IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIS OF ARIZONA, INC.; and WILLIS TOWERS WATSON INSURANCE SERVICES WEST, INC.,

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA; THE HONORABLE ELIZABETH GONZALEZ,

Respondents,

AND

HAKKASAN USA, INC.; ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY; and SOMPO INTERNATIONAL HOLDINGS, LTD.,

Real Parties in Interest.

Supreme Court Case No.:

District Court Case No. A-20-816145-B

PETITION FOR WRIT OF MANDAMUS

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

- Willis of Arizona, Inc. merged into Willis Towers Watson Insurance Services West, Inc. in December 2019;
- Wills Towers Watson Insurance Services West, Inc. is wholly owned by Willis of Michigan, Inc.;
- Willis of Michigan, Inc. is wholly owned by Willis HRH, Inc.;
- Willis HRH, Inc. is wholly owned by Willis US Holding Company, LLC (formerly Willis US Holding Company, Inc.);
- Willis US Holding Company, LLC is wholly owned by Willis North America Inc.
- Willis North America Inc. is wholly owned by Willis Group Limited;
- Willis Group Limited is wholly owned by Trinity Acquisition plc;
- Trinity Acquisition plc is wholly owned by Willis Towers Watson UK Holdings Limited;
- Willis Towers Watson UK Holdings Limited is wholly owned by TA I Limited;
- TA I Limited is wholly owned by Willis Investment UK Holdings Limited;
- Willis Investment UK Holdings Limited is wholly owned by Willis Netherlands Holdings B.V.;

- Willis Netherlands Holdings B.V. is wholly owned by Willis Towers Watson Sub Holdings Unlimited Company; and
- Willis Towers Watson Sub Holdings Limited Company is wholly owned by Willis Towers Watson PLC.

The following law firms whose partners or associates have appeared for the Petitioners in the case (including proceedings in the district court) and are expected to appear in this court: (1) Brownstein Hyatt Farber Schreck, LLP; and (2) Saul Ewing Arnstein & Lehr LLP.

DATED this 23rd day of April, 2021.

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ROUTING STATEMENT—NRAP 21(a)(3)(A)

Willis certifies that this matter falls into one of the categories of cases retained by the Supreme Court pursuant to NRAP 17(a), namely NRAP 17(a)(9).

DATED this 23rd day of April, 2021.

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Petitioners Willis of Arizona, Inc. and Willis Towers Watson Insurance Services West, Inc. (collectively, "Willis"),[1] by and through their counsel of record, the law firms of Brownstein Hyatt Farber Schreck, LLP and Saul Ewing Arnstein & Lehr, LLP, hereby seek a writ of mandamus in the above referenced matter. In the underlying action, Real Party in Interest Hakkasan USA, Inc. ("Hakkasan") alleges that it "contracted with Willis to provide [insurance] brokerage and claims-handling services" (Petitioners' Appendix – Volume I ("VI") at 12, ¶ 54) and that Willis engaged in conduct that was, among other things, "in breach of contract" (VI at 6, ¶ 14) by allegedly notifying Hakkasan's insurer, prematurely, of an impending COVID-19-related insurance claim. Hakkasan further claims that Willis's conduct resulted in the insurer issuing a General Change Endorsement reflecting a $1,500,000 sublimit for virus-related coverage under Hakkasan's $350,000,000 per occurrence Commercial Property Surplus Lines insurance policy (the "Policy"), thereby depriving Hakkasan of the full policy limits for its alleged COVID-19 losses.

Willis seeks writ relief based upon the following:

> The district court refused to enforce a jury waiver provision in the parties' contract by finding, without a hearing or any analysis, that Hakkasan's claims were "outside the scope" of the contract's broad

[1] Willis of Arizona, Inc. merged into Willis Towers Watson Insurance Services West, Inc. in December 2019.

dispute resolution provision, which governed the entirety of Willis' relationship with Hakkasan, including Willis's claims-related and insurance procurement services. The district court denied Willis's motion to strike the jury demand despite previously enforcing a mandatory mediation requirement that appears in the *exact same* dispute resolution provision containing the jury waiver agreement.

This Court has held that "extraordinary review is available" by mandamus where, such as here, the district court has denied a party's motion to strike a jury demand. *See Lowe Enterprises Residential Partners, L.P. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 118 Nev. 92, 97, 40 P.3d 405, 408 (2002). Accordingly, the review requested by Willis is appropriate.[2]

A writ of mandamus instructing the district court to strike Hakkasan's jury demand as to Willis is necessary and appropriate. First, the subject jury waiver provision clearly applies to Hakkasan's claims in this case. The jury waiver language in the parties' agreement, entitled "Brokerage Terms, Conditions & Disclosures" (the "T&Cs"), applies broadly to "any disputes arising out of or in connection with the services provided under [the T&Cs][.]" VI at 132, § 1.13. Similar language has

[2] Willis has filed a direct appeal of the district court's denial of its request to compel arbitration as an alternative remedy if the district court found the jury waiver to be unenforceable under Nevada law. The same dispute resolution provision at issue in this Petition provides that disputes between Willis and Hakkasan should be compelled to arbitration if the jury waiver is unenforceable. Willis intends to file a motion to consolidate this Petition with its appeal because the issues are inextricably intertwined.

been interpreted to cover all disputes arising out of or that "touch" upon the parties' relationship. *See, e.g., Genesco, Inc. v. T. Kakiuchi & Co. Ltd.*, 815 F.2d 840, 846 (2d Cir. 1987) (holding that if a plaintiff's allegations "touch matters" covered by a broad dispute resolution provision applying to all claims that arose under or related to the subject agreement, then those claims fell within the scope of the dispute resolution provision). Moreover, as is apparent from Hakkasan's own allegations (*see* VI at 12, ¶ 54), the T&Cs govern Willis's claims handling and insurance procurement services, both of which are implicated by Hakkasan's claims concerning unauthorized communications between Willis and the insurer. This is evident by Hakkasan's allegations as well as the undisputed evidence submitted in connection with Willis's motion to strike the jury demand. Indeed, prior to denying Willis's motion to strike, the district court recognized that Hakkasan's allegations arise out of the services provided under the T&Cs when it ordered the parties to mediation per the exact same dispute resolution provision. VI at 2.

