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THE SUPREME COURT’S MANIFEST DISREGARD OF THE “MANIFEST DISREGARD”  
DOCTRINE: HOW *STOLT-NEILSEN V. ANIMALFEEDS* EXPANDS GROUNDS FOR  
JUDICIAL REVIEW OF ARBITRAL AWARDS

By  
Matthew C. Weiner\*

I. INTRODUCTION AND BACKGROUND

A. *Introduction*

By enacting the Federal Arbitration Act (FAA),<sup>1</sup> “Congress declared a national policy favoring arbitration,”<sup>2</sup> which creates a desirably efficient, inexpensive, and expeditious means for dispute resolution.<sup>3</sup> Furthermore, we can see this national policy substantiated by observing the limited ability granted to courts to review and vacate arbitral awards, which, of course, is needed to “maintain arbitration's essential virtue of resolving disputes straightaway.”<sup>4</sup> Congress promulgated three sections within the FAA to limit judicial review of arbitral awards, §§ 9-11.<sup>5</sup> However, we have further seen the rise of common law grounds to vacate arbitral awards existing under the theories of “manifest disregard of the law,”<sup>6</sup> violations of public policy,<sup>7</sup> and arbitrary and capricious determinations.<sup>8</sup> This article will focus on the common law ground of “manifest

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<sup>1</sup> 9 U.S.C.A. §§ 1-16 (2010).

<sup>2</sup> *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984).

<sup>3</sup> *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974).

<sup>4</sup> *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008).

<sup>5</sup> *See Id.*

<sup>6</sup> *See MCI Constructors, LLC v. City Of Greensboro*, 610 F.3d 849, 857 (4th Cir. 2010).

<sup>7</sup> *See Hicks v. Cadle Co.*, 355 Fed.Appx. 186, 195 (10th Cir. 2009).

<sup>8</sup> *See Lifecare Intern., Inc. v. CD Medical, Inc.*, 68 F.3d 429 (11th Cir. 1995); *See also Hough v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 757 F.Supp. 283, 293 (S.D.N.Y. 1991) (While it may be argued that the award does not represent the only set of conclusions which the evidence might have supported, the award does not appear to be capricious, arbitrary, manifestly unfair or in violation of public policy).

disregard of the law” and explain its evolution from *Wilko v. Swan*<sup>9</sup> to *Hall Street Associates, L.L.C. v. Mattel, Inc.*<sup>10</sup> to its new implicit meaning under the controversial *Stolt-Nielsen S.A. v. Animalfeeds International Corp.*<sup>11</sup> Although it has been consistently stated by the courts that arbitral awards can rarely be vacated under the theory of “manifest disregard of the law,”<sup>12</sup> the new holding in *Stolt-Nielsen* impliedly expands the doctrine and perhaps erodes the fundamental essence of arbitration being the “efficient, inexpensive, and expeditious means for dispute resolution” that was so desirable.

*B. FAA Section Ten*

Section Ten of the FAA states grounds from which a federal district court can decide whether the arbitral award can be vacated.<sup>13</sup> An arbitration award may be vacated by a Federal District Court when: (1) an award is procured by fraud, corruption or undue means, (2) there is evident partiality or corruption in the arbitrators, (3) the arbitrators are guilty of misconduct in refusing to postpone hearings for sufficient cause shown, or in refusing to hear pertinent and material evidence or any other misbehavior which prejudices the rights of any party to the arbitration, and (4) the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final, and definite award is not made.<sup>14</sup> As to these statutory grounds, Congress avoids any reference to a substantive basis for review, which implies that a merits review of an arbitral award is inappropriate.<sup>15</sup>

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<sup>9</sup> *Wilko v. Swan*, 346 U.S. 427, 436 (1953).

<sup>10</sup> *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008).

<sup>11</sup> *Stolt-Nielsen S.A. v. Animalfeeds International Corp.*, 130 S.Ct. 1758 (2010).

<sup>12</sup> *See Wallace v. Buttar* 378 F.3d 182, 189 (2d Cir. 2004) (The doctrine of “manifest disregard of the law” is “limited only to those exceedingly rare instances where some egregious impropriety on the part of the arbitrators is apparent”).

<sup>13</sup> 9 U.S.C.A. § 10.

<sup>14</sup> 9 U.S.C.A. § 10(a)(1)-(4).

<sup>15</sup> THOMAS E. CARBONNEAU, *CASES AND MATERIALS ON ARBITRATION LAW AND PRACTICE* 79 (Thomson/West 2009).

