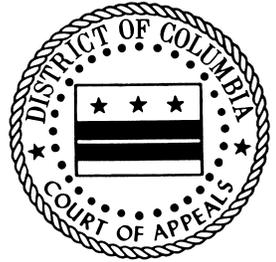


**NO. 25-CV-0086 & 25-CV-0229**  
**IN THE DISTRICT OF COLUMBIA**  
**COURT OF APPEALS**

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Clerk of the Court  
Received 02/17/2026 06:19 PM  
Filed 02/17/2026 06:19 PM

QUINN, RACUSIN & GAZZOLA, CHTD.

*Appellant,*

v.

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

*Appellees.*

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

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## **I. QUESTION PRESENTED.**

In its Order dated February 5, 2026, the Court asked for supplemental briefing addressing the impact, if any, of the D.C. Circuit’s now-final decision in *Wye Oak Tech., Inc. v. Republic of Iraq*, 109 F.4<sup>th</sup> 509 (D.C. Cir. 2024) (“the Litigation”), which decision vacated the judgment against the Republic of Iraq.

A portion of the arbitration award at issue in this appeal allocates a contingent legal fee among four law firms, including QRG, involved in the representation of Appellee Wye Oak in the Litigation. Thus, the Court inquires into whether the D.C. Circuit decision vacating the judgment means there can be no recovery to which the contingent fee attaches.

## **II. SUMMARY OF ARGUMENT**

The D.C. Circuit decision has no impact on these proceedings because a portion of the judgment was monetized in a fashion that will provide a recovery to Wye Oak, and a contingent fee to the attorneys, even though the judgment was vacated. The monetization of part of the judgment is reflected, multiple times, in the Joint Appendix prepared by QRG, including multiple times in the Final Award of the Arbitrator. Thus, the allocation portion of the award still applies.

Even if there was no money to allocate, the award should still not be set aside. Neither the Federal Arbitration Act (“FAA”) nor the D.C. Revised Arbitration Act (“DCRAA”) permit an arbitration award to be set aside for mootness. At best, the

challenge to the award might no longer be necessary, but here QRG seeks to press its challenge—suggesting that even QRG believes the allocation issue is not moot.

The D.C. Circuit decision adds no support for QRG’s challenge to the jurisdiction of the Arbitrator. Nor do QRG’s arguments about the invalidity of the underlying contract have no relevance to any issue before this Court.

### **III. ARGUMENT.**

If the D.C. Circuit decision had mooted the challenge to the allocation portion of the award, then QRG would merely have withdrawn its challenge to that portion of the award. But QRG has not done that. QRG still wants that part of the award set aside—because QRG knows that award continues to have legal effect and is not mooted, despite QRG’s effort to convey the opposite message.

The D.C. Circuit decision has no impact on this appeal for several reasons.

#### **A. The allocation of the contingent fee applies to all recoveries, not just collection of the judgment**

The arbitration award allocating the contingent fee among the signatories to the Agreement Concerning Attorneys’ Fees (“ACAF”) applies to *all recoveries from any source* and not just to collections of the judgment itself. The ACAF states that the contingent fee to be allocated among the four firms applies to “gross amounts actually recovered and value received by Wye Oak, *including from* collection or settlement *or transfer of any interest in the claims or recovery thereon, from any source*, from or on behalf of Iraq arising out of or relating to Wye Oak’s claims

against Iraq or the Litigation.” JA235. During the arbitration, a portion of the judgment was monetized, such that Wye Oak would achieve at least some recovery even if the judgment was reversed or vacated on appeal, and that the contingent fee applied to that source of recovery.<sup>1</sup>

During the arbitration, QRG relied upon and benefited from this fact. WTP had asserted that QRG had fraudulently induced it into undertaking the representation at the outset. Having been so induced, WTP would have had actual damages if the judgment had been vacated. But, as the Arbitrator explained in the Final Award, WTP later had to concede that “its successful insurance and monetization transaction eliminated WTP’s claim for actual damages as a result of QRG/Quinn’s fraudulent and negligent inducement claim.” JA188-189. As a result, even though the Arbitrator found that WTP had proven QRG’s fraudulent misrepresentations and omissions of material facts by clear and convincing evidence, the Arbitrator found that WTP was only entitled to nominal damages, in the amount of One Dollar, as recompense for QRG’s deceit. JA158-159, JA181. In other words, because the judgment had been partially monetized, Wye Oak would achieve a recovery, and WTP would collect a contingent fee on the recovery

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<sup>1</sup> Due to confidentiality provisions in the funding documents, and for other reasons, the details of the arrangement were required to be held confidential by all of the affected parties, including QRG.

regardless of the outcome of the Litigation, WTP could not show actual damages.

