Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85 (2d Cir. 2008)[1]

I. INTRODUCTION

A useful tool in attacking arbitration awards may soon be eliminated from the lawyer's tool box, or at least its usefulness significantly eroded. The doctrine of "manifest disregard of the law" has been used as a distinct ground for judicial review of arbitration awards, in addition to the statutory grounds set forth in Section 10 of the Federal Arbitration Act (FAA).[2] In its broadest application, manifest disregard allows a party in an arbitration to vacate the award if it can be shown that the arbitrator misunderstood or misapplied the law. This basis for vacatur, even in its most constrained application, strains the plain language of Section 10 and could even be beyond the intent of the FAA. In light of this issue, federal courts have not completely embraced the manifest disregard doctrine, particularly in response to commentary by the Supreme Court in *Hall Street Assocs. LLC v. Mattel, Inc.*[3] For these reasons, federal circuit courts now not only disagree on the manifest disregard doctrine's scope, but also on its very existence.[4]

Recently, the Supreme Court granted certiorari to *Stolt-Nielsen*; however, the grant on its face does not include the manifest disregard issue.[5] Instead, the Supreme Court will address whether imposing arbitration on parties whose arbitration clauses are silent on whether manifest disregard is consistent with the FAA. This issue will determine how businesses approach settling claims and the extent to which offshore firms choose the United States as a forum to hear their claims. In other words, the Court has not expressly undertaken consideration of whether manifest disregard survives *Hall Street*. Despite the limited scope of the grant, *Stolt-Nielson* does provide

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[1] Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85 (2d Cir. 2008).

[2] 9 U.S.C. § 10(a)(1)–(4) (2006).

[3] Hall Street Assocs. LLC v. Mattel, Inc., 552 U.S. 576 (2008). In *Hall Street*, the Court held "that §§ 10 and 11 respectively provide the FAA's exclusive grounds for expedited vacatur and modification" of arbitral awards. *Id.* at 584.

[4] *Id.* at 583.

[5] The Supreme Court did not grant certiorari on the manifest disregard issue. Instead, the Court limited cert to the issue of whether imposing class arbitration on parties whose arbitration clauses are silent on the manifest disregard issue is consistent with the FAA. Therefore, cert was not granted on the issue of whether the manifest disregard doctrine survives *Hall Street*. This Recent Development accordingly limits its discussion to the manifest disregard standard under the Second Circuit's analysis, recognizing this issue is not in front of the U.S. Supreme Court.

the Court an opportunity to address the manifest disregard issue, regardless of whether the Court reads *Hall Street* as being consistent or inconsistent with the doctrine.

What is clear is that unless the Supreme Court provides more clarification in *Stolt-Nielsen* beyond the holding of *Hall Street*, the scope, as well as the very existence, of the manifest disregard doctrine will continue to engender disagreements among federal courts. Moreover, the manifest disregard doctrine will continue to be fodder for legal commentary. As discussed below, the Second Circuit in *Stolt-Nielsen* reasoned that the manifest disregard doctrine is still very much alive, and upheld its use in their ruling. The Supreme Court could rule explicitly on the manifest disregard issue, and *Stolt-Nielson* offers that chance.[6]

I. PREFACE TO THE CASE

In *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, the Second Circuit held that an arbitration panel did not manifestly disregard the law when the panel construed silence in an arbitration agreement to allow class arbitration. In 2003, classwide arbitration broke new ground in *Green Tree Financial Group v. Bazzle*,[7] when the Supreme Court ruled that when parties agree to arbitrate, the question of whether the agreement permits class arbitration is "[a] matter of contract interpretation . . . for the arbitrator, not the courts, to decide."[8] The Second Circuit in *Stolt-Nielsen* adopted this principle and found that an arbitration panel properly interpreted a maritime arbitration agreement—silent on the issue of class arbitration—to *not* preclude class arbitration when absent from the contract.

The Second Circuit in *Stolt-Nielsen* also blew new life into the common law doctrine of "manifest disregard of the law." The manifest disregard doctrine has created uncertainty among federal courts since the Supreme Court's ruling in *Hall Street*, where the Court mentioned that "§§10 and 11 respectively provide the FAA's *exclusive* grounds for expedited vacatur and modification"[9] of an arbitration award. The Second Circuit reasoned that

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[6] Of course, if the Supreme Court holds that the doctrine is not an independent, non-statutory ground for setting aside an award, lawyers still have one more tool for vacating an award that arguably involves the misapplication of law—that is, using an old fashion shoehorn to force the facts into one of the statutory grounds for vacatur set forth in Section 10 of the FAA.

