No. 23-___

IN THE

Supreme Court of the United States

JDH PACIFIC, INC.,

Petitioner,

v.

PRECISION-HAYES INTERNATIONAL, INC.,

Respondent.

On Petition for a Writ of Certiorari to the Texas Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state supreme court can disregard the "clear and unmistakable evidence" standard established by the United States Supreme Court in *First Options v. Kaplan* and confirm an arbitration award that included claims arising post-termination of the agreement?

PARTIES TO THE PROCEEDING

All parties to the proceeding are identified in the caption.

RULE 29.6 STATEMENT

All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None.

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TABLE OF AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

JDH Pacific, Inc. (JDH) respectfully petitions for a writ of certiorari to review the judgment of the Texas Supreme Court in this case.

OPINIONS BELOW

Opinion of the Texas Supreme Court. Pet. App. 19a.

Memorandum Opinion of Texas Second District Court of Appeals. Pet. App. 1a.

JURISDICTION

The Texas Supreme Court denied review on June 30, 2023. Pet. App. 19a. A timely petition for rehearing was denied on August 18, 2023. Pet. App. 20a.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

The Federal Arbitration Act, 9 U.S.C.A. §§ 1–16. Pet. App. 21a.

INTRODUCTION

Clear standards are essential in law. The Texas Supreme Court and Texas Courts of Appeal are eroding the "clear and unmistakable evidence" standard set forth in *First Options v. Kaplan.* In doing so, they are forcing parties, like JDH, to arbitrate disputes that they are not contractually obligated to do so.

This case presents a unique opportunity for this Court to reaffirm that the "clear and unmistakable evidence" test first set forth in *First Options v. Kaplan* remains good law that State courts are obligated to

follow when deciding disputes under the Federal Arbitration Act.

STATEMENT OF THE CASE

In violation of the "clear and unmistakable evidence" rule set forth in *First Option v. Kaplan*, the arbitrator decided a claim that included claims arising post-termination of the agreement between the parties. The Texas Supreme Court denied review after the Court of Appeals reversed a Texas trial court's decision vacating the arbitration award.

A. Statutory Background

The case was decided under the Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1–16.

B. Proceeding Below

In the proceedings below, Respondent Precision-Hayes International, Inc. (PHI) sued Petitioner JDH Pacific, Inc. (JDH) for breach of contract. This dispute was dismissed with prejudice. Shortly thereafter, JDH initiated an arbitration against PHI and also filed a separate proceeding in state court to garnish PHI's funds. Before the garnishment was finally adjudicated by the Texas Supreme Court, PHI counter-claimed in the arbitration for "wrongful garnishment." The arbitrator awarded damages for wrongful garnishment. JDH requested vacatur of the arbitration award. A Texas state district court vacated the award. A Texas intermediate court of appeals reversed. The Texas Supreme Court denied review.

REASONS FOR GRANTING CERTIORARI

There are two compelling reasons for granting certiorari in this case. First, the judgment below directly conflicts with this Court's earlier decision in *First Options v. Kaplan*. Second, other state courts are eroding the "clear and unmistakable evidence" standard required by *First Options*. Each will be discussed in turn.

I. THE JUDGMENT BELOW DIRECTLY CONFLICTS WITH THIS COURT'S EARLIER DECISION IN *FIRST OPTIONS V. KAPLAN*, 514 U.S. 938 (1995)

As a young advocate John Roberts, now Chief Justice John Roberts, passionately argued to this Court that his client could only be required to arbitrate issues if there was "clear and unmistakable evidence" that they had agreed to do so. *Id*. at 939. In its decision, this Court adopted now Chief Justice Roberts' standard and unequivocally established the "clear and unmistakable evidence" standard required before a party would be required to arbitrate a dispute. *Id.*

Now, Texas, and other state courts, are eroding the "clear and unmistakable evidence" standard by requiring arbitration of tort claims that arose after termination of the contract. These states are doing so on the basis that the post-termination claims are alleged to have "arisen from" the contract between the parties. See, e.g., *Total Energies E&P USA, Inc. v. MP Gulf of Mexico, LLC,* 667 S.W.3d 694, 709-11 (Tex. 2023) (holding, in part, that phrase giving arbitrator 'the power' to determine its jurisdiction excluded others from exercising such power). *Airbnb, Inc. v. Doe,* 336 So.3d 698 (Fla. 2022).

