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Nos. 25-CV-0086 & 25-CV-0229

In the
District of Columbia
Court of Appeals

QUINN, RACUSIN & GAZZOLA CHARTERED,

Appellant,

v.

PAVICH LAW GROUP, P.C., *et al*,

Appellees.

*On Appeal from the Superior Court of the District of Columbia, Civil Division
Case No. 2021-CA-004580-B (Honorable Neal E. Kravitz, Judge)*

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RULE 28(a)(2)(A) STATEMENT AS TO PARTIES

Appellant Quinn, Racusin & Gazzola Chtd. certifies that the following parties and counsel are involved in the proceedings in this matter. Currently, there are no intervenors or amici curiae.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to the D.C. App. R. 26.1 and 28(a)(2)(B), Appellant Quinn, Racusin & Gazzola Chtd. certifies, by counsel, that:

1. Quinn, Racusin & Gazzola Chtd. is a chartered company formed and organized under the laws of the District of Columbia. It was established in 1982 and engages in the business of providing legal services.
2. Quinn, Racusin & Gazzola Chtd. currently has no parent, subsidiary, or affiliate companies.
3. Quinn, Racusin & Gazzola Chtd. is not a publicly held corporation.

/s/ Robert N. Kelly

Robert N. Kelly

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JURISDICTIONAL STATEMENT

The Superior Court of the District of Columbia had jurisdiction to hear this matter pursuant to its authority under D.C. Code §§ 16-4422, 16-4423, and 16-4424 to confirm, modify, correct, or vacate an arbitration award upon request of a party.

This Court has jurisdiction to review this matter pursuant to D.C. Code § 11-721(a)(1)'s final judgment rule. This Appeal stems from a final judgment entered by the lower court disposing of all claims and issues before it. The Appellant filed timely notices of appeal following the lower court's January 24, 2025 decision denying the Appellant's petition for judicial review and motion to vacate an arbitration award while granting Appellees' cross-motion to confirm the arbitration award, JA745-748, and following the February 5, 2025 entry of the lower court's final judgment, JA751-754. The appeals were consolidated by this Court in this proceeding, sua sponte.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the lower court erred in conceding to the arbitrator's determination of the scope his jurisdiction under the arbitration clause in the contract as including disputes over the allocation of a total contingency fee among the four law firms involved in representing Wye Oak in the Iraq Litigation, and as including unrelated tort claims?

2. Whether the arbitration clause itself was rendered invalid or unenforceable due to fraud in the inducement and/or duress or coercion?

3. Whether JAMS' Streamlined Arbitration Rules and Procedures compel acceptance of the Arbitrator's determination as to the scope of his jurisdiction?

STATEMENT OF THE CASE

Appellee Pavich Law Group (“PLG”) initiated an arbitration involving fellow Appellees Wye Oak Technology, Inc. (“Wye Oak”), Whiteford, Taylor & Preston (“WTP”), Kalbian Hagerty (“KH”) and Appellant Quinn, Racusin & Gazzola Chtd. (“QRG”) seeking a determination of the allocation of contingency fees related to the legal representation of Wye Oak in a breach of contract action in the United States District Court for the District of Columbia against the Republic of Iraq and its Ministry of Defense.¹ In the arbitration, PLG also asserted tort claims for damages against QRG and, subsequently, WTP asserted similar tort claims against QRG. QRG moved to dismiss the arbitration, arguing on jurisdictional grounds that the claims alleged were not arbitrable. That motion was denied by the Arbitrator on May 4, 2020. JA218-223. On May 14, 2020, a subsequent motion to reconsider the denial also was denied. JA224-225.

The tortuous procedural history of this case is recited in the Case Summary, JA004-015. The only aspect of that history that is important to this appeal is the Superior Court’s consideration of the merits of Appellant’s Petition for Judicial Review and Motion to Vacate Arbitration Award. Without the benefit of oral argument, the Superior Court issued a decision on January 24, 2025 denying

¹ The case against Iraq was originally filed in the U.S. District Court for the Eastern District of Virginia, and was subsequently transferred to the U.S. District Court for the District of Columbia.

Appellant's Petition and granting Appellees' cross-motion to confirm the final arbitration award. JA724-744. On February 5, 2025, the Superior Court entered its final judgment, consistent with its earlier decision. JA749-750. Notices of appeal were filed within 30 days of both the January 24, 2025 decision and the February 5, 2025 final judgment. JA745-748, JA751-754. The two appeals were consolidated by this Court, acting sua sponte.

The Superior Court confirmed the Final Award issued in the arbitration proceeding. JA088-217. In that Final Award, the Arbitrator allocated a contingency fee only among Appellees WTP, PLG and KH, and awarded tort damages in favor of WTP and PLG against QRG, while dismissing QRG's counterclaim against PLG.² JA215-217. In addition to the tort damages awarded against it, Appellant QRG was allocated a zero percentage share of the total contingency fee. *Id.*

² The Arbitrator had previously issued an Interim Award that addressed liability but reserved the right to revise those liability findings and consider the categories and amounts of damages to be awarded after additional hearings in the arbitration proceeding. Because the Arbitrator in the Final Award re-stated, and in some material instances reversed, his prior findings in the Interim Award, and added findings on damages, the Interim Award is now moot and the superseding Final Award stands alone.