Second, the jury waiver agreement is enforceable under Nevada law. "Contractual jury trial waivers are presumptively valid unless the challenging party can demonstrate that the waiver was not entered into knowingly, voluntarily, and intentionally." *Lowe Enterprises*, 118 Nev. at 100, 40 P.3d at 410 (emphasis added). Here, Hakkasan failed to establish that the jury waiver was not entered into knowingly, voluntarily, and intentionally. Not only did Hakkasan—which touts

itself as the operator of "world-class restaurants, nightclubs and entertainment venues throughout the United States and abroad" (VI at 10, ¶ 40)—have substantial bargaining power in negotiations with Willis, its communications with Willis were spearheaded by Hakkasan's General Counsel, Brandon Roos. Attorney Roos received the T&Cs and their jury waiver provision nearly a year before the conduct at issue in the Amended Complaint and never objected to them or even once questioned them. *See, e.g., Lowe Enterprises*, 118 Nev. at 101-02, 40 P.3d at 411 (enforcing contractual jury waiver provision in a loan document, and rejecting claim of unequal bargaining power, where the parties were represented by counsel and had prior experience in real estate). Moreover, the jury waiver language is not hidden or buried in the T&Cs; it appears in the nine-page document's "Dispute Resolution" section and is set forth in the same font and typeface as all of the other provisions in the T&Cs. *See, e.g., Casey v. Third Jud. Dist. Ct.*, 281 P.3d 1160, 2009 WL 3188939, at *2 (Nev. 2009) (unpublished) (enforcing jury waiver provision because, among other things, it was not buried in the contract and was in bold font that was the same size as the font in the rest of the document).

The jury waiver provision set forth in the T&Cs is enforceable under Nevada law and the district court erred by concluding, without a hearing or any explanation, that Hakkasan's claims are "outside the scope" of the T&Cs' dispute resolution provision and by refusing to strike Hakkasan's jury demand. Accordingly, a writ of

mandamus must issue.

DATED this 23rd day of April, 2021.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES

A. Does the district court's refusal to strike Hakkasan's jury demand, despite a valid contractual agreement between Willis and Hakkasan waiving their right to demand a jury trial, warrant the issuance of an extraordinary writ?

II. RELIEF SOUGHT

Willis seeks a writ of mandamus directing the district court to strike Hakkasan's jury demand as to its claims against Willis.

III. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Hakkasan's Relationship With Willis And The Procurement Of Hakkasan's 2019-20 Property Insurance Policy

Hakkasan is associated with the Hakkasan Group, a worldwide hospitality company that operates a collection of restaurant, nightlife, and daylife brands, including seven high-end establishments located in Las Vegas, Nevada, where Hakkasan is based. VI at 4, ¶ 1, 10, ¶¶ 40-41.[3] For the past several years, Hakkasan "contracted with Willis to provide [insurance] brokerage and claims-handling services in relation to [Hakkasan's 2019-20 commercial property insurance policy],

[3] Willis restates the allegations set forth in Hakkasan's Amended Complaint solely for the purposes of this petition. Nothing herein is intended to be, nor should be construed as, an admission as to the veracity of any of Hakkasan's allegations in the Amended Complaint.

among numerous other insurance policies procured by Willis for Hakkasan[.]" VI at 12, ¶ 54. *See also* VI at 4, ¶ 4 (Hakkasan engaged Willis "in respect to negotiating the terms of the Policy, preparing insurance proposals for the Policy and other competing options, procuring the Policy, and facilitating and advising about claims under the Policy").

Willis began communicating with Hakkasan about its 2019-20 insurance renewals no later than early January 2019 for the policy period that was set to expire as of April 1, 2019. By way of limited example:

- On January 2, 2019, Willis sent Hakkasan's General Counsel, Brandon Roos, and its Risk Manager, Veronica Stiles, an email asking them to "take a look at this initial overview on coverages, loss scenarios, pricing, etc." and they then had a meeting two days later, on January 4, 2019 (Petitioners' Appendix – Volume II ("VII") at 242, ¶ 3, 247-51);

- On January 14, 2019, Willis sent Hakkasan various coverage recommendations for the upcoming policy year and Attorney Roos responded: "This is a great start and really appreciate all of the work that went into this project from the Willis team and Veronica!" (VII at 243, ¶ 4, 252-56);

- Chuck Halsey, an Executive Vice President with Willis, met with Attorney Roos and Ms. Stiles for breakfast on January 30, 2019 (VII at 243, ¶ 5, 257-58);

- On January 31, 2019, Attorney Roos and Ms. Stiles attended an in-person meeting with a team of five Willis employees for an "April 1, 2019 Renewal Strategy Meeting." (VII at 243, ¶ 6, 259-60);

- On February 1, 2019, Willis sent Hakkasan information on its "year over year premiums" (VII at 243, ¶ 7, 261-63);

- On March 6, 2019, Willis sent Hakkasan a document entitled "Hakkasan Insurance Renewals 4/1/19 Overview" and Mr. Halsey again met with the Hakkasan team that day (VII at 243, ¶ 8, 264-67);

- Immediately following Mr. Halsey's March 6, 2019 meeting with Hakkasan, he reported back to the Willis team that Hakkasan had decided to move its property insurance policy from Travelers Property Casualty Co. of America ("Travelers") to Sompo International Holdings, Ltd. for the April 1, 2019 renewal (VII at 243, ¶ 9, 268-69).

