

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

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Appellate Case No. 2016-001057

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**RECEIVED**

JUN 20 2016

**SC SUPREME COURT**

Mae Ruth Davis Thompson  
Individually and as the Personal  
Representative of the Estate of  
Eula Mae Davis, Deceased

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Respondent,

v.

Pruitt Corporation d/b/a UHS-Pruitt  
Corporation; UHS-Pruitt Holdings, Inc.;  
UHS of South Carolina-East, LLC;  
United Health Services of South Carolina,  
Inc.; United Clinical Services, Inc.,  
United Rehab, Inc.; Rock Hill Healthcare  
Properties, Inc.; Uni-Health Post Acute  
Care-Rock Hill, LLC d/b/a UniHealth  
Post Acute-Care Rock Hill

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Petitioners.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## STATEMENT OF THE CASE

Respondent Mae Ruth Davis Thompson (“Daughter”) brought tort claims against Petitioners<sup>1</sup> on behalf of the estate of Eula Mae Davis (“Mother”), who suffered a fall while a resident in Petitioners’ nursing home. (App. p. 21). Mother was admitted to Petitioners’ facility from the hospital in January 2011. (App. p. 21). While Mother was being prepared for transport by ambulance, Daughter and Andrew Davis (“Son”) met with Petitioners’ representatives at the home.<sup>2</sup> During the meeting, Petitioners’ representatives presented Son with several documents including an “Admission Agreement” and an “Arbitration Agreement” (“AA”). (App. p. 290). The Admission Agreement identified Mother’s treating physician/preferred pharmacy, stated the monthly cost for Mother’s care, and covered other services incident to nursing home care. (App. p. 305-08). The AA was a separate document and dispute resolution was its sole purpose. (App. p. 317). Unlike the Admission Agreement, the AA included a provision granting Mother thirty days to revoke the AA without affecting her admission or residency in Petitioners’ facility. (AA § IV(c), App. p. 84). Crucially, the AA also included the following provision:

The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center

(AA § IV(b), App. p. 84).

At the time of her admission, Mother suffered from dementia but did not have a power of attorney, guardian, or other legal agent. (App. p. 286, lines 12-13; 298, lines 18-19). Son signed

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<sup>1</sup> Petitioners include Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings, Inc.; UHS of South Carolina-East, LLC; United Health Services of South Carolina, Inc.; United Clinical Services, Inc., United Rehab, Inc.; Rock Hill Healthcare Properties, Inc.; and Uni-Health Post Acute Care-Rock Hill, LLC d/b/a UniHealth Post Acute-Care Rock Hill (“UPAC-Rock Hill”).

<sup>2</sup> The Petition incorrectly asserts Mother was present when the AA was signed. Pet. at 1. In reality, Mother was being prepared for transport from the hospital to Petitioner’s facility and had not yet arrived when the documents were presented. (App. p. 289-90; see also App. p. 303 (Daughter testifying Mother arrived two hours after Son and Daughter)).

the Admission Agreement and also signed the AA on a line labelled "Patient/Resident Representative." (App. p. 290). Mother arrived at Petitioners' facility a short time later. She never signed either contract and never discussed them with Daughter, Son, or Petitioners. Mother fell that same night, suffered a broken neck, and passed away hours later. (App. p. 21-23).

After Respondent filed suit, Petitioners moved to compel arbitration citing the AA. Following a hearing on the motion, the Honorable S. Jackson Kimball denied Petitioners' motion and a motion to reconsider. (App. pp. 3-12). The circuit court held there was no valid arbitration contract because (1) Petitioners failed to meet their burden to establish an agency relationship between Mother and Son; (2) Mother was not a third-party beneficiary to the AA; and (3) Respondent was not estopped from denying enforcement of the AA because Respondents failed to meet their burden to establish all elements of equitable estoppel. Id.

In a unanimous ruling issued March 2, 2016, the Court of Appeals affirmed in full. Thompson v. Pruitt Corp., Op. No. 5384 (S.C. Ct. App. filed March 2, 2016) (Shearouse Adv. Sh. No. 9 at 34). The Court of Appeals held Son was not authorized to enter an independent arbitration contract by the Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10 to -80), the Admission Agreement and AA did not merge because their plain language indicated that they were to be considered separate, and Petitioners' Act/merger argument was not preserved. Id. at 36-41. The Court of Appeals also found Son was not Mother's actual or apparent agent and Mother was not bound to the AA as a third-party beneficiary. Id. at 41-44. Finally, citing South Carolina and federal law, the Court of Appeals held Respondent was not equitably estopped from refusing to arbitrate. Id. at 45-49. After unsuccessfully requesting rehearing, Petitioners filed a Petition for Writ of Certiorari on May 20, 2016.

## ARGUMENT

The Court should deny Petitioners' request for review because the Court of Appeals' unanimous ruling properly considered and rejected Petitioners' arguments to enforce an arbitration contract against the estate of a nursing home resident with dementia who never signed the contract or authorized another to sign for her. Without actual or apparent authority, Son's signature did not create a valid AA between Petitioners and Mother or anyone else. Petitioners' remaining arguments are fundamentally flawed because they attempt to conflate the Admission Agreement and AA in a way that is inconsistent with this Court's recent precedent and the plain language Petitioners chose for the contracts. The faulty merger argument infects other portions of Petitioners' appeal. For example, merger is an absolute prerequisite to Petitioners' equitable estoppel argument. Even under Petitioners' articulation of the doctrine, equitable estoppel only bars a party from seeking enforcement of one part of a contract while avoiding arbitration language within the same contract. Neither Mother nor Respondent attempt to enforce the AA and, unless the Admission Agreement and AA somehow merge, Petitioners cannot prevail on their otherwise flawed equitable estoppel argument. The contract formation issues also doom Petitioners' third-party beneficiary argument. Without a valid contract, Mother could not be a third-party beneficiary. In sum, the Petition should be denied because the Court of Appeals properly applied South Carolina law, and the Petition does not offer a constitutional question, novel issue, or any other basis for this Court to grant review.