STATEMENT OF THE FACTS

QRG, PLG, and WTP all represented Wye Oak Technology, Inc. (“Wye Oak”) in a lawsuit against the Republic of Iraq (the “Iraq Litigation”) stemming from agreements between Wye Oak and the Iraq Ministry of Defense to refurbish military equipment and supply it to the Iraqi military.³ The Iraq Litigation was filed in 2009 by QRG, with PLG signing the complaint as *pro hac vice* counsel. WTP was added to the litigation team in 2017 and a substantial judgment (\$120,742,030.78 plus interest, costs and attorneys’ fees) was obtained in favor of Wye Oak in 2019. *Wye Oak Tech., Inc. v. Republic of Iraq*, 2019 WL 4044046 (D.D.C., August 27, 2019). Ultimately that judgment was vacated on jurisdictional grounds by the Court of Appeals for the D.C. Circuit in *Wye Oak Tech., Inc. v. Republic of Iraq*, 109 F.4th 509 (D.C. Cir. 2024). A petition for certiorari to the U.S. Supreme Court has been filed but not yet ruled upon, and the Supreme Court has invited the Solicitor General to file a brief in the case expressing the views of the United States. *Wye Oak Tech., Inc. v. Republic of Iraq*, 145 S.Ct. 1959 (April 28, 2025).

Wye Oak founder Dale Stoffel first engaged John Quinn and QRG in 1997 to represent his various business and personal interests, and, subsequently, QRG

³ KH also provided litigation support services to Wye Oak in a limited capacity, but it did not enter an appearance as co-counsel for Wye Oak in the Iraq Litigation, nor did it present any affirmative tort claims in the Arbitration. It was, however, awarded a share of the contingency fee in the Final Award.

became general counsel for Wye Oak. QRG assisted Dale Stoffel in implementing the contract with the Iraq Ministry of Defense from mid-2004 until his murder in Iraq in December, 2004. After Dale Stoffel's death, Quinn became a member of the board of Wye Oak. QRG continued to represent Wye Oak in efforts to implement the contract and otherwise pursue Wye Oak's claims against Iraq. When these efforts proved to be unsuccessful, Wye Oak engaged PLG to represent Wye Oak in the proposed litigation.

Wye Oak's and QRG's initial expectation that QRG would serve chiefly as general counsel, reviewing work product of trial counsel for accuracy and adequacy, with the PLG attorneys pulling the laboring oar was not borne out. In all dealings with PLG from that point forward, as the only counsel admitted to the court bar and thus authorized to sign and file pleadings, QRG essentially acted as lead counsel for Wye Oak with scant support from PLG until WTP entered its appearance in the Iraq Litigation in 2017. *See* the April 4, 2022 Supplemental Declaration of John H. Quinn, Jr. at ¶ 6, JA254.⁴ In June 2014, Wye Oak engaged the services of KH to

⁴ The active involvement of Quinn and QRG in prosecuting the Iraq Litigation on Wye Oak's behalf is substantiated by the ruling of U. S. District Judge Lamberth, who presided over the Iraq Litigation in the federal district court in the District of Columbia, awarding Wye Oak its attorneys' fees. That award included \$1,729,379.20 for hourly work performed by QRG, having deemed their rates and hours to have been reasonable and necessary to Wye Oak's representation. This portion of the award included over 1,923 hours of Quinn's time. *See Wye Oak Tech., Inc. v. Republic of Iraq*, 557 F.Supp.3d 65, 102 (D.D.C. 2021).

counsel Wye Oak concerning Iraqi law as needed. *See* Wye Oak/KH retainer agreement, JA239-243. By 2016, Quinn began the process of seeking additional and/or replacement counsel and financing to further prosecute the Iraq Litigation, which had essentially come to a standstill. *See* the April 4, 2022 Supplemental Declaration of John H. Quinn, Jr. at ¶ 6, JA254.

In October 2016, Robert Pavich of PLG initiated contact with Allen Foster of WTP about WTP possibly joining the Wye Oak Litigation Team. In April 2017, WTP agreed to serve as trial counsel with PLG, and both firms entered into fee agreements with Wye Oak. The 2009 PLG fee agreement, the 2014 KH fee agreement, the 2014 PLG addendum, and the 2017 WTP and PLG fee agreements are included in the Joint Appendix at JA 237-252. It should be noted that the WTP and PLG agreements document their agreement for WTP to be compensated by Wye Oak with a 15% contingency fee and PLG to be compensated with a 25% contingency fee, accompanied by PLG's commitment to cover 60% of the litigation expenses advanced by WTP and to provide 60% of the litigation's hourly workload.

Discovery moved forward and the trial in the Iraq Litigation concluded in March 2019. With the expectation of a significant monetary judgment in view, Foster and Erik Bolog of WTP met with Pavich of PLG in early July 2019 to push for an increase in WTP's percentage of the contingency fee, ostensibly under the guise of a "look back" provision in the 2017 fee agreement between Wye Oak and

WTP.⁵ See the transcript of the September 10, 2020 deposition of Robert J. Pavich at pp. 56-59, JA267-270. Bolog and Foster then scheduled a meeting with Quinn, as Wye Oak’s general counsel, to push for an increased fee for WTP. Quinn agreed that WTP’s contribution to the success of the Iraq Litigation was far greater than PLG’s contribution and thus merited an increase in its contingency fee. During this discussion to increase WTP’s percentage of the contingency fee, there was also a proposal to increase the overall contingency fee to include QRG, whose prior fee agreements with Wye Oak were on an hourly basis, although none of those accrued fees had been paid in many years. See the September 8, 2020 Declaration of John H. Quinn, Jr. at ¶¶ 7-9, JA323-325. Foster and Bolog failed to inform Quinn that they had already met with PLG and reached an agreement on allocation with PLG that did not include QRG. See the September 8, 2020 Declaration of John H. Quinn, Jr. at ¶ 7, JA323.

