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Consistent With Inconsistency: The Sixth Circuit Keeps Manifest Disregard After *Hall Street*

*Coffee Beanery, Ltd. v. WW, L.L.C.*¹

I. INTRODUCTION

For over half a century, courts have used the doctrine of manifest disregard as a ground for vacating arbitration awards.² However, the Supreme Court's ruling in *Hall Street Associates. v. Mattel* raised questions among lower courts regarding the viability of the doctrine after the *Hall Street* decision.³ Today, many lower courts differ in their application of the doctrine. Some courts claim that the *Hall Street* decision has ended the viability of manifest disregard.⁴ Others claim that the doctrine lives on as an interpretation of section 10 of the Federal Arbitration Act (FAA),⁵ despite the Supreme Court's ruling in *Hall Street*.⁶

Recently, in *Coffee Beanery, Ltd. v. WW, L.L.C.*, the U.S. Circuit Court of Appeals for the Sixth Circuit sided with those courts that claim the manifest disregard doctrine survives after *Hall Street*.⁷ The decision in *Coffee Beanery* did not hold that manifest disregard is an interpretation of the FAA, as did many lower courts after *Hall Street*.⁸ Like some other courts, though, the decision in *Coffee Beanery* maintains the doctrine of manifest disregard in a way that seems to contradict some important aspects of the *Hall Street* decision.

II. FACTS AND HOLDING

In early 2003, Richard Welshans and Deborah Williams, owners of WW, L.L.C. (WW), began to research the possibility of opening a coffee shop in Anna-

1. 300 F. App'x 415, 419 (6th Cir. 2008).

2. The Federal Arbitration Act (FAA) provides four explicit grounds for vacatur of arbitration awards. See 9 U.S.C. § 10 (2006). "Manifest disregard" of the law is not among these grounds. *Id.* As will be explained later in much more detail, manifest disregard is considered to be either a judicially-created doctrine or an interpretation of the FAA that allows a reviewing court to overturn arbitration rulings.

3. See *Hall St. Assocs. v. Mattel*, 128 S. Ct. 1396.

4. See *Citigroup Global Mkts., Inc. v. Bacon*, 562 F.3d 349, 350 (5th Cir. 2009); *Prime Therapeutics, L.L.C. v. Omnicare, Inc.*, 555 F. Supp. 2d 993, 999 (D. Minn. 2008); *Ramos-Santiago v. United Parcel Service*, 524 F.3d 120, 124 n.3 (1st Cir. 2008) (noting in dicta that manifest disregard is not a proper ground for vacatur under the FAA).

5. 9 U.S.C. § 10 (2006).

6. *Stolt-Nielson SA v. AnimalFeeds Int'l Corp.*, 548 F.3d 85, 94 (2d Cir. 2008); *Comedy Club, Inc. v. Improv West Assocs.*, 553 F.3d 1277, 1290 (9th Cir. 2008); *Joseph Stevens & Co. v. Cikaneck*, 2008 WL 2705445, *4 (N.D. Ill. 2008) (citing *Wise v. Wachovia Sec., L.L.C.*, 450 F.3d 265, 268-69 (7th Cir. 2006)).

7. *Coffee Beanery, Ltd., v. WW, L.L.C.*, 300 F. App'x 415, 418-19 (6th Cir. 2008).

8. *Id.* at 419-20.

polis, Maryland.⁹ WW's research brought to bear the possibility of purchasing a franchise from The Coffee Beanery, Ltd. (Coffee Beanery).¹⁰ WW contacted Kevin Shaw (Shaw), Coffee Beanery's vice president of real estate, in June 2003 regarding a Coffee Beanery franchise.¹¹ Later that year, WW visited Coffee Beanery's headquarters in Flushing, Michigan, to gather more information about possibly purchasing a franchise.¹² The parties later disagreed over the nature of that visit.¹³ WW claimed that they were persuaded to purchase a Café Store as opposed to a traditional Coffee Beanery store.¹⁴ WW asserted that Shaw suggested Café Stores were more lucrative and also that he made false representations concerning the amount of money WW could expect to make.¹⁵ Coffee Beanery claimed it provided proper disclosure and made no false representations.¹⁶ During the visit, though, WW agreed to purchase a Café Store and signed a franchise agreement that allowed them to purchase and operate the store in Annapolis.¹⁷

WW encountered problems with their store as soon as it opened for business in 2003, and by 2005, WW had suffered significant losses.¹⁸ WW filed suit on December 15, 2005, in the U.S. District Court for the District of Maryland, claiming Coffee Beanery violated the Maryland Franchise Registration and Disclosure Law (Franchise Act); WW also asserted claims for detrimental reliance, intentional misrepresentation, and negligent misrepresentation.¹⁹

On January 19, 2006, the Securities Commissioner of Maryland, in a civil proceeding completely independent of WW's action, issued an order to show cause against Coffee Beanery and Shaw.²⁰ The Commissioner's order alleged that Coffee Beanery and Shaw had violated various disclosure and fraud provisions of the Franchise Act.²¹ On September 12, 2006, the Commissioner and Coffee Beanery reached a consent order requiring: "(1) that the Coffee Beanery and Shaw cease selling franchises in violation of Maryland Franchise Law; and (2) that WW

9. *Id.* at 416. WW is a Maryland Corporation, with its principal place of business located in Annapolis, Maryland. *Id.*

10. *Id.* Coffee Beanery is a Michigan corporation with its principal place of business located in Flushing, Michigan. Its main business involves selling and operating Coffee Beanery franchises in the U.S. *Id.*

11. *Id.*

12. *Id.* WW toured the facility during this trip and also met with employees and sampled products. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* WW claimed that Shaw led it to believe that Café stores were more lucrative than standard stores because they were not "seasonal." The Café store also required an up-front franchise fee of \$25,000. WW also claimed that Shaw projected income from a Café store to be \$125,000. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 417. Before filing the claim in federal court, WW originally submitted a demand for mediation and arbitration to the American Arbitration Association. However, WW soon dropped the demand claiming that this dispute did not fall within the scope of the parties' arbitration agreement. *Id.*