**I. The Adult Health Care Consent Act did not confer authority on Son to sign an independent arbitration contract on Mother's behalf.**

The Court of Appeals correctly concluded the Adult Health Care Consent Act ("the Act") did not grant Son authority to enter the AA on Mother's behalf and that the AA did not merge with the Admission Agreement for which the Act did grant Son authority. Petitioners' appeal

does not present a novel issue or complex question. Every Act and merger-related argument Petitioners raise was considered and rejected just two years ago in Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). The Act’s reach is limited by its terms to “health care” decisions, a phrase Coleman held does not include an independent arbitration contract presented near the time of a nursing home resident’s admission. 406 S.C. at 354, 755 S.E.2d at 454. Merger of contemporaneously executed contracts is a mere common law presumption easily displaced by “anything indicating a contrary intention.” Id. at 355, 755 S.E.2d at 455 (quoting Klutts Resort Realty, Inc. v. Down’Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)).<sup>3</sup> That “contrary intention” is indicated by a provision within an arbitration contract granting a nursing home resident the unilateral right to disclaim arbitration within 30 days of execution. Coleman, 407 S.C. at 355, 755 S.E.2d at 455 (finding disclaimer provision “evidenc[es] an intention that each contract remain separate”).

Petitioners cannot deny the AA contains precisely the same provision. (App. p. 84). Plus, the AA goes even further than the contracts considered in Coleman. Petitioners’ AA could not be more definitive in declaring its independence. A provision Petitioners drafted for the AA (but chose to omit from their Petition) purposefully unlinks arbitration from admission and any of the services associated with admission:

The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center

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<sup>3</sup> Klutts holds that merger cannot even be considered unless the two contracts were executed at “the same time, by the same parties, [and] for the same purpose . . .” 268 S.C. at 88, 232 S.E.2d at 24. As an additional sustaining ground, Respondent notes the Admission Agreement and AA were not executed by the same parties or for the same purpose. The Admission Agreement names Mother and Petitioners as parties while the AA purports to include Son as a party. (App. p. 68, 80). While the Admission Agreement’s purpose was to define the parameters of Mother’s nursing home services, the AA’s sole purpose was to outline an alternative dispute resolution process. Id.

(AA § IV(B), App. p. 84). In Petitioners' own words, admission and arbitration were two separate matters. The Court of Appeals did not err in applying the plain meaning of the language Petitioners chose when drafting the AA. That language and Coleman's holding are both clear and Petitioners' Act/merger argument could only prevail had the Court of Appeals disregarded both. Petitioners should not be granted discretionary review of a unanimous decision that strictly follows very recent precedent by applying Petitioners' own contractual language.

Petitioners propose three ways to distinguish Coleman but none are plausible. Some of these purported distinctions are actually unsupported arguments that Coleman was 'wrongly decided while others are contradicted by South Carolina precedent. All three proposals share the fundamental flaw of being inconsistent with anti-merger language Petitioners chose for the AA. Petitioners first argue the thirty-day disclaimer provision cited in Coleman, present in the AA, and relied on by the Court of Appeals, does not actually indicate "separateness." Pet. at 4-5. On this point, Petitioners are not attempting to distinguish Coleman, they are directly attacking it. Coleman held that a thirty-day revocability provision "evidenc[es] an intention that each contract remain separate." 407 S.C. at 355, 755 S.E.2d at 455. Petitioners now argue this holding was wrong and the Court of Appeals erred in applying it.

No credible basis is offered for rejecting this recent precedent. Instead, Petitioners argue Mother was always free to leave the nursing home entirely so that the Admission Agreement and AA are congruent in being revocable. Pet. at 5. The Court of Appeals identified the fallacy in this argument. Thompson at 40. While it was possible for Mother to leave Petitioners' facility entirely and end the Admission Agreement, the AA's thirty-day disclaimer provision was different because it allowed Mother to choose not to arbitrate **without affecting her residency**

**status.** Id.<sup>4</sup> As Coleman recognized, the thirty-day disclaimer provision shows that the AA's parties considered arbitration and admission to be two independent matters.

Petitioners also argue Coleman is distinguishable because the Admission Agreement references "exhibits" and unambiguously identifies AA as one of those exhibits. Pet. at 4. The Admission Agreement does make one reference to "exhibits" (App. p. 76) but the term is never defined. The Admission Agreement never identifies the AA as an exhibit and the AA does not use the term "exhibit" at all. Petitioners did not include anything in their contracts to identify the meaning of "exhibit," and there is no basis for their conclusion that the contracts' plain language supports their merger theory. In reality, Petitioners are not asking for application of the Admission Agreement's plain language, they are asking for a creative, impractical interpretation of the contracts in their favor. Specifically, Petitioners argue "exhibit" and "admission packet" are synonyms and that the AA must be the Admission Agreement's "exhibit" because both contracts include the phrase "admission packet."

Petitioners' proposed interpretation suffers from multiple flaws. First, it is at odds with the AA's plain language and several contract interpretation rules. A first principle of contract interpretation determines the contract parties' intent primarily by looking at the contract language itself. McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Rather than crediting Petitioners' convoluted explanation for how "admission packet" actually means "exhibit," the Court of Appeals focused on the language Petitioners actually used in the AA

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<sup>4</sup> Petitioners argue the Court of Appeals dismissed Petitioners' reference to the Admission Agreement's alleged revocability "without explanation." Pet. at 5. Petitioners likely made this argument to suggest review is necessary to address an unsupported conclusion. Unfortunately, Petitioners misrepresent the opinion. The Court of Appeals explained the flaw in Petitioners' argument in the same paragraph from which Petitioners quote in their Petition. Thompson at 40 (finding thirty-day disclaimer provision indicated separateness because it "allows the patient to disclaim the AA unconditionally").

including the provision expressly unlinking admission and arbitration. Thompson at 40 (citing AA § IV(B)). There is no way to give meaning to that provision while also finding the AA is an “exhibit” of the Admission Agreement. Instead of offering one, Petitioners instead ignore § IV(B) and ask the Court to do the same. This tack violates another bedrock contract interpretation rule. See e.g. J.A. Fay & Egen Co. v. Mims, 151 S.C. 484, 149 S.E. 246, 248 (1929) (“The rule of construction is that every word of a contract should be given meaning and effect if possible”).

