

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2026-001186
Circuit Court Case No. 2024-CP-10-04598

Bettina Honeycutt, Francisco Gilmore, and Jennifer Colburn, individually and
on behalf of all others similarly situated,

Respondents,

v.

Broad River Physicians Group, LLC and Medlytix, LLC,

Appellants.

INITIAL BRIEF OF APPELLANT MEDLYTIX, LLC

October 5, 2026

Jasmine K. Gardner (S.C. Bar No. 102168)
MCGUIREWOODS LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202
(704) 343-2262
jgardner@mcguirewoods.com

Bryan A. Fratkin (admitted *Pro Hac Vice*)
Juliet B. Clark (admitted *Pro Hac Vice*)
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219
(804) 775-4352
bfratkin@mcguirewoods.com
jbclark@mcguirewoods.com

ATTORNEYS FOR APPELLANT MEDLYTIX, LLC

RECEIVED
Oct 05 2026
SC Court of Appeals

TABLE OF CONTENTS

	Page
STATEMENT OF ISSUES ON APPEAL	1
I. Whether the Court of Common Pleas erred in denying Medlytix, LLC’s Motion to Compel Individual Arbitration under the doctrine of equitable estoppel.....	1
II. Whether the Court of Common Pleas erred in failing to delegate issues of arbitrability to the arbitrator.	1
III. Whether the Court of Common Pleas erred in finding Medlytix waived its rights to arbitration.	1
INTRODUCTORY STATEMENT OF FACTS.....	1
STATEMENT OF THE CASE.....	3
STANDARD OF REVIEW	7
ARGUMENT	7
I. The Court of Common Pleas Erred in Declining to Compel Individual Arbitration. .	8
A. The Court of Common Pleas erred in concluding there is no enforceable agreement to arbitrate.	8
B. The Court of Common Pleas erred in concluding that Medlytix may not enforce the Provider Agreements on Plaintiffs’ claims.....	10
1. <i>Medlytix need not be a third-party beneficiary or a signatory to assert direct benefits estoppel.</i>	11
2. <i>Equitable estoppel applies to the claims asserted against Medlytix.</i>	14
II. The Court of Common Pleas erred in not enforcing the delegation clause incorporated in the arbitration agreement..	22
III. The Court of Common Pleas erred in finding that Medlytix waived its right to compel arbitration.....	24
CONCLUSION.....	27

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>315 Corley CW LLC v. Palmetto Bluff Development, LLC</i> , 448 S.C. 149, 932 S.E.2d 335 (2026)	23
<i>Aiken v. World Fin. Corp. of S.C.</i> , 373 S.C. 144, 644 S.E.2d 705 (2007)	7
<i>Bennett v. ACS Primary Care Physicians-Se. P.C.</i> , 444 S.C. 458, 908 S.E.2d 110 (Ct. App. 2024).....	<i>passim</i>
<i>Berkeley Cnty. Sch. Dist. v. Hub Int’l Ltd.</i> , 130 F.4th 396 (4th Cir. 2025)	23
<i>Cabinetree of Wisconsin, Inc. v. Kraftmaid Cabinetry, Inc.</i> , 50 F.3d 388 (7th Cir. 1995)	27
<i>Carlson v. S.C. State Plastering, LLC</i> , 404 S.C. 250, 743 S.E.2d 868 (Ct. App. 2013).....	7
<i>Dean v. Heritage Healthcare of Ridgeway, LLC</i> , 408 S.C. 371, 759 S.E.2d 727 (2014)	24
<i>Dixon v. Pattee</i> , 442 S.C. 233, 898 S.E.2d 158 (Ct. App. 2023).....	12, 15
<i>Doe v. TCSC, LLC</i> , 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020).....	23
<i>Gen. Equip. & Supply Co. v. Keller Rigging & Constr., SC, Inc.</i> , 344 S.C. 553, 544 S.E.2d 643 (Ct. App. 2001).....	24
<i>Georgia Power Co. v. Partin</i> , 727 So.2d 2 (Ala. 1998).....	11
<i>Goer v. Jasco Indus., Inc.</i> , 395 F.Supp.2d 308 (D.S.C.2005).....	11, 18, 19
<i>Halim v. Great Gatsby’s Auction Gallery, Inc.</i> , 516 F.3d 557 (7th Cir. 2008) 596 U.S. 411 (2022).....	27
<i>Harvey v. Art Metal, Inc.</i> , 247 S.C. 443, 147 S.E.2d 697 (1966)	20

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>Henry Schein, Inc. v. Archer & White Sales, Inc.</i> , 586 U.S. 63 (2019).....	22
<i>Honeycutt v. Broad River Physicians Grp., LLC</i> , No. 2:24-cv-05922-BHH, 2024 WL 5891793 (D.S.C.).....	5, 26
<i>Hyload, Inc. v. Pre-Engineered Prods., Inc.</i> , 308 S.C. 277, 417 S.E.2d 622 (Ct. App. 1992).....	26
<i>Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH</i> , 206 F.3d 411 (4th Cir. 2000)	12
<i>Kidston v. Res. Plan. Corp.</i> , No. 2:11-CV-2036-PMD, 2012 WL 2512933 (D.S.C. June 29, 2012)	25, 26
<i>Leone-Larose v. Health Care Partners of S.C., Inc.</i> , No. 4:09-CV-1771-TLW-TER, 2010 WL 11553028 (D.S.C. Mar. 2, 2010)	26
<i>Long v. Silver</i> , 248 F.3d 309 (4th Cir. 2001)	18, 19, 20
<i>Lovett v. Deutsche Bank Nat. Tr. Co.</i> , No. CA 3:12-1816-MBS-SVH, 2013 WL 841679 (D.S.C. Feb. 12, 2013), <i>report and recommendation adopted</i> , No. CA 3:12-1816-MBS-SVH, 2013 WL 841675 (D.S.C. Mar. 6, 2013)	26
<i>MailSource, LLC v. M.A. Bailey & Assocs.</i> , 356 S.C. 370, 588 S.E.2d 639 (Ct. App. 2003).....	7
<i>Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.</i> , 460 U.S. 1 (1983).....	14
<i>NLM Servs., LLC v. K1 Speed Franchising, Inc.</i> , No. 9:23-CV-1777-RMG, 2023 WL 11887252 (D.S.C. June 27, 2023).....	23
<i>Oyekan v. Educ. Corp. of Am.</i> , No. 4:18-CV-01785-RBH, 2019 WL 978865 (D.S.C. Feb. 28, 2019)	25
<i>Oyekan v. Educ. Corp. of Am.</i> , No. CV 4:18-1785-RBH-KDW, 2018 WL 8300519 (D.S.C. Oct. 10, 2018).....	25
<i>Palmetto Wildlife Extractors, LLC v. Ludy</i> , 435 S.C. 690, 869 S.E.2d 859 (Ct. App. 2022).....	22, 24

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>Pearson v. Hilton Head Hosp.</i> , 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012).....	<i>passim</i>
<i>S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc.</i> , 312 S.C. 559, 437 S.E.2d 22 (1993)	12
<i>Singh v. Anesthesia Assocs. of Rock Hill, P.A.</i> , No. 0:25-CV-0696-CMC-SVH, 2025 WL 1378693 (D.S.C. May 13, 2025).....	23
<i>The Hous. Auth. of City of Columbia v. Cornerstone Hous., LLC</i> , 356 S.C. 328, 588 S.E.2d 617 (Ct. App. 2003).....	8
<i>U.S. ex rel. Coastal Roofing Co. v. P. Browne & Assocs., Inc.</i> , 585 F. Supp. 2d 708 (D.S.C. 2007).....	15, 18, 19
<i>Weaver v. Brookdale Senior Living, Inc.</i> , 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020).....	21, 22
 Statutes	
S.C. Code Ann. §§ 15-48-10, 15-48-20 (1976)	8