Foster and Bolog were clear that WTP was not only seeking an increase of its share of the attorneys’ fees from 15% to at least 25%, but that it was also enlisting Quinn’s support to persuade PLG to reduce its share of any contingency fee because

⁵ See the August 15, 2019 email from Foster to Pavich and Quinn, JA300. The “look back” provision is merely a clause in the “expenses” section of the fee agreement between WTP and Wye Oak, which allows “a mutually agreeable modification of our fee agreement to reflect the unexpected expense.” JA248.

it had not met its obligations under the prior fee agreements. *See* the September 8, 2020 Declaration of John H. Quinn, Jr. at ¶¶ 7-9, JA323-325.

After Judge Lamberth entered a judgment in excess of \$120 million in favor of Wye Oak in the Iraq Litigation, he issued an order to meet and confer with counsel for the Republic of Iraq on the issue of attorney's fees. QRG understood that accurate reporting to the judge, consistent with the D.C. R. Pro. Conduct 1.5, would require the filing of a petition for reasonable attorneys' fees based on revised and reasonable contingency agreements with each of the law firms retained by Wye Oak. Critically Quinn, on behalf of Wye Oak, agreed with WTP's assertions that the existing fee arrangements lacked the requirement of reasonableness, primarily because they failed to reflect the level of contribution from each firm to the anticipated litigation process and its success.

Ultimately, concerns with PLG's refusal to negotiate a reasonable contingency fee, coupled with a looming deadline in the Iraq Litigation to file a petition for attorneys' fees by December 2, 2019, led to a Wye Oak Board meeting preceded by a conference call in which Quinn, David Stoffel, Foster, Bolog, and Pavich participated on November 29, 2019. *See* Minutes of November 29, 2019 Wye Oak Board of Directors Meeting, JA273-280. Pavich proposed, and the other parties agreed, that Wye Oak would pay a cumulative contingency fee of forty-six percent (46%) to all four firms (including QRG and KH), albeit while reserving the

specific allocation of the 46% among the four firms “to be determined at a later time.” *Id.* at p. 1, JA274.

The Wye Oak Board’s approval of the proposed increase in the total contingency fee to 46% was conveyed to WTP and PLG in an email sent to them by Quinn on behalf of the Board. That email noted that the increase was intended to compensate all of the law firms that provided Iraqi litigation-related services to Wye Oak, “with discussions to continue among the lawyers and Wye Oak as to how each of the firms will be compensated for the services rendered to Wye Oak.” *See* November 29, 2019 email exchange by and between, inter alia, Quinn, Foster, Pavich and David Stoffel, JA276. This decision was made in the absence of any knowledge on the part of either Wye Oak or QRG of the undisclosed prior understanding of July 3, 2019 between PLG and WTP to allocate the 46% contingency fee between themselves alone. *See* September 10, 2020 deposition testimony of Robert Pavich at pp. 58-59, JA269-270.

Foster also told the parties during the November 29, 2019 call that no written contract was required before the fee petition was to be filed the following Monday, December 2, 2019. However, on December 2, 2019, Foster called Quinn and told him that WTP needed a written contract memorializing the November 29, 2019 agreement to attach to the fee petition that was to be filed that same day. Quinn invited Foster and Bolog to the QRG offices to draft what would become the ACAF.

See the September 8, 2020 Declaration of John H. Quinn, Jr. at ¶ 23, JA330. In that drafting session, Foster demanded a JAMS arbitration clause. When Quinn rejected this demand, Foster told Quinn that if he did not agree to adding a JAMS arbitration clause to the agreement, that Foster would not only refuse to sign the agreement, but would use his vast resources to “crush” Quinn and demand at least 30% of the 46% fee agreement, as distinguished from his agreement since the July 15, 2019 meeting with Quinn, acting as Wye Oak’s general counsel, to accept a 25% share. *Id.* In the interest of protecting Wye Oak’s rights to indemnification against Iraq, Quinn acquiesced because of this threat and to protect his client’s interests under the pressure of the looming imminent deadline, given his understanding that the arbitration clause would have no bearing on the separate issue, reserved for future negotiations, of the allocation of the contingency fee, and in the absence of any suggestion that PLG and WTP were planning to pursue tort claims against QRG. *Id.*

The outcome of this drafting session was the Agreement Concerning Attorneys’ Fees (“ACAF”), drafted and signed on December 2, 2019 but back-dated “as of October 15, 2019.” JA234-236. The ACAF was then filed with Wye Oak’s Petition for Attorneys’ Fees.

