

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Carmen T. Mullen, Circuit Court Judge

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Opinion No. 2014-UP-317 (S.C. Ct. App. filed Aug. 6, 2014)

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Cherry Scott, as Personal Representative of  
the Estate of Elizabeth Jones,.....Respondent,

v.

Heritage Healthcare of Estill, LLC, d/b/a Heritage  
of the Lowcountry and/or Uni-Health Post Acute  
Network of the Lowcountry, United Clinical Services,  
Inc., United Rehab, Inc. and UHS-Pruitt Corporation,.....Petitioners.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Did the Court of Appeals correctly hold Ellen Jenkins lacked authority to enter into an arbitration agreement on behalf of her competent sister Elizabeth Jones when Jenkins did not have power of attorney and the evidence showed, at most, Jones authorized Jenkins to *admit* her to the facility, which did not require execution of an arbitration agreement?
2. Is Petitioners' argument regarding merger and *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014), preserved when Petitioners did not argue merger until the Petition for Rehearing? Did the Court of Appeals correctly not rule on a merger issue not raised to it in the Statement of Issues on Appeal or in the substance of Petitioners' Final and Reply Briefs?
3. Did the Court of Appeals correctly decline to rule on Petitioners' remaining arguments after making the dispositive finding that the Arbitration Agreement is unenforceable because Ellen Jenkins lacked authority to enter into it?
4. Did the Court of Appeals correctly decline to rule on Petitioners' ratification argument when the Record lacks evidence Elizabeth Jones knew the Arbitration Agreement existed and received any benefit from it?
5. Did the Court of Appeals correctly decline to rule on Petitioners' third party beneficiary argument when she received no benefit from the Arbitration Agreement?
6. Did the Court of Appeals correctly decline to rule on Petitioners' estoppel argument when the Record lacks evidence to prove the elements of estoppel?

## COUNTER-STATEMENT OF THE CASE

In May 2007, Elizabeth Jones entered Heritage Healthcare of Estill, LLC's facility from a local hospital to receive therapy. The underlying wrongful death and survival actions allege that, during her residency at Heritage Healthcare, Ms. Jones developed several pressure sores which led to a leg amputation in March 2009 and, ultimately, in combination with other acts of negligence, resulted in her death at the age of sixty-one. (R. pp. 89-106, 208).

Respondent Cherry Scott and Ellen Jenkins were sisters of the deceased Elizabeth Jones. As part of the admission process, Petitioner Heritage Healthcare conducted a "Nursing Admission Assessment" of Jones and found her to be competent on the date of admission.<sup>1</sup> (R. p. 655). Despite Jones' competency, Jenkins signed the admission paperwork on behalf of Jones, including the Arbitration Agreement at issue in this appeal.<sup>2</sup> Jenkins did not have a power of attorney for Jones. (R. p. 640 p. 15 lns. 12-18). Sally Dobson, the admissions director at Heritage Healthcare, is the employee charged with going over the admitting paperwork and having the "paperwork signed by either the patient or a family member." (R. p. 633 p. 6 lns. 2-5; p. 635 p. 13 lns. 16-18). Dobson did not know whether "Jenkins had Power of Attorney over her sister." (R. p. 636 p. 17 lns. 10-12). Dobson admitted that if Jones had the mental capacity to sign the admitting documents, it would have been more appropriate for her to sign them for herself. (R. p. 636 p. 18 lns. 6-8).

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<sup>1</sup> Jones' competency and ability to consent to healthcare preclude application of the Adult Health Care Consent Act in this case. *See* S.C. Code Ann. § 44-66-20(8) (Supp. 2013) (stating the Act applies to adults who are "unable to appreciate the nature and implications of [their] condition and proposed healthcare").

<sup>2</sup> Petitioners' repeated assertion that Jenkins "negotiated" Jones' admission is not supported by any evidence in the Record on Appeal. Rather, Jenkins signed the papers put in front of her by Heritage Healthcare and pre-filled out by Petitioners' employees. (R. p. 634, p. 11 lns. 5-9).