STATEMENT OF ISSUES ON APPEAL

- I. Whether the Court of Common Pleas erred in denying Medlytix, LLC's Motion to Compel Individual Arbitration under the doctrine of equitable estoppel.**
- II. Whether the Court of Common Pleas erred in failing to delegate issues of arbitrability to the arbitrator.**
- III. Whether the Court of Common Pleas erred in finding Medlytix waived its rights to arbitration.**

INTRODUCTORY STATEMENT OF FACTS

This matter concerns claims submitted to liable auto insurance carriers for emergency medical treatment Plaintiffs received from emergency room doctors employed by Broad River Physicians Group LLC after Plaintiffs sustained injuries in auto accidents caused by at-fault third-party drivers. After treating Plaintiffs, Broad River prepared bills for the medical services they provided; and Medlytix LLC, on behalf of Broad River, submitted claims to the liable third-party drivers' auto insurance carriers for those medical services. At no point were Plaintiffs themselves billed. In their Complaint, Plaintiffs contend that Broad River (and Medlytix, acting on its behalf) should not have billed the auto insurance carriers (all of which accepted liability for the accidents and paid the claims in full). Instead, Plaintiffs allege that as policyholders of BlueCross BlueShield health insurance (BCBS), they are third-party beneficiaries of the Provider Agreements between Broad River and BCBS, which they "belie[ve]" "require Broad River to submit bills directly to BCBS" and "not seek payments from additional sources." (Compl. ¶¶ 10-11, 23). Based on this theory, they assert contract-based, tort, and equitable claims against both Medlytix and Broad River for billing auto insurers for their care.

Although the Provider Agreements do not actually contain the direct billing requirement that Plaintiffs allege, they *do* contain mandatory dispute resolution provisions, which provide that if "mutual negotiation" cannot "resolve any problems or disputes that may arise under [the

Provider] Agreement[s],” the parties “agree to arbitrate such problem or dispute.” (Group Preferred Provider Agreement p. 11 § IX(M)(1)-(2); HIX Preferred Provider Agreement p. 10 § IX(M)(1)-(2); *see also* Group Preferred Provider Agreement cover page (“**THIS . . . AGREEMENT IS SUBJECT TO ARBITRATION**” (emphasis in original); HIX Preferred Provider Agreement p. 1 (“**THE TERMS OF THIS AGREEMENT SHALL BE SUBJECT TO ARBITRATION.**”). Each agreement’s arbitration provision further provides that such arbitration is to be governed by “current commercial rules of the American Arbitration Association.” (*Id.* at p. 11 § IX(M)(2); HIX Preferred Provider Agreement p. 10 § IX(M)(2)).

As intended third-party beneficiaries who seek to enforce the Provider Agreements, Plaintiffs are bound by—and estopped from avoiding—the arbitration provision in the Provider Agreements. *See Bennett v. ACS Primary Care Physicians-Se. P.C.*, 444 S.C. 458, 472, 908 S.E.2d 110, 117 (Ct. App. 2024). This Court has already decided the same question presented here, regarding similar causes of action, based on a similar theory that Defendants had allegedly submitted claims for covered services provided to Plaintiffs to the wrong payer based on an almost identical BCBS provider agreement. *Id.* at 467-69, 908 S.E.2d at 114-15. This Court’s decision in *Bennett* fully controls this case.

In *Bennett*, like here, the plaintiffs were patients who had been injured in car accidents and received medical services related to those injuries. *Id.* at 467-68, 908 S.E.2d at 114-15. Like here, the plaintiffs alleged that their medical provider improperly billed for their care in violation of purported obligations found in the BCBS Provider Agreements and sued the provider, raising claims of breach of contract and unjust enrichment. *Id.* The defendant moved to compel arbitration based on language in the BCBS Provider Agreements, but the circuit court denied the motion, concluding the plaintiffs had not agreed to arbitrate. *Id.* at 468-69, 908 S.E.2d at 115. This Court

reversed. *Id.* at 470, 908 S.E.2d at 116. Noting that the plaintiffs alleged “that they received direct benefits from the Provider Agreements” in their complaint and were “attempt[ing] to enforce the Provider Agreements” in their claims, which all arose from and could not stand independently from the agreements, this Court held that Plaintiffs “are equitably estopped from avoiding the arbitration provisions in the Provider Agreements.” *Id.* at 474, 908 S.E.2d at 118.

Plaintiffs here allege almost the same facts and claims as the *Bennett* plaintiffs, based on the same BCBS Provider Agreements, which contain the same arbitration language. As this Court held in *Bennett*, and the Court of Common Pleas should have held here, Plaintiffs allege they have “received direct benefits from the Provider Agreements” in their Complaint and “attempt to enforce” those contractual benefits in their claims. *Id.* Accordingly, just as this Court concluded in *Bennett*, this Court should hold that Plaintiffs “are equitably estopped from avoiding the arbitration provisions in the Provider Agreements.” *Id.* This matter should be compelled to arbitration.

STATEMENT OF THE CASE

On December 31, 2023, Plaintiff Honeycutt was injured in an auto accident. (Compl. ¶¶ 1, 24). The same day, she received treatment from Broad River’s emergency physicians for her accident-related injuries. (*Id.*). On May 10, 2023, Plaintiffs Gilmore and Colburn were both injured in an auto accident. (*Id.* ¶¶ 2-3, 51, 58). The next day, both were treated by Broad River’s physicians for their accident-related injuries. (*Id.*). All three Plaintiffs have health insurance plans through BCBS, for which Plaintiffs allege Broad River is an in-network provider. (*Id.* ¶¶ 8- 9, 25, 52, 59).

Plaintiffs allege that Broad River’s in-network relationship to BCBS is a product of certain contractual Provider Agreement(s). (*Id.* ¶ 9). Plaintiffs allege “[u]pon information and belief” that these “Provider Agreement(s) require Broad River to submit bills directly to BCBS for

services rendered to patients who are covered by BCBS health insurance plans[.]” (*Id.* ¶ 10).¹ Plaintiffs also allege they are “intended third-party beneficiaries of the Provider Agreement(s).” (*Id.* ¶ 77). The alleged benefits they seek to enforce include Broad River’s obligation to “submit bills directly to BCBS,” to “accept discounted reimbursement rates set forth in the Provider Agreement(s), and not [to] seek payments from additional sources other than co-pays and/or deductibles from patients.” (*Id.* ¶ 76).

Plaintiffs theorize that Defendants have “attempted to circumvent the benefits afforded to Plaintiffs[] by BCBS” in the Provider Agreement(s) by seeking to “collect such charges from the potential automobile insurance claim settlements each Plaintiff recovered” from applicable auto insurance carriers. (*Id.* ¶ 23). As Plaintiffs allege, Medlytix’s business model involves “perform[ing] an analysis of medical records related to emergency room visits and utiliz[ing] a third-party data and analytics service to identify potentially at-fault parties and applicable liability insurance and/or uninsured motorist coverage,” which the provider then bills as a primary payer for the charges covered by that insurance. (*Id.* ¶¶ 18, 20).

In accordance with this model, Plaintiffs allege that Defendants “refused to submit [each Plaintiff’s] medical bill to [BCBS] and, instead, claimed that [Broad River] was entitled to seek payment directly from ‘Auto Insurance,’ and demanded payment of the full amount of the bill from [each Plaintiff] out of their potential settlement proceeds and/or from [the insurer] directly.” (*Id.* ¶¶ 49; *see also id.* ¶¶ 53-57, 60-64). Specifically, Plaintiffs allege that on January 9, 2024, Defendants made a “claim for PIP² benefits through Plaintiff Honeycutt’s USAA automobile

¹ No such provision appears in the Provider Agreements.

