Judicial Review of Arbitration Awards Under Federal and Michigan Law

| Similar But Different | By Phillip J. DeRosier |

It is well established that judicial review of arbitration awards under the Federal Arbitration Act (FAA) is very narrow, requiring “egregious departures from the parties’ agreed-upon arbitration....” While federal courts have traditionally applied the “manifest disregard of the law” standard in reviewing arbitration awards, the Michigan Supreme Court charted a different course for judicial review in *Detroit Automobile Inter-Insurance Exchange v. Gavin* by rejecting the manifest disregard standard in favor of one allowing for a “broader role for the judiciary in statutory arbitration cases than is generally assumed in other jurisdictions....” Although there is room for disagreement as to whether the standards are all that different as a practical matter, the fact remains that they are different.

**FAST FACTS**

Under the Federal Arbitration Act, review of an arbitration award is limited to “egregious departures from the parties’ agreed-upon arbitration.”

While many federal courts, including the Sixth Circuit, review arbitration awards solely to determine whether there was a “manifest disregard of the law,” Michigan courts apply a slightly different test.

Under Michigan law, an arbitration award may be set aside if, through an error of law, the arbitrator was led to a wrong conclusion, and, but for that error, a substantially different award would have been made.
Review of an Arbitration Award Under the Federal Arbitration Act

Under Section 9 of the FAA, a court must confirm an arbitration award unless it is vacated, modified, or corrected as prescribed in Sections 10 and 11.5 Section 10 of the FAA allows for the vacatur of an arbitration award where:

1. the award was procured by corruption, fraud, or undue means;
2. there was evident partiality or corruption by the arbitrators;
3. the arbitrator is guilty of misconduct; or
4. 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.6

Section 11 allows for modification or correction of an award where:

1. there was an evident material miscalculation or mistake in the award;
2. the arbitrators decided something outside of the scope of the agreement; or
3. the award is imperfect in form, but does not impact its merits.7

If none of these grounds are met, the court must confirm the arbitration award—even if the parties have agreed to expand the scope of judicial review. In Hall Street Associates, LLC v Mattel, Inc, the parties' arbitration agreement attempted to grant a reviewing court the power to vacate, modify, or correct any award if the arbitrator's findings of facts were not supported by substantial evidence or if the arbitrator's conclusions of law were erroneous. The United States Supreme Court, however, rejected this attempted expansion of the availability of judicial review, concluding that "the text [of the FAA] compels a reading of the §§ 10 and 11 categories as exclusive."9 Such exclusivity, the Court explained, "substantiat[es] a national policy favoring arbitration and the manifest disregard standard.14

Despite the Court's decision in Hall Street, some circuits continue to recognize a common-law doctrine allowing vacatur of an arbitrator's award if it exhibits a manifest disregard of the law.11 Under the manifest disregard standard, a court may only vacate an arbitrator's award if it clearly evinces more than a mere "erroneous interpretation of the law."12 For example, manifest disregard of the law has been found where the arbitrator was presented with controlling law but refused to apply it.13 On the other hand, several circuits have read Hall Street as precluding use of the manifest disregard standard.14

Two years ago, the Supreme Court had the opportunity to address whether the manifest disregard standard survived Hall Street, but ended up punting on the issue. In Stolt-Nielsen SA v AnimalFeeds International Corporation,15 the Court reaffirmed that parties seeking to vacate an arbitration award have a "high hurdle,"16 stressing "[i]t is not enough for petitioners to show that the panel committed an error—or even a serious error."17 Rather, "[i]t is only when [an] arbitrator strays from interpretation and application of the agreement and effectively 'dispense[s] his own brand of industrial justice' that his decision may be unenforceable."18 In such a situation, the Court explained that "an arbitration decision may be vacated under § 10(a)(4) of the FAA on the ground that the arbitrator 'exceeded [his] powers,' for the task of an arbitrator is to interpret and enforce a contract, not to make public policy."19

A court may set aside the arbitrator's decision only if "after applying 'clearly established legal precedent, ... no judge or group of judges could conceivably come to the same determination.'"

