IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

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No. A-1-CA-41447 and 41458
(consolidated for purpose of opinion)

STATE OF NEW MEXICO ex rel. RAÚL TORREZ, ATTORNEY GENERAL,

Plaintiff-Appellee,

v.

PHILIP MORRIS USA, INC. and SHERMAN'S 1400 BROADWAY N.Y.C., LLC,

Defendants-Appellants,

and

AMERICAN TOBACCO COMPANY, et al.,

Defendants.

and

STATE OF NEW MEXICO ex rel. RAÚL TORREZ,

Plaintiff-Appellee,

v.

R.J. REYNOLDS TOBACCO COMPANY; SANTA FE NATURAL TOBACCO COMPANY, INC.; COMMONWEALTH BRANDS, INC.; COMPANIA INDUSTRIAL DE TOBACOS MONTE PAZ, S.A.; DAUGHTERS & RYAN, INC.; ITG BRANDS, LLC; JAPAN TOBACCO INTERNATIONAL USA, INC.; KING MAKER MARKETING, INC.; KRETEK INTERNATIONAL, INC.; LIGGETT GROUP, LLC; PETER STOKKEBYE TOBAKSFABRIK A/S; PREMIER MANUFACTURING INC.; P.T. DJARUM; SCANDANAVIAN TOBACCO GROUP; LANE LTD.; TOP TOBACCO, LP; VON EICKEN GROUP; FARMERS TOBACCO COMPANY OF CYNTHIANA, INC.; and WIND RIVER TOBACCO COMPANY, LLC,

Defendants-Appellants,

and

AMERICAN TOBACCO COMPANY, et al.,

Defendants.

APPEALS FROM THE DISTRICT COURT OF SANTA FE COUNTY
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OPINION

BOSSON, Justice, retired, sitting by designation.

{1} Appellants Philip Morris USA, Inc., *et al.*, and R.J. Reynolds Tobacco Company, *et al.*, (collectively, Participating Manufacturers or PMs) separately appeal the district court's adjudication of two motions stemming from a long-standing dispute regarding Appellee State of New Mexico's performance, pursuant to a Master Settlement Agreement (MSA) entered into by the parties in 1998. "Because [these] appeals involve the same underlying proceedings and raise related issues, we exercise our discretion to consolidate [the] appeals for decision." *See State ex rel. Child., Youth & Fams. Dep't v. Carmella M.*, 2022-NMCA-052, ¶ 1 n.1, 517 P.3d 284; Rule 12-317(B) NMRA. Due to the factual and legal complexity of these issues, we begin with a recitation of the general background underlying both motions. We then provide specific facts and relevant legal analysis within the sections pertaining to each individual motion and the corresponding actions taken by the district court.

{2} We affirm in part and reverse in part.

BACKGROUND

{3} In 1998, forty-six states and five U.S. territories (Settling State or Settling States), along with the largest tobacco companies in the country, entered into the MSA, effectively concluding a years-long, complex litigation initiated by the

Settling States against the tobacco companies seeking to recover healthcare costs that stemmed from the treatment of tobacco-related illnesses. Under the terms of the MSA, the Settling States agreed to release and discharge all claims against the tobacco companies in exchange for the tobacco companies making sweeping changes to their business practices and meeting certain obligations to the Settling States. One such obligation required the PMs—i.e., those tobacco companies that are either original or subsequent signatories to the MSA—to make millions of dollars in annual payments to each of the Settling States. The total, annual amount owed to each Settling State, from all of the relevant PMs, is known as the Settling State's "Allocated Payment."

{4} However, not all tobacco companies that operate within the country are subject to the MSA. The companies that are not subject to the MSA are known as "Non-Participating Manufacturers" (NPMs). Because the NPMs operate without the constraints of the MSA inhibiting their businesses, there is the potential for the PMs to suffer a competitive disadvantage and a considerable loss in market share to their competitors on account of the large sums of money the PMs are required to pay to the Settling States. To account for this, the MSA provides for what is known as the "NPM Adjustment": a reduction in the amount the PMs are required to pay to the Settling States in order to offset the "Market Share Loss" suffered by the PMs on account of their obligations under the MSA.

{5} By default, for any year in which the PMs experience a Market Share Loss that is greater than zero as a result of the provisions of the MSA, the NPM Adjustment requires that the Allocated Payment of each Settling State be reduced "by subtracting from such Allocated Payment the product of such Allocated Payment amount multiplied by the NPM Adjustment Percentage." *See* MSA § IX(d)(1)(A).[1] In other words, the Allocated Payments owed by the PMs to each Settling State will be reduced by a fluctuating percentage for each year in which the PMs experience a Market Share Loss greater than zero due to the provisions of the MSA. The NPM Adjustment differs from year to year.

{6} A Settling State may avoid having its Allocated Payment reduced by the NPM Adjustment if it has enacted and diligently enforced a "Qualifying Statute" "during the entire calendar year immediately preceding the year in which the payment in question is due." MSA § IX(d)(2)(B). For the purposes of the MSA, a Qualifying Statute is one that "effectively and fully neutralizes the cost disadvantages that the [PMs] experience vis-à-vis [NPMs] within such Settling State as a result of the provisions of [the MSA]." MSA § IX(d)(2)(E). In essence, although an NPM Adjustment is calculated for each of the Settling States, any Settling State that enacts and diligently enforces a Qualifying Statute does not have its Allocated Payment

[1] For all references to the MSA, the full text may be found at https://www.naag.org/wp-content/uploads/2020/09/2019-01-MSA-and-Exhibits-Final.pdf.

reduced by the NPM Adjustment. Any Settling State, however, that does not enact a Qualifying Statute, or failed to enforce it in the preceding year, is subject to the NPM Adjustment.

{7} To add to the complexity, the NPM Adjustments for "diligent" states do not disappear. Instead, the NPM Adjustments of all "diligent" states are aggregated and then reallocated among all "non-diligent" states pro rata in proportion to their respective shares of the market. *See* MSA § IX(d)(2)(C). The "2004 Common Case Findings" for the "2004 NPM Adjustment Proceedings" summarize the consequences of this reallocation scheme as follows:

> As a result of this reallocation provision, the greater the number of Settling States that do not establish that they diligently enforced the provisions of their Qualifying Statutes, the more widely the NPM Adjustment is spread thereby reducing the share of the Adjustment that each such [Settling] State bears.
>
> Conversely, if only a few Settling States have failed to diligently enforce their Qualifying Statutes for a given year, those Settling States face a more concentrated application of the NPM Adjustment—and hence a greater reduction of their payments for that year, subject only to the limitation that the [NPM] Adjustment applied to a Settling State can be no greater than the total MSA payment it received for that year.

