THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2015-001100
Case No. 2012-CP-32-3496
Opinion No. 2015-UP-107 (S.C. Ct. App. Filed March 4, 2015)

Roger R. Riemann .....Petitioner.

v.

Palmetto Gems & Gemological Services, Inc. & Thomas Shofner, in his individual capacity.....Respondents.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

Angus H. Macaulay
James A. Byars
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771.8900
AMacaulay@nexsenpruet.com
JByars@nexsenpruet.com

Attorneys for Respondents
Palmetto Gems & Gemological
Services, Inc. & Thomas Shofner

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INTRODUCTION

The question at the heart of this appeal is fairly simple: in the event of a dispute as to the arbitrability of particular claims, *who decides* which claims are subject to arbitration: the court, or the arbitrator? Based on longstanding precedent of the United States Supreme Court, the answer to this question is also fairly simple: *who decides* disputes as to arbitrability is determined by the express language of the arbitration agreement. If the parties "clearly and unmistakably" agreed to arbitrate disputes as to the arbitrability of particular claims, the court must honor that agreement, just as it honors any other valid arbitration agreement, and compel the arbitrability dispute to the arbitrator. Absent such a "clear and unmistakable" agreement, the court must resolve any arbitrability dispute before compelling arbitration.

The Court of Appeals applied this well-settled precedent and unanimously held that the parties "clearly and unmistakably" agreed to arbitrate their dispute as to the arbitrability of Petitioner's claims, based on their express agreement that "[a]ny dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding." In light of that "clear and unmistakable" language, the trial court erred by ruling on the parties' arbitrability dispute, and the Court of Appeals correctly reversed the trial court's denial of Respondents' motion to compel arbitration.

Respondents respectfully submit that there are no "special and important reasons" to grant certiorari. The Court of Appeals' decision presents no novel questions of law, no conflict with the decisions of this Court or the United States Supreme Court, and no constitutional issues whatsoever. The Court of Appeals applied a straightforward contractual provision consistent with well-settled law; Petitioner merely disagrees with the result. For these reasons, Respondents respectfully request that certiorari be denied.

COUNTER STATEMENT OF THE ISSUE ON APPEAL

I. **WHETHER THE COURT OF APPEALS CORRECTLY REVERSED THE TRIAL COURT'S ORDER DENYING RESPONDENTS' MOTION TO COMPEL ARBITRATION, WHEN THE PARTIES CLEARLY AND UNMISTAKABLY AGREED THAT ANY DISPUTES REGARDING THE ARBITRABILITY OF PETITIONER'S CLAIMS WERE TO BE DECIDED NOT BY THE COURT, BUT BY THE ARBITRATOR AS PART OF THE ARBITRATION PROCEEDING.**

COUNTER STATEMENT OF THE CASE

On August 24, 2012, Petitioner Roger Riemann ("Petitioner") filed this action against Respondents Palmetto Gems & Gemological Services, Inc. ("Palmetto Gems") and Thomas Shofner ("Shofner") (collectively "Respondents") in the Lexington County Court of Common Pleas. Petitioner's Complaint alleges claims for violation of the South Carolina Payment of Wages Act, wrongful discharge in violation of public policy, and defamation. (R. pp. 21-29.)[1] Petitioner later moved to amend his Complaint to add a claim for intentional infliction of emotional distress. (R. pp. 41-53.)

On October 29, 2012, Respondents filed a Motion to Dismiss, or, Alternatively, to Stay Proceedings and Compel Arbitration ("the Motion"), based on an arbitration provision in the parties' Agreement in which they agreed to arbitrate any claim or dispute "arising out of or related to" the Agreement or its alleged breach. (R. pp. 30-31; p. 37, ¶ 6.) In a hearing on Respondents' Motion, Petitioner challenged the arbitrability of each of his claims, arguing that claims under the South Carolina Payment of Wages Act were unarbitrable as a matter of law and that each of his tort claims fell outside the scope of the Agreement. (R. pp. 81-85.) In response, Respondents noted, among other arguments, that the Agreement's arbitration provision clearly and unmistakably provided that "[a]ny dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding," such that the arbitrator, and not the court, was the proper authority to resolve the arbitrability dispute. (R. p. 37, ¶ 6.)

