

Manifest Disregard in International Commercial Arbitration: Whether Manifest Disregard Holds, However Good, Bad, or Ugly

Chad R. Yates

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Manifest Disregard in International Commercial Arbitration: Whether Manifest Disregard Holds, However Good, Bad, or Ugly

Chad R. Yates

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ABSTRACT

Manifest disregard is a common law reason for not enforcing an arbitration award. This principle applies when the arbitrator knew and understood the law, but the arbitrator disregarded the applicable law. Presently, the United States Supreme Court has not made a definite decision on whether manifest disregard is still a valid reason for vacating the award (known as “vacatur”), and the Court is highly deferential to arbitrator decisions. Consequently, the lower courts are split on the issue. For international commercial arbitration awards, manifest disregard can only apply to a foreign award that is decided under United States law or in the United States.

This Note will argue that manifest disregard should still apply to arbitration awards. However, arbitration contract clauses would be improved with the addition of language for appeals based upon manifest disregard to an arbitration appeals tribunal. The customary goal of arbitration is to provide a confidential, cost effective and expedited resolution of contract disputes. Therefore, an arbitration contract clause requiring that an appeals tribunal decide all manifest disregard questions would further these traditional arbitration goals.

AUTHOR NOTE

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I. INTRODUCTION

“Maybe” is a frustrating word when one is looking for a definitive answer.¹ Unfortunately, that was the Supreme Court’s answer on whether an arbitral award is enforceable after an arbitrator knowingly ignored the applicable law to a contract, otherwise known as manifest disregard.² “Maybe” is even more troubling when hundreds of millions of dollars are at stake during an international commercial arbitration. In the United States, a losing party arguing manifest disregard may be able to appeal an arbitral award. However, lower courts across the country lack guidance on whether manifest disregard is grounds for the nonenforcement of an award.³ Therefore, this uncertainty weakens the confidence in arbitral awards for the contracting parties.⁴

The ambiguity also has detrimental effects for common place transactions.⁵ In *Citigroup Global Markets v. Bacon*, the arbitrators ordered the defendant, Citigroup Global Markets, to pay the plaintiff, Mrs. Bacon, \$256,000 after her husband made unauthorized debits from her retirement account.⁶ In response, Citigroup Global argued the arbitrators’ decision knowingly ignored the applicable law, and the district court ruled in favor of Citigroup Global.⁷ On appeal, the Fifth Circuit ruled that manifest disregard is not permitted; however,

¹ See *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 585 (2008) (emphasizing the Court’s uncertainty by using the word “maybe” when reviewing multiple interpretations of manifest disregard); see also Perry S. Granof & Randy J. Aliment, *Alternative Dispute Resolution (ADR) in International Business Transactions*, 2012.2 JURISTE INT’L 58, 59 (2012), http://www.granofinternational.com/wp-content/uploads/2016/02/Granof_Aliment_Juriste_International.pdf [https://perma.cc/43EV-R2N3] (noting that the common law grounds for manifest disregard could “conflict with the laws in statutory law based countries”).

² See generally *Hall Street*, 552 U.S. at 584.

³ See MyLinda K. Sims & Richard A. Bales, *Much Ado About Nothing: The Future of Manifest Disregard After Hall Street*, 62 S.C. L. REV. 407, 418-21 (2010) (discussing *Hall Street*’s confusion with manifest disregard dicta and resulting circuit split).

⁴ See generally *id.*

⁵ See generally *Citigroup Glob. Mkts., Inc. v. Bacon*, 562 F.3d 349, 359 (5th Cir. 2009).

⁶ See *id.* at 350.

⁷ See *id.*

Citigroup could still argue to vacate the arbitral award under other statutory grounds.⁸ For Mrs. Bacon, she lost her retirement funds, and arbitration failed to be an expedient method to resolve this dispute with her retirement investment bank.⁹ Instead, Mrs. Bacon's arbitral award was in limbo as the award went through the lengthy procedural appeals process.¹⁰

Specifically, manifest disregard is a common law reason for not enforcing an arbitration award.¹¹ This principle applies when the arbitrator knew and understood the law, but the arbitrator disregarded the applicable law.¹² Presently, the U.S. Supreme Court has not made a definite decision on whether manifest disregard is still a valid reason for vacating the award (known as “*vacatur*”), and the Court is highly deferential to arbitrator decisions.¹³ Consequently, the lower courts are split on this issue.¹⁴ For international commercial arbitration awards, manifest disregard can only apply to a foreign award that is decided under United States law or in the United States.¹⁵ This Note will argue that manifest disregard should still apply to arbitration awards. Further, arbitration contract clauses would be improved with the addition of language for appeals stating that manifest disregard is to be decided only by an appeals arbitrator rather than a court.¹⁶ The customary goal of arbitration is to provide a confidential, cost effective and expedited resolution of contract disputes.¹⁷ Therefore, an arbitration contract clause requiring that an appeals tribunal decide all

⁸ *See id.* at 358.

⁹ *See generally id.*

¹⁰ *See id.*

¹¹ *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 n.3 (2010).

¹² *See id.*

¹³ *See generally Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008).

¹⁴ *Sims & Bales*, *supra* note 3, 420-21.

¹⁵ *See Mendelka v. Penson Fin. Servs.*, No. 16-cv-7393 (PKC), 2017 U.S. Dist. LEXIS 49536, *8-10 (S.D.N.Y. Mar. 31, 2017) (recognizing manifest disregard of the law in the Second Circuit and finding that the award was not in manifest disregard of the law).

¹⁶ *See JAMS Optional Arbitration Appeal Procedure*, JAMS, <https://www.jamsadr.com/appeal> (last visited Mar. 18, 2018) [<https://perma.cc/6ASG-RTC3>] (recommending contract language for arbitration appeals tribunal).

¹⁷ *See Granof & Aliment*, *supra* note 1, at 58.

manifest disregard questions would protect these traditional arbitration goals.¹⁸

Part II of this Note will explore the origins of international commercial arbitration starting with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“Convention”), and the exceptions to enforcement of an arbitral award. Part III will examine manifest disregard in detail by its definition and case history on its application. Part IV will discuss the circuit split on the issue of manifest disregard. Part V will suggest a possible resolution of the issue in a future U.S. Supreme Court case. Next, Part VI will argue that manifest disregard must be a valid ground for the non-enforcement of an arbitration award under United States law and that an arbitration appeals tribunal should decide manifest disregard issues. Finally, Part VII will recommend specific contract language that could be added to arbitration provisions.

II. ORIGINS OF INTERNATIONAL COMMERCIAL ARBITRATION

A. 1958 New York Convention

The Convention allowed the federal courts to enforce arbitration awards between contracting parties regardless of previous jurisdictional restrictions created by the parties’ citizenship.¹⁹ For the Convention to apply to an international commercial arbitration contract, the four following elements must be met: (1) a written agreement between the parties to arbitrate the dispute; (2) the location of the arbitration is in a country that is a signatory to this New York Convention; (3) the dispute arises out of a commercial legal relationship; and (4) at least one party to the arbitration agreement is not an American citizen.²⁰ Furthermore, the U.S. Supreme Court recommends that international contract disagreements be arbitrated.²¹ Thus, this Convention’s objective was to recognize and enforce international business arbitration agreements and resulting arbitral awards by creating shared standards for the participating countries.²²

¹⁸ *Id.*; see also *infra* Parts VI & VII.

¹⁹ 9 U.S.C. §§ 201–208 (2011); *Energy Transport, Ltd. v. M.V. San Sebastian*, 348 F. Supp. 2d 186, 197-98 (S.D.N.Y. 2004).

²⁰ *Khan v. Parsons Glob. Servs.*, 480 F.Supp.2d 327, 339 (D.D.C. 2007).

²¹ *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 638 (1985).

²² *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519-20 (1974).

The resulting United States statutes, along with the Convention, reinforced a “strong presumption in favor” of multinational business disagreements being arbitrated.²³ The overarching purpose of international commercial arbitration is to enforce arbitration awards.²⁴ If an arbitration agreement is disputed, public policy is difficult to prove for *vacatur*.²⁵ However, if a losing party insists on vacating the award, then a court will only review the award for the most egregious situations.²⁶

B. Exceptions to Enforcement of Arbitral Awards

The Convention identifies seven grounds for vacating an arbitral award in Article V.²⁷ The grounds are:

(a) The parties to the agreement referred to in [A]rticle II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award

²³ See, e.g., *Mitsubishi Motors Corp.*, 473 U.S. at 638.

