No. 97193-5
No. 97194-3

SUPREME COURT
OF THE STATE OF WASHINGTON

BARNES, INC., Petitioner,

v.

MAINLINE ROCK & BALLAST, INC., Respondent,

On Appeal from:

Spokane County Superior Court
Cause No. 17-2-03345-1
Judge Tony Hazel

Division III
No. 35767-8
No. 35890-9

ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

Mainline Rock & Ballast, Inc. ("Mainline") is the Respondent and requests that the Supreme Court deny the petition for review.

B. COURT OF APPEALS DECISIONS

The Petitioner, Barnes, Inc. ("Barnes"), seeks review of two opinions of Division III of the Court of Appeals in Cause Nos. 35767-8 and 35890-9, both issued on April 16, 2019.[1]

C. ISSUES PRESENTED FOR REVIEW

1. Upon judicial review of an arbitration award under RCW 7.04A.230, whether a reviewing court is limited to examining the face of the arbitration award for an error of law and is precluded from wading into the merits of the dispute to find a potential error of law.

2. Whether the trial court and Court of Appeals properly declined to look behind the face of the arbitration award and to substitute their judgment as to admissibility of evidence under the context rule and as to the interpretation of contract terms.

3. Whether the trial court and Court of Appeals properly declined to look behind the face of the arbitration award and to substitute their judgment as to the prevailing party status of the disputants for purposes of awarding attorney's fees.

4. Whether the trial court and Court of Appeals properly declined to look behind the face of the arbitration award and to substitute their judgment as to whether the appropriate factual conditions existed for an award of prejudgment interest.

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[1] References to the clerk's papers refer to Cause No. 35767-8, unless otherwise indicated. The answers to the petitions for review are filed in both Supreme Court Cause Numbers.

5. Whether review of the companion case regarding Mainline's request for attorney's fees under RCW 7.04A.250(3) is warranted.

D. STATEMENT OF THE CASE

In its petition, Barnes criticizes Division III for its rendition of the facts as being "inaccurate in many respects." Barnes ignores the fact that there is no record upon which Division III could rely to recite the facts because the evidence was presented in arbitration and no record was available to the Court of Appeals on review. *Mainline Rock & Ballast, Inc. v. Barnes, Inc.*, ___ Wn.App. ___, 439 P.3d 662, 664 (2019). Barnes also ignores the fact that a court does not look at evidence behind an arbitration award when reviewing an award under RCW 7.04A.230. *Id*. As a result, Barnes' further rendition of "facts" in its petition is mostly unsupported, is self-serving, and is irrelevant to the issues on review.

For purposes of review, only a few key facts are relevant.

Mainline and Barnes are parties to a Master Blasting Agreement ("MBA"), in which Barnes agreed to provide drilling and blasting services for Mainline at certain quarry sites. CP 22-30. The MBA outlines basic terms and conditions for the drilling and blasting services. (MBA, ¶ 1.a). CP 22. The MBA does not provide for specific terms and conditions for services performed at specific locations, as it is to be further specified through work orders. *Id.*

Significantly, the MBA states that Barnes is only to be paid for "rock" materials blasted when Mainline is able to sell the materials:

> **9. Payment Terms:** Unless otherwise noted herein, Mainline agrees to pay for all *materials sold and invoiced*, in full, within 20 days of the end of the month in which the *rock is sold and invoiced*. . . .

(MBA, ¶ 9) (italics added). CP 23.

As of June 1, 2008, Mainline and Barnes entered into a Work Order Authorization for the Torrance, New Mexico site ("2008 Work Order"). CP 31. The 2008 Work Order established that Barnes would be paid for its drilling and blasting services based upon a unit price per ton of rock material *sold*. Both parties agreed that Barnes would only be paid based on the actual quantity of rock materials *measured and sold* by Mainline, rather than the amount blasted by Barnes. (2008 Work Order, ¶ 7). CP 31. This required that all of the commercial by-product materials had to be *sellabl*e material; Barnes would not be compensated for waste or reject materials.

The panel found this payment language to be critical in determining the parties' intent. If Barnes expected to be paid for all material blasted, Barnes could have negotiated payment based on total cubic yards blasted:

> The majority concludes that the unit price negotiated between Mainline and Barnes in June 2008 was inclusive of anticipated reject material. . . . *This was the purpose for having a unit price based on tons sold as opposed to a contract based on solid cubic yards blasted.*"

CP 39 (emphasis added).