The ACAF established a collective 46% contingency fee and secondarily established continued roles and fees for QRG and WTP – significantly, excluding PLG - to supervise the appeal and collection efforts. The ACAF references the prior

separate fee agreements entered into between Wye Oak and the various law firms. It recognized that QRG had not been paid any of its fees under a standard hourly fee agreement to serve “as litigation counsel and appellate counsel for the [Iraq] Litigation from 2009 to 2017” and “hereby replaces QRG’s previous hourly fee agreement with a percentage contingent fee.” Further, the ACAF provided that “the existing fee agreements, as contemplated by the parties, for the distribution of fees to compensate attorneys do not accurately or equitably reflect the contribution of time, expenses, and other resources made by each of the parties throughout the course of the Litigation.” ACAF at p. 2, JA201. These provisions of the ACAF unambiguously reflect the understanding of the parties that the ACAF superseded and replaced the prior agreements as to determination of the fees owed to the firms. *See* ACAF, JA200-202. It also was intended to benefit Wye Oak through the transfer of its obligation to pay QRG for litigation services billed on an hourly basis into a share of the contingency fee for QRG.

The ACAF did not establish a set allocation of the 46% contingency fee among the four law firms because its primary purpose was to memorialize the agreement made on November 29, 2019, which included the statement: “We understand that discussions will continue among the lawyers and Wye Oak as to how each of the firms will be compensated for the services rendered to Wye Oak.” *See* email exchange of November 29, 2019, JA272. The ACAF also provided that “[a]ny

claim or dispute between any of the aforementioned parties arising out of or relating to this Agreement [the ACAF] . . . including any fee owed to any party, shall be resolved by arbitration in the District of Columbia.” It is noteworthy to observe that the only disputes over fees that would arise out of or relate to the ACAF are those hourly fees set in Paragraph 2 of the ACAF relating to appellate advocacy and collection efforts by the law firms on behalf of Wye Oak. *See* ACAF at ¶ 2, JA201.

It also is noteworthy that the consent of QRG and Wye Oak to Paragraph 3 of the ACAF (the arbitration provision) was obtained under duress. Quinn, as Wye Oak’s General Counsel, and David Stoffel, Dale Stoffel’s brother and the President of Wye Oak, consistently and repeatedly resisted the inclusion of an arbitration clause. Quinn has stated under oath that:

I, with David Stoffel’s concurrence, had been resisting any agreement committing Wye Oak to arbitration with JAMS except under clearly specified conditions which are not set forth in paragraph 3 of the ACAF. Mr. Foster told me that, unless I agreed to that paragraph, he would use his \$22 million net worth to “crush” me, and would increase his demand for a share of the contingency fee to 30% (instead of the 25% to which he had consistently agreed since July 15, 2019). Because of the threat and the time pressure (because the ACAF was essential to Wye Oak’s fee petition that was due to be filed with the court within hours), I advised Mr. Stoffel to sign the ACAF in order to avoid Wye Oak’s loss of, potentially, tens of millions of dollars in attorneys’ fees. I also advised Mr. Stoffel of the problem with the arbitration provision from Wye Oak’s perspective, but that the alternatives to signing were seemingly nonexistent in view of Mr. Foster’s threat. For

these same reasons, and in the interest of Wye Oak, I signed the ACAF [on behalf of QRG].

See the September 8, 2020 Declaration of John H. Quinn, Jr. at ¶ 23, JA330.

The recitals also speak to the essence of the ACAF and clarify that it is not an agreement to arbitrate the fee allocation dispute, because that allocation was undecided in the ACAF and hence did not arise out of or relate to the ACAF. Two documents, both dated November 29, 2019, demonstrate that this was the contemporaneous understanding of the parties to the ACAF. First, Quinn wrote to Foster on behalf of Wye Oak:

I am authorized to advise you that Wye Oak authorizes advising the court in a fee petition that it is contingently willing to pay an aggregate of 46% of the amount recovered from Defendants to all of the law firms that have provided Iraqi litigation-related services to Wye Oak.

We understand that discussions will continue among the lawyers and Wye Oak as to how each of the firms will be compensated for the services rendered to Wye Oak.

See email exchange of November 29, 2019, JA272 (emphasis added). Then, the minutes documenting the November 29, 2019 Wye Oak Board Meeting report recite that:

During the call, Mr. Pavich proposed that the then-pending impasse among the attorneys with respect to attorney fees which had been reported to the Board at its meeting on November 26 and 27, 2019 be at least partially resolved by an agreement among Wye Oak and all four law firms that have participated in the *Iraqi* litigation pursuant to which Wye Oak would agree to increase its contingency

fee commitment to 46% to compensate all four firms, with varying amounts within the 46% allowance to be determined at a later time.

See Minutes of November 29, 2019 Wye Oak Board of Directors Meeting at p. 1, JA274 (emphasis added).

STANDARD OF REVIEW

A court's interpretation of statutory language and determination of its effect should be reviewed de novo. It follows that this Court should consider the lower court's determination to dismiss the Petition for Judicial Review under the District of Columbia's Revised Uniform Arbitration Act, D.C. Code §§ 16-4401, et seq. ("DCRUA") and the Federal Arbitration Act, 9 U.S.C. §§ 1 - 16 ("FAA"), de novo. Under de novo review, this Court owes no deference to the lower court and may review the question anew. *MorphoTrust USA, Inc. v. D.C. Contract Appeals Bd.*, 115 A.3d 571, 582 (D.C. 2015). This standard of review applies to all of the issues presented to the Court.