²⁴ See *Eazy Electronics & Tech., L.L.C. v. L.G. Electronics, Inc.*, 226 F. Supp. 3d 68, 73 (D.P.R. 2016); see *Haining Zhang v. Schlatter*, No. 1-Civ.-1793(ALC) (GWG), 2013 U.S. Dist. LEXIS 138968, at *28 (S.D.N.Y. Mar. 13, 2013) (holding that the court gives great deference to arbitration); *accord Aioi Nissay Dowa Ins. Co. v. Prosignt Specialty Mgmt. Co.*, No. 12-Civ. 3274-(LPO), 2012 U.S. Dist. LEXIS 118233, at *8-9 (S.D.N.Y. Aug. 21, 2012).

²⁵ See *Lipcon v. Underwriters at Lloyd's*, 148 F.3d 1285, 1298-99 (11th Cir. 1998).

²⁶ See *id.*

²⁷ See Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, 21 U.S.T. 2519, 330 U.N.T.S. 3 (June 10, 1958) [hereinafter New York Convention].

*which contains decisions on matters submitted to arbitration may be recognized and enforced; or (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made . . . (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b) The recognition or enforcement of the award would be contrary to the public policy of that country.*²⁸

The United States Federal Arbitration Act's (FAA) defenses frequently take precedence over Convention defenses when a cause of action demands that a United States award not be enforced.²⁹ Consequently, FAA defenses are important to address for international commercial arbitration awards.³⁰ Section 10(a) addresses exceptions to enforcing arbitral awards, including the defense of manifest disregard when in any of the subsequent cases the United States court may vacate the award upon the submission of any arbitration party:

(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual,

²⁸ See *id.*; see also *BG Group PLC v. Republic of Arg.*, 134 S. Ct. 1198, 1205 (2014).

²⁹ The Federal Arbitration Act, 9 U.S.C. § 10 (1925); see *Cardell Fin. Corp. v. Suchodolksi Associates, Inc.*, 674 F.Supp.2d 549, 552 (S.D.N.Y. 2009).

³⁰ 9 U.S.C. § 10 (2002).

*final, and definite award upon the subject matter submitted was not made.*³¹

Here, the defense of manifest disregard falls within the scope of the arbitrators being guilty of misconduct under section 10(a)(3) or exceeding their powers under 10(a)(4).³² Hence, the exceptions for the non-enforcement of an arbitral award may only occur when the contracting parties agree to United States law as controlling the contract, and the arbitral award violates the exceptions stated above for either the New York Convention or the FAA.³³

Section 10(a)(4) has created controversy because courts have interpreted the term “exceeded their powers” differently.³⁴ In *Hall Street Associates, L.L.C. v. Mattel, Inc.*, the Supreme Court reviewed the defenses described above on whether contracting parties can modify the grounds for vacating an arbitral award.³⁵ The Court saw any expansion to these defenses “as the camel’s nose: if judges can add grounds to vacate (or modify), so can contracting parties.”³⁶ The court was addressing a tension between whether the arbitration defense could be modified by contracting parties or the courts.³⁷ Consequently, the Court held that judges and contracting parties cannot expand the FAA defenses because the FAA defenses were exclusive.³⁸ Based on “national policy favoring arbitration,” the Court decided to limit the “review needed to maintain arbitration’s essential virtue of resolving disputes straightway.”³⁹ Thus, a circuit court split developed regarding the defense of manifest disregard, directly stemming from the Supreme Court’s failure to directly address or clarify the issue.⁴⁰

³¹ 9 U.S.C. §§ 10(a)(1)-(4); *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 878 F.Supp.2d 459, 464 (S.D.N.Y. 2012); *see Cardell Fin. Corp.*, 674 F.Supp.2d at 552 (S.D.N.Y. 2009).

³² *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 585 (2008).

³³ 9 U.S.C. § 10; *accord Cardell Fin. Corp.*, 674 F.Supp.2d at 552.

³⁴ *Hall Street Associates*, 552 U.S. at 577-78.

³⁵ *Id.*

³⁶ *Id.* at 585.

³⁷ *Id.*

³⁸ *Id.* at 578.

³⁹ *Id.* at 588.

⁴⁰ *See generally id.*

III. DEFINING MANIFEST DISREGARD AND ITS COMMON LAW ORIGINS

Manifest disregard applies when there is a well-defined contract term or law, the term or law was not a matter of dispute, and the arbitrator declined to apply the term or law to the arbitrator's decision.⁴¹ Moreover, as demonstrated in *Mendelka v. Penson Financial Services, Tully Construction Co. v. Canam Steel Corp.*, and *Admart AG v. Stephen & Mary Birch Foundation, Inc.*, the defense of manifest disregard is only available to arbitral awards under United States law or within the United States.⁴² However, manifest disregard is not applied in all states or in all courts.⁴³ For an international arbitral award, a few courts will not apply manifest disregard.⁴⁴ If the contract clearly applies United States law, the Convention must also apply to the award.⁴⁵ The attempts to apply public policy with manifest disregard have often been futile because United States national policy favors high deference to arbitral awards.⁴⁶ However, there have been attempts to apply to manifest disregard within a limited scope of the Convention under the FAA defense of the arbitrators exceeding their powers.⁴⁷ Under the Convention, arbitrators' authority does have limits. This is especially true when the arbitrators exceed those

⁴¹ *Jacada (Eur.), Ltd. v. Int'l Mktg. Strategies, Inc.*, 401 F.3d 701, 713 (6th Cir. 2005).

⁴² *See* 9 U.S.C. § 10(a)(4) (2002) (providing language that courts look to as justification for manifest disregard); *Mendelka v. Penson Fin. Servs.*, No. 16-cv-7393 (PKC), 2017 U.S. Dist. LEXIS 49536, at *7-8 (S.D.N.Y. Mar. 31, 2017) (recognizing manifest disregard); *Tully Constr. Co. v. Canam Steel Corp.*, No. 13-Civ.-3037 (PGG), 2015 U.S. Dist. LEXIS 25690, at *47 (S.D.N.Y. Mar. 2, 2015) (recognizing manifest disregard); *Admart AG v. Stephen & Mary Birch Found., Inc.*, 457 F.3d 302, 307 (3d Cir. 2006) (recognizing manifest disregard).

⁴³ *Zeiler v. Deitsch*, 500 F.3d 157, 166 (2d Cir. 2007); *see Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys "R" Us, Inc.*, 126 F.3d 15, 22 (2d Cir. 1997) (arguing that the non-enforcement of an arbitral award is only possible under the arbitral forum's law).

⁴⁴ *Zeiler*, 500 F.3d at 166.

⁴⁵ *But see Westerbeke Corp. v. Daihatsu Motor Co.*, 304 F.3d 200 (2d Cir. 2002) (holding that manifest disregard does not apply to award of expectancy damages).

⁴⁶ *M & C Corp. v. Erwin Behr GmbH & Co.*, 87 F.3d 844, 851 n.2 (6th Cir. 1996); *see, e.g., Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 638 (1985).

⁴⁷ *Wise v. Wachovia Secs., LLC*, 450 F.3d 265, 268 (7th Cir. 2006).

powers.⁴⁸ In *DiRussa v. Dean Witter Reynolds Inc.*, the Second Circuit defined § 10(a)(4) as “whether the arbitrators had the power, based on the parties’ submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue.”⁴⁹ The court held that when an arbitrator did award attorney fees, the arbitrator was not in manifest disregard of the law and did not exceed the arbitrator’s powers.⁵⁰ Furthermore under § 10(a)(4), the court will not vacate an arbitral award even when the court has determined that the arbitrator made a “serious error” so long as the arbitrator was acting “even arguably” under the parties’ contract.⁵¹ Moreover, after *Hall Street*, manifest disregard of the law became a questionable defense.⁵²

The 1953 *Wilko v. Swan* case is the common law origin of manifest disregard and precedes the Convention.⁵³ Before *Wilko*, courts referred to the manifest disregard concept with a general disfavor of arbitral awards.⁵⁴ In *United States v. Farragut*, the Court ruled that an award may be overruled “for manifest mistake of law” or for “exceeding the power conferred.”⁵⁵ The term “manifest mistake” is an award defense similar to *Wilko*’s subsequent manifest disregard defense because both defenses apply in cases where laws were not appropriately applied.⁵⁶ However, in *Burchell v. Marsh*, the Court ruled that arbitration awards would only be vacated under very limited situations.⁵⁷ Furthermore, in *Karthus v. Ferrer*, the Court found that a “distinct specification” must

⁴⁸ See *Gas Nat. Aproveisionamientos, SDG, S.A. v. Atlantic LNG Co. of Trin. & Tobago*, No. 08-Civ.-1109(DLC), 2008 WL 4344525, at *4 n.7 (S.D.N.Y. 2008) (commenting that the FAA’s defense of exceeding arbitral power was beyond the Convention’s intention).

⁴⁹ *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 824 (2d Cir.1997).