In 2016, the parties executed a subsequent and updated Work Order (the "2016 Work Order"). CP 44. The terms remained essentially the same between the 2008 Work Order and the 2016 Work Order, except that the 2016 Work Order created two different prices for materials.

Between 2004 and 2017, Barnes drilled and blasted for Mainline, and Mainline paid Barnes based on the blasted materials actually sold. CP 39. This course of performance was also a significant finding by the arbitration panel in reaching its conclusions about the parties' intent:

> This conclusion is supported by the parties' course of performance and treatment of reject material from the time the quarry was established in 2004 up through the sale to Vulcan in April 2017.

CP 39.

The arbitration panel was tasked with determining the prices and quantities of all commercially sellable rock products at the site at the time of sale of the quarry in April 2017. The arbitration panel did exactly as tasked, determining the price and quantity for By-Product Inventory On-Hand; By-Product Inventory Loose under Jaw; and the value of in-progress drilling that had not been blasted (Drill Holes by Barnes). CP 38-39.

A majority of the panel determined that the $7.5 million claimed by Barnes was excessive and that Barnes was only entitled to an additional

payment of $354,839.50. CP 38-40. The arbitration panel also concluded that neither party was deemed to have substantially prevailed for purposes of awarding attorney's fees. CP 39. The panel also chose not to award Barnes any late fee or interest on the disputed payment amount. CP 40.

The trial court denied Barnes' motion to vacate the arbitration award. CP 114-116. Mainline then filed a motion for an award of attorney's fees pursuant to RCW 7.04A.250(3), which the trial court denied. CP 151-154. Barnes appealed the denial of its motion to vacate, and Mainline appealed the denial of its motion for attorney's fees. CP 136-141, 151-154.

In *Mainline Rock & Ballast, Inc. v. Barnes, Inc.*, ___ Wn.App. ___, 439 P.3d 662 (2019) (hereinafter *Mainline I*), Division III of the Court of Appeals affirmed the trial court's denial of Barnes' motion to vacate the arbitration award. On the same day, in *Mainline Rock & Ballast, Inc. v. Barnes, Inc.*, ___ Wn.App. ___, 439 P.3d 676 (2019) (hereinafter *Mainline II*), Division III reversed the trial court's denial of Mainline's request for attorney's fees and remanded the issue back for further proceedings.

E. ARGUMENT – WHY REVIEW IS UNNECESSARY

(1) Division III's Scope of Judicial Review of Arbitration Awards Is Consistent with Existing Precedent.

Barnes characterizes Division III's opinion in *Mainline I* as a precipitous departure from this Court's precedent. This is simply not the

case. Barnes criticizes Division III for declining to wade into the merits of the dispute. Barnes further criticizes Division III for declining to consider evidence beyond the face of the arbitration award. Because the Court of Appeals adhered to the established standards for judicial review, Barnes' petition should be denied.[2]

Judicial review of an arbitration award is limited to statutory grounds. *Barnett v. Hicks*, 119 Wn.2d 151, 153-54, 829 P.2d 1087 (1992). Courts will only review an arbitration decision "in very limited circumstances, such as when an arbitrator has exceeded his or her legal authority." *Kitsap Cty. Deputy Sheriff's Guild v. Kitsap Cty.*, 167 Wn.2d 428, 434, 219 P.3d 675 (2009). Arbitrators are deemed to have exceeded their authority by a "mistaken application of the law" or when the face of the arbitration award exhibits an "erroneous rule of law". *Boyd v. Davis*, 127 Wn.2d 256, 263, 897 P.2d 1239 (1995). A reviewing court will not review the merits of the decision of the arbitrators; rather, a reviewing court's action is "strictly limited to the statutory bases for confirmation, vacation, modification or correction." *Barnett,* 119 Wn.2d at 156. The

[2] In *dicta*, Division III questioned whether the facial legal error standard is a valid basis for review under RCW 7.04A.230 because the language does not appear in the statute. However, the Court of Appeals then proceeded to "follow Washington Supreme Court precedent" to decide the appeal in this case, including an analysis of whether the award contained a "legal error." *Mainline I*, 439 P.3d at 670.

court is not to consider the evidence that was before the arbitrator. *Davidson v. Hensen,* 135 Wn.2d 112, 119, 954 P.2d 1327 (1998). "[T]he facial legal error standard is a very narrow ground for vacating an arbitral award . . . [C]ourts may not search the arbitral proceedings for *any* legal error; courts do not look to the merits of the case, and they do not reexamine evidence." *Broom v. Morgan Stanley DW Inc.*, 169 Wn.2d 231, 239, 236 P.3d 182 (2010) (emphasis in original).

