

NO. _____

In the
Supreme Court of the United States

HAMP'S CONSTRUCTION, L.L.C., ET AL.,

Petitioners,

v.

INLAND MARINE SERVICES, L.L.C.,

Respondent.

*On Petition for Writ of Certiorari
to the Supreme Court of Louisiana*

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1. Is "manifest disregard of the law" still a valid basis to vacate or modify an arbitrator's award?
2. Did the arbitrator in this case manifestly disregard the law and issue his own brand of industrial justice so as to warrant vacatur or modification of the arbitration award?
3. Even if vacatur or modification of the arbitrator's award in this case is not warranted under the relevant statutory law, is vacatur or modification nevertheless warranted under the Due Process Clause?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, neither Petitioner Hamp's Construction, L.L.C. nor Petitioner Hartford Fire Insurance Company has a parent corporation and no publicly held corporation owns 10% or more of its stock.

PROCEEDINGS DIRECTLY RELATED TO THE CASE IN THIS COURT

1. *Inland Marine Servs., L.L.C. v. Hamp's Constr., L.L.C.*, No. 2019-C-00729 (La. Sept. 6, 2019) (writ application denied).
2. *Inland Marine Servs., L.L.C. v. Hamp's Constr., L.L.C.*, No. 2018 CA 1152 (La. Ct. App. Apr. 12, 2019) (affirming confirmation of arbitration award).
3. *Inland Marine Servs., L.L.C. v. Hamp's Constr., L.L.C.*, No. 659,557 (La. 19th Jud. Dist. Ct. Apr. 24, 2018) (motion for new trial denied).
4. *Inland Marine Servs., L.L.C. v. Hamp's Constr., L.L.C.*, No. 659,557 (La. 19th Jud. Dist. Ct. Jan. 10, 2018) (confirmation of arbitration award).

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CITATIONS OF THE OPINIONS AND ORDERS ENTERED BELOW

The Supreme Court of Louisiana's denial of the application for writ of certiorari or review in this case was unpublished but is reproduced here at A-1. The Louisiana First Circuit Court of Appeal's affirmance of the trial court's confirmation of the arbitration award in this case was unpublished but is reproduced here at A-2 to A-11. The Louisiana District Court's decisions confirming the arbitrator's award in this case were unpublished but are reproduced here at A-12 to A-15. The arbitrator's award at issue in this case is reproduced here at A-16 to A-24.

STATEMENT OF JURISDICTION

The Supreme Court of Louisiana denied the application for writ of certiorari or review in this matter on September 6, 2019. *See A-1.* This Petition for Writ of Certiorari was filed within 90 days from September 6, 2019. *See* Sup. Ct. R. 13.1, 13.3. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

The Federal Arbitration Act ("FAA") provides in pertinent part that the court can vacate the arbitrators' award "where the arbitrators exceeded their powers, or

so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4).

The Louisiana Arbitration Law mirrors the above-quoted portion of the FAA, stating that the court can vacate an arbitrator's award "[w]here the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." La. R.S. 9:4210(D).

The Fourteenth Amendment to the United States Constitution provides in pertinent part that "[n]o State shall . . . deprive any person of . . . property, without due process of law[.]" U.S. Const. amend. XIV, § 1.

STATEMENT OF THE FACTS AND PROCEEDINGS BELOW

Respondent Inland Marine Service ("IMS") was subcontracted to Petitioner Hamp's Construction, L.L.C. ("Hamp's") for performance of certain portions of a beach erosion project in Louisiana. *See A-25 to A-39.* A dispute arose between the parties and, pursuant to the parties' agreement, the matter proceeded to mandatory arbitration.

The arbitrator ultimately ruled in favor of IMS, *see A-16 to A-24*, who then moved the local trial court

in Louisiana to confirm the arbitrator's award. Hamp's and its surety, Petitioner Hartford Fire Insurance Company ("Hartford"), opposed the award and moved the trial court to vacate portions of the arbitrator's award.