After months of extensive planning, Willis and Hakkasan held an in-person meeting on March 29, 2019 to finalize Hakkasan's 2019-20 insurance renewals.[4] VII at 243, ¶ 10. During the meeting, Willis provided Hakkasan's representatives, including Attorney Roos, with a document entitled "Insurance Proposal Prepared for Hakkasan USA, Inc." (the "Proposal"). *See* VI at 73, ¶ 2; VII at 243, ¶ 10; *see also* VI at 75-138. A copy of the Proposal was also emailed to Hakkasan on March 29, 2019 after the meeting concluded. VII at 243, ¶ 10. Among other things, the Proposal reflected Hakkasan's option with regard to renewing its property coverage with Travelers or binding the property coverage with Real Party in Interest Sompo International Holdings, Ltd. ("Sompo").[5] VI at 91-98.

[4] Such meetings are often held shortly before the date existing policies are set to expire because, by the nature of the insurance industry, final decisions about insurance typically need to be made quickly—insurers' quotes are usually only valid for short periods of time because they are dependent upon changing facts and market conditions. VII at 244, ¶ 11.

[5] A dispute exists between Hakkasan and the insurer defendants as to which entity, Sompo or Endurance American Specialty Insurance Company, is the proper defendant in this case. Willis refers to them collectively herein as "Sompo."

In addition to the details concerning Hakkasan's coverage options, the Proposal included Willis's "Brokerage Terms, Conditions & Disclosures" (the "T&Cs"), which were attached thereto as "Appendix A" and set forth the terms governing Willis's relationship with Hakkasan. VI at 76, 130-38. The T&Cs are referenced in the Proposal's Table of Contents and the Proposal expressly provides that "This proposal is presented in conjunction with the Brokerage Terms, Conditions & Disclosures for US Property & Casualty Retail Accounts which is enclosed." VI at 86. The introductory sentence of the T&Cs, just below the document's heading, states that "***Your decision to purchase insurance coverages, products, and/or services through Willis Towers Watson is subject to the following terms and conditions.***" VI at 130 (emphasis added).

The T&Cs contain a mandatory "Dispute Resolution" provision that provides:

> The parties agree to work in good faith to resolve **any disputes arising out of or in connection with the services provided under these Terms, Conditions & Disclosures.** If a dispute cannot be resolved it will be submitted to non-binding mediation to be conducted by Judicial Arbitration and Mediation Services (JAMS) before either party pursues other remedies hereunder. If the mediation does not resolve the dispute and a party or both parties wish to pursue other remedies, **the parties agree that their legal dispute will be resolved without a jury trial and agree not to request or demand a jury trial**. To the fullest extent permitted by applicable law, **the parties hereby irrevocably waive any right they may have to demand a jury trial**.

VI at 132, § 1.13 (emphasis added). The Dispute Resolution further provides:

> To the extent the foregoing jury trial waiver is not enforceable under the governing law, . . . any dispute arising out of or in connection with [the T&Cs] which the parties are unable to resolve between themselves or through mediation as provided above, will be resolved by binding arbitration in the state . . . , or other mutually agreed location, before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Under these circumstances, the arbitration proceeding will be the sole and exclusive means for resolving any dispute between the parties[.]

Id.

The T&Cs also address the many services provided by Willis as Hakkasan's insurance broker, including claims handling, procurement, and renewal services. With regard to claims handling, for example, Appendix B to the Proposal is a document entitled "Claims Information" that describes Willis's unique "Claims Advocacy Center," provides contact information for the Claims Center, identifies the types of claims to be reported to Willis's Claims Center (including property claims), and identifies the types of claims that should be reported directly to the insurance carrier. VI at 129. Further, page 3 of the Proposal identifies Hakkasan's "Service Team and Claim Contact Information" and provides contact information to Hakkasan for the two individuals—Christine Lawson and John Ritter—in Willis's "Risk Control & Claims Advocacy" department assigned to Hakkasan's account. VI at 77.

The T&Cs also address Willis's claims handling and renewal services. Section 2.1 states, in part:

> **You must provide us with complete and accurate information regarding your loss experience, risk exposures, and changes in analysis or scope of your risk exposures and any other information reasonably requested by us or insurers**. It is important that you advise us of any changes in your business operations that may affect our services or your insurance coverages. Therefore, **all information which is material to your coverage requirements or which might influence insurers in deciding to accept your business, finalizing the terms to apply and/or the cost of cover, or deciding to pay a claim, must be disclosed**. Failure to make full disclosure of material facts might potentially allow insurers to avoid liability for a particular claim or to void the policy. This **duty of disclosure applies equally at renewal** or modification of your existing coverage and upon placement of new lines of coverage.