The Arbitration Agreement at issue is a separate document from the admission agreement and specifies “The Resident is *not required to sign* this Arbitration Agreement in order to be admitted to or to remain in the Facility.” (R. p. 654 ¶ 6) (emphasis added). It further states “This Arbitration Agreement does not affect the Facility’s duties with respect to the provision of care and treatment.” (R. p. 653). Jenkins testified she signed the Arbitration Agreement but did not recall the document and did not “remember hearing that word [Arbitration Agreement] at all.” (R. p. 640 p. 14 lns. 6-17). She testified Jones knew Jenkins was “signing her in” to the nursing home for therapy. (R. pp. 638-39). Jenkins did not testify Jones knew she signed an Arbitration Agreement purportedly waiving Jones’ right to a jury or bench trial in state civil court. Respondent Scott testified “we all told [Jenkins], you know, go ahead and sign the paper.” (R. p. 628 p. 8 lns. 18-19). Scott testified Jones agreed Jenkins could sign Jones into the nursing home. (R. p. 629 p. 8 lns. 15-17). No one mentioned anything to Scott “about an arbitration agreement.” (R. p. 629 p. 11 lns. 13-15).

When asked if the nursing home requires a power of attorney for a person to admit someone to the facility, Dobson responded only “If they have a copy of the Power of Attorney we ask that we get a copy of it.” (R. p. 633 p. 7 lns. 12-15). Dobson explains the paperwork “sheet by sheet and tell[s] them what they are about to sign.” (R. p. 633 p. 7 lns. 17-18). When asked “what is an arbitration proceeding,” Dobson responded, “I really don’t know how to explain it to you.” (R. p. 634 p. 9 lns. 15-17). When Dobson goes over the Arbitration Agreement with someone, she tells them “that it is an agreement that if they have any complaints or any concerns that are not being taken care of in a timely manner then we can go into arbitration.” (R. p. 634 pp. 10-11). Dobson does not know what the AAA is and “do[es]n’t know what the Arbitration Agreements are.” (R. p. 634 p. 12 lns. 2-3, 25; p. 634 p. 13 lns. 1-2).

Dobson admitted that if she does not know what an arbitration agreement is, she—an employee and representative of Petitioners—cannot expect the resident or their family member, power of attorney, or personal representative to understand the agreement. (R. p. 634 p. 12 lns. 11-24).

On November 9, 2011, the Honorable Carmen T. Mullen denied Petitioners' Motion to Compel Arbitration for five, independent reasons—(1) the forum stated in the Arbitration Agreement is unavailable, (2) the Arbitration Agreement does not involve interstate commerce, (3) there was no meeting of the minds between the parties to the Arbitration Agreement, (4) Petitioners waived the right to arbitrate Respondent's claims, and (5) Jenkins lacked authority to enter into the Arbitration Agreement. (R. pp. 4-14). Petitioners filed a Motion to Reconsider, which the lower court denied in a Form 4 Order on January 17, 2012. (R. p. 15).

Petitioners filed a Notice of Appeal and challenged the lower court's rulings. The Court of Appeals affirmed the lower court's denial of Petitioner's Motion to Compel Arbitration in a per curiam, unpublished opinion. *Scott v. Heritage Healthcare of Estill, LLC*, Op. No. 2014-UP-317 (S.C. Ct. App. Aug. 6, 2014). The Court of Appeals affirmed as to one basis for the lower court's order. Specifically, it affirmed "as to whether Ellen Jenkins had authority to sign the Arbitration Agreement on Elizabeth Jones' behalf when Jones was competent at the time she was admitted to Heritage, and Jenkins did not possess a health care power of attorney to sign either contract on Jones' behalf." *Id.* (emphasis added). The Court of Appeals found "the evidence reasonably supports the trial court's findings that Jenkins lacked authority to enter into the Arbitration Agreement on Jones' behalf because Jones was competent at the time of her admission, and Sally Dobson, admissions director for Heritage, agreed it would have been more appropriate for Jones to sign the contract herself because she was competent, and Dobson did not

know if Jenkins had a power of attorney.” *Id.* Based on this ruling, the Court of Appeals declined to address Petitioners’ remaining arguments. *Id.*

