# COMMERCIAL ARBITRATION IN PUERTO RICO AFTER *HALL STREET*

ARTICLE

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## INTRODUCTION

THE PUERTO RICO SUPREME COURT IN *CONSTRUCTORA ESTELAR V. Autoridad de Edificios Públicos* reaffirmed the availability of an additional, non-statutory ground for vacating arbitral awards.[1] Pursuant to this standard, the parties to a commercial arbitration agreement may contract to expand the scope of judicial review by requiring that the arbitrators adjudicate the submitted dispute(s) in "conformity with the law."[2] If so, a party may appear before a court requesting that it vacate the award pursuant to the limited conditions in Puerto Rico's commercial arbitration statute; and review the award for its "legal correction and validity" (i.e., for errors of law in its merits and facts).[3] *Vacatur* of the award under this non-statutory ground, the Court added, is appropriate only if the arbitrators effectively failed to resolve the dispute pursuant to the applicable law—that the arbitrators either ignored the parties' substantive choice of law in resolving the legal controversy; or made factual findings without any support in the arbitral proceeding's record.[4]

In response to the Puerto Rico Supreme Court's expansive interpretation and application of the "conformity with the law" qualification, this Article first points out that the language should not, without more, automatically authorize courts to review –and potentially vacate– arbitral awards for legal errors. This Article also notes that federal courts are unlikely to enforce such provisions after the United States Supreme Court's decision in *Hall Street Associates, L.L.C. v. Mattel, Inc.*[5] Finally, this Article cautions that the Puerto Rico Supreme Court's lax construction of the qualification risks further delays in award confirmation proceedings, an increase in the litigation costs associated with commercial arbitration and a disregard for the parties' real intent in submitting their disputes to resolution in conformity with the law—to trigger an out-of-court adjudication method based on legal, as opposed to equitable, norms.

Upon these observations, this Article concludes that the Puerto Rico Supreme Court should reassess its broad reading of the "conformity with the law" requirement to the extent it continues relying on the United States as a model for the

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1 Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 33-35 (2011). The Puerto Rico Supreme Court's opinion also considered whether an award issued after the expiration of the parties' agreed-upon deadline are automatically invalid. *Id.* at 22-29. While this issue comprises a substantial portion of the *Constructora Estelar* decision, they fall outside the scope of this Article and therefore will not be addressed.

2 *Id.* at 33-35.

3 Junta de Relaciones del Trabajo v. Hato Rey Psychiatric Hosp., 119 P.R. Dec. 62, 68 (1987) (translation by author); *see also Constructora Estelar*, 183 P.R. Dec. at 35; Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 361-62 (1961).

4 *See Constructora Estelar*, 183 P.R. Dec. at 33; Rivera v. Samaritano & Co., 108 P.R. Dec. 604, 608-09 (1979).

5 Hall Street Associates, Inc. v. Mattel L.L.C., 552 U.S. 576 (2008).

development of its local commercial arbitration jurisprudence. It should not continue misinterpreting and misapplying the non-statutory standard as an indication of the parties' desire to expand the available scope of judicial review for vacating arbitral awards. The Court should instead require express contractual language that the arbitrators' legal errors constitute action in excess of their adjudicatory powers. Vacating the award under this alternative drafting would fit neatly among the codified grounds, and avoid at least some of the issues that the conformity-with-the-law standard raises in light of the broader commercial arbitration doctrine.

## I. THE PUERTO RICO ARBITRATION ACT

It is well settled that Puerto Rico has a strong interest in promoting alternative dispute resolution methods such as arbitration, whereby parties agree to resolve their controversies through private decision-makers —"arbitrators"— rather than courts.[6] Among other benefits, these extra-judicial proceedings are faster and less expensive than conventional litigation practice.[7] Accordingly—and to safeguard the parties' contractual autonomy—Puerto Rico has adopted a "vigorous public policy" favoring the enforcement of arbitration agreements pursuant to their terms.[8]

This position is effectively codified in the *Ley para autorizar la celebración de convenios de arbitraje en Puerto Rico* (the "Puerto Rico Arbitration Act" or "Act").[9] Its twenty nine sections, largely modeled after the Federal Arbitration Act (the

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**6** *Constructora Estelar*, 183 P.R. Dec. at 30; Vivoni Farage v. Ortiz Carro, 179 P.R. Dec. 990, 1006-07 (2010); *see also* NIGEL BLACKABY *ET AL.*, REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION ¶ 1.04 (6th ed. 2015).

**7** *Constructora Estelar*, 183 P.R. Dec. at 30; *see also* BLACKABY *ET AL.*, *supra* note 6, ¶ 1.04 ("Arbitration, in short, is an effective way of obtaining a final and binding decision on a dispute, or series of disputes, without reference to a court of law . . . .").

**8** *Constructora Estelar*, 183 P.R. Dec. at 30 (translation by author); Municipio de Mayagüez v. Lebrón, 167 P.R. Dec. 713, 720 (2006) ("[S]ince a strong public policy in favor of arbitration exists [in Puerto Rico], any doubt with respect to whether [arbitration] should proceed must be resolved in the affirmative.") (translation by author).

**9** P.R. LAWS ANN. tit. 32, §§ 3201-29 (2004); *see also Vivoni Farage*, 179 P.R. Dec. at 1006. The Puerto Rico Arbitration Act effectively repealed the applicable Spanish laws governing the field at the time, even though these were compatible with the Act and the general commercial arbitration norms adopted in the United States federal and state jurisdictions. P.R. LAWS ANN. tit. 32, § 3229 (2004); *see also Constructora Estelar*, 183 P.R. Dec. at 31 (2011); Seafarers International Union v. Tribunal Superior, 86 P.R. Dec. 803, 812 n. 2 (1962); Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 356 n. 6 (1961). Spain and the United States, for example, both envisioned arbitration as being contractual in nature. *Rivera*, 108 P.R. Dec. at 607. In fact, Puerto Rico's courts by the 1940s' had already adopted the United States federal and state grounds—later codified in the Act—for judicial review and *vacatur* of awards, expressing a general unwillingness to vacate them absent any (1) defect or insufficiency invalidating the arbitration agreement, submission or award; (2) "substantial and prejudicial" deviation from the arbitral proceedings; or (3) arbitrator fraud, misconduct, or "grave or prejudicial" error tantamount to a violation of due process rights. *Constructora Estelar*, 183 P.R. Dec. at 30-31 (translation by author).

"FAA"),[10] comprehensively authorize and regulate commercial arbitration in Puerto Rico.[11] The provisions also give effect to arbitration agreements by addressing the selection and appointment of arbitrators, the admissibility and sufficiency of the proffered evidence, and the deadlines for the issuance of arbitral awards.[12] These procedural features, unavailable under the FAA, are "probably" based on the arbitration statutes of California and New York.[13] Given these origins, the Puerto Rico Supreme Court has consistently relied on the United States commercial arbitration model to interpret and apply the Act[14] —so much so that its case law embraces those federal and state legal principles governing the parties' agreement to arbitrate their disputes, as well as the scope of judicial review for arbitral awards.[15]

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**10** Federal Arbitration Act, 9 U.S.C. §§ 1-16 (2009 & Suppl. 2015).

**11** *Constructora Estelar*, 183 P.R. Dec. at 31; *Autoridad Sobre Hogares*, 82 P.R. Dec. at 359; David M. Helfeld, *La jurisprudencia creadora: Factor determinante en el desarrollo del Derecho de Arbitraje en Puerto Rico*, 70 REV. JUR. UPR 1, 54 (2001). The Puerto Rico Arbitration Act covers a broader range of legal disputes *vis-à-vis* its federal counterpart. *Compare* P.R. LAWS ANN. tit. 32, § 3201 (allowing parties to arbitrate "any [existing or future] dispute"), *with* 9 U.S.C. § 1 (enforcing only those arbitration agreements that pertain to a maritime transaction or relate to a contract involving interstate commerce); *see also* Helfeld, *supra*, at 54 (asserting that legal disputes relating to torts, estates, family law, and other areas of law that are neither strictly contractual nor commercial in nature may also fall within the Act's scope). Yet unlike the FAA, the Puerto Rico Arbitration Act does not apply to "arbitration agreements between employers and employees," which are regulated under another local statute. *Constructora Estelar*, 183 P.R. Dec. at 31 n. 49 (translation by author); *see also* Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 119 (2001) (holding that "Section 1 exempts from the FAA only [arbitration agreements in] contracts of employment of transportation workers."). Still, the Puerto Rico Supreme Court consistently cites to its employment arbitration case law when announcing the general principles that will govern local commercial arbitration proceedings—including the parties' ability to expand the statutory scope of judicial review and *vacatur* grounds under the conformity-with-the-law standard, discussed in this Article. *See Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 353-55 (taking the "conformity with the law" standard from a prior employment arbitration decision); Helfeld, *supra*, at 56 (noting that "the practice of citing employment arbitration precedent to establish the principles governing commercial arbitration" began in 1961 with *Autoridad Sobre Hogares de Puerto Rico*) (translation by author). Note, however, that the policy issues and concerns are not the same: "Arbitration works well when power is balanced between the two sides: in commercial disputes between big firms, say. Yet the balance between an employer and an employee, particularly in low-wage occupations, is often anything but even." *Shut Out by the Small Print: The Problem with the Craze for Mandatory Arbitration*, THE ECONOMIST (Jan. 27, 2018), https://www.economist.com/news/leaders/21735590-millions-american-employees-have-no-recourse-courts-problem craze?frsc=dg%7Ce.

**12** *See* P.R. LAWS ANN. tit. 32, §§ 3205-10, 3214, 3217-18 (2004).

**13** Helfeld, *supra* note 11, at 54-55 ("[The Puerto Rico Arbitration Act] is not an exact copy of the FAA, since it includes a number of additional provisions codifying the arbitration process itself. These additions may probably be traced to the arbitration laws such as those in California and New York.") (translation by author).

**14** *Constructora Estelar*, 183 P.R. Dec. at 31; S.L.G. Méndez-Acevedo v. Nieves Rivera, 179 P.R. Dec. 359, 369-70 (2010); Helfeld, *supra* note 10, at 53.

**15** *Constructora Estelar*, 183 P.R. Dec. at 31; *S.L.G. Méndez-Acevedo*, 179 P.R. Dec. at 368; *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 355.