The trial court confirmed the bulk of the arbitrator's award for payment of contract sums, which award has now been paid by Hamp's, modifying it only in limited part by striking usurious interest rates fixed by the arbitrator, but leaving intact \$190,454.00 in delay damages awarded to IMS and rejecting Hamp's claim against IMS for \$8,752.40 in equipment rental. *See A-14 to A-15.* The Petitioners timely filed a Motion for New Trial of the Motion to Vacate, which was denied. *See A-12 to A-13.*

The Petitioners timely appealed to the Louisiana First Circuit Court of Appeal based on two grounds: (1) the arbitrator exceeded his authority in that he was aware of the controlling principle of law and failed to apply it, and (2) the arbitrator grossly deviated from the parties' agreement and instead dispensed his own brand of extra-legal justice. The Louisiana First Circuit Court of Appeal affirmed the trial court's decision in its entirety via an unpublished opinion. *See A-2 to A-11.*

The Petitioners timely appealed that decision to the Supreme Court of Louisiana, but that court

summarily denied the Petitioners' application without explanation. *See A-1.*

Thereafter, the Petitioners timely filed the instant Petition for Writ of Certiorari. *See supra* Statement of Jurisdiction.

REASONS FOR GRANTING THE WRIT

The Louisiana Arbitration Law ("LAL") is virtually identical to the FAA, and thus determinations are the same under either law, meaning that federal jurisprudence interpreting the FAA may be considered in construing the LAL and vice versa. *See Duhon v. Activelaf, LLC*, 2016-0818, p. 6 (La. 10/19/16); — So. 3d —, 2016 WL 6123820, at *3, *cert. denied*, — U.S. —, 137 S. Ct. 2268 (2017). "Further, to the extent that federal and state law differ, the FAA preempts state law as to any written arbitration agreement in a contract involving interstate commerce." *Id.*

As such, in this case, the Supreme Court of Louisiana has decided an important federal question in a way that conflicts with relevant decisions of this Court. *See Sup. Ct. R. 10(c).* Simply stated, the arbitrator knew of but consciously disregarded the parties' agreement and applicable law, and instead dispensed his own brand of extra-legal justice, thus warranting vacatur of the award.

If such manifest disregard for the law is permitted to stand, it will have widespread and detrimental effects on the ability of all persons to have a fair and just result in arbitration. Accordingly, this case presents a recurring question of exceptional importance, potentially affecting all persons across this Nation who are or may become subject to binding arbitration.

I. THERE IS A CONFLICT AMONG THE APPELLATE COURTS AS TO WHETHER "MANIFEST DISREGARD" REMAINS A VIABLE BASIS FOR VACATUR

This Court's decision in *Hall Street Associates v. Mattel, Inc.*, 552 U.S. 576 (2008), "has been widely viewed as injecting uncertainty into the status of manifest disregard as a basis for vacatur." *Wachovia Sec., LLC v. Brand*, 671 F.3d 472, 481 & n.7 (4th Cir. 2012); e.g., *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 n.3 (2010) (recognizing the question but refusing to answer it); *Crescent Prop. Partners, LLC v. Am. Mfrs. Mut. Ins. Co.*, 2014-0969, p. 6 n.3 (La. 1/28/15); 158 So. 3d 798, 803 n.3 (same).

This judicial ambiguity is good reason for this Court to grant certiorari in this case. See Sup. Ct. R. 10(c) (certiorari is appropriate where "a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court").

Indeed, this ambiguity in the law has led to a split of authority on this question among various United States courts of appeals. *Compare Wachovia Sec.*, 671 F.3d at 483 (holding "that manifest disregard continues to exist either 'as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. § 10'"), and *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1290 (9th Cir. 2009) ("[W]e conclude that, after *Hall Street Associates*, manifest disregard of the law remains a valid ground for vacatur because it is a part of [9 U.S.C.] § 10(a)(4)."), with *Ramos-Santiago v. United Parcel Serv.*, 524 F.3d 120, 124 n.3 (1st Cir. 2008) (asserting that, in *Hall Street*, this Court held "that manifest disregard of the law is not a valid ground for vacating or modifying an arbitral award in cases brought under the Federal Arbitration Act"), and *Citigroup Global Mkts., Inc. v. Bacon*, 562 F.3d 349, 350 (5th Cir. 2009) ("We conclude that *Hall Street* restricts the grounds for vacatur to those set forth in [9 U.S.C.] § 10 . . . and consequently, manifest disregard of the law is no longer an independent ground for vacating arbitration awards under the FAA.").