Several law review commentators have also raised this issue and condemned the erosion of *First Options v. Kaplan's* "clear and unmistakable evidence" standard. *See Casually Finding the Clear and Unmistakable: A Re-evaluation of First Options in Light of Recent Lower Court Decisions*, Lewis & Clark Law Review, Vol. 10:2 (2007). See also *Arbitration About Arbitration*, 70 Stan. L.R. (2018) (collecting cases reaching conflicting decisions concerning mis-application of the "clear and unmistakable evidence" standard, see foot notes 350-351).

II. PROMPT INTERVENTION BY THIS COURT IS URGENTLY NEEDED TO AVOID FURTHER CHAOS IN THE LOWER COURTS

The state of confusion that now exists concerning how to apply the "clear and unmistakable evidence" test persists. For example, in 2023 in a separate case concerning the "clear and unmistakable evidence" standard, the Texas Supreme Court wrote that there was a circuit split concerning whether incorporation of the American Arbitration Association [AAA] Rules delegates the authority to decide arbitrability to the arbitrator. The Texas Supreme Court also noted that the same dispute existed between the 15 state supreme courts that had decided the issue concerning application of the "clear and unmistakable evidence" rule.[1] This is further evidence of the State court's

[1] *"Beginning nearly forty years ago, every federal circuit—except perhaps the Seventh Circuit—has held that it does. And ten of the fifteen state supreme courts that have addressed the issue have agreed, while the remaining five have held that*

confusion over how to apply the "clear and unmistakable evidence" test.

CONCLUSION

As such, Petitioner JDH Pacific, Inc. respectfully requests that this Court grant its Writ of Certiorari.

Respectfully submitted,

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January 11, 2024

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incorporation of the AAA rules may or may not delegate arbitrability, depending on other circumstances." Total Energies E&P USA, Inc. v. MP Gulf of Mex. LLC, 667 S.W.3d 694, 704-706, fn 11 & 13 (Tex. 2023).

APPENDIX

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APPENDIX A

IN THE COURT OF APPEALS
SECOND APPELLATE DISTRICT OF TEXAS
AT FORT WORTH

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No. 02-21-00374-CV

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PRECISION-HAYES INTERNATIONAL, INC.,

Appellant

v.

JDH PACIFIC, INC.,

Appellee

———

On Appeal from the 342nd District Court
Tarrant County, Texas
Trial Court No. 342-329266-21

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Before Kerr, Bassel, Walker,
JJ. Memorandum Opinion by Justice Walker

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MEMORANDUM OPINION

An arbitrator awarded Appellant Precision-Hayes International, Inc. (Precision) damages and attorney's fees in its licensing dispute with Appellee JDH Pacific, Inc. (JDH). After competing motions to vacate and confirm the arbitration award, the trial court vacated the award. Precision argues on appeal that the trial court erred because none of the grounds presented by JDH supported vacatur of the arbitration award, and therefore, the court should have confirmed the award.

We will reverse the trial court's order vacating the arbitration award and render judgment confirming the arbitrator's award.

I. BACKGROUND

Precision entered into license agreements with JDH in 2005 and 2012.[1] Precision granted JDH exclusive licenses to manufacture and sell cast metal anchor plates and castings bearing Precision's trademark. Both agreements contained an arbitration clause. The 2005 agreement provided:

> DISPUTE RESOLUTION/ARBITRATION – The parties hereto will attempt to amicably settle all disputes, controversies, or differences arising out of or in relation to the AGREEMENT by good faith negotiation. If such amicable settlement cannot be obtained, then any such dispute shall be submitted to binding arbitration in Dallas, Texas in accordance with the rules of the American Arbitration Association.

The 2012 agreement's arbitration clause was identical except for the addition of a final sentence: "Judgment may be entered on the award of the arbitrator in any court of competent jurisdiction." Only the 2012 agreement addressed attorney's fees:

ATTORNEYS' FEES – In any arbitration or other legal action or proceeding brought to enforce any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, in

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[1] The 2005 agreement was entered into by Precision Sure-Lock; the 2012 agreement was entered into by Hayes Specialty Machining. Precision succeeded to the rights of both by merger.

addition to its costs and expenses and any other available remedy.

