

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Appellants,

v.

HAKKASAN USA, INC.,

Respondent.

Supreme Court Case No.: 82833

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

Electronically Filed  
May 06 2021 09:00 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appeal from Eighth Judicial District Court, State of Nevada, County of Clark  
The Honorable Elizabeth Gonzalez, District Judge

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**MOTION TO CONSOLIDATE**

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*Attorneys for Willis of Arizona, Inc. and  
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Appellants Willis of Arizona, Inc. and Willis Towers Watson Insurance Services West, Inc. hereby move to consolidate this Petition for Writ of Mandamus (the “Writ Petition”) with the appeal filed in Nevada Supreme Court Case No. 82829 and consolidate the deadlines for briefing in said matters.

This Motion is made pursuant to NRAP 3(b) and NRAP 27 and is based on the attached Memorandum of Points and Authorities and supporting documentation, and any oral argument this Court may allow.

DATED this 5th day of May, 2021.

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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;
- Willis 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 Appellants 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 5th day of May, 2021.

/s/ Patrick J. Reilly

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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 5th day of May, 2021.

*/s/ Patrick J. Reilly*

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# MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO CONSOLIDATE

## I.

### INTRODUCTION

This appeal and the writ petition arise out of the same order in the same district court case interpreting the same dispute resolution provision. In the underlying action, Respondent 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 has demanded a jury trial as to all claims reviewable by jury in the district court action.

The claims asserted by Hakkasan against Willis are governed by 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.* (emphasis added). As a result, to the extent the jury trial waiver is not

enforceable, Willis is nevertheless entitled to have Hakkasan's claims heard in arbitration in Nevada.

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 (the "District Court 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. For the same reason, the district court refused to compel arbitration between Hakkasan and Willis. *Id.*

Under Nevada law, an order denying a motion to compel arbitration is appealable as a matter of right. NRS 38.247(1)(a). However, an order denying a motion to strike a jury demand is ordinarily not appealable. Instead, 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).

As such, part of the District Court Order is immediately appealable, while part of it arguably is not. And though the factual and legal issues in the District Court Order are inextricably intertwined,<sup>1</sup> Willis appealed the District Court Order as to the district court's refusal to compel arbitration and, out of an abundance of caution, filed the Writ Petition to challenge the district court's refusal to strike the jury demand. Though the requested relief in these matters is different, Case Number 82829 and 82833 involve the same parties, the same lower court proceeding, the same dispute resolution provision, the same motion, and the same District Court Order.

## II.

### **LEGAL ARGUMENT**

The Nevada Rules of Appellate Procedure provide that separate appeals may be joined or consolidated by the Court on its own motion or upon the motion of a party. NRAP 3(B)(2). In addition, courts have inherent authority to control their own docket "with economy of time and effort for itself, for counsel, and for litigants." *Johnson v. State*, 2019 WL 6003345, at \*1 (Nev. Ct. App. Nov. 13, 2019). In this particular instance, this Appeal and the Writ Petition involve the same parties

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<sup>1</sup> Indeed, were the Court to conclude that the issues in both cases are inextricably intertwined and the District Court Order is appealable in its entirety, the pending Writ Petition would be rendered moot and may be dismissed without prejudice so the parties may proceed on all issues exclusively in Case No. 82829.

and arise from the same case, motion, and order. It is only because a portion of the District Court Order may be unappealable that Willis has commenced two appellate proceedings, this appeal and the Writ Petition. By doing so, Willis seeks to ensure its right to review by this Court of the District Court's refusal to strike the demand for jury trial and its refusal to compel arbitration.

### III.

#### CONCLUSION

For the foregoing reasons, Willis respectfully asks this Court to issue an order consolidating case numbers 82829 and 82833 for all further proceedings.

DATED this 5th day of May, 2021.

/s/ Patrick J. Reilly

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## **CERTIFICATE OF SERVICE**

Pursuant to Nevada Rule of Appellate Procedure 25(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **MOTION TO CONSOLIDATE** 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 5th day of May, 2021, to the addresses shown below:

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/s/ Mary Barnes

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