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)

SUPPLEMENTAL BRIEF OF APPELLANT

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INTRODUCTION AND QUESTION PRESENTED

On February 5, 2026 this Court entered an Order, *sua sponte*, directing the parties to submit supplemental briefing addressing the impact of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Wye Oak Tech., Inc. v. Republic of Iraq*, 109 F.4th 509 (2024) vacating the judgment of the District Court for the District of Columbia in Case No. 1:10-cv-01182, now rendered final by the United States Supreme Court's November 10, 2025 denial of Wye Oak Technology's petition for writ of certiorari, 146 S.Ct. 396 (2025).

ARGUMENT

I. Contingency Fee Allocation

As this Court is obviously well aware, the Final Award of the Arbitrator challenged in this appeal included, among its provisions, an allocation of a total contingency fee among the law firms involved in representing Wye Oak in the Iraq Litigation. In the absence of a monetary judgment against Iraq, that portion of the Final Award no longer has operative effect. It bears noting that in Paragraph 1 of the Agreement Concerning Attorneys' Fees (the "ACAF", JA234-236), Wye Oak promised to pay the law firms involved a contingency fee of 46% of all gross amounts actually recovered by Wye Oak, "from any source, from or on behalf of Iraq" arising out of or relating to Wye Oak's claims against Iraq. Since the federal

Court of Appeals decision vacated the District Court's judgment, there are no funds "from or on behalf of Iraq" for Wye Oak to use in paying attorneys' fees.[1]

A related issue is whether impossibility of performance renders the ACAF void, ab initio. In the absence of another source of recovery by Wye Oak, Wye Oak's performance of its undertakings pursuant to the ACAF becomes impossible, and therefore it has no duty to perform those obligations. In such circumstances, it has been held as a matter of District of Columbia law that the contract is void, because "[a] void contract is one under which the promisor has no duty of performance." *U.S. ex rel. Siewick v. Jamieson Sci. & Eng'g, Inc.*, 214 F.3d 1372, 1376 (D.C. Cir. 2000). Also as a matter of District of Columbia law, a contract that is void ab initio is "null from the beginning and nothing can cure it." *Chen v. Bell-Smith*, 768 F. Supp. 2d 121, 134 (D.D.C. 2011), quoting *Julian v. Buonassissi,* 183 Md.App. 678, 963 A.2d 234, 244 (Md.Ct.Spec.App. 2009), *vacated on other grounds,* 414 Md. 641, 997 A.2d 104 (2010).[2] This result would be particularly appropriate here since the fundamental purpose of the ACAF itself was to modify

[1] Appellant expressly reserves its right to recover compensation from Wye Oak if and when any other source of funds becomes available.

[2] *Chen v. Bell-Smith* was cited as authority on this point in *LA Sound USA, Inc. v. St. Paul Fire & Marine Ins. Co.*, 156 Cal.App.4th 1259, 1266, 67 Cal.Rptr.3d 917 (2007), which held that "[a] contract that is 'void ab initio' is '[n]ull from the beginning,' Black's Law Dictionary (11th Ed. 2019), and treated as if it had never existed."

the total amount of the contingency fee (though not the allocation of that fee among the four law firms involved), and that purpose has been rendered void by the decision of the federal Court of Appeals. If this Court agrees that the ACAF is void ab initio, then the Final Award must necessarily be vacated.

II. Tort Claims

Distinguishing the allocation of the contingency fee issue from the other issues before the Court in this appeal highlights the strength of Appellant's assertions regarding the absence of arbitral jurisdiction over the remaining challenged elements of the Final Award, the tort claims, because those claims so clearly failed to "arise out of" the ACAF. For the reasons stated at length in Appellant's Opening and, perhaps more succinctly, in Appellant's Reply brief, the Arbitrator's assumption of jurisdiction over those claims was in direct conflict with the scope of his jurisdiction under the governing contract, the ACAF. Those arguments are, if anything, enhanced because the fundamental purpose of the ACAF has been pre-empted by the decision of the federal Court of Appeals, and therefore there remains no dispute subject to arbitral jurisdiction under the ACAF.

CONCLUSION

For the additional reasons stated above, Appellant urges this Court to overturn the Superior Court's confirmation of the Arbitrator's Final Award, and remand with

further instructions to dismiss all proceedings in the Superior Court consistent with this disposition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of February, 2026, a copy of the *Supplemental Brief of Appellant* was served via electronic filing upon:

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