To support its petition, Barnes argues that Division III incorrectly held that it could not consider the underlying contract when reviewing the award for facial legal error. Barnes argues that this Court specifically authorized such reviews in its decisions in *Broom v. Morgan Stanley DW Inc.* and *Boyd v. Davis*, *supra*. However, Barnes' argument ignores the fact that the contract reviews in *Broom v. Morgan Stanley* and *Boyd v. Davis* were limited to determining issues of applicable law and not for the purpose of wading into the merits of the dispute. Division III correctly noted this distinction in its analysis. *Mainline I*, 439 P.3d at 671.

In *Broom*, the Court examined the agreement between the parties for the sole purpose of determining if there was any agreement on governing law. *Broom*, 169 Wn.2d at 239-240. Finding no agreement, the Court proceeded to review the award for legal errors in the context of Washington's statutes of limitations, noting that the parties could have

contractually modified the applicable law had they chosen to do so. *Id*. at 240-245. The Court did not engage in any evaluation of the merits of any contract issues or disputes.

In *Boyd*, the Court identified a number of Court of Appeals cases where underlying contracts were reviewed in the context of arbitration awards, but the Court specifically noted that those reviews were for the limited purpose of ascertaining "the law governing the disputed point." *Boyd*, 127 Wn.2d at 260. The Court then held that any analysis of the contract for the purpose of discerning the parties' intent constitutes an act of contract interpretation, which in turn, is "tantamount to trying the case de novo." *Id*. at 261. The Court then held that any such contract analysis involving the parties' intent is outside the scope of judicial review. *Id*. at 261-62.

In order for Barnes to obtain the relief it seeks on appeal, this Court would necessarily have to engage in contract interpretation to discern the parties' intent with respect to the terms and conditions of payment in the MBA and Work Orders. This request amounts to a trial de novo, except that this Court does not have the benefit of any record of the testimony and exhibits presented to and considered by the arbitration panel. In addition to lacking the necessary record to conduct a de novo review, such a request

completely undermines the efficiency and finality of arbitration that Mainline bargained for when it entered into the MBA with Barnes.

Barnes' citation to the federal decision of *Aspic Engineering and Construction Company v. ECC Centcom Constructors, LLC*, 913 F.3d 1162 (9th Cir. 2019) does not support review in any respect. First, it is an interpretation of the judicial standard of review under the Federal Arbitration Act, not the Washington Arbitration Act. *Aspic Engineering*, 913 F.3d at 1165-66. Second, it is not a case involving the interpretation of disputed contract terms. Instead, it is a case where the arbitrator admittedly chose to ignore express contract language because he felt it would be unjust to hold one party to it its terms, even though the prevailing party never argued that the terms should not apply. *Id*. at 1168.[3]

Barnes also argues that Division III erred by failing to consider the dissenting arbitrator's opinion in its review of the award. While Division III appropriately noted the risks of relying on a dissenting opinion that may misstate or misconstrue the majority's analysis or findings (*Mainline I*, 439 P.3d at 672), ultimately it makes no difference. The reason is that Division III stated that "even if we consider the arbitration panel dissent's writing,

[3] The Ninth Circuit noted that if the arbitrator's decision was based on evidence that the parties modified the contract by conduct or had competing interpretations, the court would not have a basis to vacate the award. *Aspic Engineering*, 913 F.3d at 1167-68.

our conclusion would not change." *Id*. at 672. Division III proceeded to explain why the arbitration panel could conceivably rely on evidence outside the terms of the written contract, particularly because the MBA "in fact does not include language that resolves the dispute" or "contains an ambiguity that cannot be resolved by other language" in the MBA. *Id*.[4]

Contrary to Barnes' arguments, Division III's decision maintains the strong public policies in favor of arbitration, rather than creating a risk of making arbitration less attractive. As noted by the Court of Appeals, "Arbitration seeks to avoid the formalities, delay, expense, and vexation of litigation in court." *Mainline I*, 439 P.3d at 670. Arbitration is attractive as an alternative to litigation specifically because of its finality. *Id*. If reviewing courts are allowed to look behind the award and examine every issue of contract interpretation and every decision regarding admissibility of evidence, parties lose all efficiency and finality, which are the primary benefits of arbitration.[5]

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[4] The Court of Appeals astutely noted that the dissenting arbitrator and Barnes both rely on extrinsic evidence to support their interpretations of the agreement, completely undermining Barnes' argument for vacating the award. *Mainline I*, 439 P.3d at 672.