On August 21, 2014, Petitioners filed a Petition for Rehearing in the Court of Appeals, in which they raised for the first time an argument regarding merger of the admission agreement and Arbitration Agreement. The Court of Appeals denied the Petition for Rehearing on September 18, 2014. Petitioners then filed the Petition for Writ of Certiorari now before this Court. For the reasons stated below, Respondent requests this Court deny the Petition and remit this case to the Court of Appeals for a remand to the circuit court for further proceedings consistent with its ruling.

### ARGUMENT

Under Rule 242(b), SCACR, a “writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Petitioners’ Petition makes no argument about or mention of any “special and important reasons” why this Court should exercise its discretion to grant the Petition.<sup>3</sup> Rather, Petitioners simply express disagreement with the decision of the Court of Appeals. Rule 242(d)(4), SCACR, requires Petitioners to submit “A direct and concise argument *in support of the petition.*” (emphasis added). Petitioners’ argument addresses the merits of the questions presented rather than addressing if and why this case is appropriate for the Court to exercise its discretion to grant certiorari.

The Court of Appeals’ unpublished opinion affirmed the lower court based on established South Carolina agency law. There is no special or important reason for granting the Petition and no danger of the unpublished opinion, which cannot be cited as precedent, upsetting agency or

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<sup>3</sup> Further, none of the “character of reasons” listed in Rule 242(b)(1)-(5), SCACR, which this Court may consider in deciding a petition for writ of certiorari, apply in this case.

arbitration law in South Carolina. The Court should deny the Petition because there is no special and important reason for hearing this case. Further, as addressed below, and in response to Petitioners' arguments, the Court of Appeals correctly determined Ellen Jenkins lacked authority to enter into an arbitration agreement on behalf of the decedent Elizabeth Jones.

I. **The Court of Appeals Correctly Held Ellen Jenkins did Not Have Authority to Sign the Arbitration Agreement on Behalf of Elizabeth Jones**

Petitioners repeatedly assert that "undisputed evidence clearly" establishes Jenkins possessed the authority to admit Jones to Heritage. In addition to being incorrect, this assertion misses the point. The appeal is not about whether Jenkins had the authority to admit Jones to Heritage. It is about whether Jenkins had the authority to bind Jones to arbitration and, thereby, waive her right to a trial by jury or judge in civil court in South Carolina. The Arbitration Agreement and admission agreement are *separate documents*, and the Arbitration Agreement *by its very terms is not required for admission*. (R. p. 654). Therefore, whether Jenkins had authority to admit Jones does not answer the question of whether she had authority to bind Jones to arbitration. The testimony of Jenkins and Scott is that Jones knew Jenkins admitted her to Heritage for therapy. (R. p. 639, p. 9 lns. 2-9; p. 629, p. 9 lns. 12-19). The Arbitration Agreement is not required for admission. Neither Jenkins' nor Scott's testimony establishes or tends to show that Jones knew Jenkins signed the Arbitration Agreement or authorized her to do so.