VI at 134 (emphasis added). Section 2.7 provides that "[Willis] will inform [Hakkasan] of the reporting requirements for claims, including where claims should be reported and the method of reporting to be used, if applicable." VI at 135. Section 2.17 concerns Willis's obligations upon termination of the parties' agreement and provides: "Claims and premium or other adjustments may arise after our relationship ends, and we have no responsibility to handle these things after our relationship ends. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises." VI at 136.

Ultimately, on April 3, 2019, five days after receiving the T&Cs, Hakkasan's General Counsel, Attorney Roos, executed Willis's "Order to Bind" form, which was included with the Proposal, instructing Willis to bind Hakkasan's property coverage with Sompo as had been previously indicated in early March 2019. VI at 73, ¶ 3, 139-40; *see also id.* at 4, ¶ 4.

Pursuant to the Order to Bind, Hakkasan purchased a $350,000,000 per occurrence Commercial Property Surplus Lines insurance policy from Sompo, covering the policy period of April 1, 2019 to April 1, 2020 (the "Policy"). VI at 4, ¶ 3, 8, ¶ 35. Hakkasan paid Sompo a premium of $325,000 to obtain the Policy. VI at 8, ¶ 33. Among other things, Hakkasan's Policy insures against losses related to (1) "'contagious or infectious disease (including decontamination and clean-up costs)' and/or 'outbreak of a contagious and/or infectious disease' within five miles of any insured location[,]" and (2) the "'closing of the whole or part of the premises of the Insured either by the Insured or by order of a Public Authority consequent upon the existence or threat of hazardous conditions either actual or suspected to an insured locations . . .'" VI at 4, ¶ 5. Although both the quote and the binder prepared by Sompo in connection with Hakkasan's property insurance referenced a $1,500,000 sublimit for virus-related claims, the Policy did not contain the $1,500,000 sublimit when it was issued.

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B. Hakkasan Notifies Willis Of COVID-19 Related Losses During Willis's Efforts To Procure Hakkasan's 2020-21 Property Insurance Policy

As a result of the COVID-19 pandemic and the government responses thereto, Hakkasan alleges that it began sustaining business income losses in February 2020 and that it "had to close its venues to the public across its entire portfolio and cancel significant banquet events and refund ticket sales." VI at 11, ¶¶ 50-51. Around that time, in late-February 2020, while Willis was working on the renewal of Hakkasan's property policy with Sompo for the 2020-21 policy year, Hakkasan "notified Willis that it expected to suffer covered losses and was preparing to submit a claim under the Policy." VI at 12, ¶ 55; VII at 244, ¶ 12. Willis informed Hakkasan in early March 2020 that it had to disclose the impact of COVID-19 on Hakkasan's ongoing business operations to Sompo's underwriter in connection with Willis's efforts to renew Hakkasan's property policy. VII at 244, ¶ 12. Willis then proceeded to notify Sompo's underwriter of the impact of COVID-19 on Hakkasan's ongoing business operations because, otherwise, Willis would have jeopardized both Hakkasan's 2020-21 property coverage and the claim by failing to disclose such relevant information. *Id.* Indeed, Sompo could have voided the 2020-21 policy if it learned that Hakkasan had undisclosed circumstances causing business operation losses that preexisted a new policy. *Id.* Ultimately, "[a]fter receiving its financial results for

February 2020, Hakkasan instructed Willis to formally tender" its claim to Sompo. VI at 12, ¶ 56; *see also id.* at 5, ¶ 7.

Willis proceeded with its efforts to assist Hakkasan with its insurance renewals throughout March 2020. On March 17, 2020, in connection with Hakkasan's 2020-21 auto and general liability insurance renewals, Willis again emailed Attorney Roos and Ms. Stiles a copy of Willis's T&Cs, which contained the same jury waiver provision that was present in the version provided to Hakkasan a year earlier, in March 2019. VII at 244, ¶ 13, 270-80. Willis also sent a letter to Attorney Roos concerning Hakkasan's 2020-21 property insurance renewal on March 30, 2020, which stated that "This proposal is presented in conjunction with the Brokerage Terms, Conditions & Disclosures for US Property & Casualty Retail Accounts which was previously sent to you." VII at 244, ¶ 13, 281-83.

Hakkasan subsequently renewed its insurance policies for the 2020-21 policy year through Willis. VII at 245, ¶ 14. At no point after Hakkasan received a copy of Willis's T&Cs in March 2019—or after they were provided again in March 2020—did Attorney Roos or anyone from Hakkasan object to the jury waiver clause. *Id.*

C. Hakkasan's Claims Against Willis In The Amended Complaint

Hakkasan's claims against Willis in this case relate to the circumstances pursuant to which Willis provided notice to Sompo of the impact of COVID-19 on Hakkasan's business operations during the insurance renewal period. Contrary to the

sworn Declaration submitted by Willis, Hakkasan's Amended Complaint alleges that "[o]ut of concern for the business relationship between Willis and Sompo, and without notifying Hakkasan or obtaining approval from Hakkasan to violate the duties owed to Hakkasan, Willis contacted Sompo to inform Sompo of the impending Claim for which there was no stated sublimit in the Policy." VI at 12, ¶ 58. Then, according to Hakkasan, "Sompo conspired with Willis in an attempt to issue a back-dated endorsement to the Policy (the "Endorsement") *after* Hakkasan's losses began and after Hakkasan had already notified Willis of its losses and its Claim." VI at 5, ¶ 9. Hakkasan further claims that "[t]he backdated endorsement—submitted to Willis without Hakkasan's knowledge or consent—purported to reduce the limits of insurance for the Claim from the full Policy limits of $350,000,000 per occurrence to a sublimit of $1,500,000." VI at 5, ¶ 10.