SUMMARY OF THE ARGUMENT

The purported jurisdictional basis for the Arbitrator's authority to render the determinations contained in the Final Award is the Agreement Concerning Attorneys' Fees ("ACAF"), drafted and signed on December 2, 2019 but back-dated "as of October 15, 2019." JA234-236. That agreement contains an arbitration clause, but the clause is expressly limited to claims or disputes "arising out of or relating to" the ACAF, nor is there any language in the ACAF as a whole, or the arbitration clause itself, giving retroactive application of the clause to pre-existing claims or disputes. ACAF at ¶ 3, JA201. Neither the allocation of the total contingency fee agreed to by Wye Oak among the four law firms involved in prosecuting the Iraq Litigation, nor the tort claims of WTF and PLG, arose out of, or related to, the ACAF. Instead, they arose out of, and related to, prior conduct and negotiations that were omitted from the ACAF. In addition, the record makes it clear that both Wye Oak's and QRG's agreement to the inclusion of the arbitration clause in the ACAF was obtained under duress, rendering the arbitration clause invalid and unenforceable. For the same reasons the forum selection clause in the ACAF's arbitration provision, that arbitration be administered by JAMS under its Streamlined Arbitration Rules and Procedures, likewise is invalid and unenforceable, including application of Rule 8(b) giving the arbitrator the authority to rule on his own jurisdiction.

As a consequence, this Court should reverse the decision of the lower court and vacate the Final Award because the Arbitrator lacked jurisdiction to consider and rule upon issues that were not arbitrable as a matter of contract interpretation including the fee allocation and affirmative tort claims.

ARGUMENT

In making its own de novo determination, without the need for any legal deference to the trial court's determination, this Court should conclude that, based on principles of contract interpretation, the fee allocation and intentional tort disputes are not arbitrable as a matter of law under the ACAF. As a threshold matter, this Court must first settle the basic contractual question of whether the parties agreed to submit these disputes to arbitration. Appellant QRG contends that they never agreed to do so, and the record bears this out, as shown below.

The fee allocation issue was plainly exempted from the scope of the ACAF. The record is replete with references made or acknowledged by all of the parties that while the total amount of the contingency fee was revised to 46%, the relative proportion of that fee to be allocated to each of the four law firms involved in Wye Oak's prosecution of the Iraq Litigation was to be the subject of future negotiations. In other words, that issue was not addressed, much less resolved, in the ACAF, and therefore the Arbitrator acted outside of the jurisdictional scope of the arbitration clause of the ACAF when he ruled on that issue and allocated the total contingency fee among only three of the four law firms, in direct conflict with paragraph 1 of the ACAF which expressly provides that allocation was to be among all four law firms

serving Wye Oak in the Iraq Litigation. *See* ACAF at ¶ 1, JA201.⁶ QRG’s decision not to participate directly in the arbitration (though Quinn was called as a fact witness) did not justify the Arbitrator in acting in contradiction to the express intent of the ACAF that the contingency fee, though subject to future negotiations over the exact allocation, be split among all four law firms representing Wye Oak in the Iraq Litigation. QRG’s non-participation was a result of its understanding of the principles stated in the Rules of Professional Conduct with regard to conflicts of interest, and to preserve the objection to the exercise of arbitral jurisdiction over the allocation of the total contingency fee made on behalf of both QRG and its client, Wye Oak. The Arbitrator implicitly acknowledged the flaw in his own jurisdictional analysis in observing that had QRG not opted out of participation in the arbitration (for the good and valid reasons stated above) he could have determined what share was appropriate for the work done by QRG. Final Award, JA121.

Moreover, the tort claims that resulted in the award by the Arbitrator of very substantial monetary damages against QRG arose from disputes that pre-existed the ACAF and yet resulted in claims that were never made or even mentioned prior to the filing of the arbitration demand by PLG. As a consequence these claims were outside the limited scope of the ACAF’s arbitration clause, as those tort claims arose,

⁶ Paragraph 1 of the ACAF states that “Wye Oak will pay to the Law Firms a total contingency fee of 46%” “Law Firms” is a defined term in the ACAF, identified in the preamble to the agreement as PLG, KH, QRG and WTP.

not out of the ACAF, but out of supposed disputes involving prior fee and related financial arrangements. *See* Final Award at JA156-161, where the Arbitrator identified the grounds for the various tort claims of PLG and WTP. Yet the ACAF's arbitration agreement by its terms does not provide for arbitration to resolve issues arising out of alleged prior misconduct relating to fee agreements and/or related financial arrangements, nor does it contain language suggesting that it applies retroactively. To the contrary, the ACAF itself contains recitals and clauses that contradict that interpretation of the parties' intent in the formation of the contract referred to as the ACAF.

Finally, the record makes it clear that both Wye Oak's and QRG's agreement to the inclusion of the arbitration clause in the ACAF was obtained under duress, rendering the arbitration clause invalid and unenforceable.

For these reasons, vacatur of the Final Award is required.

I. The Lower Court Erred in Conceding to the Arbitrator's Determination of the Scope of his Jurisdiction Under the ACAF.

In the Order Denying Petitioner's Motion to Vacate and Granting Respondents' Cross-Motion to Confirm Arbitration Award, JA724-744 (hereafter "Trial Court Order"), the lower court agreed with, and conceded to, the Arbitrator's interpretation of the scope of the arbitration clause in the ACAF. *See* Trial Court Order at p. 8, JA731.