Precision later learned that JDH was manufacturing and selling trademarked anchors that neither met the quality specifications required in the agreements nor carried the ® for Precision's mark. Accordingly, Precision terminated both agreements and filed suit against JDH in state court in Fort Bend County, Texas. JDH removed the action to federal court and sought to compel arbitration under the Federal Arbitration Act (the FAA). The federal court granted JDH's motion to compel all issues to arbitration—accepting JDH's invocation of the FAA—but denied JDH's request for its attorney's fees as a prevailing party under the 2012 agreement. Accordingly, the federal court dismissed Precision's claims with prejudice in its final judgment.[2]

JDH then filed an arbitration claim with the American Arbitration Association (the AAA), raising various contract and tort claims and requesting attorney's fees as the prevailing party under the 2012 agreement. JDH also sought declaratory judgments aimed at invalidating Precision's patents and absolving JDH of alleged trademark and patent violations. The AAA appointed an arbitrator under its Commercial Arbitration Rules.

JDH then returned to the Fort Bend County court and filed, in the original cause, an application for a prejudgment writ of garnishment in the removed action. *See* Tex. R. Civ. P. 658. That court granted the

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[2] The federal court dismissed each of Precision's claims after deciding that they were all subject to arbitration. *Precision-Hayes, Int'l, Inc. v. JDH Pac., Inc.*, CV H-19- 1805, 2019 WL 5748889, at *4 (S.D. Tex. Nov. 5, 2019).

writ against a bank to garnish Precision's funds in an amount equal to JDH's unreimbursed attorney's fees. The court later withdrew its order granting the writ, and JDH appealed this order.[3]

Meanwhile, Precision filed a counterclaim in the pending arbitration, alleging that JDH had wrongfully garnished Precision's funds by seeking (and briefly obtaining) the pretrial writ of garnishment in a court without jurisdiction. Precision also sought a declaration that it had rightfully terminated the agreements and sought its attorney's fees as a prevailing party under the 2012 agreement. JDH objected to the arbitrability of and the arbitrator's jurisdiction over Precision's counterclaims.

After a six-day final hearing, the arbitrator found that Precision had lawfully terminated the agreements and had successfully proven its wrongful garnishment claim. Precision was awarded $9,092.51 in damages and $498,094.52 in attorney's fees. The arbitrator ruled against JDH on each of its claims. No transcript of the arbitration proceedings was created.

JDH then filed its motion to vacate the arbitration award, which was followed by Precision's motion to confirm the award. JDH argued that the award should be vacated because the arbitrator exceeded its authority when it considered Precision's wrongful garnishment claim, awarded Precision its attorney's fees, and failed to make a reasoned award. JDH filed

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[3] On June 29, 2021, the Fourteenth Court of Appeals dismissed JDH's appeal of the Fort Bend County court's withdrawal of its order granting a pretrial writ of garnishment because "the case ha[d] not been remanded to state court" after JDH removed it to federal court. *JDH Pac., Inc. v. Precision-Hayes Int'l, Inc.*, No. 14-21- 00027-CV, 2021 WL 2656774, at *1 (Tex. App.—Houston [14th Dist.] June 29, 2021, pet. filed) (per curiam) (mem. op.).

an opposition to Precision's motion to confirm in which it argued that Precision's motion should be denied as "not ripe" due to defective service.

Each motion was set for a hearing on November 5, 2021, at which both parties appeared through their attorneys. The trial court granted JDH's motion to vacate the arbitrator's award without identifying the grounds relied upon and denied Precision's motion to confirm.

II. STANDARD OF REVIEW AND RELEVANT LAW

A. The FAA Applies To This Dispute

At the outset we must determine whether the FAA or Texas Arbitration Act (the TAA) governs this dispute because, although similar, the two arbitration schemes are not identical regarding the review of arbitration awards. *See* 9 U.S.C.A. §§ 1–16 (FAA); Tex. Civ. Prac. & Rem. Code Ann. §§ 171.001–98 (TAA); *see also Black v. Shor*, 443 S.W.3d 154, 162 (Tex. App.—Corpus Christi–Edinburg 2013, pet. denied). Though the parties before the trial court and on appeal have interchangeably invoked both the FAA and TAA, it is undisputed that the arbitration proceeded under the FAA after the federal court granted JDH's motion to compel an FAA arbitration. *See Precision-Hayes*, 2019 WL 5748889, at *1. Thus, we will apply the FAA substantively while being mindful that the TAA applies to matters of procedure. *See Prudential Secs. Inc. v. Marshall*, 909 S.W.2d 896, 899 (Tex. 1995) ("When a party asserts a right to arbitration under the Federal Arbitration Act, the question of whether a dispute is subject to arbitration is determined under federal law."); *see also Miller v. Walker*, 582 S.W.3d 300, 304 (Tex. App.—Fort Worth 2018, no pet.) (apply-