[7] Green Tree Financial Corp. v. Bazzle, 539 U.S. 444 (2003).

[8] *Id.* at 453.

[9] *Hall Street*, 552 U.S. 584 (emphasis added).

while *Hall Street* may have debated the continuing applicability of the doctrine, the Supreme Court did not "abrogate the 'manifest disregard' doctrine altogether."[10] Having so interpreted the *Hall Street* decision, the Second Circuit in *Stolt-Nielsen* upheld the applicability of the manifest disregard doctrine, and accordingly found that an arbitration panel had not met the "manifest disregard" standard.[11]

II. FACTS AND PROCEDURAL HISTORY

AnimalFeeds International Corp. ("AnimalFeeds") brought a federal class action suit against Stolt-Nielsen SA and others[12] ("Stolt-Nielsen") claiming that they were engaged in a "global conspiracy to restrain competition in the world market for parcel tanker shipping services in violation of federal antitrust laws."[13] AnimalFeeds sued on behalf of a class of all purchasers of parcel tanker transportation services from Stolt-Nielsen during the period from August 1, 1998 to November 30, 2002. AnimalFeeds initially filed suit in the United States District Court for the Eastern District of Pennsylvania, but the action was transferred to the Connecticut District Court.

Stolt-Nielsen sought to avoid the class action suit and moved for arbitration—a motion initially denied by the lower court. However, the Second Circuit later reversed, finding that the parties' transactions were governed by contracts with enforceable agreements to arbitrate, and that the antitrust claims in the lawsuit were arbitrable.[14] The parties eventually entered into an arbitration agreement stating, among other things, that the arbitrators "shall follow and be bound by Rules 3 through 7 of the American Arbitration Association's Supplementary Rules for Class Arbitrations."[15]

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[10] Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 95 (2d Cir. 2008).

[11] *Id.* at 87.

[12] The other defendants were Stolt-Nielsen Transportation Group Ltd., Odfjell ASA, Odfjell Seachem AS, Odfjell USA, Inc., Jo Tankers BV, Jo Tankers, Inc., and Tokyo Marine Co. Ltd.

[13] *Stolt-Nielsen*, 548 F.3d at 87 (quoting Appellant's Br. 4).

[14] *See generally* JLM Indus., Inc. v. Stolt-Nielsen SA, 387 F.3d 163, 183 (2d Cir. 2004) (discussing how Sherman Act claims, as well as state law claims, are arbitrable).

[15] *See Stolt-Nielsen*, 548 F.3d at 88; *see also* SUPPLEMENTARY RULES FOR CLASS ARBITRATIONS (Am. Arb. Ass'n, 2003) ("Supplementary Rules"), *available at* http://www.adr.org/sp/asp?id=21936 (last visited February 2, 2010). The Supplementary Rules were issued following the Supreme Court's decision in *Green Tree Financial Corp. v. Bazzle*, which held that when parties agree to arbitrate, the question of whether

Under Rule 3 of the Supplementary Rules, AnimalFeeds and several co-plaintiffs who were not parties in the appeal to the Second Circuit demanded class arbitration.[16] This demand was based upon the provision in Supplemental Arbitration Rule 3 providing that, upon appointment, an arbitrator shall determine

> whether the applicable arbitration clause permits the arbitration to proceed on behalf or against a class (the "clause Construction Award"). . . . In construing the applicable arbitration clause, the arbitrator shall not consider the existence of these Supplementary Rules, or any other AAA rules, to be a factor either in favor of or against permitting the arbitration to proceed on a class basis.[17]

Therefore, pursuant to the Class Construction Award, an arbitration panel was assembled to consider the two standard-form agreements between the parties known as the Vegoilvoy charter party and the Asbatankvoy charter party.[18] Both agreements dictated that performance or termination of the charter party would be in a select location, the parties would appoint an arbitrator who would rule on the dispute, and any decision by that arbitrator would be final.[19] However, what proved to be of great significance was that "both agreements unambiguously mandate[d] arbitration but [were] silent as to whether arbitration may proceed on behalf of a class."[20]