In other words, the more Settling States that are found to be "diligent," the larger the reduction each "non-diligent" Settling State suffers to its "Allocated Payment."

{8} An "Independent Auditor"—a nationally recognized public accounting firm jointly selected by the PMs and Settling States—is responsible for calculating all of the relevant amounts owed pursuant to the MSA, incorporating all necessary

adjustments and reductions, including the application of the NPM Adjustment. *See* MSA § XI(a), (b). By the language of the Agreement, "[a]ny dispute, controversy or claim arising out of or relating to calculations performed by, or any determinations made by, the Independent Auditor . . . shall be submitted to binding arbitration before a panel of three neutral arbitrators, each of whom shall be a former Article III federal judge. . . . The arbitration shall be governed by the United States Federal Arbitration Act [(FAA)]." MSA § XI(c).

{9} In 2016, two Arbitration Panels (Birch and Legg Panels) were formed to address challenges to and issues regarding the 2004 NPM Adjustment as calculated and applied to multiple Settling States, including New Mexico. The Panel proceedings were split into two parts. The first involved the parties and the Birch and Legg Panels jointly resolving issues that applied broadly to all of the involved Settling States. For the second part of the 2004 NPM Adjustment Proceedings, each Settling State was assigned to one of the two Arbitration Panels, which then "conducted individual [s]tate-[s]pecific hearings to allow them to separately consider the evidence and issues relevant to the specific [Settling] State[] to which each was assigned."

I. The 2004 Arbitration Award

A. Procedural History

{10} New Mexico's state-specific hearing was conducted over a seven-day period between February and March 2022. The arbitration panel assigned to conduct New Mexico's state-specific hearing (Arbitration Panel or Panel) was comprised of three retired Article III judges: the Honorable Stanley F. Birch (11th Cir.); the Honorable Bruce D. Black (D.N.M.); and the Honorable Philip M. Pro (D. Nev.). As was the case with most of the other state-specific hearings, the issue presented to the Panel was whether New Mexico had diligently enforced its Qualifying Statute in 2004. Additionally, the hearings involved extensive commentary on New Mexico's use of a piece of "Complementary Legislation" that was intended to assist the State in its diligent enforcement of the Qualifying Statute.

{11} For context, the MSA promulgated a "Model Statute," which the PMs and Settling States all collectively agreed would constitute a valid Qualifying Statute if enacted by a Settling State. The Model Statute attempts to eliminate the NPMs' unfair competitive advantage by requiring each NPM to make escrow deposits per unit of tobacco sold in the respective Settling State. All of the Settling States enacted the Model Statute, including New Mexico. However, there were a number of considerable shortcomings and loopholes in the Model Statute that made enforcement particularly difficult. To counteract this, most Settling States—

including New Mexico—enacted complementary legislation in 2003, which granted the Settling States additional remedial powers to identify and penalize NPMs that were noncompliant under the terms of the Qualifying Statutes. New Mexico's version of the Complementary Legislation made it easier for the State to track and identify the NPMs operating within the State through the creation of a certification process and an NPM registry. The Complementary Legislation also gave the State additional options by which it could hold noncompliant NPMs accountable, and provided new tools for collecting larger NPM payments and depositing them into escrow more frequently.

{12} During the Arbitration Panel hearings, the State took the position that it had adequately taken advantage of the tools made available to it via the Complementary Legislation to require escrow payments from the NPMs, and, accordingly, it had diligently enforced its Qualifying Statute. The Arbitration Panel found otherwise. Seemingly using the terms of the Complementary Legislation as the framework for its analysis, the Arbitration Panel found that New Mexico had not properly managed the NPM registry and failed to determine which entities were obligated to make escrow deposits. The Panel also found that the State had failed to secure adequate payments from those entities it had successfully identified. The Arbitration Panel concluded that New Mexico had failed to diligently enforce its Qualifying Statute. It did so not only on the basis that the State had failed to effectively utilize the

provisions of the Complementary Legislation, but also on the basis that the State failed to take any meaningful action at all. Furthermore, independent of any mention of the Complementary Legislation, it was apparent to the Arbitration Panel that New Mexico had failed to diligently enforce its Qualifying Statute because less than half of the NPMs operating in New Mexico had paid any amounts into escrow between 2003 and 2004. The State's own witnesses corroborated the fact that less than half of the NPMs operating in the State were compliant with the established regulations.

{13} On this basis, the Arbitration Panel concluded the following:

> While diligent enforcement is an ongoing process, the fact that limited efforts were made to identify and penalize or disqualify noncompliant distributors until that point makes it difficult to find in favor of the State on this issue. [The State was] cognizant of the necessity of diligent enforcement of the MSA in 2004. [Its] resources were clearly too limited, and [it] lacked the necessary focus and organization to achieve that goal. This Panel must conclude that New Mexico did not diligently enforce the MSA until at least December 2004 and as the PMs argued "that was too little too late for 2004."

{14} The State appealed the decision of the Arbitration Panel to the First Judicial District Court of the State of New Mexico, moving to vacate the Panel's determination and award. In its motion to vacate, the State argued that it had presented evidence during the arbitration hearings that showed that "only 1.7 [percent] of NPM sales in the State had not been covered by escrow deposits and thus were non-compliant with the Qualifying Statute for 2004 sales." The State argued that the Arbitration Panel impermissibly required the State to abide strictly

by the terms of the Complementary Legislation as a necessary condition for finding that the State had diligently enforced its Qualifying Statute. This additional requirement, the State argued, constituted a functional amendment to the MSA through the insertion of additional enforcement requirements that went beyond the scope of the Arbitration Panel's authority.

{15} In their response in opposition to the State's motion to vacate, the PMs argued that the Arbitration Panel did not exceed the scope of its authority. Instead, the PMs argued, as the MSA does not define "diligent enforcement," the Panel necessarily based its analysis on multiple state-specific factors, including the availability and features of the Complementary Legislation. The PMs explained that the Arbitration Panel's decision did not hinge on the State's failure to adequately utilize the tools given to them via the passage of the Complementary Legislation. Instead, the Panel's decision was based on the "serious deficiencies across all aspects of the State's enforcement regime, including resource allocation, collection and verification of data, reporting compliance, audits, inspections, sanctions, lawsuits, enforcement actions, escrow deposit rate, and interagency coordination."

{16} The district court agreed with the State. It held that the Arbitration Panel "departed from the [MSA]'s clear and unambiguous language of the limited scope of the State's diligent enforcement obligations" by "expanding the State's diligent enforcement obligations beyond the Qualifying Statute required by the plain

language of the MSA to require Compl[e]mentary Legislation, tax code enforcement and the application and enforcement of other laws." The district court therefore found that the Arbitration Panel materially amended the MSA by adding in these additional requirements, and that such an amendment was beyond the scope of the Panel's authority. The court granted the State of New Mexico's motion to vacate the 2004 award.

