

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.: 82829

(consolidated with Case No. 82833)

Electronically Filed
Feb 10 2022 12:19 p.m.
District Court Case No. A-20-816145-B
Elizabeth A. Brown
Clerk of Supreme Court

**REPLY IN SUPPORT OF PETITIONERS' MOTION TO STRIKE
STATEMENTS FROM RESPONDENT'S ANSWERING BRIEF**

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Petitioners and Appellants, 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 submit this reply brief in support of their motion that this Court strike certain factual references from Respondent Hakkasan USA, Inc.’s (“Hakkasan”) Answering Brief filed in connection with Case Nos. 82829 and 82833 on November 3, 2021.

I. Hakkasan’s Answering Brief Contains False Statements Regarding The Renewal Meeting

Hakkasan’s response to Willis’s Motion to Strike Statements from Respondent’s Answering Brief (the “Motion”) is an exercise in sleight of hand. Despite Hakkasan’s best efforts in its Answering Brief to create the impression that Willis nefariously waited until the “eve of the renewal deadline” to meet with Hakkasan and discuss Hakkasan’s insurance coverages, Hakkasan now claims it was merely pointing out that “Willis unquestionably did not present the T&Cs containing the Jury Waiver Clause to Hakkasan until March 29[.]” Response at 5. Hakkasan further claims that the fact that the meeting was rescheduled to March 29 at Hakkasan’s request does “not render Hakkasan’s truthful representations about when Willis provided the Proposal and T&Cs misleading.” *Id.* at 8.

Hakkasan completely, and perhaps intentionally, misses the point of Willis’s Motion. While it would not have changed the fact that the T&Cs are enforceable, it would have been one thing if Hakkasan had simply argued that it did not receive the Proposal until March 29 and, therefore, did not have time to review the document and the T&Cs before the April 1 renewal deadline. But Hakkasan did not stop there. Rather, Hakkasan attempted to peddle the false premise that, consistent with Willis’s

¹ Willis of Arizona, Inc. merged into Willis Towers Watson Insurance Services West, Inc. in December 2019 and no longer exists as a separate entity.

alleged practice of waiting until the last-minute to present Hakkasan with its insurance options (*see* Answering Brief at 2 (“Willis’s consistent eleventh hour provision of vital insurance information to Hakkasan”)),² Willis intentionally scheduled the 2019 renewal meeting on the last business day before the renewal, March 29, 2019, to put itself in a better bargaining position vis-à-vis Hakkasan.³ *See* Answering Brief at 13 (claiming Willis “placed Hakkasan in a gravely compromised bargaining position by waiting until just one business day before Hakkasan’s existing policies were set to expire to present a complete renewal proposal”) and 36 (asserting that “Willis exploited Hakkasan’s diminished leverage by imposing a long list of one-sided terms and conditions at the eleventh hour of the renewal process, knowing Hakkasan would be compelled to accept them”). And, contrary to Hakkasan’s suggestion in the Response, its Answering Brief repeatedly characterizes Willis’s supposed intentional delay as relating to its “presentation” of the Proposal (i.e., meeting to discuss the Proposal) and not merely to its furnishing of the Proposal document. *See* Answering Brief at 31 (touting “Willis’s delay in presenting the Proposal”) and 35 (claiming that “Willis waited until the eve of Hakkasan’s policy renewal deadline to present the Proposal”) (emphasis added).

Given that the renewal meeting was initially set for March 21, 2019 and then rescheduled *at Hakkasan’s request*, it is a complete falsehood for Hakkasan to contend in the Answering Brief that Willis, for self-serving reasons, intentionally waited until March 29, 2019 to present the Proposal to Hakkasan.

² Hakkasan’s convenient suggestion that Willis provided poor service throughout their relationship (*see* Response at 2-3) is belied by the fact that Hakkasan had retained Willis as its insurance broker since 2014 (and its predecessor entities worked with Willis for a decade prior to that).

³ The sheer absurdity of this contention cannot go unnoticed. Hakkasan would have this Court believe that Willis would willingly ignore its client’s request to hold the renewal meeting farther in advance of the renewal deadline, thereby jeopardizing its client relationship, so that Willis could surreptitiously bind Hakkasan to the T&Cs.

II. The Court Should Not Disregard The Halsey Declaration

Hakkasan claims that this Court should disregard the Halsey Declaration and the emails attached thereto, which clearly demonstrate that the 2019 renewal meeting was originally scheduled for March 21, because they are hearsay and were not part of the District Court record. *See* Response at 6-7. Hakkasan is wrong on both counts.

First, the fact that the March 21, 2019 meeting was rescheduled at Hakkasan's request is not based on "unreliable hearsay." Mr. Halsey states in his Declaration that "[i]n 2019, we initially scheduled our final renewal meeting with Hakkasan to take place on March 21, 2019, but it had to be rescheduled at the last minute at Hakkasan's request." (Halsey Dec. at ¶ 3.) That is a statement of fact based on Mr. Halsey's personal knowledge of what occurred. Regardless, such statements are admissible under NRS 51.105(1) because they demonstrate Willis's state of mind as to why it rescheduled the meeting from March 21, 2019. This is particularly relevant given Hakkasan's suggestion that Willis scheduled the final renewal meeting for March 29, 2019 to gain leverage over Hakkasan.

Second, the fact that Mr. Halsey's Declaration was not part of the District Court record is a red herring. Willis is not asking this Court to consider Mr. Halsey's Declaration for purposes of resolving the pending consolidated Petition for Writ and Appeal. Instead, Willis submitted the Halsey Declaration in support of its request to strike certain misleading statements from the appellate record because they are based on an undeveloped record. Willis filed the Motion so that this Court would not base its ruling in Case Nos. 82829 and 82833 on outdated and stale evidence. Indeed, by maintaining that this Court should disregard the Halsey Declaration, Hakkasan is advancing an argument not based on the actual facts and therefore an argument that is misleading.

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CONCLUSION

For the foregoing reasons, Willis requests that its Motion be granted and that this Court strike or disregard the specific factual references identified in the Motion from Hakkasan's November 3, 2021 Answering Brief filed in connection with Case Nos. 82829 and 82833.⁴

DATED this 10th day of February, 2022.

/s/ Patrick J. Reilly

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⁴ Hakkasan's Response to the Motion devotes a substantial amount of space to repeating arguments set forth in its Answering Brief. *See* Response at 3-4. Rather than respond herein, Willis refers the Court to its previously filed Petition for Writ of Mandamus, Appellant's Opening Brief, and Petitioners'/Appellants' Reply Brief.

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 STRIKE STATEMENTS FROM RESPONDENT'S ANSWERING BRIEF** 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 10th day of February, 2022, to the addresses shown below:

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