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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-42-00219
Appellate Case No. 2025-000346

Jo Ann Blackwell, Michelene Brooks, and Samuel H. Owens, Jr., individually and on behalf of all others similarly situated, ... Respondents,

v.

Mary Black Health System, LLC, d/b/a Mary Black Memorial Hospital; CHSPSC, LLC; and Professional Account Services, Inc..... Petitioners.

PETITIONERS MARY BLACK HEALTH SYSTEM, LLC, d/b/a MARY BLACK MEMORIAL HOSPITAL, CHSPSC, LLC, AND PROFESSIONAL ACCOUNT SERVICES, INC.'S REPLY TO RETURN IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

James Lynn Werner; SC Bar No. 6029
Katon E. Dawson Jr.; SC Bar No. 101167
PARKER POE ADAMS & BERNSTEIN LLP
1221 Main Street, Suite 1100
Post Office Box 1509 (29202)
Columbia, South Carolina 29201
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
jimwerner@parkerpoe.com
katondawson@parkerpoe.com

Attorneys for Petitioners

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INTRODUCTION

Over one panel member's dissent, the Court of Appeals issued a decision here that directly conflicts with a decision issued by the same panel, on the same day, concerning when a nonsignatory who is trying to enforce and take a benefit from a contract with an arbitration clause is bound by that clause. That conflict, in turn, invites confusion and gamesmanship by encouraging future plaintiffs to employ artful pleading to avoid arbitration. Through this Petition, Defendants ask this Court to resolve the conflict, clarify the law, and avoid the confusion, inconsistency, and gamesmanship that the majority's ruling invites.

In response, Plaintiffs do not explain how the two decisions can be reconciled. Nor are they convincing in their attempt to explain how the majority's decision will not invite gamesmanship—indeed, they confirm that their own artful pleading led to the majority's misguided ruling. Plaintiffs' arguments also highlight the majority's misunderstanding as to how the doctrine of direct benefits estoppel works; how courts, including the U.S. Supreme Court, interpret common class action waivers; and under what circumstances an appellate court should exercise its discretion to review collateral orders when a facing a related appealable order.

Defendants, therefore, respectfully request that their Petition be granted.

ARGUMENT

I. Plaintiffs Cannot Reconcile the Conflict Between the Court of Appeals Decision Here and the Same Panel's Decision in *Bennett*.

This appeal involves the doctrine of direct benefits estoppel. That doctrine provides that—as a matter of equity and fairness—a nonsignatory to a contract containing an arbitration clause may not seek to receive a direct benefit from the contract's terms while refusing to comply with the contract's arbitration clause.

Here, a Court of Appeals majority found that the doctrine did not apply to Plaintiff Owens, even though he is trying to enforce and benefit from the terms of a contract containing an

arbitration clause. But, as explained in the Petition, that decision cannot be squared with the decision of the same panel issued on the same day in *Bennett v. ACS Primary Care Physicians-Southeast P.C.*, 444 S.C. 458, 908 S.E.2d 110 (Ct. App. 2024). Both cases are putative class actions challenging the defendants' (in both cases hospital systems or related entities) alleged practice of billing the plaintiffs instead of plaintiffs' health insurers for medical services, allegedly in violation of the defendants' agreements with those insurers. The plaintiffs in both cases seek to derive a benefit from the agreements between the hospitals and insurers in the form of reduced medical charges. In both cases, the plaintiffs allege claims for unjust enrichment and injunctive relief. And the appeals in both cases raise the same legal issue—whether the doctrine of direct benefits estoppel applies in such circumstances. (Pet. at 7–9, 11–14).

Faced with these virtually indistinguishable cases, the Court of Appeals panel reached divergent answers. What was the basis for these divergent outcomes? Superficial differences in how the respective plaintiffs styled one out of three claims in each case. Superficialities aside, however, these two decisions cannot both be right, and Plaintiffs' attempts to explain away the conflicts between them are unavailing, as follows.

A. Plaintiffs do not meaningfully address or distinguish *Bennett*.

Tellingly, Plaintiffs do not address *Bennett* until page 12 of their 19-page Return. And, once they do address the case, Plaintiffs do not even try to address the multiple conflicts identified in Defendants' Petition.

They do not explain, for example, how the unjust enrichment claim in *Bennett* can be meaningfully distinguished from the same claim here. Thus, neither the court nor Plaintiffs provide an answer as to how two claims—each positing the same theory of liability based on indistinguishable material allegations—can lead to opposing outcomes on the application of direct benefits estoppel. (Pet. at 11–12).

