

Supreme Court Ruling Impacts Arbitration Appeals

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Following the Supreme Court's decision in *Hall Street Associates, LLC v. Mattel*,¹ courts across the country have divided as to whether an arbitrator's "manifest disregard of the law" remains a proper basis for judicial review of arbitration awards. For construction disputes taken to arbitration, this unsettled question could impact the final outcome of the dispute.

Whether "manifest disregard of the law" is an acceptable ground for judicial review of an arbitration award concerns the application of the Federal Arbitration Act (FAA).² The FAA provides expedited judicial review for confirming, vacating, or modifying an arbitration award.³ Under the FAA's expedited review process, a reviewing court must confirm an arbitration award unless a specific ground for judicial review exists.⁴ The primary grounds for judicial review appear in the statute itself, under sections 10 and 11 of the FAA.⁵ These sections set forth specific grounds, such as an arbitrator's material miscalculation of an award, that trigger a court's power to vacate or modify an award.⁶

A second, common law exception to a court's duty to confirm an arbitration award occurs when the arbitrator exhibited "manifest disregard of the law."⁷ Manifest disregard typically refers to an arbitrator's willful disregard of the applicable law.⁸ In other words, the arbitrator recognized that a particular law applied, yet chose to ignore this knowledge in rendering his decision. Mere error or misunderstanding of the law does not rise to the level of manifest disregard.⁹ This judicially created exception has existed alongside the FAA statutory grounds in most jurisdictions as grounds for judicial review.

The Supreme Court, however, shook the foundation of the manifest disregard grounds in *Hall Street*.¹⁰ In *Hall Street*, the Court granted certiorari to resolve a circuit split on the question of whether parties may contract for expanded judicial review under the FAA. The Court resolved this question in the negative, stating that the statutory grounds listed in sections 10 and 11 of the FAA are the exclusive grounds for judicial review. Citing the strict language of the FAA and the Act's policy of providing limited judicial review, the Court held that "the text compels a reading of the §§ 10 and 11 categories as exclusive."¹¹ As a result, the Court denied the parties' rights to contract around the statutory confines of the FAA's stated grounds for judicial review.

Though the Supreme Court did not specifically decide on the issue of manifest disregard in *Hall Street*,¹² the Court's statements that the statutory grounds are "exclusive" raised a legitimate question as to whether manifest disregard remains a viable reason for appeal. In interpreting the Supreme Court's language, courts have since divided as to the implications of *Hall Street* with respect to manifest disregard.

Manifest disregard still exists as grounds for judicial review according to some courts. Under one post-*Hall Street* approach, courts have concluded that manifest disregard remains a viable ground for judicial review by finding that the FAA statutory grounds encompass manifest disregard.¹³ For example, the Ninth Circuit held that an arbitrator's manifest disregard of the law continues to be grounds for vacatur under § 10(a)(4) of the FAA.¹⁴ Similarly, the Second

Circuit held that manifest disregard continues as a “shorthand” for the section 10 grounds collectively, stating *Hall Street* “did not, we think, abrogate the ‘manifest disregard’ doctrine altogether.”¹⁵

By contrast, many courts have determined that *Hall Street* eliminated the manifest disregard grounds for judicial review. The Fifth Circuit, for example, declared that manifest disregard, as a “*non-statutory ground* for vacatur,” no longer exists in the wake of *Hall Street*.¹⁶ Additionally, shortly after *Hall Street*, the First Circuit acknowledged in dicta that manifest disregard was no longer a valid basis for vacating or modifying an arbitration award.¹⁷

The confusion sown by *Hall Street* has practical import for construction disputes taken to arbitration. Whether an arbitrator’s manifest disregard of the law is a viable reason to appeal the award will now vary depending upon where the reviewing court is located. Because of the lack of conformity on this issue, the Supreme Court likely will have to address the grounds for judicial review once again, clarifying its prior holding in *Hall Street*.

¹ 552 U.S. 576 (2008).

² 9 U.S.C.A. § 1 et seq. (2006).

³ *Id.* at §§ 9-11.

⁴ *Id.* at § 9.

⁵ *Id.* at §§ 10-11.

⁶ *Id.*

⁷ *Wilko v. Swan*, 346 U.S. 427 (1953).

⁸ *See, e.g., Citigroup Global Markets, Inc. v. Bacon*, 562 F.3d 349, 354 (5th Cir. 2009).

⁹ *See, e.g., Stolt-Nielsen SA v. AnimalFeeds Int’l Corp.*, 548 F.3d 85 (2d Cir. 2008).

¹⁰ *Hall Street*, 552 U.S. 576 (2008).

¹¹ *Id.* at 586.

¹² *See id.* at 585.

¹³ *See Sharp v. Downey*, 13 A.3d 1, 20 (Md. Ct. Spec. App. 2010) (“[O]ther circuits have looked to *Hall Street*’s description of “manifest disregard” as referring to the FAA statutory grounds ‘collectively,’ or as ‘shorthand’ for particular statutory grounds, expressing the opinion that review for ‘manifest disregard’ remains sound.”).

¹⁴ *Comedy Club, Inc. v. Improv West Assoc.*, 553 F.3d 1277, 1281 (9th Cir. 2009).

¹⁵ *Stolt-Nielsen*, 548 F.3d at 95.

¹⁶ *Citigroup*, 562 F.3d at 355.

¹⁷ *Ramos-Santiago v. United Parcel Serv.*, 524 F.3d 120, 124 n.3 (1st Cir. 2008).