### *A. The Validity and Enforceability of Commercial Arbitration Agreements*

The Act considers commercial arbitration to be inherently contractual.[16] Pursuant to § 3201, parties may commit to arbitrate any current or future claims arising from (or related to) their underlying commercial contract, provided they have agreed to do so in writing.[17] The Act does not require any other formalities: the parties may evince their intent to arbitrate an existing dispute in a separate agreement; alternatively, they may include, as part of their original commercial contract, either an express arbitration clause submitting future claims to arbitration, or a provision incorporating one by reference.[18] In either case, the Puerto Rico Arbitration Act upholds the arbitration agreement as "valid, enforceable, and irrevocable," except where any of the legal grounds for the revocation of a contract exist.[19]

Thus, courts may stay civil actions between parties to a binding arbitration agreement under § 3201 until the arbitral proceedings come to an end.[20] By the same token, if one of the contracting parties refuses to arbitrate, the opposing litigant may file a motion requesting confirmation of their mutual assent to extrajudicial adjudication[21]—that is, to settle: (1) whether a valid and enforceable arbitration agreement exists; (2) whether the scope of the arbitration agreement covers the parties' dispute, or (3) whether the arbitrators may adjudicate claims concerning the duration and expiration of the parties' underlying commercial contract.[22] Thereafter, the court may enter an order compelling the parties to arbitrate in accordance with their agreement.[23]

Notwithstanding these provisions, it is "prudent" for courts to exercise "judicial abstention" when confronted with arbitration agreements.[24] In line with the United States' approach under the FAA, Puerto Rico's public policy also mandates that courts resolve in favor of arbitration any doubts as to whether the contracting parties may arbitrate particular claims.[25] Said differently, the courts lack discretion over arbitration's effectiveness as an alternative dispute resolution method: if an

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**16** Municipio de Mayagüez v. Lebrón, 167 P.R. Dec. 713, 720 (2006); Rivera v. Samaritano & Co., 108 P.R. Dec. 604, 606-07 (1979).

**17** P.R. LAWS ANN. tit. 32, § 3201 (2004); *see also S.L.G. Méndez-Acevedo*, 179 P.R. Dec. at 367.

**18** VDE Corp. v. F & R Contractors, 180 P.R. Dec. 21, 33 (2010); *Municipio de Mayagüez*, 167 P.R. Dec. at 720; *Rivera*, 108 P.R. Dec. at 608.

**19** P.R. LAWS ANN. tit. 32, § 3201 (2004).

**20** *Id.* § 3203.

**21** *Id.* § 3204.

**22** *Municipio de Mayagüez*, 167 P.R. Dec. at 720 (*citing* World Films, Inc. v. Paramount Pict. Corp., 125 P.R. Dec. 352, 361 n. 9 (1990)).

**23** P.R. LAWS ANN. tit. 32, § 3204 (2004).

**24** *Municipio de Mayagüez*, 167 P.R. Dec. at 720 (translation by author) (*citing* U.C.P.R. v. Triangle Engineering Corp., 136 P.R. Dec. 133, 142 (1994)).

**25** S.L.G. Méndez-Acevedo v. Nieves Rivera, 179 P.R. Dec. 359, 368-70 (2010).

arbitration agreement is valid and enforceable pursuant to § 3201, the court must give effect to its terms and provisions.[26]

### *B. Confirming and Vacating Arbitral Awards*

Once the arbitral proceedings come to an end, the arbitrators resolve the parties' dispute by recording their factual and legal conclusions in an arbitral award.[27] In this sense, the awards are similar to trial court judgments, and therefore subject to a degree of judicial review.[28] As a general rule, however, awards are also "final and unappealable" (i.e., binding), effectively prohibiting the parties from re-litigating their claims.[29] The Puerto Rico Arbitration Act even presumes that awards are valid and enforceable: the parties may, but need not, request judicial confirmation to this effect.[30]

Courts must therefore play a "truly narrow and limited role" while reviewing arbitral awards.[31] They cannot inquire as to the arbitrators' "deliberate, mental, and decisional process" during the adjudication, much less review any alleged mistakes or errors in their interpretation of the facts or application of the legal norms governing the dispute—even if the courts would have ruled differently on the same evidence and law.[32] To the extent that the arbitrators "even arguably constru[ed] or appl[ied]" the parties' arbitration agreement, the relevant legal rules, or the record before it, and "act[ed] within the scope of [their] authority," the court must confirm the award.[33]

In keeping with these principles—premised upon notions of judicial "self-restraint" and deference towards arbitrators[34]—the Act "strengthens" commercial

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**26** PaineWebber, Inc. v. Service Concepts, Inc., 151 P.R. Dec. 307, 312 (2000).

**27** Vivoni Farage v. Ortiz Carro, 179 P.R. Dec. 990, 1006-07 (2010).

**28** Unión de la Industria Licorera de Ponce v. Destilería Serrallés, 116 P.R. Dec. 348, 354 (1985).

**29** Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 33 (2011) (translation by author); *Vivoni Farage*, 179 P.R. Dec. at 1006-07; Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 354 (1961).

**30** *See* P.R. LAWS ANN. tit. 32, § 3221 (2004) ("The validity of an award [that is not subject to modification, correction, or *vacatur* under the Act] shall not be affected by the fact that no motion has been filed for its confirmation."); *see also Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 354. The Puerto Rico Arbitration Act permits a party to challenge this supposition through a motion requesting the award's modification, correction, or *vacatur*. *See* P.R. LAWS ANN. tit. 32, § 3224.

**31** Junta de Relaciones del Trabajo v. Hato Rey Psychiatric Hospital, 119 P.R. Dec. 62, 67 (1987) (translation by author).

**32** *Constructora Estelar*, 183 P.R. Dec. at 33 (translation by author); Febus v. MARPE Construction Corp., 135 P.R. Dec. 206, 217 (1994); Junta de Relaciones del Trabajo v. Corporación de Crédito Agrícola, 124 P.R. Dec. 846, 849 (1989); *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 352, 362-63.

**33** Colón Vázquez v. El San Juan Hotel & Casino, 483 F.Supp.2d 147, 151-53 (D.P.R. 2007) (citations omitted).

**34** *Vivoni Farage*, 179 P.R. Dec. at 1006-07 (translation by author); *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 354.

arbitration proceedings by codifying the exclusive *vacatur* grounds for the otherwise final and binding awards.[35] Specifically, § 3222 authorizes courts to enter, upon a party's motion request, an order vacating an award following notice and a hearing only: (1) where it was obtained through corruption, fraud, or undue means; (2) where the arbitrators manifested evident partiality or corruption; (3) where the arbitrators erred in refusing to postpone the arbitral hearing after just cause was shown, or in refusing to hear relevant and material evidence, or when they commit any other error impairing the rights of any party to the dispute; (4) where the arbitrators exceeded their powers or where the rendered award does not finally and definitively decide the parties' legal controversy, or (5) where the arbitration submission or agreement is invalid, and the arbitral proceedings were initiated without proper service of process.[36]

The five standards listed in § 3222 are an almost-literal replica of the corresponding grounds in FAA § 10,[37] which also provides courts with "very limited" *vacatur* justifications by prohibiting judicial review for legal errors in an award's merits and facts.[38] Whenever the challenging party shows the award is subject to *vacatur* under any of the Act's five grounds, the reviewing court retains discretion to order a new hearing before the same arbitrator(s); or have new ones selected

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**35** *Constructora Estelar*, 183 P.R. Dec. at 32 (translation by author); *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 361; P.R. LAWS ANN. tit. 32, § 3222 (2004). The Puerto Rico Arbitration Act also allows courts to modify or correct arbitral awards (1) where there was an evident and material miscalculation of numerical figures or an evident and material error in the description of a person, thing, or property; (2) where the arbitrators handed down a ruling and an award with regard to a matter not submitted to them by the arbitration agreement, or (3) where the arbitral award is imperfect as to its form, without affecting the merits of the dispute. P.R. LAWS ANN. tit. 32, § 3223 (2004). This Article will only discuss the statutory grounds for vacating awards.

**36** *See* P.R. LAWS ANN. tit. 32, §§ 3222, 32224 (2004). The Puerto Rico Supreme Court has summarized and re-stated these grounds, asserting that an arbitral award may be vacated under the Act for: (1) fraud; (2) improper conduct on behalf of the arbitrators; (3) lack of due process during the arbitration hearing; (4) public policy violations; (5) lack of jurisdiction; and (6) failure to resolve all of the issues submitted to the arbitral panel. *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 353.

**37** *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 353 (translation by author); Helfeld, *supra* note 11, at 54 (pointing out that much of the Puerto Rico Arbitration Act, "especially" the "key provisions," constitute a "translation of the FAA to Spanish") (translation by author).

**38** Universal Ins. Co. v. Warrantech Consumer Prod. Servs., Inc., 849 F. Supp. 2d 227, 236 (D.P.R. 2012) (noting that the comparability between both sets of *vacatur* grounds is "unsurprising: Not only is the [Puerto Rico Arbitration Act] modeled after the FAA, but it tracks [the federal statute] closely as well.") (citations omitted). To illustrate this stark equivalence, the Act's *vacatur* grounds for arbitrator fraud, corruption, or excess of arbitral power—the first, second, and fourth justifications, respectively—"constitute a *verbatim* recitation of [their] federal counterpart." *Id.* at 235. Similarly, the fifth ground—lack of notice or proper service of process—"parallels" the federal statute's provisions in § 9 on award confirmation and procedure. *Id.* The third *vacatur* justification is also no exception, despite its terminology seemingly warranting a "lesser protection to arbitration awards" than the federal version. *Id.* On account of the Puerto Rico Arbitration Act's legislative history and close relationship to the FAA, "error" as used in § 3222 is equivalent to the terms "misconduct" and "misbehavior" in the federal version of the *vacatur* ground, such that both standards offer awards the same degree of protection from court intervention by prohibiting judicial review of the arbitrators' alleged mistakes or "errors" while weighing the facts or administering the law. *Id.* at 235-36; *see also Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 360-61.

pursuant to the provisions (if any) in the parties' arbitration agreement.[39] If no such showing is made, however, the court must confirm the award as final and binding upon the parties.[40] The Puerto Rico Arbitration Act by its own terms forbids—at least for *vacatur* purposes—any other type of judicial review of, or intervention against, arbitral awards.[41]

## II. CONTRACTUALLY EXPANDING THE SCOPE OF JUDICIAL REVIEW—THE NON-STATUTORY "CONFORMITY WITH THE LAW" *VACATUR* GROUND

Despite the exclusive language of § 3222, the parties to an arbitration agreement may also contractually expand the scope of judicial review and grounds for vacating awards provided in the Act.[42] The Puerto Rico Supreme Court has confirmed that courts retain jurisdiction to review awards for legal errors in their merits and facts whenever the parties' agreement expressly requires that the arbitrators resolve the submitted disputes "in conformity with the law."[43] The qualification likewise operates as an "exception" (or non-statutory addition) to the *vacatur* grounds in the Puerto Rico Arbitration Act.[44] In these instances, the losing party may appear before a court to request both the award's *vacatur* pursuant to § 3222—namely, for fraud, improper conduct, due process and public policy violations, lack of jurisdiction, or failure to resolve all matters in dispute—*and* judicial review for the "legal correction and validity" of the award's merits and facts.[45]

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**39** P.R. LAWS ANN. tit. 32, § 3222 (2004).