⁵⁰ *Id.* at 827-28.

⁵¹ *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987).

⁵² See *Hall Street Associates*, 552 U.S. at 586.

⁵³ See *Wilko v. Swan*, 346 U.S. 427, 436-37 (1953).

⁵⁴ See Ann C. Gronlund, Note, *The Future of Manifest Disregard as a Valid Ground for Vacating Arbitration Awards in Light of the Supreme Court’s Decision in Hall Street Associates, L.L.C. v. Mattel, Inc.*, 96 IOWA L. REV. 1351, 1356 (2011) (discussing Federal Arbitration Act of 1925 and the courts’ application).

⁵⁵ *United States v. Farragut*, 89 U.S. 406, 420 (1874).

⁵⁶ Compare *id.*, with *Wilko*, 346 U.S. at 436-37. Origins of manifest disregard may be manifest mistake due to similar definitions.

⁵⁷ See *Burchell v. Marsh*, 58 U.S. (17 How.) 344, 349-51 (1854).

be used in arbitration agreements and “in the construction of awards . . . no intendment shall be indulged, to overturn an award, but every reasonable intendment shall be allowed, to uphold it.”⁵⁸ Finally, in *Carnochan v. Christie*, the Court considered vacating an arbitral award when (1) “the arbitrators have not decided the whole matter that was submitted to them,” (2) “[arbitrators] have decided and awarded what was not submitted,” and (3) “the award is uncertain.”⁵⁹ Interestingly, these grounds are similar to those later codified in FAA § 10.⁶⁰ Thus, although courts now are even more deferential to arbitral awards, there is a long, established history of vacating these awards for precise and “narrow” conditions.⁶¹

After recognizing the FAA goal of “speedier, more economical and more effective enforcement of rights” for arbitration, the Fifth Circuit interpreted *Hall Street* as holding that arbitrators cannot ignore the controlling law in a contract, and the arbitrator’s failure to apply the controlling law would result in non-enforcement of an award.⁶² In *Shearson/American Express Inc. v. McMahon*, customers made tort and securities fraud claims, and claims under the Racketeer Influenced and Corruption Organization Act (“RICO”) against a broker.⁶³ The Supreme Court ruled that the customers would have to arbitrate the security fraud and RICO claims because the Court enforced the arbitration agreements for the claims of security fraud and RICO.⁶⁴ Thus, *McMahon* overruled *Wilko*, and the Court held that *Wilko* was obsolete considering subsequent federal statutes applying to commercial transactions for arbitration contracts under the Securities Act.⁶⁵

⁵⁸ *Karthaus v. Ferrer*, 26 U.S. (1 Pet.) 222, 228 (1828).

⁵⁹ *Carnochan v. Christie*, 24 U.S. (11 Wheat.) 446, 460 (1826).

⁶⁰ *See id.*; *see also* 9 U.S.C.A. § 10(a)(4) (2002).

⁶¹ Circuit split makes the Fifth Circuit interpretation of manifest defense arguable. *See Citigroup Glob. Mkts., Inc. v. Bacon*, 562 F.3d 349, 351 (5th Cir. 2009) (quoting *Burchell v. Marsh*, 58 U.S. at 349-51); *see also* *Karthaus v. Ferrer*, 26 U.S. at 228 (arguing that the court will enforce an award unless arbitrator clearly violated the contract).

⁶² *Wilko v. Swan*, 346 U.S. 427, 439 (1953).

⁶³ *See generally* *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220 (1987).

⁶⁴ *See generally id.*

⁶⁵ *See generally id.*; *see* *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477 (1989) (holding arbitration agreements enforceable under the Securities Act).

Furthermore, the Court emphasized the necessity of harmonizing the contradiction between *Wilko* and *McMahon*.⁶⁶ For consistency, the Court accentuated that *McMahon* also overruled *Wilko*, referencing an antiquated “judicial mistrust of the arbitral process . . . [that does] not hold true today.”⁶⁷ Moreover, *McMahon* even stressed that the Court has overruled almost all of the “nonarbitrable” grounds in *Wilko*.⁶⁸ Additionally, in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, the Court held that arbitrators have the capacity to evaluate the intricacies of antitrust cases without judicial supervision.⁶⁹ Thus, the Court now is highly deferential to arbitration compared to the mistrust expressed by the Court in *Wilko*.⁷⁰ The question remains whether manifest disregard is still a valid ground for *vacatur* when the contemporary Supreme Court is strongly opposed to *Wilko*, the common law origin of manifest disregard.⁷¹

IV. UNITED STATES SUPREME COURT’S MANIFEST DISREGARD INTERPRETATION AND IMPLICATION

The Court’s highly deferential opinion on arbitrator’s decisions has been made clear repeatedly, and the pursuit of arbitral *vacatur* is only allowed for the most “outrageous” transgressions.⁷² Furthermore, courts cannot overrule an arbitrator’s holding if the holding was grounded on the arbitrator’s interpretation of the contract.⁷³ Therefore, in *Oxford Health Plans LLC v. Sutter*, the Court emphasized that the arbitrator’s interpretation should be affirmed, “however good, bad, or

⁶⁶ *McMahon*, 482 U.S. at 220-21.

⁶⁷ *Id.* at 221.

⁶⁸ *Id.* at 232.

⁶⁹ *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633-34 (1985).

⁷⁰ *McMahon*, 482 U.S. at 232.

⁷¹ *Id.*

⁷² *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 586 (2008).

⁷³ Porter Wright, *You Choose, You Lose! Supreme Court Rules “Arbitrator’s Construction Holds, However Good, Bad, or Ugly” in Upholding Class Arbitration Proceedings*, EMP’R. L. REP. (June 13, 2013), <http://www.employerlawreport.com/2013/06/articles/employment-class-collective-actions/you-choose-you-lose-supreme-court-rules-arbitrators-construction-holds-however-good-bad-or-ugly-in-upholding-class-arbitration-proceedings/> [https://perma.cc/RKS9-TWEE].

ugly.”⁷⁴ Here, the Court emphasized the enforceability of an arbitral award because some lower courts have a tendency to second-guess the arbitrator’s decision.⁷⁵

The current trend of the Court is to uphold arbitrators’ decisions so as not to permit a “rerun” for the losing party in court.⁷⁶ Unfortunately, arbitration can sometimes lead to more appellate litigation, which can further burden judicial economy and undermine arbitration’s goal of expedited results.⁷⁷ Consequently, the Court is discouraging arbitrating parties from seeking a rerun with a trial; however, regrettably, this tension continues to plague awards with the losing party sometimes seeking a favorable overruling.⁷⁸

In *Hall Street*, the Court made the manifest disregard defense questionable as a reason for nonenforcement of an arbitral award.⁷⁹ The Court’s dicta created a split in the circuit courts for the common law manifest disregard defense.⁸⁰ The Court’s ambivalence on manifest disregard is demonstrated in the Court’s analysis of *Wilko*:

*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 paragraphs 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.*⁸¹

⁷⁴ Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 573 (2013).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See generally Jay E. Grenig & Rocco M. Scanza, “It’s Not Over ‘Til It’s Over”:
After the Arbitration Award in Sports Arbitration, 70 DISP. RESOL. J. 21, 21-22
(2015) (positing that post-award procedures under the FAA in Sports Arbitration
are frequent and consequently undermine the goals of arbitration).

⁷⁸ *Id.*

⁷⁹ Hall Street Associates, L.L.C. v. Mattel, Inc., 552 U.S. 576, 586 (2008).

⁸⁰ Sims & Bales, *supra* note 3, at 418.

⁸¹ *Hall Street*, 552 U.S. at 585 (internal citations omitted).

The legal field criticized the Court’s dicta here for its use of “maybe,” and the resulting confusion regarding manifest disregard’s application within the circuits.⁸² Furthermore, *Hall Street* created more questions than provided answers.⁸³ For example, the Supreme Court in *Hall Street* raises the question of whether *Wilko* created a “new ground for review” for manifest disregard, but then dismisses this issue without addressing it.⁸⁴ Further, the Court presents another question on whether manifest disregard was “shorthand” for § 10(a)(3) or § 10(a)(4), but again does not answer the question.⁸⁵ The Court acknowledges the circuit split, and then the Court perpetuates this split when failing to answer these questions.⁸⁶ Consequently, the Court’s lack of guidance in these arbitration disputes has intensified the debate over the benefits and disadvantages of arbitration in general.⁸⁷

In 2010, only a few years later, *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.* added to this confusion when the Court again refused to address the manifest disregard defense. The Court did “not decide whether manifest disregard survives our decision in *Hall Street Associates, L.L.C. v. Mattel, Inc. . . .* as an independent ground for review as a judicial gloss on the enumerated grounds for set forth at 9 U.S.C. § 10.”⁸⁸ The Court had another opportunity to decide whether the common law challenge of manifest disregard should survive, and yet again did not resolve the issue.⁸⁹ Thus, the circuits remain split when applying manifest disregard.⁹⁰

A. Uncertainty in the Circuits

Immediately following *Hall Street* in 2008, the First Circuit in *Ramos-Santiago v. United Parcel Service* recognized that manifest

⁸² See, e.g., Stanley A. Leasure, *Arbitration Law in Tension After Hall Street*, 39 U. ARK. LITTLE ROCK L. REV. 75, 78 (2016) (positing that the Court in *Hall Street* exposed the conflict between the “freedom to contract and finality”).