ing the FAA where the arbitration petition was filed under the FAA and no dispute otherwise existed as to its application); *In re Chestnut Energy Partners, Inc.*, 300 S.W.3d 386, 394–95 (Tex. App.—Dallas 2009, pet. denied) (orig. proceeding).

B. De Novo Review

We review de novo a trial court's decision to vacate an arbitration award under the FAA. *Miller*, 582 S.W.3d at 304. Our review is "exceedingly deferential" to the arbitrator's decision. *Id*. Courts may vacate an arbitration award "only in very unusual circumstances." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568, 133 S. Ct. 2064, 2068 (2013) (internal quotations omitted).

C. Vacatur For Exceeding Authority

An arbitration award must be confirmed unless it is vacated, modified, or corrected pursuant to one of the limited grounds set forth in the FAA. *See* 9 U.S.C.A. §§ 9, 10. Vacatur is available if an arbitrator "exceeded their powers." *Id*. § 10(a)(4). An arbitrator exceeds its powers if it acts "contrary to an express contractual provisions" which does not occur unless the arbitrator has "utterly contorted . . . the essence of the contract." *Vantage Deepwater Co. v. Petrobras Am., Inc.*, 966 F.3d 361, 375 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 1395 (2021) (internal quotations omitted).

Thus, to decide if an arbitrator exceeded its powers, we must determine only whether the arbitration clause gave the arbitrator authority to reach a certain issue, "not whether the arbitrator correctly decided the issue." *Ancor Holdings, LLC v. Peterson, Goldman & Villani, Inc.*, 294 S.W.3d 818, 829 (Tex. App.—Dallas 2009, no pet.); *see DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 824 (2d Cir. 1997).

Accordingly, a reviewing court may not substitute its judgment for that of the arbitrator merely because it would have reached a different result. *Mauldin v. MBNA Am. Bank, N.A.*, No. 2-07-208-CV, 2008 WL 4779614, at *2 (Tex. App.—Fort Worth Oct. 30, 2008, no pet.*); Albemarle Corp. v. United Steel Workers ex rel. AOWU Local 103*, 703 F.3d 821, 827 (5th Cir. 2013). When reviewing whether an arbitrator exceeded its powers, we must resolve all doubts in favor of the arbitration and none against it. *Vantage Deepwater Co.*, 966 F.3d at 375; *see Mauldin*, 2008 WL 4779614, at *2.

III. DISCUSSION

The only grounds for vacatur argued by JDH were that the arbitrator exceeded its powers in three ways: (1) by deciding Precision's wrongful garnishment claim because that claim was outside the scope of the arbitration clauses, (2) by awarding an unreasonable amount of attorney's fees to Precision, and (3) by failing to issue a reasoned award.[4] On appeal, Preci-

[4] JDH also contended that vacatur was appropriate because Precision failed to properly serve JDH with its motion to confirm. However, we overrule any argument related to defective service because JDH undisputedly entered a general appearance by failing to file a special appearance, responding to Precision's motion, and then appearing at the hearing held on *both* motions. *See* Tex. R. Civ. P. 120a(1); *Nationwide Distrib. Servs., Inc. v. Jones*, 496 S.W.3d 221, 224 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (instructing that a party that does not comply with Rule 120a waives its jurisdictional challenge and enters a general appearance). And the trial court apparently agreed, as it would have had no authority to enter its final order without having determined that it had personal jurisdiction over both parties. *See Spir Star AG v. Kimich*, 310 S.W.3d 868, 871 (Tex. 2010) ("To render a binding judgment, a court must have both subject matter jurisdiction and personal jurisdiction over the parties.").

sion argues that the trial court erred because none of the three grounds presented by JDH supported vacatur of the arbitration award. Accordingly, Precision argues, the court further erred in failing to confirm the arbitration award. We agree with Precision.