For example, Plaintiffs here alleged—just like the plaintiffs in *Bennett*—that it would be unjust for Defendants to retain certain unidentified funds "because payment for the services provided should have come from the health insurance carriers of Plaintiffs and the Class Members, with the amount to be paid for services provided determined *by the contracts between Defendants and patients' health insurance carriers*." (R. 76 ¶ 73 (emphasis added); *see also* Case No. 2021-001342, R. 46 ¶ 73 (Bennett complaint alleging that '[h]ad Defendant followed the terms of the [agreement with plaintiffs' health insurance carriers], it would have receive less money for these services")). Accordingly, the panel's holding in *Bennett* that the claim there is "based on an alleged duty arising *solely* from the terms of the Provider Agreement" cannot be squared with the majority's unexplained holding that Plaintiff's unjust enrichment claim in this case "does not rely" on those agreements at all. (Panel Op. at 11). To this, Plaintiffs have no response.

Other conflicts in the decision are similarly unanswered. In the Petition, Defendants explained that the two decisions conflict on the central issue of how a court is to determine whether, or when, direct benefits estoppel applies. (Pet. at 12–13). Similarly, Defendants explained how the two decisions conflict as to whether alleged discounts between a health insurer and a provider suffice as a direct benefit. (Pet. at 13). And Defendants explained how the two decisions conflict as to the relevance, and timing, of the plaintiffs' knowledge of the agreements between a health insurer and provider to the direct-benefits-estoppel analysis. (Pet. at 13).

Plaintiffs respond to none of this. Their silence speaks volumes.

B. Plaintiffs admit to engaging in artful pleading to avoid arbitration.

Plaintiffs instead argue that the cases can be reconciled because one claim (out of three) in *Bennett* alleged a breach of the *defendants'* contract with the health insurers, while one claim (out of three) in the instant case alleged tortious interference with *Plaintiffs'* contract with the health insurers. (Ret. at 12–13). Not only is that a distinction without a difference (a point explained in

more detail in the Petition and below), accepting it would encourage gamesmanship and efforts at artful pleading by allowing future plaintiffs to avoid arbitration by obscuring the true nature of their claims.

Rather than disagree, Plaintiffs admit to engaging in the very gamesmanship that cries out for this Court's review. That is, Plaintiffs affirmatively say they engaged in artful pleading, which, according to them, has "long" been "recognized" as "critically important" and one of "the lawyer's most critical skills." (Ret. At 14–15). Plaintiffs are wrong.

The phrase "artful pleading" describes when a plaintiff "artfully (i.e., *misleadingly*)" omits or disguises facts to obscure the true nature of a claim. *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 271–72 (2d Cir. 2005) (emphasis added); *see also*, *e.g.*, Black's Law Dictionary (12th ed. 2024) (defining "artful pleading" as "[a] plaintiff's disguised phrasing of a federal claim as solely a state-law claim in order to prevent a defendant from removing the case from state court to federal court"); *Pueschel v. U.S.*, 369 F.3d 345, 355 (4th Cir. 2004) (explaining that parties may not "frustrate the goals of *res judicata* through artful pleading"). As such, "artful pleading" is an exception to the well-pleaded complaint rule, allowing courts to look past the allegations of the complaint when a plaintiff strategically omits facts or otherwise disguises a claim for tactical advantage.

Despite all this, Plaintiffs here *admit* that they styled their claim in tort "to avoid arbitrating claims," asserting that there is "nothing wrong" with such artful pleading. (Ret. At 15). That too is wrong. For example, the Texas Supreme Court held in similar circumstances that a plaintiff may not "recast" a contract claim as a "tortious interference claim" because it is a tactic that "could be used to forestall arbitration" in violation of the FAA's requirement that arbitration agreements be placed "'on equal footing with other contracts.'" *In re Vesta Ins. Grp., Inc.*, 49 Tex. Sup. Ct. J. 445, 192 S.W.3d 759, 762 (2006) (quoting *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 293

(2002)); *see also Grigson v. Creative Artists Agency LLC*, 210 F.3d 524, 526 (5th Cir. 2000) (explaining that parties may not "avoid" arbitration agreements "by casting their claims in tort, rather than contract").