{17} The PMs appealed to this Court.

B. Discussion

1. The District Court Erred in Vacating the Arbitration Panel's 2004 Award

{18} The question before the district court, and the question now before us, is not whether the Arbitration Panel made a mistake of fact or law in reaching its conclusion that the State of New Mexico failed to adequately enforce its Qualifying Statute in 2004. *See Fernandez v. Farmers Ins. Co. of Ariz.*, 1993-NMSC-035, ¶ 9, 115 N.M. 622, 857 P.2d 22 (holding that "the district court does not have the authority to review arbitration awards for errors as to the law or the facts"). We do not, and indeed cannot, review whether the Arbitration Panel was incorrect in its ultimate conclusion. *See id.* ¶ 12 (holding that an arbitration panel's decision cannot be reversed "even if arguably incorrect" as long as its actions were "a permissible exercise of its arbitral power"). The sole question is whether, in reaching that conclusion, the Arbitration Panel exceeded the scope of its authority. *See* NMSA

1978, § 44-7A-24(a)(4) (2001) ("Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if[] an arbitrator exceeded the arbitrator's powers.").

{19} Arbitrators exceed their powers "when the arbitrators rule on a matter that is beyond the scope of the arbitration agreement" or make an award that is "inconsistent with the arbitration agreement." *Fernandez*, 1993-NMSC-035, ¶ 17. Although making this determination necessitates a review of the facts and the Arbitration Panel's conclusions, we do so only to ensure that the Arbitration Panel considered facts upon which it had the authority to rely, and made conclusions that it had the authority to reach. Because this case involves matters of both contract and statutory interpretation, our review is de novo. *See Sipp v. Buffalo Thunder, Inc.*, 2024-NMSC-005, ¶ 15, 546 P.3d 1266 ("Contract interpretation is a matter of law that we review de novo." (internal quotation marks and citation omitted)); *Tucson Elec. Power Co. v. N.M. Tax'n & Revenue Dep't*, 2020-NMCA-011, ¶ 6, 456 P.3d 1085 (providing that our interpretation of a statute "is a matter of law that we review de novo" (internal quotation marks and citation omitted)).

{20} The district court vacated the Arbitration Panel's 2004 award, reasoning that the Panel had exceeded its authority by penalizing the State "for deficient enforcement of the Compl[e]mentary Legislation" and "expand[ing] the State[']s enforcement obligations to include enforcement of the tax code and other laws,"

thereby inappropriately amending the terms of the MSA to require more than diligent enforcement of a Qualifying Statute.[2] On appeal, the PMs argue that the court erred, stating that the Arbitration Panel's award cannot be interpreted as requiring mandatory compliance with the terms of the Complementary Legislation such as would constitute an amendment to the terms of the MSA. We agree.

{21} As previously discussed, the Qualifying Statute consisted of a number of defects, which made its enforcement particularly challenging. The Complementary Legislation is a set of enforcement tools passed by the New Mexico Legislature to assist the State in diligently enforcing the more amorphous requirements of the Qualifying Statute. As such, the Complementary Legislation and Qualifying Statute are inextricably linked. To the extent the State argues that it used the Complementary Legislation to meet its requirements under the MSA, as it did in the 2004 NPM Adjustment Proceedings, it is appropriate for the Arbitration Panel to evaluate such a claim and determine whether the Complementary Legislation was adequately used

[2]The State also argues that the Arbitration Panel erred in its definition of what constitutes "diligent enforcement" under the terms of the MSA. However, this argument was not raised before the district court, so to the extent the State is making a right-for-any-reason argument, we decline to consider it. *See Meiboom v. Watson,* 2000-NMSC-004, ¶ 20, 128 N.M. 536, 994 P.2d 1154 (providing that our appellate courts "may affirm a district court ruling on a ground not relied upon by the district court, but will not do so if reliance on the new ground would be unfair to appellant" (alteration, internal quotation marks, and citation omitted)); *Romero v. Bd. of Cnty. Comm'rs*, 2011-NMCA-066, ¶ 7, 150 N.M. 59, 257 P.3d 404 ("[W]e can affirm if the district court was correct for any reason *that was before it* on the basis of the presentations of the parties." (emphasis added)).

to achieve diligent enforcement of the Qualifying Statute. However, this cannot be the sole factor for consideration in the Arbitration Panel's analysis. If the State had otherwise competently and diligently enforced its Qualifying Statute without resorting to the use of the Complementary Legislation, then it would have been an abuse of authority to penalize the State for its failure to utilize the Complementary Legislation, thereby going beyond the scope of the MSA. *See* MSA § IX(d)(2)(B) (providing that the only requirement for avoidance of the NPM Adjustment is the diligent enforcement of a Qualifying Statute). But that is not what happened here.

{22} Under the terms of the MSA, a Qualifying Statute is one that "effectively and fully neutralizes the cost disadvantages that the [PMs] experience vis-à-vis [NPMs] within such Settling State as a result of the provisions of [the MSA]." *See* MSA § IX(d)(2)(E). By logical extension, not only must a Settling State abide by the terms of its Qualifying Statute, the Settling State must be effective in doing so. If the cost disadvantages have not been fully neutralized, then the Qualifying Statute has not been diligently enforced. In rendering its decision, the Arbitration Panel explicitly provided the framework it used to reach its conclusion, stating that "the Panel has evaluated the evidence presented to determine whether New Mexico has met its burden to show by a preponderance of the evidence that its efforts to monitor NPM compliance, to detect non-compliance, and to compel NPM compliance with its Qualifying Statute were diligent in the context of the facts, law and circumstances

existing in New Mexico throughout the relevant 2004 time period." The Panel makes it clear that its ultimate focus is on the diligent enforcement of the Qualifying Statute, not strict adherence to the Complementary Legislation.

{23} The State is correct that the Panel then devotes a significant portion of its analysis to reviewing whether the State properly utilized the tools given it by the Complementary Legislation to achieve diligent enforcement. But the reason for this singular focus is clear: the State's argument in support of its diligence was predicated almost entirely on its use of the Complementary Legislation. After the conclusion of New Mexico's state-specific NPM Adjustment hearing before the Arbitration Panel, the State submitted a post-hearing brief. In its brief to the Panel, the State reiterated the basis for its argument that it had diligently enforced the Qualifying Statute. In support, the State cited to its alterations to the allocable share release provision within the Qualifying Statute and the creation of an NPM directory as an enforcement tool to ensure NPMs remained compliant with the requirements of the Qualifying Statute. Both of these changes were a result of the Complementary Legislation. The State itself further argued that the passage of the Complementary Legislation, including the requirement that the NPMs make quarterly escrow deposits, was perhaps the most important step taken in the State's efforts at diligent enforcement of its Qualifying Statute. Accordingly, the Arbitration Panel's analysis

of the State's efforts to effectively utilize the Complementary Legislation to diligently enforce the Qualifying Statute was not only understandable, but necessary.