Similarly, the Supreme Court of Louisiana has equivocated as to the viability of the manifest disregard standard as a ground for vacatur, *see Crescent Prop. Partners*, p. 6 n.3; 158 So. 3d at 803 n.3 (recognizing but neither adopting nor abrogating same), and there is a

split among the five intermediate appellate courts in Louisiana.

Specifically, three of the five state appellate courts have expressly adopted the standard, *see Strategic Planning Assocs., L.L.C. v. Core Constr. Servs., L.L.C.*, 2018-0176, p. 3 (La. App. 4 Cir. 9/19/18); 256 So. 3d 330, 333; *Gilbert v. Robert Angel Builder, Inc.*, 45,184, p. 5 (La. App. 2 Cir. 4/14/10); 34 So. 3d 1109, 1113; *Webb v. Massiha*, 08-226, p. 4 & n.3 (La. App. 5 Cir. 9/30/08); 993 So. 2d 345, 347 & n.3; whereas two of the five state appellate courts have expressly rejected the standard, *see A-10 to A-11* (citing and following *Preis Gordon, APLC v. Chandler*, 2015-0958, p. 7 (La. App. 1 Cir. 2/26/16); 191 So. 3d 31, 36); *Brown v. Kabco Builders, Inc.*, 2018-928, pp. 6-7 (La. App. 3 Cir. 6/5/19); 274 So. 3d 216, 223-24.

The above-summarized split of authority (in both the United States courts of appeals as well as within Louisiana) is yet another reason for this Court to grant certiorari in this case. *See* Sup. Ct. R. 10(b) (certiorari is appropriate where "a state court of last resort has decided an important federal question in a way that conflicts with the decision . . . of a United States court of appeals"); *see also id.* Rule 10(a) (certiorari is appropriate where "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter").

II. THE ARBITRATOR'S AWARD IN THIS CASE MUST BE VACATED DUE TO A MANIFEST DISREGARD OF THE LAW

Although courts generally defer to an arbitrator's decision, which can be vacated only in a limited set of circumstances, the FAA (and LAL) allows vacatur of an arbitral award "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4); *accord* La. R.S. 9:4210(D).

Extrapolated from this statutory ground for vacatur, this Court has long acknowledged that arbitral awards are likewise subject to vacatur for a "manifest disregard" of the law. *See Stolt-Nielsen S.A.*, 559 U.S. at 671-72 (citing, *inter alia*, *Wilko v. Swan*, 346 U.S. 427, 436 (1953), *overruled on other grounds by Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 485 (1989)); *accord* *Crescent Prop. Partners*, p. 6 n.3; 158 So. 3d at 803 n.3.

In order to have a court vacate an arbitrator's decision on this basis, the party challenging the award

must clear a high hurdle. It is not enough for petitioners to show that the [arbitrator] committed an error—or even

a serious error. See *Eastern Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62, 121 S. Ct. 462, 148 L. Ed. 2d 354 (2000); *Paperworkers v. Misco, Inc.*, 484 U.S. 29, 38, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987). "It is only when [an] arbitrator strays from interpretation and application of the agreement and effectively 'dispense[s] his own brand of industrial justice' that his decision may be unenforceable." *Major League Baseball Players Assn. v. Garvey*, 532 U.S. 504, 509, 1015, 121 S. Ct. 1724, 149 L. Ed. 2d 740 (2001) (*per curiam*) (quoting *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960)). In that situation, an arbitration decision may be vacated under § 10(a)(4) of the FAA on the ground that the arbitrator "exceeded [his] powers," for the task of an arbitrator is to interpret and enforce a contract, not to make public policy.

Stolt-Nielsen S.A., 559 U.S. at 671-72.

As further explained by this Court:

While the interpretation of an arbitration agreement is generally a

matter of state law, see *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630-31, 129 S. Ct. 1896, 173 L. Ed. 2d 832 (2009); *Perry v. Thomas*, 482 U.S. 483, 493, n.9, 107 S. Ct. 2520, 96 L. Ed. 2d 426 (1987), the FAA imposes certain rules of fundamental importance, including the basic precept that arbitration "is a matter of consent, not coercion," *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989).

....

[Thus], courts and arbitrators must "give effect to the contractual rights and expectations of the parties." *Volt, supra*, at 479, 109 S. Ct. 1248. In this endeavor, "as with any other contract, the parties' intentions control." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985). This is because an arbitrator derives his or her powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution.