In the arbitration, QRG also successfully relied upon the partial monetization as a defense to the claim that QRG itself had had a duty to, and failed to, monetize the judgment earlier. JA202-203. And QRG again benefited because the Arbitrator ruled that the award of punitive damages against QRG could only be paid upon QRG's receipt of attorneys' fees in the Iraq litigation, which included "receipt of any insurance proceeds related to the Iraq litigation." JA199.

Simply stated, the arbitration was tried on the premise that the contingent fee would attach to the monetization proceeds and, until now, none of the parties to the arbitration case, including QRG, ever contended otherwise.

Now, seeking to reinterpret the agreement, QRG argues that "that portion of the Final Award no longer has operative effect," and that "there are no funds 'from or on behalf of Iraq' for Wye Oak to use in paying attorneys' fees." Supplemental Brief at 1. But in the very next breath, QRG "expressly reserves its right to recover compensation from Wye Oak if and when any *other source* of funds becomes available." Supplemental Brief at 2, footnote 1 (emphasis added). QRG thus recognizes that the fee claims will attach to the monetization proceeds.

Notably, the D.C. Circuit's opinion vacating the judgment was issued on July 26, 2024. When QRG moved to vacate the award nearly two months later, on September 12, 2024, it made no contention at all about this issue. If the D.C.

Circuit’s decision had an actual effect on the validity of the award, QRG would have raised it then. ’Throughout the proceedings in the Superior Court and this Court, QRG never once advanced the argument that it makes now.

**B. Mootness is not a statutory ground for setting aside an arbitration award.**

Even if the allocation portion of the award had been rendered moot, that still would not provide a ground to set aside the award. Both the FAA and the DCRAA limit review of arbitration awards to the statutory grounds. *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 586 (2008) (the FAA text compels a reading of the §§ 10 and 11 categories as exclusive); *C.R. Calderon Construction, Inc. v. Grunley Construction. Co., Inc.*, 257 A.3d 1046, 1058 (D.C. 2021) (“review is limited to the grounds set forth in D.C. Code § 16-4423”). Neither statute provides for setting aside an award for mootness (assuming that the allocation issue was in fact moot, which it is not).

As stated above, assuming it were true that none of the firms would recover anything because of the D.C. Circuit decision, then QRG would just withdraw its challenge. *See Stafford v. Int’l Bus. Machines Corp.*, 78 F.4th 62, 69 (2d Cir. 2023) (“Stafford’s petition to confirm her arbitration award became moot when IBM fully paid the award, and her petition should have been dismissed as moot.”). But QRG has not done that because the award still has vitality.

Nor would it be true that the mootness of proceedings to enforce or challenge

an award necessarily results in setting aside the arbitration award. For example, in *Bennington Iron Works, Inc. v. J.P. Const. Co.*, No. CIV. A. 94-11035-GAO, 1996 WL 208494 (D. Mass. Mar. 6, 1996) an arbitration award was paid during the pendency of proceedings to confirm or challenge it and the award was arguably moot. The court confirmed the award anyway, reasoning as follows:

Notwithstanding J.P.'s fulfillment of its obligation to compensate Bennington, judicial confirmation serves other important purposes aside from ensuring payment of the award. For example, a confirmation decree effectively disposes of all disputes that formed part of the arbitration proceeding, and its issuance therefore affixes to the controversy a stamp of finality. Accordingly, the Court will enter an order confirming the arbitration award to Bennington in the amount of \$127,864.00.

Id., at \*1.

**C. During the arbitration case, QRG disclaimed any share of the contingency fee.**

QRG's current argument is nothing more than continued dissembling. QRG is a law firm that, six years ago, entered into an agreement with the Appellee firms regarding the collective compensation for the representation and resolution of disputes between them by arbitration. Before the ink was dry on the agreement, QRG was already in breach and arbitration was demanded against QRG in February 2020—six years ago. From that moment until now, QRG has sought to litigate issue after issue, repeatedly advancing arguments that had no support in fact or law. This appeal is QRG's second appeal to this Court. In the prior appeal, after causing the

Appellees to incur great cost in defending QRG’s challenge to the Arbitrator’s Interim Award, QRG asked this Court to dismiss its appeal on the ground that the Superior Court had lacked subject matter jurisdiction to hear the very case that it brought. QRG Reply Brief, dated January 18, 2023, case no, 22-cv-596, at 1-3.