On this point, the Fourth Circuit's decision in *American Bankers Insurance Group v. Long* is particularly instructive. *See* 453 F.3d 623 (4th Cir. 2006). In that case, the Fourth Circuit explained the application of principles of equitable estoppel, including the principle of direct benefits estoppel,[1] in the context of binding a signatory or nonsignatory to the arbitration provision in a contract. The Fourth Circuit's analysis of the law of equitable estoppel exposes the fatal flaws in Plaintiffs' arguments here. Indeed, the court in *Long* confronted the very issue raised here: whether a plaintiff may thwart the application of equitable or direct benefits estoppel by purportedly basing claims on theories of liability other than breach of the agreement containing the arbitration provision. And the Fourth Circuit emphatically held that a party "may not use artful pleading to avoid arbitration" in that way. *Id.* at 628 (internal quotation marks and brackets omitted).

The court explained that "the legal principle underlying the theory of equitable estoppel rests on a simple proposition: it is unfair for a party to rely on a contract when it works to its advantage, and repudiate it when it works to its disadvantage." *Id.* at 627 (cleaned up). The court stated that it is proper to look at the substance of the underlying claims and determine whether the claims are based on the alleged breach of the obligations and duties created by a contract containing

[1] Although *Long* technically involved the "rely on" test that applies when a signatory is trying to avoid a contract's arbitration clause in a suit against a nonsignatory, rather than the "direct benefits" that applies here, the Fourth Circuit explained that "any difference in the two tests is more semantic than substantive." *Long*, 453 F.3d at 629. Because "[b]oth tests examine whether the plaintiff has asserted claims in the underlying suit that, either literally or obliquely, assert a breach of a duty created by the contract containing the arbitration clause," "the inquiry is ultimately the same." *Id.*

the arbitration provision "regardless of the legal label assigned to the claim." *Id*. at 627-628 (citing *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 319 (4th Cir. 1988)).

Applying these principles, the Fourth Circuit held that estoppel applied because the "claims clearly arose" out of the agreement containing the arbitration clause because, if that agreement did not exist, the plaintiff "would have no basis for recovery." *Id.* at 630. "Each of the Longs' individual claims," including their "interference with contract" claim, is "dependent upon their allegation that [the nonsignatory defendant] breached a duty created solely by [the contract], for without the alleged breach of the [contract], the Longs would have no cause to complain." *Id.*

The same is true here. As Defendants have explained, and as the law clearly reflects, there is no independent legal duty for medical providers to bill insurance companies. (Pet. at 6 n.1, 14). And Plaintiffs do not allege any duty to bill the health insurer, or to bill or accept discounted rates, arising from the patients' insurance policies (with their insurers). In fact, Plaintiffs specifically alleged that the hospitals' duty to bill the insurer directly, and at discounted rates, arises directly from the agreement between the hospital and the insurer. (R. 68-74; 76-78). Thus, there is no duty, legal or contractual, for Defendants to submit bills to, and seek reimbursement from, Plaintiffs' health insurance *other than* the alleged terms in Defendants agreements with Plaintiffs' insurers. (Pet. at 14–15). Therefore, as stated in *Long*, a proper application of direct benefits estoppel requires Owens to arbitrate his claims pursuant to the arbitration provision in the CIGNA Agreement because, if that agreement did not exist, Owens would have no basis for recovery and no cause to complain.

Nor can Plaintiffs avoid this result by repeating the majority's position that, because Plaintiffs have phrased the claim in tort, their claims rely on an independent duty not to interfere with contracts rather than a contractual duty. (Ret. at 11–12). In the words of the Fourth Circuit, it does not matter that the intentional interference claim is "phrased in tort" because, "at root,"

Plaintiffs' claims "attempt to hold" Defendants "to the terms of" Defendants' agreements with insurers. *Long*, 453 F.3d at 630 (internal quotation marks and brackets omitted). Stated bluntly, Plaintiffs "may not use *artful pleading* to avoid arbitration." *Id.* (emphasis added) (internal quotation marks and brackets omitted).

In short, Plaintiffs admit to doing the very thing that should concern this Court—artfully styling their claim in tort to avoid the arbitration clause in the agreement they seek to enforce. For all the reasons that other courts (including the Fourth Circuit) have refused to condone such conduct, this Court should grant Defendants' Petition and review the majority's decision to disregard the proper application of direct benefits estoppel in order not to reward Plaintiffs' artful pleading.

