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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2024-002098

Court of Appeals Appellate Case No. 2022-001587

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315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein, ...Respondents,

v.

Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PBLH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25, ... Petitioners.

PETITION FOR REHEARING

Petitioners, pursuant to Rule 221(a), SCACR, respectfully petition for rehearing of the Opinion filed on June 10, 2026, affirming the Court of Appeals as modified ("the Opinion"). Rehearing is warranted because the Opinion overlooked and/or misapprehended matters of both law and fact. With respect to its holding that the parties did not clearly and unmistakably delegate threshold questions of arbitrability to the arbitrator, the Opinion failed to adhere to the *Prima Paint* doctrine, violated settled rules of contract interpretation, and failed to give effect to the actual terms of the arbitration agreement. With respect to its holding that the arbitration agreement was unconscionable, the Opinion failed to consider key differences between the limitations period in the arbitration agreement here—requiring notice of arbitration within 60 days of concluding a mediation process of unspecified timing and length—and the limitation period at issue in *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 910 S.E.2d 474 (2024), which required notice of arbitration within 90 days of the accrual of a claim. The Opinion also failed to determine whether the 60-day period here—which Palmetto Bluff never sought to enforce—could be severed from the remainder of the arbitration agreement.

BACKGROUND

The dispute here concerns the parties' agreement to arbitrate disputes concerning Respondents' membership in the Palmetto Bluff Club. The Opinion held that "these transactions implicate interstate commerce" and, therefore, that "the FAA applies." Slip Op. at 4. The Opinion then turned to the question of whether enforceability of the arbitration agreement should be decided by the circuit court or whether it had, instead, been delegated to the arbitrator. As the Opinion noted, there must be "'clear and unmistakable' evidence" of such a delegation. Slip Op. at 4 (quoting *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020); *see First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).

In answering the delegation question, the Opinion acknowledged that the arbitration agreement's explicit incorporation of the American Arbitration Association's Commercial Arbitration Rules was evidence of the parties' intent to delegate gateway questions to the arbitrator. Slip Op. at 4-5; *see id.* at 6 (recognizing that "almost every Federal Circuit Court of Appeals has found the incorporation of the AAA Rules into an arbitration provision is itself 'clear and unmistakable' evidence" of delegation). The Opinion concluded, however, that "the parties intended the procedural provisions of South Carolina law—which require the court to determine arbitrability—to apply." Slip Op. at 5. The Opinion based this conclusion on (1) the arbitration notice, which according to the Opinion "goes farther than required by" S.C. Code Ann. § 15-48-10(a); and (2) the Membership Agreement's choice-of-law clause—***not*** the choice-of-law clause in the arbitration agreement—on the grounds that doing so was justified "to discern if anything clarifies [the parties'] intent." The Opinion found that the arbitration notice and the *non-arbitral* choice-of-law clause indicated the parties intended for the procedural law of South Carolina to apply. Slip Op. at 6. The procedural law of South Carolina requires courts to decide whether a contract is enforceable. *See* S.C. Code Ann. § 15-48-20(a); *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 23-24, 644 S.E.2d 663, 668 (2007). Consequently, the Opinion held, the circuit court properly ruled on the threshold question of whether the arbitration agreement was unconscionable and unenforceable.

The Opinion further affirmed the Court of Appeals' holding that the arbitration agreement was unconscionable. The Opinion pointed specifically to the term requiring commencement of arbitration within 60 days of the conclusion of contractually required mediation. *See* Slip Op. at 7. The Opinion held that this provision "is not functionally different" from the 90-day-from-accrual limitation found unconscionable in *Huskins*. The Opinion did not consider whether the limitations period was severable.

ARGUMENT

I. The Arbitration Agreement Unambiguously Demonstrates the Parties' Intent to Apply Federal, Not State, Procedural Rules

"Unless the parties have contracted to the contrary, the FAA[1] applies in Federal or State Court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). "Parties are free to enter into a contract providing for arbitration under rules established by state law rather than rules established by the FAA," but such an intention must be expressed in the contractual language. *Id.* at 538 n.2, 542 S.E.2d at 353 n.2; *see Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019) (arbitration is a matter of contract).