To mask that the evidence tends to show, at most, Jones authorized Jenkins to admit her to the nursing home, Petitioners' mischaracterize any alleged authority as being without limitation and, thereby, including authority to enter into the Arbitration Agreement. (Pet. for Writ of Cert. p. 5). Assuming Jones authorized Jenkins to admit her to the nursing home, such admission *did not require execution of the Arbitration Agreement*. Jones cannot be legally

presumed to have authorized Jenkins to waive rights to a civil jury trial when such waiver was not a condition of admission. While the Adult Health Care Consent Act is inapplicable in this case (*supra* fn. 1), this Court's decision in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014), interpreting the Act supports Respondent's argument that any authority to admit Jones to the facility did not extend to binding her to an Arbitration Agreement. In *Coleman*, this Court found the plaintiff, who signed her sister into a facility, could not bind her to arbitration under the Act. *Id.* at 354, 755 S.E.2d at 454. The Court found the Act's "authority to consent to decisions concerning Decedent's healthcare extended to the admission agreement, which was the basis upon which Facility agreed to provide health care," and did not extend to the "separate arbitration agreement [which] concerned neither health care nor payment." *Id.* at 353-54, 755 S.E.2d at 454. In this case, as in *Coleman*, any authorization Jones gave Jenkins to admit her to the facility did not extend to the Arbitration Agreement, which neither concerned nor was required for care.

Apparent authority is also absent in this case. "Apparent authority must be established based upon manifestations by the principal, not the agent. The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent, but on that between the principal and the third party." *Town of Kingstree v. Chapman*, 405 S.C. 282, 314, 747 S.E.2d 494, 510 (Ct. App. 2013). Petitioners submitted no evidence of any relationship or representation between Jones and Heritage Healthcare regarding the alleged apparent authority of Jenkins to enter into an unnecessary arbitration agreement. Dobson gave no testimony regarding any conversation between she and Jones or any representation made by Jones to Dobson regarding Jenkins' authority.

The Record on Appeal and law of South Carolina support the Court of Appeals' holding that Jenkins lacked authority to enter into the Arbitration Agreement. Thus, there is no substantive basis and no "special and important reason" to grant certiorari.

## **II. Petitioners' Merger Issue is Unpreserved and Substantively Incorrect**

Petitioners' question presented and argument regarding merger and this Court's decision in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014), is not preserved because it was raised for the first time in Petitioners' Petition for Rehearing to the Court of Appeals. See Rule 242(d)(2), SCACR ("Only those questions raised *in the Court of Appeals and* in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.") (emphasis added). Therefore, the question is improperly presented to this Court, and Respondent requests this Court decline to hear it on that procedural basis alone.

Petitioners did not argue merger at the lower court hearing on the Motion to Compel Arbitration. (R. pp. 602-25). Petitioners did not raise merger in their Motion to Reconsider. (R. pp. 465-91). The Statement of Issues on Appeal in Petitioner's Final Brief does not raise a merger issue. Petitioners' Final and Reply Briefs do not include a merger argument. As further evidence that Petitioners did not intend to raise a merger theory until after this Court's decision in *Coleman*, they neither developed nor submitted evidence to support a merger theory. The Facts section of Petitioner's Final Brief does not assert the Arbitration Agreement was signed simultaneously with any other document. The testimony of Jenkins, Dobson, and Scott make no mention of whether Jenkins signed the documents simultaneously, at the same meeting, or on the same day.

Petitioners simply did not consider raising a merger argument until reading *Coleman*. The theory of merger existed long before *Coleman*,<sup>4</sup> and Petitioners' belated realization of the possible application of a theory to their case should not be permitted to defeat long-standing procedural rules aimed at preventing a party from keeping an ace card up its sleeve and allowing the lower court to rule on all arguments. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (stating issue preservation "serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve - intentionally or by chance - in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case"). This Court should decline to hear Petitioners' question presented regarding merger based solely on the fact that it is unpreserved.

In response to the substance of Petitioners' argument, *Coleman* actually supports the ruling of the Court of Appeals and Respondent's position. This Court held no merger existed in *Coleman* because the admission agreement contained an "Entirety of Agreement" clause that "recognize[d] the 'separatedness' of the" arbitration agreement and admission agreement. *Id.* at 355, 755 S.E.2d at 455. In this case, the Arbitration Agreement, on its face, recognizes the "separatedness" of it and the admission agreement. It states:

This Arbitration Agreement does not affect the Facility's duties with respect to the provision of care and treatment.