² PIP, which stands for “Personal Injury Protection,” is a type of auto insurance coverage that pays for medical expenses (and sometimes other costs) for the policyholder, regardless of who was at fault.

insurance policy instead of submitting the bill to . . . BCBS.” (*Id.* ¶¶ 38, 39). Plaintiffs Gilmore and Colburn also allege that their accounts were “referred” to Medlytix, but they do not allege any details about which auto insurance was billed for their care or whether any payments were made. (*Id.* ¶¶ 54-57, 61-64).

Based on these events, Plaintiffs filed this action on September 13, 2024, asserting seven claims, including five against Medlytix: Tortious Interference (Count II), Negligence (Count III), Unjust Enrichment (Count IV), Injunctive Relief (Count VI), and violation of the Fair Debt Collection Practices Act (“FDCPA”). (Compl., generally). On October 16, 2024, Medlytix timely removed the matter to federal court. (Medlytix’s Not. of Filing of Not. of Removal p. 1; *see also Honeycutt v. Broad River Physicians Grp., LLC*, No. 2:24-cv-05922-BHH, 2024 WL 5891793 (D.S.C.)). Plaintiffs opposed removal and sought remand, arguing that Medlytix failed to obtain Broad River’s consent to removal. (Pls.’ Mot. to Remand p. 2.) Medlytix thereafter sought leave to amend its notice of removal to include Broad River’s consent, but the federal court denied Medlytix’s motion and remanded to the Court of Common Pleas on April 14, 2025. (Medlytix’s Mot. to Am. Not. of Removal p. 1; Remand Order pp. 14-15). Other than briefing Plaintiffs’ motion to remand and Medlytix’s motion to amend its notice of removal, the parties did not engage in any substantive litigation in federal court and did not answer, move to dismiss, or file other responsive pleadings. (Pls.’ Apr. 22, 2025 Not. of Filing pp. 1-2). In fact, the parties agreed to stay all deadlines pending decision on the removal. (Mot. to Stay Deadlines pp. 1-2).

After remand, on May 5, 2025, Medlytix timely moved to dismiss. (Medlytix’s Mot. to Dismiss p. 1). The same day, Broad River moved to compel arbitration, and in the alternative, to dismiss. (Broad River’s Mot. to Compel Arb. p. 1; Broad River’s Mot. to Dismiss p. 1). In its motion to compel arbitration, Broad River argued that “[b]ased on Plaintiffs’ claims that they are

indeed third-party beneficiaries of the Provider Agreements, Plaintiffs are bound to the arbitration provisions contained therein under well-settled law,” including this Court’s holding in *Bennett*. (Broad River’s Mem. in Supp. of Mot. to Compel Arb. pp. 1, 5). Broad River also argued that any arbitration must be conducted on an individual basis, (*id.* at pp. 5-7), and that the arbitration provisions are valid and not exempt under South Carolina law, again citing *Bennett*. (*Id.* at p. 7).

After reviewing Broad River’s motion, on June 4, 2025, Medlytix also moved to compel arbitration. (Medlytix’s Mot. to Compel Arb. p. 1). In its motion, Medlytix asked to be included in a combined arbitration of all parties and claims thereby consenting to arbitration. (*Id.* at p. 2). Medlytix further argued that its motion to compel should be granted “because Plaintiffs have sued to enforce their alleged rights under the Provider Agreement(s), they are estopped from avoiding the arbitration provision within those agreements,” and further because the claims against Medlytix are “intimately founded in and intertwined with the other claims relating to the Provider Agreement(s),” and therefore should be compelled to arbitration together. (*Id.*). Medlytix also argued that, to the extent there was any dispute, the scope of the arbitration provision’s applicability to the claims against Medlytix “is a question for an arbitrator to decide.” (*Id.*).

On July 30, 2025, Medlytix filed a brief in support, expanding on its arguments. (Medlytix’s Mem. in Supp. of Mot. to Compel Arb.). Plaintiffs opposed both Defendants’ motions to compel, (Pls.’ Opp’ns to Defs.’ Mots. to Compel Arb.), and Broad River filed a reply. (Broad River’s Reply in Supp. of Mot. to Compel Arb.).

The Court of Common Pleas heard argument on August 5, 2025. (Tr. p. 1). The Court took the motions under advisement and asked the parties to submit proposed orders setting forth their arguments and legal authorities so the Court could “take a look at it, and . . . make a decision.” (Tr. pp. 56, 76, 77; Aug. 11, 2025 Form 4 Order p. 1). On September 3, 2025, the Court adopted

Plaintiffs’ proposed orders in full as to all pending motions, and relevant here, denied both motions to compel arbitration. (Order Denying Medlytix’s Mot. to Compel Arb. p. 1; Order Denying Broad River’s Mot. to Compel Arb. p. 1).

On September 15, 2025, both Defendants moved for reconsideration. (Medlytix’s Mot. to Reconsider Order Denying Mot. to Dismiss p. 1; Medlytix’s Mot. to Reconsider Order Denying Mot. to Compel Arb. p. 1; Broad River’s Mot. to Reconsider Order Denying Mot. to Dismiss p. 1; Broad River’s Mot. to Reconsider Order Denying Mot. to Compel Arb. p. 1). On May 6, 2026, the Court of Common Pleas issued a form order denying the motions for reconsideration. (Order Denying Defs.’ Mots. to Reconsider p. 1). On May 20, 2026, Medlytix filed and served its Notice of Appeal. (Medlytix’s Not. of Appeal p. 1).

STANDARD OF REVIEW

Under South Carolina law, “[t]he determination of whether a claim is subject to arbitration is subject to de novo review.” *Bennett*, 444 S.C. at 469, 908 S.E.2d at 115 (quoting *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007)). “[T]he determination of whether a party waived its right to arbitrate is a legal conclusion subject to de novo review.” *Carlson v. S.C. State Plastering, LLC*, 404 S.C. 250, 256, 743 S.E.2d 868, 872 (Ct. App. 2013) (quoting *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003)).

ARGUMENT

The Orders entered by the Court of Common Pleas on Medlytix’s motions to compel and to reconsider erred in four main ways. **First**, the Court of Common Pleas erroneously concluded that there was no agreement to arbitrate by looking too narrowly at whether Medlytix and Plaintiffs are in direct privity with each other—but this was the wrong question. **Second**, it erroneously concluded that Medlytix could not enforce the arbitration agreement in the Provider Agreements

under estoppel theories as a nonsignatory, when governing South Carolina law holds that nonsignatories may both compel and be compelled to arbitration. Plaintiffs cannot seek to enforce a provision of the Provider Agreement while attempting to avoid the terms of the Provider Agreements they do not like. **Third**, it failed to consider Medlytix’s arguments that issues of arbitrability (including waiver) had been delegated to an arbitrator. **Finally**, it incorrectly held that Medlytix had waived its right to arbitrate by removing the case to federal court, a holding that contradicts every South Carolina authority on the question. Each of these holdings was error.

I. The Court of Common Pleas Erred in Declining to Compel Individual Arbitration.

A. The Court of Common Pleas erred in concluding there is no enforceable agreement to arbitrate.

In its Order denying Medlytix’s Motion to Compel, the Court of Common Pleas erroneously held that “Medlytix must show the existence of a valid arbitration agreement between itself and Plaintiffs,” and that “Medlytix may not simply rely on an alleged agreement between Plaintiffs and its co-defendant, Broad River.” (Order Denying Medlytix’s Mot. to Compel Arb. p. 3). Finding no such direct agreement, the Court thus concluded that “Medlytix has failed to establish the existence of a written agreement to arbitrate.” (*Id.*)

The Court of Common Pleas asked the wrong question and thus gave the wrong answer. Plaintiffs already acknowledge a written agreement exists and seek to enforce it against Medlytix. Because Medlytix is relying on a theory of estoppel to merely hold Plaintiffs to the contract they seek to enforce, the only question for the Court at the initial stage of the analysis is whether the contract at issue contains a valid and existing written agreement to arbitrate the claims alleged, not who the parties are to that agreement. S.C. Code Ann. §§ 15-48-10, 15-48-20 (1976); *The Hous. Auth. of City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 334, 336, 588 S.E.2d 617, 620-21 (Ct. App. 2003) (in analyzing whether dispute is subject to arbitration, the Court determines

“whether an arbitration agreement exists” and whether the “factual allegations underlying the claim are within the scope of the [] arbitration clause” (internal quotation marks omitted) (citation omitted)).