## II. THE EMERGENCE OF “MANIFEST DISREGARD OF THE LAW”

### A. *Early Precedents*

Perhaps to supplement the statutory grounds and provide for a limited judicial supervision of the merits of an arbitral award, the common law has evolved to incorporate the doctrine of “manifest disregard of the law.”<sup>16</sup> Although its use is very limited, the doctrine is invoked most frequently in an attempt to challenge the enforcement of an award.<sup>17</sup>

We first see the doctrine stated in dictum in the 1953 Supreme Court case of *Wilko v. Swan*.<sup>18</sup> In one sentence, the *Wilko* Court stated, “In unrestricted submission, such as the present margin agreements envisage, the interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in the federal courts, to judicial review for error in interpretation.”<sup>19</sup> Ever since, each circuit has invoked “manifest disregard” and has come up with its own definition of what the doctrine entails. Generally speaking, “manifest disregard of the law” means something more than just error in law or failure on part of the arbitrator(s) to understand or apply law; it must be clear from the record that the arbitrator(s) recognized applicable law and then ignored it.<sup>20</sup>

Accordingly, the standard is very narrow. In the 2000 case, *Dawahare v. Spencer*,<sup>21</sup> the Sixth Circuit explained, “Since Supreme Court dictum established the manifest disregard of the law standard forty-seven years ago, only two federal

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<sup>16</sup> *Id.* at 81.

<sup>17</sup> THOMAS E. CARBONNEAU, *ARBITRATION IN A NUTSHELL* 245 (Thomson/West 2009).

<sup>18</sup> *Wilko v. Swan*, 346 U.S. 427, 436-437 (1953), overruled on other grounds, *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989).

<sup>19</sup> *Wilko*, 346 U.S. at 436-437.

<sup>20</sup> *See Carter v. Health Net of California, Inc.*, 374 F.3d 830 (9th Cir. 2004).

<sup>21</sup> 210 F.3d 666 (6th Cir. 2000).

courts of appeals have used it to vacate arbitration decisions.”<sup>22</sup> The cases to which *Dawahare* was referring were *Montes v. Shearson Lehman Bros., Inc.*,<sup>23</sup> and *Halligan v. Piper Jaffray, Inc.*<sup>24</sup> Although there have been instances since *Dawahare* that a federal appeals court has vacated an award based on the doctrine,<sup>25</sup> it has been looked upon as a very limited and unusual determination.<sup>26</sup>

B. Hall Street Associates and its effect on “Manifest Disregard of the Law”

1. Hall Street Associates v. Mattel

The subject of manifest disregard has been the topic of much debate since the recent Supreme Court opinion of *Hall Street Associates v. Mattel*.<sup>27</sup> In *Hall Street*, the issue was whether parties could contractually enable a District Court to vacate an arbitral award where the arbitrator's findings of facts are not supported by substantial evidence, or where the arbitrator's conclusions of law are erroneous.<sup>28</sup> Essentially, the parties wished to expand the grounds of vacatur beyond the FAA § 10 and allow the Court to undergo *de novo* review of the arbitral award.

The Court did not allow for such an agreement.<sup>29</sup> Justice Souter, writing for the majority, held that grounds for vacatur are “exclusively” within the text of the Federal Arbitration Act §§ 9-11.<sup>30</sup> The Court analyzed the text of the FAA and

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<sup>22</sup> *Id.* at 670.

<sup>23</sup> *Montes v. Shearson Lehman Bros., Inc.*, 128 F.3d 1456 (11th Cir. 1997).

<sup>24</sup> *Halligan v. Piper Jaffray, Inc.*, 148 F.3d 197 (2d Cir. 1998), cert. denied, 526 U.S. 1034 (1999).

<sup>25</sup> See *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 330 F.3d 843 (6th Cir. 2003); See also *Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230 (4th Cir. 2006); *Coffee Beanery, Ltd. V. WW, L.L.C.*, 300 Fed. Appx. 415 (6th Cir. 2008).

<sup>26</sup> See *Electronic Data Systems Corp. v. Donelson*, 473 F.3d 684 (6th Cir. 2007).

<sup>27</sup> *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008).

<sup>28</sup> *Id.* at 579.

<sup>29</sup> *Id.* at 586.