On June 25, 2013, the trial court issued an order denying Respondents' Motion. (R. pp. 1-20.) The court expressly declined to enforce the parties' agreement to arbitrate

[1] Respondents note that the Appendix filed by Petitioner does not include a copy of the Record on Appeal or the briefs of the parties. *See* S.C.A.C.R. 242(e)(1). As a result, Respondents cite the appropriate pages of the Record on Appeal as filed in the Court of Appeals in place of citations to the Appendix as necessary.

any disputes as to the arbitrability of specific claims. (R. pp. 16-18.) Instead, the court ruled that none of Petitioner's claims were arbitrable, on two grounds: first, that claims under the South Carolina Payment of Wages Act cannot be arbitrated as a matter of law, and second, that the remainder of Petitioner's claims did not bear a significant relationship to the Agreement and thus fell outside the scope of the Agreement's arbitration provision. (R. pp. 14-16; pp. 18-19.)

On August 1, 2013, Respondents timely appealed the trial court's ruling, and presented two questions to the Court of Appeals: (1) whether the trial court erred by ruling on the arbitrability of Petitioner's claims, when the parties clearly and unmistakably agreed to submit such a dispute to the arbitrator; and (2) whether the trial court erred by ruling that claims under the Payment of Wages Act were unarbitrable as a matter of law. (App. pp. 1-2.)

On March 4, 2015, following the parties' submission of briefs and oral argument, the Court of Appeals reversed the trial court's order denying Respondents' motion to compel arbitration, holding that the trial court erred in failing to enforce the parties' clear and unmistakable agreement to arbitrate all disputes regarding the arbitrability of particular claims. (App. p. 2.) The Court of Appeals declined to rule on the Payment of Wages Act issue, on the grounds that its holding was dispositive of all issues on appeal. (*Id.*)

Petitioner filed a Petition for Rehearing, which was denied. (App. p. 28.) This petition for a writ of certiorari follows.

ARGUMENT

I. CERTIORARI IS UNWARRANTED, BECAUSE PETITIONER'S ASSERTION OF THE COURT OF APPEALS' ALLEGED ERROR RELIES ON A FUNDAMENTAL MISREADING OF WELL-ESTABLISHED SUPREME COURT PRECEDENT.

In a misguided effort to obtain certiorari, Petitioner attempts to manufacture a novel question of law where none exists. More specifically, Petitioner suggests that the Court must resolve the allegedly unsettled issue of whether the Agreement's "delegation provision"—in which the parties clearly and unmistakably agreed to submit **any** arbitrability disputes to the arbitrator—applies to certain claims that are, according to Petitioner, "clearly not subject to mandatory arbitration or are unrelated or unconnected to the arbitration agreement." (Petition, p. 8.)

Indeed, Petitioner's argument focuses *exclusively* on the allegations of his particular claims, adamantly insisting that, regardless of Respondents' position to the contrary, his claims could not possibly be subject to arbitration. But Petitioner's conclusory conviction that his claims are unarbitrable serves only to distract from the true issue presented by the parties' dispute. Resolution of this appeal boils down to a simple question: in the event of a dispute as to whether particular claims are arbitrable, *who decides* which claims are subject to arbitration—the court or the arbitrator? Contrary to Petitioner's argument, the answer to this question has nothing to do with the allegations of his underlying claims, and is far from the unsettled issue that he suggests.