Here, Plaintiffs do not and cannot seriously contend that the very contract on which they assert their claims and which they seek to enforce is invalid or unenforceable. Each of their claims is premised on an alleged violation of the Provider Agreements and thus premised on the existence and validity of the terms of the Provider Agreements. (Compl. ¶ 85 (tortious interference claim based on alleged breach of Provider Agreement); ¶ 93 (negligence claim based on Medlytix “billing contrary to personal health insurance information” subject to the Provider Agreement between BlueCross BlueShield and Broad River); ¶ 100 (unjust enrichment claim based on assertion that payment for services “should have come from BCBS at the discounted reimbursement rate” under the Provider Agreement); ¶ 113 (injunctive relief sought to prevent Medlytix from “facilitating . . . violations of the Provider Agreement(s)”; ¶ 118 (FDCPA claim based on debt that is allegedly unlawful for being “in an amount not permitted to be collected by contract” under the Provider Agreements)). Were the Court to hold that no valid contract exists, Plaintiffs’ claims all must necessarily fail, as there would be no obligation whatsoever for Broad River to submit claims to BCBS absent enforceable Provider Agreements.

Nor is there any serious dispute that the contract contains a valid written arbitration provision. Each agreement provides on its cover page that it is “**SUBJECT TO ARBITRATION.**” (Group Preferred Provider Agreement cover page; HIX Preferred Provider Agreement p. 1.) (emphasis in original). In line with this cover-page bold and underlined language, each agreement contains a mandatory dispute resolution provision, which states that if “mutual negotiation” cannot “resolve any problems or disputes that may arise under [the Provider]

Agreement[s],” the parties “agree to arbitrate such problem or dispute.” (Group Preferred Provider Agreement p. 11 § IX(M)(1)-(2); HIX Preferred Provider Agreement p. 10 § IX(M)(1)-(2)).

Plaintiffs have not challenged the validity of the Provider Agreements or the arbitration provisions. Therefore, the Court of Common Pleas should have held that there is a valid agreement to arbitrate. Whether or not Plaintiffs and Medlytix are parties who can enforce or be bound by that agreement is a separate and unrelated question, addressed under the estoppel analysis below.

B. The Court of Common Pleas erred in concluding that Medlytix may not enforce the Provider Agreements on Plaintiffs’ claims.

The Court of Common Pleas next erroneously held that Medlytix is not permitted to enforce the arbitration agreement in the Provider Agreements. First, the Court of Common Pleas wrongly reasoned that “Medlytix may not enforce the Provider Agreements . . . because it is not a third-party beneficiary of either agreement” and therefore “lacks privity to enforce it.” (Order Denying Medlytix’s Mot. to Compel Arb. p. 4). Next, the Court wrongly concluded that Medlytix may not assert direct benefits estoppel, because this only applies “when a signatory seeks to enforce an arbitration agreement against a nonsignatory,” even though governing caselaw holds that nonsignatories can both compel and be compelled. (*Id.* p. 5). Finally, citing inapposite caselaw, the Court wrongly stated that Medlytix could not rely on equitable estoppel because enforcement was not “necessary to prevent an injustice” here and therefore did not apply. (*Id.*).

This analysis was wrong in every sense. Medlytix’s status (or not) as a third-party beneficiary or signatory is irrelevant to its ability to enforce an arbitration agreement under an estoppel theory. Here, estoppel applies for two reasons. First, Plaintiffs rely on the direct benefits of the terms of the contracts in asserting their claims against Medlytix, and thus direct benefits estoppel requires Plaintiffs to submit to arbitration, to which Medlytix has consented. Second,

separately and in addition, Plaintiffs' claims against Medlytix are intertwined with their claims against Broad River and with the terms of the contract and therefore collective arbitration under a theory of equitable estoppel is required to avoid thwarting the goal of the arbitration provision in the Provider Agreements.

1. *Medlytix need not be a third-party beneficiary or a signatory to assert direct benefits estoppel.*

To start, the Court of Common Pleas is wrong that Medlytix must be a third-party beneficiary or signatory to enforce the Provider Agreements. Because Medlytix is seeking to enforce the arbitration provision in the Provider Agreements through estoppel, and giving its consent to arbitrate, its status as a third-party beneficiary or signatory to the underlying agreement (or not) is irrelevant.

As this Court has observed, a nonsignatory can compel arbitration under a theory of estoppel in two situations: (1) when the claims against the nonsignatory “rely on the terms of the written agreement” containing the arbitration clause, and (2) when the claims allege “substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.” *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 295, 733 S.E.2d 597, 604 (Ct. App. 2012) (quoting *Goer v. Jasco Indus., Inc.*, 395 F.Supp.2d 308, 314 n. 9 (D.S.C.2005)); *see* Order Denying Medlytix's Mot. to Compel Arb. p. 5.

Nothing in this analysis requires Medlytix to be a third-party beneficiary of the contract. Indeed, it is the opposite—the direct benefits estoppel analysis looks to whether the *plaintiff* is a third-party beneficiary of the contract, asserting claims based on benefits obtained from the contract. Generally, “a third[-]party beneficiary is bound by the terms and conditions of the contract that it attempts to invoke.” *Bennett*, 444 S.C. at 470 n.5, 908 S.E.2d at 116 n.5 (quoting *Georgia Power Co. v. Partin*, 727 So.2d 2, 5 (Ala. 1998)); *see also id.* at 481-82, 908 S.E.2d at

122 (listing cases from other jurisdictions where arbitration provisions were enforced against third party beneficiaries). In this case, because *Plaintiffs* assert that they are third-party beneficiaries of the Provider Agreements and thus entitled to enforce the agreements, they are “estopped from refusing to comply with an arbitration clause” in those agreements. *Dixon v. Pattee*, 442 S.C. 233, 257, 898 S.E.2d 158, 171 (Ct. App. 2023) (quoting *Pearson*, 400 S.C. at 290, 733 S.E.2d at 601). “To allow a plaintiff to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the arbitration act.” *Id.* at 257, 898 S.E.2d at 170-71 (internal quotation marks omitted) (citation omitted) (cleaned up). “[A] party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.” *Id.* at 258, 898 S.E.2d at 171 (internal quotation marks omitted) (citation omitted).

Medlytix’s status as a nonsignatory consenting to arbitration, rather than a signatory to the underlying agreement, does not prevent it from compelling arbitration of a third-party beneficiary under direct benefits estoppel. (*Contra* Order Denying Medlytix’s Mot. to Compel Arb. p. 5 (“Medlytix is not a signatory to the Provider Agreements. As such, [Medlytix] may not assert direct benefits estoppel to enforce the arbitration provisions in the Provider Agreements against Plaintiffs.”)). As this Court has emphasized, “a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.” *Pearson*, 400 S.C. at 288, 733 S.E.2d at 600 (quoting *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000)). The general principle is that “when the nonsignatory parties are willing to submit to arbitration, the case should be arbitrated.” *S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc.*, 312 S.C. 559, 563, 437 S.E.2d 22, 24 (1993). Here, Medlytix has given its willing consent to arbitrate under the agreement, and Plaintiffs have asserted their third-party beneficiary

status under the agreement. The fact that Medlytix did not sign the Provider Agreements therefore does not preclude Medlytix from claiming the protection of the arbitration agreement when Plaintiffs attempt to enforce the Provider Agreements against Medlytix.