⁸³ *Id.*

⁸⁴ *Hall Street*, 552 U.S. at 585.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Amalia D. Kessler, *Arbitration and Americanization: The Paternalism of Progressive Procedural Reform*, 124 YALE L.J. 2940, 2942 (2015).

⁸⁸ *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 672 n.3 (2010).

⁸⁹ *Id.*

⁹⁰ See *Schafer v. Multiband Corp.*, 551 F. App’x 814, 820 (6th Cir. 2014) (applying manifest disregard only for arbitrator’s “disagreement with the law” and not “interpretation of the law”).

disregard is not a valid ground for non-enforcement of an arbitral award.⁹¹ Prior to *Hall Street*, the courts applied a manifest disregard test that the arbitration award is:

*(1) unfounded in reason and fact; (2) based on reasoning so palpably faulty that no judge, or group of judges, could ever have made such a ruling; or (3) mistakenly based on a critical assumption that is concededly a non-fact.*⁹²

Furthermore, the record must prove that the arbitrator knowingly and “expressly” ignored the law.⁹³ However, in the 2015 case *Raymond James Financial Services, Inc. v. Fenyk*, the First Circuit was more cautious about the viability of manifest disregard as grounds for *vacatur*.⁹⁴ Moreover, the court found that it did not need to “resolve the uncertainty” of manifest disregard and the resulting circuit split after *Hall Street*.⁹⁵ Thus, the First Circuit is still undecided on the validity of manifest disregard as grounds of *vacatur*.⁹⁶

In *Whitehead v. Pullman Group*, the Third Circuit refused to answer the “open question” of manifest disregard and the resulting circuit split after *Hall Street*.⁹⁷ The court explained that the case fails to establish manifest disregard, even if available, because the arbitrator’s decision did not knowingly ignore the law and emphasized that the court is “extremely deferential” to arbitral awards.⁹⁸ The arbitrator applied the necessary statute, gave both parties an opportunity to submit a brief, and then applied the statute with no legal error.⁹⁹ Furthermore, in *Bellantuono v. ICAP Securities USA, LLC*, the court again refused to resolve the validity of manifest disregard for *vacatur*.¹⁰⁰ Prior to *Hall Street*, the Third Circuit did recognize manifest disregard of the law although this common law reason was

⁹¹ *Ramos-Santiago v. United Parcel Serv.*, 524 F.3d 120, 124 n.3 (1st Cir. 2008).

⁹² *Id.* at 124 (citing *McCarthy v. Citigroup Glob. Mkts., Inc.*, 463 F.3d 87, 91 (1st Cir. 2006)).

⁹³ *Id.* (quoting *Advest, Inc. v. McCarthy*, 914 F.2d 6, 9 (1st Cir.1990)).

⁹⁴ *Raymond James Fin. Servs., Inc. v. Fenyk*, 780 F.3d 59, 64-65 (1st Cir. 2015).

⁹⁵ *Id.* at 65.

⁹⁶ *Id.*

⁹⁷ *Whitehead v. Pullman Grp., LLC*, 811 F.3d 116, 120-21 (3d Cir. 2016).

⁹⁸ *Id.* at 121.

⁹⁹ *Id.*

¹⁰⁰ *Bellantuono v. ICAP Sec. USA, LLC*, 557 F. App’x 168, 173-74 (3d Cir. 2014).

not explicitly stated under the FAA.¹⁰¹ *Bellantuono* also noted the current circuit split regarding the application of manifest disregard.¹⁰² Like the more recent *Whitehead* case, *Bellantuono* avoided the manifest disregard question because the party failed to provide significant evidence to meet the high standard of manifest disregard and the court did not have to determine the viability of this common law ground for *vacatur* after *Hall Street*.¹⁰³

In *Schafer v. Multiband Corp.*, the Sixth Circuit refused to settle the issue of manifest disregard following *Hall Street*.¹⁰⁴ Like the Third Circuit, the Sixth Circuit also found that there was not a manifest disregard of the law.¹⁰⁵ *Schafer* did recognize that the arbitrator's decision was "legally unsupportable" and that the court would "reverse the decision if it had been made by a district court."¹⁰⁶ However, the arbitrator's decision would still fail to meet the higher standard of manifest disregard even if available for *vacatur* because the arbitrator can "disagree with nonbinding precedent without disregarding the law."¹⁰⁷ Furthermore, the Sixth Circuit ruled that an arbitrator is not "bound by the legal holding" of the Sixth Circuit, but the arbitrator can still not "reject the law."¹⁰⁸ Thus, the Sixth Circuit remains undecided on the manifest disregard of the law for non-enforcement of an arbitral award; however, it would recognize manifest disregard "albeit not in a published holding."¹⁰⁹

Additionally, in the earlier case of *Coffee Beanery, Ltd. v. WW, L.L.C.*, the Sixth Circuit commented that after *Wilko*, all federal appellate courts have permitted manifest disregard as grounds for

¹⁰¹ *Id.* at 173 (citing *Tanoma Min. Co., Inc. v. Local Union No. 1269*, 896 F.2d 745, 749 (3d Cir. 1990)).

¹⁰² *Id.*

¹⁰³ Compare *Whitehead*, 811 F.3d at 120-21 (declining to address the "open question" of whether the arbitrators' actions "amounted to" manifest disregard), with *Bellantuono*, 557 F. App'x at 174 (refusing to address the viability of the manifest disregard defense).

¹⁰⁴ *Schafer v. Multiband Corp.*, 551 F. App'x 814, 819 (6th Cir. 2014).

¹⁰⁵ Compare *Schafer*, 551 F. App'x at 819, with *Whitehead*, 811 F.3d at 120, and *Bellantuono*, 557 F. App'x at 174 (evidence did not show manifest disregard of the law, so courts refused to address viability of manifest disregard as grounds for *vacatur*).

¹⁰⁶ *Schafer*, 551 F. App'x at 819.

¹⁰⁷ *Id.* at 820.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 819 n.1.

vacatur.¹¹⁰ Consequently, this court permitted manifest disregard in this 2008 case following *Hall Street*.¹¹¹ The arbitrator's manifest disregard of the Franchise Act was evident when the arbitrator ignored that the Coffee Beanery owner did not disclose a felony conviction as required in the contract.¹¹² Therefore, the court vacated the arbitral award because the arbitrator knowingly ignored the controlling law of the contract.¹¹³ It is important to note that this case took place the same year as *Hall Street*, so the circuit split was not as clearly established.¹¹⁴ Consequently, the 2014 *Schafer* case recognizes the circuit split over manifest disregard vacating an arbitral award.¹¹⁵

B. Circuits Permitting Manifest Disregard as Grounds for Non-Enforcement of Arbitral Award

The Second, Fourth, Seventh, Ninth, and Tenth Circuits all allow manifest disregard for non-enforcement of an arbitral award following *Hall Street*.¹¹⁶ In the Second Circuit, *A&G Coal Corporation v.*

¹¹⁰ See *Coffee Beanery, LTD. v. WW, L.L.C.*, 300 F. App'x 415, 419 (6th Cir. 2008) See also *Halim v. Great Gatsby's Auction Gallery, Inc.*, 516 F.3d 557, 563 (7th Cir. 2008); *Three S Delaware Inc. v. DataQuick Info. Sys., Inc.*, 492 F.3d 520, 527 (4th Cir. 2007); *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 879 (9th Cir. 2007); *McCarthy v. Citigroup Glob. Mkts., Inc.*, 463 F.3d 87, 91 (1st Cir. 2006) (permitting manifest disregard); *Dominion Video Satellite, Inc. v. Echostar Satellite L.L.C.*, 430 F.3d 1269, 1275 (10th Cir. 2005); *Manion v. Nagin*, 392 F.3d 294, 298 (8th Cir. 2004); *Hoelt v. MVL Grp., Inc.*, 343 F.3d 57, 64-65 (2d Cir. 2003); *Dluhos v. Strasberg*, 321 F.3d 365, 370 (3d Cir. 2003); *Prestige Ford v. Ford Dealer Comput. Servs., Inc.*, 324 F.3d 391, 395-96 (5th Cir. 2003); *Scott v. Prudential Sec., Inc.*, 141 F.3d 1007, 1017 (11th Cir. 1998).