In fact, the question of "who decides" was settled by the United States Supreme Court twenty years ago, in *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995). *First Options* holds that parties to an arbitration agreement are permitted to contractually agree who—the court or the arbitrator—has the authority to resolve disputes as to the arbitrability of particular claims. 514 U.S. 938 at 943. If the parties "clearly and unmistakably" agreed that arbitrability disputes were to be decided by the arbitrator, the court must enforce that agreement and compel arbitrability disputes to arbitration. *Id.* at 943-45. The Supreme Court later characterized this type of agreement as a "delegation provision"—that is, "an agreement to arbitrate threshold issues concerning the arbitration agreement," which is just as enforceable under the Federal Arbitration Act ("FAA") as any other agreement to arbitrate. *Rent-a-Center, West, Inc.* v. Jackson, 561 U.S. 63, 130 S. Ct. 2772, 2777-78 (2010). By contrast, if the arbitration agreement is silent or ambiguous as to "who decides" arbitrability, the court resolves arbitrability disputes, and only refers to arbitration those claims it decides are arbitrable. *Id.*

In this case, the parties' arbitration agreement unambiguously provides, without qualification, that "[a]ny dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding." (R. p. 37, ¶ 6.) It is difficult to imagine language the parties could have used to more "clearly and unmistakably" delegate the authority to submit all arbitrability disputes to the arbitrator. Therefore, the Court of Appeals, citing *First Options*, reversed the trial court's order denying Respondent's Motion, and required that the trial court compel the parties' arbitrability dispute to be resolved as part of the arbitration proceeding. The Court of Appeals' holding was *First Options* clear and uncontroversial command.

Petitioner acknowledges *First Options*, but misinterprets the case in a manner that would, if true, completely overrule its holding. Petitioner argues that, under *First Options*, a delegation provision only operates to submit disputes as to the arbitrability of specific claims to the arbitrator if the *trial court* first rules that the particular claims are "clearly and unmistakably" *within the scope* of the arbitration agreement, and thus subject to its delegation provision. (Petition, p. 11.) If the claims are not "clearly and unmistakably" within the scope of the agreement, Petitioner asserts that the court, not the arbitrator, must resolve any disputes as to their arbitrability. (Petition, p. 16.)

Among other fallacies, Petitioner's theory conflates the standard for *who decides* arbitrability with the standard for *which claims* are arbitrable. The "clear and unmistakable" standard applies **only** to the first, gateway question of "who decides" arbitrability; courts *presume* that the parties intended the court to decide arbitrability, unless the parties' "clearly and unmistakably" agreed to delegate resolution of arbitrability disputes to the arbitrator. *First Options*, 514 U.S. 938 at 943. Once the question of "who decides" is resolved, the law reverses this presumption for the second question—which claims are arbitrable—in that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* at 945.

Both Petitioner and the trial court conflated these two standards by suggesting that, even in the face of an indisputably valid delegation provision, the trial court should only compel arbitrability disputes to arbitration for legal claims that it finds to be "clearly and unmistakably" within the *scope* of the arbitration agreement. *First Options* does **not** require that the trial court first determine that the parties "clearly and unmistakably" agreed that *particular claims* are within the scope of the arbitration agreement—and thus

arbitrable—before submitting disputes as to the arbitrability of those claims to arbitration. Indeed, under *First Options*, the allegations of the underlying claims are totally irrelevant to the question of "who decides" arbitrability; it is solely the language of the arbitration agreement that answers the question of "who decides."

In fact, Petitioner's theory directly conflicts with *First Options*' endorsement of the parties' right to contractually agree to arbitrate arbitrability. If Petitioner were correct, there would *never* be an arbitrability dispute for the arbitrator to resolve; the trial court would necessarily be ruling that the claim was arbitrable by ruling that that the claim was "clearly and unmistakably" within the scope of the arbitration agreement, rendering meaningless the parties' express contractual agreement to have the issue of arbitrability decided by the arbitrator. Moreover, Petitioner's theory, which would require the parties to arbitrate only those claims which are "clearly and unmistakably" within the scope of the arbitration agreement, would overrule decades of well-settled law imposing a presumption or arbitrability and commanding that any doubt regarding arbitrability be resolved in favor of arbitration. *First Options*, 514 U.S. 938 at 945 ("[A]ny doubts concerning the *scope* of arbitrable issues should be resolved in favor of arbitration."); *accord Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596-97, 553 S.E.2d 110, 118-19 (2001) (holding, under South Carolina law, that arbitration must be ordered unless a court can say with "positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute").