**40** *Id.* § 3221; *see also Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 354.

**41** *See* Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 34-35 (2011); Febus v. MARPE Construction Corp., 135 P.R. Dec. 206, 216-17 (1994); Junta de Relaciones del Trabajo v. Corporación de Crédito Agrícola, 124 P.R. Dec. 846, 849 (1989); Corp. de Renovación Urbana y Vivienda v. Hampton Development Corp., 112 P.R. Dec. 59, 63-64 (1982); *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 361-62.

**42** *Constructora Estelar*, 183 P.R. Dec. at 33-35; Unión de la Industria Licorera de Ponce v. Destilería Serrallés, 116 P.R. Dec. 348, 352-53 (1985); Rivera v. Samaritano & Co., 108 P.R. Dec. 604, 608-09 (1979); *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 361.

**43** *Constructora Estelar*, 183 P.R. Dec. at 33-34; Vivoni Farage v. Ortiz Carro, 179 P.R. Dec. 990, 1007 (2010); Condado Plaza Hotel & Casino v. Asociación de Empleados de Casinos, 149 P.R. Dec. 347, 353 (1999); *Corporación de Crédito Agrícola*, 124 P.R. Dec. at 849; *Unión de la Industria Licorera de Ponce*, 116 P.R. Dec. at 352-53; *Rivera*, 108 P.R. Dec. at 608-09.

**44** Universal Ins. Co. v. Warrantech Consumer Prod. Servs., Inc., 849 F. Supp. 2d 227, 236 (D.P.R. 2012); *Constructora Estelar*, 183 P.R. Dec. at 33-35; *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 354, 362; *see* discussion *supra* Part I, Section B.

**45** Junta de Relaciones del Trabajo v. Hato Rey Psychiatric Hospital, 119 P.R. Dec. 62, 68 (1987) (translation by author); *see also Constructora Estelar*, 183 P.R. Dec. at 35; *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 354, 361-62.

The Puerto Rico Supreme Court cautions, however, that lower courts should not feel readily inclined to vacate these qualified awards unless the arbitrators "effectively" failed to resolve the parties' dispute in conformity with the law.[46] Courts may review the arbitrators' legal errors or misunderstandings in—as opposed to "mere discrepancies" with[47]—their application of the substantive law or evaluation of the facts, as long as the parties' arbitration agreement explicitly required that the dispute be resolved in conformity with the law.[48] The award's *vacatur*, however, is warranted *only if* it is evident that the arbitrators' did not resolve the dispute according to the applicable law.[49] In practice, this would mean that the arbitrators either (1) made factual findings that were irrational, arbitrary, illegal, or not supported by the record, or (2) disregarded the parties' choice of substantive law in their arbitration agreement.[50]

If the conformity-with-the-law standard were more lax, the Puerto Rico Supreme Court reasons, it would defeat the "fundamental purposes" of arbitration as a speedy dispute resolution system without the costs and delays associated with conventional court litigation.[51] The expanded scope of judicial review for legal errors correspondingly parallels that of an appellate forum revising the correct or incorrect judgments of lower courts and administrative bodies for mistakes of law.[52] Plenary hearings—a re-litigation of the parties' claims, or *de novo* trial—are not allowed, since these would render the arbitrators' deliberations, and commercial arbitration proceedings themselves, an "exercise in futility" under the Act.[53]

### *A. The Underlying Reasoning and Justifications*

The relationship between the conformity-with-the-law standard and the expanded scope of judicial review it offers parts from the premise that arbitration agreements limit the arbitrators' adjudicatory authority over the parties' submitted disputes.[54] An arbitral award's final and binding character, contracted for in

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**46** *Constructora Estelar*, 183 P.R. Dec. at 33-34 (translation by author); *Rivera*, 108 P.R. Dec. at 609.

**47** *Rivera*, 108 P.R. Dec. at 609 (translation by author).

**48** *Constructora Estelar*, 183 P.R. Dec. at 34; *Hato Rey Psychiatric Hospital*, 119 P.R. Dec. at 68; *Rivera*, 108 P.R. Dec. at 609.

**49** *Rivera*, 108 P.R. Dec. at 609.

**50** *Constructora Estelar*, 183 P.R. Dec. at 34; *Hato Rey Psychiatric Hospital*, 119 P.R. Dec. at 68; *Rivera*, 108 P.R. Dec. at 609; *see also Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 354 (holding that an arbitration agreement requiring that the arbitrators issue the award in "conformity with law" ensures that arbitrators do not disregard the parties' choice of substantive law in resolving the dispute).

**51** *Rivera*, 108 P.R. Dec. at 609 (translation by author).

**52** Unión de la Industria Licorera de Ponce v. Destilería Serrallés, 116 P.R. Dec. 348, 355 (1985).

**53** *Id.* at 354-55 (translation by author) (prohibiting discovery methods during judicial review of arbitral awards subject to resolution in conformity with the law).

**54** *Rivera*, 108 P.R. Dec. at 607-09; *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 353-54.

the arbitration agreement,[55] guarantees the benefit of the parties' bargain: resolving their claims in a cost-effective and expeditious manner "by substituting arbitrators for courts in the determination of all factual and legal issues between them."[56] The arbitrators, moreover, are ordinarily free to choose (or ignore) the "rules of substantive law" under which they will resolve the parties' dispute.[57] In fact, arbitrators do not need to issue factual findings or legal conclusions, or explain the reasoning underlying the award, and may even resolve the parties' dispute by relying on "personal knowledge and experience."[58] The arbitrators are, by extension, free to commit "errors of law" while resolving the dispute, and the issued award cannot be subject to judicial review of its merits and facts under § 3222; this is what the parties essentially intended for—or impliedly accepted—by agreeing to arbitrate their claims.[59]

Be that as it may, the parties have "ample freedom" to incorporate in their arbitration agreement any provisions they deem appropriate for resolving their disputes.[60] As the Puerto Rico Supreme Court reasons, avoiding the complexity and scrutiny of traditional court proceedings—the main draw of alternative dispute resolution methods[61]—should thereby defer to arbitration's contractual nature whenever parties circumscribe the arbitrators' powers by including the "conformity with the law" requirement in their agreement.[62] Hence, the parties may contractually expand the scope of judicial review for awards and limit the arbitrators' adjudicatory authority by subjecting their claims to resolution in conformity with the law—that is, by requiring that the arbitrators "follow the rules of law" and "the prevailing legal doctrines."[63] The arbitrators are contractually obligated to comply with this condition; if not, the award is subject to *vacatur* given that the arbitrators would have exceeded the sphere of their delegated powers.[64]

For these reasons, allowing parties to expand the scope of judicial review for awards under the conformity-with-the-law standard allegedly bolsters, rather than diminishes, the arbitration agreement's effectiveness by enforcing it pursuant to its express terms and giving effect to the parties' intent: in this case, that

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**55** BLACKABY *ET AL.*, *supra* note 6, ¶ 1.04 ("Th[e arbitrators'] decision is final and binding on the parties—and it is final and binding because the parties have agreed that it should be, rather than because of the coercive power of any state.").

**56** *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 354 (translation by author); *see also Constructora Estelar*, 183 P.R. Dec. at 30.

**57** *Autoridad Sobre Hogares*, 82 P.R. Dec. at 354 (translation by author).

**58** *Id.* at 354, 361-62 (translation by author).

**59** *Id.* at 353-54, 362 (translation by author).

**60** Rivera v. Samaritano & Co., 108 P.R. Dec. 604, 608 (1979) (translation by author).

**61** *See Constructora Estelar*, 183 P.R. Dec. at 30.

**62** *See Rivera*, 108 P.R. Dec. at 607-09; *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 353-57.

**63** *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 354 (translation by author).

**64** *Rivera*, 108 P.R. Dec. at 608.

the award also be subject to judicial review for legal errors in its merits and facts.[65] This expectation, the Puerto Rico Supreme Court suggests, is not entirely antithetical to the provisions in § 3222, which includes a *vacatur* ground for whenever the arbitrators exceed the purview of their delegated authority (as prescribed in the parties' arbitration agreement).[66]

### *B. The Federal Counterpart: "Manifest Disregard of the Law"*

Despite taking mostly after state—particularly California—case law,[67] Puerto Rico's non-statutory conformity-with-the-law standard is not entirely foreign to the federal commercial arbitration doctrine. The United States Supreme Court "implicitly acknowledged" a similar "excess-of-authority" argument in *Wilko v. Swan*,[68] where it stated that "the 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" in cases involving "unrestricted" arbitration agreements[69]—those that "do not require the arbitrators to follow the law."[70] Conversely, for "restricted" arbitration agreements—those that do impose the requirement—the courts have jurisdiction to "review the arbitrators' legal rulings *de novo*."[71] The qualification effectively authorizes—as does the conformity-with-the-law standard—the *vacatur* of an award where the arbitrators' fact-findings are unsupported by the record or where the arbitrators' legal conclusions are erroneous.[72] And this is no accident: the Puerto Rico Supreme Court favorably cited to

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**65** *Id.* at 608-09; *see also* Junta de Relaciones del Trabajo v. Otis Elevator Co., 105 P.R. Dec. 195, 202 (1976) (holding that courts serve to ensure that the arbitration agreements are strictly enforced pursuant to their terms as long as the parties' intent and submission to the extra-judicial proceedings is clear).

**66** P.R. LAWS ANN. tit. 32, § 3222(d) (2004); *Rivera*, 108 P.R. Dec. at 607-09; *see also Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 362-63 (holding that the Puerto Rico Arbitration Act, despite barring courts from reviewing awards for errors of law on their legal merits and facts, "did not leave without effect" the parties' ability to expand the scope of judicial review by subjecting their dispute to resolution in conformity with the law).

**67** *See* discussion *infra* Part III; *see also Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 355.

**68** Christopher R. Drahozal, *Contracting Around Hall Street*, 14 LEWIS & CLARK L. REV. 905, 914 (2010).

**69** Hall Street Associates L.L.C. v. Mattel Inc., 552 U.S. 576, 584 (2008) (*citing* Wilko v. Swan, 346 U.S. 427, 436-37 (1953)).