{24} As an example, the Arbitration Panel's award states that "[t]he logical first step to enforcing New Mexico's Qualifying Statute is to determine which PMs . . . and NPMs are obligated to deposit escrow." From what is available to us in the record, it appears that all of the State's efforts to identify these entities stemmed from the tools provided via the Complementary Legislation. The Panel determined that the State was deficient in this regard, as "[t]he evidence showed only 6 Registered NPMs" in the State, and that the actions taken "did not constitute diligent enforcement of New Mexico's Qualifying Statute." It is incorrect to characterize this conclusion as the Arbitration Panel mandating that the State adhere to the Complementary Legislation. Instead, it was the Arbitration Panel's finding that the State had failed to diligently enforce the Qualifying Statute by any means, including the singular means—the Complementary Legislation—through which the State attempted to do so.

{25} The Arbitration Panel further found that the State failed to ensure escrow compliance, did not identify and sanction those NPMs that violated the escrow requirements, and failed to reduce the NPM share of sales. The Panel concluded that "only 38 [percent] of the 2003 NPM sales resulted in proper escrow payments and 2004 was actually worse." The conclusions of the Panel can be summarized as

follows: the State failed to identify relevant NPMs, failed to acquire any meaningful amount of escrow payments, and failed to adequately penalize those entities that did not meet the State's requirements. These conclusions are largely independent of the Complementary Legislation, and instead go to the heart of the matter: whether the actions taken by the State constituted diligent enforcement of the Qualifying Statute and effectively nullified the cost disadvantages suffered by the PMs as a result of the terms of the MSA. The Arbitration Panel found that the State's actions did not constitute diligent enforcement.

{26} The State further argues that the Panel's consideration of "very subjective claims about the State's enforcement of the Qualifying Statute" along with its consideration of the use of the Complementary Legislation makes it "impossible to separate these factors from each other to determine how the Panel would have decided if it had stuck to the Qualifying Statute." However, as we have already noted, the Panel's reliance on deficiencies in the State's use of the Complementary Legislation was a direct result of the evidence presented to it. Had the State argued a myriad of ways in which it allegedly satisfied the requirements of the MSA, and the Arbitration Panel had found that the State failed in its diligent enforcement *exclusively* because it failed to utilize the Complementary Legislation, this argument would have merit. However, the Arbitration Panel did not so limit its analysis, and

its discussion of the Complementary Legislation was predicated on the very evidence supplied to it by the State.

{27} The State also attempts to defend the district court's decision by arguing that the Arbitration Panel manifestly disregarded established contract law by ignoring the plain language of the MSA, acting contrarily to the intent of the parties, and inserting additional requirements into the MSA. First, while simultaneously arguing that state law should apply, the State encourages us to adopt the federal definition and test for "manifest disregard" that does not currently exist in our case law. Additionally, the State argues that our standard does not allow for vacating arbitration awards that make simple errors of law, but that "manifest disregard" of the law is more egregious and can be a basis for vacatur. Even if we were to agree with the State on this point, and were to adopt this standard, there is no evidence that the Arbitration Panel's actions rose to this level. "Manifest disregard" for law requires an element of deliberateness: an arbitration panel must be aware of the law and willfully disregard it. *See ARW Expl. Corp. v. Aguirre*, 45 F.3d 1455, 1463 (10th Cir. 1995) (characterizing manifest disregard of the law as "willful inattentiveness to the governing law" that goes beyond simple "error or misunderstanding with respect to the law" (internal quotation marks and citations omitted)). This could be satisfied if the State were right that the Arbitration Panel deliberately interpreted the Qualifying Statute and Complementary Legislation to impose new requirements, but

we have already rejected this argument. Additionally, as to the State's other claims of willful disregard, the Panel stated in its award that its rejection of other principles and evidence was the result of its good-faith assessments of the credibility of the witnesses and evidence before it. We see nothing in the State's presentations to the district court or to us that disprove this statement, or otherwise show that the Arbitration Panel willfully disregarded the appropriate law.

{28} Lastly, the State's overall argument relies on the assumption that the Panel improperly characterized the Complementary Legislation as an amendment to the MSA and the Qualifying Statute, based in part on the Panel's usage of that term within the award. However, it is clear that this language stemmed from the State itself, whose attorneys occasionally characterized it as such. Indeed, it is clear from our review of the record that the State was not sure how to characterize the Complementary Legislation, sometimes referring to it as "amendments" and sometimes referring to it as a set of helpful enforcement tools, supplementing the firm requirements of the Qualifying Statute. What is certain, however, is that it was not the intent of the Arbitration Panel to characterize this as an amendment such as would fundamentally change the Qualifying Statute to require additional, mandatory requirements. To use the State's own words, the Complementary Legislation is best viewed as a "framework for monitoring compliance with the . . . statutory escrow obligations imposed on NPMs" established by enacting "legislative changes to

strengthen the Qualifying Statute." There is no evidence that the Arbitration Panel considered it any differently.

{29} The district court vacated the Arbitration Panel's award on the ground that it "exceeded [its] powers." *See* § 44-7A-24(a)(4). Arbitrators exceed their powers "when the arbitrators rule on a matter that is beyond the scope of the arbitration agreement, inconsistent with the arbitration agreement, removed from their consideration by statute, or removed from their consideration by case law." *Fernandez*, 1993-NMSC-035, ¶ 17 (citations omitted). The Arbitration Panel limited its review to the ultimate question that was concretely within the sphere of its authority: whether New Mexico diligently enforced its Qualifying Statute. In doing so, the Panel appropriately considered relevant state-specific factors, including the Complementary Legislation, but did not exceed the bounds of its authority by making any of these state-specific factors mandatory requirements for diligent enforcement. The district court erred when it held otherwise. Accordingly, we reverse.

II. The 2022 Reallocation Order

A. Procedural History

{30} As alluded to at the outset, when a Settling State is found to be diligent in the enforcement of its Qualifying Statute, the NPM Adjustment value that would have reduced the Settling State's Allocated Payment does not disappear. Instead, "[t]he

aggregate amount of the NPM Adjustments that would have applied to the Allocated Payments of those Settling States that are not subject to an NPM Adjustment . . . shall be reallocated among all other Settling States pro rata in proportion to their respective Allocable Shares." MSA § IX(d)(2)(C). In other words, a Settling State that is found to be non-diligent in the enforcement of its Qualifying Statute shall receive a reallocated portion of the NPM Adjustments of all other Settling States that are found to be diligent. Accordingly, the more Settling States that are found to be diligent, the larger the reduction each non-diligent State suffers to its Allocated Payment.