The arbitration panel decided in favor of AnimalFeeds and found that the agreements permitted class arbitration. Stolt-Nielsen in turn petitioned the Federal District Court for the Southern District for New York to vacate the arbitrator's decision. The district court agreed with Stolt-Nielsen and vacated the award, finding that the award was made in manifest disregard of the

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the agreement permits class arbitration is a matter of "contract interpretation [that] should be for the arbitrator, not the courts, to decide." Green Tree Financial Corp. v. Bazzle, 539 U.S. 444, 452–53 (2003).

[16] *Stolt-Nielsen*, 548 F.3d at 88.

[17] *See* Supplementary Rules, *supra* note 15.

[18] *See Stolt-Nielsen*, 548 F.3d at 89. "A 'charter party' is a specific contract, by which the owners of a vessel let the entire vessel, or some principle part thereof, to another person, to be used by the latter in transportation for his own account, either under their charge or his." *Id.* (quoting Asoma Corp. v. SK Shipping Co., 467 F.3d 817, 823 (2d Cir. 2006)).

[19] *See generally* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 435 F. Supp. 2d 382, 384 (S.D.N.Y. 2006) (outlining the "Asbatankvoy Clause"); *see also Stolt-Nielsen*, 548 F.3d at 88–89 (outlining the "Vegoilvoy Clause").

[20] *Stolt-Nielsen*, 548 F.3d at 89.

law.[21] AnimalFeeds appealed to the Second Circuit. The Second Circuit held that the arbitration panel did not act in manifest disregard of the law, and reversed the district court.[22]

A. *Basis of the Suit*

The Vegoilvoy and Asbatankvoy charter party agreements failed to properly delineate a proper class action procedure, which brought about the action between the parties in *Stolt-Nielsen*. AnimalFeeds and its co-plaintiffs argued that "because the arbitration clauses were silent, arbitration on behalf of a class could proceed."[23] Moreover, AnimalFeeds cited published clause construction awards under Rule 3 of the Supplementary Rules permitting class arbitration awards, as well as public policy where the contracts' arbitration clauses would be unconscionable and unenforceable if class arbitration was forbidden.[24]

Stolt-Nielsen argued against class arbitration on three primary grounds. First, Stolt-Nielsen argued that"because the arbitration clauses were silent, the parties intended not to permit class arbitration," citing in support that federal courts and arbitrators regularly denied both class arbitration and class consolidation.[25] Second, Stolt-Nielsen argued that the arbitration decisions cited by AnimalFeeds were inapposite because "they were not made in the context of international maritime agreements, where parties have no expectation that arbitration will proceed on behalf of a class."[26] Lastly, Stolt-Nielson offered extrinsic evidence on the negotiating history between the parties, and their understanding of the arbitration agreements to demonstrate that the parties did not intend to authorize class arbitration.[27] However, before the arbitration panel, "Stolt-Nielsen acknowledged that the interpretation of the contracts at issue here was a question of first impression."[28]

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[21] *See generally Stolt-Nielsen*, 435 F. Supp. 2d 382.

[22] *See generally* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85 (2d Cir. 2008).

[23] *Id.* at 89.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 89 (2d Cir. 2008).

B. *The Arbitration Panel's Finding*

On December 20, 2005, "the arbitration panel issued a Clause Construction Award deciding that the agreements permit class arbitration."[29] The arbitration panel's decision was based upon three primary foundations. First, the arbitration panel based its decision "largely on the fact that in all twenty-one published clause construction awards issued under Rule 3 of the Supplementary Rules, the arbitrators had interpreted silent arbitration clauses to permit class arbitration."[30] Second, the Court further distinguished the *Stolt-Nielsen* case from past law that "prohibit[ed] consolidation of claims when an arbitration agreement is silent."[31] The Court reasoned that consolidating two distinct arbitrations with distinct arbitration clauses was different than the class action arbitration before the panel. Lastly, although the arbitration agreements regarded maritime action and thus were factually unique to international shipping, "Stolt-Nielsen's arguments regarding the negotiation history and context of the agreements did not establish that the parties intended to preclude class arbitration."[32]

C. *Reversal of Panel's Finding and Appeal to Second Circuit*

Stolt-Nielsen petitioned the district court to vacate the arbitration panel's Clause Construction Award; the United States District Court for the Southern District of New York subsequently vacated the panel's decision, reasoning that the award was made in manifest disregard of the law.[33] The district court found that the arbitration panel "failed to make any meaningful choice-of-law analysis"[34] and failed to consider that any interpretation of charter parties should be dictated by the "custom and usage" of federal maritime law. The district court found that Stolt-Nielsen sufficiently demonstrated that "the

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[29] *Id.*

[30] *Id.* at 90.