Ordinarily, it is presumed that the court will decide "gateway" questions of arbitrability, including whether the arbitration agreement is unconscionable. But the parties can delegate such questions to the arbitrator. *See, e.g.*, *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 67-68 (2019). Here, the parties made such a delegation by agreeing that disputes:

> shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect . . . , applying the substantive laws of South Carolina.

[1] Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*

(App. 578.) Despite this language, the Opinion held that the parties intended for arbitration to occur under procedural rules of the South Carolina Uniform Arbitration Act (SCUAA), S.C. Code Ann. § 15-48-10, *et seq.*

A. The Arbitration Notice Is Not Broader than the Statutory Notice Requirement

The Membership Agreements containing the parties' arbitration agreement included the following notice on the first page:

> THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET SEQ.

(App. 574.) The Opinion found that this notice "goes farther than required by" the SCUAA's statutory notice requirement, S.C. Code Ann. § 15-48-10(a), because it "provides that the entire SCUAA applies to the Membership Agreement." Slip Op. at 5. This is incorrect.

The SCUAA's statutory notice requirement provides:

> Notice that a contract is subject to arbitration pursuant to *this chapter* shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract . . . .

S.C. Code Ann. § 15-48-10(a) (emphasis added). The only difference between the Membership Agreement's arbitration notice and the statutorily required notice is that the Membership Agreement replaces "this chapter" with "South Carolina Code Section 15-48-10, et seq.," *which means exactly the same thing*. The statutory reference to "this chapter" is to Chapter 48 of Title 15, *i.e.*, the SCUAA. And, the statutory reference to "this chapter" must mean the entirety of the SCUAA. The only way the arbitration notice on the

Membership Agreement can be broader than the statutorily required notice is if the statutory text—"subject to arbitration pursuant to this chapter"—encompasses only *part* of the SCUAA. This is impossible as a matter of statutory construction: "this chapter" means "this chapter," not "part of this chapter."[2]

The arbitration notice says nothing about the parties' intention with respect to application of the FAA because an arbitration *notice* is different from, and does not serve the same purpose as, the arbitration *agreement*. "The purpose of the notice requirement of section 15–48–10(a) is to alert the contracting parties that the contract requires arbitration of disputes arising under the contract." *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 317 S.C. 274, 279, 453 S.E.2d 253, 257 (Ct. App. 1994). By its very nature, an arbitration *notice* is not "a *contract* providing for arbitration." *Munoz*, 343 S.C. at 538 n.2, 542 S.E.2d at 363 n.2 (emphasis added). An arbitration agreement, like any other contract, must reflect "a meeting of the minds between the parties with regard to all essential and material terms." *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 130, 678 S.E.2d 435, 438 (2009). The required meeting of the minds is expressed in the arbitration agreement itself, in the section of the Membership Agreement titled "ARBITRATION." (App. 578.) The terms of the actual arbitration agreement are the best evidence of the parties' intentions, and as discussed *infra*, those terms clearly and unmistakably show that the parties intended to delegate gateway questions to the arbitrator.

[2] Or more accurately, "part of this chapter, but we're not saying which part."

B. The Arbitration Agreement's Choice-of-Law Provision Unambiguously Calls for Application South Carolina Substantive Law, Not South Carolina Procedural Law

The Opinion next found evidence of the parties' intent in the Membership Agreement's choice-of-law clause, which reads, "This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law." (App. 579.) The Opinion concedes that this choice-of-law clause is not part of the arbitration agreement but contends that looking outside the arbitration agreement is proper in order to "discern if anything clarifies the parties' intent." Slip Op. at 6 (citing *Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008)). In looking to the choice-of-law clause in the Membership Agreement, the Opinion overlooked the choice-of-law provision specific to the arbitration agreement, which provides that disputes:

> shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect . . . , applying the substantive laws of South Carolina.

(App. 578.) The Opinion erred in failing to consider and give effect to the choice-of-law provision in the arbitration agreement.