**70** Drahozal, *supra* note 68.

**71** *Id.*

**72** *Id.* Drahozal explains that a "restricted" arbitration agreement requiring arbitrators to issue an award in conformity with the law has "the same effect" as an "expanded-review provision" authorizing courts to "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." *Id.* (citing the expanded review provision in the *Hall Street* arbitration agreement).

*Wilko* when it adopted the conformity-with-the-law standard for the local commercial arbitration jurisprudence.[73]

Some federal Courts of Appeals later expanded upon *Wilko*'s language, interpreting it as a non-statutory *vacatur* ground—known as "manifest disregard of the law"—additional to the ones listed in the FAA.[74] Indeed, the First Circuit, to which Puerto Rico belongs, recognizes a "very limited exception" to the scope of judicial review under FAA § 10, allowing courts to vacate awards upon evidence that the arbitrators acted in "manifest disregard of the law" while resolving the parties' controversies.[75] Under this ground, a party may challenge and vacate the arbitrators' determinations by showing that the award is "(1) unfounded in reason and fact; (2) based on reasoning so palpably faulty that no judge, or group of judges, could ever conceivably have made such a ruling, or (3) mistakenly based on a crucial assumption that is concededly a non-fact."[76] In order to succeed on this claim, however, there must first be "'some showing in the record, other than the result obtained, that the arbitrator . . . knew the law and expressly disregarded it.'"[77]

The Puerto Rico Supreme Court thus seems to have been enforcing *Wilko* and its progeny all along: even the local United States District Court has associated the local conformity-with-the-law standard with the federal "manifest disregard" counterpart.[78] And both non-statutory *vacatur* grounds are at least comparable: each suggests a certain degree of intent, evident on the record, in the arbitrators' decision to ignore the law governing the resolution of the parties' submitted disputes.[79] The extent to which the grounds are commensurate, however, is quite

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**73** *See* Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 356 (1961) (justifying the conformity-with-the law standard, in part, on the United States Supreme Court's decision in *Wilko*, 346 U.S. at 427.

**74** *Hall Street*, 552 U.S. at 584.

**75** Ramos-Santiago v. United Parcel Service, 524 F.3d 120, 124 (1st Cir. 2008); McCarthy v. Citigroup Global Mkts., 463 F.3d 87, 91 (1st Cir. 2006); Wonderland Greyhound Park v. Autonote Sys., 274 F.3d 34, 35 (1st Cir. 2001); Advest, Inc. v. McCarthy, 914 F.2d 6, 8 (1st Cir. 1990) (holding that the "manifest disregard of the law" standard provides courts with "a very limited power to review arbitration awards outside of section 10 [of the FAA].").

**76** *Ramos-Santiago*, 524 F.3d at 124 (*citing McCarthy*, 463 F.3d at 91).

**77** *Id.* (*quoting* O.R. Securities v. Professional Planning Associates, 857 F.2d 742, 747 (11th Cir. 1988)).

**78** *See* Universal Ins. Co. v. Warrantech Consumer Product Servs., Inc., 849 F. Supp. 2d 227, 236 n. 7 (D.P.R. 2012) (construing the conformity-with-the law standard as equivalent to the manifest-disregard-of-the-law standard).

**79** *Compare* Rivera v. Samaritano & Co., 108 P.R. Dec. 604, 608-09 (1979) (stating that an award is subject to *vacatur* when the parties have explicitly required in the arbitration agreement that it be "rendered in conformity with the parties' choice of substantive law" but, despite recognizing this and correctly stating the law, the arbitrators still ignored the applicable law), *and* Junta de Relaciones del Trabajo v. Hato Rey Psychiatric Hospital, 119 P.R. Dec. 62, 68 (1987) ("Conditioning an award to 'conformity with the law' means that the arbitrator cannot ignore the interpretive norms of substantive law [as indicated in the parties' arbitration agreement]."), *with Advest*, 914 F.2d at 8-9 ("'[D]isregard' implies that the arbitrators appreciated the existence of a governing legal rule but willfully decided not to apply it . . . . [It must be] clear from the record that the arbitrator[s] recognized the applicable law-and then ignored it.").

elusive, and the recent federal commercial arbitration cases cast doubt on whether the conformity-with-the-law standard survives in local and federal courts as applied, or as a proxy for *Wilko*'s "manifest disregard of the law" language.[80]

## III. THE MISINTERPRETATION AND MISAPPLICATION OF THE CONFORMITY-WITH-THE-LAW STANDARD

The parties' ability to expand the scope of judicial review, and hence rely on non-statutory *vacatur* grounds under the conformity-with-the-law standard, does not seem to run up against universal commercial arbitration principles.[81] As a general matter, the contractual obligations established in an arbitration agreement do not exist in a "legal vacuum."[82] They are based on a legal framework—known as the "substantive," "applicable," or "governing" law—that "governs the interpretation and validity of the contract, the rights and obligations of the parties, the mode of performance, and the consequences of breaches of the contract."[83]

The parties, moreover, are ordinarily "free to choose for themselves the law (or the legal rules) applicable to that agreement."[84] "If national courts are prepared . . . to recogni[z]e the principle of party autonomy in the choice of the law applicable to [the arbitration] contract, then, *a fortiori*, arbitral tribunals should also be prepared to do so."[85] Admittedly, the arbitrators' adjudicatory power "owes its existence" to the parties' arbitration agreement, and "in applying the law chosen" therein, the arbitrators are "simply carrying out th[at] agreement."[86] Arbitrators, it follows, cannot assume the parties' choice of law to govern the adjudication of the submitted dispute; they must look to the arbitration agreement and identify the substantive law (that the parties selected) in order to assess the merits and facts of the claims and issue an award pursuant to the corresponding legal rules.[87]

At the same time, the parties' selection of governing law may point to a variety of substantive legal systems, including national law, public international law, transnational law (e.g., *lex mercatoria*), and even *ex aequo et bono* (i.e., "equity and good conscience") principles.[88] Given these various choice-of-law options, submitting legal disputes to arbitration for resolution "in conformity with the law" merely indicates how arbitrators must resolve the parties' dispute: through a

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**80** *See* discussion *infra* Part IV, Section B.

**81** *See* discussion *supra* Part II, Section A; *see also Rivera*, 108 P.R. Dec. at 608-09; Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 353-54 (1961).

**82** BLACKABY *ET AL.*, *supra* note 6, ¶ 3.93.

**83** *Id.*

**84** *Id.* ¶ 3.97.

**85** *Id.* ¶ 3.99.

**86** *Id.*

**87** *Id.* ¶ 3.192.

**88** *Id.* ¶ 3.110.

"strictly legal"—as opposed to "equitable"—interpretation.[89] In such cases, the requirement itself serves as the parties' choice of substantive law to govern the adjudication of their claims, as it effectively eliminates any possibility that the arbitrators issue an award "on the basis of what is 'fair and reasonable,' for example, rather than on the basis of law."[90]

This much is in line with the Puerto Rico Supreme Court's elaboration of the conformity-with-the-law standard.[91] The issue lies instead in how the Court expands the restriction's purpose beyond a choice-of-law clause in the arbitration agreement to automatically provide judicial review for legal errors in the award's merits and facts. This misinterpretation and misapplication is best illustrated by the California Supreme Court's decision in *Cable Connection, Inc. v. DIRECTV, Inc.*,[92] where it enforced an arbitration agreement that expanded the scope of judicial review available under a state statute with the same "excess of arbitrators' powers" *vacatur* ground listed in § 3222.[93]

The 2008 opinion began by noting that the finality of the arbitrators' legal and factual conclusions, as well as their susceptibility to judicial review, varied based on the parties' arbitration agreement: if it "is qualified and provides, for example, that an arbitrator should make his judgment and award according to the legal rights of the parties, apparently the award is subject to judicial review."[94] Including this mandate in an arbitration agreement, the Court explained, became "an exception to the usual rule barring review of the merits of an award" as well.[95] Consequently, just like in Puerto Rico, "policies favoring the efficiency of private arbitration as a means of dispute resolution must sometimes yield to its fundamentally contractual nature, and to the attendant requirement that arbitration shall proceed as the parties themselves have agreed."[96] Since "[t]he scope of judicial [in-

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**89** *Id.* ¶ 3.192.

**90** *Id.* In this sense, an arbitration agreement stipulating, such as the one in *Constructora Estelar*, that the "arbitrators shall decide the disputes submitted to them pursuant to the Laws of Puerto Rico" and that "the decision shall conform to Law," would be entirely redundant. *See* Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 8 (2011).

**91** *See* discussion *supra* Part II, Section A. In fact, when the Puerto Rico Supreme Court adopted the conformity-with-the-law standard in the commercial arbitration context, it noted the parties' freedom to submit the resolution of their dispute before either: (1) arbitrators, who must resolve the parties' dispute in conformity with the law, or (2) *amiables compositeurs*, who instead adjudicate in accordance with equity (*ex aequo et bono*) or their faithful knowledge and understanding. Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 356 n. 6 (1961).

**92** Cable Connection, Inc. v. DIRECTV, Inc., 190 P.3d 586, 600 (Cal. 2008) (addressing whether the general rule of limited judicial review for awards is "displaced" simply by an arbitration agreement requiring that arbitrators decide a dispute according to the rule of law).

**93** *Id.* at 600-04.

**94** *Id.* at 603 (citations omitted).

**95** *Id.* at 602.

**96** *Id.*

quiry] is not invariably limited by statute" under either the Puerto Rico and California Arbitration Act, the parties "may expressly agree to accept a broader scope of review."[97]

The California Supreme Court then turned to its prior case law—cited by the Puerto Rico Supreme Court when it first adopted the conformity-with-the-law standard in the field of commercial arbitration[98]—for the proposition that "'arbitrators, *unless specifically required to act in conformity with rules of law*, may base their decision upon broad principles of justice and equity,'" and even "'reject a claim that a party might successfully have asserted in a judicial action.'"[99] Exploring the nature of the "limiting clause in the arbitration agreement," the state supreme court recognized that these earlier cases might be interpreted "to support a rule that a provision simply requiring the arbitrators to follow the rule of law places it beyond their powers to apply the law incorrectly, so that the award may be vacated or modified on that basis."[100] Unsettled by this possibility, the Court clarified that parties must do more than simply require the resolution of their dispute to conform to law: "to take themselves out of the general rule that the merits of the award are not subject to judicial review, the parties must clearly agree[—as they did in *Cable Connection*—]that legal errors are an excess of arbitral authority" subject to judicial review.[101] After all, the parties to an arbitration agreement do not usually expect a court to review an award's merits and facts when they "accept[ed] the risk of legal error in exchange for the benefits of a quick, inexpensive, and conclusive resolution."[102]

The Puerto Rico Supreme Court is not that demanding, as it does not require that parties to an arbitration agreement expressly commit the award to judicial review for errors in the arbitrators' application of the law or interpretation of the facts. Instead, the Court takes the standard as a talisman—whenever an arbitration agreement expressly submits the parties' dispute to resolution "in conformity with the law" (and nothing more), judicial review for legal error will automatically be available.[103] In doing so, the Puerto Rico Supreme Court professedly disregards that the decision to broaden judicial review is not one for a court to make or fictitiously impute on an arbitration agreement, as "[i]t is the parties who are best

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**97** *Id.*; *see* discussion *supra* Part II, Section A.