{31} Sometime after the creation of the MSA, the Settling States sought an alternative method of dispute resolution to avoid the lengthy and complex arbitration process otherwise required for the Settling States to prove their diligence and avoid the NPM Adjustment. During an earlier set of NPM Adjustment Proceedings, a separate agreement (Term Sheet Settlement Agreement) was reached between the PMs and some of the Settling States, in which the Settling States agreed to settle their claims under the MSA and waive their ability to prove their diligence. These States became known as the "Resolved States." In exchange, the Resolved States received a significant reduction in the amount by which their Allocated Payment would have been reduced had they been found to be non-diligent. However, it was unclear how the reallocation provision should be applied to the Resolved States.

Given that the Term Sheet Settlement Agreement eliminated any finding of diligence, (1) should the Resolved States be treated as diligent or non-diligent, and (2) should their NPM Adjustments be reallocated? The attempted solutions provided during the 2003 NPM Adjustment Proceedings were rejected, and these remained open questions.

{32} In 2017, the Birch and Legg panels responsible for the 2004 NPM Adjustment Proceedings—the subject of this present action—attempted to answer these outstanding questions. In the Birch and Legg panels' 2017 reallocation order (the 2017 Reallocation Order), they devised the following scheme in an attempt to balance the interests of the PMs, the Resolved States, and those Settling States that declined to sign the Term Sheet Settlement Agreement (Arbitrating States). Any Resolved State that chose to settle and waive its right under the MSA to pursue a finding of diligence via federal arbitration—in exchange for a smaller reduction in its Allocated Payment—would be presumed non-diligent for the purposes of reallocation. In other words, its share of the NPM Adjustment would not be reallocated among the non-diligent Arbitrating States. However, this circumstance created a deficit whereby the PMs' payments to the States would not be subjected to the full reduction to which they would ordinarily be entitled under the NPM Adjustment. To balance this, the 2017 Reallocation Order created a second step of the process, by which the PMs could rebut the presumption of non-diligence by

proving that a Resolved State had, in fact, diligently enforced its Qualifying Statute in the relevant year. If the PMs were successful in their challenge, the Resolved State's NPM Adjustment would then be reallocated among the non-diligent Arbitrating States. Ironically, this results in the PMs and Settling States reversing positions; instead of arguing that a Settling State is non-diligent, the PMs are now arguing for a State's diligence, and the State is now attempting to defend a presumption of non-diligence.

{33} In 2022, the 2004 NPM Adjustment Proceedings panels reversed course, issuing a new reallocation order (the 2022 Reallocation Order), which laid out some additional rules governing the reallocation of the NPM Adjustments of the Settling States. The 2022 Reallocation Order determined that under the MSA, the only mechanism by which a Settling State can avoid being subject to the NPM Adjustment is by enforcing a Qualifying Statute in the relevant year, and proving its own diligent enforcement. As such, the plain language of the MSA does not allow for any alternative process that would allow for a PM to step into the shoes of a Settling State and prove that state's diligence. Under the MSA, the only entity that is allowed to prove a Settling State's diligence is the Settling State itself. In summary, the Arbitration Panel held: (1) there must be explicit *proof* of a Settling State's diligence in order for the State to be considered "diligent," exempted from the NPM Adjustment, and have its NPM Adjustment reallocated—i.e., there can be

no *presumption* of diligence; and (2) the Settling State itself is the only entity permitted to prove its diligence. To the extent the 2017 Reallocation Order allowed otherwise, the Panel held that it constituted an improper amendment to the MSA, which exceeded the bounds of the 2017 Panel's authority. Accordingly, the 2022 Reallocation Order vacated the 2017 Reallocation Order.

{34} In its place, the 2022 Reallocation Order introduced a new scheme, which it viewed to be in line with the plain language of the MSA. Under the new order, there is a non-rebuttable presumption of non-diligence for any Resolved State. As such, and solely for the purposes of calculating reallocation, "the Resolved States must be deemed to be subject to the 2004 NPM Adjustment." Accordingly, the NPM Adjustments of the Resolved States are not aggregated and redistributed among the non-diligent Arbitrating States.

{35} The PMs moved the district court to vacate the 2022 Reallocation Order, arguing that the Order "exceeded the [Arbitration] Panel's authority by impermissibly amending the parties' contract and refusing to consider material evidence relevant to an arbitrable dispute." The district court denied the PMs motion, holding that "[t]he 2004 Panel had the authority to interpret the relevant provisions of the MSA and it did so." The PMs appealed.

B. Discussion

1. The Arbitration Panel Did Not Exceed Its Authority in Entering the 2022 Reallocation Order

{36} Again, in determining whether the Arbitration Panel exceeded its powers, *see* § 44-7A-24(a)(4), we must look to whether the arbitrators "rule[d] on a matter that is beyond the scope of the arbitration agreement, inconsistent with the arbitration agreement, removed from their consideration by statute, or removed from their consideration by case law." *See Fernandez*, 1993-NMSC-035, ¶ 17 (citations omitted). There is no argument that the latter two factors apply, so we look only to the first two. Our review is de novo. *See Sipp*, 2024-NMSC-005, ¶ 15 ("Contract interpretation is a matter of law that we review de novo." (internal quotation marks and citation omitted)).

{37} Our goal in engaging in contract interpretation is to "ascertain the intentions of the contracting parties." *Mendoza v. Isleta Resort & Casino*, 2020-NMSC-006, ¶ 20, 460 P.3d 467 (internal quotation marks and citation omitted). "If a contract is unambiguous, [an appellate court's] role is to interpret the contract according to the intent of the contracting parties." *Id.* "When a contract is clear as written, a court must give effect to the contract and enforce it as written." *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, ¶ 67, 299 P.3d 844 (internal quotation marks and citation omitted). We therefore look to the plain language of the MSA to discern whether the

Arbitration Panel's 2022 Reallocation Order significantly altered the framework provided by the MSA, such that the Panel exceeded the scope of its authority.

{38} First, it is clear that the Arbitration Panel had the authority to issue the 2022 Reallocation Order, and to speak on the application of the reallocation provision. The MSA's arbitration clause specifies that the arbitration panel is authorized to decide "any dispute concerning the operation or application of any of the . . . allocations described in subsection IX(j)." MSA § XI(c). Subsection IX(j), in relevant part, discusses the reallocation provision. Accordingly, the Panel had the authority to resolve the dispute concerning how the reallocation provision should be applied to the Resolved States. The Panel did not exceed its authority in entering the 2022 Reallocation Order.