...

The Resident is not required to sign this Arbitration Agreement in order to be admitted to or to remain in the Facility.

(R. pp. 653-54). As in *Coleman*, the terms of the Arbitration Agreement evidence an intention that the admission and arbitration agreements remain separate. Therefore, merger does not apply.

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<sup>4</sup> *See Klutts Resort Realty, Inc. v. Down Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) (cited by *Coleman* for merger law).

The Court of Appeals correctly declined to rule on a merger issue raised for the first time in a Petition for Rehearing. Further, merger does not apply to the facts of this case. Therefore, this Court should decline to exercise its discretion to hear an unpreserved, meritless issue.

**III. Jenkins' Lack of Authority is Dispositive of Petitioners' Appeal and, Therefore, the Court of Appeals Correctly Declined to Address Petitioner's Remaining Arguments**

Petitioners' assert the Court of Appeals should have reached its arguments regarding ratification, third-party beneficiary, and estoppel. This is incorrect. The finding that Jenkins lacked authority voided the agreement and left nothing to enforce. Ratification was not raised as a separate issue in Petitioner's Final or Reply Brief, and there is no evidence of it. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). Third party beneficiary theory presupposes the existence of an enforceable agreement, which the Court of Appeals held did not exist. *See* Restatement (Second) of Contracts, § 309(1) ("A promise creates no duty to a beneficiary unless a contract is formed between the promisor and the promisee; and if a contract is voidable or *unenforceable at the time of its formation* the right of *any beneficiary* is subject to the infirmity." (emphasis added)). Finally, the Court of Appeals' finding that "Dobson did not know if Jenkins had a power of attorney" is dispositive of estoppel because an element of estoppel is "lack of knowledge and of means of knowledge of truth to the facts in question." *Regions Bank v. Schmauch*, 354 S.C. 648, 675, 582 S.E.2d 432, 446 (Ct. App. 2003).

The Court of Appeals held "the Arbitration Agreement is not enforceable." *Scott*, Op. No. 2014-UP-317, ¶ 1. This holding rendered any ruling on all of Petitioners' remaining arguments unnecessary. Should this Court grant the Petition, Respondent requests any decision on the merits of the ratification, third-party beneficiary, and estoppel arguments be remanded to the Court of Appeals. While there is no ruling on the substance of the authority arguments for

this Court's review, Petitioners addressed the merits in their Petition. Therefore, Respondent proceeds to respond in kind below.

Additionally, Petitioners also request this Court remand the case to the Court of Appeals for rulings on issues regarding the Federal Arbitration Act, rules of the American Arbitration Association, waiver, and the existence of a meeting of the minds, citing to *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014), and *Johnson v. Heritage Healthcare of Estill, LLC*, Op. No. 2014-UP-318 (S.C. Ct. App. Aug. 6, 2014). (Pet. p. 11). Petitioners did not request rulings on these issues in the Petition for Rehearing. Therefore, the request is improper in a petition for writ of certiorari. Rule 242(d)(2), SCACR.

#### **IV. The Record Lacks Evidence that Jones Ratified the Arbitration Agreement**

Petitioners assert Jones ratified the Arbitration Agreement because she “remained a resident” of the facility. (Pet. p. 8). This is insufficient proof of ratification. “One asserting ratification must establish the following three elements: (1) acceptance by the principal of the benefits of the agent’s acts, (2) the principal’s full knowledge of the facts, and (3) circumstances or an affirmative election demonstrating the principal’s intent to accept the unauthorized arrangements.” *Stiltner v. USAA Cas. Ins. Co.*, 395 S.C. 183, 191, 717 S.E.2d 74, 78 (Ct. App. 2011). As to the first element, Petitioners have not and cannot point to evidence of any benefit Jones received from *the Arbitration Agreement*. To the extent they argue Jones benefitted by remaining in the facility, the language of the Agreement directly contradicts this argument. It states: “This Arbitration Agreement does not affect the Facility’s duties with respect to the provision of care the treatment.” (R. p. 653). Thus, “care” in the facility is not a benefit of the Arbitration Agreement. As to the second element, the Record is devoid of evidence that *Jones* had any knowledge of the Arbitration Agreement. To the contrary, the Record shows only that Jenkins, who signed the Agreement, did not recall or understand the document, and no one ever