C. Plaintiffs echo the Court of Appeals majority's misunderstanding of direct benefits estoppel.

Plaintiffs also repeat the Court of Appeals' misguided view of the scope of direct benefits estoppel. That is, like the majority below, Plaintiffs argue that direct benefits estoppel applies only to a nonsignatory who has *received* a direct benefit from the agreement in question. (Ret. at 10–11). Thus, Plaintiffs argue, because Owens alleges that he did not already receive any benefit from Defendants' agreement with Cigna, the doctrine does not apply to him. (*Id.*).

But, as Defendants have explained, this restrictive view of the scope of direct benefits estoppel conflicts with South Carolina precedent, including *Bennett*. (Pet. 12–13). Direct benefits estoppel is not limited to circumstances where a plaintiff has *already* received a benefit from the contract containing an arbitration requirement. It applies when the nonsignatory maintains and alleges that the contract should be enforced to benefit him and he seeks to obtain such benefit. *Id.* (quoting *Bennett*, 444 S.C. at 470, 908 S.E.2d at 116); *see also Long*, 453 F.3d at 628 (citation omitted) (emphasis added) (explaining that "a non-signatory will be estopped when his underlying claims *seek* a 'direct benefit' from the contract containing the arbitration clause") (emphasis

added)). And this makes sense. If the plaintiff had already obtained the benefit, he would have no reason to sue. It is the attempt to use the contract to obtain the benefit which triggers direct benefits estoppel.

Plaintiffs try to sidestep this issue by asserting that, because they did not bring a breach of contract claim, they are not seeking to enforce agreements between Defendants and insurers like Cigna. (Ret. at 10–11). But this is just a recasting of Plaintiffs' artful pleading argument. To be clear, based on their own allegations, the benefit Plaintiffs seek in this litigation is the enforcement of an alleged obligation arising solely from the agreement between the hospital and the insurer for Defendants to bill the insurers, not Plaintiffs, and to do so at reduced rates. (Pet. At 2–3, 8 (describing relevant allegations in Plaintiffs' Amended Complaint)). Thus, they are attempting to "enforce" those agreements. Transparent tactics like phrasing a claim in tort cannot, and does not change the nature of Plaintiffs' case. *See Long*, 453 F.3d at 630.

Plaintiffs also seek to conflate direct benefits estoppel with traditional equitable estoppel, arguing that direct benefits estoppel does not apply here because all the elements of equitable estoppel are not met. (Ret. 8–10, 11). This Court, however, has recognized that the "direct benefits test" is different than the "traditional" six factor-test, which is typically used "in non-arbitration cases." *Wilson v. Willis*, 426 S.C. 326, 340 n.9, 827 S.E.2d 167, 175 n.9 (2019). The Court of Appeals' decision below concerns only direct benefits estoppel, making the traditional factors irrelevant.

In sum, Plaintiffs do nothing to resolve the conflict between the majority's erroneous decision here and the panel's correct decision in *Bennett*. Instead, they concede that they created that conflict by using artful pleading to disguise their claims and allegations. This Court should grant Defendants' Petition and clarify that South Carolina law does not allow such transparent gamesmanship.

II. Plaintiffs Offer No Support for the Majority's Misguided Interpretation of the Class Action Waiver Clause in the CIGNA Agreement.

As explained in the Petition, the majority interpreted a class arbitration waiver clause in the CIGNA Agreement to work exactly backwards. That is, rather than effecting the parties' intent of requiring all disputes to be resolved by individual arbitration, the majority's interpretation would read the clause as preventing arbitration when a party attempts to use class procedures. As Defendants explained, this reading defies the plain language of the agreement, U.S. Supreme Court precedent, and the Federal Arbitration Act. (Pet. at 18–19).

To all that, Plaintiffs' main response is that, because Owens is not "a party" to CIGNA Agreement, he cannot be bound to that agreement's arbitration clause. (Ret. at 16; *id.* at 17 (arguing that, as a non-party, Owens "neither contracted for arbitration nor agreed to any rules for conducting arbitration"). Plaintiffs conflate the issues. The question is not whether Owens is bound to the CIGNA Agreement—that is the whole point of direct benefits estoppel. The issue is, assuming Owens is subject to arbitration, whether the plain language of that agreement's arbitration clause can be plausibly read to allow class litigation. And Plaintiffs do not mount any meaningful defense of that interpretation. Nor do they distinguish the cases in which other courts had held such an interpretation to be implausible. *See* Pet. at 19 (citing *Bouskos v. J.P. Morgan Chase Bank, N.A.*, No. 1:19-cv-01321, 2020 WL 8483909, *5 (E.D. Cal. Dec. 21, 2020)).