1. The Opinion Violates the *Prima Paint* Doctrine

Under the United States Supreme Court's decision in *Prima Paint*, an arbitration agreement is separable from the contract in which it is embedded. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-04 (1967); *see also Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 608-09, 879 S.E.2d 746, 753 (2022). Despite expressing some dissatisfaction with the *Prima Paint* doctrine, this Court has recognized that it "must apply the *Prima Paint* doctrine in in cases governed by the FAA." *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 385, 892 S.E.2d 112, 116 (2023). Since the FAA applies here, *see* Slip Op. at 4, so does the *Prima Paint* doctrine.

The *Prima Paint* doctrine barred the Opinion from looking outside the arbitration agreement for evidence of the parties' intent. The Membership Agreement is the "container contract," *i.e.* the contract that contains the arbitration agreement. *See Sanders*, 440 S.C. at 384, 892 S.E.2d at 115. The *Prima Paint* doctrine requires courts to recognize that an arbitration agreement is a contract unto itself, and must be interpreted as such. *See Lampo v. Amedisys Holding, LLC*, 445 S.C. 305, 311, 914 S.E.2d 139, 142 (2025) ("An arbitration agreement, of course, is a contract.").

Koon v. Fares, cited by the Opinion for the proposition that the parties' intent is to be discerned from "the entire document" is not to the contrary. Slip Op. at 6 (citing *Koon*, 379 S.C. at 155, 666 S.E.2d at 233). *Koon* was not an arbitration case, and thus this Court's statement did not account for the contract-within-a-contract scenario here. But it is plain that under *Prima Paint*, the *relevant* "entire document" is the arbitration agreement. *Accord Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48-49, 790 S.E.2d 1, 4 (2016) (noting the importance, under *Prima Paint*, of identifying the specific parts of a container contract that constitute the arbitration agreement). To the extent there is any tension between *Prima Paint* and *Koon*, *Prima Paint* is controlling. *See Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 10, 791 S.E.2d 128, 132 (2016) (recognizing the obligation of South Carolina courts to adhere to decisions by the United States Supreme Court).

2. The Opinion Violates Settled Rules of Contract Interpretation

Wholly apart from the *Prima Paint* doctrine, the Opinion violated long-established rules of contract interpretation when it looked to the choice-of-law provision in the Membership Agreement rather than the arbitration agreement's more specific choice-of-law clause. "A proper construction of a contract requires the court to give effect to specific terms over any general language." *Crenshaw v. Erskine Coll.*, 432 S.C. 1, 28, 850 S.E.2d 1, 15 (2020). The arbitration agreement here contains a choice-of-law clause specific to the arbitration proceedings. Under *Crenshaw* (not to mention *Prima Paint*), the Opinion was required to discern the parties' intent based on the more specific choice-of-law clause.

3. The Arbitration Agreement's Choice-of-Law Clause Clearly and Unambiguously Expresses the Parties' Intent to Apply Federal Procedural Rules

As noted above, the choice-of-law provision in the arbitration agreement provides that arbitration shall occur "in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect . . . , applying the substantive laws of South Carolina." This language clearly and unambiguously expresses the parties' intention that the merits of their dispute will be determined under South Carolina substantive law, while procedural matters will be controlled by the AAA's Commercial Arbitration Rules—in other words, by federal law, which allows parties to make a complete delegation of this kind. This result is compelled, in the first instance, by basic rules of contract interpretation. A contract must be interpreted so as to give effect to all its terms, without rendering any superfluous. *See Crenshaw*, 432 S.C. at 42, 850 S.E.2d at 22; *see also Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014) ("[A]n interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous." (internal quotation marks omitted)). Under this rule, the Opinion was required to give effect to the arbitration agreement's use of the word "substantive" with respect to "laws of South Carolina," by excluding South Carolina *procedural* law. It also gives effect to the arbitration agreement's reference to the AAA Commercial Arbitration Rules, which supply the applicable procedural law.