mentioned it to Respondent Scott. (R. p. 640, p. 14 lns. 9-25; p. 629, p. 11 lns. 13-15). Finally, as to the third element, the Record lacks any evidence that Jones intended to affirmatively accept the unauthorized Arbitration Agreement.<sup>5</sup> The Record on Appeal does not support a finding of ratification.

Further, the Arbitration Agreement's express "separatedness" from the admission agreement defeats Petitioners' argument that Jones should not be able to allegedly accept the benefits of admission and avoid the Arbitration Agreement. The evidence shows only that Jones intended to enter the facility to receive care—not that she intended to enter into or had any knowledge whatsoever of the existence of the Arbitration Agreement or its terms. *See id.* at 192, 717 S.E.2d at 79 ("[R]atification requires that the principal have *actual knowledge* of the relevant material facts." (citation omitted) (emphasis added)). This argument has no merit, and this Court should affirm the Court of Appeals' decision not to rule on it.

V. **Third Party Beneficiary Theory Fails Because Jones Received No Benefit from the Arbitration Agreement**

Petitioners' attempt to bind Jones to the Arbitration Agreement by a third party beneficiary theory fails due to an absence of evidence that Jones received any benefit from the Arbitration Agreement or that the Agreement is intended to benefit Jones. *See Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) ("A third-party beneficiary is a party that the contracting parties intend to directly benefit."). The Arbitration Agreement benefits Petitioners by preventing Jones from bringing claims in civil court before a judge or jury. The Agreement does not benefit Jones.

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<sup>5</sup> *See id.* at 191-92, 717 S.E.2d at 78 ("Moreover, mere silence or failure of a principal to repudiate the unauthorized act of an agent does not necessarily constitute a ratification, unless the silence or acquiescence in question cannot be explained on any other theory than that of ratification.").

Petitioners support their argument for application of third party beneficiary theory with the assertion that “Ms. Jones’s care was the essential purpose of the admission agreements.” (Pet. p. 9). This is incorrect. As noted above, the “Arbitration Agreement does not affect the Facility’s duties with respect to the provision of care and treatment.” (R. p. 653). The Agreement provides no benefits to Jones, and she accepted no benefits of the Agreement.<sup>6</sup> Any rights and responsibilities arising from the Agreement are separate and distinct from Heritage Healthcare’s provision of care and treatment to Jones, which is governed by the admission agreement.

The cases cited by Petitioners in support of the third party beneficiary argument are distinguishable from this case. *THI of S.C. of Columbia, LLC v. Wiggins*, 2011 WL 4089435, \*1 (D.S.C. Sept. 13, 2011), is distinguishable because it involved an admission agreement that contained an arbitration provision. Therefore, the resident received care as a result of the same agreement containing the waiver of the right to a jury trial in civil court. *McCutcheon v. THI of S.C. at Charleston*, 2011 WL 6318575 (D.S.C. Dec. 15, 2011), is distinguishable because there was no dispute as to the signatory’s authority to sign the arbitration agreement. Here, Respondent asserts, and the lower court and Court of Appeals found, Jenkins was not authorized to sign the Arbitration Agreement on behalf of Jones. Therefore, there is no enforceable contract to which Jones may be bound as a third party beneficiary.