[31] *See, e.g., id.;* United Kingdom v. Boeing Co., 998 F.2d 68, 74 (2d Cir. 1993) (involving a reversal of a consolidation of arbitration proceedings because the proceedings involved separate agreements).

[32] *Stolt-Nielsen*, 548 F.3d at 90.

[33] Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 435 F. Supp. 2d 382, 387 (S.D.N.Y. 2006).

[34] *Id.* at 385

arbitration clauses here in issue are part of maritime contracts, [and thus] they are controlled in the first instance by federal maritime law."[35]

The district court also found "the result would be the same even if there was no established maritime rule and state law then governed."[36] On these grounds, the district court found that because these clearly established rules of law were presented to the panel and the panel failed to apply them, they manifestly disregarded the law and the Clause Construction Award must be vacated. After vacatur, AnimalFeeds appealed to the Second Circuit on the question of whether the arbitration panel acted in manifest disregard of the law when it construed silence in the arbitration agreement to allow class arbitration. The Second Circuit ultimately reversed the district court for the reasons discussed below.

III. HOLDING OF THE SECOND CIRCUIT COURT

The Second Circuit reviewed de novo the district court's order to vacate the arbitration award on the grounds of manifest disregard of the law.[37] Guiding the court's decision was the principle that "it is well established that courts must grant an arbitration panel's decision great deference."[38] This deference principle served as the underlying theme of the Second Circuit's opinion.

In determining whether an arbitration panel's decision can be vacated, the Second Circuit cited the FAA and the common law principle of manifest disregard of the law as the governing rules. Under the FAA, arbitral awards can generally be vacated when an award was procured by corruption, fraud, or undue means; if there is evidence of partiality or corruption of the arbitrators; if there is misconduct by the arbitrators; or if the arbitrators exceed their powers.[39] The Second Circuit previously has "also recognized that the district court may vacate an arbitral award that exhibits a 'manifest

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[35] *Id.*

[36] *Id.* at 386.

[37] *See generally* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 90 (2d Cir. 2008) (quoting Hoeft v. MVL Group, Inc, 343 F.3d 57, 69 (2d Cir. 2003).

[38] *Id.* (quoting Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S, 333 F.3d 383, 388 (2d Cir. 2003).

[39] *See generally* 9 U.S.C. §10(a)(1)–(4) (2006).

disregard' of the law."[40] However, in *Stolt-Nielson*, the court clearly stated that it will not "recognize manifest disregard of the *evidence* as proper ground[s] for vacating an arbitrator's award."[41]

A. *The "Manifest Disregard" Standard*

First and foremost, the Second Circuit stressed that "a party seeking to vacate an award on the basis of the arbitrator's alleged 'manifest disregard' of the law bears a 'heavy burden.'"[42] Relying upon *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*,[43] the Second Circuit maintained that the manifest disregard doctrine allows a reviewing court to vacate an arbitral award only in "those exceedingly rare instances where some egregious impropriety on the part of the arbitrators is apparent."[44] This is based on the reasoning that "the parties agreed to submit their dispute to arbitration, more likely than not to enhance efficiency, to reduce costs, or to maintain control over who would settle their disputes and how—or some combination thereof."[45]

On this basis, the Second Circuit decided that manifest disregard must be interpreted to be more than error or misunderstanding with respect to the law. In other words, a "federal court cannot vacate an arbitral award merely because it is convinced that the arbitration panel made the wrong call on the law."[46] Looking to the rule articulated in *Wallace v. Buttar*, the court upheld the principle that an award should be enforced, despite a court's disagreement with it on the merits, so long as there is a barely colorable justification for the outcome reached.[47]

Instead, the Second Circuit held an award can be vacated if it passes the court's manifest disregard standard.[48] The three-part manifest disregard test

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[40] *See generally Duferco*, 333 F.3d at 388 (citing Goldman v. Architectural Iron. Co., 306 F.3d 1214, 1216 (2d Cir. 2002)); *see also* Westerbeke Corp. v. Daihatsu Motor Co., Ltd., 304 F.3d 200, 208 (2d Cir. 2002).