The Opinion recognized that "almost every Federal Circuit Court of Appeals has found the incorporation of the AAA Rules into an arbitration agreement is by itself 'clear and unmistakable' evidence the parties intended to delegate questions of arbitrability to the arbitrator." Slip Op. at 6 (citing *Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842, 846 (6th Cir. 2020). In fact, this is also the rule for numerous state courts. *See*, *e.g.*, *Uber Techs., Inc. v. Royz*, 517 P.3d 905, 910 (Nev. 2022) ("[A]s many courts have found, incorporating the AAA's rules, even without more, constitutes clear and unmistakable evidence of intent to submit the question of arbitrability to the arbitrator."); *James & Jackson, LLC v. Willie Gary, LLC*, 906 A.2d 76, 80 (Del. 2006) ("As a matter of policy, we adopt the majority federal view that reference to the AAA rules evidences a clear and unmistakable intent to submit arbitrability issues to an arbitrator.").[3] The Opinion sought

[3] Together with Delaware and Nevada, at least 22 states have recognized the same rule, including the following: **Alabama**: *Wiggins v. Warren Averett, LLC*, 307 So. 3d 519, 524 (Ala. 2020) (agreement to arbitrate "in accordance with" AAA Commercial Arbitration Rules delegated arbitrability to the arbitrator); **Arizona**: *Brake Masters Sys., Inc. v. Gabbay*, 78 P.3d 1081, 1088 (Ariz. Ct. App. 2003) ("By incorporating the AAA rules into the agreement, Brake Masters and Gabbay clearly and unmistakably agreed that the

to distinguish only three of the dozens of appellate decisions.

The Opinion sought to distinguish *Blanton* on the grounds that the arbitration agreement there "included only a reference to the AAA Rules" and made "no mention of any reference in the [container contract] to state arbitration rules that would negate an intent to delegate arbitrability." Slip Op. at 6; *see id.* (distinguishing *Terminix Int'l Co., LP*

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arbitrator would primarily decide the arbitrability of the issues."); **Arkansas**: *HPD, LLC v. TETRA Techs., Inc.*, 424 S.W.3d 304, 311 (Ark. 2012); **Colorado**: *Johnson-Linzy v. Conifer Care Communities A, LLC*, 469 P.3d 537, 542 (Colo Ct. App. 2020); **Florida**: *United States Fire Ins. Co. v. Am. Walks at Port St. Lucie, LLC*, 386 So. 3d 575, 580 (Fla. Dist. Ct. App. 2024); **Indiana**: *Illinois Cas. Co. v. B&S of Fort Wayne Inc.*, 235 N.E.3d 827, 835 (Ind. 2024); **Iowa**: *Smith Barney, Inc. v. Keeney*, 570 N.W.2d 75, 78 (Iowa 1997); **Kentucky**: *Ally Align Health, Inc. v. Signature Advantage, LLC*, 574 S.W.3d 753, 756 (Ky. 2019); **Louisiana**: *Fla. Gas Transmission Co., LLC v. Texas Brine Co., LLC*, 267 So. 3d 633, 637 (La. Ct. App. 2018) ("A contract's incorporation of the AAA Rules that empower an arbitrator to decide issues of arbitrability serves as clear and unmistakable evidence of the parties' intent to delegate such issues to the arbitrator."); **Mississippi**: *McInnis Elec. Co. v. Brasfield & Gorrie, LLC*, 384 So. 3d 485, 490 (Miss. 2023) ("Agreeing to the American Arbitration Association rules is tantamount to agreeing to delegate scope questions to the arbitrators."); **Missouri**: *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 48 (Mo. 2017); **New Mexico**: *Felts v. CLK Mgmt., Inc.*, 254 P.3d 124, 134 (N.M. Ct. App. 2011) ("[I]ncorporation of the NAF Code of Procedure constitutes clear and unmistakable evidence of the parties' intent to delegate arbitrability issues."); **New York**: *Acevedo v. Citibank, N.A.*, 83 Misc. 3d 706, 745, 209 N.Y.S.3d 753, 785 (N.Y. Sup. Ct. 2024); **North Carolina**: *Bailey v. Ford Motor Co.*, 780 S.E.2d 920, 927 (N.C. Ct. App. 2015) ("Given the parties' adoption of the CPR rules … we hold that the parties clearly and unmistakably intended that an arbitrator would decide questions of substantive arbitrability, like the one at issue here."); **North Dakota**: *26th St. Hosp., LLP v. Real Builders, Inc.*, 879 N.W.2d 437, 446 (N.D. 2016) ("The incorporation of the AAA Rules is clear and unmistakable evidence the parties agreed to arbitrate the question of arbitrability."); **Oregon**: *Gozzi v. W. Culinary Inst., Ltd.*, 366 P.3d 743, 751 (Or. Ct. App. 2016); **Texas**: *Estate of Moncrief*, 699 S.W.3d 315, 334–35 (Tex. App. 2024); **Washington**: *Raven Offshore Yacht, Shipping, LLP v. F.T. Holdings, LLC*, 400 P.3d 347, 348 (Wash. Ct. App. 2017); **West Virginia**: *W. Virginia CVS Pharmacy, LLC v. McDowell Pharmacy, Inc.*, 796 S.E.2d 574, 588 (W. Va. 2017) ("We find that incorporation of the AAA rules into the arbitration agreements is sufficient evidence that the parties clearly and unmistakably agreed to arbitrate arbitrability."); **Wisconsin**: *Mortimore v. Merge Techs. Inc.*, 824 N.W.2d 155, 161 (Wisc. Ct. App. 2012).