A. The Arbitrator Did Not Exceed Its Powers By Deciding The Wrongful Garnishment Claim

With its first ground, JDH contended that the arbitrator exceeded its powers when it decided Precision's wrongful garnishment claim because it was outside the scope of the arbitration clauses.[5] JDH argued that this was true under three legal theories: (1) that the clauses limited arbitration to only breach of contract claims, (2) that the wrongful garnishment claim was a "stand-alone grievance" because Precision did not refer to the license agreements in raising the claim, and (3) that the wrongful garnishment claim was a "post-termination dispute."

1. The Arbitration Clauses Are Expansive

The arbitration clauses here required the parties to arbitrate "all disputes, controversies, or differences arising out of or in relation to this [license agreements]."

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[5] Within this argument, JDH also raised a question as to whether the arbitration clauses gave the arbitrator power to determine threshold issues of the arbitrability of particular claims. However, because we hold that Precision's wrongful garnishment claim was within the scope of claims to be decided by the arbitrator under the broad clauses, we need not decide the question of arbitrability. *See* Tex. R. App. P. 47.1. JDH's attorney conceded this point at oral argument before this court.

The United States Supreme Court, the Fifth Circuit, and Texas courts all agree that arbitration clauses that use similar "arising out of" and "related to" language that are broad and "capable of expansive reach." *Pennzoil Expl. & Prod. Co. v. Ramco Energy Ltd.*, 139 F.3d 1061, 1067-68 (5th Cir. 1998); *see Prima Paint Corp., v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 397–98, 87 S. Ct. 1801, 1802–03 (1967) (labelling as "broad" a clause requiring arbitration of "[a]ny controversy or claim arising out of or relating to this Agreement"); *Kirby Highland Lakes Surgery Ctr., L.L.P. v. Kirby*, 183 S.W.3d 891, 898–99 (Tex. App.—Austin 2006, no pet.) (similar). An arbitration clause that covers all disputes "related to" an agreement "is not limited to claims that literally arise under the contract." *Ford Motor Co. v. Ables*, 207 Fed. Appx. 443, 447 (5th Cir. 2006) (internal quotations omitted). Instead, such broad arbitration clauses require only that the dispute merely "touch" upon matters covered by the agreement to be arbitrable. *Id*. To determine whether a claim falls within the scope of matters covered in an arbitration clause, we are to "focus on the factual allegations of the complaint, rather than the legal causes of action asserted." *Prudential Secs. Inc.*, 909 S.W.2d at 900.

2. The Wrongful Garnishment Claim is Within the Scope of These Clauses

JDH first argued that the scope of the arbitration clauses covered only breach of contract claims. However, the clauses are exceedingly broad and required that the parties send to arbitration "all disputes, controversies, or differences arising out of or in relation to the [Agreements]." In light of this broad language, we must look to the allegations within Precision's original counterclaim to determine if its

wrongful garnishment claim "touched" upon the license agreements in some way. *See Ford Motor Co.*, 207 Fed. Appx. at 447. We conclude that it did.

In its counterclaim, Precision alleged that JDH obtained multiple writs of garnishment from the Fort Bend County district court that froze $200,000 in Precision's operating account. It also alleged that JDH believed itself the "prevailing party" under the 2012 agreement after the federal court dismissed Precision's initial lawsuit and compelled the dispute to arbitration.[6] Finally, according to Precision's counterclaim, even after the state court dissolved the garnishment orders, JDH "continued to take deliberate actions" to wrongfully garnish Precision's funds which damaged Precision and caused it to incur attorney's fees in its defense.

These allegations establish that the wrongful garnishment claim clearly touched upon the 2012 agreement; in fact, the claim existed only because of the 2012 agreement. JDH obtained the garnishment under the theory that the 2012 agreement entitled it to attorney's fees. In other words, JDH's garnishment arose directly out of that agreement. It follows that Precision's wrongful garnishment claim, as a direct objection to that garnishment, was a "dispute, controversy, or difference[]" that related to or, at a minimum, touched upon the 2012 agreement. Therefore, Precision's claim was within the scope of the arbitration clause.