In *Pearson*, for example, a medical doctor entered a contract with a placement agency, which, in turn, contracted with a hospital where the doctor worked. 400 S.C. at 285-86, 733 S.E.2d at 599. Both contracts contained arbitration provisions. *Id.* at 286, 733 S.E.2d at 599. When the medical doctor sued both the hospital and the placement agency to assert rights under his contract with the placement agency, the circuit court erroneously split up the case, ordering only the claims against the placement agency to arbitration, while denying arbitration of the doctor's claims against the hospital. *Id.* The court reasoned that since there was *no direct contract* between the doctor and hospital containing an arbitration provision, the doctor's claims against the hospital could not be arbitrated, even if those claims were based on the contract with the placement agency that contained such a provision. *Id.* The Court of Appeals reversed and ordered all claims to arbitration, agreeing with the hospital that:

(1) Dr. Pearson's claims [against the hospital] fall within the arbitration agreement he signed with [the placement agency]; (2) federal law recognizes the right to compel non-signatories to arbitrate and for non-signatories to compel signatories to arbitrate; (3) Dr. Pearson is relying on the terms in the agreement between [the placement agency] and the Hospital and Dr. Pearson sought to benefit from it; and (4) the Hospital is a third-party beneficiary to Dr. Pearson and [placement agency's] contract.

Id. at 287, 733 S.E.2d at 599-600. Each of these factors is present here as well. Plaintiffs' claims arise from an alleged violation of the Provider Agreements and therefore fall within the arbitration provision; non-signatories like Medlytix may compel arbitration of covered claims, and non-signatories like Plaintiffs may be compelled to arbitrate those claims; Plaintiffs rely and seek to assert benefits based on the Provider Agreements; and Plaintiffs allege they are third-party

beneficiaries of the Provider Agreements. Under *Pearson*, Plaintiffs' claims—including those against Medlytix—must be arbitrated.

The Court's citation to *Moses H. Cone Mem'l Hospital*, a U.S. Supreme Court decision about the *Colorado River* doctrine, defeats, rather than supports, the Plaintiffs' argument. That case was about a dispute between a hospital, a construction company, and an architect. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 4-8 (1983). The construction company sought to compel arbitration based on an agreement between it and the hospital. *Id.* at 7-8. The architect was not a party to the arbitration agreement. *Id.* at 4-6. Accordingly, in analyzing the risk of piecemeal litigation (a factor under the *Colorado River* doctrine), the Supreme Court acknowledged that “an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement,” and thus this may require “piecemeal resolution when necessary to give effect to an arbitration agreement.” *Id.* at 20. In other words, the Supreme Court acknowledged that the hospital might need to face arbitration of the claims against the construction company, while litigating potential indemnity claims against the architect. *Id.* at 19-20. But in explaining this possibility, the Supreme Court explained that this outcome was determined *based on the nonparty's consent*: “The [indemnity] dispute cannot be sent to arbitration without the Architect's consent, since there is no arbitration agreement between the Hospital and the Architect.” *Id.* at 19-20. Here, by contrast, the nonsignatory Medlytix has consented to arbitration and indeed moves to compel Plaintiffs. The piecemeal resolution mentioned in *Moses* would be unnecessary and inappropriate.

2. *Equitable estoppel applies to the claims asserted against Medlytix.*

Given Medlytix's consent to arbitration and Plaintiffs' asserted status as third-party beneficiaries, both separate tests for compelling arbitration based on estoppel are met here. The Court of Common Pleas was wrong to deny Defendants' motions to compel arbitration.

Direct Benefits Estoppel Test. First, Plaintiffs’ claims “rely on the terms of the written agreement” containing the arbitration clause and thus are subject to the principle of direct benefits estoppel. *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (internal quotation marks omitted) (citation omitted). “When a claim depends on the contract’s existence and cannot stand independently—that is, the alleged liability arises solely from the contract or must be determined by reference to it—equity prevents a person from avoiding the arbitration clause that was part of that agreement.” *Bennett*, 444 S.C. at 470-71, 908 S.E.2d at 116-17 (internal quotation marks omitted) (citation omitted); *see also id.* at 474, 908 S.E.2d at 118 (“[T]heir admissions in their respective complaints that they received direct benefits from the Provider Agreements preclude them from avoiding the arbitration provisions in these agreements.”); *see also Dixon*, 442 S.C. at 257, 898 S.E.2d at 170 (“[A] party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract’s arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him.” (internal quotation marks omitted) (citation omitted) (cleaned up)). Notably, this test is “broadly construed, and does not solely apply to causes of action for breach of contract,” but even where “Plaintiff does not include a breach of contract cause of action in its complaint” and instead asserts only non-contractual theories that relate to supposed obligations under an agreement. *U.S. ex rel. Coastal Roofing Co. v. P. Browne & Assocs., Inc.*, 585 F. Supp. 2d 708, 715 (D.S.C. 2007).

Each of Plaintiffs’ claims against Medlytix, as alleged in their own Complaint, relies and depends on the supposed obligations in the Provider Agreement(s).

In Count II, Plaintiffs allege a claim of tortious interference with a contractual relationship, on the basis that “Plaintiffs and Class members are intended third-party beneficiaries of the Provider Agreement(s),” and that Medlytix “intentionally and improperly interfered with and

caused a disruption of the contractual relationships between Broad River and BCBS by directing Broad River not to submit bills directly to BCBS” for their care but instead “pursuing payment from . . . liability insurers and or . . . uninsured motorist coverage.” (Compl. ¶¶ 82-84). Plaintiffs allege that this interference denied Plaintiffs the benefit of the “discounted reimbursement rates” to which they are entitled under their BCBS plan—i.e., under the Provider Agreements. (*Id.* ¶ 87). This claim therefore necessarily “depends on the contract’s existence,” and is subject to direct benefits estoppel. *Bennett*, 444 S.C. at 471, 908 S.E.2d at 116.

In Count III, Plaintiffs allege a negligence claim arising from Defendants’ supposed breach of a duty to “assess and execute medical billing”, resulting in Plaintiffs paying “more for healthcare services than they would have if the bills would have been submitted to BCBS and paid at the discounted reimbursement rates” available under the Provider Agreements. (*Id.* ¶¶ 91, 94). Accordingly, Defendants’ “alleged liability” under this claim “must be determined by reference to” the Provider Agreements, and this claim is likewise subject to direct benefits estoppel. *Bennett*, 444 S.C. at 471, 908 S.E.2d at 116.

In Count IV, Plaintiffs allege an unjust enrichment claim on the theory that they made “higher payments for healthcare services” than they would have “if the bills had been submitted to BCBS and paid at the discounted reimbursement rates set forth in the Provider Agreement(s).” (Compl. ¶ 98). Plaintiffs claim that “payment for the services provided should have come from BCBS at the discounted reimbursement rates” set forth in the Provider Agreements. (*Id.* ¶ 100). This claim, too, “cannot stand independently” of the contract, as any obligation to bill BCBS at a certain rate necessarily comes from the Provider Agreements. *Bennett*, 444 S.C. at 471, 908 S.E.2d at 116. This claim is thus subject to estoppel.

In Count VI, Plaintiffs seek injunctive relief based on the theory that “Broad River is contractually obligated to submit bills directly to BCBS for services rendered to patients who are covered by BCBS health insurance plans[.]” (Compl. ¶ 111). Plaintiffs seek relief that would stop Defendants from “violating the terms of the Provider Agreement(s),” including a permanent injunction prohibiting covering Defendants’ billing practices. (*Id.* ¶¶ 113, 115). This claim similarly hinges on Plaintiffs’ theory that Defendants are bound by contractual obligations under the BCBS Provider Agreements that Plaintiffs can enforce and thus is subject to estoppel.