v. Palmer Ranch Ltd. P'ship, 432 F.3d 1327 (11th Cir. 2005), and *Awuah v. Coverall N. Am., Inc.*, 554 F.3d 7 (1st Cir. 2009), on the same grounds). But the Membership Agreement makes no reference at all to "state arbitration rules"—in fact, it does not reference arbitration at all—but said only that the container agreement would "be governed by and construed and enforced in accordance with the laws of the State of South Carolina." (App. 579.) The delegation provision in *Blanton* used *exactly the same language* as the arbitration agreement in this case. *Compare Blanton*, 962 F.3d at 845 (arbitration to be conducted "in accordance with" AAA rules), *with* App. 578 (arbitration to be conducted "in accordance with" AAA rules). This language is not "only a reference" to the AAA rules, it is an incorporation of them.[4] And for the reasons discussed *supra*, the reference to the SCUAA in the arbitration notice is not evidence of contrary intent because it is not part of the arbitration agreement. Further, the arbitration agreement's specific incorporation of only the *substantive* law of South Carolina is strong evidence that the parties did not intend to incorporate state procedural law.

C. Conclusion as to Delegation

For the reasons set forth above, this Court should grant rehearing and modify the

[4] In fact, courts have not hesitated to find no "clear and unmistakable evidence" of intent to delegate arbitrability when arbitration agreements reference AAA or similar rules but fail to use terms of incorporation like "in accordance with," "pursuant to," or the like. *See, e.g.*, *Dist. No. 1, Pac. Coast Dist., Marine Engineers' Beneficial Ass'n, AFL-CIO v. Liberty Mar. Corp.*, 998 F.3d 449, 462 (D.C. Cir. 2021) (no clear and unmistakable evidence of delegation where arbitration agreement referenced the AAA only in regard to selection of an arbitrator); *Acheron Portfolio Tr. v. Mukamal as Tr. of Mut. Benefits Keep Pol'y Tr.*, No. 21-12111, 2022 WL 16707942, at *3 (11th Cir. Nov. 4, 2022) (holding JAMS rules were not incorporated by reference where arbitration agreement merely stated that disputes "shall be submitted to JAMS for arbitration" (internal quotation marks omitted)).

Opinion to hold—in accordance with the plain text of the arbitration agreement, the *Prima Paint* doctrine, and settled rules of contract interpretation—that the parties clearly and unmistakably intended to delegate questions of arbitrability to the arbitrator. Because the delegated questions include whether the agreement is unconscionable, the Opinion's discussion of unconscionability should be deleted.