Citing *Valero Energy Corp. v. Teco Pipeline Co.*, JDH contended that Precision's wrongful garnishment

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[6] JDH sought and obtained the ex parte writ of garnishment in Fort Bend County only after the federal court denied its request for attorney's fees under the same theory.

claim was outside the scope of the arbitration clauses because, on its face, the claim did not specifically reference the two license agreements. 2 S.W.3d 576, 589–90 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (holding that a tort claim falls within an arbitration clause if the claim, as alleged in the petition, "is so interwoven with the contract that it could not stand alone" rather than being available "without reference to the contract") (internal quotations omitted). Thus, says JDH, the wrongful garnishment claim was a "stand-alone grievance" that could be maintained without reference to the agreements—which took it outside the scope of the arbitration clauses.

This argument is misleading. Precision's original counterclaim first pleaded a set of background facts, which included a detailed account of the garnishment proceedings with a specific reference to the 2012 agreement. After these facts, Precision presented its claims, including one for wrongful garnishment. Though there is technically no mention of the license agreements within the boundaries of its wrongful garnishment claim, Precision specifically incorporated all of its background facts therein. Thus, on its face, Precision's claim invoked the 2012 agreement and did not constitute a "stand-alone grievance" that was maintained without reference to the license agreements.

Finally, JDH argued that the wrongful garnishment claim was outside the arbitration clauses' scope because it arose after termination of the license agreements, thus precluding it from arbitration as announced by the Supreme Court in *Litton*. *See Litton Fin. Printing Div., a Div. of Litton Bus. Sys., Inc. v. N.L.R.B.*, 501 U.S. 190, 205–06, 111 S. Ct. 2215. 2224 (1991). In *Litton*, a labor union sought to arbitrate

grievances against an employer pursuant to a collective bargaining agreement after a group of union employees was laid off in a manner that allegedly violated the order of layoffs as required in the agreement. *Id*. at 193, 209–10. The layoffs, however, occurred "well after" the expiration of the agreement and before a new agreement had been struck. *Id*. The arbitration clause from the expired agreement mandated arbitration for "[d]ifferences that may arise . . . regarding [the agreement] and any alleged violations" thereof. *Id*. at 194.

After placing the dispute into its particular context within the National Labor Relations Act and related precedent, the Supreme Court explained that grievances over terms and conditions of employment that arise after the expiration of a collective bargaining agreement remain arbitrable only if the dispute has its "real source in the contract." *Id*. at 205. It expounded that a

> postexpiration grievance can be said to arise under the contract only where it involves facts and occurrences that arose before expiration, where an action taken after expiration infringes a right that accrued or vested under the agreement, or where, under normal principles of contract interpretation, the disputed contractual right survives expiration of the remainder of the agreement.

Id. at 205–06.

The Court then held that the employee grievances did not arise from the contract because the "order of layoffs" provision required consideration of factors like aptitude and ability that are fluid and change over time. *Id*. at 210. Therefore, the Court concluded that it

was unable to "infer an intent on the part of the contracting parties to freeze any particular order of layoff or vest any contractual right as of the Agreement's expiration"; thus, the grievances were not subject to the arbitration clause. *Id*.

Litton is not particularly instructive for our case. It was decided within the insular and statutory-based realm of federal labor-relation jurisprudence and involved issues related to an *expired* collective bargaining agreement rather than *terminated* license agreements, as we have here. And, although the Court held that the layoffs did not fall under what it deemed the "broad" arbitration clause from the collective bargaining agreement, *id.* at 193, that clause's breadth is eclipsed by the expansive clauses in the license agreements before us. For reasons already explained, Precision's wrongful garnishment claim fell squarely within the scope of these arbitration clauses because it touched upon and arose directly out of the attorney's fee provision from the 2012 agreement.

Finally, the mere fact that the events related to the wrongful garnishment occurred after the licenses were terminated does not, as JDH contends, preclude arbitration of Precision's wrongful garnishment claim under *Litton*. To the contrary, the *Litton* Court explicitly agreed that a dispute arising after expiration of a collective- bargaining contract could still be compelled to arbitration so long as it "clearly arises under the contract." *Id*. at 204 (quoting *Nolde Bros., Inc. v. Local No. 358, Bakery & Confectionery Workers Union*, *AFL-CIO*, 430 U.S. 243, 249, 97 S. Ct. 1067, 1071 (1977)). Again, that is exactly the situation we have here.