20. *Id.*

21. See MD. CODE ANN., BUS. REG. § 14-210 (West 2009); *Coffee Beanery*, 300 F. App'x at 417. The Commissioner's allegations were nearly identical to WW's. The Commissioner claimed that "the Coffee Beanery made material misrepresentations in connection with the offer and sale of Café Store franchises, that Shaw inappropriately told prospective buyers that they could expect a specific income level from the operation of a Café Store, and that the Coffee Beanery failed to provide prospective franchisee a copy of the offering prospectus and a proposed franchise agreement." *Id.*

be entitled to a rescission offer that would be kept open for thirty days from the date of notice.”²² Coffee Beanery retained the right to deny any facts or conclusions of the consent order in any proceeding in which the Commissioner was not a party.²³

Meanwhile, Coffee Beanery filed a petition to compel arbitration in the U.S. District Court for the Eastern District of Michigan on January 30, 2006.²⁴ Coffee Beanery claimed that under the franchise agreement, any dispute between WW and Coffee Beanery must be resolved by arbitration.²⁵ The court granted the petition.²⁶ WW submitted the dispute to arbitration in Michigan in January 2007.²⁷ The arbitrator, JoAnne Barron, found in favor of Coffee Beanery on all claims after an eleven-day hearing.²⁸

WW filed a motion to vacate the award on April 18, 2007, in the Eastern District of Michigan.²⁹ The court confirmed the award, finding that, among other things, the arbitrator’s decision did not manifestly disregard any laws or facts.³⁰

On appeal, WW claimed that the arbitrator ignored undisputed evidence that Shaw had misled it regarding promotions, contracts, and potential earnings, and that he had failed to disclose his prior felony conviction for grand larceny.³¹ WW argued that the arbitrator’s decision to ignore this evidence, especially the conviction for grand larceny, was in manifest disregard of Maryland franchise law.³² Coffee Beanery acknowledged that it had not disclosed Shaw’s conviction, but it argued that disclosure of this type of conviction was not covered by the Franchise Act.³³

The U.S. Court of Appeals for the Sixth Circuit held that federal courts may still vacate arbitration awards for manifest disregard of the law and vacated the award due to the arbitrator’s manifest disregard of the Franchise Act.³⁴

III. LEGAL HISTORY

A. Arbitration and the FAA

Arbitration is a process by which parties agree to settle their disputes through the use of a detached and disinterested neutral.³⁵ The parties may agree by con-

22. Coffee Beanery, 300 F. App’x at 417.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* On March 23, 2006, the Maryland district court issued an order staying the case in deference to the state administrative proceedings and the Eastern District of Michigan, and administratively closed the case. *Id.* at 417, n. 1.

27. *Id.* WW did not accept the rescission offer mandated by the consent order. *Id.*

28. *Id.* Among other things, the arbitrator found that Coffee Beanery was not required to disclose Shaw’s felony conviction for grand larceny under the Franchise Act. *Id.* at 419.

29. *Id.* at 417-18.

30. *Id.* The court also found that WW failed to establish “evident partiality,” that the parties were not required to mediate their claims, and that WW failed to establish fraud or perjury. WW filed for reconsideration of the opinion and order, but the request was denied. *Id.*

31. *Id.* at 419.

32. *Id.*

33. *Id.* at 420.

34. *Id.* at 421.

tract to allow the arbitrator to listen to and rule on their claims under any rules and procedures they have negotiated.³⁶ The result is a process which, to many, presents a speedy, efficient, and cost-effective alternative to traditional litigation.³⁷ In 1925, Congress passed the FAA as a response to the judicial system's refusal to enforce private arbitration agreements.³⁸ Congress passed the FAA in order to replace this judicial indisposition with a national policy favoring agreements to arbitrate and placing them "on equal footing with all other contracts."³⁹ The FAA makes any contract agreement to arbitrate "valid, irrevocable, and enforceable" as long as the transaction involves commerce.⁴⁰ The agreement is enforceable in both state and federal courts.⁴¹ Section 9 of the act provides that a court must confirm an arbitration award unless it is vacated under section 10.⁴² Section 10 provides a court with four different circumstances in which it may vacate an award.⁴³ Some courts use section 10's fourth ground for vacatur—the arbitrator exceeding her powers—to justify manifest disregard as an interpretation of the FAA.⁴⁴

B. The Wilko Decision

In 1953, the Supreme Court decided a case that, until recently, many courts interpreted as crafting grounds for vacating an arbitration award in addition to section 10 of the FAA.⁴⁵ In *Wilko v. Swan*,⁴⁶ the Supreme Court decided whether the Securities Act of 1933 superseded arbitration agreements purporting to cover claims under that act.⁴⁷ In dictum, the Court said, "[T]he 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."⁴⁸ The Court went on to say

35. 1 DOMKE ON COMMERCIAL ARBITRATION § 1:1 (Larry E. Edmonson ed., Thompson West 3d ed. 2009).

36. *Id.*

37. *Id.*

38. *Hall St. Assocs. v. Mattel*, 128 S. Ct. 1396, 1408 (Stevens & Kennedy, JJ., dissenting) (2008).

39. *Id.* at 1402 (majority opinion).

40. 9 U.S.C. § 2 (2006).

41. *Hall St. Assocs.*, 128 S. Ct. at 1402.

42. 9 U.S.C. § 9 (2006).

43. *Id.* § 10. These circumstances are:

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

Id.

44. *Hall Street Assocs.*, 128 S. Ct. at 1404 (Stevens & Kennedy, JJ., dissenting).

45. *Id.* at 1403 ("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.").