To be sure, Plaintiffs try to address the U.S. Supreme Court decision in *Epic System Corp. v. Lewis*, 584 U.S. 497, 506 (2018). Plaintiffs argue that case can be distinguished because (once again) Owens is not a party to the CIGNA Agreement and because that case involved an employee/relationship. (Ret. at 17).

Plaintiffs misunderstand *Epic Systems*' relevance here. The U.S. Supreme Court's discussion of class waivers in that case supports Defendants' interpretation of class waiver in the CIGNA Agreement. As the Court explains, such waivers are commonly interpreted as reflecting

the parties intent to enjoy "the traditionally individualized and informal nature of arbitration" by limiting resolution of disputes to individualized procedures. *Id.*. at 508. Class or collective action procedures, by contrast, tend to make "the process slower, more costly, and more likely to generate procedural morass." *Id.*

Plaintiffs, on the other hand, offer no plausible counter-explanation for why the class waiver in the CIGNA Agreement would have the meaning given to it by the majority. That Owens is not a party to the agreement, or that Owens is not Defendants' employee, has nothing to do with any of this.

The plain terms of the CIGNA Agreement provide that arbitration is the exclusive forum for resolution of disputes and that a party subject to those terms may only pursue individual claims. Neither the majority nor Plaintiffs offer a plausible reading to the contrary. And because the reading advanced by the majority invites conflict with U.S. Supreme Court precedent and the Federal Arbitration Act, this Court should grant review.

III. Consideration of Defendants' Motions to Dismiss Would Have Aided the Analysis of the Other Issues.

This Court should also correct the Court of Appeals' mistake in declining to review the circuit court's denials of Defendants' motions to dismiss under Rule 12(b)(6). As Defendants explained, Defendants' arguments for dismissal would, among other things, have helped explain how the majority's decision misapprehends the arbitration issue. *See Brown v. Cnty. of Berkeley*, 366 S.C. 354, 362 n.5, 622 S.E.2d 533, 538 n.5 (2005) (allowing review of interlocutory orders when they "are companion to issues that are [immediately] reviewable" by the appellate court).

Once again, Plaintiffs offer little in response. They point out that orders denying motions to dismiss are not typically appealable. (Ret. at 18). But that says nothing about whether an appellate court should consider (which it can) such issues when a case is relatedly and properly on appeal.

The claims of all three named Plaintiffs here have a clear nexus, and the issue of Owens' obligation to arbitrate his claims cannot be so easily separated. Through an Amended Complaint, Brooks and Owens chose to join an existing litigation commenced by Blackwell. (R. 63). Each of the named Plaintiffs brings the same three claims, and each seeks to represent the same consolidated class. Thus, the inadequacy of any one claim impacts the whole case—including Owens' duty to arbitrate. And Owens' duty to arbitrate impacts the whole case.

Neither the interests of justice (for each Plaintiff, the alleged class members, or Defendants), nor the interests of judicial efficiency and economy will be served by allowing litigation of facially nonviable claims to continue. Instead, those interests are best served by addressing the viability of Plaintiffs' claims now.

Rather than address the multiple legal problems with their claims and theories, however, Plaintiffs try to deflect, arguing that such "merits arguments" should not be considered now. (Ret. 18–19). Plaintiffs seek to avoid these issues because they have no good response to the merits of the motions to dismiss. Take, for example, the fact that, because Plaintiff Brooks was insured by Medicare, Plaintiffs' entire theory of liability fails as a matter of law because federal law *required* Defendants to bill Plaintiff Brooks directly. (Pet. at 21–22). Neither judicial economy, nor efficiency would be promoted by allowing this claim to proceed for further factual development, as no additional facts are necessary.[2]

As stated in the Petition, review of whether to dismiss Owens' and Brooks' claims pursuant to the voluntary payment doctrine is particularly relevant to this Petition. As argued in the

[2] Defendants have also explained that Plaintiffs' tortious interference with contract claim fails because they failed to allege any breach of the alleged agreement between them and their insurers, a necessary element of the claim. (Pet. at 20, 23). In a footnote, Plaintiffs assert that this is "inaccurate" and "mischaracterizes the allegations in the complaint." (Ret. at 18 n.10). In making that argument, however, Plaintiffs do not cite a single allegation in the Amended Complaint. And there is none. (R at 75-76, ¶¶ 63–69 (alleging only that Defendants "inferred [sic] with and caused a disruption of [Plaintiffs'] business expectations and/or contractual relationships")).