#### **VI. Petitioners Cannot Prove the Elements of Estoppel**

Petitioners rely on *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), for their estoppel argument. This reliance is misplaced because *Pearson* is factually distinguishable from this case. In *Pearson* the plaintiff asserted a breach of contract claim as to a

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<sup>6</sup> The Agreement states no consideration provided to Jones or Jenkins in exchange for purportedly waiving the right to a civil jury trial. (R. pp. 653-54).

contract that contained an arbitration clause. *Id.* at 286, 733 S.E.2d 599. The Court of Appeals compelled the plaintiff to arbitrate because he sought to enforce the contract by asserting a breach of contract claim at the same time disclaiming the arbitration clause within the contract. *Id.* at 297, 733 S.E.2d at 605. In this case, Respondent Scott does not allege a breach of contract action and is not seeking to enforce either the admission agreement or the Arbitration Agreement. Further, *the Arbitration Agreement is separate from the admission agreement.* Therefore, the reasoning in *Pearson* does not apply to this case.

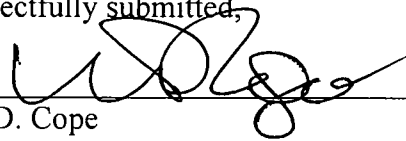
Petitioners also cannot prove the elements of an estoppel claim. “Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position.” *Regions Bank v. Schmauch*, 354 S.C. 648, 675, 582 S.E.2d 432, 446 (Ct. App. 2003). As to the first element, Petitioners’ employee in charge of the admission paperwork chose not to ask for a power of attorney or inquire into Jenkins’ authority for Jones. As to the second element, Petitioners do not allege any conduct in reliance upon Jones. They were bound to provide care to her based solely on the admission agreement. Therefore, Petitioners cannot claim they relied upon the Arbitration Agreement in providing care to Jones. As to the third element, Petitioners have neither asserted any detrimental change in position nor set forth any evidence of it in the Record.

Jones received no benefit from the Arbitration Agreement, and Jenkins was without authority to enter into it on Jones’ behalf. Therefore, Respondent is not estopped from challenging the enforceability of the Arbitration Agreement.

## CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and permit the Court of Appeals to remit this case to the circuit court for further proceedings consistent with its ruling.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

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Opinion No. 2014-UP-317 (S.C. Ct. App. filed Aug. 6, 2014)

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Cherry Scott, as Personal Representative of  
the Estate of Elizabeth Jones,.....Respondent,

v.

Heritage Healthcare of Estill, LLC, d/b/a Heritage  
of the Lowcountry and/or Uni-Health Post Acute  
Network of the Lowcountry, United Clinical Services,  
Inc., United Rehab, Inc. and UHS-Pruitt Corporation,.....Petitioners.

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PROOF OF SERVICE

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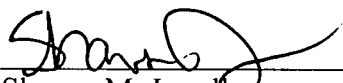
The undersigned hereby certifies that on the date indicated below, a copy of the foregoing  
*Return to Petition for Writ of Certiorari* was served on all counsel of record via U.S. Mail with  
first class postage prepaid to the following addresses:

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November 11, 2014

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**S.C. SUPREME COURT**

The Hon. Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

*Re: Cherry Scott as Personal Representative of the Estate of Elizabeth Jones v. Heritage Healthcare of the Estill, LLC, d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, United Clinical Services, Inc., United Rehab, Inc., and UHS-Pruitt Corporation  
Opinion No. 2014-UP-317 (S.C. Ct., App. Filed August 6, 2014)  
C/A No.: 2010-CP-25-491 & 492  
~~SC Court of Appeals Case No.: 2012-207308~~*

2014-002232

Dear Mr. Shearouse:

Enclosed please find for filing an original and seven copies of Respondent's Return to Petition for Writ of Certiorari in the above reference case. Please return a clocked-in copy of same to me for our records.

Thank you in advance for your kind attention to this matter.

Sincerely,

  
Lee D. Cope

LDC/smj  
Enclosure

cc: Tyler Arnold, Esquire  
Charles J. McCutchen, Esquire  
Monteith P. Todd, Esquire  
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