46. 346 U.S. 427 (1953), *overruled on other grounds by* *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477 (1989).

47. *Id.* at 430-38.

48. *Wilko*, 346 U.S. at 436-37.

that the FAA “contains no provision for judicial determination of legal issues such as is found in the English law.”⁴⁹

After *Wilko*, nearly every U.S. federal circuit adopted some form of “manifest disregard of the law” as a basis for vacating an arbitration award in addition to the provisions of section 10 of the FAA.⁵⁰ This doctrine is construed narrowly and awards are vacated pursuant to it only in rare circumstances.⁵¹ The wording of the doctrine is subject to variation in each jurisdiction, but courts generally apply the following two-part test: “(1) Did the arbitrator know of the governing legal principle yet refused to apply it or ignored it all together? and (2) Was the law ignored by the arbitrators well defined, explicit and clearly applicable to the case?”⁵² Stated another way, a party must establish that the arbitrator recognized that a controlling legal principle existed but intentionally decided not to apply it.⁵³

C. *The Hall Street Decision*

After *Wilko*, courts honed the manifest disregard doctrine and applied it as a judicially created ground for vacating arbitration awards over the next half-century. In 2008, the Supreme Court’s opinion in *Hall Street Associates v. Mattel* led many courts to question whether the manifest disregard doctrine still existed.⁵⁴ In *Hall Street*, the parties disputed a lease in which Hall Street, the landlord, claimed that the tenant, Mattel, was obligated to indemnify Hall Street for the costs of an environmental cleanup.⁵⁵ The parties drew up an arbitration agreement, which the district court approved, stating that the district court could “vacate, modify or correct any award: (i) where the arbitrator’s findings of facts are not supported by substantial evidence, or (ii) where the arbitrator’s conclusions of law are erroneous.”⁵⁶ This agreement allowed a court to vacate an arbitration award in a way which was negotiated by the parties, but it was inconsistent with sections 10 and 11 of the FAA.⁵⁷ The question for the Supreme Court was whether sections 10 and 11 of the FAA are the exclusive grounds for vacatur of arbitra-

49. *Id.* at 437.

50. *See, e.g.*, McCarthy v. Citigroup Global Mkts., Inc., 463 F.3d 87, 91 (1st Cir. 2006); Hoeft v. MVL Group, Inc., 343 F.3d 57, 64 (2d Cir. 2003); Dluhos v. Strasberg, 321 F.3d 365, 370 (3d Cir. 2003); Three S Delaware Inc. v. DataQuick Info. Sys., Inc., 492 F.3d 520, 527 (4th Cir. 2007); Prestige Ford v. Ford Dealer Computer Servs., Inc., 324 F.3d 391, 395 (5th Cir. 2003); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jaros, 70 F.3d 418, 421 (6th Cir. 1995); Halim v. Great Gatsby’s Auction Gallery, Inc., 516 F.3d 557, 563 (7th Cir. 2008); Manion v. Nagin, 392 F.3d 294, 298 (8th Cir. 2004); Collins v. D.R. Horton, Inc., 505 F.3d 874, 879 (9th Cir. 2007); Dominion Video Satellite, Inc. v. Echostar Satellite L.L.C., 430 F.3d 1269, 1275 (10th Cir. 2005); Scott v. Prudential Sec., Inc., 141 F.3d 1007, 1017 (11th Cir. 1998).

51. *See* Michael H. LeRoy & Peter Feuille, *Happily Never After: When Final and Binding Arbitration Has No Fairy Tale Ending*, 13 HARV. NEGOT. L. REV. 167, 205 (2008). *See also* 1 DOMKE, *supra* note 35, § 38:9.

52. *See* 1 DOMKE, *supra* note 35, § 38:9.

53. Christopher R. Drahozal, *Codifying Manifest Disregard*, 8 NEV. L.J. 234, 235 (2007) (citing *Cytcy Corp. v. Deka Prods. Ltd. P’ship*, 439 F.3d 27, 35 (1st Cir. 2006)).

54. Arthur D. Felsenfeld & Antonette Ruocco, *‘Manifest Disregard’ after ‘Hall Street’: The Early Returns*, 9/18/2008 N.Y.L.J. 24, (col. 1) (2008).

55. *Hall St. Assocs. v. Mattel*, 128 S. Ct. 1396, 1400 (2008).

56. *Id.* at 1400-01.

57. *See* 9 U.S.C. §§ 10, 11 (2006)

tion agreements within its jurisdiction when the parties have contracted otherwise.⁵⁸

The Court held that sections 10 and 11 “provide the FAA’s exclusive grounds for expedited vacatur and modification.”⁵⁹ The Court considered Hall Street’s argument that under *Wilko* courts had accepted expanded judicial review authority in the form of the manifest disregard doctrine.⁶⁰ The Court noted the vagueness of the *Wilko* dicta and reasoned that “[m]aybe the term ‘manifest disregard’ was meant to name a new ground for review, but maybe it merely referred to the [section 10] grounds collectively, rather than adding to them.”⁶¹ The Court also reasoned that “manifest disregard” might have been meant as a shorthand way of referring to section 10(a)(3) or section 10(a)(4).⁶² Whatever the meaning of the *Wilko* dicta, the Court in Hall Street found “no reason to accord it the significance that Hall Street urges.”⁶³

D. Life After Hall Street

The *Hall Street* decision cast serious doubt on whether “manifest disregard” of the law is still a viable option for vacating an arbitration award.⁶⁴ That decision, which neither completely affirmed nor extinguished the doctrine, creates problems considering that every federal circuit had previously adopted some form of the doctrine.⁶⁵ Since *Hall Street*, several courts have come to different conclusions regarding whether the doctrine still exists or has become extinct.