Petitioner combines this flawed interpretation of *First Options* with the self-serving presumption—stated as an undisputed fact—that his particular claims are not "arising out of or related to" the Agreement and are therefore outside its scope, such that

he argues he did not "clearly and unmistakably" agree to submit any disputes as to their arbitrability to the arbitrator. (Petition, p. 16 (stating that the delegation provision at issue "does not clearly and unmistakably establish that the parties contractually agreed to submit claims ***legally distinct from the parties contractual relationship*** to an arbitrator on the question of whether such claims are arbitrable.") (emphasis added)). Of course, if Petitioner's presumption that his claims fall outside the scope of the arbitration agreement were an *undisputed fact* as he suggests, the delegation provision would be irrelevant. Respondents would not have filed a motion to compel arbitration, there would be no need for anyone, neither court nor arbitrator, to resolve the non-existent arbitrability dispute, and this case would not be before the Court.

But herein lies the fundamental misunderstanding of *First Options* underlying Petitioner's entire argument in favor of certiorari: Petitioner's claims are not unarbitrable merely because Petitioner says so. Respondents assert that all of Petitioner's claims are arbitrable, because each claim arises out of the business relationship memorialized by the Agreement and requires resolution of the terms of the Agreement to support Petitioner's claim or Respondents' defenses. Petitioner asserts that none of his claims are arbitrable, because they are allegedly "legally distinct from the parties' contractual relationship." (Petition, p. 16.) Regardless of how adamantly Petitioner insists that his analysis is correct, this is a dispute over arbitrability, and somebody—the court or the arbitrator—must resolve the dispute.

That returns us to the original, simple question settled by *First Options*: *who decides* the parties' arbitrability dispute? The parties clearly and unmistakably agreed to submit any such arbitrability dispute "as part of the arbitration proceeding." (R. p. 37, ¶

6.) This is precisely the type of dispute that the delegation provision was designed to address, and this agreement would be meaningless if, as Petitioner suggests, the only disputes referred to the arbitrator were those which the court decided were "arising out of or related to" the Agreement. *First Options* required that the trial court honor the parties' delegation provision and submit the entire case to arbitration, where the arbitrator will resolve this arbitrability dispute. This clear precedent is the basis of the Court of Appeals' reversal of the trial court, and there is no "special or important reasons" why this Court should exercise its discretion to review such a well-settled issue.

Petitioner fails to cite a single case—state or federal—in support of his muddled interpretation of *First Options*. But this Court has expressly referenced the holding of *First Options*, acknowledging that courts generally *presume* that gateway questions regarding arbitration agreements, specifically including the question of "whether an arbitration clause applies to a certain type of controversy," are to be resolved by the court, but only "in the absence of 'clear and unmistakable' evidence to the contrary." *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 23, 644 S.E.2d 663, 667-68 (2007).

Moreover, contrary to Petitioner's tortured attempt to minimize the effect of the parties' delegation provision, the United States Supreme Court has only *expanded* the effect of such a provision by *narrowing* the scope of issues considered to be "gateway matters" subject to a presumption of court resolution. *See, e.g. Rent-a-Center,* 130 S. Ct. at 2779 (holding that, regardless of disputes as to the validity of the arbitration agreement as a whole, a delegation provision will operate to submit all disputes to arbitration unless the validity of the delegation provision itself is specifically challenged); *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444, 452-53 (2003) (holding that the question of

"what kind of arbitration proceeding the parties agreed to" is not a gateway matter, such that a delegation provision reserves its resolution for the arbitrator).