Hakkasan also alleges that "Sompo and Willis further conspired to fraudulently conceal the circumstances upon which the backdated endorsement was created in order to induce Hakkasan to accept a lower limit and settlement than it would otherwise be entitled under the Policy." VI at 5, ¶ 11. Specifically, Hakkasan claims that Sompo sent the Endorsement to Willis on March 9, 2020 and that "Willis did not tell Hakkasan about the Endorsement, but proceeded to purport to 'accept' the Endorsement on Hakkasan's behalf without Hakkasan's knowledge or consent." VI at 13, ¶ 62, ¶ 66. Hakkasan further alleges that "Willis did so knowing that

Hakkasan had a pending claim and would never agree to a retroactive modification of the Policy to its detriment." VI at 13, ¶ 67. Hakkasan asserts that Willis then submitted Hakkasan's claim to Sompo on March 16, 2020, and proceeded to attempt to facilitate a settlement for Hakkasan with Sompo for the $1,500,000 "purported 'limit' of coverage under the Endorsement." VI at 13, ¶ 71, 14, ¶ 77. Hakkasan, however, did not settle its claim with Sompo and Willis subsequently disclosed the Endorsement to Hakkasan on May 26, 2020. VI at 16, ¶ 92.

Hakkasan's Amended Complaint asserts four claims against Willis for its purported failure to notify Hakkasan of the backdated Endorsement and unsuccessful attempt to get Hakkasan to settle its claim with Sompo. Hakkasan asserts that Willis is liable for civil conspiracy, constructive fraud, negligence, and intentional interference with contractual relations. VI at 22-29.

D. Relevant Procedural History

Hakkasan filed its Complaint in this case on June 5, 2020. One month later, Willis moved to dismiss arguing, among other things, that Hakkasan failed to initiate mediation prior to commencing litigation as required by the T&Cs' dispute resolution provision. After a hearing on Willis's motion to dismiss, and applying the T&Cs' dispute resolution provision, the District Court compelled Hakkasan and Willis "to mediation before JAMS in the next sixty day period from the date of this Order before any further proceedings occur with respect to the Willis Defendants[.]"

VI at 2. Mediation took place on November 3, 2020, no resolution was reached, and Willis filed its Answer (the "Answer") on December 16, 2020. *See* VI at 33.

On February 11, 2021, Willis filed its Motion To Strike Plaintiff's Jury Demand As To Its Claims Against The Willis Defendants Or, In The Alternative, To Compel Arbitration (the "Motion to Strike"). *See* VI at 61. After briefing was completed, the district court did not hold a hearing and entered a minute order denying the Motion to Strike stating that "[i]ssues related to the proposal are distinct with those which remain at issue in this matter." Subsequently, the district court executed an Order denying the Motion to Strike holding that "Hakkasan's present claims against Willis for civil conspiracy, constructive fraud, negligence, and intentional interference with contractual relations are outside the scope of the Dispute Resolution clause in Section 1.13 of the T&Cs." VII at 286.

IV. REASONS TO GRANT THE WRIT

A. Extraordinary Review Is Available When The District Court Denies A Motion To Strike A Jury Demand

"Under NRS 34.160, this court may issue a writ of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust or station." *Lowe Enterprises*, 118 Nev. at 95, 40 P.3d at 407. "Extraordinary relief will only issue where 'there is not a plain, speedy and adequate remedy in the ordinary course of law.'" *Id.*, 118 Nev. at 95-96, 40 P.3d at 407 (quoting NRS

34.170). The denial of a motion to strike a jury demand, which is the issue presented by the instant Petition for Writ of Mandamus, is a situation that this Court has expressly found warrants the such extraordinary review. *See id.*, 118 Nev. at 97, 40 P.3d at 408 (concluding that "extraordinary review is available" when the district court denies a motion to strike a jury demand because "[i]f petitioners had to wait to challenge the district court's denial of their motion to strike the jury demand on appeal, petitioners would have too difficult a burden to meet upon appellate review").

Accordingly, extraordinary review is appropriate in this case to consider the propriety of the district court's denial of Willis's motion to strike Hakkasan's jury demand.

B. Hakkasan's Claims Against Willis Arise Out Of Or In Connection With The Services Provided By Willis Under The T&Cs

"Even in a writ petition, this court reviews de novo issues of law, such as contract and statutory interpretation." *State Dep't of Transp. v. Eighth Judicial Dist. Ct. ex rel. Cty. of Clark*, 133 Nev. 549, 553, 402 P.3d 677, 681 (2017) (citing *Int'l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008); *Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 460, 254 P.3d 641, 647-48 (2011) ("Contract interpretation is a question of law and, as long as no facts are in dispute, this court review contract issues de novo.")). A writ should issue

in this case because the district court's conclusion that Hakkasan's allegations against Willis are "outside the scope" of the T&Cs' dispute resolution provision is erroneous in light of the plain language of the contract, Hakkasan's allegations, the undisputed evidence submitted by the parties in connection with the Motion to Strike, and the district court's previous application **of the very same contract provision** when compelling the parties to mediate their dispute.

