The Arbitration Newsletter

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The Arbitration Newsletter is published periodically by Whitaker Chalk Swindle & Schwartz PLLC, Fort Worth, Texas, to explore the rapidly developing law and practice of commercial arbitration both in the U.S. and other countries.[1]

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ONLY ENUMERATED VACATUR GROUNDS FOR TAA ARBITRATION AWARDS
Hoskins v. Hoskins, 2016 Tex. LEXIS 386 (Tex. 2016)

"Manifest disregard of the law" is not an enumerated vacatur ground for arbitration awards governed by the Texas General Arbitration Act (the "TAA")[2] and no longer is a valid ground for vacatur in arbitrations governed by the TAA.[3] Justice Don Willett punctuates this Texas Supreme Court holding, joining the majority "in full," but concurring with a brief but comprehensive survey of the current confusion after *Hall Street Associates, LLC v. Mattel, Inc.*[4] regarding "manifest disregard" in the Federal Arbitration Act's vacatur jurisprudence.[5] "[M]anifest disregard of the law" is no longer an available common law vacatur ground in Texas for arbitration awards governed by the TAA.[6]

The parties in *Hoskins* agreed that the TAA governed their arbitration agreement.[7] The mandatory language in the TAA is "clear and unambiguous," "could not be plainer," and only needs for statutory construction its "plain and common meaning"[8] according to the *Hoskins* court. The trial court "**shall** confirm the award" unless there are statutory grounds for "vacating, modifying, or correcting an award."[9] The trial court "**shall** vacate an award if" one of the stated statutory vacatur grounds is established.[10] The trial court "**shall** modify or correct an award if"

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[1] Nothing in *The Arbitration Newsletter* is presented as or should be relied on as legal advice to clients or prospective clients. The sole purpose of *The Arbitration Newsletter* is to inform generally. The application of the comments in *The Arbitration Newsletter* to specific questions and cases should be discussed with the reader's independent legal counsel.

[2] Texas Civil Practice & Remedies Code ch. 171.

[3] *Hoskins v. Hoskins*, 2016 Tex. LEXIS 386, *19-21 (Tex. 2016) ("The TAA's plain language confirms that, in proceedings governed by that statute, section 171.088 provides the exclusive grounds for vacatur of an arbitration award.").

[4] 552 U.S. 576, 128 S.Ct. 1396, 170 L.Ed.2d 254 (2008).

[5] 2016 Tex. LEXIS 386, *20-21.

[6] 2016 Tex. LEXIS 386, *15.

[7] 2016 Tex. LEXIS 386, *8fn5.

[8] 2016 Tex. LEXIS 386, *8.

[9] TCP&RC §171.087(emphasis added); 2106 Tex. LEXIS 386, *8-11.

[10] TCP&RC §171.088(a)(1)-(4) (emphasis added); 2106 Tex. LEXIS 386, *8-11.

one of the statutory conditions for modification or correction is established.[11] This is a first-impression, straightforward statutory construction case that demonstrates the absence of "manifest disregard" as a TAA exclusive vacatur ground.[12] "[T]he TAA leaves no room for courts to expand on those [TAA] grounds [for vacatur]."[13]

Nafta Traders is not in conflict with the *Hoskins* decision because *Nafta* (based on the parties' arbitration agreement) was about another enumerated vacatur ground – "exceeded powers."[14] But no such limitation on the arbitrator's powers was attempted by the parties in *Hoskins.*[15] The losing party in *Hoskins*, in fact, "abandoned the majority of his statutory grounds for vacatur" in the court of appeals.[16]

L. H. Lacy Co. v. City of Lubbock[17] is not applicable to this case because *Lacy*, a construction case, was decided at a time when construction disputes were expressly exempted from the application of the TAA.[18] The Texas "dual system" of common law and statutory arbitration as explained in *Lacy* does not authorize the use of "manifest disregard" in cases governed by the TAA, whether the current version or the one that existed at the time *Lacy* was decided.[19]

The arbitrator's decision not to give the losing party a second hearing on two additional supplemental claims did not violate TCP&RC §§171.047 and 171.088(a)(3)(D). The after-filed supplemental claims were addressed in the arbitrator's prior grant of the winning party's summary judgment motion and, therefore, the losing party's rights were not "substantially prejudiced" by the lack of a second hearing.[20]

OBSERVATIONS

1. The decision to make the FAA the governing arbitration law in arbitration clause drafting for Texas-based contracts just became more interesting.

2. The lack of clarity among the federal circuits for "manifest disregard" as a continuing common-law vacatur ground versus the clarity of *Hoskins v. Hoskins* for the TAA is a consideration that arbitration clause drafters will want to consider.[21]

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[11]TCP&RC §171.091(a)(1)-(3) (emphasis added); 2106 Tex. LEXIS 386, *8-ll.
[12]2016 Tex. LEXIS 386, *8-11.
[13]2016 Tex. LEXIS 386, *11; TCP&RC §171.088(a)(1)-(4).
[14]TCP&RC §171.088(a)(3)(A); 2106 Tex. LEXIS 386, *11-12.
[15]2016 Tex. LEXIS 386, *12.
[16]2016 Tex. LEXIS 386, *7-8.
[17]559 S.W.2d 348 (Tex. 1977).
[18]2016 Tex. LEXIS 386, *14-15; citing *Lacy*, 559 S.W.2d at 350 ("Because the Texas General Arbitration Act exempts construction contracts from its coverage, the Act is not applicable here.").
[19]2016 Tex. LEXIS 386, *14-15 ("*Lacy* simply does not speak to the common law's application to arbitration agreements that *are* governed by the TAA.").
[20]2016 Tex. LEXIS 386, *16-19; TCP&RC §171.088(a)(3)(D).
[21]*See* Justice Willett's concurrence at 2015 Tex. LEXIS 836, *20-21.

3. Mistakes of fact or law continue not to be sufficient grounds by which arbitration awards can be vacated.[22]

4. Justice Willett believes that *Hoskins* means that all common law grounds for vacatur, including "gross mistake" are now barred for all awards subject to the TAA.[23]

5. The *Hoskins* majority again explained its disagreement with *Hall Street* based on the parties' arbitration agreement in *Hall Street* that permitted judicial review based on "exceeded powers" statutory ground in 9 U.S.C. §10(a)(4) and Tex. Civ. Prac. & Rem. Code §171.088(a)(3)(A), as the court had previously explained in *Nafta*.[24]

6. *Hoskins* also illustrates the exercise of the arbitrator's equitable powers by the arbitrator's appointment of a receiver for the trusts involved in the dispute who then filed his own motion to vacate that was denied by the trial court (without appeal).[25]

7. Common law arbitration, as discussed in *Lacy*, remains a viable option in Texas after *Hoskins* for arbitration clauses that do not expressly adopt either the TAA or the FAA.

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[22] *See Hoskins v. Hoskins*, 2014 Tex. App. LEXIS 11382, *5 (Tex. App. – San Antonio Oct. 15, 2014) (*citing* Texas cases).
[23] 2016 Tex. LEXIS 386, *21.
[24] 2016 Tex. LEXIS 386, *12fn7.
[25] 2016 Tex. LEXIS 386, *7fn3.