In *Citigroup Global Markets, Inc. v. Bacon*,⁶⁶ Citigroup moved to vacate an arbitration award regarding unauthorized withdrawals from an Individual Retirement Account.⁶⁷ The district court granted the motion to vacate after finding that the award was made in manifest disregard of the law.⁶⁸ The U.S. Court of Appeals for the Fifth Circuit considered the question of whether manifest disregard remained a valid, independent ground for vacatur after the *Hall Street* decision.⁶⁹

58. *Hall St. Assocs.*, 128 S. Ct. at 1400.

59. *Id.* at 1403.

60. *Id.*

61. *Id.* at 1404.

62. *Id.*

63. *Id.* The Court also found that, regarding *Wilko*’s language, “[a]lthough it is true that the Court’s discussion includes some language arguably favoring Hall Street’s position, arguable is as far as it goes.” *Id.* at 1403.

64. See Hans Smit, *The Calm and the Storm: Arbitration Experts Speak Out On Hall Street Associates*, 26 ALTERNATIVES TO HIGH COST LITIG. 104 (May 2008).

65. See *McCarthy v. Citigroup Global Mkts., Inc.*, 463 F.3d 87, 91 (1st Cir. 2006); *Hoefl v. MVL Group, Inc.*, 343 F.3d 57, 64 (2d Cir. 2003); *Dluhos v. Strasberg*, 321 F.3d 365, 370 (3d Cir. 2003); *Three S Delaware, Inc. v. DataQuick Info. Sys., Inc.*, 492 F.3d 520, 527 (4th Cir. 2007); *Prestige Ford v. Ford Dealer Computer Servs., Inc.*, 324 F.3d 391, 395 (5th Cir. 2003); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jaros*, 70 F.3d 418, 421 (6th Cir. 1995); *Halim v. Great Gatsby’s Auction Gallery, Inc.*, 516 F.3d 557, 563 (7th Cir. 2008); *Manion v. Nagin*, 392 F.3d 294, 298 (8th Cir. 2004); *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 879 (9th Cir. 2007); *Dominion Video Satellite, Inc. v. Echostar Satellite L.L.C.*, 430 F.3d 1269, 1275 (10th Cir. 2005); *Scott v. Prudential Sec., Inc.*, 141 F.3d 1007, 1017 (11th Cir. 1998).

66. 562 F.3d 349 (5th Cir. 2009).

67. *Id.* at 350.

68. *Id.*

69. *Id.* at 355.

The Court held that manifest disregard must be abandoned as an independent, non-statutory ground for vacatur and that arbitration awards under the FAA must only be vacated under the grounds in section 10.⁷⁰

In *Prime Therapeutics L.L.C. v. Omnicare, Inc.*,⁷¹ the plaintiff moved to vacate an arbitration award relating to a Pharmacy Network Agreement.⁷² In *Prime*, the plaintiff argued that the arbitrator's award was in manifest disregard of the law.⁷³ The plaintiff argued that the *Hall Street* decision "did not overrule judicially created grounds for vacating arbitration awards."⁷⁴ The court disagreed, stating that under *Hall Street*, parties are not allowed to expand on sections 10 and 11 of the FAA by contract.⁷⁵ Next, the court found 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."⁷⁶ Thus, the court dismissed the plaintiff's manifest disregard claim, finding that it was not one of the exclusive grounds for vacatur under the FAA.⁷⁷

Finally, in *Ramos-Santiago v. United Parcel Service*,⁷⁸ the U.S. Court of Appeals for the First Circuit addressed manifest disregard briefly in dictum.⁷⁹ The court said, "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."⁸⁰

While some courts have concluded that the manifest disregard doctrine is no longer valid, others have concluded that it still survives. In *Stolt-Nielson S.A. v. AnimalFeeds International Corp.*,⁸¹ the U.S. Court of Appeals for the Second Circuit recognized that its precedent viewing manifest disregard as an additional ground to the FAA was not consistent with *Hall Street's* holding and that the grounds for vacatur and modification in the FAA are exclusive.⁸² However, the court mentioned that *Hall Street* questioned whether manifest disregard was meant to refer to section 10 grounds instead of adding to them.⁸³ Specifically, the court decided that, consistent with *Hall Street*, it could vacate arbitration awards where "the arbitrator knew of the relevant [legal] principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the

70. *Id.* at 358.

71. 555 F. Supp. 2d 993 (D. Minn. 2008).

72. *Id.* at 995-96.

73. *Id.* at 996.

74. *Id.* at 997. The court acknowledged that "the Eighth Circuit has recognized two 'extremely narrow' extra-statutory grounds for vacating an arbitration award," including manifest disregard of the law. *Id.*

75. *Id.* at 999.

76. *Id.*

77. *Id.*

78. 524 F.3d 120 (1st Cir. 2008).

79. *Id.* at 124.

80. *Id.* at 124 n.3 (emphasis added). The court found *Hall Street* not applicable in this case though, since the claim was not brought under the FAA. *Id.* at 124.

81. 548 F.3d 85 (2d Cir. 2008).

82. *Id.* at 94.

83. *Id.* at 94-95.

governing law by refusing to apply it.”⁸⁴ The court concluded by stating that this view of the manifest disregard doctrine was encompassed by section 10(a)(4) of the FAA, which allows for vacatur where the arbitrator has exceeded her powers.⁸⁵

Similarly, in *Comedy Club, Inc. v. Improv West Associates*,⁸⁶ the U.S. Court of Appeals for the Ninth Circuit considered the impact of *Hall Street* on its manifest disregard precedent.⁸⁷ The court began by recognizing that, in the Ninth Circuit, manifest disregard is shorthand for section 10(a)(4) of the FAA.⁸⁸ The court employed the same reasoning as the Second Circuit and stated that, for an award to be in manifest disregard of the law, the record must be clear that the arbitrator recognized the particular law and chose to ignore it.⁸⁹ Thus, the court concluded, “manifest disregard of the law remains a valid ground for vacatur because it is a part of [section] 10(a)(4).”⁹⁰