The dispute resolution provision in the T&Cs, which contains the jury waiver language, states that it applies to disputes "arising out of or in connection with the services provided under [the T&Cs][.]" VI at 132, § 1.13. Similar "arising out of" and "in connection with" language is frequently found in arbitration provisions and is "interpreted broadly to encompass all manner of disputes between the parties." *Sho-Oja v. Sprint Corp.*, CV 13-8575-JFW, 2004 WL 12561584, at *3 (C.D. Cal. Jan. 16, 2014) (citing *Pennzoil Exploration and Prod. Co. v. Ramco Entergy Ltd.*, 139 F.3d 1061, 1067-68 (5th Cir. 1998) (holding that arbitration clauses requiring the arbitration of all disputes "arising out of" and "in connection with or relating to" an agreement are broad and "embrace all disputes between the parties having a significant relationship to the contract regardless of the label attached to the dispute"); *Genesco, Inc.*, 815 F.2d at 846 (holding by the Second Circuit that if a plaintiff's allegations "touch matters" covered by a broad dispute resolution provision applying to all claims that arose under or related to the subject agreement,

then those claims fell within the scope of the dispute resolution provision); *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 722-25 (9th Cir. 1999) (construing a similar arbitration provision to require arbitration of antitrust claims, Lanham Act claims, defamation claims, and misappropriation of trade secrets claims because they all touched upon the contract or related to the underlying contract in some way)); *see also Matter of Kent & Jane Whipple Tr.*, 133 Nev. 1033, 399 P.3d 332 (2017) (citing the Ninth Circuit's decision in *Simula, Inc.* with approval); *Kindred v. Second Jud. Dist. Ct. ex rel. Cty. of Washoe*, 116 Nev. 405, 411, 996 P.2d 903, 907 (2000) (holding language providing that "any controversy or dispute arising between you and [the company] in any respect to this agreement or your employment by [the company] shall be submitted for arbitration" was "broad" and "appears to include all employment related claims"). Indeed, the term "connected to" has been found to be synonymous with "related to," which is "defined simply as 'connected by reason of an established or discoverable relation[.]'" *Vermont Pure Holdings, Ltd. v. Descartes Systems Group, Inc.*, 140 F.Supp.2d 331, 334-35 (D. Vt. 2001) (quoting *Coregis Ins. Co. v. American Health Found.*, 241 F.3d 123, 128 (2d Cir. 2001)); *see also Jackson v. Lajaunie*, 270 So.2d 859, 864 (La. 1972) (holding that "'in connection with' is a broader term than 'arising out of'").

The decision by the United States Court of Appeals for the Sixth Circuit in *Watson Wyatt & Co. v. SBC Holdings, Inc.*, 513 F.3d 646 (6th Cir. 2008), is

particularly instructive with regard to the language contained in the T&Cs. There, the defendant provided actuarial and consulting services to the plaintiff for several years before sending the plaintiff a letter "to formalize the terms and conditions of its engagement." *Id.* at 648. The defendant's terms and conditions document contained a dispute resolution provision that required arbitration of "any dispute or claim arising from or in connection with this agreement or the services provided by [the defendant][.]" *Id.* In considering the scope of the dispute resolution provision, not only did the Sixth Circuit conclude that it was "broadly written," it found that the "or services provided" language required a finding that the provision applied retroactively and described it as "a type of umbrella agreement governing the parties overall relationship." *Id.* at 650, 652.

Here, there is no doubt that Hakkasan's claims against Willis "aris[e] out of or in connection with the services provided under [the T&Cs][.]" As a general matter, the dispute resolution provision in the T&Cs is exceptionally broad given the "in connection with the services provided" language. As such, like in *Watson Wyatt*, the T&Cs' dispute resolution provision is a "type of umbrella agreement governing the parties overall relationship" and applies to any claims that "touch matters" related to the services Willis provided to Hakkasan, regardless of how those services are characterized. There is no doubt that Hakkasan's allegations against Willis—which suggest that Willis breached duties owed to Hakkasan as its insurance broker

by conspiring with the insurer to issue an Endorsement to Hakkasan's Policy—implicate their overall business relationship and touch matters connected to Willis's services under the T&Cs. Accordingly, the T&Cs' broad dispute resolution provision, and its jury waiver language, are appliable to Hakkasan's claims in this case.

Even taking an extremely narrow view of the T&Cs' dispute resolution provision and focusing only on Willis's alleged unauthorized communications with Sompo, Hakkasan's claims would still be subject to the terms of the dispute resolution clause. Willis's communications with Sompo in early March 2020 regarding the impact of COVID-19 on Hakkasan's ongoing business operations fell squarely within the scope of Willis's performance of services covered by the T&Cs.

- First, Willis's communications with Hakkasan fell squarely within the scope of Willis's procurement (or renewal) services for the 2020-21 policy year. At the time of the subject communications, Hakkasan's property insurance policy was set to expire in a few weeks, on March 31, 2020, and Willis was working on placing Hakkasan's property insurance policy for the next policy year. In the course of those efforts, Willis was obligated to, and thus did following discussion with Hakkasan, disclose the impact of COVID-19 on Hakkasan's ongoing business operations to Sompo. *See* VII at 244, ¶ 12. Insurance procurement and renewal services are clearly

services provided by Willis in connection with the T&Cs. *See generally* VI at 130-38.

- Second, Willis's communications with Sompo about the impact of COVID-19 on Hakkasan's business were unquestionably part of Willis's claims handling services. Such services were clearly within the scope of the T&Cs. As noted previously, the Proposal and the T&Cs repeatedly reference Willis's claims handling services and even assigned two individuals in Willis's "Risk Control & Claims Advocacy" department to Hakkasan's account. VI at 77, 129, 134, § 2.1, 135, §2.7, 136, § 2.17.

