# *Review of Arbitration Awards After* Hall Street Associates v. Mattel: *Supreme Court says "No" to Contractual Expansion ... and to "Manifest Disregard of the Law"?*

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## INTRODUCTION

The trend toward arbitration has intensified the controversy about the appropriate scope of judicial review for an arbitration award. Dissatisfied with the limited grounds for review in the Federal Arbitration Act ("FAA"), some parties have agreed to an expanded scope of judicial review within their arbitration contracts[1]—with much success. Litigants also have successfully persuaded courts to apply a "manifest disregard of the law" standard for reviewing an arbitrator's award, even though this ground is not specifically provided in the FAA.[2]

On March 25, 2008, however, the United States Supreme Court decided *Hall Street Associates, L.L.C. v. Mattel, Inc.*, which resolved a circuit split[3] over whether parties may contractually expand the existing grounds for vacating an arbitration award.[4] The Court held that parties cannot contractually expand the grounds for vacating an arbitrator's award.[5] The opinion, while settling this issue regarding review of arbitration awards, created another issue.

*Hall Street* provides fodder for an argument that the judicially created "manifest disregard of the law" standard for vacating arbitration awards should not be recognized,[6] and at least one court has so interpreted the decision.[7] Other courts, however, have held that *Hall Street* did not eliminate review of arbitrators' decisions for "manifest disregard of the law."[8]

## OVERVIEW OF THE DECISION

The arbitration agreement in *Hall Street* allowed a district court to set aside an arbitrator's award if "(1) the arbitrator's findings of facts are not supported by substantial evidence, or (2) where the arbitrator's conclusions of law are erroneous."[9] After an arbitrator rendered an award in favor of Mattel, Hall Street moved to vacate the award because of an erroneous conclusion of law.[10]

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1 Christian A. Garza & Christopher D. Kratovil, *Contracting for Private Appellate Review of Arbitration Awards*, Vol. 19, No. 2, APP. ADVOC. Winter 2007, at 19-20.

2 *See* 9 U.S.C. §§ 10, 11 (2008).

3 *Compare Puerto Rico Tel. Co. v. U.S. Phone Mfg. Corp.*, 427 F.3d 21, 31 (1st Cir. 2005) (allowing contractual expansion of judicial review); *Jacada (Europe), Ltd. v. Int'l Mktg. Strategies, Inc.*, 401 F.3d 701, 710 (6th Cir. 2005) (same), *Roadway Package Sys., Inc. v. Kayser*, 257 F.3d 287, 292 (3d Cir. 2001) (same), *Syncor Int'l Corp. v. McLeland*, No. 96-2261, 1997 WL 452245, at *6 (4th Cir. Aug. 11, 1997) (same), *and Gateway Tech., Inc. v. MCI Telecommc'ns Corp.*, 64 F.3d 993, 996 (5th Cir. 1995) (same), *with Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 933-37 (10th Cir. 2001) (rejecting contractual expansion), *Kyocera Corp. v. Prudential-Bach Trade Servs.*, 341 F.3d 987, 997-1000 (9th Cir. 2003) (en banc) (same), *and UHC Mgm't Co. v. Computer Scis. Corp.*, 148 F.3d 992, 998 (8th Cir. 1998) (same in dicta).

4 *See generally Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 128 S. Ct. 1396 (2008).

5 *Id.*

6 *Id.* at 1404.

7 *Prime Therapeutics LLC v. Omnicare, Inc*, No. 08-375, 2008 WL 2152207, at *5 (D. Minn. May 21, 2008).

8 *Halliburton Energy Servs., Inc. v. NL Indus.*, Nos. H-05-4160, H-06-3504, 2008 WL 906037, at *13-14 (S.D. Tex. Mar. 31, 2008); *Chase Bank USA, N.A. v. Hale*, No. 601044/07, 2008 WL 1746984, at *5 (N.Y. Sup. Ct. Mar. 31, 2008).

9 *Hall Street*, 128 S. Ct. at 1400-01.

10 *Id.* at 1401.