Finally, in *Joseph Stevens & Co. v. Cikanek*,⁹¹ the U.S. District Court for the Northern District of Illinois explained the *Hall Street* decision’s effect on the Seventh Circuit’s manifest disregard precedent.⁹² The court stated that in the Seventh Circuit, a court may vacate an award for manifest disregard only “by directing the parties to violate the law or by failing to adhere to the legal principles specified by the contract.”⁹³ The court noted that *Hall Street* questioned whether manifest disregard was either an interpretation of the FAA or if it was a judicially created additional ground.⁹⁴ Regardless, the court concluded that the specific manifest disregard standard of the Seventh Circuit was cabined entirely within section 10(a)(4) of the FAA.⁹⁵

Before *Hall Street*, the Sixth Circuit applied a fairly standard test for manifest disregard claims.⁹⁶ The *Hall Street* decision cast doubt on courts’ analysis of manifest disregard claims, and as a result is now forcing courts, such as the Sixth Circuit Court of Appeals, to make their own determinations as to the breadth of the Supreme Court’s holding.

84. *Id.* at 95 (quoting *Westerbeke Corp. v. Daihatsu Motor Co.*, 304 F.3d 200, 217 (2d Cir. 2002)). The court added that its “review for manifest disregard is ‘severely limited,’ ‘highly deferential,’ and confined to ‘those exceedingly rare instances’ of ‘egregious impropriety on the part of the arbitrators.’” *Id.* (quoting *Duferco Int’l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 389 (2d Cir. 2003)).

85. *Id.*

86. 553 F.3d 1277 (9th Cir. 2009).

87. *Id.* at 1289-90.

88. *Id.* at 1290.

89. *Id.*

90. *Id.*

91. 2008 WL 2705445 (N.D. Ill. Jul. 9, 2008).

92. *Id.* at *4.

93. *Id.*

94. *Id.*

95. *Id.* The court found that its narrow definition of manifest disregard would qualify as an instance where the arbitrator had “exceeded their powers.” *Id.*

96. *See Coffee Beanery Ltd. v. WW, L.L.C.*, 300 F. App’x 415, 418 (6th Cir. 2008). “Thus, an arbitrator acts with manifest disregard if (1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrators refused to heed that legal principle.” *Id.* (quotations omitted).

IV. INSTANT DECISION

In *Coffee Beanery*, the U.S. Court of Appeals for the Sixth Circuit first analyzed past Sixth Circuit precedent that addressed vacating arbitration awards.⁹⁷ The court found that, under the FAA, there is a presumption that arbitration awards will be confirmed, and that the standard for review is extremely limited.⁹⁸ Additionally, the court stated that its ability to vacate an arbitration award was limited to the nearly exclusive grounds of section 10 of the FAA.⁹⁹

However, the court said that it could vacate an award that was in manifest disregard of the law.¹⁰⁰ The court noted that, in the Sixth Circuit, a court could not vacate an award for a simple error in interpretation or application of the law.¹⁰¹ Instead, for the court to vacate an award, the arbitrator's decision must "fly in the face" of the applicable legal principle.¹⁰² Therefore, the court found that manifest disregard of the law exists if: "(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrators refused to heed that legal principle."¹⁰³

Next, the court addressed the *Hall Street* decision. The court acknowledged that the decision in *Hall Street* significantly reduced the grounds for federal courts to vacate arbitration awards, but it stated that the decision had not eliminated the manifest disregard doctrine entirely.¹⁰⁴ The court reasoned that *Hall Street* did not determine the precise meaning of *Wilko* but only held that *Wilko* did not allow parties to contractually expand judicial review of arbitration agreements.¹⁰⁵ The court found it significant that, since *Wilko*, every circuit had adopted a form of the manifest disregard doctrine.¹⁰⁶ Therefore, because manifest disregard was such a "universally recognized principle," and since *Hall Street* had not explicitly rejected the doctrine, the court decided to continue to apply the doctrine.¹⁰⁷

The court then addressed whether the arbitrator had manifestly disregarded the law.¹⁰⁸ While WW asserted that Shaw's conviction for grand larceny should have been disclosed, the arbitrator found that, under the Franchise Act, Shaw's conviction was not a felony conviction that Coffee Beanery was required to disclose.¹⁰⁹ Conversely, the court, in examining the common law of Maryland, found that the Franchise Act did require Coffee Beanery to disclose any felony conviction.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* The court stated that, in *Wilko*, the Supreme Court had implicitly recognized manifest disregard of the law as a basis for judicial review of arbitration awards. *Id.*

101. *Id.*

102. *Id.* (quoting *Merrill Lynch v. Jaros*, 70 F.3d 418, 421 (6th Cir. 1995)).

103. *Id.* (quoting *Jaros*, 70 F.3d at 421).

104. *Id.*

105. *Id.* at 418-19. In coming to this conclusion, the court discussed *Hall Street's* language concerning the possible interpretations of the *Wilko* dicta. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* The court declined to address WW's other arguments, including that: (1) the Arbitrator overreached her authority, (2) the franchise agreement was unconscionable, and (3) the Arbitrator had a conflict of interest. *Id.*

109. *Id.* at 420.

tion involving “misappropriation of property.”¹¹⁰ The court reasoned that, by definition, “misappropriation of property” included convictions for grand larceny.¹¹¹ The court found that the law could not be more clear and that the arbitrator knew that this law was applicable to the situation.¹¹²