If there were any doubt about whether the T&Cs covered Willis's procurement, renewal, and/or claims handling services, the Court need look no farther than Hakkasan's own allegations in the Amended Complaint. Specifically, Hakkasan acknowledges that it "**contracted** with Willis to provide [insurance] brokerage and **claims-handling services** in relation to [Hakkasan's 2019-20 commercial property insurance policy], among numerous other insurance policies procured by Willis for Hakkasan[.]" VI at 12, ¶ 54 (emphasis added). Hakkasan also alleges that it engaged Willis "in respect to negotiating the terms of the Policy, preparing insurance proposals for the Policy and other competing options, **procuring the Policy**, and **facilitating and advising about claims under the Policy**." VI at 4, ¶ 4 (emphasis added). Accordingly, whether Willis's

communications with Sompo in March 2020 related to its procurement, renewal, or claims handling efforts, Hakkasan's claims arising out of those communications are connected to the services provided by Willis under the T&Cs.

Hakkasan argued to the district court that its claims against Willis are not subject to the dispute resolution provision in the T&Cs because the provision is narrowly tailored to disputes arising out of Hakkasan's act of purchasing insurance through Willis and because its claims "can be resolved independently without reference to Willis's Proposal or the T&Cs." VII at 152. This is an obvious mischaracterization of the dispute resolution clause. The dispute resolution clause is in no way limited to "Willis's purchase of insurance on Hakkasan's behalf"; it applies broadly, as noted above, by its express terms to disputes "arising out of or in connection with the services provided under [the T&Cs][.]" And the absence of such a limiting clause directs that the parties did not agree to one. *See State v. Javier C.*, 128 Nev. 536, 541, 289 P.3d 1194, 1197 (2012) (recognizing that "Nevada follows the maxim 'expressio unius est exclusio alterius,' the expression of one thing is the exclusion of another").

The T&Cs' dispute resolution provision also does not apply solely to claims that require interpretation of the T&Cs' terms. While courts have found that dispute resolution provisions solely covering claims "arising out of" an agreement may only apply to claims requiring interpretation of the subject contract, *see, e.g.*, *Tracer*

Research Corp. v. National Environmental Services Co., 42 F.3d 1292 (9th Cir. 1994) (holding that "an arbitration clause that covered disputes 'arising under' an agreement, but omitted reference to claims 'relating to' an agreement, covered only those disputes 'relating to the interpretation and performance of the contract itself'"), the provision at issue here is not so limited. The T&Cs' dispute resolution provision also encompasses disputes arising "in connection with the services provided under" the T&Cs, which, as discussed above, is language with broader application.

In making its decision, the district court undertook no such analysis. The total sum of the district court's decision amounted to a bare conclusion that the jury waiver did not fall within the scope of Hakkasan's claims. *See* VII at 284-86. There was no explanation and no legal analysis.

And, significantly, the district court's decision **directly contradicted a previous order** in which it had applied the T&Cs to cover the entirety of the Hakkasan/Willis relationship to compel mediation between the parties. *See* VI at 2. **The inconsistency between these two orders is fundamental and cannot be reconciled.** If the T&Cs did not apply to Hakkasan's claims, why did the district court compel mediation in the first place? Under what legal authority could the district court have compelled mediation if the T&Cs did not apply? The T&Cs either apply to this dispute or they do not; they cannot be enforced arbitrarily.

Ultimately, it is clear that Hakkasan's claims in this case fall within the scope of the T&Cs' dispute resolution provision. As a result, this Court should issue a writ of mandamus directing the district court to strike Hakkasan's jury demand as to its claims against Willis as is required by the T&Cs' Dispute Resolution provision.

C. The Jury Waiver Provision In The T&Cs Is Enforceable Under Nevada Law

A writ of mandamus directing the district court to strike Hakkasan's jury demand as to its claims against Willis is also appropriate because Nevada law recognizes the enforceability of jury waiver provisions such as the one set forth in the T&Cs. In Nevada, "[c]ontractual jury trial waivers are **presumptively valid** unless the challenging party can demonstrate that the waiver was not entered into knowingly, voluntarily, and intentionally." *Lowe Enterprises*, 118 Nev. at 100, 40 P.3d at 410 (emphasis added). In determining whether a jury trial waiver was entered into knowingly, voluntarily, and intentionally, the court may consider, but is not limited to considering, the following factors: "(1) the parties' negotiations concerning the waiver provision, if any, (2) the conspicuousness of the provision, (3) the relative bargaining power of the parties and (4) whether the waiving party's counsel had an opportunity to review the agreement." *Id.*, 118 Nev. at 101, 40 P.3d at 410-11 (citing *Whirlpool Fin. Corp. v. Sevaux*, 866 F. Supp. 1102, 1105 (N.D. Ill. 1994)).

Here, the T&Cs, which were accepted by Hakkasan when it elected to purchase insurance through Willis and executed the Order to Bind, govern the parties' relationship. *See Eagle Materials, Inc. v. Stiren*, 127 Nev. 1131, 373 P.3d 911 (2011) (recognizing that "[a]cceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer" and that "[w]here an offer invites an offeree to accept by rendering a performance ... [a] contract is created when the offeree tenders or begins the invited performance") (quoting RESTATEMENT (SECOND) OF CONTRACTS §§ 45, 50 (1981)). The T&Cs unambiguously reflect an agreement between the parties to resolve any disputes that remain unresolved following mediation "without a jury trial." VI at 132-33. Indeed, the parties agreed "not to request or demand a jury trial" in any post-mediation disputes and further expressly acknowledged that they were "irrevocably waiv[ing] any right they may have to demand a jury trial[.]" *Id*. In accordance with Nevada law, the jury waiver provision set forth in the T&Cs is presumptively valid and should be enforced.