Appellant's challenge to that determination is predicated upon the fundamental threshold question, whether the Arbitrator had the authority to decide a particular issue. *Davis v. Chevy Chase Fin., Ltd.*, 667 F.2d 160, 166-67 (D.C. Cir. 1981). Thus, although the decisions of an arbitrator are ordinarily swaddled in precedential deference, and oft rest undisturbed in the protective arms of a "manifest disregard" standard, the specific jurisdictional issues raised before this Court are not so insulated against close scrutiny. *See* DCRUA, D.C. Code § 16-4423(a).

Here, as the lower court acknowledged in its Trial Court Order at p. 8, JA731, a court owes an arbitrator's decision regarding his or her own jurisdiction no deference and the court reviews questions of arbitrability de novo. That follows from the fundamental principle that arbitration is a contractual procedure, and as is universally accepted, the interpretation of a contract is a legal question that a court reviews de novo. *See, e.g., Unit Owners Ass'n of 2337 Champlain St. Condo. v. 2337 Champlain St., LLC*, 314 A.3d 1198, 1211 (D.C. 2024). This is consistent with the widely accepted principal that judicial bodies ought to place "arbitration agreements on equal footing with other contracts[.]" *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 293 (2002). "In sum, the genesis of arbitral authority is the contract, and arbitrators are permitted to decide only those issues that lie within the contractual mandate." *Davis*, 667 F.2d at 165. Nevertheless, it is also true that the arbitrability of a particular grievance should only be denied where "the arbitration clause is not

susceptible of an interpretation that covers the asserted dispute.” Trial Court Order at p. 8, JA731, quoting from *George Wash. Univ. v. Scott*, 711 A.2d 1257, 1259 (D.C. 1998).

Where the lower court went astray was in concluding that if an arbitration clause is ambiguous, a court must construe the ambiguity in favor of arbitration. Trial Court Order at p. 8, JA731. That result is inconsistent with settled law in the District. Here, only if a contract is reasonably or fairly susceptible to different constructions or interpretations is it considered ambiguous. *Debnam v. Crane Co.*, 976 A.2d 193, 197 (D.C. 2009). “In order to determine whether a contract provision has more than one reasonable interpretation, it is necessary to look at the ‘face of the language itself, giving the language its plain meaning, without reference to any rules of construction.’” *Capital City Mortgage Corp. v. Habana Vill. Art & Folklore, Inc.*, 747 A.2d 564, 567 (D.C. 2000) (quoting *Sacks v. Rothberg*, 569 A.2d 150, 154 (D.C. 1990)). “If the court finds that the contract has more than one reasonable interpretation and therefore is ambiguous, then the court—after admitting probative extrinsic evidence—must ‘determine what a reasonable person in the position of the parties would have thought the disputed language meant.’” *Id.* (quoting *Intercountry Constr. Corp. v. District of Columbia*, 443 A.2d 29, 33 (D.C. 1982)) (citation omitted). “Extrinsic evidence may include ‘the circumstances before and contemporaneous with the making of the contract, all usages—habitual and

customary practices—which either party knows or has reason to know, the circumstances surrounding the transaction and the course of conduct of the parties under the contract.” *Id.* at 568 n. 2. The determination of ambiguity is a question of law which this court reviews de novo. *Aziken v. District of Columbia*, 70 A.3d 213, 219 (D.C. 2013), citing *Tillery v. D.C. Contract Appeals Bd.*, 912 A.2d 1169, 1176 (D.C. 2006).

In the case before this Court, it can and should be concluded that the ACAF is not ambiguous in that the provisions of the arbitration clause are susceptible to a clear and definite meaning – albeit a meaning that was impermissibly ignored by the Arbitrator and improperly accepted by the lower court. The scope of the arbitration clause, and by extension the scope of arbitral jurisdiction, is plainly confined to “[a]ny claim or dispute . . . arising out of or relating to this Agreement.” ACAF at ¶ 3, JA201 (emphasis added). There is nothing in the remainder of the ACAF relating to the allocation of the contingency fee among the four law firms. There is nothing in the ACAF relating to disputes over prior fee agreements or related financial arrangements, all of which arose out of conduct that preceded the ACAF itself and resulted in the eventual presentation of claims against QRG by PLG and WTF only after the ACAF came into effect. *See* JA200-203, *passim*. Given this context, there is nothing in the ACAF that would support the conclusion that a reasonable person would find that the scope of the arbitration provision intended by the parties would

encompass either the allocation of the contingency fee or the resolution of tort claims arising, not out of the ACAF, but out of claimed collateral disputes.

If, however, this Court were to accept the proposition that the arbitration clause is contractually ambiguous, it should turn to extrinsic evidence in an effort to resolve the ambiguity. Only if that cannot be done may the contract be construed in favor of arbitration. The lower court skipped that intermediate step and failed to consider extrinsic evidence. Yet two documents, both dated November 29, 2019, demonstrate that the contemporaneous understanding of the parties to the ACAF was to exclude consideration of the contingency fee allocation. First, Quinn wrote to Foster on behalf of Wye Oak:

I am authorized to advise you that Wye Oak authorizes advising the court in a fee petition that it is contingently willing to pay an aggregate of 46% of the amount recovered from Defendants to all of the law firms that have provided Iraqi litigation-related services to Wye Oak.