¹¹¹ *Coffee Beanery*, 300 F. App'x at 419.

¹¹² *Id.* at 419-20.

¹¹³ *Id.* at 419-21.

¹¹⁴ Compare *Coffee Beanery*, 300 F. App'x at 415, with *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 576 (2008).

¹¹⁵ *Schafer v. Multiband Corp.*, 551 F. App'x 814, 819 n.1 (6th Cir. 2014) (citing *Grain v. Trinity Health, Mercy Health Servs. Inc.*, 551 F.3d 374, 380 (6th Cir. 2008) (“*Hall Street*’s reference to the ‘exclusive’ statutory grounds for obtaining relief casts some doubt on the continuing vitality of that theory.”)).

¹¹⁶ See *Renard v. Ameriprise Fin. Servs., Inc.*, 778 F.3d 563, 567 (7th Cir. 2015) (applying manifest disregard). See also *A & G Coal Corp. v. Integrity Coal Sales, Inc.*, 565 F. App'x 41, 42-43 (2d Cir. 2014) (applying manifest disregard); *Adviser Dealer Servs., Inc. v. Icon Advisers, Inc.*, 557 F. App'x 714, 717 (10th Cir. 2014) (applying manifest disregard); *Comedy Club, Inc. v. Improv W. Associates*, 553 F.3d 1277, 1288 (9th Cir. 2007) (applying manifest disregard).

Integrity Coal Sales, Inc. still allowed manifest disregard as a possible reason for *vacatur*.¹¹⁷ Furthermore, the Second Circuit referenced *Schwartz v. Merrill Lynch* to justify manifest disregard as grounds for non-enforcement of an arbitral award.¹¹⁸ Thus, for non-enforcement of an award in the Second Circuit, the arbitrator must have knowingly ignored a clearly defined law similar to other circuits that allow the challenge of manifest disregard.¹¹⁹

The Fourth Circuit ruled in *Dewan v. Walia* that the arbitrator manifestly disregarded the law by allowing the enforcement of the employee's release as the company's accountant while also reviewing the employee's counterclaims for underpayment during employment.¹²⁰ The court looked to the FAA as the controlling law because the agreement was between a Canadian citizen and a U.S. business.¹²¹ However, the court expressed some hesitance to apply manifest disregard after *Hall Street* because manifest disregard is considered an "extra-statutory grounds" for *vacatur* that is not expressly stated under the FAA.¹²²

In *Renard v. Ameriprise Financial Services, Inc.*, the Seventh Circuit affirmed the lower court's holding that the arbitrator did not demonstrate manifest disregard of the law.¹²³ Rather than applying state law, the Seventh Circuit found the FAA should be the controlling law for manifest disregard with the heightened standard of the arbitrator knowingly and "deliberately disregard[ing]" the law.¹²⁴ Thus, the court found that manifest disregard failed to meet the requirements of this higher FAA standard.¹²⁵

In *Wetzel's Pretzels, LLC v. Johnson*, the Ninth Circuit ruled that manifest disregard may still apply to arbitral awards; however, the

¹¹⁷ *A & G Coal Corp.*, 565 F. App'x at 42.

¹¹⁸ *Id.* (quoting *Schwartz v. Merrill Lynch & Co.*, 665 F.3d 444, 451 (2d Cir. 2011)).

¹¹⁹ *Id.* (citing *Jock v. Sterling Jewelers Inc.*, 646 F.3d 113, 121 n.1 (2d Cir. 2011)).

¹²⁰ *Dewan v. Walia*, 544 F. App'x 240, 241 (4th Cir. 2014).

¹²¹ *Id.* at 245 (holding that the FAA controls where there are issues relating to "employment contracts and the release evidence and arise out of transactions involving foreign commerce").

¹²² *Id.* at 246 n.5 (quoting *Raymond James Fin. Serv., Inc. v. Bishop*, 596 F.3d 183, 194 n.13 (4th Cir. 2010)).

¹²³ *Renard v. Ameriprise Fin. Servs., Inc.*, 778 F.3d 563, 568 (7th Cir. 2015).

¹²⁴ *Id.* at 567 (internal citation and punctuation omitted).

¹²⁵ *Id.* at 568.

plaintiff would need to prove that the arbitrator did not follow the controlling law of the contract.¹²⁶ Further, *Comedy Club, Inc. v. Improv West Associates* commented similarly that the court may apply manifest disregard when the arbitrator ignored a clearly defined law.¹²⁷ The court found that section § 10(a)(4) of the FAA still allowed manifest disregard as a ground for the non-enforcement of an arbitral award after *Hall Street*.¹²⁸ The court determined that manifest disregard is “shorthand” under the FAA § 10(a)(4).¹²⁹ Specifically, the Ninth Circuit held that an arbitral award is not enforceable when arbitrators exceed their powers for an award that is “completely irrational” or show a “manifest disregard of the law.”¹³⁰ Thus, the Ninth Circuit recognizes manifest disregard as a ground for *vacatur*.¹³¹

In *Adviser Dealer Services, Inc. v. Icon Advisers, Inc.*, the Tenth Circuit upheld manifest disregard as grounds for *vacatur*.¹³² Here, a new employer attempted to vacate an arbitral award after the arbitrator decided in favor of the employer for claims of tortious interference with contract.¹³³ The court held that the arbitrators did not exceed their powers when permitting liability for the new employer.¹³⁴ Specifically, the court found that the non-enforcement of an arbitral award may be grounds for manifest disregard under the FAA and the common law.¹³⁵ Following *Hall Street*, the court ruled that manifest disregard was still valid and implied under the FAA.¹³⁶ Furthermore, there must be “exceptional circumstances” when vacating an arbitral award as courts

¹²⁶ *Wetzel’s Pretzels, L.L.C. v. Johnson*, 567 F. App’x 493, 494 (9th Cir. 2014) (citing *Biller v. Toyota Motor Corp.*, 668 F.3d 655, 665 (9th Cir. 2012)).

¹²⁷ *Comedy Club, Inc. v. Improv W. Associates*, 553 F.3d 1277, 1290 (9th Cir. 2007).

¹²⁸ *Id.*; see *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662 (2010).

¹²⁹ See *Comedy Club, Inc.*, 553 F.3d at 1290 (citing *Kyocera Corp. v. Prudential-Bache T Servs.*, 341 F.3d 987, 997 (9th Cir.2003)).

¹³⁰ *Id.*

¹³¹ *Id.*; see *Wetzel’s Pretzels*, 567 F. App’x at 494.

¹³² *Adviser Dealer Servs., Inc. v. Icon Advisers, Inc.*, 557 F. App’x 714, 717 (10th Cir. 2014).

¹³³ See *id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* (citing *Burlington N. & Santa Fe Ry. Co. v. Pub. Serv. Co. of Okla.*, 636 F.3d 562, 567 (10th Cir. 2001)).

are highly deferential to arbitral awards.¹³⁷ Thus, in *Adviser Dealer Services, Inc. v. Icon Advisers, Inc.*, the court affirmed the arbitrator’s decision and did not find manifest disregard because the arbitrator-awarded attorneys’ fee was a matter of contract interpretation and not an exceptional circumstance.¹³⁸

C. Circuits Denying Manifest Disregard as Grounds for Non-Enforcement of Arbitral Award

The Fifth, Eighth, and Eleventh Circuits all rejected manifest disregard as a ground of the non-enforcement of an arbitral award after *Hall Street*.¹³⁹ In *Citigroup Global Markets, Inc. v. Bacon*, the Fifth Circuit denied the possibility of manifest disregard of the law as grounds for *vacatur* because it limits grounds for vacating an arbitral award to those expressly written in FAA § 10.¹⁴⁰ Although the Fifth Circuit recognized manifest disregard of the law, it determined that *Hall Street* overruled that recognition.¹⁴¹ Moreover, the court went further back and rejected *Wilko* as establishing manifest disregard under the FAA because the court held that the origins of manifest disregard had a “modest debut” in a “vague phrase” in *Wilko*.¹⁴² Thus, the court concluded that manifest disregard is not a ground for *vacatur* of arbitral awards.¹⁴³

In *Medicine Shoppe, International, Inc. v. Turner Investments, Inc.*, the Eighth Circuit limited vacating awards to those grounds only expressly stated in the FAA.¹⁴⁴ The court focused on the words “must grant” referencing *Hall Street* to rationalize that only those reasons enumerated within the FAA were valid for non-enforcement of an

¹³⁷ *Burlington N. & Santa Fe Ry. Co. v. Pub. Serv. Co. of Okla.*, 636 F.3d 562, 567 (10th Cir. 2001) (internal quotation marks and citation omitted).

