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LITIGATION ALERT

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SUPREME COURT RESISTS EXPANSION OF GROUNDS FOR VACATING ARBITRATION AWARDS UNDER FEDERAL ARBITRATION ACT

By Daniel J. Brooks

In *Hall Street Associates, L.L.C. v. Mattel, Inc.*, the United States Supreme Court ruled that parties to an arbitration agreement cannot contractually expand the statutory grounds under the Federal Arbitration Act (FAA), 9 U.S.C. §§ 10, 11, for judicially vacating or modifying an arbitration award. In reaching this result, the Court held that the narrow statutory grounds for invalidating an award under the FAA are exclusive, and may not be expanded by agreement of the parties. Addressing the petitioner's contention that the grounds could not be exclusive because they had been judicially expanded to permit *vacatur* when the arbitrators "manifestly disregard the law," a doctrine deriving from language in *Wilko v. Swan* (a 1953 Supreme Court case followed and elaborated upon by numerous lower federal and state courts), the Supreme Court held that its vague language in *Wilko* was entitled to no such interpretation. To the contrary, the text of the FAA, which, in § 9, mandates confirmation of an award absent proof of one of the "egregious" and "extreme" types of arbitral misconduct contained in §§ 10 and 11, is not "malleable" and unequivocally instructs courts to grant confirmation in all cases, except when one of the prescribed exceptions applies.

The narrow and limited statutory grounds for vacating or modifying an award – "corruption," "fraud," "evident partiality," "misconduct," "misbehavior," "exceed[ing] their powers ... or so imperfectly execut[ing] them," "evident material miscalculation," "evident material mistake," "award[s] upon a matter not submitted" – all emphasize extreme arbitral misconduct. The parties in *Mattel* sought, by contract, to expand the grounds for disallowing an award to include arbitrators' findings of facts that were not supported by substantial evidence, or arbitrators' conclusions of law that were erroneous. In rejecting this contractual expansion of the grounds for setting aside an award, the Court held, in essence, that the specific text of the FAA trumps the truism that arbitration is a creature of contract. Thus, while

the parties can, in their contract, specify what disputes are arbitrable, the method of selecting arbitrators, and how the arbitrators are to conduct the hearing, the parties cannot, by contract, modify the judicial standard for review of an arbitration award under the FAA.

The Court stressed that this literal interpretation of §§ 9-11 of the FAA would foster the "national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway. Any other reading opens the door to the full-bore legal and evidentiary appeals that can 'render informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process,' [internal citation omitted], and bring arbitration theory to grief in post-arbitration process." This unambiguous rejection of contractual or judicially-created expansions of the grounds for vacating or modifying awards under the FAA means that other judge-made exceptions to the confirmation of awards, permitting awards under the FAA to be set aside if they are "against public policy" or "irrational," should meet the same fate as the seemingly well-established doctrine of "manifest disregard of the law."

Conclusions

This decision has relevance not only to members of industries involved in interstate or foreign commerce in which arbitration is either mandatory (e.g. the securities industry) or customary (e.g. maritime, labor, construction), but also to all of the corporate and non-profit entities that are increasingly inserting arbitration clauses into their commercial, consumer and employment agreements. To the extent that those clauses are motivated by a desire for speedy, informal and inexpensive resolutions of disputes by arbitrators possessing specialized knowledge of the relevant industry, the *Mattel* holding will further those goals. To the extent, however, that contracting parties want a hybrid process, involving alternative dispute resolution culminating in judicial review that is more than cursory, they will not be able to have their cake and eat it too. ◆

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