Stolt-Nielsen S.A., 559 U.S. at 681-82.

Unfortunately, this Court's precedents

do not provide significant guidance as to what standards a federal court should use in assessing whether an arbitrator's behavior is so untethered to either the agreement of the parties or the factual record so as to constitute an attempt to "dispense his own brand of industrial justice."

Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 512 (2001) (Stevens, J., dissenting).

On the other hand, the federal courts of appeals have provided some guidance in this regard.

As summarized by the Second Circuit, "the application of the manifest disregard standard involves at least three inquiries. First, we must consider whether the law that was allegedly ignored was clear, and in fact explicitly applicable to the matter before the arbitrators." *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 389-90 (2d Cir. 2003). "Second, . . . we must find that the law was in fact improperly applied, leading to an erroneous outcome." *Id.* at 390. "Third, . . . we look to a subjective element, that is, the knowledge actually possessed by the arbitrators." *Id.*

An examination of each of these three elements as applied to the instant case clearly demonstrates that the arbitrator here actually knew of the clear and applicable law, and yet manifestly disregarded it and dispensed his own brand of justice, thus warranting vacatur.

The arbitrator's award fails to draw its essence from the parties' agreement when

(1) it conflicts with express terms of the agreement; (2) it imposes additional requirements not expressly provided for in the agreement; (3) it is not rationally supported by or derived from the agreement; or (4) it is based on "general considerations of fairness and equity" instead of the exact terms of the agreement.

Solvay Pharm., Inc. v. Duramed Pharm., Inc., 442 F.3d 471, 476 (6th Cir. 2006) (internal quotation marks omitted).

In the instant case, the arbitrator violated *all four* of the parameters outlined in *Solvay Pharmaceuticals*, thus warranting vacatur of the award.

Under well-settled Louisiana law, "[c]ontracts have the effect of law for the parties," La. C.C. art. 1983,

and as such, "the courts are obligated to give legal effect to such contracts according to the true intent of the parties." *Waterworks Dist. No. 1 of DeSoto Parish v. La. Dep't of Pub. Safety & Corrs.*, 2016-0744 (La. App. 1 Cir. 2/17/17); 214 So. 3d 1, 5, *writ denied*, 2017-0470 (La. 5/12/17); 219 So. 3d 1103.

The reasonable intention of the parties to a contract is to be sought by examining the words of the contract itself, and not assumed. *Clovelly Oil Co., LLC v. Midstates Petroleum Co., LLC*, 12-2055 (La. 3/19/13), 112 So.3d 187, 192. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. LSA-C.C. Art. 2046. Common intent is determined, therefore, in accordance with the general, ordinary, plain and popular meaning of the words used in the contract. *Clovelly*, 112 So.3d at 192. Accordingly, when a clause in a contract is clear and unambiguous,[¹] the letter of that clause

¹"A contract . . . is ambiguous when its written terms are susceptible to more than one interpretation, there is uncertainty as to its provision, or the parties' intent cannot be ascertained from the language used." *Vill.*

should not be disregarded under the pretext of pursuing its spirit, as it is not the duty of the courts to bend the meaning of the words of a contract into harmony with a supposed reasonable intention of the parties. *Id.* Most importantly, a contract must be interpreted in a common-sense fashion, according to the words of the contract their common and usual significance.

Waterworks Dist. No. 1, pp. 5-6; 214 So. 3d at 5.

As explained below, in the instant case, with respect to both the delay damages imposed against Hamp's and the rental charges Hamp's sought against IMS, the arbitrator unlawfully ignored the clear and unambiguous terms of the parties' contract (the law between the parties) and instead ruled based upon his own, personal brand of justice.

Such a ruling clearly falls within the narrow circumstances of when it is appropriate to vacate an arbitrator's award. *See, e.g., Sw. Airlines Co. v. Local 555, Transp. Workers Union of Am. AFL-CIO*, 912 F.3d 838, 844-46 (5th Cir. 2019) (vacating arbitration award where it conflicted with the plain language of the

Shopping Ctr. P'ship v. Kimble Dev., LLC, 2018-740, pp. 6-7 (La. App. 5 Cir. 4/24/19); 271 So. 3d 376, 382.

parties' contract); *U.S. Soccer Fed'n, Inc. v. U.S. Nat'l Soccer Team Players Ass'n*, 838 F.3d 826, 832-37 (7th Cir. 2016) (vacating award where arbitrator erroneously sought to construe a contractual ambiguity when, in fact, the contract was unambiguous and the arbitrator's ruling was not permitted by the terms of the contract).