¹³⁸ *Adviser Dealer Servs.*, 557 F. App’x at 717-18.

¹³⁹ See *McVay v. Halliburton Energy Servs., Inc.*, 608 F. App’x 222, 225 (5th Cir. 2015) (rejecting manifest disregard); *Med. Shoppe Int’l, Inc. v. Turner Invs., Inc.*, 614 F.3d 485, 489 (8th Cir. 2010) (rejecting manifest disregard); *Frazier v. CitiFinancial Corp.*, 604 F.3d 1313, 1322-24 (11th Cir. 2010) (rejecting manifest disregard).

¹⁴⁰ See generally *Citigroup Glob. Mkts., Inc. v. Bacon*, 562 F.3d 349 (5th Cir. 2009).

¹⁴¹ *Id.* at 350.

¹⁴² *Id.* at 354-55.

¹⁴³ *Id.* at 354.

¹⁴⁴ *Med. Shoppe Int’l*, 614 F.3d at 489.

arbitral award.¹⁴⁵ Moreover, the court ruled that *Hall Street* clearly ended the common law reason of manifest disregard for *vacatur*.¹⁴⁶

In *Frazier v. CitiFinancial Corp.*, the Eleventh Circuit ruled that manifest disregard was not a ground for the non-enforcement of an arbitral award.¹⁴⁷ Furthermore, the court commented, “*Hall Street* casts serious doubt on their legitimacy.”¹⁴⁸ This court rejected the manifest disregard defense with a warning from *Hall Street* that the manifest disregard defense may undermine arbitration.¹⁴⁹ In light of judicial economy, arbitration should not be a “mere[] prelude to a more cumbersome and time-consuming judicial review process.”¹⁵⁰ *Hall Street* repeatedly emphasized a highly deferential position on arbitral awards.¹⁵¹ Therefore, *Frazier* concluded that manifest disregard of the law ended with *Hall Street* because the FAA statute is “exclusive.”¹⁵²

Furthermore, *Frazier* dismissed the plaintiff’s allegation that the award was in violation of public policy as to the virtue of arbitration.¹⁵³ The court reviewed manifest disregard as a public policy issue and held that *Hall Street* precluded such non-statutory arguments because national policy supports “arbitration with just the limited review needed to maintain arbitration’s essential virtue of resolving disputes straightaway.”¹⁵⁴ To augment this essential virtue, the court ruled that the statutory language does not permit an expansion of the statutory grounds for the public policy considerations.¹⁵⁵

¹⁴⁵ *Id.* (citing *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 587 (2008)).

¹⁴⁶ *Id.*

¹⁴⁷ *See Frazier v. CitiFinancial Corp.*, 604 F.3d 1313, 1323-24 (11th Cir. 2010).

¹⁴⁸ *Id.* at 1322.

¹⁴⁹ *See id.*

¹⁵⁰ *Id.* (citing *Hall Street*, 552 U.S. at 588); *cf.* *Ethyl Corp. v. United Steelworkers of America*, 768 F.2d 180, 184 (C.A.7 1985).

¹⁵¹ *See Frazier*, 604 F.3d at 1522-24.

¹⁵² *Id.* at 1324 (citing *Hall Street*, 552 U.S. at 586).

¹⁵³ *Id.* at 1322.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 1324.

V. PREDICTIONS ON MANIFEST DISREGARD FOR THE UNITED STATES SUPREME COURT

Although the Supreme Court showed levity by quoting a Clint Eastward Western movie when it stated, “arbitrator’s construction holds, however good, bad or ugly,” this statement augmented the high deference to arbitral awards.¹⁵⁶ The Court repeatedly stated that lower courts must not overrule an arbitral award even if a court disagreed with the arbitrator’s interpretation of the law and must show high deference to these awards.¹⁵⁷ After *Wilko*, there is a trend of increased deference to arbitral awards as embodied in *Hall Street* and *Stolt-Nielsen*.¹⁵⁸ If this trend continues, courts will continue to limit grounds for *vacatur* to those only expressly codified in the FAA and preclude any common law grounds like manifest disregard to resolve the current circuit split.

A concern of the Court is judicial economy and the danger of non-enforcement arbitral awards in light of the losing party often seeking a “rerun” of the disputed issue.¹⁵⁹ Because arbitration is confidential and has lower procedural costs than the traditional judicial process, arbitration is desirable for resolving disputes.¹⁶⁰ The Supreme Court wants to protect these benefits of arbitration.¹⁶¹ Therefore, if the common law grounds for *vacatur* such as manifest disregard undermine the Court’s goal of deference to arbitration, then the Court is likely to preclude these common law grounds for *vacatur* of an arbitral award.

On the other hand, there is a growing concern that arbitration is undermining the needs of United States employees and consumers.¹⁶²

¹⁵⁶ *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 573 (2013).

¹⁵⁷ *Id.*

¹⁵⁸ See *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 664 (2010); *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 586 (2008).

¹⁵⁹ *Oxford Health Plans LLC*, 569 U.S. at 573.

¹⁶⁰ *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 638 (1985).

¹⁶¹ See JOHN RAWLS, *A THEORY OF JUSTICE*, 85-89 (1971) (analyzing the “balance of satisfaction” for flawed “procedural justice” against procedural costs); Lawrence B. Solum, *Procedural Justice*, 78 S. CAL. L. REV. 181, 240 (2004) (comparing “procedural justice” with “accuracy” regarding legal decisions).

¹⁶² Amanda R. James, *Because Arbitration Can Be Beneficial, It Should Never Have to be Mandatory: Making a Case Against Compelled Arbitration Based Upon Pre-Dispute Agreements to Arbitrate in Consumer and Employee Adhesion Contracts*, 62 LOYOLA L. REV. 531, 534 (2016) (noting employees and

If the Court rejects manifest disregard, a party will have fewer common law reasons to argue that an arbitral award is unjust.¹⁶³ There may be validity to this argument because the bargaining power of the employee is handicapped, especially when an arbitration clause is an industry norm that leaves prospective employees with few meaningful options.¹⁶⁴ However, if the contracting parties have equal bargaining power, such as two international companies, then an arbitration contract may be highly desirable and the “runaway” arbitration power argument fails.¹⁶⁵

Finally, if the Court had to choose between upholding an unfair arbitral award or protecting the judicial economy, the Court would likely choose to protect the judicial economy. The Court is deferential to arbitration awards and aims to discourage the losing arbitral party from undermining the efficiency of an arbitration agreement as mutually agreed and contracted.¹⁶⁶ Further, the Court limits judicial review to “maintain arbitration’s essential virtue of resolving disputes straightaway.”¹⁶⁷ Thus, to resolve the current circuit split, the Court will probably limit grounds for *vacatur* to those explicitly codified in the FAA and exclude any common law grounds like manifest disregard.¹⁶⁸

VI. INTERNATIONAL COMMERCIAL CONTRACT AGREEMENT FOR MANIFEST DISREGARD DISPUTES BEING DECIDED BY ARBITRAL APPEAL TRIBUNAL

Manifest disregard should only be grounds for a vacating an arbitral award in an arbitral appeals tribunal because (1) there is uncertainty in the circuits about the viability of manifest disregard for

consumers are usually the “weaker party” forced into unfair mandatory arbitration agreements).

¹⁶³ *See id.*

¹⁶⁴ *Id.* at 558.

¹⁶⁵ *Compare id.* (discussing how procedural unconscionability may depend in part on the precedent of the court hearing the case), *with* *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 638 (1985) (highlighting a dispute between large businesses with equal bargaining power).

¹⁶⁶ *See* *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 573 (2013) (holding arbitrator’s decisions final).

¹⁶⁷ *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008).

¹⁶⁸ *Id.*

vacating an arbitral award;¹⁶⁹ (2) the contracting parties sacrifice confidentiality when appealing the arbitral award in the courts;¹⁷⁰ (3) arbitration has lower procedural costs;¹⁷¹ and (4) when an arbitrator knowingly ignores an applicable law in the binding contract, the contracting parties should have a remedy.¹⁷²

As discussed earlier, because there is uncertainty in the circuits about the viability of manifest disregard for vacating an arbitral award,¹⁷³ manifest disregard should only be grounds for a vacating an arbitral award in an arbitral appeals tribunal. The Fifth, Eighth, and Eleventh Circuits all reject manifest disregard,¹⁷⁴ while the Second, Fourth, Seventh, Ninth, and Tenth Circuits all allow manifest disregard.¹⁷⁵ Furthermore, the First, Third, and Sixth Circuits are undecided on manifest disregard.¹⁷⁶ This circuit split creates a perilous situation for arbitrating parties if manifest disregard is raised because the outcome will depend on the applicable circuit court.