In sum, Respondents respectfully submit that this is not a case justifying the Court's exercise of its discretion to grant certiorari. The Court of Appeals' decision neither implicated a novel or unsettled question of law, nor conflicted with a decision of this Court or the United States Supreme Court. As such, Respondents respectfully request that this Petition for a Writ of Certiorari be denied.

II. CERTIORARI IS UNWARRANTED AS TO WHETHER PETITIONER'S PAYMENT OF WAGES ACT CLAIM IS UNARBITRABLE AS A MATTER OF LAW, BECAUSE THIS DISPUTE IS RESERVED FOR THE ARBITRATOR, AND THE ACT IS PREEMPTED BY THE FAA TO THE EXTENT IT PROHIBITS ARBITRATION OF WAGE DISPUTES.

In the Court of Appeals, Respondents separately appealed the trial court's erroneous ruling that Petitioner's wage claim under the South Carolina Payment of Wages Act ("SCPWA" or "the Act") was unarbitrable as a matter of law. (App., p. 2.) The Court of Appeals determined that it need not rule on this issue, because its holding that the parties "clearly and unmistakably" agreed to submit **all** arbitrability disputes to the arbitrator necessarily included the arbitrability dispute regarding Petitioner's SCPWA claim, such that its holding is dispositive of both issues. (*Id.*) Because resolution of the SCPWA arbitrability dispute is reserved for the arbitrator, Respondents respectfully submit that the same reasons to decline certiorari previously set forth in this Return are equally applicable to warrant denial of certiorari on this subsidiary SCPWA issue.

Although the substance of his question presented is unclear, Petitioner arguably urges this Court to grant certiorari on the SCPWA issue *regardless* of the resolution of the delegation provision issue, on the theory that the SCPWA expressly *prohibits*

arbitration of claims under the Act, such that there can *never* be a dispute as to the arbitrability of such a claim. Essentially, Petitioner argues that a mandatory agreement to arbitrate wage disputes under the Act conflicts with his statutory entitlement to a "civil action" to resolve such disputes, running afoul of the SCPWA's prohibition on private agreements which "contravene" or "set aside" provisions of the Act. (Petition, p. 17.) Therefore, according to Petitioner, this arbitrability dispute regarding Petitioner's SCPWA claim should not be resolved by the arbitrator, since there is "no plausible argument that the claim could be subject to arbitration." (Petition, pp. 13-14.)

To the extent Petitioner seeks certiorari on such an argument, Respondents note that, even if Petitioner's interpretation of the SCPWA's bar on private waivers were correct, which it is not,[2] any provision of the Act arguably prohibiting arbitration of wage disputes as a matter of law would be preempted by the FAA, such that the SCPWA claim would remain arbitrable if otherwise within the scope of the agreement. *See AT&T Mobility, LLC v. Concepcion*, 131 S. Ct. 1740 (2011).

In *Concepcion*, the plaintiffs challenged a provision of AT&T's consumer arbitration agreement which prohibited classwide arbitration—a provision which,

[2] In its briefs before the Court of Appeals, Respondents noted, among other things, that the South Carolina case law interpreting the SCPWA's prohibition of private agreements which "contravene or set aside" the Act's requirements have held that this requirement is intended to prevent employers from requiring employees to waive the Act's requirements as a condition of employment. *See Cato v. Grendel Cotton Mills*, 132 S.C. 454, 456-61, 129 S.E. 203, 205 (1925); *Ross v. Ligand Pharms., Inc.*, 371 S.C. 464, 473 n.1, 639 S.E.2d 460, 465 n.1 (Ct. App. 2006). But an agreement to arbitrate wage disputes under the Act does not operate as a waiver, because it does not limit an employee's rights under the Act nor alter its substantive provisions; it simply dictates the forum in which rights must be enforced. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542, 542 S.E.2d 360, 365 (2001) ("An agreement providing for arbitration does not determine the *remedy* for a breach of contract but only the *forum* in which the remedy for the breach is determined") (emphasis in original). Moreover, to the extent that Petitioner argued that his interpretation of the Act were the one intended by the General Assembly, that argument is belied by the fact that the wage disputes under the SCPWA are indisputably arbitrable under the legislatively-enacted South Carolina Uniform Arbitration Act, which exempts from arbitration only employment disputes related to worker's compensation, unemployment, or collective bargaining agreements. S.C. Code Ann. § 15-48-10(b)(2). Of course, Petitioner's suggestion that a claim that is arbitrable under state law would somehow become unarbitrable under the FAA is wholly inconsistent with FAA case law and cannot succeed.