<sup>30</sup> *Id.* at 584.

concluded that §§ 10 and 11 cannot be supplemented, as “it would stretch basic interpretive principles to expand the stated grounds to the point of evidentiary and legal review generally.”<sup>31</sup> The Court went on to state that §§ 10 and 11 “address egregious departures from the parties’ agreed-upon arbitration.”<sup>32</sup> By keeping the use of vacatur under §§ 9-11 to such “extreme” instances, the Court viewed §§ 9-11 “as substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration’s essential virtue of resolving disputes straightaway.”<sup>33</sup>

Naturally, because the “manifest disregard of the law” doctrine is not authorized from the text, one would be led to believe that the Court wished to disband the doctrine. However, to create confusion among the circuits, the Court refused to rule on the survival of “manifest disregard.”<sup>34</sup> The Court stated that “[m]aybe the term ‘manifest disregard’ was meant to name a new ground for review, but maybe it merely referred to the § 10 grounds collectively, rather than adding to them.”<sup>35</sup> Is the Court stating that only the procedural grounds stated in §§ 9-11 are meant to be applied during judicial review? Or, to the contrary, has the manifest disregard standard survived as an independent ground for merits review, or perhaps hidden under the meaning of the FAA § 10?

## 2. Subsequent Circuit Division Regarding “Manifest Disregard of the Law”

The circuits have been split in attempting to answer these questions. The fifth circuit, in *Citigroup Global Mkts. Inc. v. Bacon*<sup>36</sup> stated that *Hall Street* “clearly has the effect of further restricting the role of federal courts in the

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<sup>31</sup> *Id.* at 586.

<sup>32</sup> *Hall Street*, 552 U.S. at 589.

<sup>33</sup> *Id.* at 588.

<sup>34</sup> *Id.* at 585.

<sup>35</sup> *Id.*

<sup>36</sup> *Citigroup Global Mkts. Inc. v. Bacon*, 562 F.3d 349 (5th Cir. 2009).

arbitration process.”<sup>37</sup> By interpreting the FAA as exclusive grounds for vacatur and modification, the *Citigroup* Court held that “*Hall Street* rejected manifest disregard as an independent ground for vacatur.”<sup>38</sup> The court further reasoned that this ruling was “consistent with the ‘national policy favoring arbitration with just the limited review needed to maintain arbitration’s essential virtue of resolving disputes straightaway.”<sup>39</sup> The first and eleventh Circuits have also both held that judicially-created bases for vacatur, such as “manifest disregard of the law,” are no longer valid in light of *Hall Street*.<sup>40</sup>

However, we see a different interpretation of *Hall Street* in other circuits. The sixth circuit, in *Coffee Beanery, Ltd. V. WW, L.L.C.*,<sup>41</sup> held that the decision of *Hall Street* “did not foreclose federal courts’ review for an arbitrator’s manifest disregard of the law.”<sup>42</sup> The *Coffee Beanery* court reasoned that in *Hall Street* the holding spoke only to the inability of parties to expand the scope of judicial review.<sup>43</sup> It further stated that in *Hall Street* the Court acknowledged the possibility that the term “manifest disregard,” as stated in *Wilko*, was meant to name a new ground of review.<sup>44</sup> The second and ninth Circuits also continued to use the manifest disregard doctrine, but they do not believe that the standard is an additional, independent non-statutory ground for vacatur, but instead a judicial gloss on the grounds of FAA § 10.<sup>45</sup>

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<sup>37</sup> *Id.* at 350.

<sup>38</sup> *Id.* at 353.

<sup>39</sup> *Id.* at 353 (citing *Hall Street*, 552 U.S. at 1405).

<sup>40</sup> *Ramos-Santiago v. United Parcel Service*, 524 F.3d 120, 124 n. 3 (1st Cir.2008) (“We acknowledge the Supreme Court’s recent holding in [*Hall Street*] that manifest disregard of the law is not a valid ground for vacating or modifying an arbitral award in cases brought under the Federal Arbitration Act.”); *Frazier v. CitiFinancial Corp., LLC*, 604 F.3d 1313 (11th Cir. 2010).

<sup>41</sup> *Coffee Beanery, Ltd. v. WW, L.L.C.*, 300 Fed. Appx. 415 (6th Cir. 2008).

<sup>42</sup> *Id.* at 418.

<sup>43</sup> *Id.* at 419.

<sup>44</sup> *Id.*

<sup>45</sup> *Telenor Mobile Communications AS v. Storm LLC*, 584 F.3d 396, 408 n.6 (2nd Cir. 2009); *Comedy Club, Inc. v. Improv West Assoc.*, 553 F.3d 1277, 1290 (9th Cir.), cert. denied, *Improv West Assoc. v. Comedy Club, Inc.*, 130 S.Ct. 145 (2009).