In similar fashion, in the arbitration case itself, QRG informed the Arbitrator and the other parties that it would seek no part of the contingent fee,<sup>2</sup> and the Arbitrator awarded the exact sum that QRG asked for—zero. The award stated: “Based on QRG’s deliberate and intentional decision not to participate in the allocation portion of the arbitration, QRG is entitled to no share of the allocation.” JA 467. Then, QRG sought to challenge the award that it had asked for. (What QRG is really seeking here is to have the Court rescue it from its decision to claim no part of the contingent fee.).

**D. QRG’s new argument should have been presented to the Arbitrator.**

QRG is now arguing that the 46% contingent fee established in ¶ 1 of the ACAF does not apply to the amounts recovered through the monetization effort. It contends that the contingent fee applies just to monies “from or on behalf of Iraq,” and does not apply to monies from “or transfer of any interest in the claims or

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<sup>2</sup> JA293 (“QRG will not advance any claim to a share of the contingency fee...”).

recovery thereon, from any source.” That argument presents an issue as to the interpretation of ¶ 1 of the ACAF, and is a “claim or dispute ... arising out of or relating to [the ACAF].” Because QRG (and the other parties) agreed that this question would be decided by arbitration under ¶ 3 of the ACAF; it cannot be presented to, or decided by, this Court at this stage of the proceedings, or ever.

Nevertheless, the Court should not conclude that this dispute (between QRG and itself) is in any way unresolved or that QRG is entitled to have the case remanded the case for a decision on this issue by the Arbitrator. QRG could long since have asked the Arbitrator to rule that ¶ 1 of the ACAF did not apply to amounts recovered from the monetization effort. QRG chose not to do that, relying on that same recovery to limit its liability for the torts it had committed.

As this Court has emphasized, “[a]t its core, arbitration is supposed to be an alternative to litigation in a court of law, not a prelude to it.” *C.R. Calderon Construction, Inc. v. Grunley Construction. Co., Inc.*, 257 A.3d at 1058. If the Court were to entertain QRG’s arguments that after-the-fact events can form a basis to set aside an arbitration award, that would only invite more challenges to arbitration awards.<sup>3</sup>

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<sup>3</sup> The governing statutes foreclose the use of after-the-fact events to set aside awards. Motions to vacate must be served within three months after the award under the FAA (9 U.S.C. § 12) and within 90 days under the DCRAA (D.C. Code § 16-4423(c)).

**E. The D.C. Circuit decision does not affect the issues on appeal concerning jurisdiction of the Arbitrator.**

The question presented in this case involves the jurisdiction of the Arbitrator and, more specifically, the requirements for bringing a challenge to an arbitrator's decision on jurisdiction. The parties have agreed that they delegated jurisdictional issues to the Arbitrator for decision, and QRG advanced no challenge to its agreement to the delegation provision. As a result, the Court must treat delegation provision "as valid, leaving any challenge to the validity of the larger arbitration agreement to the Arbitrator." *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 72 (2010). The Supreme Court's controlling decision, *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. 63 (2019) provides that where "the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract." *Id.* at 68. Thus, the Court cannot revisit the merits of the Arbitrator's decision on jurisdiction, period.

**F. QRG's argument that the impossibility of performance renders that ACAF void ab initio is specious.**

QRG's next argument, that "impossibility of performance renders the ACAF void, ab initio," is specious and also demonstrates QRG's complete and utter disregard of the law governing arbitration agreements and challenges to arbitration awards. The ACAF contains an arbitration clause. And any argument that the ACAF has become void must be decided in arbitration, not this Court.

The arbitration agreement is severable from the rest of the ACAF, and QRG has not argued that the arbitration clause was somehow voided by the D.C. Circuit opinion. The validity of the larger contract is a question for the Arbitrator. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 406 (1967). See pages 20-26 of Appellees' Brief. (Even if QRG did argue that, the question is still a question for the arbitrator under JAMS Rule 8(b)).

Throughout this litigation, QRG has refused to acknowledge, cite to, distinguish, or even discuss the governing law. QRG's obstinate refusal to acknowledge controlling precedent has unnecessarily prolonged these proceedings at great cost to the Appellees, all of whom are entitled to a recovery of fees and costs under D.C. Code § 16-4425(c).

#### **IV. CONCLUSION.**

For these reasons, the final decision of the D.C. Circuit has no effect on these proceeding, the Petition was properly denied, and the arbitration award at issue was properly confirmed.

The orders and judgment below should be affirmed.

Dated: February 17, 2026

Respectfully submitted,

/s/ Eric C. Rowe

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