**98** *Compare Cable Connection*, 190 P.3d at 602-04 (discussing the conformity-with-the law standard announced in Crofoot v. Blair Holdings Corp., 260 P.2d 156, 170-72 (Cal. 1953)), *with* Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 355 (1961) (favorably citing *Crofoot*, 260 P.2d at 170-72, as case law in line with Puerto Rico's commercial arbitration doctrine).

**99** *Cable Connection*, 190 P.3d at 602 (emphasis in original) (*citing Crofoot*, 260 P.2d at 170-72 *and* Sapp v. Barenfeld, 212 P.2d 233 (Cal. 1949)); *see also Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 355 (also favorably citing *Crofoot* and *Sapp*).

**100** *Cable Connection*, 190 P.3d at 602-03.

**101** *Id.* at 604.

**102** *Id.*

**103** *See* Rivera v. Samaritano & Co., 108 P.R. Dec. 604, 608-09 (1979).

situated to weigh the advantages of traditional arbitration against the benefits of court review for the correction of legal error."[104]

## IV. THE CONFORMITY-WITH-THE-LAW STANDARD AFTER *HALL STREET*

Alongside these issues with the Puerto Rico Supreme Court's misinterpretation and misapplication of the conformity-with-the-law standard, recent United States commercial arbitration cases now raise additional questions regarding the validity and applicability of the non-statutory *vacatur* ground in both federal and state courts. Among them, the United States Supreme Court's decision in *Hall Street Associates, L.L.C. v. Mattel, Inc.* is particularly relevant, holding that the parties to an arbitration agreement cannot contractually expand the available grounds for judicial review of an award under the FAA because the statute's plain language "compels a reading" that the grounds for modifying, correcting and vacating arbitral awards under § 10 and § 11 are "exclusive."[105]

Justice Souter, writing for the majority, accepted as true that the FAA seeks to enforce arbitration agreements pursuant to their terms, and even allows parties to tailor many "features of arbitration by contract, including the way arbitrators are chosen, what their qualifications should be, which issues are arbitrable, along with procedure and choice of substantive law."[106] Yet "the FAA has textual features at odds with enforcing a contract to expand judicial review following the arbitration."[107] On this point, the Court noted that § 9 "unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' [grounds for modifying, correcting, or vacating awards] applies;" it is not "meant to tell a court what to do just in case the parties say nothing else."[108] For that reason, the parties to an arbitration agreement may not expand the grounds for judicial intervention listed in the FAA by, for example, allowing a court to modify, correct, or vacate an award "where the arbitrators' findings of fact are not supported by substantial evidence" or where the arbitrators' conclusions of law are erroneous."[109]

*Hall Street*'s interpretation of the FAA is identical to how the Puerto Rico Supreme Court construed the corresponding provisions in the Act (*i.e.*, § 3222) when it decided to adopt the conformity-with-the-law standard.[110] Both statutes exhaustively list the grounds for the modification, correction, and *vacatur* of awards;

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**104** *Id.*; *see* discussion *supra* Part I, Section A.

**105** Hall Street Associates, L.L.C. v. Mattel, Inc., 552 U.S. 576, 585-86 (2008).

**106** *Id.* at 586.

**107** *Id.*

**108** *Id.* at 587; 9 U.S.C. § 9 (2012) (a court "must grant" an order confirming the award if the challenging party fails to satisfy any of the grounds for the award's modification, correction, or *vacatur*).

**109** *Hall Street*, 552 U.S. at 584-86.

**110** *See* Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 361-63 (1961) (holding that awards may be modified, corrected, or vacated pursuant only to the provisions listed in the Puerto Rico Arbitration Act).

and neither includes judicial review for legal error in the merits and facts.[111] Given the United States' pervasive influence over commercial arbitration in Puerto Rico, *Constructora Estelar*—decided three years after *Hall Street*—arguably should have refrained from upholding the non-statutory judicial review and *vacatur* standard for errors of law.

Simultaneously, what *Hall Street* did not decide—the availability of contractually-expanded grounds for judicial review under state arbitration law and the validity of the federal "manifest disregard" standard[112]—may open the door for Puerto Rico's courts to continue applying the non-statutory conformity-with-the-law standard.[113] On this first point, the United States Supreme Court deliberately limited the *Hall Street* ruling to the FAA[114] and, as a result, "explicitly left open . . . the possibility that parties might be able to rely on some authority other than the FAA to enforce an agreement providing for expanded court review of awards."[115] After determining that § 10 and § 11 offer the "exclusive regimes for [judicial] review" under federal law, the Court noted that "[t]he FAA is not the only way into court for parties wanting review of arbitration awards: they may contemplate enforcement under state statutory or common law, for example, where judicial review of a different scope is arguable."[116] *Hall Street* therefore "suggests that the Court did not intend categorically to preclude parties from obtaining expanded judicial review in all forums and under all circumstances."[117] The continued enforceability of this proposition, or of the conformity-with-the-law standard as a proxy for "manifest disregard" in federal and state courts, however, remains uncertain.

### *A. Disregarding the Federal Commercial Arbitration Case Law*

The Puerto Rico Supreme Court has developed its commercial arbitration jurisprudence by closely following the corresponding United States federal model,

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**111** *See* discussion *supra* Part I, Section B.

**112** *Hall Street*, 552 U.S. at 585-90.

**113** *See* discussion *infra* Part IV, Sections B and C.

**114** *Hall Street*, 552 U.S. at 590.

**115** Drahozal, *supra* note 68, at 906. The United States Supreme Court expressly affirmed it did "not purport to say that [§§ 10-11] exclude more searching review based on authority outside the [FAA] as well." *Hall Street*, 552 U.S. at 590.

**116** *Hall Street*, 552 U.S. at 590.

**117** Brian T. Burns, *Freedom, Finality, and Federal Preemption: Seeking Expanded Judicial Review of Arbitration Awards Under State Law After Hall Street*, 78 FORDHAM L. REV. 1813, 1816 (2010).

state court precedent, and common law.[118] In doing so, the Court has adopted various, widely accepted norms,[119] including its pro-arbitration public policy[120] and the finality of arbitral awards.[121] Today, "it is undeniable that a great convergence exists between the dispositions of [both] the Federal Supreme Court and [the Puerto Rico Supreme Court] with regard to commercial arbitration."[122]

The United States' influence also extends to the structure, provisions, and interpretation of the Puerto Rico Arbitration Act.[123] "Not only is the [Act] modeled after the [FAA], but tracks it closely as well."[124] Many of its sections, especially key ones such as the *vacatur* grounds in § 3222,[125] constitute—or at least have been interpreted as—"a translation of the FAA to Spanish."[126] The Act, moreover, mandates that a court confirm an award if the party challenging it fails to satisfy its burden of proof under any of the statutory grounds for modification, correction, or *vacatur*.[127]

Faced with a Puerto Rico Arbitration Act closely mirroring the FAA and a general disposition for adopting the federal commercial arbitration doctrine, the Puerto Rico Supreme Court's continued embrace of the conformity-with-the law standard in *Constructora Estelar* becomes questionable post-*Hall Street*. After all, the non-statutory ground—which the Puerto Rico Supreme Court adopted notwithstanding its comprehensive treatment of § 3222's language[128]—allows precisely what *Hall Street* rejected: the parties' supplementation, by contract, of the statutory judicial review grounds for the modification, correction, and *vacatur* of

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**118** Helfeld, *supra* note 11, at 53.

**119** Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 31 (2011); *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. 344, 355 (1961); Helfeld, *supra* note 11, at 53.

**120** Medina v. Cruz Azul de Puerto Rico, 155 P.R. Dec. 735, 742 (2001) (agreeably citing to PaineWebber, Inc. v. Service Concepts, Inc., 151 P.R. Dec. 307, 312 (2000) for the proposition that Puerto Rico also implements a "vigorous public policy in favor of arbitration" as an alternative dispute resolution method) (translation by author).

**121** Junta de Relaciones del Trabajo de Puerto Rico v. Otis Elevator Co., 105 P.R. Dec. 195, 199 (1976) (holding that arbitral awards are generally final and exempt from judicial review for legal errors in their merits and facts); Helfeld, *supra* note 10, at 56.

**122** S.L.G. Méndez Acevedo v. Nieves-Rivera, 179 P.R. Dec. 359, 370 (2010) (translation by author).

**123** *See Constructora Estelar*, 183 P.R. Dec. at 31 (*citing Autoridad Sobre Hogares*, 82 P.R. Dec. at 355).

**124** Universal v. Warrantech Consumer Product Servs., 849 F. Supp. 2d 227, 236 (D.P.R. 2012).

**125** *See* discussion *supra* Part I, Section B.

**126** Helfeld, *supra* note 11, at 54 (translation by author); *see also Universal*, 849 F. Supp. 2d at 235-36 (noting that the grounds for *vacatur* under the Puerto Rico Arbitration Act are either verbatim translations of the FAA, or have been interpreted in line with the language in the federal counterpart's provisions).

**127** P.R. LAWS ANN. tit. 32, § 3221 (2004); *see also* Febus v. MARPE Construction Corp., 135 P.R. Dec. 206, 216-17 (1994); Junta de Relaciones del Trabajo v. Corporación de Crédito Agrícola, 124 P.R. Dec. 846, 849 (1989).