pursuant to California state law, rendered the arbitration agreement unconscionable. *Id.* at 1745. The Court noted that the savings clause in § 2 of the FAA[3] "permits agreements to arbitrate to be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability, but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Id.* at 1746 (internal quotation marks and citations omitted). The Court further referenced settled law that, "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: [t]he conflicting rule is displaced by the FAA." *Concepcion*, 131 S. Ct. at 1747 (*citing Preston v. Ferrer*, 552 U.S. 346, 353 (2008)). But the question presented in *Concepcion* was broader: whether a state law thought to be generally applicable to contracts generally is preempted by the FAA, when it is *applied* in a fashion that disfavors arbitration. *Id.*

The Supreme Court answered in the affirmative, holding that the FAA preempts any state law which "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the FAA, which is to "ensur[e] that private arbitration agreements are enforced according to their terms." Although § 2's savings clause recognizes the validity of state contract law to invalidate arbitration agreements on grounds applicable to contracts *generally*, the Court held that § 2 cannot be "construed to include a State's mere preference for procedures that are incompatible with arbitration and `would wholly eviscerate arbitration agreements.'" *Id.* at 1748. As such, the Supreme Court held that California's state law requiring the availability of classwide

[3] Section 2 of the FAA provides that arbitration agreements are "valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract.*" 9 U.S.C. § 2 (emphasis added). The final clause of that sentence, which renders unenforceable any arbitration agreement which is void pursuant to general contract defenses under state law, is referred to as the FAA's "savings clause."

procedures in dispute resolution agreements—and invalidating those agreements which precluded classwide arbitration—was preempted by the FAA, as the state law "interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA." *Id.*at 1749.

Petitioner's interpretation of the SCPWA is precisely the type of state law that the *Concepcion* Court held to outside the scope of § 2's savings clause and thus preempted by the FAA. Petitioner does not argue that his SCPWA claim is unarbitrable based on some state law applicable to the revocation of contracts generally, such as fraud or duress; such an argument could be a valid defense to enforcement under § 2 of the FAA. Instead, Petitioner argues that SCPWA claims can **never** be arbitrated, because the Act allegedly prohibits private agreements which deprive employees of a "civil action," which, according to Petitioner, would include arbitration agreements. Assuming, *arguendo*, that Petitioner's flawed interpretation of the SCPWA were accurate, the Act's alleged requirement that wage claims be resolved in court rather than arbitration would reflect the state's "mere preference for procedures that are incompatible with arbitration" and thus "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives" of the FAA. Therefore, under *Concepcion*, the FAA preempts the SCPWA to the extent it could be interpreted to prohibit arbitration of wage disputes.

As such, this case does not present any "special and important reasons" why the Court should grant certiorari to determine whether the SCPWA prohibits mandatory arbitration of wage claims under the Act, because, even if Petitioner's tortured interpretation of the SCPWA were correct, the FAA would preempt the SCPWA under

Concepcion and render his wage claim arbitrable. For these reasons, Respondents respectfully request that Petitioner's request for certiorari be denied.

III. CERTIORARI IS UNWARRANTED AS TO WHETHER PETITIONER'S TORT CLAIMS ARE ARBITRABLE, BECAUSE THIS ARBITRABILITY DISPUTE IS RESERVED FOR THE ARBITRATOR AND SUBSUMED WITHIN THE PRIMARY ISSUE BEFORE THE COURT.