{39} Furthermore, it is clear that the 2017 Reallocation Order constituted an improper amendment to the MSA, and the Panel was justified in vacating it. The MSA does not contemplate any condition in which a PM and Settling State can essentially swap places, with the PM now advocating for the State's diligence and the State arguing for its non-diligence. *See* MSA § IX(d)(2)(B). The 2017 Reallocation Order's creation of such a procedure is directly antithetical to the plain language of the MSA. In rectifying this error, the Panel was acting in accordance with the plain language of the MSA. The Panel did not exceed its authority by vacating the 2017 Reallocation Order. We now turn to whether the Arbitration Panel

had the authority to create the specific reallocation scheme contemplated by the 2022 Reallocation Order.

{40} Looking to the MSA, it is clear that the application of the NPM Adjustment is the default. MSA § IX(d)(2)(A) ("The NPM Adjustment . . . *shall* apply to the Allocated Payments of all Settling States, except as set forth [in Section IX(d)(2)(B)]."). There is only one circumstance in which a Settling State may avoid the NPM Adjustment: the diligent enforcement of a Qualifying Statute in the relevant calendar year. MSA § IX(d)(2)(B). In essence, all Settling States are presumed non-diligent and have the NPM Adjustment applied to their Allocated Payments. The reallocation provision therefore lies dormant, and only triggers if a Settling State can successfully refute this presumption by proving its diligence.

{41} This is all that the 2022 Reallocation Order does. It states that all Resolved States—those which have waived their right to prove their diligence by entering into the Term Sheet Settlement Agreement—are presumed non-diligent and their NPM Adjustments are not reallocated. The PMs argue that the Panel has wrongfully shirked its duties by avoiding determining the diligence or non-diligence of the Resolved States, and calculating the proper reallocation amounts. However, there is nothing compelling a Settling State to pursue its exclusion from the NPM Adjustment. That is simply the only option if it desires to avoid a finding of non-diligence. By the plain text of the MSA, any Settling State could refuse to enact a

Qualifying Statute, or decline to prove its diligent enforcement. Entering into the Term Sheet Settlement Agreement appears to be another way of doing so. The 2022 Reallocation Order merely reaffirms this default condition.

{42} The plain text of the MSA does not require any Settling State to affirmatively prove its diligence. As such, the district court did not err in finding that the Arbitration Panel did not exceed its authority or contravene the text of the MSA, *see Fernandez*, 1993-NMSC-035, ¶ 17, by entering the 2022 Reallocation Order. We affirm the district court's denial of the PMs' motion to vacate the 2022 Reallocation Order.

III. The New Mexico Court of Appeals Has Jurisdiction to Decide This Appeal Under Both the FAA and the New Mexico Uniform Arbitration Act

{43} Lastly, we turn to the State's argument that the New Mexico Uniform Arbitration Act (NMUAA), NMSA 1978, §§ 44-7A-1 to -32 (2001), governs this proceeding and bars the Court of Appeals from deciding this appeal. Specifically, the State argues that, in vacating the Arbitration Panel's 2004 state-specific award, the district court directed the Arbitration Panel to conduct a rehearing, depriving this Court of jurisdiction under the NMUAA to decide this appeal.

{44} At the outset, we note that we are hesitant even to address the State's argument. Any ambiguity in the proceedings below that resulted in the present circumstances was created by the State, not by the PMs. The order that the State now

argues deprives this Court of jurisdiction was promulgated by the State, and contains no language indicating whether or not a rehearing was directed. The State now asks us to construe this ambiguity in its favor, despite the fact that the State created that same ambiguity. The State could have taken any corrective action between the entry of the order some two years ago and now to rectify the confusion or pursue a rehearing. It has not done so. In the interest of fairness, we are not inclined to allow the State to exploit the ambiguous circumstances it helped to cause.

{45} However, despite our hesitation, there are separate jurisdictional, procedural, and policy questions underlying this issue that will benefit from further exploration. We take up this matter to address and resolve these outstanding concerns.

A. The FAA Versus the NMUAA

{46} The language of the MSA clearly specifies that any disputes regarding the diligence of a Settling State, the amount of a Settling State's Allocated Payment, or the amount of a Settling State's NPM Adjustment, among others, "shall be submitted to binding arbitration before a panel of three neutral arbitrators, each of whom shall be a former Article III federal judge" and that "[t]he arbitration shall be governed by the United States [FAA]." MSA § XI(c). There is, therefore, no question that the FAA governed the proceedings before the Arbitration Panel.

{47} However, it remains an open question whether proceedings concerning a motion to vacate the decision of the federal arbitration panel, filed in state court,

continue to be governed by the FAA, or instead are governed by the state arbitration act of the Settling State in which the action is brought. The State of New Mexico argues that the NMUAA applies, given the MSA's language selecting state courts as the forum for the resolution of MSA implementation and enforcement actions, *see* MSA § VII(a), and its selection of state law to govern such proceedings, *see* MSA § XVIII(n). The PMs, however, argue that the selection of the FAA to govern the arbitration proceedings carries through to an appeal of the arbitration panel's decision in state court.

{48} Most other states faced with a similar challenge have avoided resolving this issue, due to the similarities between their state acts and the FAA. However, there are procedural distinctions between the NMUAA and the FAA that make our analysis more challenging. The FAA places no bars on an appeal from a district court's grant of a motion to vacate an arbitration panel's decision. *See* 9 U.S.C. § 16(a)(1)(E) ("An appeal may be taken from an order modifying, correcting, or vacating an award."). The NMUAA, however, does not allow for an appellate court to review the district court's grant of a motion to vacate if the district court also simultaneously granted a rehearing before an arbitration panel. *See* § 44-7A-29. The State argues that the district court granted its request for a rehearing, and under the NMUAA, the Court of Appeals is now barred from hearing the appeal.

{49} However, despite the procedural distinctions between the FAA and the NMUAA with regard to the appealability of a district court's grant of a motion to vacate, we decline to address the question of which arbitration act applies. We conclude that this Court possesses jurisdiction over this appeal under either act, and that in all other relevant respects, the FAA and NMUAA are substantively identical, eliminating the need for further parsing.

{50} Under the FAA, our jurisdiction is clear: "An appeal may be taken from an order modifying, correcting, or vacating an award." 9 U.S.C. § 16(a)(1)(E). This grant of jurisdiction is not qualified or limited in any way. If the FAA applies, this Court clearly has the authority to hear the present appeal. If the NMUAA applies, however, "[a]n appeal may be taken from an order vacating an award *without directing a rehearing*." Section 44-7A-29(a)(5) (emphasis added). Despite this limiting language, we find that we possess jurisdiction over this appeal because the district court did not explicitly direct a rehearing. Furthermore, even if a rehearing had been ordered, practical finality applies in this limited circumstance to prevent these errors from becoming permanent and unassailable, with financial consequences extending far beyond New Mexico's borders.