Applying the contractually-agreed standard of review, the district court agreed with Hall Street, vacated the award, and remanded the case to the arbitrator.[11] The court cited *LaPine Technology Corp. v. Kyocera Corp.*,[12] holding that the FAA allows parties to dictate an alternative standard of review.[13] On remand, the arbitrator amended the award to apply the correct legal standard in Hall Street's favor.[14] The parties each sought to modify the second award by the trial court, and after consideration, the trial court affirmed the second award with one slight modification.[15]

On appeal, Mattel pointed out that the Ninth Circuit had recently reversed its position on contractual expansion of arbitration review in *Kyocera Corp. v. Prudential-Bach Trade Servs.*[16] Hall Street attempted to distinguish this later case, to no avail.[17] The Ninth Circuit Court of Appeals agreed with Mattel and reversed the award, holding that "the terms of the arbitration agreement controlling the mode of judicial review are unenforceable and severable."[18] The Ninth Circuit instructed the district court to review the award under the FAA standards, which it held were the exclusive grounds for vacating or modifying an award.[19] On remand, the district court again held for Hall Street, and the Ninth Circuit reversed again.[20]

The Supreme Court held that under 9 U.S.C. § 9,[21] a court "'must' confirm an award 'unless' it is vacated, modified, or corrected 'as prescribed' in §§ 10 and 11."[22] The Court held that the grounds listed in sections 10 and 11 for vacating or modifying an award are *exclusive* and cannot be expanded by the parties' arbitration agreement.[23]

First, Hall Street argued that expanded judicial review had been accepted since the Court's decision in *Wilko v. Swan*,[24] where it alleged the Court recognized the "manifest disregard" ground of review.[25] *Wilko* considered whether section 14 of the Securities Act of 1933[26] precluded an

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11 *Id.*

12 130 F.3d 884, 889 (9th Cir. 1997),

13 *Hall Street,* 128 S. Ct. at 1401.

14 *Id.*

15 *Id.*

16 341 F.3d at 997-1000.

17 *Hall Street*, 128 S. Ct. at 1401.

18 *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 113 Fed. Appx. 272, 273 (9th Cir. 2004).

19 *Id.*

20 *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 196 Fed. Appx. 476, 477-78 (9th Cir. 2006).

21 That section provides:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

9 U.S.C. § 9 (2008).

22 *Hall Street*, 128 S. Ct. at 1402.

23 *Id.* at 1403.

24 347 U.S. 427 (1953), *overruled by Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989).

25 Br. for the Petitioner, *Hall Street Assocs. L.L.C. v. Mattel*, No. 06-989, *available at* http://supreme.lp.findlaw.com/supreme_court/briefs/06-989/06-989.mer.pet.pdf (filed July 27, 2007).

26 That section provides that "[a]ny condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this subchapter or of the rules and regulations of the Commission shall be void." *Wilco*, 347 U.S. at 430 n. 6 (quoting 15 U.S.C.§ 77n).

arbitration agreement covering securities claims.[27] Hall Street argued that if the courts can add "manifest disregard" as a ground for vacating an arbitration award, then parties can alter the grounds for review by contract.[28]

The Court concluded that Hall Street's interpretation was "too much for *Wilko* to bear."[29] It noted that while many circuits had interpreted *Wilko* as recognizing "manifest disregard of the law" as an additional ground to vacate an arbitration award, *Wilko*'s language actually stated the opposite or was so vague that it cannot be read as affirmatively establishing an independent ground of review:

> The *Wilko* Court was explaining that arbitration would undercut the Securities Act's buyer protections when it remarked (citing FAA § 10) that "[p]ower to vacate an [arbitration] award is limited," and went on to say that "the interpretations of the law by the arbitrators in contrast to manifest disregard [of the law] are not subject, in the federal courts, to judicial review for error in interpretation." Hall Street reads this statement as recognizing "manifest disregard of the law" as a further ground for vacatur on top of those listed in § 10, and some Circuits have read it the same way. . . .
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> Quite apart from its leap from a supposed judicial expansion by interpretation to a private expansion by contract, Hall Street overlooks the fact that the statement it relies on expressly rejects just what Hall Street asks for here, general review for an arbitrator's legal errors. Then there is the vagueness of *Wilko*'s phrasing. Maybe 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. Or, as some courts have thought, "manifest disregard" may have been shorthand for § 10(a)(3) or § 10(a)(4), the subsections authorizing vacatur when the arbitrators were "guilty of misconduct" or "exceeded their powers." We, when speaking as a Court, have merely taken the *Wilko* language as we found it, without embellishment, and now that its meaning is implicated, we see no reason to accord it the significance that Hall Street urges.[30]