Finally, in Count VII, Plaintiffs allege that Medlytix has violated the FDCPA by “collecting, on behalf of Broad River, amounts not permitted to be collected by contract or law.” (*Id.* ¶ 118). This claim, too, is based on the Provider Agreements, as Plaintiffs allege that because of Medlytix’s supposed FDCPA violation, they “paid more for healthcare services than they would have if the bills would have been submitted to BCBS and paid at the discounted reimbursement rates set forth in the Provider Agreement(s)[.]” (*Id.* ¶ 120). As this claim also “depends on the contract’s existence,” it is subject to direct benefits estoppel. *Bennett*, 444 S.C. at 471, 908 S.E.2d at 116.

In sum, the Court of Common Pleas erred in concluding that “none of Medlytix’s conduct that Plaintiffs complain of arises from the Provider Agreements.” (Order Denying Medlytix’s Mot. to Compel Arb. p. 7). To the contrary, each claim against Medlytix is predicated on the theory that Medlytix’s billing of auto insurance *violates the Provider Agreements*. But for the (supposed) obligations set forth in those Provider Agreements, Plaintiffs’ claims would not arise. Direct benefits estoppel under *Bennett* applies.

Intertwined Claims Test. Second, Plaintiffs’ claims against Medlytix allege “substantially interdependent and concerted misconduct by both the nonsignatory and one or more

of the signatories to the contract,” and thus properly may be compelled to arbitration along with the other contract-based claims against Broad River on this basis as well. *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (internal quotation marks omitted) (citation omitted). This test applies both to claims intertwined with each other and with another defendant as well as claims intertwined with the contract itself. *See Goer*, 395 F. Supp. 2d at 313, 315 (describing “so-called ‘intertwined claims’ test” for compelling arbitration, and noting this test applies “when a party’s claims are sufficiently entangled with the underlying contract.”); *Pearson*, 400 S.C. at 288-89, 733 S.E.2d at 600 (arbitration should be compelled where “‘a significant relationship’ exists between the asserted claims and the contract in which the arbitration clause is contained” (quoting *Long v. Silver*, 248 F.3d 309, 316 (4th Cir. 2001))). A non-signatory to an arbitration agreement may properly use this test to compel arbitration. *Goer*, 395 F. Supp. 2d at 313.

The intertwined claims test broadens the reach of direct benefits estoppel and helps protect the parties’ intent in contracting to arbitrate their disputes. *See Long*, 248 F.3d at 320 (“If the non-signatory shareholders were forced to litigate the issues arising under the 1972 Agreement, the arbitration proceedings involving the 1972 Agreement against the Corporation, as well as the arbitration proceedings involving the 1999 Agreement, ‘would be rendered meaningless and the federal policy in favor of arbitration effectively thwarted.’” (citation omitted)); *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (not arbitrating all “interdependent” and related claims together would “render[] meaningless” and “thwart[]” policy goals of arbitration (citations omitted)); *Coastal Roofing Co.*, 585 F. Supp. 2d at 715 (allowing intertwined claims to avoid arbitration would contravene purposes of arbitration and violate equity).

Determining whether claims are sufficiently intertwined to justify sending them to arbitration together involves considering the facts and issues on which the claims are based, the

treatment of the different defendants, and how the claims relate to the contract at issue. *See Pearson*, 400 S.C. at 297, 733 S.E.2d at 605 (“[Plaintiff] makes no distinction between the Hospital and Locum. He lumps them together as defendants and states they are jointly and severally liable. Additionally, the lawsuit arose against Locum and the Hospital from the same set of facts.”); *Long*, 248 F.3d at 320 (“[T]he facts and claims against the Corporation and its shareholders are so closely intertwined that Long’s claims against the non-signatory shareholders of the Corporation are properly referable to arbitration even though the shareholders are not formal parties to the 1972 Agreement.”); *Coastal Roofing Co.*, 585 F. Supp. 2d at 715 (“[T]he heart of its various claims is that Broadband did not live up to its obligations under the agreement, prematurely and unfairly terminated Plaintiff as a subcontractor, was unjustly enriched as a result of these actions, and that Plaintiff took out a bond in reliance upon the agreement, which it would not have otherwise done. Plaintiff does not, and indeed cannot, provide a satisfactory explanation as to how its claims are not substantively ‘intertwined’ with the obligations it alleges Defendants, allegedly acting as Broadband, assumed in the agreement.”); *Goer*, 395 F. Supp. 2d at 316 (allowing nonsignatories to compel arbitration under the intertwined claims test because the “claims can not be adjudicated without interpreting, and potentially enforcing, the terms of the employment agreements” that contain the arbitration provision).

Here, the claims against Medlytix should not proceed separately from the other claims in the case because they are too “closely intertwined.” *Long*, 248 F.3d at 320. Each claim against Medlytix turns on an alleged violation of the same Provider Agreements at issue in the claims on which Broad River has moved to compel arbitration. The claims against Medlytix cannot be resolved “without interpreting, and potentially enforcing, the terms” of the Provider Agreements that are subject to arbitration. *Goer*, 395 F. Supp. 2d at 316. Moreover, throughout the Complaint,

Plaintiffs “lump [Medlytix and Broad River] together,” contending that they share responsibility for the billing practices at issue. *Pearson*, 400 S.C. at 297, 733 S.E.2d at 605. (*See, e.g.*, Compl. ¶ 12 (alleging Defendants acted “in concert”), ¶ 16 (alleging “control”), ¶ 20 (alleging Defendants acted “jointly and collaboratively”)). Finally, the claims against Medlytix and Broad River arise “from the same set of facts.” *Pearson*, 400 S.C. at 297, 733 S.E.2d at 605. Plaintiffs contend that Medlytix has assisted Broad River in recovering Plaintiffs’ accident-related medical expenses from auto liability coverage instead of from BCBS health insurance, purportedly in violation of terms contained in the Provider Agreements. Any determinations regarding these alleged violations will turn on the positions that Plaintiffs and Broad River take in the pending arbitration. It makes no sense to litigate that same issue in two separate forums, and doing so would undermine the strength of South Carolina’s policy favoring arbitration. Not only would this be inefficient, it could also lead to unhelpful results, such as inconsistent treatment of the issues or contradictory rulings.³

The Court of Common Pleas’ citations to other cases about equitable estoppel and injustice are inapposite. For example, *Harvey v. Art Metal* was a workers’ compensation case where an employee made misrepresentations in his application for employment, but neither defendant nor its insurer suffered prejudice from it, so they were not permitted to raise an estoppel defense to his claim for unemployment compensation. *Harvey v. Art Metal, Inc.*, 247 S.C. 443, 449-52, 147 S.E.2d 697, 700-02 (1966). This has nothing to do with the application of direct benefits estoppel

³ For the same reason, even if this Court were to conclude that some of Plaintiffs’ claims are sufficiently independent of the contract to fall within the direct benefits test above, the intertwined claims test ensures that even those are still subject to arbitration because of their factual and practical overlap with the contract-based claims. *Long*, 248 F.3d at 321 (applying intertwined claims test to compel arbitration of all claims “because the facts and claims . . . are inextricably intertwined”); *Pearson*, 400 S.C. at 297, 733 S.E.2d at 605 (compelling arbitration of lawsuit since all claims against all defendants arise “from the same set of facts”). Thus, under the intertwined claims test, all causes of action should be compelled to arbitration together.

to the claims here, which were raised based on an agreement containing an arbitration provision, and which are clearly governed by more closely on-point cases like *Bennett*.