III. STOLT-NIELSEN AND ITS AFFECT ON “MANIFEST DISREGARD OF THE LAW”

A. *Stolt-Nielsen S.A. v. Animalfeeds International Corp.*

The Supreme Court in *Stolt-Nielsen* has recently had the opportunity to address the confusion between the circuits regarding the application of manifest disregard, but arguably made it even more ambiguous. In *Stolt-Nielsen*, the parties’ arbitral clause was silent with respect to whether AnimalFeeds can pursue class arbitration.<sup>46</sup> The parties agreed to submit to arbitrators whether or not class arbitration could commence with the stipulation that the agreement was in fact silent.<sup>47</sup>

The arbitrators found in favor of AnimalFeeds, and Stolt-Nielsen filed an application to vacate the arbitrators’ award in the District Court for the Southern District of New York.<sup>48</sup> The district court vacated the award, holding that the award was in manifest disregard “insofar as the arbitrators failed to conduct a choice-of-law analysis.”<sup>49</sup> AnimalFeeds appealed and the second circuit reversed.<sup>50</sup> The second circuit held that because Stolt-Nielsen could not cite authority applying a federal maritime rule of custom and usage *against* class arbitration, the arbitrators’ decision could not be in manifest disregard of the law.<sup>51</sup>

The Supreme Court reversed the second circuit and vacated the arbitrators’ award, ultimately concluding that the arbitrators exceeded their powers under § 10(a)(4) and dispensed their own brand of industrial justice.<sup>52</sup> In an opinion written by Justice Alito, the Court stated that the arbitrators should have applied a decisional rule derived from the FAA or either maritime or New York law when

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<sup>46</sup> *Stolt-Nielsen S.A. v. Animalfeeds International Corp.*, 130 S.Ct. 1758, 1765 (2010).

<sup>47</sup> *Id.* at 1766.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Stolt-Nielsen*, 130 S.Ct. at 1766.

<sup>52</sup> *Id.* at 1767.

interpreting whether the parties' contract permits class arbitration.<sup>53</sup> Instead, the panel imposed its own policy choice and thus exceeded its powers.<sup>54</sup> Because arbitration must be consensual and because there was no agreement regarding class arbitration, "the parties cannot be compelled to submit their dispute to class arbitration."<sup>55</sup>

*B. Analysis*

At first glance, it is difficult to understand the grounds on which the Court vacated the arbitrators' award. Did the Court use the "manifest disregard of the law" standard and apply a merits review, did it use the statutory ground of the arbitrators exceeding their powers under § 10(a)(4), or perhaps did the Court create a new means of vacating an arbitral award? The Court even declined to consider whether manifest disregard survives the decision in *Hall Street* as an independent ground for review or a judicial gloss on the enumerated grounds for vacatur set forth under § 10.<sup>56</sup> However, one can infer from the reasoning the Court applied that it does not matter how "manifest disregard" survives *Hall Street* because the Court conducted a merits review on grounds beyond that of "manifest disregard." Regardless of how the Court viewed "manifest disregard," it paved a new path of analysis in reviewing arbitral awards, which certainly can have an effect on future judicial review.

First, I will consider how the court went about analyzing the review as if solely under the statutory ground of § 10(a)(4). After all, the Court did not refer to the common law ground of "manifest disregard" once. Furthermore, it claimed that the panel "exceeded its powers" by imposing its own policy choice when it ruled in favor of class arbitration.<sup>57</sup> Because § 10(a)(4) specifically allows vacatur "where

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<sup>53</sup> *Id.* at 1770.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 1776.

<sup>56</sup> *Stolt-Nielsen*, 130 S.Ct. at 1768 n. 3.

<sup>57</sup> *Id.* at 1770.

the arbitrators exceeded their powers,” it is safe to say that the Court used this statutory ground as a basis underlying its decision. However, as stated *supra*,<sup>58</sup> § 10 is not a means for a substantive basis review, but rather it is procedural. The inquiry under § 10(a)(4) is not whether the arbitrators correctly decided that issue, but rather, whether the arbitrators had the *power* to decide upon the issue.<sup>59</sup> The arbitrators’ power, of course, is based on the parties’ submissions or the arbitration agreement itself.<sup>60</sup> The dissent was certainly aware of this, stating that “[t]he parties’ supplement agreement, referring the class-arbitration issue to an arbitration panel, undoubtedly empowered the arbitrators to render their clause-construction decision. That scarcely debatable point should resolve this case.”<sup>61</sup> Obviously, the arbitrators had the power to decide on the issue, so why did the Court conclude that the arbitrators exceeded their powers? Did the Court expand the grounds upon which a court can grant the statutory ground of vacatur? Or perhaps the Court used the common law doctrine of manifest disregard – without even saying so.