[5] Before the post-arbitration proceedings, this case was a model for efficiency. Mainline issued its initial notice of intent to arbitrate on February 3, 2017 and the arbitration award was issued on May 31, 2017, a period of less than 4 months.

(2) Division III's Opinion Properly Rejects Barnes' Request to Wade into Issues of Admissibility of Evidence and the Reasonableness of Contract Interpretation.

Barnes argues that the arbitration panel misapplied established precedent on contract law and that such error exists on the face of the award. However, the fact that the arbitration panel references extrinsic evidence in the arbitration award does not establish the existence of a clear error of law on the face of the award.

Washington law does not preclude a trier of fact from considering the context in which an agreement is formed, as Washington follows the "context rule" in the interpretation of contracts. *Berg v. Hudesman*, 115 Wn.2d 657, 678–79, 801 P.2d 222 (1990). The context rule allows a fact finder to determine the intent of the parties by:

> ". . . viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties."

Berg, 115 Wn.2d at 667 (quoting *Stender v. Twin City Foods, Inc.*, 82 Wn.2d 250, 254, 510 P.2d 221 (1973)). In *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 115 P.3d 262 (2005), the Washington Supreme Court clarified the purposes for which extrinsic evidence could be used under the context rule, but it did not restrict the use of extrinsic evidence for the purpose of determining the meaning of specific words and

terms used in a written contract or to assist the trier of fact in understanding the reasonableness of respective interpretations advocated by the parties. *See Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

Barnes cites to *Lopez v. Reynoso*, 129 Wn.App. 165, 118 P.3d 398 (2005) for the proposition that terms and conditions not contained in a final integrated agreement must be disregarded. However, in *Lopez*, the Court of Appeals held that consideration of extrinsic evidence *was admissible* to show that an integration clause was not valid because it did not give effect to the actual agreement of the parties, as evidenced by the context in which the agreement was formed. *Lopez v. Reynoso*, 129 Wn.App. 165, 173, 118 P.3d 398 (2005), *review denied*, 157 Wn.2d 1003 (2006).

In this case, there was a dispute between the parties over the interpretation of the payment terms of the MBA and the Work Orders. Barnes argues that the MBA states that payment will be made for all materials that Barnes blasted, regardless of its character, quality, marketability, or intended use. However, neither the MBA nor the Work Orders state as much. Instead, each document specifically states that payment will be made for rock *sold* by Mainline. (MBA, ¶ 9, at CP 23; 2008 Work Order, ¶ 7, at CP 31) In addition, the MBA and Work Orders expressly state that payment would only be made for commercially sellable

"rock" products or "commercial by-product" (i.e., not for waste or reject materials). (MBA, ¶ 9, at CP 23; 2016 Work Order, Item 2, at CP 44)

In light of this limiting language in the MBA and Work Orders, the panel had to determine the parties' intent with respect to such terms as "rock" and "by-product stockpiled on-site to be sold" and "commercial by-product" material. To assist in interpreting the MBA and Work Orders and in evaluating the competing interpretations offered by Barnes and Mainline as to these terms, the panel appropriately considered the course of dealings between the parties to help define the parties' intent, stating:

> The majority concludes that the unit price negotiated between Mainline and Barnes in June 2008 was inclusive of anticipated reject material. *This conclusion is supported by the parties' course of performance and treatment of reject material from the time the quarry was established in 2004 up through the sale to Vulcan in April 2017.* In particular, by letter dated July 27, 2004, Barnes specifically noted that its negotiated unit price was inclusive of anticipated reject material. Barnes re-affirmed this understanding in its February 7, 2006 letter. Accordingly, the unit price Barnes negotiated and agreed to in June 1, 2008 Work Order Authorization (i.e., $0.87/tom) was inclusive of anticipated reject material. This was the purpose for having a unit price based on tons sold as opposed to a contract based on solid cubic yards blasted.

(Award, Summary ¶ 1) (emphasis added). CP 39. While the panel considered the July 2004 Letter of Understanding as part of the overall course of conduct, it was only one fact of many considered by the panel as part of the context of the overall agreement.