A. Delay Damages

In relevant part, the parties' agreement provides as follows:

IMS shall not be responsible for any delays resulting from . . . Hamp's delays Delays resulting from these items shall be compensated to IMS. . . . If either Contractor or Subcontractor contend that they are being delayed due to the performance or non-performance of the other party, written notice must be given to the other party's onsite supervisor within three (3) business days of the onset of the delay. . . .

In the event of any delays that are not caused by the performance of the Contractor or Subcontractor but are attributed to weather conditions, site conditions, different site conditions, project plans and/or specifications, design

and/or engineering issues or any other reason that could be caused by the Owner, Engineer or the Project Site, the Contractor and Subcontractor shall work together, and cooperate with each other, to pursue any claims for additional time and money from the Owner/Engineer for the Project.

A-31 to A-33 (¶ 6).

Thus, in clear and unambiguous terms, IMS is only entitled to delay damages from Hamp's if Hamp's is the cause of the delay; if the delay is caused by the Owner, Engineer, Project Site, or the weather, then IMS and Hamp's have to collaborate to seek additional time and/or money from the Owner. *See id.*

Here, the arbitrator expressly determined that "[d]esign deficiencies, changes in design, unforeseen site conditions and adverse weather conditions prevented IMS from completing its work scope within the 45-day period specified in the Subcontract," A-18 (¶ 2.1.3), which in turn caused IMS to perform additional work and incur additional costs, *see A-18 (¶ 2.1.5).* Notably, absent from the cause of the delay was anything attributable to Hamp's. *See A-18 (¶ 2.1.3).*

Accordingly, based on the arbitrator's own express findings and the unambiguous text of the

parties' contract, IMS was not entitled to delay damages from Hamp's but, rather, the parties were required to collaborate to seek additional time and/or money from the Owner. *See A-32 to A-33.* Nevertheless, the arbitrator ignored the above-stated law between the parties and imposed his own brand of justice by ordering that Hamp's pay IMS \$190,454 in delay damages. *See A-20 to A-21 (¶ 3.4).*

The arbitrator was clearly aware of the terms of the contract, because he enforced that provision which denied recovery of attorneys' fees to either party and emphasized in that denial that "the referenced Subcontract clause must be construed and enforced as a mutual waiver of the parties' rights to recover attorney's fees." *See A-33 (¶ 3.3).* By selectively enforcing this contract provision, but not enforcing the clear language as to delay damages, the arbitrator consciously ignored the controlling principle of law in Louisiana that the contract is the law between the parties.

B. IMS's Use of Hamp's Equipment

Undisputedly, "[d]uring the Project, Hamp's supplied equipment for the benefit of IMS, for which IMS agreed to make payment to Hamp's." A-19 (¶ 2.1.9); *accord A-21 (¶ 4.1).*

Aside from the \$7,882 that IMS admitted it owed Hamp's during the trial, the arbitrator denied Hamp's claims for an additional \$6,939.40 for signed work tickets and an additional \$1,813 for use of an excavator. See Mot. to Partially Vacate Arbitration Award at 7-10. In support of its claim, Hamp's submitted the signed work tickets and various written correspondence from Hamp's to IMS. See *id.*, Exs. C & D. A signed work ticket is an agreement to pay. See *Messina v. Koch Indus., Inc.*, 283 So. 2d 204, 206 & n.3 (La. 1973); *La. Crane Co. v. Quality Contract Servs., Inc.*, 2009-94 (La. App. 3 Cir. 6/3/09); 2009 WL 1545807, at *2 (unpublished).

Nevertheless, the arbitrator ignored this uncontested written evidence and imposed his own brand of justice by denying Hamp's the compensation clearly owed to it from IMS pursuant to the parties' agreement. See A-21 (¶ 4.1).

III. ALTERNATIVELY, SUBSTANTIVE DUE PROCESS MANDATES THAT ARBITRATORS FOLLOW THE GOVERNING LAW

A. Judicial Confirmation of an Arbitration Award Constitutes State Action

As previously noted by this Court:

The Fourteenth Amendment protects . . . only from a deprivation by state action. Private use of state sanctioned private remedies or procedures does not rise to the level of state action. . . . But when private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found.