Moreover, Hakkasan cannot legitimately contend that its agreement to the jury waiver provision was not knowing, voluntary, or intentional. First, there is simply no disparity in bargaining power between Willis and Hakkasan. Hakkasan touts in its Complaint that it is the operator of "world-class restaurants, nightclubs and entertainment venues throughout the United States and abroad" and that it has been

recognized "by the press and industry experts as 'the Las Vegas Strip's leading nightlife company.'" VI at 10, ¶¶ 40-43. In addition, Hakkasan's insurance portfolio involves hundreds of millions of dollars of coverages. *See, e.g.*, VI at 75-128. Hakkasan is a sophisticated business entity that had substantial bargaining power with regard to Willis, its insurance broker.

Second, not only did the waiving party's counsel have an opportunity to review the T&Cs, it was Hakkasan's General Counsel, Attorney Roos, who executed the Order to Bind that manifested Hakkasan's assent to the T&Cs, including the jury waiver provision. *See* VI at 140. Indeed, Attorney Roos was primarily responsible for communicating with Willis regarding Hakkasan's insurance needs and Willis's insurance proposal during the several months leading up to the March 29, 2019 meeting, when the T&Cs were presented to Hakkasan. VII at 242, ¶ 2. Attorney Roos was also Willis's primary contact for Hakkasan's insurance renewals for the 2020-21 policy year and its virus-related claim under the Policy. *See* VII at 244, ¶ 13, 271, 282-83. Attorney Roos had more than fourteen months from the time he received the T&Cs until this lawsuit was filed to negotiate any of the T&Cs' provisions, including the jury waiver provision, but he never raised a single objection. *See* VII at 245, ¶ 14.

Third, the jury waiver provision in the T&Cs is conspicuous and unambiguous. The T&Cs are listed in the Proposal's Table of Contents and there is

a separate heading in the Proposal that provides: "This proposal is presented in conjunction with the [T&Cs] . . . which is enclosed." VI at 76, 86. The T&Cs comprise a total of only nine pages and its terms are not drafted in fine print. The jury waiver language is not concealed in any respect; it appears exactly where one would expect to find it in the T&Cs, in the section entitled, in bold font, "**Dispute Resolution**," and is set forth in the same font and typeface as the rest of the provisions of the T&Cs. Notably, the jury waiver language appears in the sentence immediately following the mandatory mediation provision that was enforced by the district court. Given that the jury waiver provision was neither hidden nor buried in the T&Cs, it should have been apparent to a sophisticated business such as Hakkasan and its in-house counsel, Attorney Roos.

Based on the foregoing, the T&Cs' jury waiver provision, as with the mandatory mediation provision previously enforced by the district court, is valid and enforceable. *See Lowe Enterprises*, 118 Nev. at 101-02, 40 P.3d at 411 (enforcing contractual jury waiver provision in a loan document, and rejecting claim of unequal bargaining power, where the parties were represented by counsel and had prior experience in real estate); *Casey*, 281 P.3d 1160, 2009 WL 3188939, at *2 (enforcing jury waiver provision because, among other things, it was not buried in the contract and was in bold font that was the same size as the font in the rest of the document). This Court should therefore issue a writ of mandamus directing the district court to

strike Hakkasan's jury demand as to the claims asserted against Willis in the Amended Complaint.

CONCLUSION

For the foregoing reasons, this Court should issue a writ of mandamus directing the district court to strike Hakkasan's demand for jury trial as it pertains to Hakkasan's claims against Willis.

DATED this 23rd day of April, 2021.

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AFFIDAVIT OF VERIFICATION—NRAP 21(a)(5)

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Patrick J. Reilly, Esq., being duly sworn, states as follows:

1. I am an partner with the law firm of Brownstein Hyatt Farber Schreck, LLP ("BHFS"), counsel of record for Petitioners Willis of Arizona, Inc. and Willis Towers Watson Insurance Services West, Inc. (collectively "Petitioners"). I have personal knowledge of the matters set forth in this Affidavit except where stated upon information and belief, which matters I believe to be true, and, if called as a witness, could and would competently testify thereto.

2. I make this affidavit for the purpose of verifying that the facts stated in this Petition are within my knowledge, and that Petitioners are unable to verify the facts stated herein.

DATED this 23rd day of April, 2021.

PATRICK J. REILLY

Subscribed and sworn to before me
this 23rd day April, 2021.

Notary Public

Expires: March 13, 2023

ADRIANA CARCELEN
Notary Public, State of Nevada
No. 07-3072-1
My Appt. Exp. March 13, 2023

CERTIFICATE OF COMPLIANCE—NRAP 21(e)

1. I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14 point font in Times New Roman type style.

2. I further certify that this Petition complies with the page – or type – volume limitations of NRP32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 6,718 words.

3. Finally, I hereby certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions

/ / /

in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 23rd day of April, 2021.

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **PETITION FOR WRIT OF MANDAMUS** was served by submitting electronically for filing and/or service with Supreme Court of Nevada's EFlex Filing system and serving all parties with an email address on record, as indicated below, pursuant to Rule 8 of the N.E.F.C.R. on the 23rd day of April, 2021, to the addresses shown below:

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