Contrary to Barnes' argument, the panel was allowed to consider this evidence even though there is an integration clause in the Agreement. "Agreements and negotiations prior to or contemporaneous with the adoption of a writing are admissible in evidence to establish . . . the meaning of the writing, whether or not integrated…" *Berg*, 115 Wn.2d at 668 (*quoting* Restatement (Second) of Contracts § 214(c)).

Furthermore, there is nothing on the face of the award to suggest that the panel relied upon the July 2004 Letter of Understanding to alter or vary the terms of the Agreement, as Barnes has argued. Instead, the panel relied upon evidence of the course of performance to assist in interpreting the language in the MBA and the Work Orders. Consideration of this evidence is permissible under Washington law and does not constitute error on the face of the award. *Hearst*, 154 Wn.2d at 503 (stating that extrinsic evidence can be used to help define specific terms or words).

Because it was not an error of law for the panel to consider evidence outside the MBA and Work Orders to help discern the parties' intent and because there is no evidence that the panel used the extrinsic evidence to alter or vary the terms of the MBA or Work Orders, Barnes' did not meet its burden to demonstrate an error of law on the face of the award.

Barnes also argues that the arbitration award contains an error of law in that the panel did not make a finding of the total tonnage of commercially

sellable rock by-product located at the site. Barnes fails to explain how this is an error of law. Regardless, the panel specifically made such findings when it calculated the quantities and prices of By-Product Inventory On-Hand and By-Product Inventory Loose Under Jaw as part of the award. CP at 38-39.

(3) Division III's Opinion Properly Defers to the Arbitration Panel's Determination of Prevailing Party Status.

Barnes argues that it must be the prevailing party, as a matter of law, solely because it was awarded a small fraction of the relief requested. Barnes misstates the law. First, a net award does not automatically equate to being a prevailing party. "If both parties prevail on major issues, however, there may be no prevailing party. In such situations, neither party is entitled to an attorney fee award. Accordingly, when both parties to an action are afforded some measure of relief and there is no singularly prevailing party, neither party may be entitled to attorney fees." *Phillips Bldg. Co., Inc. v. An*, 81 Wn.App. 696, 702, 915 P.2d 1146 (1996) (citations omitted).

In this case, Barnes asks the Court to assume—without the benefit of the complete record presented to the arbitration panel—that Mainline did not prevail on any issues presented or did not acknowledge some existing obligation to make a small payment under the MBA or Work Orders. The

fact is that Mainline prevailed on the most significant issue in the case—whether Barnes was to be paid for all materials blasted or only paid for commercially sellable rock products on hand at the site. Frankly, Mainline has the better argument to be the prevailing party, considering it successfully reduced a $7.5 million claim to $354,839.50.

These and other factors are what the arbitration panel had to consider in determining whether there was a prevailing party, and in doing so, the panel determined that each party prevailed on certain issues and that neither party substantially prevailed. As a result, it was within the panel's discretion to find no prevailing party. *Phillips Bldg. Co.*, 81 Wn.App. at 702.

Second, Barnes mistakenly argues that the arbitration panel is required to award attorney's fees. However, Washington's Arbitration Act specifically allows for the discretionary award of attorney's fees, where permitted by law:

> An arbitrator *may* award attorneys' fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

RCW 7.04A.210(2) (emphasis added). The use of "may" within a statute allows the decision-maker to exercise discretion. *Powell v. Rinne*, 71

Wn.App. 297, 301, 857 P.2d 1090 (1993). Nothing in the statute mandates that the arbitration panel award attorney's fees as a part of their award.

In its attempt to obtain review, Barnes tries to argue that Division III's decision conflicts with existing precedent on the issue of attorney's fees, citing to *Agnew v. Lacey Co-Ply*, 33 Wn.App. 283, 654 P.2d 712 (1982). While Division III calls into question the validity of the *Agnew* decision (just as Division II previously did in *Morrell v. Wedbush Morgan Sec. Inc.*, 143 Wn.App. 473, 487, 178 P.3d 387 (2008)), the *Agnew* case is distinguishable from this case and does not justify further review by this Court. The reason is that the *Agnew* case involved a situation where the arbitration panel simply did not address the issue of prevailing party, whereas in this case, the panel specifically considered the issue and made a finding that both parties prevailed on issues, resulting in no substantially prevailing party. *See, e.g., Morrell*, 143 Wn.App. at 487-88 (denying motion to vacate where award when the "face of the award supports the panel's decision that neither party prevailed for the purpose of awarding fees")

Barnes argues that it must be awarded fees because it was forced to arbitrate to recover money under the contract. This argument ignores the fact that it was Mainline who initiated the arbitration process because Barnes was making completely unreasonable demands for exorbitant

payments that were not justified under the MBA and Work Orders. CP 34-36. While Barnes received an affirmative award, it was Mainline who ultimately prevailed on the main issue in the case, i.e., the proper method for determining quantities for payment.