B. The District Court Did Not Direct a Rehearing

{51} In its "Motion to Vacate 2004 Final Arbitration Award," the State asked the district court for two forms of relief: (1) to vacate the Arbitration Panel's award in

favor of the PMs, and (2) to order that a new hearing be held before a newly-convened arbitration panel. The district court granted the State's motion, but did not specify the scope of relief, simply ordering that the "State of New Mexico's Motion to Vacate the 2004 Final Arbitration Award is GRANTED." While we reverse the district court's order in this regard as explained above, the order itself makes no mention of the State's request for a rehearing, and the order's reasoning is limited to its analysis and conclusion that the Arbitration Panel exceeded the scope of its authority. "Where the language of a judgment or decree is clear and unambiguous, it must stand and be enforced as it speaks." *Allred v. N.M. Dep't of Transp.*, 2017-NMCA-019, ¶ 41, 388 P.3d 998 (text only) (citation omitted). However, given the lack of an explicit grant of the State's request for a rehearing, we are unable to discern from the plain text of the order whether the district court intended to order a rehearing. To resolve the ambiguity, we look elsewhere.

{52} When the plain language of a district court order is ambiguous, we look to other indicia of the district court's intent, construing the judgment "in the light of the pleadings, other portions of the judgment, findings, and conclusions of law." *Fed. Nat'l Mortg. Ass'n v. Chiulli*, 2018-NMCA-054, ¶ 14, 425 P.3d 739. Ultimately, "[o]ur goal in construing an ambiguous judgment is to determine the intention and meaning of the author." *See Allred*, 2017-NMCA-019, ¶ 23 (alteration, internal quotation marks, and citation omitted). In the record, the State's request for

a new hearing is referenced only twice: once, as previously mentioned, in its motion to vacate, and again at the hearing held on the State's motion. During the hearing, the State requested the district court to vacate the 2004 Arbitration Award and remand for a rehearing. The district court then clarified that the State was not seeking a strict rehearing, but was seeking a new hearing before a new arbitration panel, which the State confirmed. The court then inquired further as to what directive the district court should provide to the new panel, if the court were to grant the State's request. The hearing concluded with the district court requesting that both parties submit proposed orders, without giving any indication as to whether it intended to grant the State's request for a new hearing.

{53} It is clear that the district court was aware of the State's request for a new hearing, as well as the scope of its request. However, the district court's order granting the State's motion to vacate makes no mention of the State's request, and fails to explicitly grant it. The order lacks any language remanding the matter to either the previously established arbitration panel or a new panel. Furthermore, it is common for a district court ordering a rehearing to issue instructions to the arbitration panel on remand regarding the scope of their review. *In re State of Haw. Org. of Police Officers (SHOPO*) *v. Cnty. of Kauai*, 230 P.3d 428, 429 (Haw. Ct. App. 2010) (explaining that the lower court vacated an arbitration award and "remanded [the] matter to the arbitrator *with instructions* to rehear the issue of what

remedy [was] appropriate" (emphasis added)); *Neb. Dep't of Health & Hum. Servs. v. Struss*, 623 N.W.2d 308, 312 (Neb. 2001) (stating that the district court explicitly directed "that the matter be remanded for a rehearing before a new arbitrator" and instructed that the scope of the rehearing was to allow the appellant to present additional evidence); *E. Tex. Salt Water Disposal Co. v. Werline*, 307 S.W.3d 267, 269 (Tex. 2010) (stating that the district court's judgment "ordered that the matter be re-submitted to arbitration by a new arbitrator with the sole issue before that [a]rbitrator being whether or not there was a material breach of [an employment agreement]" (internal quotation marks omitted)).[3] In contrast, although the district court here directly inquired as to which instructions it should provide to the new arbitration panel if it were to order a new hearing, the order does not contain any such instructions.

{54} Finally, the NMUAA specifies that when a district court vacates an award and orders a rehearing, "[t]he arbitrator must render the decision in the rehearing within the same time as that provided in Section [44-7A-20(b)]." *See* § 44-7A-24(c). Section 44-7A-20(b) states that "[a]n award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court." Here, the arbitration clause within the MSA provides no timeframe by

[3]We cite these out-of-state authorities only to illustrate that when courts vacate an arbitration award and order a rehearing, courts consistently provide detailed instructions to govern and inform the scope of the panel's review on remand.

which the award must be rendered. Accordingly, even if a rehearing were ordered, it was for the district court to set the timeframe for the rehearing. The district court did not do so, and no hearing has been pursued in the two years since the district court entered its order vacating the Arbitration Panel's 2004 award.

{55} There are only two possible conclusions: either the district court directed a rehearing, or it did not. The court did not explicitly direct a rehearing in its order vacating the Arbitration Panel's award, nor did the court verbally express an intent to do so. The order contains no remand instructions, nor any directive to the Arbitration Panel regarding the scope of its subsequent proceedings. The district court did not provide any timeline by which a new panel would be required to render a new decision. Accordingly, there are no indications that the district court intended to order a rehearing, and therefore we hold that no rehearing was directed. *See Allred*, 2017-NMCA-019, ¶ 23 ("Our goal in construing an ambiguous judgment is to determine the intention and meaning of the author." (alteration, internal quotation marks, and citation omitted)). As such, under both the FAA and the NMUAA, this Court has jurisdiction over these appeals. *See* 9 U.S.C. § 16(a)(1)(E) ("An appeal may be taken from an order modifying, correcting, or vacating an award."); § 44-7A-29(a)(5) ("An appeal may be taken from an order vacating an award without directing a rehearing.").

C. The District Court's Order Is Practically Final and Appealable

{56} We also find merit in noting that, even if the district court had ordered a rehearing, due to the extraordinary and unique circumstances posed by this litigation and appeal, the Court of Appeals would still possess jurisdiction under the NMUAA. Section 44-7A-29(a)(5) provides that an order vacating an award is appealable if it does not direct a rehearing. Our courts have never had an opportunity to interpret or construe the language of Section 44-7A-29(a)(5), but courts in other states have construed statutes with similar language. Although the language of the subsection does not use the word "finality," other states have held that the rationale behind barring an appeal when a rehearing has been ordered is that the arbitration proceedings have not yet been completed, and there is no final order in the action. *See Struss*, 623 N.W.2d at 314 ("[A] lower court's order [that] . . . vacates an arbitration award without directing a rehearing finally terminates the arbitration process and thus renders such order suitable for review, whereas an order [that] directs a rehearing is premature for appellate review because the arbitration process has not been completed."); *In re SHOPO*, 230 P.3d at 432 (holding that an order vacating an arbitration award and remanding for further proceedings "extended, rather than concluded, the arbitration process" and is not "sufficiently final to be suitable for appellate review").