[41] *Stolt-Nielsen*, 548 F.3d at 91 (quoting Wallace v. Buttar, 378 F.3d 182, 193 (2d Cir. 2004) (citation and internal quotation marks omitted; emphasis in original).

[42] *Id.* (quoting GMS Group, LLC v. Benderson, 326 F.3d 75, 81 (2d Cir. 2003).

[43] *Duferco*, 333 F.3d at 383.

[44] *Id.* at 389.

[45] *See* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 92 (2d Cir. 2008).

[46] *Id.*

[47] *Id.* (quoting Wallace v. Buttar, 378 F.3d 182, 190 (2d Cir. 2004)) (citation and internal quotation marks omitted; emphasis added in *Wallace*).

[48] *Id.* at 93.

requires (1) examining the law allegedly ignored; (2) the application of the law by the arbitrator; and (3) whether the arbitrator knowingly misapplied or ignored the law.[49] Without meeting all three prongs of this standard, the Second Circuit was not willing to vacate an arbitration award.

B. *The Effect of Hall Street on the "Manifest Disregard" Doctrine*

Before continuing on its argument, the court briefly considered how the recent Supreme Court decision *Hall Street Assoc., LLC v. Mattel, Inc.* affects the scope or vitality of the manifest disregard doctrine. While the manifest disregard doctrine was not specifically at issue in *Hall Street*, the "[Supreme] Court nonetheless commented on its origins"[50] and continued use.[51] So, while *Hall Street* mentioned section 10 of the FAA as the "exclusive" grounds for vacatur of an arbitration award, the Second Circuit nonetheless decided that the Supreme Court's decision to leave the *Wilko v. Swan*[52] decision intact, and not overrule *Wilko*'s manifest disregard argument, provided ample evidence that the Supreme Court "did not . . . abrogate the 'manifest disregard' doctrine altogether."[53]

The Second Circuit then took the position that they "view the 'manifest disregard' doctrine, and the FAA itself, as a mechanism to enforce the parties' agreements to arbitrate rather than as judicial review of the arbitrators' decision."[54] And, from this standpoint, the Second Circuit asserted that courts "must therefore continue to bear the responsibly to vacate arbitration award in the rare instances in which 'the arbitrator knew of the relevant [legal] principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it.'"[55] Therefore, the Second Circuit,

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[49] *Id.*

[50] *Id.*

[51] *See generally* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 94 (2d Cir. 2008). Since *Hall Street* was decided, "courts have begun to grapple with its implications for the 'manifest disregard' doctrine. *Id.* Specifically, the Second Circuit listed several federal courts that have been on both side of the debate of whether the doctrine continues to survive or has merely been reconceptualized in the *Hall Street* decision.

[52] Wilko v. Swan, 346 U.S. 427 (1953).

[53] *See Stolt-Nielsen*, 548 F.3d at 95.

[54] *Id.*

[55] *Id.* (quoting Westerbeke Corp. v. Daihatsu Motor Co., Ltd., 304 F.3d 200, 217 (2d Cir. 2002)).

finding that the manifest disregard doctrine continues to be a legitimate form of vacating arbitration awards, analyzed Stolt-Nielsen's arguments to determine whether the district court correctly decided the arbitration panel manifestly disregarded the law.[56]

C. *The Second Circuit's Analysis of Stolt-Nielsen's "Manifest Disregard" Claim and the District Court's Reasoning*

The district court found the arbitration panel "failed to make any meaningful choice-of-law analysis."[57] In this respect, the lower court reasoned that the arbitrators failed to recognize the dispute was governed by federal maritime law and ignored the "established rule of maritime law" that the interpretation of contracts "is . . . dictated by custom and usage."[58] Even under state law, the district court decided that the arbitration panel was required to interpret contacts in light of "industry custom and practice."[59] Based on these factors, the district court believed that, along with the extrinsic evidence provided by Stolt-Nielsen, the panel should have found for Stolt-Nielsen.