We understand that discussions will continue among the lawyers and Wye Oak as to how each of the firms will be compensated for the services rendered to Wye Oak.

See email exchange of November 29, 2019, JA272 (emphasis added). These statements are reflective of the understanding of all parties to the ACAF, in that the email exchange was by and between representatives of all of the contending parties, including Quinn for QRG, Foster for WTP, Pavich for PLG, and David Stoffel for Wye Oak.

In addition, the minutes documenting the November 29, 2019 Wye Oak Board

Meeting report recite that:

During the call, Mr. Pavich proposed that the then-pending impasse among the attorneys with respect to attorney fees which had been reported to the Board at its meeting on November 26 and 27, 2019 be at least partially resolved by an agreement among Wye Oak and all four law firms that have participated in the *Iraqi* litigation pursuant to which Wye Oak would agree to increase its contingency fee commitment to 46% to compensate all four firms, with varying amounts within the 46% allowance to be determined at a later time.

See Minutes of November 29, 2019 Wye Oak Board of Directors Meeting at p. 1, JA274 (emphasis added). Again, the participants in this discussion included Quinn, Foster, Pavich and David Stoffel.

This evidence, while extrinsic to the ACAF, convincingly resolves any ambiguity, demonstrating that an objective, reasonable person would interpret the ACAF as excluding the contingency fee allocation issue. That being the case, this issue could not “arise under or relate to” the ACAF, and the arbitration clause did not vest the Arbitrator with jurisdiction to hear and rule on the contingency fee allocation. In sum, “[n]either arbitrators nor courts . . . have the prerogative to redraft an arbitration clause to require parties to arbitrate matters that they did not initially agree to arbitrate.” *Davis*, 667 F.2d at 167. As the *Davis* court observed, “[b]y necessary implication, an arbitral award regarding a matter not within the scope of

the governing arbitration clause is one made in excess of authority, and a court is precluded from giving effect to such an award.” *Davis*, 667 F.2d at 165.

Consideration of the propriety of the Arbitrator’s jurisdiction over the tort claims of PLG and WTP is more straightforward because there is no ambiguity in the arbitration clause as respects those issues. As the Arbitrator himself characterizes those claims in the Final Award, they were premised on, and arose out of, not the ACAF, but rather:

- Purported fraudulent omissions by QRG prior to 2017 relating to the procurement of litigation funding from an outside source by PLG; *see* Final Award at p. 69, JA56.
- Purported fraudulent inducement of WTP by QRG convince WTP to agree in 2017 to represent Wye Oak in the Iraq Litigation; *see* Final Award at pp. 70-71, JA157-158.
- Purported fraudulent interference by QRG with PLG’s position on its rightful share of the contingency fee; *see* Final Award at p. 74, JA161.

None of these tort claims were connected in the slightest way with the ACAF. More to the point, none of these claims “arose out of” the ACAF itself. Instead, they arose out of perceived misconduct that pre-dated the ACAF and its arbitration clause by two years or more. Moreover, in the absence of any language in the ACAF’s arbitration clause expressing an intent to apply that clause retroactively to past

claims arising out of events occurring two years or more before the ACAF was signed, the arbitration clause is enforceable only with respect to claims arising after the execution of the agreement, so even if the tort claims did arise out of the ACAF, they would not be subject to the ACAF's arbitration clause. *See Davis v. Joseph J. Magnolia, Inc.*, 640 F.Supp.2d 38, 44 (D.D.C. 2009).

II. QRG's Acceptance of the ACAF's Arbitration Clause was Made Under Duress and Compelled Through a Combination of Concealment of Material Facts and Coercion, Rendering the Arbitration Clause Unenforceable.

The record in this case establishes that WTP and PLG induced QRG into executing the ACAF, notwithstanding QRG's repeated objections to the arbitration clause, through a combination of concealment of key facts from QRG and coercion. But arbitration "is a matter of consent, not coercion," *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 681 (2010), quoting *Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989), and "an arbitration or forum-selection clause in a contract is not enforceable if the inclusion of the clause in the contract was the product of fraud or coercion." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 n. 14 (1974).

Material factual omissions by PLG and WTP about the arbitration clause in the ACAF induced Quinn to sign the ACAF with the clause as drafted, and, acting as Wye Oak's general counsel, to recommend the ACAF's signing to Wye Oak President David Stoffel. As indicated above, on November 29, 2019, Quinn and

David Stoffel joined Foster and Bolog of WTP and Pavich of PLG on a phone call to discuss how to proceed with Wye Oak's fee petition in the Iraq litigation when there was yet no client-approved contingency fee agreement. *See* Minutes of November 29, 2019 Board Meeting at JA274. The Wye Oak Board agreed to the proposal to increase the total contingency fee to 46% to compensate all of the law firms that provided Iraqi litigation-related services to Wye Oak, "with discussions to continue among the lawyers and Wye Oak as to how each of the firms will be compensated for the services rendered to Wye Oak." *See* November 29, 2019 email exchange by and between inter alia, Quinn, Foster, Pavich and David Stoffel, JA276.