Second, the Court rejected Hall Street's argument that because arbitration is a creature of contract, parties ought to be able to expand judicial review of arbitration awards through their contracts.[31] The Court held that the FAA's language, which demonstrated that the grounds for vacating an award were meant to be exclusive, was at odds with this proposition.[32]

The Court then reviewed FAA sections 10 and 11. It held that even if sections 10 and 11 could be expanded to a certain extent, it "would stretch basic interpretive principles to expand the stated grounds to the point of evidentiary and legal review generally."[33] Sections 10 and 11 address "egregious departures from the parties' agreed-upon arbitration," such as "corruption," "fraud," "evident partiality," "misconduct," "misbehavior," "exceed[ing] . . . powers," "evident material miscalculation," "evident material mistake," and "award[s] upon a matter not submitted."[34] The Court noted that only one ground lacked such an extreme focus, review for "imperfect[ions]," but the Court noted that these

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27 *Id.* at 437-38.

28 *Id.*

29 *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 128 S. Ct. 1396, 1404 (2008).

30 *Id.* at 1403-04 (citations omitted).

31 *Id.* at 1404.

32 *Id.*

33 *Id.*

34 *Id.*

may only be corrected if they go to "[a] matter of form not affecting the merits."[35]

The Court noted that under the rule of *ejusdem generis*, a general term following specific terms allows expansion only to items similar to the previously listed specific terms.[36] It reasoned that if a statute containing an expansion term had to be so limited, then "surely a statute with no textual hook for expansion cannot authorize contracting parties to supplement review for specific instances of outrageous conduct with review for just any legal error. 'Fraud' and a mistake of law are not cut from the same cloth."[37]

Additionally, section 9 is written in mandatory terms: the court "must grant" the order "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title."[38] The Court held that this provision provided no wiggle room: It "unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions applies. This does not sound remotely like a provision meant to tell a court what to do just in case the parties say nothing else."[39]

Finally, limiting the avenues of review is more consistent with the FAA's purpose:

> Instead of fighting the text, it makes more sense to see the three provisions, §§ 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. Any other reading opens the door to the full-bore legal and evidentiary appeals that can "rende[r] informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process," and bring arbitration theory to grief in post-arbitration process.[40]

The Court limited its holding to the circumstances of the case. It noted that its holding only applied to enforcement of arbitration awards under the FAA, expressly declining to extend its holding to other enforcement options available under state statutory or common law enforcement mechanisms.[41] Additionally, at oral argument, the parties pointed out that the trial court had adopted the parties' arbitration agreement as an order.[42] Thus, the Court questioned whether the agreement, as an order, should be treated as the trial court's exercise of its authority to manage its docket under Federal Rule of Civil Procedure 16.[43] Because the lower courts had not considered this possibility, the Court remanded the case to the court of appeals for consideration of the issue.[44]

**THE DISSENTS**

Justices Stevens, Kennedy, and Breyer dissented. Justices Stevens wrote, and Justice Kennedy agreed, that the Court's ruling conflicted with the FAA's purpose and ignored its historical context.[45] Justice Stevens opined that the FAA's purpose was to eliminate the previous hostility to arbitration and to make arbitration agreements "valid, irrevocable, and enforceable."[46] Because these were the FAA's "core" purposes, Justice Stevens reasoned that there was more, not less, reason to enforce a party's agreement to arbitrate than there was before the FAA. "An unnecessary refusal to enforce a perfectly reasonable category of arbitration agreements defeats the primary purpose of the statute."[47] Justice Stevens disagreed with the Court's reference to *ejusdem generis*, stating that "[a] listing of grounds that

35 *Id.*

36 *Id.*

37 *Id.* at 1404-05.

38 *Id.* at 1405.

39 *Id.*

40 *Id.* (citations omitted).

41 *Id.* at 1406.

42 *Id.* at. 1407.

43 *Id.* at 1407-08.

44 *Id.* .

45 *Id.* at 1408 (Stevens, J., dissenting).