Petitioners ask the Court to look beyond the AA’s language because it “oversimplifies” the relationship between the Admission Agreement and AA. Pet. at 5. Petitioners insist their post hoc, self-serving elaboration on that supposed relationship should prevail over § IV(B), the thirty-day disclaimer provision, and other language Petitioners included in the AA. Yet again, Petitioners overlook a contract interpretation rule. Courts will not seek evidence of intent outside of the contract’s language unless that language is ambiguous. McGill, 381 S.C. at 185, 672 S.E.2d at 574. There is nothing ambiguous about § IV(B). Petitioners have not offered any reason why a court should go beyond its language to interpret the AA.

Second, Petitioners are wrong to suggest South Carolina law mandates the AA be interpreted in their favor. Pet. at 7-9. The opposite is true. For merger questions, any “doubts and ambiguities” are construed against Petitioners as the drafter. Chassereau v. Global Sun Pools, Inc., 373 S.C. 168, 175, 644 S.E.2d 718, 722 (2007); Coleman, 407 S.C. at 355-56, 755 S.E.2d at 455. As an advocate for merger, Petitioners had to prove without a doubt the Admission Agreement and AA did not contain any indication of separateness. Petitioners are also incorrect in arguing “federal law mandates” a favorable ruling on merger. Pet. at 8-9. Petitioners attempt to extend the federal pro-arbitration policy far beyond its recognized bounds. The Federal

Arbitration Act (“FAA”) was intended to raise the status of arbitration contracts **but only** to the level of contracts regarding any other subject matter. Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 67 (2010) (the FAA’s savings clause—9 U.S.C. § 2—“places arbitration on equal footing with other contracts”); Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 414 n. 12 (1967) (finding FAA’s purpose was “to make arbitration agreements as enforceable as other contracts, but not more so”).

Federal policy does not compel this Court to construe the AA as valid or to interpret Son’s signature as binding on Mother’s estate. Petitioners rely on cases where courts have held that doubts concerning arbitration should be resolved in favor of arbitration. Pet. at 8-9 (citing Landers v. Federal Deposit Ins. Corp., 402 S.C. 100, 739 S.E.2d 209 (2013)). However, these cases were limited to questions regarding an arbitration agreement’s scope, i.e. whether the parties’ dispute is encompassed within an arbitration agreement’s language. Landers, 402 S.C. at 109, 739 S.E.2d at 213 (“doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration”). Here, the issue is more fundamental. Respondent does not dispute that her claims would be covered by the AA’s scope. Instead, Respondent’s position is that there is no valid AA. This is a contract formation issue, and the FAA expressly reserves it to arbitration-neutral state contract law.<sup>5</sup>

Petitioners’ third proposed way to distinguish Coleman suggests Coleman was limited by the Court’s ruling in Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 379, 759

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<sup>5</sup> See 9 U.S.C. § 2 (arbitration agreement may be invalidated “upon such grounds as exist at law or in equity for the revocation of any contract”); Goldberg v. C.B. Richard Ellis, Inc., Civil Action No. 4:11-cv-02237, 2011 WL 6817908 \*2 (D.S.C. Dec. 28, 2011) (finding FAA “does not displace state law on the general principles governing formation of the contract itself”); Lawrence v. Blue World Pools, Inc., C.A. No. 8:11-1099-JFA, 2011 WL 2491367 \*2 (D.S.C. June 22, 2011) (“whether a party agreed to arbitrate a particular dispute is a question of state law governing contract formation”).

S.E.2d 727, 731 (2014). Petitioners argue Dean shows the thirty-day disclaimer provision has no bearing on merger and the Court of Appeals' ruling in this case is "fundamentally in conflict" with Dean. Pet. at 9. However, Dean has nothing to say about merger. 408 S.C. at 382, 759 S.E.2d at 733 ("the outcome of this appeal turns on whether the unavailability of the [American Arbitration Association] to serve as arbitrator dooms the Agreement"). Dean considered forum selection and the possible failure of a contract's essential term. It has no bearing on the issues raised here. Moreover, Petitioners are wrong in arguing Dean's facts are analogous to this case. Pet. at 9. The nursing home resident in Dean and Mother are differently situated. Petitioners argue the Admission Agreement and AA merge such that Son's authority under the Act applies to the AA. Dean could not possibly support that argument. The resident in Dean was fully competent and, accordingly, the Act did not apply to her. S.C. Code Ann. § 44-66-30(A) (limiting Act's provisions to patient "unable to consent"). Finally, in Petitioners' quest to enforce a purported arbitration contract against a non-consenting elderly nursing home resident suffering from dementia, Dean is an odd citation indeed. The Court was "concerned" by that possibility even with a competent resident and, on remand, instructed the circuit court not to enforce arbitration unless presented evidence of assent sufficient to form a valid contract. 408 S.C. at 388 n. 13, 759 S.E.2d at 736 n.13.

Finally, the Court of Appeals was correct in concluding Petitioners' Act and merger arguments were not preserved. Petitioners' counsel disclaimed these arguments during oral arguments before the circuit court. Counsel specifically told the circuit court, "My argument is not premised upon a merger." (App. p. 281, lines 3-4). Counsel also answered a direct question from the circuit court by claiming Petitioners were not seeking relief based on the Act. (App. p. 244, lines 1-5). Petitioners now seek to reverse course but the Court of Appeals was correct to

conclude South Carolina error preservation rules do not permit it. Thompson at 37 (citing Richland County v. Carolina Chloride, Inc., 382 S.C. 634, 656, 677 S.E.2d 892, 903 (Ct. App. 2009)). Petitioners' suggestion that the Court should vacate the Court of Appeals merits' discussion in light of the preservation ruling should also be rejected because it is at odds with a long line of South Carolina cases ruling on preservation and merits.<sup>6</sup>

## **II. Son was not acting as Mother's actual or apparent agent.**

The Court of Appeals correctly affirmed the circuit court's rejection of Petitioners' agency argument because Son was not Mother's attorney-in-fact and had no actual authority under the Act or common law to enter the AA on Mother's behalf. Moreover, there was no apparent agency relationship between Mother and Son because Mother made no representations to Petitioners regarding her son and "an agency may not be established solely by the declarations and conduct of an alleged agent." Thompson at 42 (quoting Froneberger v. Smith, 406 S.C. 37, 47, 748 S.E.2d 625, 630 (Ct. App. 2013)).