Applying that standard in Stolt-Nielsen, the Supreme Court found that the arbitration panel exceeded its powers in imposing class arbitration on the parties because they had expressly stipulated that there was no agreement to authorize class arbitration.20 However, the Court specifically declined to base its decision on the manifest disregard standard:

We do not decide whether "manifest disregard" survives our decision in [Hall Street] as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. § 10....Assuming, arguendo, that such a standard applies, we find it satisfied....21

Regardless whether the manifest disregard standard survived Hall Street, there appears to be no question that it remains "severely limited," 'highly deferential,' and confined to 'those exceedingly rare instances of egregious impropriety on the part of the arbitrators."22 In the Sixth Circuit, the manifest disregard standard allows for vacatur only if the applicable legal principle is clearly defined and not subject to reasonable debate, and the arbitrators refused to heed that legal principle.23 Or put another way, a court may set aside the arbitrator's decision only if "after applying 'clearly established legal precedent, ... no judge or group
of judges could conceivably come to the same determination.”24
Moreover, the manifest disregard standard cannot be used as a
basis for modifying (as opposed to vacating) an award.25

Review of an Arbitration Award
Under the Michigan Court Rules

While limiting review of arbitration awards in federal court
to the statutory grounds for vacatur, Hall Street also recognized
the potential for broader review under state law. As the Court
explained in Hall Street, the FAA is “not the only way into court
for parties wanting review of arbitration awards: they may con-
template enforcement under state statutory or common law, for
example, where judicial review of different scope is arguable.”26
It is, of course, well established that the FAA’s reach is expansive,
applying to all contracts involving interstate commerce, and that
state courts are bound to enforce the FAA’s substantive provisions
under the Supremacy Clause.27 But at least two state high courts
since Hall Street have taken the position that the FAA does not
control judicial review of an arbitration award in state court, even
if the FAA is otherwise implicated.28

This is significant because while federal courts continue to
struggle with whether the manifest disregard standard may be
used to expand judicial review of arbitration awards, the Michi-
gan Supreme Court long ago rejected the manifest disregard stan-
dard as being too limited, despite the fact that the Michigan court
rules ostensibly mirror the FAA.29 In Gavin, supra, the Court char-
acterized the manifest disregard standard as a rule of “virtual non-
reviewability” that was based on the notion that the goal of private
arbitration is the “expeditious, inexpensive, and unreviewable res-
olution of private disputes…..”30 The Gavin Court, however, con-
cluded that those are not the goals or purpose of arbitration.31

The Gavin Court instead found the “process of dispute reso-
lution and the procedural advantages of arbitration” to be “the
servants of the law governing the issues in dispute, not the re-
verse.”32 In wrestling with the proper balance to be struck in
reviewing errors of law by arbitrators, the Gavin Court observed
that on one end of the spectrum are errors that so plainly disre-
gard principles fundamental to a fair resolution of the dispute, or
generate a legally unsustainable result, that they cannot be within
the parties’ agreement to arbitrate or the arbitrator’s authority.33
Yet, on the other end, there are errors committed by the arbitra-
tors that are so minimal and inconsequential to the outcome of
the arbitration as to be immaterial.34

The Gavin Court concluded that justice and common sense
required drawing

a line between the two and that it be drawn sufficiently close to
the center of the spectrum that it cannot in fairness be said that
the line is a fiction and that errors of substantive law, no matter
how egregious, are never reviewable because they are the price
paid for the procedural advantages of the dispute resolution.35

The Court decided to adopt a review standard recognizing that
arbitrators exceed their power when they act beyond the terms
of the contract or in contravention of controlling principles of
law.36 Thus, under Gavin, a court must set aside an arbitration
award whenever it

appears on the face of the award or the reasons for the decision as
stated, being substantially a part of the award, that the arbitrators
through an error in law have been led to a wrong conclusion, and
that, but for such error, a substantially different award must have
been made…..37