For these reasons, we hold that the arbitrator did not exceed its powers in deciding the wrongful

garnishment claim and, therefore, that this ground did not support vacatur of the arbitrator's award.

B. Attorney's Fees

JDH further contended that the arbitrator exceeded its powers by awarding to Precision an unreasonable amount of attorney's fees. It conceded that the arbitrator had the power to award *reasonable* attorney's fees but argued that the arbitrator had no power to award an *unreasonable* amount. According to JDH, the award of fees to Precision—which totaled "more than 55 times [the] awarded damages"—was excessive and, therefore, "*per se* unreasonable."[7] This argument fails for at least two reasons.

First, JDH's argument is not whether the arbitrator had the power to award attorney's fees, only that the arbitrator set the award incorrectly. Because there is no dispute as to whether the parties contracted to give the arbitrator the power to award attorney's fees, JDH cannot now seek judicial review of the specific amount awarded. *See Oxford Health Plans LLC*, 569 U.S. at 569, 133 S. Ct. at 2068 ("Because the parties bargained for the arbitrator's construction of their agreement, an arbitral decision even arguably construing or applying the contract must stand, regardless of a court's view of its (de)merits.") (internal quotations omitted). The arbitrator's award cannot be vacated on the grounds that it was decided incorrectly or contained errors in

[7] Relatedly, JDH also argued that the arbitrator's award of attorney's fees—as those fees pertained to the wrongful garnishment claim—supported vacatur because deciding that claim was outside the arbitrator's powers. Having held that it was within the arbitrator's powers to decide the wrongful garnishment claim, we overrule this argument.

interpretation or application of the law to facts. *See Ancor Holdings, LLC*, 294 S.W.3d at 829–30.

Additionally, there is not a full record or transcript of the arbitration proceedings in this case. In the absence of a complete record and transcript of the arbitration proceedings, we cannot determine the basis of the attorney's-fees award. *See Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84, 101–02 (Tex. 2011); *Statewide Remodeling v. Williams*, 244 S.W.3d 564, 569–70 (Tex. App.—Dallas 2008, no pet.). Without such a record, a reviewing court is to presume that the award was correct. *Nafta Traders, Inc.*, 339 S.W.3d at 101–02; *Statewide Remodeling*, 244 S.W.3d at 569–570. JDH, in seeking to vacate the arbitrator's decision, bore the burden of supplying a complete record to establish its grounds for vacatur. *See Statewide Remodeling*, 244 S.W.3d at 569–70. Because JDH failed to meet this burden, we must presume that the award of attorney's fees was reasonable. *See Nafta Traders, Inc.*, 339 S.W.3d at 101–02.

For these reasons, we hold that any argument that the award of attorney's fees was unreasonable could not support vacatur of the arbitrator's award.

C. Reasoned Award

Finally, JDH argued for vacatur on the ground that the arbitrator failed to issue a reasoned award—as requested by the parties—because the award did not (1) address JDH's contention that JDH did not make false statements to obtain its writ of garnishment or (2) provide any rationale for denying JDH's request for declaratory relief. We hold that the arbitrator issued a reasoned award.

To qualify as a "reasoned award," the arbitrator must submit a decision that is less than findings and

conclusions but more than a standard award. *YPF S.A. v. Apache Overseas, Inc.*, 924 F.3d 815, 820 (5th Cir. 2019); *see Stage Stores, Inc. v. Gunnerson*, 477 S.W.3d 848, 858–59 (Tex. App.—Houston [1st Dist.] 2015, no pet.). Both the "standard award" and "findings and conclusions" standards are well-known to courts. *YPF S.A.*, 924 F.3d at 820. A standard award is one that offers no explanation and merely announces a decision. *Id*. Findings and conclusions are much more exacting, requiring extensive explanation. *Id.*; *see Cat Charter, LLC v. Schurtenberger*, 646 F.3d 836, 844 (11th Cir. 2011). Accordingly, an arbitrator's award is reasoned if it provides greater detail than found in a standard award—that is, more than a mere announcement of the decision. *YPF S.A.*, 924 F.3d at 820.