Mother and Son could not have an apparent agency relationship unless Petitioners provided evidence Mother made express representations or engaged in other knowing conduct indicating to Petitioners that Son had authority to enter the AA on her behalf. Froneberger, 406 S.C. at 47, 748 S.E.2d at 630 (quoting Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 868 (Ct. App. 1996) (finding apparent agency requires proof of "written or

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<sup>6</sup> See e.g., Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 10, 466 S.E.2d 727, 732 (1996) ("Even if the issue were preserved, the argument lacks merit"); see also State v. Policao, 402 S.C. 547, 556, 741 S.E.2d 774, 778 (Ct. App. 2013) ("Even if the issue is preserved, we alternatively affirm on the merits"); Martin v. Rapid Plumbing, 369 S.C. 278, 291, 631 S.E.2d 547, 554 (Ct. App. 2006) ("Even had this issue been preserved for our review, it fails on the merits"); Hope Petty Motors of Columbia, Inc. v. Hyatt, 310 S.C. 171, 175 425 S.E.2d 786, 789 (Ct. App. 1992) ("had it been preserved, we would find it without merit"); Estes v. Gray, 319 S.C. 551, 553, 462 S.E.2d 561, 562 (Ct. App. 1991) (finding party "has not properly preserved this issue . . . [a]lso the argument lacks merit").

spoken words or any other conduct **of the principal . . .**”) (emphasis added). Yet, throughout this litigation, Petitioners have attempted to construct an agency relationship between Mother and Son based solely on Son’s conduct. Pet. at 13. On one level, that approach is understandable because Petitioners cannot credibly claim Mother made any representations to them. She was not even on nursing home grounds when the contracts were presented. (App. p. 289-90; 303) Additionally, an apparent agency is only created by the principal’s knowing or intentional acts. Thompson at 42 (quoting Froneberger, 406 S.C. at 47, 748 S.E.2d at 630). Mother suffered from dementia and she could not have knowingly or intentionally represented her son as an agent even if she had been in the room when the contracts were presented. Thompson at 42; see also (App. p. 60, 117, 119, 142).

Petitioners argue they may rely on Son’s representations alone because Son was Mother’s “general agent.” Pet. at 12 (citing R & G Const., Inc. v. Lowcountry Reg’l Transp. Auth., 343 S.C. 424, 540 S.E.2d 113 (Ct. App. 2000)). R & G Construction, presented a very different set of facts than the current case. In R & G Construction, the designated executive director of a regional transportation company entered a contract with a construction contractor for work on premises operated by the transportation company. 343 S.C. at 434, 540 S.E.2d at 118-19. The circuit court found there was some evidence that the executive director had apparent authority to enter into contracts on the transportation company’s behalf. Id. Unlike Petitioners’ arguments, the R & G Construction court found that the transportation company (i.e. the purported principal) “represented to others that [purported agent] had the authority to enter into the contract.” Id. at 435, 540 S.E.2d at 119. The transportation company conceded that it expressly named the purported agent as the company’s executive director and the transportation company’s employee confirmed the executive director’s position to the third party. Id.

Plus, R & G Construction does not alter the agency creation analysis in any way. In fact, it specifically recognized that agency requires intentional or knowing conduct by the purported principal.<sup>7</sup> Petitioners' inability to demonstrate Mother made any representations to them remains dispositive, and the Court of Appeals correctly applied South Carolina agency law.

### **III. Mother was not a third-party beneficiary to the Arbitration Agreement.**

The Court should not grant certiorari on Petitioners' third-party beneficiary ground because Petitioners argue Mother is a third-party beneficiary to a nonexistent contract. Son had no authority under the Act or agency law to bind Mother to the AA and it fails for lack of mutual assent. Consignment Sales LLC v. Tucker Oil Co., 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2011) ("a binding contract requires a manifestation of mutual assent to its terms"). There is no valid AA and can be no third-party beneficiary. Thompson at 44 (quoting Dickerson v. Longoria, 995 A.2d 721, 742 (Md. 2010); see also Adams Cmty. Care Ctr., LLC v. Reed, 37 So.3d 1155, 1160 (Miss. 2010) ("For a third-party beneficiary to exist, there must first exist a valid contract executed by one with 'legal authority'") (citing Grenada Living Center, LLC v. Coleman, 961 So.2d 33, 38 (Miss. 2007)). Alternatively, Petitioners argue the AA's parties are actually Petitioners and Son with Mother as a beneficiary. But, not even the administrator of Petitioners' nursing home supports this fiction. She testified by affidavit that Son signed the AA

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<sup>7</sup> R & G Construction makes this point several times. For example, apparent authority "focuses on the principal's manifestation to a third party that the agent has certain authority." 343 S.C. at 432, 540 S.E.2d at 117 (citing Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996)). Also, the "concept of apparent authority depends upon manifestations by the principal to a third party." R & G Construction, 343 S.C. at 432, 540 S.E.2d at 118. Additionally, "[a]pparent authority must be established upon manifestations by the principal, not the agent." Id. (citing Shropshire v. Prahalis, 309 S.C. 70, 419 S.E.2d 829 (Ct. App. 1992)). Finally, "[t]he 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 third party." R & G Construction, 343 S.C. at 432-33, 540 S.E.2d at 118 (citing Vereen v. Liberty Life Ins. Co., 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991)).

not for himself but “as the representative” of Mother. (App. p. 66). The third-party beneficiary doctrine is not a cure for contract formation deficiencies, and Petitioners cannot meet the threshold requirement of demonstrating a valid contract to which Mother could be a beneficiary.

The machinations Petitioners propose to label Mother a third-party beneficiary undercut both contract formation rules and public policy. Petitioners attempted to bind Mother to the AA by making her a party. Petitioners knew Mother could be a party only if she assented to the AA’s terms and knew Mother’s mental state precluded her from assenting. In these circumstances, Mother could still become a party but only if someone with legal authority signed the contract on her behalf. The South Carolina Probate Code provides multiple mechanisms by which a person may be empowered to assent to a contract on an incapacitated individual’s behalf. E.g. S.C. Code Ann. § 62-5-312 (guardianship); S.C. Code Ann. § 62-5-501 (durable power of attorney). These mechanisms are intended to protect the incapacitated by requiring the individual’s assent before her incapacity arises (S.C. Code Ann. § 62-5-501) or by requiring court approval before a guardian is appointed (S.C. Code Ann. § 62-5-303). Petitioners acknowledge Mother had not executed a power of attorney and did not have a guardian. Pet. at 1. Therefore, despite Son’s signature, Petitioners failed in their attempt to make Mother a party.