¹⁶⁹ Granof & Aliment, *supra* note 1, at 59.

¹⁷⁰ Under Seal v. Under Seal, No. 16-CV-7820 (KBF), 2017 U.S. Dist. LEXIS 128000, at *19-20 (S.D.N.Y. July 27, 2017) (warning that a confidentiality provision may become a public record); *see also* Wells Fargo Bank, N.A. v. Wales LLC, 993 F. Supp. 2d 409, 412-14 (S.D.N.Y. 2014) (explaining that the confidentiality clause does not overcome public access right); Aioi Nissay Dowa Ins. Co. v. Prosgit Specialty Mgmt. Co., No. 12-Civ.-3274 (JPO), 2012 U.S. Dist. LEXIS 118233, at *12 (S.D.N.Y. Aug. 21, 2012) (expressing that public access to judicial documents supersedes confidentiality provision); *but see* Kelly v. Evolution Mkts., Inc., 626 F. Supp. 2d 364, 377 (S.D.N.Y. 2009) (holding plaintiff cannot disclose employment contract as expressed in confidentiality provision).

¹⁷¹ Granof & Aliment, *supra* note 1, at 58.

¹⁷² Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 573 (2013).

¹⁷³ Sims & Bales, *supra* note 3, at 418.

¹⁷⁴ *See generally* Citigroup Glob. Mkts., Inc. v. Bacon, 562 F.3d 349 (5th Cir. 2009); Med. Shoppe Int'l, Inc. v. Turner Invs., Inc., 614 F.3d 485, 489 (8th Cir. 2010); Frazier v. CitiFinancial Corp., 604 F.3d 1313, 1322-24 (11th Cir. 2010).

¹⁷⁵ A & G Coal Corp. v. Integrity Coal Sales, Inc., 565 F. App'x 41, 42-43 (2d Cir. 2014); Dewan v. Walia, 544 F. App'x 240, 241 (4th Cir. 2014); Renard v. Ameriprise Fin. Servs., Inc., 778 F.3d 563, 568 (7th Cir. 2015); Wetzel's Pretzels, L.L.C. v. Johnson, 567 F. App'x 493, 494 (9th Cir. 2014); Adviser Dealer Servs., Inc. v. Icon Advisers, Inc., 557 F. App'x 714, 717 (10th Cir. 2014).

¹⁷⁶ Raymond James Fin. Servs., Inc. v. Fenyk, 780 F.3d 59, 64-65 (1st Cir. 2015); Whitehead v. Pullman Grp., LLC, 811 F.3d 116, 120-21 (3d Cir. 2016); Schafer v. Multiband Corp., 551 F. App'x 814, 819 (6th Cir. 2014).

To address this uncertainty for arbitration, contracting parties could include manifest disregard contract language for review by an appeals arbitration tribunal.¹⁷⁷ Although the circuit split over current manifest disregard is a problem yet to be addressed by the Court,¹⁷⁸ international commercial parties applying United States law are able to address the manifest disregard issue by contract. Using this method, the contracting parties are effectively taking control of their contract by “contracting around” the manifest disregard issue and avoiding further uncertainty imposed by the current split.

However, this contract solution is a deterrence rather a resolution to the manifest disregard defense. The losing party can still file a motion to vacate the award for the manifest disregard of the law in certain circuits.¹⁷⁹ First, in such cases, the losing party is placed in a difficult position because the arbitral appeal tribunal’s decision will likely be highly persuasive for the court. The arbitral award is then reviewed by a panel of arbitrators, so the court would be less likely to overturn the arbitrators’ decision. Second, because contracting parties sacrifice confidentiality when appealing the arbitral award in the courts,¹⁸⁰ manifest disregard should only be grounds for vacating an arbitral award in an arbitral appeals tribunal. Confidentiality is a benefit for international commercial businesses with exposure to risk.¹⁸¹ Mistakes happen in the globalized world of international business with large supply chains.¹⁸² Corporate reputations can be ruined with one mistake.¹⁸³ Furthermore, innovative technology companies value confidentiality, especially if the dispute concerns

¹⁷⁷ See, e.g., *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008) (holding that parties cannot expand judicial review in contract).

¹⁷⁸ See *id.* at 585 (2008) (commenting “maybe” when reviewing manifest disregard).

¹⁷⁹ *Bellantuono v. ICAP Sec. USA, LLC*, 557 F. App’x 168, 173 (3d Cir. 2014).

¹⁸⁰ *Under Seal v. Under Seal*, No. 16-CV-7820 (KBF), 2017 U.S. Dist. LEXIS 128000, at *19-20 (S.D.N.Y. July 27, 2017).

¹⁸¹ See *Aioi Nissay Dowa Ins. Co. v. ProSight Specialty Mgmt. Co.*, No. 12-Civ.-3274 (JPO), 2012 U.S. Dist. LEXIS 118233 (S.D.N.Y. Aug. 21, 2012).

¹⁸² *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 638 (1985).

¹⁸³ See Therese Frare, *Jack in the Box’s Worst Nightmare*, N. Y. TIMES (Feb. 6, 1993), <http://www.nytimes.com/1993/02/06/business/company-news-jack-in-the-box-s-worst-nightmare.html> [<https://perma.cc/2FFM-JRT7>] (discussing that the business reputation was ruined after food poisoning).

sensitive internal information about a product.¹⁸⁴ However, confidentiality limits the damage of these mistakes and allows the companies to continue doing business.¹⁸⁵ Unfortunately for the international commercial business, confidentiality is sacrificed when the losing arbitration party appeals an arbitral award in the court system.¹⁸⁶

To avoid this loss of confidentiality, the losing party, who believes that the arbitrator knowingly ignored an applicable law, could appeal the award to an arbitration appeals tribunal.¹⁸⁷ This arbitration appeals tribunal would keep the parties' confidentiality, allow the losing party to be heard for the alleged arbitrator's manifest disregard, and allow for minimal damage to their reputation or other business privacy concerns.¹⁸⁸

Third, because the arbitral appeals tribunal has lower procedural costs,¹⁸⁹ disputing parties would avoid additional legal costs. The Court encourages arbitration for international commercial disputes.¹⁹⁰ Arbitration allows for the parties to agree to the controlling law that will govern the commercial contract.¹⁹¹

¹⁸⁴ See *Breaking Down Apple's iPhone Fight with the U.S. Government*, N.Y. TIMES (March 21, 2016), <https://www.nytimes.com/interactive/2016/03/03/technology/apple-iphone-fbi-fight-explained.html> [<https://perma.cc/KW32-4N89>] (discussing how the business refused the government's demand to "unlock" an iPhone's confidential data).

¹⁸⁵ Granof & Aliment, *supra* note 1, at 58.

¹⁸⁶ Under Seal v. Under Seal, No. 16-CV-7820 (KBF), 2017 U.S. Dist. LEXIS 128000, at *19-20 (S.D.N.Y. July 27, 2017).

¹⁸⁷ See *Citigroup Glob. Mkts., Inc. v. Bacon*, 562 F.3d 349, 358 (5th Cir. 2009) (deciding not to apply manifest disregard).

¹⁸⁸ *But see Wells Fargo Bank, N.A. v. Wales LLC*, 993 F. Supp. 2d 409, 414 (S.D.N.Y. 2014) (ruling confidentiality clause does not overcome public access right); see also Richard J. Peltz-Steele, *U.S. Business Tort Liability for the Transnational Republisher of Leaked Corporate Secrets*, 1 AMITY J. MEDIA & COMM. STUD. 68, 74 (2011) (warning of the reputational risk of business confidentiality being compromised in the modern informational world).

¹⁸⁹ *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 219–20 (1985).

¹⁹⁰ *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 638 (1985).

¹⁹¹ MARGARET L. MOSES, *THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION*, THIRD EDITION 49 (3d ed. 2017).

Fourth, when an arbitrator knowingly ignores an applicable law in the binding contract, the contracting parties should have a remedy.¹⁹² On its face, manifest disregard is a reasonable ground for vacating an arbitral award.¹⁹³ In an international commercial contract, because the business parties would have equal bargaining power and would have mutually agreed to a governing law in the contract, the arbitrator should apply that applicable law.¹⁹⁴ Furthermore, the contracting business parties would have had time to consider the applicable contract law and the parties would have made a thoughtful decision to have that law govern their contract. If the arbitrator knowingly ignored the applicable law, then the arbitrator would be harming the contracting parties.¹⁹⁵ Therefore, the contracting parties would likely have a remedy of review for the arbitrator's manifest disregard of the law.¹⁹⁶

In contrast, there is a distrust among legal scholars that arbitration will not protect the parties' substantive rights.¹⁹⁷ Even after a ruling by an arbitration appeals tribunal, the losing party could still attempt to vacate the arbitral award in the United States court system.¹⁹⁸ This

¹⁹² Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 573 (2013).

