nor did it cite any case law that addresses this issue. However, in *Conner v. Dart Transportation Service*,[119] the California Court of Appeal held that findings in an employment related arbitration proceeding had the effect of collateral estoppel in a subsequent suit for defamation and breach of contract between the parties.[120]

Third, the court stated that it has "no occasion to consider whether application of the FAA [Federal Arbitration Act] would alter our ruling."[121] However, under federal law, arbitration awards are generally given the effect of nonmutual collateral estoppel.[122] Therefore, the court points out yet another instance in which its decision does not apply.

Fourth, the court noted that its decision does not affect collateral estoppel issues related to arbitration awards associated with any type of collective bargaining agreement under state or federal law.[123] The court cites *Kelly v. Vons Cos.*[124] and *Lehto v. Underground Construction Co.*;[125] both of these California state cases support the notion that arbitration decisions will not have the effect of collateral estoppel against third parties.[126] However, the majority's footnote also mentioned federal collective bargaining agreements and as stated earlier, federal law does apply nonmutual collateral estoppel to arbitration decisions.[127]

Fifth and finally, the court stated that its decision does not address whether nonmutual collateral estoppel applies to arbitration conducted under a specific California statutory scheme.[128] In direct contrast to the holding in *Vandenberg*, the California Court of Appeal held in *State Farm Mutual Automobile Insurance Co. v. Superior Court* that statutorily mandated judicial arbitration can have the effect of nonmutual collateral estoppel.[129] The determination by the *Vandenberg* court that its holding does not apply to this type of arbitration conducted under a California statutory scheme is the most glaring evidence that the court is having to contort itself in order to avoid blatant inconsistency with its own decision. There is no logical reason why arbitration mandated by statute should have any different effect than voluntary arbitration permitted by statute and, unfortunately, the court does not elaborate on this distinction except to offer another case in which collateral estoppel was not applied under a statutorily mandated arbitration proceeding.[130]

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118. *Vandenberg*, 982 P.2d at 234 n.2.
119. 135 Cal. Rptr. 259 (Cal. Ct. App. 1976).
120. *Id.* at 261.
121. *Vandenberg*, 982 P.2d at 234 n.2.
122. *See* Witkowski v. Welch, 173 F.3d 192 (3d Cir. 1999). The federal law at issue in *Witkowski* was the Employee Retirement Income Security Act, 29 U.S.C. §1001 (1994). *Id.* at 199.
123. *Vandenberg*, 982 P.2d at 234 n.2.
124. 79 Cal. Rptr. 2d 763 (Cal. Ct. App. 1998).
125. 138 Cal. Rptr. 419 (Cal. Ct. App. 1977).
126. *Vandenberg*, 982 P.2d at 234 n.2.
127. *Witkowski*, 173 F.3d at 206.
128. *Vandenberg*, 982 P.2d at 234 n.2.
129. 259 Cal. Rptr. 50 (Cal. Ct. App. 1989).
130. *See* Flynn v. Gorton, 255 Cal. Rptr. 768 (Cal. Ct. App. 1989).

Combined, the preceding qualifications that define the court's "narrowly circumscribed" holding tend to suggest that the exceptions should in fact state the rule. In other words, by offering these limitations on its holding, one could infer that the court should have decided the issue differently.

C. "Contrary Approach"

The most important reason for scrutinizing the *Vandenberg* court's opinion is the fact that it contradicts prevailing opinion on the issue of applying nonmutual collateral estoppel to judicially confirmed arbitration awards. The court stated that "[w]e realize that some commentators and most other courts addressing the issue, have taken a contrary approach."[131] The court noted that the predominant view is to apply nonmutual collateral estoppel to judicially confirmed arbitration awards when the parties sought to foreclose the issue and the parties had the incentive and opportunity to litigate the matter.[132] The court then proceeded to cite a string of cases which apply both state and federal law in contradicting its holding.[133]

Each case cited by the court offers similar justifications for the application of nonmutual collateral estoppel to arbitration awards. In *Clemens v. Apple*, the Court of Appeals of New York concluded that parties should be fully aware of the possible outcomes and effects of an arbitration ruling due to the fact that it is strictly voluntary.[134] Furthermore, the *Clemens* court noted that just like any civil case, the parties to arbitration should reasonably assume that arbitration could impact outside litigation.[135] This approach is opposite to *Vandenberg*, which assumes that it would be unfair to make parties assume and take into account the effect arbitration will have on outside litigation. In *Clemens*, the amount at issue in the arbitration was approximately $1,800.00, while the amount at issue in a related lawsuit with a third party was $250,000.00.[136] The plaintiff lost on the issue in the arbitration and the intermediate appellate court held that issue was precluded from the suit with the third party.[137] Based on this scenario, the *Vandenberg* court would argue that since the plaintiff had a relatively insignificant amount at stake in the arbitration, he might not have expended his full resources in the arbitration proceeding. Therefore, the California Supreme Court would consider it unfair to hold the plaintiff to a decision where he may not have found it prudent to fully pursue his interest. If a party is truly concerned that the potential risk is not worth the potential outcome of arbitration, then they should not submit to voluntary arbitration. The New York approach also promotes judicial economy. By applying issue preclusion to arbitration, parties are

131. *Vandenberg*, 982 P.2d at 240.
132. *Id.*
133. *Id. See* Witkowski v. Welch, 173 F.3d 192 (3d Cir. 1999); Mandich v. Watters, 970 F.2d 462 (8th Cir. 1992); Western Indus. Envtl. Servs. v. Kaldveer Assocs. 887 P.2d 1048 (Idaho 1994); Aufderhar v. Data Dispatch, Inc., 452 N.W.2d 648 (Minn. 1990); Clemens v. Apple, 481 N.E.2d 560 (N.Y. 1985); Cities Service Co. v. Gulf Oil Corp., 980 P.2d 116 (Okla. 1999); Konieczny v. Micciche, 702 A.2d 831 (N.J. Super. Ct. App. Div. 1997).
134. *Clemens*, 481 N.E.2d at 561.
135. *Id.*
136. Clemens v. Apple, 477 N.Y.S.2d 774, 776 (N.Y. App. Div. 1984).
137. *Id.* at 776.

on notice that they must arbitrate their cases to the best of their ability if they are truly concerned about claims by third parties on the same issue. This saves the resources of the courts that must confirm arbitration decisions and of the courts that would have to hear the issue if the arbitration was not preclusive.

VI. CONCLUSION

Collateral estoppel serves a valuable role in promoting the efficiency of our legal system. To disallow application of this form of res judicata in judicially confirmed arbitration burdens the courts without giving them the benefit of their own prior decisions. When a judge confirms an arbitration award, he or she has spent the court's valuable time determining whether a final ruling on the merits exists. Therefore, this ruling should have the effect of any other judicial proceeding and collateral estoppel should apply. The court in *Vandenberg* superceded the interests of the parties over the interest of judicial economy. The only way this would be justified is if judicial economy were inherently unfair but, by establishing a consistent rule that informs parties of their collateral liability, no one could argue a lack of fairness. However, by holding as it does in *Vandenberg*, California has adopted a rule that is inconsistent with the rest of the country and has convoluted this rule by applying narrowing language that will only create conflict and confusion.

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