Yet, by arguing Mother may be forced to arbitrate as a non-party, Petitioners effectively ask the Court to ignore the protections the South Carolina Probate Code provided Mother. If successful, Petitioners will have converted the third-party beneficiary doctrine into a mechanism for circumventing the legislature’s substantive protections for vulnerable adults. In Petitioners’ view, inserting a family member’s name in the AA as a nominal party is an expedient way to force a resident with diminished mental capacity into arbitration without hassling with thorny questions about a resident’s wishes or a family member’s authority. However, the Probate Code

values resident protection over expedience. See In re Campbell, 379 S.C. 593, 600, 666 S.E.2d 908, 911 (2008) (interpreting conservatorship statute “with the best interest of the allegedly incapacitated person in mind”). Despite contrary suggestions (Pet. at 16), it is Petitioners’ position, not the Court of Appeals’ ruling, that strays from South Carolina public policy.

Petitioners would also have the Court ignore the question of assent in its entirety. Petitioners allege the Court of Appeals erred by referencing Mother’s lack of assent and incapacity to assent. Petitioners boldly claim assent simply does not matter. Pet. at 15 (“To require the assent of the third-party to be bound to such an arbitration agreement would eviscerate this rule . . .”). South Carolina and federal law reject Petitioners’ argument. See Pearson v. Hilton Head Hosp., 400 S.C. 281, 294-95, 733 S.E.2d 597, 603 (Ct. App. 2012) (citing E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S., 269 F.3d 187, 202 (3d Cir. 2001) (“If the parties have not agreed to arbitrate, the courts have no authority to mandate that they do so”)); Volt Information Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 479 (1989) (finding arbitration “is a matter of consent, not coercion”); Int’l Paper, 206 F.3d at 416 (“a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit”).

As the Court of Appeals correctly noted, courts have applied these foundational arbitration requirements to prevent nursing homes from applying the third-party beneficiary doctrine in the haphazard manner Petitioners propose. Thompson at 44 (citing Drury v. Assisted Living Concepts, Inc., 262 P.3d 1162, 1166 n. 5 (Or. Ct. App. 2011) (“[U]nless the third-party beneficiary in some way assents to a contract containing an arbitration clause, the contracting parties have waived the beneficiary’s right to a jury trial without her consent”). It is true that a person may assent to a contract by some means other than personally signing. Int’l Paper, 206

F.3d at 416. However, no South Carolina or federal precedent supports Petitioners' assertion that a non-signatory nursing home resident's jury trial right may be lost by means of an arbitration-specific contract the resident never saw and lacked the capacity to understand.

In an effort to pique the Court's interest in issuing a writ, Petitioners allege the Court of Appeals "misapplies state and federal law" on the third-party beneficiary doctrine. Pet. at 17. Petitioners' efforts to portray the Court of Appeals' ruling as a break from precedent must fail because none of the cases Petitioners cite on this point support the conclusion they seek, and the Court of Appeals acknowledged the precise point for which Petitioners cite each case. Petitioners argue South Carolina allows non-signatories to be bound to an arbitration provision within a contract formed by other parties. Pet. at 15 (citing Pearson v. Hilton Head Hosp., 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012); Wilson v. Willis, Op. No. 5387 (S.C. Ct. App. filed March 2, 2016) (Shearouse Adv. Sh. No. 9 at 73); Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411 (4th Cir. 2000)). The Court of Appeals' ruling acknowledged this general principle. Thompson at 46 (citing Pearson and Int'l Paper). However, Petitioners' argument also requires forcing a non-signatory to arbitrate as a third-party beneficiary when arbitration is governed by an independent contract and the non-signatory has made no effort to enforce that contract.

Pearson, Wilson, and International Paper are no help to Petitioners here. None of these cases based their holdings on the third-party beneficiary doctrine. Pearson held that a physician must arbitrate an employment-related dispute against a hospital, and the holding used clear estoppel language.<sup>8</sup> The physician "should not be allowed to hold the Hospital to one of the

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<sup>8</sup> This Court has viewed Pearson as an estoppel case. See Malloy v. Thompson, 409 S.C. 557, 561-62, 762 S.E.2d 690, 692 (2014). Malloy noted the doctrines (including estoppel but not third party beneficiary) identified in Pearson that allow enforcement of arbitration against a

contracts to allege a breach but not be subject to the arbitration provisions.” 400 S.C. at 297, 733 S.E.2d at 605. Wilson and International Paper also unambiguously grounded their holdings in estoppel. Wilson at 87 (“we find the Insureds and Agents are equitably estopped from arguing their status as nonsignatories precludes enforcement of the arbitration provision . . . .”); Int’l Paper, 206 F.3d at 417 (“We believe that the doctrine of equitable estoppel applies here”). For reasons discussed below, the Court of Appeals correctly refused to apply equitable estoppel in this case. More importantly at this juncture, the Court of Appeals’ third-party beneficiary ruling does not conflict with the holdings of Pearson, Wilson, and International Paper because none of those cases were decided based on the third-party beneficiary doctrine.

Lastly, Petitioners cite district court orders and cases from other jurisdictions. None of these cases were binding on the Court of Appeals. Chase Home Fin., LLC v. Risher, 405 S.C. 202, 213, 746 S.E.2d 471, 477 (Ct. App. 2013) (noting federal district court rulings are persuasive at most). More fundamentally, the Court of Appeals properly refused to apply them because they are all distinguishable. Some of these cases<sup>9</sup> did apply the third-party beneficiary doctrine to non-signatory nursing home residents. However, in each case, admission is cited as the benefit supporting the doctrine and each involved contracts that link arbitration with admission either by placing an arbitration provision within an admission contract<sup>10</sup> or by first

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nonsignatory. Id. Separately, the Court noted that some federal courts (outside of South Carolina) have applied the third-party beneficiary doctrine to compel nonsignatories to arbitrate. Id. (citing Bridas S.A.R.I.C. v. Gov’t of Turkmenistan, 345 F.3d 347 (5th Cir. 2003)).