In adopting this framework, the Gavin Court was careful to
point out that the primary role of arbitrators is fact-finding. It em-
phasized that these findings of fact are unreviewable, given the
informal nature of arbitration hearings and the subsequent lack of
meaningful review.38 However, “just as a judge exceeds his power
when he decides a case contrary to controlling principle of law,
so does an arbitrator.”39 The Court felt that its approach would
“secure to litigants who come to the courts for judicial confirma-
tion and enforcement of arbitration results, that which we believe
they agreed to: an arbitration award rendered according to the
law which governs their dispute.”40

As a practical matter, it is not clear how different the Gavin
standard really is from the federal manifest disregard standard.
Applying the manifest disregard standard, lower federal courts
have vacated awards that ignored the plain language of the parties’
contract.41 Compare that to Gavin, in which the Michigan Supreme
Court observed that “by ignoring express and unambiguous con-
tract terms, arbitrators run an especially high risk of being found
to have ‘exceeded their powers.’”42 Similarly, an arbitrator’s fact-
finding is essentially unreviewable under either approach.43
At the same time, however, the *Gavin* Court specifically rejected what it viewed as the essence of the manifest disregard standard, explaining that “[r]eviewing courts should focus upon the materiality of the legal error to test whether judicial disapproval is warranted, and not upon the question whether the rule of law was so well settled, widely known, or easily understood that the arbitrators should have known of it.”

Thus, if an “error in law” is sufficiently material that its correction would lead to a “substantially different award,” vacatur is permissible, whereas a court operating under the FAA would presumably not have this same freedom.

**Conclusion**

While the differences between the federal manifest disregard standard and the review framework adopted in *Gavin* may be subtle, it seems clear that Michigan courts have more of a role in reviewing arbitration awards than do their federal counterparts. Practitioners should keep this in mind when drafting arbitration agreements or seeking judicial review of an arbitration award in a Michigan court.

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**FOOTNOTES**

1. 9 USC 1 et seq.
4. 9 USC 9.
5. Hall Street, 552 US at 582.
6. 9 USC 10(a).
7. 9 USC 11.
8. Hall Street, 552 US at 578.
9. id. at 586.
10. id. at 588.
11. See Stolt-Nielsen SA v AnimalFeeds Int’l Corp, 548 F3d 85, 95–96 (CA 6, 2008), rev’d on other grounds, 130 S Ct 1758 (2010); Wachovia Securities, LLC v Brand, 671 F3d 472, 483 (CA 4, 2012); Coffee Beanery, Ltd v WW, LLC, 300 Fed Appx 415, 419 (CA 6, 2008); Comedy Club, Inc v Improv W Assoc, 553 F3d 1277, 1290 (CA 9, 2009).
14. See Ramos-Santiago v United Parcel Serv, 524 F3d 120, 124 n 3 (CA 1, 2008); Citigroup Global Markts, Inc v Bacon, 562 F3d 349, 355 (CA 5, 2009); Medicine Shoppe Int’l, Inc v Turn2 Investments, Inc, 614 F3d 485, 489 (CA 8, 2010); Frazier v Citifinancial Corp, LLC, 604 F3d 1313, 1324 (CA 11, 2010).
16. id., 130 S Ct 1757.
17. id.
18. id. (citation omitted).
19. id.
20. id., 130 S Ct 1776.
21. id., 130 S Ct 1768 n 3.
22. Stolt-Nielsen, 548 F3d at 95 (citation omitted).
23. Coffee Beanery, 300 Fed Appx at 418 (citation omitted).
29. Similar to the FAA, MCR 3.602(J)(2) allows for vacatur of an arbitration award if:
   (a) the award was procured by corruption, fraud, or other undue means;
   (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party’s rights;
   (c) the arbitrator exceeded his or her powers; or
   (d) the arbitrator refused to postpone the hearing upon a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party’s rights.
31. id. at 427.
32. id.
33. id. at 430.
34. id.
35. id.
36. id. at 434.
37. id. at 443 (citation and internal quotation marks omitted).
38. id. at 429.
39. id. at 444.
40. id. at 445.
42. Gavin, 416 Mich at 434.
43. id. at 429; see also Scioto v Life Ins Co of N America, 20 Fed Appx 45, 47 (CA 2, 2011) (“An arbitrator’s error in fact finding does not provide a grounds for reversal.”).
44. Gavin, 416 Mich at 443–44.