However, the court determined that the arbitrator’s finding—that the non-disclosure of Shaw’s felony conviction did not cause damage to WW—did not constitute “a refusal to heed a clearly defined legal principle.”¹¹³ The court believed that this finding concerned whether WW was entitled to damages under the Franchise Act but not whether WW was entitled to a rescission of the franchise agreement.¹¹⁴ Therefore, since the arbitrator expressly declined to follow an established legal principle regarding the grand larceny conviction, the court found that WW should be allowed to seek a rescission and other remedies in a court of law.¹¹⁵ Finally, the court contemplated the purpose of the Franchise Act and interpreted that it was to allow parties to make informed decisions when deciding with whom they would enter into franchise agreements.¹¹⁶ Since WW had been deprived of the notice required by the statute, the court found that WW should not be bound by the arbitration provisions which were part of the agreement WW was fraudulently induced into signing in the first place.¹¹⁷

V. COMMENT

A. *The Sixth Circuit’s Decision Fails To Address Pertinent Issues*

Due to the relatively short amount of time since the Supreme Court’s decision in *Hall Street*, there are few circuit courts of appeals decisions dealing directly with whether the manifest disregard doctrine survived that decision. In *Coffee Beanery*, the Sixth Circuit had the opportunity to clear up some of the issues left out of the *Hall Street* decision. For example, does the manifest disregard doctrine survive at all after *Hall Street*? Even though the Sixth Circuit held that it does, the court failed to address relevant issues such as whether manifest disregard is only a judicially created doctrine or whether the doctrine is an interpretation of section 10(a)(4) of the FAA. Instead, the court seemed satisfied with a conclusory analysis and appeared more inclined to keep such a “universally recognized principle” than to attempt a thorough analysis of the *Hall Street* decision.¹¹⁸

A more thorough analysis of *Hall Street* could have done more to bring unity to the inconsistent state of the law currently surrounding the manifest disregard doctrine. Such an analysis might have led the Sixth Circuit to find that not only is manifest disregard no longer a viable judicially created ground for vacatur, it also

110. *Id.*; See MD. CODE ANN., BUS. REG. §14-216(c)(8)(i) (West 2004).

111. *Coffee Beanery Ltd.*, 300 F. App’x at 420. “Larceny in Maryland is a common-law crime, consisting of the taking and carrying away of the personal property of another with intent to deprive the owner of the property permanently.” *Id.* (quoting *Benton v. Maryland*, 395 U.S. 784, 803 (1969)).

112. *Id.* at 420-21.

113. *Id.* at 421.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at 419.

should not be interpreted as part of section 10(a)(4), as other courts which have kept manifest disregard have done.¹¹⁹

At first glance, *Hall Street* seems to imply that the manifest disregard doctrine is no longer a viable ground for vacatur at all since the Supreme Court ultimately holds that the FAA's grounds for vacatur are exclusive and that manifest disregard of the law is not one of them.¹²⁰ However, the Court never expressly holds that manifest disregard is no longer good law.¹²¹ In the case, *Hall Street* argued that the FAA grounds for vacatur were not exclusive because *Wilko* courts had used manifest disregard as an additional, judicially created doctrine for vacatur.¹²² The Court rejected that argument, thus rejecting manifest disregard as a judicially created additional ground.¹²³ However, the Court left open the possibility that manifest disregard survived as an interpretation of section 10 of the FAA.¹²⁴

Unlike some other courts which continue to apply manifest disregard after *Hall Street*, it is noteworthy that the *Coffee Beanery* court did not conclude that the doctrine is contained within section 10 of the FAA.¹²⁵ In fact, the Sixth Circuit found that while *Hall Street* did reduce the ability for vacatur outside of section 10, it did not foreclose manifest disregard completely.¹²⁶ The court found that under *Hall Street*, *Wilko* did not allow parties to expand judicial review of arbitration awards by contract.¹²⁷ The court's brief discussion of *Hall Street* implies that, in the Sixth Circuit, manifest disregard of the law is still a viable "judicially invoked" ground for vacatur in addition to section 10 grounds. This conclusion is supported by the significance that the court gives to the *Hall Street* language stating "[m]aybe the term 'manifest disregard' [in *Wilko*] was meant to name a new ground for review."¹²⁸ As previously mentioned, *Hall Street* held that the FAA's grounds for vacating an arbitration award are exclusive.¹²⁹ If the manifest disregard dicta in *Wilko* was meant to name a new ground for vacatur, then this ground would be in addition to those explicitly enumerated in the FAA.¹³⁰

Thus, it seems that *Hall Street* precludes courts from using manifest disregard as a ground for vacatur unless it is interpreted as part of section 10.¹³¹ In *Coffee Beanery*, the Sixth Circuit made no attempt to synthesize the manifest disregard

119. See *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 548 F.3d 85 (2d Cir. 2008); *Comedy Club, Inc. v. Improv West Assocs.*, 553 F.3d 1277 (9th Cir. 2008); *Joseph Stevens & Co. v. Cikanek*, 2008 WL 2705445 (N.D. Ill., Jul. 9, 2008).

120. *Hall St. Assocs. v. Mattel, Inc.*, 128 S. Ct. 1396, 1403 (2008).

121. *Id.* at 1404.

122. *Id.* at 1403.

123. *Id.* at 1404.

124. *Id.* The Court said that maybe manifest disregard "merely referred to the §10 grounds collectively, rather than adding to them." *Id.* "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.'" *Id.*

125. *Coffee Beanery Ltd. v. WW, L.L.C.*, 300 F. App'x 415, 419 (6th Cir. 2008).

126. *Id.* at 418-19.

127. *Id.*

128. *Id.* at 419 (quoting *Hall St.*, 128 S. Ct. at 1404 (2008)). This language was merely dicta and conjecture by the Court, not actually a holding of the case. *Id.* (citing *Hall St.*, 128 S. Ct. at 1404).

129. *Hall St.*, 128 S. Ct. at 1403.

130. 1 DOMKE, *supra* note 35, § 39:7.