<sup>9</sup> Petitioners cite Owens v. Coosa Valley Health Care, Inc., 890 So.2d 983 (Ala. 2004), which does not reference a third-party beneficiary at all.

<sup>10</sup> THI of S.C. at Columbia, LLC v. Wiggins, Civil Action No. 3:11-888-CMC, 2011 WL 4089435 \*6 (D.S.C. Sept. 13, 2011) (finding resident’s care was “essential purpose” of single contract with integrated arbitration provision); Trinity Mission Health & Rehab. v. Scott, 19 So.3d 735, 740 (Miss. Ct. App. 2008) (holding that resident bound to arbitrate because admission contract containing arbitration provision provided healthcare services to resident).

finding separate admission and arbitration contracts merged into one.<sup>11</sup> Here, Petitioners cannot cite the benefits of Mother’s admission as the basis for applying the third-party beneficiary doctrine because arbitration and admission are governed by distinct contracts, and Petitioners expressly chose to unlink the two. (App. p. 84) (“The signing of this [Arbitration] Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident”).

None of these cases apply the third-party beneficiary doctrine against a mentally compromised nursing home resident when admission and arbitration are governed by two separate and independent contracts.<sup>12</sup> The latest district court order proves the point. In THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, Civil Action No. 7:13-cv-2929-BHH, 2014 WL 6863550 \*3 (D.S.C. Oct. 31, 2014), a federal magistrate recommended application of the third-party beneficiary doctrine to a nursing home admission agreement with an integrated arbitration provision. The district court adopted the recommendation but only after distinguishing Coleman because in Coleman “admission to the nursing home for health related needs was not contingent upon execution of the arbitration agreement.” THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, Civil Action No. 7:13-cv-2929-BHH, 2015 WL 1268185 \*2 (D.S.C. March 19, 2015). Thus, even if the Court were to fully follow this line of lower court decisions, they would not

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<sup>11</sup> McCutcheon v. THI of S.C. at Charleston, LLC v. Wiggins, 2011 WL 6318575 \* 3 (D.S.C. Dec. 15, 2011) (citing Klutts and applying its merger elements); Cook v. GGNSC Ripley, LLC, 786 F. Supp. 2d 1166, 1171-72 (N.D. Miss. 2011) (considering two contracts—an admission agreement and arbitration agreement—but finding resident was third-party beneficiary only after first concluding arbitration agreement “became part of the admission agreement upon execution, as reflected by its express terms”).

<sup>12</sup> To the extent McCutcheon discusses third-party beneficiary, that ruling has been limited to instances where equitable estoppel also applies. Benezra v. Zacks Inv. Research, Inc., Case No. 1:11-CV-596, 2012 WL 1067559 at \*9 n. 10 (M.D.N.C. March 30, 2012) (finding McCutcheon limited to instances where non-signatory “also seek[s] to benefit from the contract, thus invoking estoppel grounds as well”).

support Petitioners' argument. At most, they establish the third-party beneficiary doctrine may apply to single admission/arbitration contracts (e.g. Wiggins, Gilbert) but do not apply when admission and arbitration are governed by separate and independent contracts (e.g. Coleman).

**IV. Mother's estate is not equitably estopped from refusing to arbitrate.**

The Court should not grant the Petition to review the Court of Appeals' ruling on equitable estoppel because Petitioners apply the wrong law to the wrong person and suggest only illusory inconsistencies between the Court of Appeals' ruling and existing precedent. South Carolina law imposes six elements Petitioners must establish to apply equitable estoppel. Thompson at 47 (quoting Boyd v. BellSouth Tel. Tel. Co., 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006)). The Court of Appeals held that Petitioners did not meet their burden on several elements. Mother's dementia prevented her from having the knowledge or forming the requisite intent to mislead Petitioners regarding Son's authority. Thompson at 47. Practically speaking, Mother could not be guilty of conduct amounting to a false representation because she was not in the room or even on the premises when the contracts were presented for signature. (App. pp. 289-90; 303) Petitioners also failed to prove any detrimental reliance on Mother's purported misrepresentations. Thompson at 48 (citing Dickerson, 995 A.2d at 743).

Petitioners do not seriously contest the Court of Appeals' ruling on this point, choosing to address South Carolina's equitable estoppel elements only in a footnote. Pet. at 20 n. 5. Instead, Petitioners contend their contract-based argument is subject to federal law rather than the law of South Carolina, the state where the alleged contract was signed and its alleged parties resided. Pet. at 17-18. This argument is at odds with U.S. Supreme Court precedent. Arbitration contracts concerning interstate commerce are governed by the FAA but its provisions apply state law to enforceability questions such as the application of equitable estoppel. 9 U.S.C. § 2 (requiring

enforcement of arbitration contract “save upon such grounds as exist at law or in equity for the revocation of any contract”). The FAA does not “alter background principles of state contract law regarding the scope of agreements (including the question of who is bound by them).” Arthur Anderson LLP v. Carlisle, 556 U.S. 624, 630 (2009). Arthur Andersen specifically applied this principle to equitable estoppel arguments. Id. at 632 (noting question on remand was “whether the relevant state contract law recognizes equitable estoppel”). At least eight federal circuits<sup>13</sup> along with multiple district<sup>14</sup> and state courts<sup>15</sup> have cited Arthur Andersen with multiple courts modifying or overruling precedent to comply with the Supreme Court’s ruling. By looking past South Carolina contract law, Petitioners stand in the untenable position of asking the Court to ignore the U.S. Supreme Court’s interpretation of a federal statute.