The Second Circuit disagreed with the district court, and furthermore, resolved that "the errors . . . identified do not, in our view, rise to the level of manifest disregard of the law."[60] Each of the three factors: (1) choice of law analysis, (2) Federal Maritime Rule of Construction in contract analysis, and (3) state law regarding the availability of class arbitration are discussed below in turn.

1. *Choice of Law*

The Second Circuit held that the arbitral panel did not manifestly disregard the law in its choice-of-law analysis. To reach the manifest disregard standard, the court argued, "the arbitrators must be 'fully aware of the existence of a clearly defined governing legal principle, but refuse [ ] to

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[56] *Id.* at 96.

[57] *See generally* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 435 F. Supp. 2d 382, 385 (S.D.N.Y. 2006).

[58] *Id.* at 385–86.

[59] *Id.* at 386.

[60] Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 96 (2d Cir. 2008).

apply it, in effect, ignoring it.'"[61] Instead, Stolt-Nielson briefed the arbitration panel, addressing choice of law provisions in a footnote and assuring the panel that choice of law was immaterial to the ultimate decision.[62] On that basis, the Second Circuit held "this concession bars us from concluding that the panel manifestly disregarded the law by not engaging in a choice-of-law analysis and expressly identifying federal maritime law as governing the interpretation of the charter party language."[63]

Nevertheless, the Second Circuit was convinced that the arbitration panel's award was proper. This conclusion was derived from the arbitration panel's language regarding the governing law which stated that the panel was bound to "look to the language of the parties' agreement to ascertain the parties' intention whether they intended to permit or preclude class action. This is . . . consistent with New York law . . . and with federal maritime law."[64] From this language, the court determined that in a "plausible reading of the award decision,"[65] the panel intended to interpret the charter parties according to the rules of both New York State law and federal maritime law, both of which, would render the same result as according to the panel and Stolt-Nielsen.

2. *Federal Maritime Rule of Construction*

The Second Circuit held that the arbitration panel did not manifestly disregard the law with respect to established rules of federal maritime law.[66] The Second Circuit arrived at the conclusion that while the district court stated that interpreting maritime contracts "is very much dictated by custom and usage,"[67] "custom and usage is more of a guide than a rule."[68] Thus,

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[61] *Id.* (quoting Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S, 333 F.3d 383, 389 (2d Cir. 2003).

[62] *Id.* Stolt-Nielsen, in their brief, expressed to the arbitration panel that it would make no difference whether the panel used New York or federal maritime law to govern the contracts because the analysis is the same under either. *See generally* Stolt-Nielsen Arbitration Br. 7 n. 13.

[63] *See Stolt-Nielsen,* 548 F.3d at 96.

[64] *Id.* (quoting Clause Construction Award 4).

[65] *Id.*

[66] *See, e.g.*, Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 435 F. Supp. 2d 382, 386 (S.D.N.Y. 2006).

[67] *Id.* at 385–86.

according to the Second Circuit, while "custom and usage" should be considered, influence interpretation, or inform a court's analysis, "it does not govern the outcome of each case."[69]

Additionally, the Second Circuit held that "Stolt-Nielsen cites no decision holding that a federal maritime rule of construction specifically precludes class arbitration where a charter party's arbitration clause is silent."[70] More specifically, the Second Circuit noted that "during oral argument . . . counsel for Stolt-Nielsen conceded that the interpretation of the charter parties in this case was an issue of first impression."[71] And, for whether the arbitration panel misapplied or misinterpreted the "custom and usage rule," the court has held that "the misapplication . . . of . . . rules of contract interpretation does not rise to the stature of 'manifest disregard' of the law."[72] Even if there were indications of egregious misapplication of custom, such "determinations of custom and usage are findings of fact, which federal courts may not review even for manifest disregard."[73]

On the above grounds, the arbitration panel acknowledged Stolt-Nielsen's argument with respect to custom and usage, but concluded that it failed to establish that the parties to the charter agreements intended to preclude arbitration. Therefore, "the panel thus considered Stolt-Nielsen's arguments and found them unpersuasive," [74] resulting in the Second Circuit finding that the panel did not evidence a manifest disregard for the law.