Because it is apparent that the Court went beyond the statutory grounds of vacatur, the next inquiry is to decide exactly what the Court did to vacate the arbitral award. What is confusing is that the Court decided that the award should be vacated under § 10(a)(4), but it conducted a merits review and stated that the arbitral panel decided the law incorrectly. Essentially, the Court attempted to squeeze the common law doctrine of manifest disregard into the statutory text of § 10(a)(4). Even still, we can see that the arbitrators did not *disregard* the law, as the panel observed the arbitration clause consistent with New York law and with

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<sup>58</sup> See Carbonneau, *supra* note 15.

<sup>59</sup> *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 824 (2nd Cir. 1997) See also *Eastern Associated Coal Corp. v. United Mine Workers of America*, Dist. 17, 121 S.Ct. 462, 467 (2000) (“[Petitioner] does not claim here that the arbitrator acted outside the scope of his contractually delegated authority. Hence we must treat the arbitrator's award as if it represented an agreement between [petitioner] and [respondent] as to the proper meaning of the contract's words...”).

<sup>60</sup> *DiRussa*, 121 F.3d at 824.

<sup>61</sup> *Stolt-Nielsen* at 1780 (Ginsberg, J., dissenting).

federal maritime law and gauged what it believed to be the parties' intent with regards to class arbitration.<sup>62</sup>

So if the arbitrators had the power to decide on the issue, and further did not disregard the law, then why was the award vacated? Ultimately, the Court did not agree with the arbitrators' analysis in viewing that *Bazzle v. Green Tree Financial Corp.* controlled<sup>63</sup> and further felt that arbitrators cannot compel class arbitration absent a contractual basis to do so.<sup>64</sup> Because class arbitration and bilateral arbitration are fundamentally different, one may not infer that the parties intended class-action arbitration when the agreement is silent.<sup>65</sup> Accordingly, the Court viewed the arbitral award as an attempt of the arbitrators to implement policy, which "exceeds their powers."<sup>66</sup>

Essentially the Court conducted a *de novo* review of the arbitrators' decision and concluded that they committed legal error. By disregarding prior means of vacating arbitral awards, *i.e.* manifest disregard of the law or the procedural grounds stated in § 10, the Court impliedly dictated a new means by which an arbitral award can be vacated. Although the arbitrator has the power to decide upon a legal issue that the parties agreed to submit to arbitration, it seems as if the Court will now vigilantly watch and vacate awards that stray too far from acceptable legal reasoning.

#### IV. CONCLUSION

After *Solt-Nielsen*, one can make a plausible argument as to the death of the manifest disregard doctrine. After all, *Stolt-Nielsen* did not appeal to the

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<sup>62</sup> *Id.* at 1781 (Ginsberg, J., dissenting).

<sup>63</sup> *Id.* at 1770.

<sup>64</sup> *Id.* at 1775.

<sup>65</sup> *Id.* ("[B]ecause class-action arbitration changes the nature of arbitration to such a degree[,] it cannot be presumed the parties consented to [class arbitration] by simply agreeing to submit their disputes to an arbitrator").

<sup>66</sup> *Id.* at 1767-68.

doctrine once in its opinion and nevertheless conducted a more lenient merits review under a procedural statutory ground of FAA § 10(a)(4). Therefore, there would be no purpose of appealing to the manifest disregard doctrine because there is already a more lenient statutory merits review route available under the FAA. Although logically sound, that reasoning has not necessarily been adopted by the lower federal courts as we still see the doctrine invoked to date.<sup>67</sup>

Nevertheless, it is still troubling how the Supreme Court conducted a merits base review and then concluded that the arbitrators “exceeded their powers” under § 10(a)(4). Not once did the Court appeal to the common law manifest disregard doctrine, but rather it consistently invoked the statutory text – which is not meant to call for a merits review. Furthermore, and perhaps most importantly, it appears that the Court conducted *de novo* review and simply found error in the panel’s reasoning. Nowhere in the opinion did the Court state how the panel knew of the applicable law, and then ignored it. With this ruling, the Court potentially opened the door for easier possibilities of vacatur and placed a higher power upon courts to review arbitral awards. With disgruntled parties more prone to seek judicial review, the underlying inexpensive and expedient nature of arbitration is thus jeopardized.

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<sup>67</sup> See *Lagstein v. Certain Underwriters at Lloyd's*, 607 F.3d 634 (9th Cir. 2010); See also *Paul Green School Of Rock Music Franchising, LLC. v. Smith*, Slip Copy, 2010 WL 2993835 (3d Cir. 2010) (“an arbitrator will not be found to have manifestly disregarded the law for alleged errors in its application”)