Petitioners could not prevail even if their equitable estoppel argument was governed by federal law. Even under federal law, a party may be equitably estopped from refusing arbitration only when he has “consistently maintained that other provisions of the same contract should be enforced to benefit him.” Int’l Paper, 206 F.3d at 418. Petitioners bear the burden of proving

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<sup>13</sup> Richmond Health Facilities v. Nichols, 811 F.3d 192, 195 (6th Cir. 2016) (citing Arthur Anderson) (“in determining the enforceability of an arbitration agreement, we apply state law of contract formation”); Crawford Prof’l Drugs, Inc. v. CVS Caremark Corp., 748 F.3d 249, 255 (5th Cir. 2014) (holding “state contract law” applied to equitable estoppel issue and noting prior decisions “based on federal common law, rather than state contract law . . . have be modified to conform with Arthur Andersen”); Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1128 (9th Cir. 2013) (citing Arthur Andersen and applying California law to the equitable estoppel analysis); Awuah v. Coverall N. Am., Inc., 703 F.3d 36, 41-42 (1st Cir. 2012) (same for Massachusetts law); The Republic of Iraq v. BNP Paribas USA, 472 Fed. Appx. 11, 13-14 (2d Cir. 2012) (same for New York law); Lenox MacLaren Surgical Corp. v. Medtronic, Inc. 449 Fed. Appx. 704, 708 n. 2 (10th Cir. 2011) (finding Arthur Andersen “made it clear that state law governs who may be bound to an arbitration clause”); Lawson v. Life of the S. Ins. Co., 648 F.3d 1166, 1172 (11th Cir. 2011) (holding that “to the extent any of our earlier decisions indicate to the contrary, those indications are overruled or at least undermined to the point of abrogation by [Arthur Andersen]”); Donaldson Co. v. Burroughs Diesel, Inc., 581 F.3d 726, 732 (8th Cir. 2009) (“The Supreme Court has ruled that state contract law governs the ability of nonsignatories to enforce arbitration provisions”).

<sup>14</sup> MacDonald v. Unisys Corp., 951 F. Supp. 2d 729, 736-38 (E.D. Pa. 2013) (“Post-Arthur Andersen, it is incontrovertible that state law governs the equitable estoppel and third-party beneficiary determinations”); Hospira, Inc. v. Therabel Pharma N.V., Case No. 12-C-8544, 2013 WL 3811488 \*11-14 (N.D. Ill. July 19, 2013) (citing Arthur Andersen and applying state law to equitable estoppel analysis); FR 8 Singapore Pte. Ltd. v. Albacore Maritime Inc., 794 F. Supp. 2d 449, 455 (S.D.N.Y. 2011) (“the question of who was bound by [arbitration] agreement was treated as a question of state law”).

<sup>15</sup> See e.g., Carter v. TD Ameritrade Holding Corp., 721 S.E.2d 256, 261-62 (N.C. Ct. App. 2012) (citing Arthur Andersen and considering ratification argument under state law).

Mother consistently maintained that portions of the AA should be enforced. Mother never made any efforts to enforce provisions of the AA. Since Petitioners cannot make this showing, they attempt to alter the federal equitable estoppel analysis in two subtle but important ways. First, Petitioners attempt to substitute the Admission Agreement for the AA by arguing Mother's admission supports equitable estoppel. Second, Petitioners attempt to substitute Daughter and Son for Mother by arguing Daughter and Son's actions can equitably estop Mother's estate.

The first substitution cannot be reconciled with International Paper and progeny. Pearson, 400 S.C. at 290, 733 S.E.2d at 601 (quoting Int'l Paper, 206 F.3d at 418) (applying equitable estoppel when party to be estopped seeks to enforce "the same contract"). The Court of Appeals properly applied these cases in rejecting all equitable estoppel arguments based on Mother's "acceptance" of admission. Thompson at 46 (finding "assertion that Mother received benefits under the Admission Agreement . . . is of no moment" because "the two agreements are independent of one another"). The district court cases cited in the Petition do not support equitable estoppel for this case because they all involved single contracts or merged contracts for which a nursing home could argue the resident enjoyed the benefits and sought to avoid arbitration under the "same contract." Gilbert, 2015 WL 1268185 (single contract with integrated arbitration provision); Wiggins, 2011 WL 4089435 (same). Many of these cases are also very different because the person opposing arbitration alleged breaches of the contract containing an arbitration requirement. McCutcheon, 2011 WL 6318575 \*3 (noting resident "attempts to hold [nursing home] liable for breach of certain contractual terms"). The same is true of the "direct benefit" cases Petitioners cite. See Thompson at 46.

Petitioners advocate McCutcheon as proof equitable estoppel may be applied against a nursing home resident even when admission and arbitration are governed by two unmerged

contracts. Pet. at 18. However, that is not a fair reading of McCutcheon for two reasons. First, McCutcheon at least implicitly applied merger. 2011 WL 6318575 at \*3 (applying Klutts and merger doctrine's elements). Second, to the extent McCutcheon suggests estoppel applies to separate admission and arbitration contracts, the district court's order was rendered obsolete by Coleman. Specifically, McCutcheon found it would be inequitable for a resident's estate "to assert that [family member] had authority to sign the Admissions Agreement on behalf of [resident], but lacked such authority to sign the Arbitration Agreement." 2011 WL 6318575 at \*3. However, as the Court held in Coleman, those assertions are perfectly consistent with the Act, which provides authority for family members to make health care decisions but not to sign an independent arbitration contract. 407 S.C. at 354, 755 S.E.2d at 454.

Petitioners then attempt to alter the equitable estoppel analysis further by substituting Son and Daughter for Mother and basing their estoppel arguments on Daughter & Son's actions. Again, the Court of Appeals identified and rejected Petitioners' attempt to recast the doctrine. Thompson at 47-49. Again, the Court of Appeals ruling is supported by the very precedent on which Petitioners rely. See Pet. at 19 (citing Pearson, 400 S.C. at 290, 733 S.E.2d at 601 (applying equitable estoppel to "a party . . . **when his own behavior** renders non-enforcement inequitable") (emphasis added). Son is not a party to Respondent's negligence and wrongful death claims, and his discussions with Petitioners' representatives cannot estop Mother's estate. Likewise, Daughter's presence when the contracts were presented cannot support application of equitable estoppel against Mother's estate even though Daughter is now its personal representative. Actions taken in her individual capacity have no bearing on the equitable estoppel analysis. Thompson at 48 (quoting Dickerson, 995 A.2d at 743). Plus, Daughter made no representations to Petitioners regarding Son's authority. There is nothing in the record suggesting

Daughter told Petitioners' representatives that Son had authority. Petitioners cite only Daughter's deposition where Petitioners' counsel asked Daughter for her current knowledge of Son's history of signing documents. (App. pp. 298-99). This knowledge was not conveyed to Petitioners at the time of alleged contract formation and could not be a representation that affected Petitioners decision to go forward with admission.