In line with his other misguided attempts to overcome the Agreement's delegation provision, Petitioner seeks certiorari for a question that was never presented to the Court of Appeals: whether his tort claims "arise out of or are related to" the Agreement, and thus within the scope of its arbitration provision. (Petition, pp. 20-23.)

Respondents did not specifically appeal the trial court's ruling on this issue in the Court of Appeals, because Respondents appealed the threshold issue of the trial court's assessment of its authority to rule on the arbitrability of *any* of Petitioner's claims, necessarily including both his SCPWA claim and his tort claims, in light of the parties' clear and unmistakable agreement to compel any arbitrability dispute to arbitration.[4] The Court of Appeals agreed, holding that the trial court lacked the authority to issue *any* ruling on arbitrability and remanding to the trial court to compel the entire case to arbitration. (App. p. 2.) The question as to whether the trial court correctly ruled that Petitioner's tort claims were within the scope of the arbitration agreement is necessarily

[4] Respondents' decision to appeal the trial court's ruling as to Petitioner's SCPWA claim in the Court of Appeals, but not the court's ruling as to Petitioner's tort claims, was deliberate, but not because Respondents concede that the tort claims are outside the scope of the arbitration agreement. As noted *supra* pp. 11-12, Respondents have separately addressed Petitioner's argument regarding his SCPWA claim throughout this appeal because Petitioner argued **not** that his SCPWA claim is outside the *scope* of the arbitration agreement, but that claims under the Act are *never* arbitrable as a matter of law. As such, Petitioner asserted that there was never an arbitrability dispute to send to arbitration, regardless of the validity of the parties' delegation provision. By contrast, Petitioner's argument with respect to his tort claims is not that such claims are *never* arbitrable, but that they do not fall within the *scope* of the Agreement's arbitration provision. Therefore, Respondents have consistently treated Petitioner's tort claims differently, because resolution of the *scope* of the arbitration provision is clearly and unmistakably a question for the arbitrator, and thus the arbitrability of those claims is subsumed within the issue of "who decides" arbitrability and need not be separately addressed.

encompassed within the Court of Appeals' ruling, such that Respondents respectfully submit that the same reasons to decline certiorari previously set forth in this Return are equally applicable to warrant denial of certiorari on this issue.

CONCLUSION

Petitioner has not asserted any "special or important reasons" why this Court should exercise its discretion to grant certiorari and review the decision of the Court of Appeals. In reversing the trial court, the Court of Appeals merely applied long-settled United States Supreme Court case law validating the parties' clear and unmistakable agreement to arbitrate arbitrability disputes, and required that the parties' agreement be enforced. Petitioner's adamant insistence that he did not agree to arbitrate the arbitrability of *his particular claims* is irrelevant to this case, and turns on a fundamental misunderstanding of *First Options* and its progeny that this Court need not correct.

For these reasons, Respondents respectfully request that this Petition for a Writ of Certiorari be denied, and that this case be remanded to Lexington County in accordance with the opinion of the Court of Appeals.

Respectfully submitted,

Angus H. Macaulay S.C. Bar #15044
James A. Byars S.C. Bar #79055
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900
AMacaulay@nexsenpruet.com
JByars@nexsenpruet.com

Attorneys for Respondents

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PROOF OF SERVICE

I hereby certify that I have served the foregoing Return to Petition for a Writ of Certiorari on the Petitioner by hand-delivering a copy of the same, on June 22, 2015, addressed to Respondent's Counsel of Record, Eugene H. Matthews, Esq., 1900 Barnwell Street, Columbia, South Carolina 29201.

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Angus H. Macaulay S.C. Bar #15044
James A. Byars S.C. Bar #79055
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900
AMacaulay@nexsenpruet.com
JByars@nexsenpruet.com

Attorneys for Respondents