**128** *See Autoridad Sobre Hogares*, 82 P.R. Dec. at 361-363 (holding that awards may be modified, corrected, or vacated pursuant only to the provisions listed in the Puerto Rico Arbitration Act); *see also* discussion *supra* Part I, Section B.

awards.[129] And this should be true even in cases where, as in *Constructora Estelar*, the FAA is not under consideration (which may in turn suggest a broader disregard for the application of the federal statute and the accompanying case law).[130]

Granted, the Puerto Rico Supreme Court may adopt the California Supreme Court's reasoning in *Cable Connection*, subject to debate,[131] that the FAA does not preempt its interpretation of the California Arbitration Act: that "the *Hall Street* holding is restricted to proceedings to review arbitra[l] awards under the FAA, and does not require state law to conform with its limitations."[132] Yet the Puerto Rico Supreme Court has also emphatically asserted that the non-applicability of the FAA does not mean that it has to "draw a heterogeneous line to the one delineated by the federal Supreme Court" with regards to commercial arbitration doctrine.[133] Again, the Puerto Rico Arbitration Act was designed and modeled to reflect its federal counterpart, such that the "interpretative jurisprudence of the [FAA] serves as [the Puerto Rico Supreme Court's] guide in [its] disposition of [local commercial arbitration] cases."[134] There appears to be no sound basis for the Puerto Rico Supreme Court to continue affirming the conformity-with-the-law standard as a contractual expansion of the statutory judicial review grounds for award *vacatur* when the Act is so intimately connected to the FAA.

### *B. Enforceability in Federal Courts*

*Hall Street* "foreclosed the most direct option for expanded review in federal court—a contract provision specifying the applicable (expanded)" ground for judicial inquiry and *vacatur* of an award under FAA § 10[135]—and the Puerto Rico

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**129** Hall Street Associates, L.L.C. v. Mattel, Inc., 552 U.S. 576, 585-86 (2008); *see* discussion *supra* Part II.

**130** The FAA applies in both federal and state courts whenever the arbitration agreement is related to a contract involving interstate commerce. S.L.G. Méndez-Acevedo v. Nieves Rivera, 179 P.R. Dec. 359, 371 (2010) (citations omitted). But the Puerto Rico Supreme Court's decisions "indicate that [it] is not paying much attention to the possible application of the federal statute"—*Constructora Estelar* for example, "neither mentions the FAA nor the jurisprudence that interprets it, even though it related to a contract for the remodeling of public housing, supplemented by federal funds. The relationship with interstate commerce appears to be evident." Salvador Antonetti Zequeira, *Arbitraje comercial en Puerto Rico: ¿Solución o problema?*, 11 REV. ACAD. PR JURIS. LEGIS. 1, 30 (2013) (translation by author). *See also* Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 6-7 (2011) (noting that the public housing remodeling project arose under a Federal Housing Administration program). One possible explanation may be that the parties did not allege or prove that the underlying commercial contract involved interstate commerce, which frees the Puerto Rico Supreme Court from applying the FAA and being "tied, *strictu sensu*," to the United States Supreme Court's interpretations of the FAA. *S.L.G. Méndez-Acevedo*, 179 P.R. Dec. at 371.

**131** *See* discussion *infra* Part IV, Section C.

**132** Cable Connection, Inc. v. DIRECTV, Inc., 190 P.3d 586, 599 (Cal. 2008).

**133** *S.L.G. Méndez-Acevedo*, 179 P.R. Dec. at 371 (translation by author).

**134** *Id.* at 369 (translation by author).

**135** Drahozal, *supra* note 68, at 911.

Supreme Court should have followed suit in *Constructora Estelar*.[136] Still, the survival of the conformity-with-the-law standard at a federal level is, according to some legal scholars, admittedly plausible after *Hall Street*.[137] The non-statutory ground may persist if the Court were to (1) interpret it as an elaboration of the FAA's *vacatur* ground for arbitral awards rendered in excess of the arbitrators' powers; (2) equate it to the federal "manifest disregard" standard, or (3) strictly rely on the Puerto Rico Arbitration Act and local precedent for purposes of judicially reviewing and vacating awards.[138] All three options, however, have a "limited likelihood" of prevailing in a federal forum.[139]

i. Under FAA § 10(a)(4) as a Limitation on the Arbitrators' Authority

Professor Christopher Drahozal first contends that a provision in an arbitration agreement expanding the scope of judicial review, such as Puerto Rico's conformity-with-the-law standard, should be enforceable in a federal court under the FAA if the parties' impose the limitation on the arbitrators rather than the courts.[140] In *Hall Street*, for example, the parties "'directed to the federal district court judge the standard of review to be applied" by requiring that the judiciary "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.'"[141] Alternatively, the parties "may direct the provision not to the court but to the arbitrators, such as by requiring that the arbitrators follow the law or by denying the arbitrators the authority to make legal or other errors."[142] Assuming that the arbitrators breach the qualification by, for example, "making an error of law, the court would [then] vacate the award [under FAA § 10(a)(4)] on the ground that the arbitrators exceeded their authority."[143] By drafting the provision for expanded judicial review in this manner, Drahozal argues, the parties could avoid the *Hall Street* holding altogether: while the clause would effectively expand the permissible scope of judicial review, "it relies on an express statutory ground for *vacatur*" rather than "adding" one to FAA § 10.[144]

The case law preceding *Hall Street*, including *Wilko*, gravitated towards supporting this approach, though much of this favorable treatment came, and still

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**136** *See* discussion *supra* Part IV, Section A.

**137** Drahozal, *supra* note 68, at 911-22.

**138** *Id.*

**139** *Id.* at 927.

**140** *Id.* at 912.

**141** *Id.* (*quoting* Hall Street Associates L.L.C. v. Mattel Inc., 552 U.S. 576, 579 (2008)).

**142** *Id.*

**143** *Id.*; *see also* Federal Arbitration Act, 9 U.S.C. § 10(a)(4) (2012) (allowing a court to "make an order vacating the award upon the application of any party to the arbitration . . . where the arbitrators exceeded their powers" or authority) (citation omitted).

**144** Drahozal, *supra* note 68, at 912.

does, from state courts.[145] The *Cable Connection* decision—holding that parties to an arbitration agreement may, under California's arbitration statute, contractually expand the scope of judicial review by circumscribing the arbitrators' authority to adjudication in conformity with the law—is a recent post-*Hall Street* illustration of a state court accepting this alternative drafting approach, despite the similarities between the local arbitration statute and the FAA[146] (as is *Constructora Estelar* under the Puerto Rico Arbitration Act). Contemporary legal scholars generally agree as well, stating that "'[w]hile it is presumably not within the power of parties to contract to expand the statutorily-conferred scope of review . . . the parties may accomplish the same goal indirectly' by relying on the 'excess of authority' statutory ground" in FAA § 10(a)(4).[147]

After *Hall Street*, however, state and federal "courts have tended to reject the argument that parties can contract around [the FAA's exclusive grounds for judicial review and *vacatur*] by restricting the arbitrators' authority."[148] They instead construe clauses requiring that the arbitrators apply the rules of law to resolve the parties' dispute "as involving something like 'manifest disregard of the law' rather than expanded [judicial review]."[149] These courts reason that a determination of whether the arbitrators have entirely "disregard[ed] the lawful directions the parties have given them"[150] may be "determined from the face of the award" and, as a result, do not necessarily expand the scope of judicial review to encompass legal errors on the merits and facts.[151]

ii. Under the Federal "Manifest-Disregard-of-the-Law" Standard

If so, a second safety valve for the survival of the conformity-with-the-law standard would emanate from the United States Supreme Court's discussion of the non-statutory "manifest disregard" ground in *Hall Street*.[152] As part of its efforts to "show that the grounds set out for vacating or modifying an award [under the

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**145** *Id.* at 912-14.

**146** *Id.*

**147** *Id.* at 915 (*quoting* Thomas J. Stipanowich, *Rethinking American Arbitration*, 63 IND. L.J. 425, 486 n. 339 (1988)); *see also* Alan Scott Rau, *Contracting Out of the Arbitration Act*, 8 AM. REV. INT'L ARB. 225, 239 (1997) (arguing that "[a] contract that withdraws errors of law from the authority conferred on the arbitrator—that, in other words, places issues of law 'beyond the scope of the submission' to binding arbitration—should, then, allow an aggrieved party on 'review' to invoke § 10(a)(4).").

**148** Drahozal, *supra* note 68, at 915 n. 57.

**149** *Id.* at 916.

**150** *Id.* at 914 (*quoting* Edstrom Industries, Inc. v. Companion Life Insurance Co., 516 F.3d 546, 549 (7th Cir. 2008) to suggest that at least some federal courts have accepted expanded judicial review through contractual provisions by requiring that the arbitrators follow the substantive law selected in the parties' arbitration agreement).

**151** *In re* Raymond Prof'l Group, Inc., 397 B.R. 414, 431 (Bankr. N.D. Ill. 2008).

**152** Hall Street Associates L.L.C. v. Mattel Inc., 552 U.S. 576, 584 (2008).

FAA] are not exclusive," the Petitioner in *Hall Street* argued—based on the language in *Wilko*[153]—that the Court had already accepted "expandable judicial review authority" in arbitration proceedings.[154] In other words, the Petitioner saw *Wilko* "as the camel's nose: if judges can add grounds to vacate (or modify), so can contracting parties."[155] The Court immediately disagreed, noting, "this [wa]s too much for *Wilko* to bear."[156] Besides the "leap from a supposed judicial expansion by interpretation to a private expansion by contract," the Petitioner "overlook[ed] the fact that the [*Wilko*] statement it relie[d] on expressly rejects what [the arbitration agreement in *Hall Street*]" provided for: "general review for an arbitrator's legal errors."[157] If, as has already been suggested, the *Wilko* restriction practically authorizes *de novo* review of the award's legal and factual rulings, *Hall Street* would equally bar enforcement of Puerto Rico's conformity-with-the-law standard in federal courts. [158]

The Court nevertheless refrained from overruling or interpreting *Wilko*, listing instead a series of possible interpretations for its language that leave open the question of whether the "manifest disregard" ground—and the conformity-with-the-law standard, assuming it is Puerto Rico's local equivalent—survive *Hall Street*.[159] Emphasizing the language's "vagueness," the Court did not clarify whether the federal standard was (1) an additional, non-statutory ground for arbitral award review; (2) a reference to the FAA § 10 standards collectively; or (3) a "shorthand" expression for FAA § 10(a)(3) or § 10(a)(4), the grounds "authorizing *vacatur* when the arbitrators were guilty of misconduct or exceeded their powers."[160] Justice Souter simply affirmed that the United States Supreme Court takes the standard "without embellishment."[161]

The First Circuit has also not conclusively determined whether *Hall Street* permits the application of the non-statutory ground under the FAA, acknowledging that its "continued vitality . . . is a difficult and important issue that the [federal] courts have only begun to resolve."[162] Still, the Court of Appeals has noted that if the standard were to survive *Hall Street* as an available *vacatur* ground, "it does so only as a judicial gloss on [FAA] § 10."[163] As such—and given the similarity

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**153** *See* discussion *supra* Part II, Section C.