Although Foster had represented to the other parties during the November 29, 2019 call that no written contract was required, on December 2, 2019, Foster called Quinn and told him that WTP needed a written contract memorializing the November 29, 2019 agreement to attach to the fee petition that was to be filed within hours that same day. Quinn invited Foster and Bolog to the QRG offices to draft what would become the ACAF. *See* the September 8, 2020 Declaration of John H. Quinn, Jr. at ¶ 23, JA330. Foster demanded a JAMS arbitration clause. Acting on behalf of QRG and as Wye Oak's general counsel, Quinn rejected this demand because it was not in Wye Oak's interests. At that point Foster told Quinn that if he did not agree to adding a JAMS arbitration clause to the agreement, that Foster would not only refuse to sign the agreement, but would use his vast resources to "crush"

Quinn and demand at least 30% of the 46% fee agreement. *Id.* In the interest of protecting Wye Oak's rights to indemnification against Iraq, Quinn acquiesced because of this threat and in the heat of the moment under the pressure of the looming imminent deadline, given his understanding that neither the ACAF as a whole or the arbitration clause would have any bearing on the separate issue, reserved for future negotiations, of the allocation of the contingency fee. *Id.*⁷

It is important to note that the ACAF drafting session on December 2, 2019 was not the first time that an arbitration clause had been proposed by WTP and rejected by QRG. The record clearly shows WTP pushing arbitration in the fall of 2019 as a mechanism to settle the allocation issue. On November 23, 2019 WTP circulated a proposed Confidential Arbitration Agreement. JA304-307. That draft agreement, having been signed by PLG, was rejected by QRG on November 25, 2019. *See* Quinn's email, JA308. The next day, Quinn reiterated in another email that QRG rejected the draft Confidential Arbitration Agreement, and repudiated any suggestion that he, directly or indirectly, by implication or otherwise, authorized or

⁷ The lower court was skeptical of the impact of these threats made to Quinn on Quinn's ultimate agreement to sign the ACAF, noting that "those statements would have been of a piece with the history of the parties' often aggressive communications during their negotiations." Trial Court Order at p. 15, JA738. Yet that context did not make the threat any less threatening, as the six year history of this litigation exemplifies. The degree of Foster's personal animus against Quinn is also illustrated by the service of writs of attachment on the assets of QRG filed in the Superior Court case below, notwithstanding the pendency of this appeal. Foster clearly intended to follow through on his threats.

approved the draft agreement. *See* November 26, 2019 email from Quinn to WTP attorneys Foster and Bolog, JA311.

The above exchange, which concluded six days before the ACAF was executed, shows that Foster and Pavich realized that the arbitration issue was highly material to Quinn and confirms that there had been no meeting of the minds on terms for arbitrating the allocation of the contingency fee. Nevertheless, despite the clear separation of the allocation issue from the matters addressed in the ACAF, and the limitation of the ACAF's arbitration clause to claims or disputes arising out of or relating to the ACAF itself, Foster and Pavich concealed their contrary intent to pursue arbitration of the fee allocation dispute under the ACAF arbitration clause. The lower court erred in misperceiving the focus of their efforts at concealment as relating to the ACAF as a whole and not, as required by the *Hercules* decision, directed at the arbitration clause. *See* Trial Court Order at p. 6, JA729, citing *Hercules & Co. v. Shama Rest. Corp.*, 613 A.2d 916, 924 (D.C. 1992). The inclusion and scope of an arbitration clause was central to the fraudulent inducement efforts of Appellees, and was their sole objective in the coercive efforts they employed against Quinn and QRG.

In sum, Foster and Pavich deceptively concealed from Quinn their intent regarding the ACAF arbitration clause, in which case it was fraudulently induced. The evidence summarized above supporting this assertion is clear and unequivocal,

not to mention uncontroverted in all material respects. QRG's acquiescence to the inclusion of the arbitration clause also was made under duress, as it was induced by the threats, amounting to coercion, made to Quinn.

III. JAMS Rule 8(b) Does Not Change This Outcome.

Though the lower court did not reach the issue, *see* Trial Court Order at p. 9, JA731, the applicability of JAMS Rule 8(b) (JA564) must be resolved by this Court if, as it should, it agrees with Appellant that the arbitration clause is unenforceable. The arbitration clause in the ACAF specified arbitration administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. JA201. Rule 8(b) provides that jurisdictional and arbitrability disputes shall be ruled on by the Arbitrator. The contention of Appellees, of course, is that the Arbitrator's rulings as to the extent of his own jurisdiction in the arbitration proceeding may not be challenged.

The simple answer is that the reference in the arbitration clause to arbitration "administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures" is in essence a forum selection clause. To repeat the guidance of the U.S. Supreme Court on this issue, "an arbitration or forum-selection clause in a contract is not enforceable if the inclusion of the clause in the contract was the product of fraud or coercion." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 n.14

(1974) (emphasis added). For the reasons provided above, JAMS Rule 8(b) is rendered irrelevant as its application is unenforceable.

CONCLUSION

For the foregoing reasons, Appellant Quinn, Racusin & Gazzola Chtd. respectfully requests that this Court (1) reverse the Superior Court's denial of the Petition for Judicial Review and Motion to Vacate Arbitration Award; (2) reverse the Superior Court's action granting the Respondents' cross-motion for confirmation of the Arbitrator's Final Award; and (3) vacate the Final Award.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 16, 2025, a copy of *Brief of Appellant* was served via the Court's electronic filing system upon the following:

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