3. *State Law*

The Second Circuit determined that the panel did not manifestly disregard New York State law.[75] While the Second Circuit agreed with the district court's finding that New York State law follows a "custom and practice," the Second Circuit determined that, "it is also [the] state law that the courts' role in interpreting a contract is to ascertain the intentions of the

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[68] *See* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 97 (2d Cir. 2008). (quoting Great Circle Lines, Ltd. v. Matheson & Co., 681 F.2d 121, 125 (2d Cir. 1982) (discussing certain long-standing customs of the shipping industry)).

[69] *Id.* at 98.

[70] *Id.*

[71] *Id.*

[72] *Id.* (quoting Amicizia Societa Navegazione v. Chilean Nitrate & Iodine Sales Corp., 274 F.2d 805, 808 (2d Cir. 1960), *cert. denied*, 363 U.S. 843.

[73] *Id.* (quoting Wallace v. Buttar, 378 F.3d 182, 193 (2d Cir. 2004)).

[74] Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 98 (2d Cir. 2008).

[75] *Id.*

parties at the time they entered into the contract."[76] Regarding Stolt-Nielsen and AnimalFeeds, the Second Circuit determined that "the arbitration panel may have concluded that even though the arbitration clauses are silent on the disputed issue of whether class arbitration is permitted, their silence bespeaks an intent not to preclude class arbitration."[77]

Concluding its argument regarding state law custom and practice, the Second Circuit reasoned that none of the cases cited as precedent "purports to establish a *rule* regarding the interpretation of an arbitration clause that is silent on the issue of class arbitration."[78] Therefore, the Second Circuit held that no state law rule of construction clearly governed the question of whether class arbitration is permitted by an arbitration clause that is silent on the issue, "the arbitrators' decision construing such silence to permit class arbitration in this case is not in manifest disregard of the law."[79]

D. *Stolt-Nielsen's Reference to Past Precedent in the Second and Seventh Circuits*

An argument that was not discussed in the district court was Stolt-Nielsen's argument that Second Circuit decisions in *Glencore, Ltd. v. Schnitzer Steel Prods.*[80] and *United Kingdom v. Boeing Co.*,[81] along with the Seventh Circuit's decision in *Champ v. Siegel Trading Co.*,[82] prohibit class arbitration unless expressly provided for in an arbitration agreement.[83] Stolt-Nielsen argued that the failure of the panel to take these cases into consideration in their award constituted a manifest disregard of the law. The Second Circuit dismissed this argument finding that *Glencore*, *Boeing*, and *Champ* are not binding on this case.

The court based its reasoning on the later Supreme Court case of *Green Tree Financial Corp. v. Bazzle*, which determined "that when parties agree to arbitrate, the question whether the agreement permits class arbitration is generally one of contract interpretation to be determined by the arbitrators,

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[76] *Id.* at 99 (citing Evans v. Famous Music Corp., 807 N.E.2d 869, 873 (N.Y. 2004).

[77] *Id.* (emphasis in original).

[78] *Id.*

[79] *Id.*

[80] Glencore, Ltd. V. Schnitzer Steel Prods., 189 F.3d 264 (2d Cir. 1999).

[81] United Kingdom v. Boeing Co., 998 F.2d 68 (2d Cir. 1993)

[82] Champ v. Siegel Trading Co., 55 F.3d 269 (7th Cir. 1995).

[83] Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 99 (2d Cir. 2008).

not by the court."[84] In other words, *Bazzle* abrogated *Glencore*, *Boeing*, and *Champ* to the extent that they read the FAA to prohibit consolidation, joint hearings, or class representation, absent express provisions in the relevant arbitration clause.