**154** *Hall Street*, 552 U.S. at 584.

**155** *Id.* at 585.

**156** *Id.*

**157** *Id.*

**158** *See* discussion *supra* Part II, Section B.

**159** *Hall Street*, 552 U.S. at 585.

**160** *Id.* (citations omitted).

**161** *Id.*; *see also* First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 942 (1995).

**162** Kashner Davidson Securities Corp. v. Mscisz, 601 F.3d 19, 22 (1st Cir. 2010) (citation omitted); Ramos-Santiago v. United Parcel Service, 524 F.3d 120, 124 n.3 (1st Cir. 2008).

**163** Ortiz-Espinosa v. BBVA Sec. of P.R., Inc., 852 F.3d 36, 46 (1st Cir. 2017)

between the "manifest disregard" and conformity-with-the-law standards[164]—the Puerto Rico Supreme Court in *Constructora Estelar* might not have been ignoring the parallel federal commercial arbitration jurisprudence after all.

On its face, however, the formulation of the conformity-with-the-law standard—judicial review of an award for legal error in its merits and facts—is somewhat inconsistent with the "manifest disregard" ground, and it is only after a careful description of the scope of judicial inquiry it entails that the degree of comparability between them becomes somewhat clearer.[165] Besides, when the Puerto Rico Supreme Court adopted the conformity-with-the-law standard in the field of commercial arbitration—and ever since—it has disregarded the wording or application implemented by the federal courts, much less expressly drawn an equivalence between the non-statutory grounds.[166] Finally, the conformity-with-the-law standard still risks running afoul "of the well-established principle that courts '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.'"[167] Not only are the reviewing courts in Puerto Rico empowered to act as appellate tribunals: the judicial review process itself is equated to the scope of inquiry available for administrative decisions, and even allows the court to change or modify the arbitrators' factual findings.[168] It is doubtful that the conformity-with-the-law standard would survive in federal court as the local equivalent of the federal "manifest disregard" ground.

iii. Under Puerto Rico Commercial Arbitration Law

Lastly, and in light of *Hall Street*'s limitations on the FAA, the parties may enforce the conformity-with-the-law standard in federal courts by relying solely on local (Puerto Rican) arbitration law.[169] A party to an arbitration agreement may seek to vacate an award in a federal court under the Puerto Rico Arbitration Act, which still allows expanded judicial review post-*Constructora Estelar*, "as well as (or perhaps in lieu of) the FAA"—which does not allow, after *Hall Street*, *vacatur*

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**164** *See* discussion *supra* Part II, Section C. Under both standards, a court may vacate an award when there is some showing in the record that the arbitrators knew the parties' substantive choice of law and patently ignored it. *Compare Ramos-Santiago*, 524 F.3d at 124, *with* Rivera v. Samaritano & Co., 108 P.R. Dec. 604, 609 (1979).

**165** *See Rivera*, 108 P.R. Dec. at 608-09.

**166** *See, e.g.*, Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 33 (2011); Vivoni Farage v. Ortiz Carro, 179 P.R. Dec. 990, 1007 (2010); Condado Plaza Hotel & Casino v. Asociación de Empleados de Casinos, 149 P.R. Dec. 347, 353 (1999); Junta de Relaciones del Trabajo v. Corporación de Crédito Agrícola, 124 P.R. Dec. 846, 849 (1989); Unión de la Industria Licorera de Ponce v. Destilería Serrallés, 116 P.R. Dec. 348, 352-53 (1985); *Rivera*, 108 P.R. Dec. at 608-09; Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 353-64 (1961).

**167** McCarthy v. Citigroup Global Mkts., 463 F.3d 87, 91 (1st Cir. 2006) (*quoting* United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 38 (1987)).

**168** *Unión de la Industria Licorera de Ponce*, 116 P.R. Dec. at 355; *see also Constructora Estelar*, 183 P.R. Dec. at 33-35.

**169** Drahozal, *supra* note 68, at 916-21.

of the award outside the grounds specified in the federal statute.[170] Yet some legal scholars suggest that the FAA would preempt the *vacatur* of an award in federal court under state law provisions—such as Puerto Rico's conformity-with-the-law standard—allowing expanded judicial review.[171]

According to Drahozal, for example, in these situations "one would expect the prevailing party to file a cross-motion seeking confirmation of the award under the FAA."[172] Since, given *Hall Street*, the federal court is "limited" to vacating the award pursuant to the grounds stated in § 10, the challenging party's attempt to rely on the conformity-with-the-law standard "necessarily would conflict with the right to confirmation under the FAA" (assuming *vacatur* is not warranted by the exclusive grounds listed in the federal statute).[173] The Supremacy Clause in the United States Constitution would be triggered, thereby preempting the challenging party's reliance on the conformity-with-the-law standard.[174] In sum, "[t]he existence of state law authority permitting expanded-review provisions would not, in such a case, provide the parties with an effective alternative means of enforcing an expanded-review provision in federal court."[175]

Drahozal further posits that the conformity-with-the-law standard may serve as a non-statutory ground to vacate arbitral awards in the federals court if the parties either (1) "effectively opt[ed] out of the FAA *vacatur* standards by not satisfying the requirements of [§] 9" that the arbitral award be final and binding, or (2) "contract[ed] expressly for [the] application of [Puerto Rico] arbitration law" in their arbitration agreement.[176] As to the first option, the parties to an arbitration agreement cannot "be confident" that they can "draft an arbitration clause providing for [final and] binding arbitration that did not also satisfy [§] 9" and its mandate that the court enter judgment (*i.e.*, confirm the award) unless *vacatur* is warranted under § 10.[177] And the second alternative would only work if the parties "opt out of the FAA altogether . . . [b]ut the [United States Supreme] Court has not so held."[178] Until then, "contracting for state arbitration law to apply exclusively should not permit the parties to contract around *Hall Street*" and expand the statutory scope of judicial review and *vacatur* grounds for awards under the conformity-with-the-law standard.[179]

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**170** *Id.* at 917.

**171** *Id.*

**172** *Id.*

**173** *Id.* at 917-18.

**174** *Id.* at 918.

**175** *Id.*

**176** *Id.* at 918-20.

**177** *Id.* at 918.

**178** *Id.* at 919-21.

**179** *Id.* at 921.

### *C. Enforceability in Puerto Rico State Courts*

The challenging party may instead appear before a Puerto Rico state court to obtain judicial review of an award under the conformity-with-the-law standard.[180] In such cases, the parties to an arbitration agreement have "a greater likelihood" that the non-statutory *vacatur* ground is enforced[181]—as *Constructora Estelar* and the decisions before it illustrate. But, according to Drahozal, "there are several prerequisites for such an approach to succeed," one of which remains uncertain.[182]

To begin with, "the case must be one that is brought in, and stays in, state court."[183] In addition, local arbitration law—such as Puerto Rico and California's conformity-with-the-law standard[184]— "must permit the parties to contract for expanded [judicial] review" and grounds for vacating arbitral awards.[185] Finally, and perhaps most importantly, "the FAA must not preempt the state law permitting expanded review."[186]

Up until now, the United States Supreme Court has not "addressed whether [§] 9 and [§] 10 of the FAA, dealing with the confirmation and *vacatur* of awards, apply in state court," nor determined "the possible preemptive effect of the FAA on state *vacatur* standards (whether contractually based or not)."[187] While "the more likely result" is that these sections "apply only in federal court," Drahozal concedes that the extent to which these federal provisions preempt state arbitration law—including contractually expanded grounds for judicial review and *vacatur* of awards—"is uncertain."[188]

Even assuming that the FAA does not prevent such non-statutory grounds, however, the Puerto Rico Supreme Court incorrectly interprets and applies the conformity-with-the-law standard.[189] If the non-statutory ground is to remain in effect before the local courts, the Puerto Rico Supreme Court should require, as did the California Supreme Court in *Cable Connection*, that the parties expressly provide that "legal errors are an excess of arbitral authority that is reviewable by

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**180** *Id.* at 922.

**181** *Id.* at 927.

**182** *Id.* at 922-25.

**183** *Id.* at 922.

**184** *See* discussion *supra* Parts II and III.

**185** *See* Drahozal, *supra* note 68, at 923.

**186** *Id.* at 922.

**187** *Id.* at 924. As Drahozal points out, the United States Supreme Court has instead "made clear that [§] 2 of the FAA—which makes arbitration clauses 'valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract'—applies in state court and preempts conflicting state law." *Id.* at 923-24 (*citing* 9 U.S.C. § 9 (2012)). As for § 3 and § 4, however, "the Court has strongly suggested (although not yet expressly held)" that they "do not apply in state court." *Id.* at 924.

**188** *Id.* at 925.

**189** *See* discussion *supra* Part III.

the courts."[190] Otherwise, taking the provision and automatically loading it with the parties' intent to expand the scope of judicial review may erode commercial arbitration's attractiveness as an expedited and inexpensive alternative dispute resolution mechanism, enforceable pursuant only to its terms.

## V. THE PRACTICAL IMPLICATIONS OF THE CONFORMITY-WITH-THE-LAW STANDARD

Despite these criticisms, the conformity-with-the-law standard—and, more generally, expanded judicial review of awards for legal errors in their merits and facts—are not inherently anathema to commercial arbitration. The final and binding nature of awards, as well as the restricted breadth of court inquiry, certainly "can make arbitration a less desirable means of dispute resolution for 'bet-the-company' cases, such as [disputes] in which an aberrational award could have a devastating effect on the company."[191] But this narrow point ignores two negative externalities produced by the non-statutory *vacatur* ground: (1) the undue delay of award confirmation proceedings under the Puerto Rico Arbitration Act, and (2) the disregard of the parties' intent by automatically affording them with judicial review on the merits.

### *A. Delaying the Confirmation of Arbitral Awards*

At the outset, the manner in which the Puerto Rico Supreme Court applies the conformity-with-the-law standard risks eroding the advantages of commercial arbitration by unduly delaying the confirmation of awards and, by extension, increasing costs for litigants. Regardless of whether the arbitration agreement requires that the award conform to law, the Act in § 3222 allows courts to review—and potentially vacate—the arbitrators' resolution of the dispute for fraud; improper conduct; due process and public policy violations; lack of jurisdiction; or failure to resolve all matters in dispute.[192] If *vacatur* is unwarranted under any of these grounds, the award will be considered valid and enforceable regardless of whether a court confirms it as such.[193] No other judicial intervention is allowed.[194]

Conditioning awards through the conformity-with-the-law standard instead provides judicial review of the award under the grounds listed in § 3222, as well as

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**190** Cable Connection, Inc. v. DIRECTV, Inc., 190 P.3d 586, 600, 604 (Cal. 2008).