{57} However, not all forms of rehearing are the same in scope. If a court orders a rehearing for the limited purpose of requiring the same arbitration panel to take a simple, corrective action, there is a reasonable argument to be made that such an action is not a final order. But that is not what happened here. In this instance, the State requested a new hearing, before a new arbitration panel. The Supreme Court of Texas has held that in just such a circumstance—where an arbitration panel's award is vacated and the court orders a new hearing before a new panel—such an order "is as final a decision as an appellate court's remand of a case to a trial court for a new trial, and therefore appealable." *Werline*, 307 S.W.3d at 272.[4]

{58} We are not without precedent to follow Texas's example. In New Mexico, appellate courts are allowed in extremely limited circumstances to exercise our jurisdiction and review a non-final order if it is deemed to be practically final. *See State v. Ahasteen*, 1998-NMCA-158, ¶¶ 12-13, 126 N.M. 238, 968 P.2d 328, *abrogated on other grounds by State v. Savedra*, 2010-NMSC-025, ¶ 9, 148 N.M. 301, 236 P.3d 20. "Under the doctrine of practical finality an appellate court will review a remand order if the issue raised on appeal would, as a practical matter, not

[4]In *Werline*, the Supreme Court of Texas was interpreting a provision of the Texas General Arbitration Act (TAA) that is virtually identical to Section 44-7A-29(a)(5) of the NMUAA. *See Werline*, 307 S.W.3d at 270 ("Section 171.098(a) [of the TAA] states: 'A party may appeal a judgment or decree entered under this chapter or an order: . . . (5) vacating an award without directing a rehearing.'" (quoting Tex. Civ. Prac. & Rem. Code Ann. § 171.098 (West 1997, amended 2025))).

be available for review after a decision on remand." *Id.* ¶ 12 (internal quotation marks and citation omitted); *see State v. Heinsen*, 2005-NMSC-035, ¶ 14, 138 N.M. 441, 121 P.3d 1040 (explaining that "[t]he practical finality exception recognizes that the rule of finality is not an absolute, inflexible rule, but a term that is to be given a practical, rather than a technical, construction" (internal quotation marks and citation omitted)). We are cognizant of the fact that "practical finality is the exception, rather than the rule" and that our courts "appl[y] it cautiously, in limited circumstances." *Heinsen*, 2005-NMSC-035, ¶ 15. This is such a circumstance, where "the issue raised on appeal will not be available for review if the [PMs are] deprived of an immediate appeal." *Id.*

{59} If we do not decide this issue now, there is a strong possibility that it will never be available for appellate review, meaning that the error—reversing the arbitration decision—would become entrenched and unassailable, causing a grave injustice. Here, the district court erroneously vacated the Arbitration Panel's award on the basis that the Panel improperly considered elements of the Complementary Legislation in finding that New Mexico was not diligent in enforcing its Qualifying Statute. If we were to determine that we do not have jurisdiction to decide this appeal because a rehearing was ordered, the issue will be remanded for a new hearing before a new arbitration panel. Indeed, the new arbitration panel might reach a new decision, relying on the erroneous reasoning of the district court. Given that an error

of law or fact is not a basis for overturning an arbitration panel's award, the very error that we are now called upon to review would become shielded by the extremely narrow grounds upon which an arbitration panel's award can be vacated. *See Fernandez*, 1993-NMSC-035, ¶ 9 (holding that "the district court does not have the authority to review arbitration awards for errors as to the law or the facts"). In other words, the moment a new arbitration panel applies the faulty reasoning relied upon by the district court, that same reasoning would become shielded from review and vacatur.

{60} In addition, the consequences of failing to correct this error now may be extensive and widespread. Pursuant to the terms of the MSA, if the new arbitration panel, relying on faulty reasoning, reaches a new conclusion finding that the State diligently enforced its Qualifying Statute, then New Mexico's NPM Adjustment will be reallocated pro rata among all the other non-diligent Settling States. This could result in significant reductions to other Settling States' Allocated Payments. If we do not rectify this mistake now, the error can never be remedied. This is exactly the limited, but critical, circumstance in which the doctrine of practical finality applies. *Ahasteen*, 1998-NMCA-158, ¶¶ 12-13.

{61} Although an order vacating an arbitration award and directing a rehearing is not one of the specific appealable orders enumerated in Section 44-7A-29(a), that list of appealable orders is not exclusive. *See N.M. Dep't of Health v. Maestas*, 2023-

NMCA-075, ¶ 14, 536 P.3d 506 ("[W]e do not treat [Section 44-7A-29] as an exclusive list of orders that may be appealed." (internal quotation marks and citation omitted)). "When an order concerning arbitration is not one of the orders listed in Section 44-7A-29(a), the question of whether the order is appealable as of right depends on whether the order is final, and finality must be determined by applying the general law concerning finality of judgments in civil cases." *Id.* ¶ 15 (alteration, internal quotation marks, and citation omitted). Here, the district court's order "is as final a decision as an appellate court's remand of a case to a trial court for a new trial, and therefore appealable." *See Werline*, 307 S.W.3d at 272. Even if a rehearing had been directed, this is the exact unique circumstance that authorizes our use of the doctrine of practical finality, and we will exercise our jurisdiction accordingly to ensure the merits of this action are heard. *See Ahasteen*, 1998-NMCA-158, ¶¶ 12-13; *Heinsen*, 2005-NMSC-035, ¶ 14. The proper administration of justice so requires it.

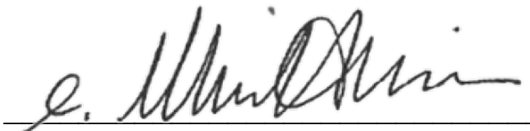
CONCLUSION

{62} For the foregoing reasons, we reverse the district court's vacatur of the final award for the State of New Mexico 2004 NPM Adjustment proceeding, and remand for the reinstatement of the award. Otherwise, we affirm.

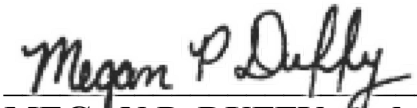
{63} **IT IS SO ORDERED.**

RICHARD C. BOSSON, Justice,
Retired, Sitting by Designation

WE CONCUR:



J. MILES HANISEE, Judge



MEGAN P. DUFFY, Judge