Plaintiffs' Return, the Plaintiffs are the "architects of their own complaint." (Ret. at 13). And, in their Amended Complaint, Plaintiffs' allege that Defendants "agreed to accept a 50% reduction" to settle Brooks' and Owens' accounts, and those accounts were settled. (R. 71-72). These allegations can support only one clear interpretation and conclusion, Defendants accepted offers from Owens and Brooks to pay only fifty percent of the bills for the medical services rendered to them and those voluntary payments were made by Brooks and Owens (through their attorneys who are the very attorneys now representing Plaintiffs in this case). The Amended Complaint does not contain any allegation that the payments were made under coercion or duress, or were in any way not voluntary. In effect, Owens and Brooks are suing Defendants for accepting settlement offers and payments which Plaintiffs initiated and offered. It is a long standing and elementary principle of South Carolina law that no action will lie to recover money voluntarily paid. *Hardaway v. S. Ry. Co*., 90 S.C. 475, 488-89, 73 S.E. 1020, 1025 (1912); *Moody v. Stem*, 214 S.C. 45, 60, 51 S.E.2d 163, 169 (1948); *Shockley v. Wickliffe*, 150 S.C. 476, 148 S.E. 476, 477 (1929); *see also Cross v. Ciox Health, LLC*, 438 F. Supp. 3d 572 (E.D.N.C. 2020), *appeal dismissed*, No. 20-1262, 2020 WL 5203205 (4th Cir. Aug. 31, 2020)).

Additionally, review of Blackwell's claim for unjust enrichment also merits immediate review. A claim for unjust enrichment is a claim to have a defendant return a benefit that would be inequitable for the defendant to retain. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994); *Campbell v. Robinson*, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012). However, Blackwell never alleged that she paid any money or gave anything of value to Defendants. Thus, there is, and can be, no actionable claim for unjust enrichment. *See, e.g., Harrison v. Christus St. Patrick Hosp.*, 430 F. Supp. 2d 591, 597 (W.D. La. 2006) (granting the hospital's motion to dismiss a patient's claim for unjust enrichment because the hospital received nothing from the patient). As such, Blackwell's claim for unjust enrichment

fails as a matter of law, and the Court should reverse the circuit court and dismiss Blackwell's claim for unjust enrichment.

Despite these issues with Plaintiffs' pleading, Plaintiffs urge this Court to follow the Court of Appeals' lead and ignore these issues entirely, along with all the other reasons Plaintiffs' allegations are insufficient to state a claim. But no interest—certainly not interests of justice—will be served by this Court (or any appellate court) turning a blind eye to Plaintiffs' legally deficient theories and claims. *See*, *e.g.*, *Marshall v. Richardson*, 240 S.C. 318, 324, 125 S.E.2d 639, 643 (1962) ("An Appellate Court exists for the correction of errors committed in a lower Court . . . ."); *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, n.3; 817 S.E.2d 273 273 (2018) (explaining that "[j]udicial economy" is not served "when a case, ripe for decision, is decided on a procedural technicality," as "the interests of justice and fair play" are promoted by deciding cases "on the merits") (internal quotation marks omitted)).

On the contrary, addressing the deep flaws in Plaintiffs' claims now would prevent injustice, aid judicial economy, and further this Court's understanding and disposition of the estoppel and arbitration issues already before it. *See Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005) (allowing review of interlocutory orders when "such review would avoid another appeal in the future and potentially narrow the issues for trial (i.e. judicial economy)"). The Court should grant Defendants' Petition to review these issues as well.

CONCLUSION

For these reasons, and for the other reasons provided in Defendants' Petition, Defendants request that this Court grant their Petition for Writ of Certiorari.

s/James Lynn Werner
James Lynn Werner; SC Bar No. 6029
Katon E. Dawson Jr.; SC Bar No. 101167
PARKER POE ADAMS & BERNSTEIN LLP
1221 Main Street, Suite 1100
Post Office Box 1509 (29202)
Columbia, South Carolina 29201
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
jimwerner@parkerpoe.com
katondawson@parkerpoe.com

Attorneys for Petitioner

April 28, 2025
Columbia, South Carolina