**191** Drahozal, *supra* note 68, at 908 (citations omitted).

**192** Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 33-35 (2011).

**193** Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 361 (1961); P.R. LAWS ANN. tit. 32, § 3221 (2004).

**194** *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 361.

for its "legal accuracy and validity."[195] The non-statutory standard, by misinterpreting the purpose of a "conformity with the law" clause, automatically invites more probing judicial review, such that parties may always challenge an award for legal errors in their merits and facts whenever they qualify it to resolution in conformity with legal—as opposed to equitable—principles.[196] This result is particularly problematic in Puerto Rico. While commercial arbitration proceedings are commonplace, they frequently take a long time to conclude given the multiple motions exchanged between parties before, during, and after the adjudicative proceedings, as well as the time it takes for the arbitrators to rule on each and every one of them.[197] Furthermore, even though the grounds for vacating awards under the Puerto Rico Arbitration Act are limited, the adversarial nature of arbitration may inevitably extend the resolution of the dispute.[198]

*Constructora Estelar* itself presents a stark illustration of these conditions. The parties' legal controversy arose in 1995, and arbitration immediately ensued in 1996 pursuant to their agreement.[199] The extra-judicial proceedings ended in December 2001, and the arbitrators issued their award in May 2002.[200] Yet litigation concerning the award's *vacatur*, due in part to the parties' discrepancies regarding the conformity-with-the-law standard, extended the controversy until November 2012, when a trial court reinstated the original award.[201] In the end, the parties waited seventeen years to obtain a valid and enforceable (*i.e.*, final) award. Assuming that arbitration agreements infrequently provide for resolution subject to non-legal principles, the Puerto Rico Supreme Court's simplistic application and interpretation of the conformity-with-the-law standard—particularly its failure to require an express agreement expanding the statutory scope of judicial review under § 3222—would then subject every award to these inefficiencies in the local court system.

This should not be taken to suggest that the non-statutory ground was solely responsible for the excessive delays in *Constructora Estelar*. But the conformity-with-the-law standard nevertheless risks exacerbating an already less-than-ideal situation in local commercial arbitration proceedings. It further casts doubt on the viability of Puerto Rico's pro-arbitration policy, premised on the proposition that settlement of legal disputes through extra-judicial channels reduces costs for

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**195** Unión de la Industria Licorera de Ponce v. Destilería Serrallés, 116 P.R. Dec. 348, 352-53 (1985) (translation by author).

**196** *See* discussion *supra* Parts II and III.

**197** Antonetti Zequeira, *supra* note 130, at 23.

**198** *Id.*

**199** Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 7 (2011).

**200** *Id.* at 10.

**201** Constructora Estelar v. Autoridad de Edificios Públicos, KLAN200700787, 2012 WL 6561063, at *1 (T.A. P.R. November 30, 2012).

the litigants and accelerates the resolution of adversarial proceedings.[202] The conformity-with-the-law standard may be producing opposite results and, in the process, overcrowd Puerto Rico's courts with what Salvador Antonetti Zequeira refers to as arbitration "controversies that are frequently more complicated than the ones routinely occupying the time and attention" of the courts.[203]

### *B. Disregarding the Parties' Intent*

By automatically offering judicial review whenever parties submit their dispute to resolution "in conformity with the law," the Puerto Rico Supreme Court's application of the non-statutory standard may also inadvertently disregard the parties' intent in having the restriction form part of their arbitration agreement. While the qualification underscores the parties' desire to submit their dispute to legal—as opposed to equitable—resolution, it should not, by itself, be taken as a manifestation of the parties' intent to authorize judicial review and *vacatur* of the award for legal errors in its merits and facts.

The inherent contractual nature of arbitration is "undoubted,"[204] the Puerto Rico Supreme Court maintains, such that the parties' intentions "is the fundamental criterion to set scope of the contractual obligations" in the arbitration agreement.[205] Once a court validates an arbitration agreement, it "lack[s] discretion with regards to [the agreement's] efficacy and must enforce the agreed-upon arbitration."[206] At the same time, the Puerto Rico Civil Code provides the judicial process for determining the parties' intent in a contractual setting.[207] This method of deliberation "begins and ends with the terms of the agreement, as long as these [terms] are clear and leave no doubt with regards to [the parties'] intentions."[208] And, in the event of ambiguity, a court may rely on evidence extrinsic to the contract[209] for purposes of reconciling the arbitration agreement's express language with the parties' intent.[210] The court, however, must always implement the "use and custom of the place or the industry pertinent to the agreement in determining the agreed-upon terms and supplying the non-agreed upon terms."[211]

Based on this interpretive framework, the limited function of a "conformity with the law" clause in an arbitration agreement appears to be clear: when the

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**202** *Constructora Estelar*, 183 P.R. Dec. at 30.

**203** Antonetti Zequeira, *supra* note 130, at 3 (translation by author).

**204** VDE Corp. v. F & R Contractors, 180 P.R. Dec. 21, 33 (2010) (translation by author).

**205** *Id.* at 35 (translation by author).

**206** *Id.* at 36 (translation by author).

**207** P.R. LAWS ANN. tit. 31, § 3471 (2015).

**208** Municipio de Mayagüez v. Lebrón, 167 P.R. Dec. 713, 723 (2006) (translation by author).

**209** *Id.* at 724.

**210** *Id.*

**211** *Id.* (translation by author).

parties stipulate that arbitrators must render the award in conformity with the law, they clearly intend to prohibit the resolution of their dispute pursuant to equity principles, and nothing more.[212] At this point, providing judicial review for legal errors in the award's merits and facts merely upon the parties' inclusion of the qualification requires a logical stretch, especially since the parties to the arbitration agreement presumably "comprehend that they have substituted the arbitrator for the courts in adjudicating all issues of fact and substantive law."[213]

This generous availability of expanded judicial review also stands in stark contrast with the broader commercial arbitration doctrine. The Puerto Rico Supreme Court adopted the conformity-with-the-law standard by citing to its prior labor and employment arbitration case law.[214] The only mention of the parties' intent—that submitting the award to resolution in conformity with the law orders arbitrators to follow the "prevailing legal doctrines" or "substantive law"—does not even suggest, by its own terms, an invitation for judicial review of the award's legal merits and facts.[215]

The sole justification for the non-statutory standard then seems to be that arbitration would be more effective if courts could review awards on substantive law issues.[216] But even Philip G. Phillips, who espoused this view in a 1934 article cited by the Puerto Rico Supreme Court in 1961 when it made the conformity-with-the-law standard available in commercial arbitration proceedings, stated that "it takes very strong language" for the parties to allow judicial review of an award for legal errors whenever the arbitrators must resolve the parties' controversies according to law.[217] As the California Supreme Court noted in *Cable Connection*, merely requiring the award to adjudication "in conformity with the law" does not constitute such unmistakable wording.[218]

Unfortunately, the Puerto Rico Supreme Court seems more comfortable with using the conformity-with-the-law standard as a legal fiction to impute on the parties, *ex post*, a desire to provide for judicial review of legal errors in the award's merits and facts. Indeed, local litigants have argued that their inclusion of the conformity-with-the-law qualification in the arbitration agreement was not meant as an expression of intent to provide judicial review of the award for legal errors.[219]

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**212** *See* discussion *supra* Parts II and III.

**213** Autoridad Sobre Hogares de Puerto Rico v. Tribunal Superior, 82 P.R. Dec. 344, 354 (1961) (translation by author).

**214** *Id.* at 353-55. Again, this approach is in itself somewhat questionable given the different potential issues involved. *See supra* note 11 and accompanying text.

**215** *Autoridad Sobre Hogares de Puerto Rico*, 82 P.R. Dec. at 353-55 (translation by author).

**216** *Id.*

**217** *Id.* at 354; Philip G. Phillips, *Rules of Law or Laissez-Faire in Commercial Arbitration*, 47 HARV. L. REV. 590, 603-04 (1934).

**218** *See* discussion *supra* Part III.

**219** *See, e.g.*, Constructora Estelar v. Autoridad de Edificios Públicos, 183 P.R. Dec. 1, 15-16 (2011) (considering whether the grounds upon which an arbitral award may be vacated are those listed the Puerto Rico Arbitration Act only); Rivera v. Samaritano & Co, 108 P.R. Dec. 604, 606 (1979) (addressing

But the Court has not budged in defending the non-statutory *vacatur* ground, turning this argument on its head: courts would truly render the expression of the parties' intent in the arbitration agreement "superfluous" and "ineffective" by refusing to review these qualified arbitral awards on their merits and facts.[220]

In effect, the manner in which the Puerto Rico Supreme Court applies its expansive interpretation and application of the conformity-with-the-law standard is so strict that not even an inquiry into the parties' intent may avoid the non-statutory availability of judicial review for legal errors in the award's merits and facts. Even more worrisome, this wooden interpretation—if left unaddressed—will continue diluting the enforcement of commercial arbitration agreements to the "automatism of words"[221] at the expense of courts' "fundamental criterion" for giving effect to the contractual obligations in an arbitration agreement: the parties' intent.[222]

## CONCLUSION

This Article examined the parties' ability to contractually expand the scope of judicial review and *vacatur* grounds for otherwise final-and-binding arbitral awards under the Puerto Rico Arbitration Act. It also evaluated whether the parties may continue to do so after the United States Supreme Court's decision in *Hall Street*. Based on the discussion above, this Article concludes that while the conformity-with-the-law standard's enforceability in a federal court remains uncertain, it is clear that the Puerto Rico Supreme Court misinterprets and misapplies the non-statutory ground. The Court should therefore reassess its lax position on providing judicial review for legal errors in the award's merits and facts whenever the parties' expressly submit their dispute to resolution "in conformity with the law." If not, the Court risks unnecessarily delaying award confirmation proceedings and, more alarmingly still, disregarding the parties' intent, as evinced in their arbitration agreement, to submit the award to such a qualification. Who would want to arbitrate in a jurisdiction like this?

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whether judicial review of arbitral awards for purposes of their *vacatur* was only available pursuant to the five grounds enumerated in the Puerto Rico Arbitration Act).

**220** *Rivera*, 108 P.R. Dec. at 606 (translation by author).

**221** *Id.* at 612 (Díaz Cruz, J., dissenting) (translation by author).

**222** VDE Corp. v. F & R Contractors, 180 P.R. Dec. 21, 35 (2010) (translation by author).