The Court’s reference to *Weaver v. Brookdale* at least asks the right question, but it is still distinguishable by its facts and claims. In that case, this Court had to determine whether the tort claims arising from the unfortunate death of a nursing home resident who had encountered an alligator were subject to an arbitration agreement between the resident and the facility. *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 227-28, 847 S.E.2d 268, 270-71 (Ct. App. 2020). This Court concluded that because those claims depended on duties outside of and unrelated to the agreement, direct benefits estoppel did not apply:

Weaver’s claims rely on general tort duties owed by Appellants to everyone, not any provision of the residency agreement. For instance, one of her emotional distress claims alleges she was injured because Appellants mishandled and failed to safeguard Walker’s remains. Our review of the residency agreement reveals no provision regarding the handling of a deceased resident’s remains These duties do not flow directly from the residency agreement. . . . Weaver has not “exploited” or otherwise sought to enforce or benefit from the residency agreement, any more than a pedestrian run over by a truck has benefited from the contract for the purchase of the truck.

Id. at 232, 847 S.E.2d at 273.

This case is nothing like *Weaver*. The heart of Plaintiffs’ claims is the contention that the BCBS Provider Agreements require Defendants to bill BCBS for Plaintiffs’ care, not an otherwise liable auto insurance policy. This is not a general tort duty—it is an obligation Plaintiffs allege arises from a contract. Like in *Bennett*, Plaintiffs “pled all of [their] claims as being based on an alleged duty arising solely from the terms of the Provider Agreement.” *Bennett*, 444 S.C. at 472, 908 S.E.2d at 117. Plaintiffs’ “admissions in their respective complaints that they received direct benefits from the Provider Agreements preclude them from avoiding the arbitration provisions in these agreements.” *Id.* at 474, 908 S.E.2d at 118. And “a reasonable construction” of the

arbitration provisions at issue, which cover “any problems or disputes that may arise under this Agreement,” is that the agreement to arbitrate encompasses “not only disputes between Provider and Insurer but also disputes between a third party and either Provider or Insurer as long as the dispute arises under the Provider Agreement.” *Id.* at 481, 908 S.E.2d at 122. (*See also* Group Preferred Provider Agreement p. 11 § IX(M)(1)-(2); HIX Preferred Provider Agreement p. 10 § IX(M)(1)-(2) (stating if “mutual negotiation” cannot “resolve any problems or disputes that may arise under [the Provider] Agreement[s],” the parties “agree to arbitrate such problem or dispute”). Thus, under *Bennett*, Plaintiffs’ claims must be compelled to arbitration.

In short, *Bennett* and *Pearson*, not *Weaver*, govern this case. Because Plaintiffs’ claims assert direct benefits from a contract containing an arbitration provision, Plaintiffs are estopped from avoiding that provision, even if a nonsignatory like Medlytix is asserting it. *Id.* at 474, 908 S.E.2d at 118.

II. The Court of Common Pleas erred in not enforcing the delegation clause incorporated in the arbitration agreement.

The Court of Common Pleas further erred in deciding issues about the scope of arbitrability—including issues of waiver—at all. Specifically, it was error for the Court of Common Pleas to overlook Medlytix’s argument that any determinations about the scope of arbitrability were validly delegated to an arbitrator to decide, and not for the Court to resolve. (*See* Medlytix’s Mot. to Compel Arb. p. 2; Medlytix’s Mem. in Supp. of Mot. to Compel Arb. p. 3, 7-8; Medlytix’s Mot. to Reconsider Order Denying Mot. to Compel Arb. p. 2.).

South Carolina permits parties to delegate questions of arbitrability to an arbitrator, so long as this is done by “clear and unmistakable evidence.” *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 700, 869 S.E.2d 859, 864 (Ct. App. 2022) (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019)). Where a contract delegates issues of arbitrability to

arbitrator, “a court may not override the contract and decide the arbitrability question” itself. *Id.*; *see also Doe v. TCSC, LLC*, 430 S.C. 602, 616, 846 S.E.2d 874, 881 (Ct. App. 2020) (Where the question relates to the “interpretation and scope of the arbitration contract and the arbitrability of the dispute—rather than whether the arbitration contract was formed or is valid—precedent requires that we honor the parties’ choice to leave the issue of the exception to the arbitrator.”)

The arbitration provision at issue here, by invoking and incorporating the American Arbitration Association (“AAA”) Commercial Arbitration Rules, validly delegated these issues to an arbitrator. *NLM Servs., LLC v. K1 Speed Franchising, Inc.*, No. 9:23-CV-1777-RMG, 2023 WL 11887252, at *3 (D.S.C. June 27, 2023) (an arbitration agreement incorporating the AAA Commercial Arbitration Rules “clearly and unmistakably delegates the arbitrability question to an arbitrator”); *Berkeley Cnty. Sch. Dist. v. Hub Int’l Ltd.*, 130 F.4th 396, 403 n.3 (4th Cir. 2025) (noting that “other circuits have held that an arbitration provision’s incorporation of the AAA commercial rules is a clear and unmistakable expression of the parties’ intent to reserve the question of arbitrability for the arbitrator and not the court” and listing cases); *Singh v. Anesthesia Assocs. of Rock Hill, P.A.*, No. 0:25-CV-0696-CMC-SVH, 2025 WL 1378693, at *7 (D.S.C. May 13, 2025) (“Courts overwhelmingly agree incorporation of the AAA rules provides ‘clear and unmistakable’ evidence of the parties’ intent to delegate arbitrability.” (citations omitted)).

Here, the Provider Agreements’ arbitration provisions validly incorporate the AAA Commercial Arbitration Rules and provide that those rules “shall apply in lieu of state or federal rules of civil procedure.” Group Preferred Provider Agreement p. 11 § IX(M)(2); HIX Preferred Provider Agreement p. 10 § IX(M)(2).⁴ This constitutes “clear and unmistakable evidence” that

⁴ This language distinguishes the arbitration agreements here from the arbitration agreement discussed in the South Carolina Supreme Court’s recent decision in *315 Corley CW LLC v. Palmetto Bluff Development, LLC*, 448 S.C. 149, 932 S.E.2d 335 (2026). There, the South

the parties intended to delegate any disputes about the scope of the arbitration agreements' applicability to Plaintiffs' claims, including issues of waiver and estoppel, to the arbitrator. *Palmetto Wildlife*, 435 S.C. at 700, 869 S.E.2d at 864. The Court of Common Pleas erred in failing to delegate these issues to the arbitrator in the first instance and in failing to address Medlytix's argument on this point on reconsideration. (Medlytix's Mot. to Reconsider Order Denying Mot. to Dismiss p. 2). For this reason as well, the Court of Common Pleas' Order(s) should be reversed and this matter should be compelled to arbitration.

III. The Court of Common Pleas erred in finding that Medlytix waived its right to compel arbitration.

Finally, even assuming it could decide the issue, the Court of Common Pleas erroneously held—contrary to a wealth of controlling caselaw—that Medlytix had waived its right to compel arbitration by merely “electing to remove this case to federal court” and opposing Plaintiffs' motion to remand. (Order Denying Medlytix's Mot. to Compel Arb. p. 8). This extraordinary holding should be reversed.

South Carolina courts have emphasized that “there is a presumption against finding a party has waived its right to compel arbitration.” *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 388, 759 S.E.2d 727, 736 (2014) (finding no waiver where the parties engaged in settlement talks and limited discovery before arbitration was sought); *see also Gen. Equip. & Supply Co. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 557, 544 S.E.2d 643, 645-46 (Ct.