¹⁹³ See Coffee Beanery, LTD. v. WW, L.L.C., 300 F. App'x 415, 419 (6th Cir. 2008).

¹⁹⁴ See MOSES, *supra* note 191, at 49.

¹⁹⁵ See Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 219–20 (1985).

¹⁹⁶ *But see* Citigroup Glob. Mkts., Inc. v. Bacon, 562 F.3d 349, 358 (5th Cir. 2009) (holding manifest disregard no longer permitted after *Hall Street* and arbitral awards “under the FAA may be vacated only for reasons provided in FAA § 10”).

¹⁹⁷ Because of the high deference to arbitral award in the United States, legal scholars tend to identify the shortcomings in such a legal position. A strain exists between the powers of arbitrators and judges for justly resolving disputes. See Leasure, *supra* note 82, at 101-02; Kristen M. Blankley, *Taming the Wild West of Arbitration Ethics*, 60 U. KAN. L. REV. 925, 925 (2012); Weathers P. Bolt, *Much Ado About Nothing: The Effect of Manifest Disregard on Arbitration Agreement Decisions*, Comment, 63 ALA. L. REV. 161, 162 (2011); Wendy L. Rovina, *Is It Time to Revise Your Arbitration Agreements or Rethink Your Alternative Dispute Strategy?*, 57 LA. B. J. 168, 169 (2009); David K. Kessler, *Why Arbitrate? The Questionable Quest for Efficiency and Arbitration After Hall Street Associates*, 8 FLA. ST. U. BUS. REV. 77, 92 (2009); Lindsay Biesterfeld, *Courts Have the Final Say: Does the Doctrine of “Manifest Disregard” Promote Lawful Arbitral Awards or Disguise Unlawful Judicial Review?*, 2006 J. DISP. RESOL. 627, 627 (2006).

¹⁹⁸ See generally Bacon, 562 F.3d at 358 (discussing the FAA grounds for vacating an arbitral award).

decision would undermine the efficiency goals of arbitration.¹⁹⁹ However, an arbitration appeals tribunal's decision could augment the arbitral award because the award has already been reviewed.²⁰⁰ In light of this, a court may be more deferential to a reviewed arbitral award and less likely to vacate the award.²⁰¹ The arbitration appeals tribunal's decision may also persuade the parties that the arbitral award should hold because the award has been appealed, and further appeal would be an unwise use of time, money and energy.²⁰² As another deterrence, the contracting parties would also be sacrificing the confidentiality of their agreement if one party attempts to vacate the arbitral award in the courts.²⁰³

The contracting parties should include an arbitration appeals provision in their contract, and the parties should expressly address the issue of manifest disregard. Consequently, the contracting parties could address the issue directly, which would increase the likelihood that the matter would not be appealed to the courts.

VII. CONTRACT LANGUAGE RECOMMENDATION ADDRESSING MANIFEST DISREGARD BY ARBITRATION APPELLATE REVIEW

Because there is limited judicial review of arbitral awards in United States courts,²⁰⁴ international commercial parties should consider adding contractual language providing for an appellate review of an arbitral award by appellate arbitrators. The International Court of Arbitration (ICC), the London Court of International Arbitration (LCIA), and the American Arbitration Association, International Center for Dispute Resolution (ICDR) are the foremost global forums for international arbitration.²⁰⁵

¹⁹⁹ See, e.g., Grenig & Scanza, *supra* note 77, at 21-22.

²⁰⁰ *Bacon*, 562 F.3d at 358.

²⁰¹ *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008) (discussing the Court's deference to arbitral awards and against a re-run of the dispute).

²⁰² *Id.* The Court is generally deferential of arbitral awards, so an arbitration appeals tribunal decision should strengthen that deferential position.

²⁰³ *Wells Fargo Bank, N.A. v. Wales LLC*, 993 F. Supp. 2d 409, 414 (S.D.N.Y. 2014) (holding that a confidentiality clause does not overcome public access right).

²⁰⁴ See *Hall Street*, 552 U.S. at 581, n.1; *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 573 (2013) (holding arbitrator's interpretation of the contract "holds, however good, bad, or ugly").

²⁰⁵ See *Granof & Aliment*, *supra* note 1, at 59.

The United States based Judicial Arbitration and Mediation Services, Inc. (JAMS) recommends contract language for appellate arbitration.²⁰⁶ The following AAA/ICDR recommendation could apply for the appellate standard of review: “Appeals must satisfy one of two alternatives to succeed. The arbitrator who issued the award must have either: An error that is material and prejudicial; [or] determinations of fact that are clearly erroneous. (AAA Optional Appellate Arbitration Rule Article A-10.)”²⁰⁷ The JAMS language recommendation that the “error of law that is material and prejudicial” may permit a review for manifest disregard because the arbitrator knowingly ignored a law that was material to the dispute.²⁰⁸ Furthermore, JAMS recommends this course of action for reviewing an award under dispute.²⁰⁹

However, the recommendations above could be improved with specific contractual language in the case of the arbitrator’s manifest disregard of the law. To address this issue, the contracting parties could add the language:

*If the arbitrator manifestly disregards the applicable law or knowingly ignores a controlling principle of law in the contract, the parties agree to resolve the dispute by a panel of three appellate arbitrators. The finding by the appeals panel is a final and complete resolution of this dispute.*²¹⁰

This contract language would give notice to the contracting parties and to appellate arbitrators. While it is true that the arbitrator’s decision may arguably be challenged for exceeding their powers,²¹¹ it is also true that the three appellate arbitrators can correct an error by the initial arbitrator in a timely and efficient manner. Thus, international commercial parties who would like to avoid the issue of manifest disregard should consider adding the provision to their contracts.

²⁰⁶ See *JAMS Optional Arbitration Appeal Procedure*, *supra* note 16.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *See id.*

²¹⁰ This language addresses the uncertainty of manifest disregard by having the contracting parties directly address the issue. The language would provide clarity to the arbitrator or judge on how the contracting parties would like to address manifest disregard if such a defense were raised.

²¹¹ The Federal Arbitration Act, 9 U.S.C.S. § 10(4) (1925).

VIII. CONCLUSION

Because there is a circuit split over manifest disregard,²¹² international commercial parties should consider an appellate review of an arbitral award by appellate arbitrators. This contract recommendation only applies to an arbitral award that is decided under United States law or in the United States. Manifest disregard is grounds, under United States common law, for not enforcing an arbitration award and applies when the arbitrator knew and understood the law, but the arbitrator disregarded this applicable law.²¹³ Appellate review of an arbitral award by appellate arbitrators would protect the goals of arbitration.²¹⁴ Furthermore, review by appellate arbitrators would avoid the public, more expensive, and prolonged judicial process through the United States court system.²¹⁵

In the future, the United States Supreme Court likely will expressly preclude non-statutory grounds for *vacatur* such as manifest disregard.²¹⁶ The Court has told the lower courts time and again to uphold arbitrators' decisions.²¹⁷ The losing party should not have a re-run of a dispute because the arbitrator decided for the other party.²¹⁸ Unfortunately, there is a legal trend for the losing party to use non-statutory grounds for non-enforcement of an arbitral award and undermine the goals of arbitration.²¹⁹ This trend holds especially true for employer contracts.²²⁰ However, for disputes arising between international commercial parties who share equal bargaining power, the Supreme Court of the United States will more likely uphold the arbitrator's decision.²²¹ The Court will probably rule that only the statutory grounds expressly written under the FAA will be

²¹² Sims & Bales, *supra* note 3, at 424.

²¹³ Mendelka v. Penson Fin. Servs., No. 16-CV-7393 (PKC), 2017 U.S. Dist. LEXIS 49536, at *11 (S.D.N.Y. Mar. 31, 2017).

²¹⁴ See Granof & Aliment, *supra* note 1, at 58 (discussing the benefits and goals of arbitration).

²¹⁵ *Id.*; see Grenig & Scanza, *supra* note 77, at 21-22 (arguing the frequency of post-awards procedures under the FAA in Sports Arbitration).

²¹⁶ Hall Street Associates, L.L.C. v. Mattel, Inc., 552 U.S. 576, 586 (2008).

²¹⁷ Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 573 (2013).

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ See James, *supra* note 162, at 534.

²²¹ AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 341-43 (2011) (analyzing unequal bargaining power and likelihood of unconscionable business practices).

permitted.²²² Thus, the arbitrators' decisions will hold no matter how "good, bad or ugly."²²³

²²² Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 573 (2013).

²²³ *Id.*