Ultimately, Barnes' argument sets a dangerous precedent of allowing a reviewing court to second-guess the decision-making of the arbitration panel without having the benefit of receiving and considering all the evidence, the briefing, and the arguments of the parties. Barnes' argument would strip arbitration of its benefits by eliminating the facial legal error standard of review in favor of a de novo standard of review. Division III's decision accurately recognized this flaw in Barnes' argument.

(4) Division III's Opinion Properly Defers to the Arbitration Panel's Determination whether Conditions Exist for Award of Prejudgment Interest.

Barnes' final contention for vacating the award rests upon the panel's decision not to award a late fee or interest to Barnes. However, the determination of whether interest is due and the amount of interest delves into the merits of the case. Division III's decision follows existing precedent on this issue and does not warrant review by this Court.

"[A] trial court has no collateral authority to go behind the face of an arbitration award and determine whether additional amounts are appropriate." *Morrell*, 143 Wn.App. at 485. In *Westmark Properties, Inc.*

v. McGuire, 53 Wn.App. 400, 766 P.2d 1146 (1989), the Court of Appeals determined that the trial court erred when it determined pre-judgment interest should be added to an award. "Inasmuch as the court was foreclosed from going behind the face of award, it had no basis for determining whether the amount awarded met the test for prejudgment interest; this was part of the merits of the controversy, forbidden territory for a court." *Westmark Properties, Inc. v. McGuire*, 53 Wn.App. 400, 404, 766 P.2d 1146 (1989).

In this case, the award clearly states that "[a]ny and all further claims or requests for relief of any type by either Mainline or Barnes in this arbitration are denied with prejudice." CP 40. The issue of interest and late fees was thus considered by the panel and denied; therefore, no further award or consideration is necessary, as the panel did not go outside its authority and the award remains facially valid.

(5) Review of the Published Companion Case Is Only Warranted if Review of this Case is Granted.

Review of Division III's decision in Cause No. 35890-9 is only warranted if this Court grants review of Cause No. 35767-8, as the issue presented in Cause No. 35890-9 involves a prevailing party analysis under RCW 7.04A.250(3), which states that a "court may add to a judgment confirming, vacating without directing a rehearing, modifying, or correcting

an award, attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made."

If the Court grants review in Cause No. 35767-8, the outcome of the review could impact the prevailing party analysis in Cause No. 35890-9.

F. CONCLUSION

While Division III's published opinion, through *dicta* only, suggests that a broader limit on the scope of judicial review would advance the strong public policies in support of arbitration, the actual standard of judicial review employed by Division III is consistent with this Court's precedent with respect to the scope of judicial review of arbitration awards under RCW Chapter 7.04A. As a result, this Court should affirm the decisions in Cause Nos. 35767-8 and 35890-9. Costs on appeal, including reasonable attorney's fees, should be awarded to Mainline. RAP 18.1.

DATED this 19th day of June, 2019.

Respectfully submitted,

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I HEREBY CERTIFY that on the 19th day of June, 2019, I caused to be served a true and correct copy of the forgoing **Answer to Petition for Review** to be electronically served on the following:

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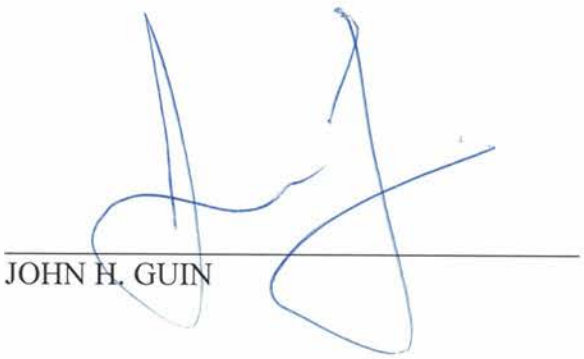

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