Carolina Supreme Court held that while a contract adopting the AAA's rules was “some evidence of an intent to delegate” issues of arbitrability, other areas of the contract clearly indicated “the parties' intent to apply the procedural law of South Carolina to the arbitration provision,” including South Carolina procedural rules that “require the court to determine arbitrability issues.” *Id.* at 156-57, 932 S.E.2d at 338-39. Here, the arbitration provisions in the Provider Agreements communicate clearly and unmistakably that arbitrability issues are to be decided by the arbitrator and not the court, as the Provider Agreements *both* adopt the AAA's rules *and* expressly state these rules “shall apply in lieu of” South Carolina's procedural law. Group Preferred Provider Agreement p. 11 § IX(M)(2); HIX Preferred Provider Agreement p. 10 § IX(M)(2).

App. 2001) (no waiver where parties were involved in litigation for almost eight months and engaged in limited discovery).

The federal courts of South Carolina have also repeatedly held that “mere removal of a case to federal court, without further detailed participation in litigation there, does not suffice to waive the right to compel arbitration.” *Oyekan v. Educ. Corp. of Am.*, No. CV 4:18-1785-RBH-KDW, 2018 WL 8300519, at *5 (D.S.C. Oct. 10, 2018), *report and recommendation adopted*, No. 4:18-CV-01785-RBH, 2019 WL 978865 (D.S.C. Feb. 28, 2019); *see also Oyekan v. Educ. Corp. of Am.*, No. 4:18-CV-01785-RBH, 2019 WL 978865, at *5 (D.S.C. Feb. 28, 2019) (concluding arbitration was not waived where defendant removed case and did not engage in substantial litigation); *Kidston v. Res. Plan. Corp.*, No. 2:11-CV-2036-PMD, 2012 WL 2512933, at *3 (D.S.C. June 29, 2012) (“[T]he removal of a state action is not to be deemed a ‘default’ or ‘waiver.’” (citation omitted)). Indeed, parties regularly remove cases to federal courts before moving to compel arbitration—resulting in no finding of waiver at all. *See, e.g., Kidston*, 2012 WL 2512933, at *3 (D.S.C. June 29, 2012) (no waiver, even where “[p]rior to seeking arbitration, Defendants utilized the litigation machinery by (1) removing the case to federal court, (2) filing motions to dismiss, and (3) answering the complaint”); *see also Bennett*, 444 S.C. at 468, 908 S.E.2d at 115 (unsuccessfully removed and remanded before motions to compel were filed and ultimately arbitration agreements were enforced).

Here, like in these other cases, Defendants’ “mere removal of [the] case to federal court” did not waive its right to arbitrate. *Oyekan*, 2018 WL 8300519, at *5. Plaintiffs opposed the removal and sought remand, calling into question the federal court’s jurisdiction to resolve disputes between the parties—including any dispute about arbitration. There cannot be waiver in this situation as no court was able to take action on the arbitrability of the claims until the remand

issue was resolved. *See Leone-Larose v. Health Care Partners of S.C., Inc.*, No. 4:09-CV-1771-TLW-TER, 2010 WL 11553028, at *2 (D.S.C. Mar. 2, 2010) (“If remand is proper, the Court lacks jurisdiction to enter an order compelling arbitration.”); *Lovett v. Deutsche Bank Nat. Tr. Co.*, No. CA 3:12-1816-MBS-SVH, 2013 WL 841679, at *4 (D.S.C. Feb. 12, 2013) (“Because the state court is required to stop all proceedings unless and until the case is remanded, any action it takes after the filing of the removal notice is void ab initio, even if the case is subsequently remanded because the initial removal was improper.” (internal quotation marks omitted) (citation omitted)), *report and recommendation adopted*, No. CA 3:12-1816-MBS-SVH, 2013 WL 841675 (D.S.C. Mar. 6, 2013). The *only thing* the parties briefed before the federal court was whether removal jurisdiction had properly been invoked and which court had jurisdiction over the proceeding. (Pls.’ Apr. 22, 2025 Not. of Filing pp. 1-3; Remand Order pp. 1, 14-15.). All other deadlines were stayed. (Pls.’ Apr. 22, 2025 Not. of Filing pp. 1-3; Mot. to Stay Deadlines pp. 1-2); *see* Text Order Granting Mot. To Stay, *Honeycutt v. Broad River Physicians Grp., LLC*, No. 2:24-cv-05922-BHH, ECF No. 11 (D.S.C. Dec. 4, 2024). Medlytix did not file an answer, engage in any discovery, or otherwise “utilize[] the litigation machinery” of the federal court. *Kidston*, 2012 WL 2512933, at *3. *See generally Honeycutt v. Broad River Physicians Grp., LLC*, No. 2:24-cv-05922-BHH (D.S.C.).

This procedural history contrasts sharply with the caselaw cited in the Court of Common Pleas’ Order and caselaw in which waiver has been found. For example, in *Hyload*, it was the ***plaintiff*** who sued and then later moved to compel arbitration of the counterclaim against it. *Hyload, Inc. v. Pre-Engineered Prods., Inc.*, 308 S.C. 277, 278-80, 417 S.E.2d 622, 623-24 (Ct. App. 1992). The plaintiff had previously “refus[ed] to execute the papers necessary to commence arbitration and elect[ed] instead to sue on the contract.” *Id.* at 280, 417 S.E.2d at 624. As bringing

a lawsuit and refusing to engage in arbitration were acts inconsistent with a later motion to compel that arbitration, the court found waiver. *Id.*

Cabinetree, the Seventh Circuit case, is similarly inapposite. In that case, the defendant engaged in extensive discovery for months, including the exchange of almost two thousand documents. *Cabinetree of Wisconsin, Inc. v. Kraftmaid Cabinetry, Inc.*, 50 F.3d 388, 389 (7th Cir. 1995). Ultimately, nine months into the litigation, the defendant moved to arbitrate, offering no justification for its delay other than a desire to “weigh its options.” *Id.* at 391. Concluding that this was “the worst possible reason for delay,” the Seventh Circuit held that the defendant had waived its right to arbitrate. *Id.* Later cases from the Seventh Circuit discussing *Cabinetree* emphasize that it did not mean that removal alone was a sufficient basis to find waiver: “[A]lthough this Court has considered removal in determining whether there was implicit waiver of an arbitration clause, it has not found waiver where removal was the only action taken by the party against whom the waiver was to be enforced.” *Halim v. Great Gatsby’s Auction Gallery, Inc.*, 516 F.3d 557, 562 (7th Cir. 2008) (holding that removal plus moving to dismiss on arbitration grounds did not constitute waiver), *overruled on other grounds by Moore v. Club Exploria, LLC*, --- F. 4th ---, 2026 WL 2409841 (7th Cir. Aug. 18, 2026).

In sum, Medlytix’s removal to federal court and the parties’ limited briefing to determine whether the federal court had jurisdiction over the case (including jurisdiction to resolve any motion to compel arbitration) was not a sufficient basis to find waiver under governing caselaw. The Court of Common Pleas’ finding of waiver on this issue as well is unsupported and should be reversed.

CONCLUSION

For the foregoing reasons, Appellant Medlytix, LLC respectfully requests that this Court reverse the trial court’s Order Denying Medlytix, LLC’s Motion to Compel Individual Arbitration

entered September 3, 2025, and the Form 4 Order Denying Medlytix, LLC's Motion to Alter, Amend, and/or Reconsider entered May 6, 2026, and remand this matter with instructions to compel individual arbitration of Respondents' claims against Medlytix.

Respectfully submitted,

MCGUIREWOODS LLP

By: /s/ Jasmine K. Gardner
Jasmine K. Gardner (S.C. Bar No. 102168)
MCGUIREWOODS LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202
(704) 343-2262
jgardner@mcguirewoods.com

Bryan A. Fratkin (admitted *Pro Hac Vice*)
Juliet B. Clark (admitted *Pro Hac Vice*)
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219
(804) 775-4352
bfratkin@mcguirewoods.com
jbclark@mcguirewoods.com

ATTORNEYS FOR APPELLANT MEDLYTIX, LLC

Charlotte, North Carolina

October 5, 2026