The arbitrator's final award is a five-page document that includes an approximately two-page section titled "CONCLUSIONS AND REASONING." As to the particular claims, the award provides that

> [] A threshold and pivotal question is whether the 2005 Agreement and the 2012 Agreement could be terminated in a lawful manner. Yes, by the express terms both agreements, the 2005 Agreement and 2012 Agreement, could be and were lawfully terminated by [Precision].
>
> [] [JDH] did not carry it[]s burden of proof on its claims of breach by [Precision] of the 2005 Agreement and the 2012 Agreement. [JDH] is further estopped because it accepted the benefits to it under the 2005 Agreement and the 2012 Agreement.

> [] [JDH] did not carry it[]s burden of proof on any remaining claims of tortious interference and unfair competition.
>
> [] [JDH] did not carry it[]s burden of proof on Counts 6, 7, 8, 9, 10 and 11, which seek declaratory relief. The claims are not ripe or justiciable in the final hearing and [JDH] simply did not prove it[]s case (or defeat [Precision]'s defenses) on the requested declaratory relief. No declaratory judgment relief is granted to [JDH] against [Precision].
>
> [] [Precision] did carry it[]s burden of proof for a claim of wrongful garnishment by [JDH] against [Precision]. [Precision] is awarded damages as outlined below for a wrongful garnishment.

The award then outlines the parties' claims for attorney's fees, pointing to the attorney's fee provision in the 2012 agreement and also discussing the various legal bases upon which their claims could rest. The award then concludes that "[Precision] mainly succeeds and prevails on its claims and defenses and [JDH] does not," and it awarded Precision its attorney's fees. Finally, as to damages, the award declares that "[Precision] proved its wrongful garnishment claim[,] [that] the wrongful garnishment caused [Precision] damages," and that "[JDH] does not recover on it[]s claims against [Precision]."

We conclude that this award provided more detail than a mere announcement. *YPF S.A.*, 924 F.3d at 820. This becomes apparent if we juxtapose the award against the trial court's vacatur order, which constitutes an award of the simple, standard variety:

> On this day, the Court considered [JDH]'s Petition/Motion/Application to Vacate the [arbitrator's final award]. After considering the pleadings, the Motion, and arguments of the Parties, the Court is of the opinion that the Motion should be and hereby is GRANTED.
>
> THEREFORE, it is hereby ORDERED and DECREED that [Precision]'s Motion to Confirm Arbitration is DENIED.

Accordingly, we hold that vacatur was not supported on the ground that the arbitrator failed to enter a reasoned award.

IV. CONCLUSION

Having concluded that JDH failed to present any grounds that support vacatur of the arbitrator's award, we reverse the trial court's order vacating the arbitrator's award and render judgment confirming the award.

/s/ Brian Walker
Brian Walker
Justice

Delivered: August 31, 2022

APPENDIX B

FILE COPY

RE: Case No. 22-1184 DATE: 6/30/2023

COA #: 02-21-00374-CV TC#: 342-329266-21

STYLE: JDH PAC., INC. v. PRECISION-HAYES INT'L, INC.

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. (Justice Lehrmann not participating)

MR. MALCOLM EDWIN WHITTAKER

* DELIVERED VIA E-MAIL *

APPENDIX C

FILE COPY

RE: Case No. 22-1184 DATE: 8/18/2023

COA #: 02-21-00374-CV TC#: 342-329266-21

STYLE: JDH PAC., INC. v. PRECISION-HAYES INT'L, INC.

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review. (Justice Lehrmann not participating)

MR. MALCOLM EDWIN WHITTAKER
2341 GLEN HAVEN BLVD
HOUSTON, TX 77030-3607

* DELIVERED VIA E-MAIL*

APPENDIX D

Title 9—Arbitration
9 U.S.C.A. §§ 1–16

This title was enacted by act July 30, 1947, ch. 392, § 1, 61 Stat. 669

§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings,

under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

§ 5 Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or

umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

§ 6. Application heard as motion

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

§ 7. Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their

punishment for neglect or refusal to attend in the courts of the United States.

§ 8. Proceedings begun by libel in admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse

party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than

a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

§ 11. Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

§ 12. Notice of motions to vacate or modify; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of

motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

§ 14. Contracts not affected

This title shall not apply to contracts made prior to January 1, 1926.

§ 15. Inapplicability of the Act of State doctrine

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

§ 16. Appeals

(a) An appeal may be taken from—

(1) an order—

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order—

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.