While the Second Circuit acknowledged that *Boeing*, *Glencore*, and *Champ* were instructive insofar as they view the silence of an arbitration clause regarding consolidation, joint hearings, and class arbitration as disclosing the parties' intent not to permit such proceedings, the court noted that "they do not represent a governing rule of contract interpretation under federal maritime law or the law of New York."[85] Therefore, the Second Circuit determined that in the present case, *Bazzle* provides the governing rules of contract interpretation that arbitrators must consult.[86] Therefore, the Second Circuit ruled that the panel's decision to construe the contract language at issue between Stolt-Nielsen and AnimalFeeds to permit class arbitration was not in manifest disregard of the law.[87]

E. *Stolt-Nielsen's Claim that the Arbitrators Exceeded Their Authority*

In addition to asserting that the arbitration panel acted in manifest disregard of the law, Stolt-Nielsen also contended that the arbitration panel "exceeded its authority."[88] This claim falls under the FAA: "where [when] arbitrators [exceed] their powers,"[89] vacatur of an arbitration award may be possible. The Second Circuit quickly dismissed this claim on the basis that the parties expressly agreed that the arbitration panel "shall follow and be bound by Rules 3 though 7 of the American Arbitration Association's Supplementary Rules for Class Arbitrations."[90] Under Rule 3, "the arbitrator shall determine as a threshold matter, in a reasoned, partial final award on the construction of the arbitration clause, whether the applicable arbitration

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[84] *Id.* at 100 (Green Tree Financial Corp. v. Bazzle, 539 U.S. 452, 453 (2003).

[85] *Id.* at 101.

[86] To be sure, Rule 3 of the American Arbitration Association's Supplementary Rules for Class Arbitrations were established after *Bazzle* to embody the Supreme Court's opinion. *See also supra* note 14.

[87] *See* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 548 F.3d 85, 101 (2d Cir. 2008).

[88] *Id.* (citing Appellee Br. 18).

[89] 9 U.S.C. §10(a)(4).

[90] *See Stolt*-Nielsen, 548 F.3d at101 (citing Class Arbitration Agreement 3.)

clause permits the arbitration to proceed on behalf of or against a class."[91] Based upon the parties' agreement to follow the Supplementary Rules, and the construction of Rule 3 of the Supplementary Rules, the Second Circuit ruled that "the arbitration panel did not exceed its authority in deciding that issue—irrespective of whether it decided the issue correctly."[92]

IV. CONCLUSION AND IMPLICATIONS OF THE RULING

As the Second Circuit could not find manifest disregard of the law, the court reversed the judgment of the district court and remanded the case to the district court with instructions to deny the petition to vacate the arbitration award.[93] The reversal by the Second Circuit brings about two important issues. The first and arguably the more far reaching issue is whether courts can continue to reverse arbitral awards on the ground that arbitrators manifestly disregarded the law. This issue attracts the keen interest of arbitration practitioners. The second issue is whether imposing class arbitration on parties, whose arbitration clauses are silent on the issue, is consistent with the FAA. This issue could have broad implications for business by influencing their decisions to settle claims as well as decisions of international firms to choose the United States as a forum for their business interests and disputes arising from that business.

Interestingly, the Supreme Court granted writ of certiorari only on the issue of whether silence in an arbitration agreement permits class arbitration.[94] Thus, at this stage a decision by the Court will address imposition of class arbitration in cases where arbitration agreements are silent on the issue of class arbitration. However, the Supreme Court's grant of certiorari does not reveal any willingness by the Court to directly address the manifest disregard issue at this time. It is unknown if the Supreme Court sees any need or value in addressing the broader issue of the continuing vitality of the manifest disregard doctrine as a tool to attack arbitration awards.

What is clear, however, is that in the absence of guidance from the Supreme Court in *Stolt-Nielsen*, the circuit courts will continue to struggle with the manifest disregard doctrine. While the Second Circuit is not alone in

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[91] *Supra* note 14.

[92] *See Stolt-Nielsen*, 548 F.3d at 101.

[93] *Id.* at 102

[94] *See generally id.*

their belief that the manifest disregard doctrine lives on,[95] it is clear that other courts are not in agreement with the Second Circuit.[96] Until this issue is resolved by the U.S. Supreme Court, it is likely that the common law doctrine of manifest disregard of the law will continue to cause uncertainty among the lower federal courts.

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[95] The Sixth Circuit, in an unpublished opinion, also continued to apply the "manifest disregard" standard of review, however relying more on the *Wilko* decision to buttress their claim. *See* Coffee Beanery Ltd. v. WW LLC., 297 Fed App'x 556 (6th Cir. 2008).

[96] *See* Citigroup Global Mkts, Inc., v. Bacon, 562 F.3d 349 (5th Cir. 2009) (holding that manifest disregard of the law does not constitute an independent, nonstatutory ground for vacating awards under the Federal Arbitration Act).