II. The Post-Mediation Time Limit Is Not Unconscionable

Alternatively, the Court should grant rehearing and modify the Opinion with respect to its conclusion that the arbitration agreement was rendered unconscionable by the requirement that any arbitration be commenced within 60 days of completion of mediation. Rehearing is warranted because the Opinion overlooks and/or misapprehends key differences between the limitation in the agreement here and the draconian, 90-days-from-accrual limitation held unconscionable in *Huskins*. The Opinion also failed to consider the fact that the post-mediation limitation had no impact on this case: it is undisputed that Respondents submitted their application for arbitration—accompanied by their 82-page verified complaint—within 60 days of the conclusion of mediation. Palmetto Bluff has never argued that Respondents' arbitration notice was untimely, nor has it otherwise sought to rely on the 60-day limitation to limit any claim or right asserted by Respondents. Moreover, Respondents have never claimed that they have been harmed in any way by the 60-day-post-mediation limitation.

The arbitration agreement provides that written notice of a demand for arbitration "shall be given no later than sixty (60) calendar days after the conclusion of" a required mediation process. (App. 578.) Although it is undisputed that Respondents filed their arbitration notice within 60 days of the conclusion of mediation, the Opinion nevertheless held the arbitration agreement was unconscionable because the 60-day-post-mediation limitation was "not functionally different" from the 90-days-post-accrual limitation period at issue in *Huskins*.

In reaching this holding, the Opinion overlooked a critical difference in the purpose of the two limitations periods. In *Huskins*, the Court correctly recognized that the purpose of the limitation there—which barred any arbitration demand made more than 90 days after a claim or dispute "has arisen"—was "not to streamline the resolution of disputes but to reduce their number" by drastically shortening the time available to bring them. *Huskins*, 444 S.C. at 597, 910 S.E.2d at 477.

Here, in contrast, an arbitration notice need only be filed within 60 days of the conclusion of the contractual mediation, and the agreement sets no limit on the time for commencing mediation or for concluding it.[5] Indeed, the circuit court recognized that "the record does not support a conclusion that a potential claimant would be barred from bringing a claim after sixty days" under the notice provision. (App. 226.) These differences are critical. In order to mediate a dispute, the parties must necessarily have developed their claims, marshaled the facts supporting them, and calculated their damages—in other words, the claims must be fairly mature. Therefore, the 60-day-post-

[5] The arbitration agreement contemplates that mediation will occur within 30 days of a demand for arbitration. (App. 579.) However, nothing in the agreement prohibits the mediation from continuing, once it has been commenced. And in fact, the parties here mediated several times and over extended periods, including while this matter worked its way through the appellate process.

mediation filing deadline does not unjustly cut off claims but rather ensures claims are resolved before they become stale. In other words, the limitation promotes rather than undermines the purpose of arbitration, which is to "resolve disputes in a fair and efficient manner." *Huskins*, 444 S.C. at 597, 910 S.E.2d at 477.

Rehearing should be granted for the additional reason that the Opinion did not consider whether the 60-day-post-mediation limitation was severable from the remainder of the arbitration agreement. In *Huskins*, severance was obviously inappropriate because the 90-days-from-accrual limitation was "designed" to limit claims, undermining not only public policy but also "the core of the arbitration agreement." *Huskins*, 444 S.C. at 597, 910 S.E.2d at 477. Those considerations are not present here. Unlike the limitation in *Huskins*, the limitation period here does not necessarily shorten the statutory limitations period, since there is no limitation on when mediation must be commenced or concluded. Just as importantly, the limitations period has no bearing on this case, since Respondents timely demanded arbitration, Palmetto Bluff has never disputed timeliness, and Respondents have never claimed any prejudice whatsoever related to this term of the parties' contract. *Cf. Stevens Aviation*, 407 S.C. at 416, 756 S.E.2d at 153 ("Courts are to "assume that the parties intended that a binding contract be formed, and thus, any choice of alternative interpretations, with one interpretation saving the contract and the other voiding it, should be resolved in favor of the interpretation that saves the contract." (cleaned up)).

Signatures on following page.

Respectfully submitted,

July 9, 2026

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