Tulsa Prof'l Collection Servs., Inc. v. Pope, 485 U.S. 478, 485-86 (1988) (internal citations omitted).

Admittedly, arbitration is a private, voluntary proceeding and thus does not alone constitute state action so as to implicate due process. *See Davis v. Prudential Sec. Inc.*, 59 F.3d 1186, 1191 (11th Cir. 1995) ("[T]he arbitration was a private proceeding arranged by a voluntary contractual agreement of the parties. Accordingly, the arbitration proceeding itself did not constitute state action."); *Gallus Invs., L.P. v. Pudgie's Famous Chicken, Ltd.*, 134 F.3d 231, 234 (4th Cir. 1998) ("[A]rbitrators [are] not state actors for purposes of the Fifth or Fourteenth Amendments.").

However, if and when the parties to arbitration seek judicial approval of the arbitration award, they are necessarily invoking the power of the judiciary and, thus, engaging in the threshold "state action" to implicate the Fourteenth Amendment. *See Shelley v.*

Kraemer, 334 U.S. 1, 14 (1948) ("That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court."); e.g., *Tulsa Prof'l Collection Servs.*, 485 U.S. at 485-86 (Oklahoma's nonclaim statute is not self-executing, in that probate court's involvement in appointing executor is necessary to activate time bar and, thus, there was sufficient state action to give rise to due process requirements); *see also Shelley*, 334 U.S. at 20 ("We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand.").

Accordingly, the Louisiana court's decision regarding whether the arbitrator's decision is subject to vacatur is itself subject to attack on due process grounds. *But see Davis*, 59 F.3d at 1192 (expressly holding "that the mere confirmation of a private arbitration award by a district court is insufficient state action to trigger the application of the Due Process Clause").

B. Refusing to Vacate an Arbitration Award Resulting from Manifest Disregard of the Law Violates Substantive Due Process

The Due Process Clause provides citizens with the right to both substantive and procedural due process. *See Parrino v. Price*, 869 F.3d 392, 397 (6th Cir. 2017); *United States v. Salerno*, 481 U.S. 739, 746 (1987).

Substantive due process "protects individual liberty [and property] against 'certain government actions regardless of the fairness of the procedures used to implement them.'" *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)); *see also Parrino*, 869 F.3d at 397.

In the instant case, assuming that the FAA (and LAL) provides a sufficient means of procedural due process to challenge an arbitrator's award, if manifest disregard is not a viable ground on which to vacate such an award, *see supra* Part II, then the Petitioners' substantive due process rights have been violated.

In the instant case, the arbitrator had actual knowledge of the plain and unambiguous terms of the parties' Agreement, which only entitled IMS to delay damages if Hamp's caused the delay, and nevertheless awarded IMS delay damages despite the arbitrator's

factual finding that Hamp's did not cause the delay. *See supra* Part II.A.

Moreover, the arbitrator had actual knowledge that IMS agreed to pay Hamp's for use of the latter's equipment, and nevertheless denied Hamp's compensation for IMS's use of Hamp's equipment despite unambiguous and undisputed documentary evidence therefor. *See supra* Part II.B.

In other words, the arbitrator knowingly ignored the relevant, applicable law and instead dispensed his own subjective brand of justice between the parties. *See supra* Part II. Such conscious disregard of the law and evidence constitutes a violation of substantive due process. *See Winslow v. Smith*, 696 F.3d 716, 732 (8th Cir. 2012) (if investigators purposefully ignore evidence of defendant's innocence or intentionally misconstrue evidence in order to charge defendant with a crime, that is sufficiently conscience-shocking as to implicate substantive due process); *Schwartz v. Booker*, 702 F.3d 573, 587 (10th Cir. 2012) (plaintiffs sufficiently pled that county human services department employees violated substantive due process rights of child, who died while in foster care, where they alleged that employees ignored known or likely injuries and abuse to child, chose not to further investigate such possible abuse, and ignored the danger posed by his continued residence in foster's home).

CONCLUSION

In light of the foregoing arguments and authorities cited, the Petitioners respectfully request that this Honorable Court grant their Petition for Writ of Certiorari to review the judgment of the Supreme Court of Louisiana on the questions presented herein.

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