131. See *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 548 F.3d 85, 94 (2d Cir. 2008) (*Hall Street* is "undeniably inconsistent with some dicta by this Court treating the 'manifest disregard' standard as a ground for vacatur entirely separate from those enumerated in the FAA.").

doctrine with the FAA.¹³² The holding of the case, therefore, seems to contradict the holding of *Hall Street*.¹³³ The court's odd analysis, though, supports the general feeling among some commentators that there has not been any consistency in court decisions concerning the applicability, or the viability, of the manifest disregard doctrine after *Hall Street*.¹³⁴

B. Manifest Disregard Does Not Fit Within Section 10(a)(4)

Due to the present inconsistency among circuits, an essential question which the Sixth Circuit failed to address is whether manifest disregard should survive an interpretation of section 10 of the FAA. While section 10 contains four grounds for vacatur,¹³⁵ many courts find manifest disregard to be an interpretation of section 10(a)(4), which allows vacatur where an arbitrator has exceeded her powers or imperfectly executed them.¹³⁶ However, this line of reasoning is inconsistent with *Hall Street* and the traditional interpretations of section 10(a)(4).

First, an arbitrator's powers are determined by the parties to the contract containing the arbitration agreement.¹³⁷ Traditionally, section 10(a)(4) applies when the arbitrator decides issues or grants relief that was not considered by the arbitration agreement.¹³⁸ Under section 10(a)(4), the reviewing court must determine whether the arbitrator had the authority under the contract to decide an issue, not whether the issue was decided correctly.¹³⁹ If the court finds that the arbitrator has decided issues within her scope of authority under the contract, then the court must defer to the arbitrator's interpretation of the law even if the court is convinced that the arbitrator committed a serious error.¹⁴⁰

In many circumstances, parties give arbitrators the authority to decide their claims based on a certain body of law.¹⁴¹ In that situation, the parties have agreed that an arbitrator, and not a court, will interpret the body of law they have chosen.¹⁴² Thus, arbitrators would not "exceed their powers" by interpreting the law, regardless of whether the interpretation was "correct," because interpreting the

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

133. Compare *Hall St.*, 128 S. Ct. 1396, 1403 (holding that the grounds for vacatur in the FAA are exclusive), with *Coffee Beanery*, 2008 WL 4899478, *4 (leaving open the possibility that the manifest disregard doctrine survives in addition to the FAA grounds).

134. See Felsenfeld & Ruocco, *supra* note 54.

135. 9 U.S.C. § 10 (2006).

136. See *Stolt-Nielsen S.A. v. Animal Feeds Int'l. Corp.*, 548 F.3d 85, 95 (2d Cir. 2008); *Comedy Club Inc. v. Improv West Assocs.*, 553 F.3d 1277, 1290 (9th Cir. 2008); *Joseph Stevens & Co. v. Cikanek*, 2008 WL 2705445 at *4 (N.D. Ill., Jul. 9, 2008).

137. 1 DOMKE, *supra* note 35, § 39:6.

138. *Id.*

139. *Id.* ("In determining whether an arbitrator has exceeded the authority granted under the contract, a court cannot base the decision on whether the court would have awarded the same relief, or whether or not the arbitrator correctly interpreted the contract. The court must instead focus on whether the arbitrators had authority to reach a certain issue, not whether that issue was correctly decided.")

140. *Id.* For example, in *Coffee Beanery* the arbitrator had the authority to interpret Maryland law under the arbitration agreement. Under section 10(a)(4) the arbitrator could not have "exceeded her powers" by merely interpreting the common law crime of larceny incorrectly under Maryland law. This would be true even though, as the court found, the arbitrator's interpretation of the law was obviously wrong.

141. *Id.* § 8:1.

142. Albert G. Besser, *The Arbitrator Blew It! Now What?*, 29 Vt. B.J. 39, 45 (2003).

law is exactly what the parties contracted for.¹⁴³ In fact, the *Wilko* dictum itself states explicitly that an arbitrator's interpretation of the law is not subject to judicial review for error.¹⁴⁴ Therefore, it seems that only a certain articulation of the manifest disregard doctrine would fit with section 10(a)(4). This situation would arise where the arbitrator knows exactly what the relevant law is, knows how it should be interpreted, knows that the law determines the outcome of the case, and consciously decides not to apply that law.¹⁴⁵ Nevertheless, in *Coffee Beanery*, the standard applied by the court found manifest disregard where "(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrators refused to heed that legal principle."¹⁴⁶

While the two standards may appear similar, their differences are illustrated by the outcome of *Coffee Beanery*. In *Coffee Beanery*, the dispute arose when the arbitrator decided that a felony conviction for grand larceny was not a felony involving a "misappropriation of property" under the Franchise Act, and thus did not require disclosure to WW.¹⁴⁷ The court found that the arbitrator's interpretation of the law "fl[ies] in the face of clearly established legal precedent."¹⁴⁸ It reached this determination because larceny in Maryland involves "the taking and carrying away of the personal property of another with intent to deprive the owner of the property permanently."¹⁴⁹ The arbitrator did not ignore the law, nor did she determine the case based on the wrong law. The court simply found that the arbitrator interpreted Maryland law differently than it would have. Alternatively, the arbitrator may have manifestly disregarded the law if she knew that grand larceny involved a "misappropriation of property" but ignored the law anyway.

The opinion of the U.S. Court of Appeals for the Ninth Circuit in *Comedy Club, Inc. v. Improv West Associates*¹⁵⁰ further illustrates the inconsistent application of the manifest disregard doctrine. In *Comedy Club*, the court found manifest

143. See *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987) ("Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept. Courts thus do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts.").

144. *Wilko v. Swan*, 346 U.S. 427, 436-37 (1953), *overruled on other grounds* by *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477 (1989) ("[T]he 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. The United States Arbitration Act contains no provision for judicial determination of legal issues such as is found in the English law.").