46 *Id.*

47 *Id.* at 1409.

must always be available to contracting parties simply does not speak to the question whether they may agree to additional grounds for judicial review."[48]

Justice Breyer agreed with Justice Stevens's analysis, but he wrote separately to state his disagreement with the Court's decision to send the case back for further analysis.[49]

## APPLICATION OF THE DECISION BY LOWER COURTS

In the few short months since the decision, several cases have tested its reasoning.[50] One court opined that *Hall Street* eliminated "manifest disregard" as a separate ground for vacating an arbitration award.[51] In contrast, two courts have interpreted *Hall Street* as leaving the "manifest disregard" standard intact, albeit in a very limited form.[52]

For example, in *Prime Therapeutics LLC v. Omnicare, Inc*, the United States District Court for the District of Minnesota refused to apply the judicially created "manifest disregard" standard, relying on *Hall Street.*[53] After summarizing *Hall Street*, the court held that "[i]t would be somewhat inconsistent to say that the parties cannot contractually alter the FAA's exclusive grounds for vacating or modifying an arbitration award, but then allow the courts to alter the exclusive grounds by creating extra-statutory bases for vacating or modifying an award."[54] Accordingly, the court refused to consider that ground as a basis for vacating the award.

In contrast, in *Chase Bank USA, N.A. v. Hale*, the New York County Supreme Court held that *Hall Street* did not "jettison" the "manifest disregard" standard.[55] It held that *Hall Street* deemed *Wilko's* discussion of the standard "ambiguous."[56] The New York court relied on the Court's statement that *Wilko* could have referred to the 9 U.S.C. § 10 grounds collectively, rather than adding to them: "Accordingly, this court will view 'manifest disregard of law' as judicial interpretation of the section 10 requirement, rather than as a separate standard of review."[57]

Likewise, the District Court for the Southern District of Texas interpreted *Hall Street* not as questioning the continuing viability of the "manifest disregard" standard, but as questioning "whether the manifest disregard standard is a ground for vacatur separate from the statutory grounds for vacatur under the FAA, as the Fifth Circuit has previously stated, or a way of summarizing two or more of those statutory grounds."[58] It pointed out that the Fifth Circuit's articulation of the "manifest disregard" is so "extraordinarily narrow" that it is not inconsistent with the *Hall Street* decision.[59] Therefore, it determined that the Supreme Court did not intend to totally supplant the standard:

> Because the Supreme Court did not expressly decide whether the "manifest disregard" standard remains a separate basis for federal court review of arbitration decisions in at least some circumstances; because the Fifth Circuit

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48 *Id.*

49 *Id.* (Breyer, J., dissenting).

50 *See Ascension Orthopedics, Inc. v. Curasan, AG*, 2008 WL 2074058, *1 (S.D. Tex. May 14, 2008) (rejecting contractual expansion); *Feeney v. Dell, Inc.*, No. 031158, 2008 WL 1799954, at * 2 (Mass. Super. Ct. Apr. 4, 2008) (same).

51 *Prime Therapeutics LLC v. Omnicare, Inc*, No. 08-375, 2008 WL 2152207, at *5 (D. Minn. May 21, 2008).

52 *Halliburton Energy Servs., Inc. v. NL Indus.*, Nos. H-05-4160, H-06-3504, 2008 WL 906037, at *13-14 (S.D. Tex. Mar. 31, 2008); *Chase Bank USA, N.A. v. Hale*, No. 601044/07, 2008 WL 1746984, at *5 (N.Y. Sup. Ct. Mar. 31, 2008).

53 *Prime Therapeutics LLC*, 2008 WL 2152207, at *5.

54 *Id.*

55 *Chase Bank USA*, 2008 WL 1746984, at *5.

56 *Id.*

57 *Id.*

58 *Halliburton Energy Servs., Inc. v. NL Indus.*, Nos. H-05-4160, H-06-3504, 2008 WL 906037, at *13-14 (S.D. Tex. Mar. 31, 2008).

59 *Id.* at *13.

> has often approved of reviewing arbitration awards for "manifest disregard," *see, e.g., Am. Laser Vision,* 487 F.3d at 259 (5th Cir. 2007); and because Halliburton sought vacatur on the basis of the Fifth Circuit's "manifest disregard" standard, out of an abundance of caution this court analyzes the parties' arguments using "manifest disregard" as both a summary of some of the statutory grounds and as an additional ground for vacatur.[60]

## CONCLUSION

The Supreme Court resolved the circuit split over whether parties can expand judicial review of arbitration awards by contract with an emphatic "no!" But did the Court also say "no!" to the "manifest disregard of the law" standard? *Hall Street* is not entirely clear on this issue, as is evident by the emerging split of authority. The Court's decision sets the stage for more confusion, and until this issue is resolved, practitioners should keep abreast of how the divergent lines of authority are developing.

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[60] *Id.* at *14.