145. A good articulation of this can be found in a Sixth Circuit case decided before *Coffee Beanery*, where the court said:

When "properly utilized and applied, the 'manifest disregard' of the law standard does not lead to vacatur based on a judicial determination that the arbitrator made an error of the law, of any degree. Instead, vacatur results under when the arbitrator makes clear in some manner that she appreciates and understands the law relevant to the matter before her, but nevertheless proceeds to ignore that law.

Crye-Leike, Inc. v. Thomas, 196 F. Supp. 2d 680, 684 (W.D. Tenn. 2002) (quoting Stephen L. Hayford, *Law in Disarray: Judicial Standards for Vacatur of Commercial Arbitration Awards*, 30 Ga. L. Rev. 731, 818 (1996)); see also Thomas E.L. Dewey & Kara Siegel, *Room For Error: 'Hall Street' and the Shrinking Scope of Judicial Review of Arbitral Awards*, 5/15/2008 N.Y.L.J. 24 (col. 5) (2008).

146. *Coffee Beanery Ltd. v. WW*, L.L.C., 300 F. App'x 415 (6th Cir. 2008).

147. *Id.* at 418.

148. *Id.* at 420.

149. *Id.*, citing *Fletcher v. State*, 189 A.2d 641 (1963).

150. 553 F.3d 1277, 1283 (9th Cir. 2009).

disregard of the law when an arbitrator enforced a covenant not to compete.¹⁵¹ The court found that manifest disregard existed as an interpretation of the text of section 10(a)(4), and that manifest disregard existed where the arbitrator clearly recognized the applicable law and then ignored it.¹⁵² However, the court did not adhere to the literal meaning of its own interpretation. Instead, the court conducted a long review of Ninth Circuit case law and held that the arbitrator's interpretation of the law was not consistent with Ninth Circuit precedent.¹⁵³ Again, the court took issue with the fact that the arbitrator's interpretations of law were incorrect, not that the arbitrator had appreciated the relevant law and then ignored it.

A simple example may be useful in discerning the difference between a proper standard of manifest disregard as an interpretation of section 10(a)(4), and an improper one. Assume that two parties to a contract for the sale of goods agree to submit all disputes to an arbitrator who will settle claims in accordance with the Uniform Commercial Code (UCC). Furthermore, assume that the outcome of the dispute hinges on whether one of the parties is a "merchant" under the code. The arbitrator would "exceed her powers" under section 10(a)(4) by either refusing to apply the UCC altogether, or by deciding the case on a different body of law. As long as she does decide the claim based on her interpretations of the UCC, however, those interpretations should not be reviewable by a court no, matter how ridiculous they appear.

Perhaps courts are reluctant to abolish the manifest disregard doctrine precisely because of cases such as *Coffee Beanery* and *Comedy Club* where the arbitrator's interpretation of the law was irreconcilable with the court's interpretation of it.¹⁵⁴ However, by agreeing to arbitrate in the first place, parties are essentially taking their chances with an arbitrator's interpretations of law over a courts' in order to utilize the advantages of arbitration such as time and cost.¹⁵⁵ By interpreting manifest disregard as part of section 10(a)(4), but still vacating awards for errors in interpretation of the law, courts are practically abrogating the parties' arbitration agreement. This interpretation arguably makes arbitration "merely a prelude to a more cumbersome and time-consuming judicial review process."¹⁵⁶ This interpretation also seems inconsistent with the nature of arbitration, which is that parties may contract for an arbitration proceeding in any way they choose, with the only caveat being that, under *Hall Street*, they cannot contract for judicial

151. *Id.*

152. *Id.* at 1290.

153. *Id.* at 1293. "The grounds given by the arbitrator . . . are fundamentally incorrect." *Id.*

154. *Id.* at 1292 ("Keeping in mind these settled principles of California law . . . which principles were expressly before the arbitrator, we proceed to evaluate whether the arbitrator's decision was in manifest disregard of the law.").

155. *Perini Corp. v. Greate Bay Hotel & Casino, Inc.*, 610 A.2d 364, 385 (N.J. 1992) (Wilentz, C.J., concurring) ("People generally choose arbitration for many reasons: speed, economy, and finality. They trust the process and they trust the arbitrators. Whatever the combination of reasons, the bottom line is the same: they choose arbitration because they do not want litigation. They simply do not want the courts to have anything to do with it. When parties choose arbitration, the role that the judiciary should aim at is to have no roll at all.").

156. *Hall St. Assocs. v. Mattel*, 128 S. Ct. 1396, 1405 (2008) (quoting *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 998 (9th Cir. 2009)).

review outside of sections 10 and 11 of the FAA.¹⁵⁷ Thus, courts are essentially adding on to section 10 what the *Hall Street decision* says the parties cannot contract for outside of section 10.¹⁵⁸

VI. CONCLUSION

It is likely that courts and commentators will continue to debate the viability of the manifest disregard doctrine until some uniformity among the circuits occurs, the Supreme Court resolves the issue, or Congress amends the FAA.¹⁵⁹ The Sixth Circuit's ruling in *Coffee Beanery* fails to analyze the pervasive issues of manifest disregard adequately in light of *Hall Street*. The court neither forecloses manifest disregard as an extra-statutory ground for vacatur, nor, like other courts, views the doctrine as an interpretation of section 10(a)(4) of the FAA. For the courts that take the latter position, in some instances, this interpretation allows them to continue to review arbitration awards for legal errors despite the traditional view that section 10(a)(4) does not allow judicial review of legal errors. This position also leads to more costly and time-consuming review, which is what arbitration is meant to prevent in the first place.¹⁶⁰ As of now then, all that is clear is that the issue is still unresolved.

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157. *Id.* (“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.”).

158. *Prime Therapeutics, L.L.C. v. Omnicare, Inc.*, 555 F. Supp. 2d 993, 999 (D. Minn. 2008) (“It 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.”).

159. Smit, *supra*, note 64.

160. *Perini*, 610 A.2d 383-84 (Wilentz, C.J., concurring).