Finally, Petitioners add a new argument that the Court of Appeals' opinion is inconsistent with Wilson, a ruling issued on the same day. In Wilson, insurance customers alleged tort claims against their insurer, its local agency, and its agents for a variety of fraudulent and anti-competitive business practices. Wilson at 75-77. Rival agents alleged tort claims against the insurer and its local agency for anti-competitive practices. Wilson held that the insureds and rival agents were equitably estopped from refusing to arbitrate based on an arbitration provision within a contract solely between the insurer and its local agency. Id. at 87. Even though they were non-signatories and did not allege breach of contract claims, the insureds and rival agents had to arbitrate because their tort claims were based on duties that could not exist but for the contract. Id.

The Court of Appeals' ruling in this case is not inconsistent. Wilson held that estoppel may apply to non-signatories who allege some tort claims but only when the duty underlying each claim "directly arose out of" the contract containing arbitration language. Id. at 85. Petitioners are wrong to conclude the duty underlying Respondent's claims "directly arose out of" the Admission Agreement. The Complaint alleges a general negligence claim, a negligence per se claim, and a negligent misrepresentation claim. The duty underlying the negligence per se claim arises from South Carolina statutes and federal regulations (App. p. 23-24). The negligent misrepresentation claim arises from extra-contractual statements made by Petitioners'

representatives. (App. p. 24). Not even the general negligence claim arises from or is dependent on the Admission Agreement. Under South Carolina law, a duty may be created in a number of ways including by contract but also by nature of the parties' relationship. Carson v. Adgar, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997). For example, in a medical negligence action, a duty arises from the doctor-patient relationship rather than any contract between the parties. See Ellis v. Niles, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996). Several jurisdictions have held the same principle applies to the nursing home-resident relationship.<sup>16</sup> Wilson does not support arbitration here because Respondent does not allege a breach of contract claim or tort claim with a duty dependent on any contract.

Plus, the fact that Wilson is a single-contract case is an important distinction. The insureds/rival agents' tort claims were based on duties that arose from a contract containing an arbitration provision. That is not the argument Petitioners make here. Instead, Petitioners argue Respondent's negligence and wrongful death claims are based on a duty arising from the Admission Agreement and, therefore, Respondent should be forced to arbitration pursuant to the AA. Wilson does not support that result.

In sum, the Court should not grant the Petition on equitable estoppel grounds. Petitioners cannot meet the six elements imposed by South Carolina law, and their federal law arguments do

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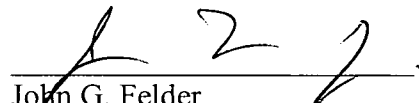
<sup>16</sup> See e.g., Stearns v. Ridge Ambulance Serv., Inc., 32 N.E.2d 765, 773 (Ill. App. 2015) ("A physically infirm and cognitively impaired nursing-home resident depends upon the staff of the nursing home to prevent injury. The relationship is sufficiently custodial to give rise to a duty"); Limbaugh v. Coffee Med. Ctr., 59 S.W.3d 73, 79-80 (Tenn. 2001) (holding that "the relationship between a nursing home and its residents . . . gives rise to an affirmative duty owed by the nursing home to exercise reasonable care to protect its residents"); Harder v. F.C. Clinton, Inc., 948 P.2d 298, 304 (Okla. 1997) ("Vis-à-vis its resident, a nursing home stands in a relationship similar to that which a hospital occupies opposite its patient" and "nursing home has a duty to provide care at a reasonable standard"); Pye v. Taylor & Bird, Inc., 456 S.E.2d 63, 65 (Ga. Ct. App. 1995) ("Because of the special relationship existing between the nursing home and its residents . . . the nursing home has a duty to exercise ordinary care in keeping its premises safe").

not apply here. Those arguments are also flawed because, when applied to the proper contract and proper party, there is no evidence Mother attempted to enforce the AA or took actions inconsistent with opposing arbitration. Plus, Petitioners' approach irretrievably links their equitable estoppel argument to their merger argument. Petitioners cannot prevail on estoppel unless they first prove merger, and Petitioners' merger argument was squarely rejected by this Court just two years ago. See supra at 4-9 (discussing Coleman).

### CONCLUSION

Based on the arguments stated above, the Court should deny the Petition for Writ of Certiorari. The Court of Appeals' unanimous opinion accurately applies state and federal law, and this case does not present a novel issue or other matter requiring review.

Respectfully submitted,

  
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June 20 2016  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Case No. 2013-CP-46-2930  
Appellate Case No. 2014-001624

RECEIVED

JUN 20 2016

SC SUPREME COURT

Mae Ruth Davis Thompson  
Individually and as the Personal  
Representative of the Estate of  
Eula Mae Davis, Deceased ..... Respondent,

v.

Pruitt Corporation d/b/a UHS-Pruitt  
Corporation; UHS-Pruitt Holdings, Inc.;  
UHS of South Carolina-East, LLC;  
United Health Services of South Carolina,  
Inc.; United Clinical Services, Inc.,  
United Rehab, Inc.; Rock Hill Healthcare  
Properties, Inc.; Uni-Health Post Acute  
Care-Rock Hill, LLC d/b/a UniHealth  
Post Acute-Care Rock Hill ..... Appellants.

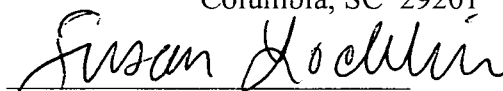
**PROOF OF SERVICE**

I, the undersigned Paralegal of the law offices of McGowan Hood & Felder, LLC, attorney for the Respondent, do hereby certify that I have served all counsel and Clerk of Court of South Carolina Appeals in this action with a copy of the Return to Petition for Writ of Certiorari by mailing a copy of the same via United States Mail, postage prepaid, at the following addresses:

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Honorable Jenny Abbott Kitchings  
Clerk, SC Court of Appeals  
1205 Pendleton St.  
Columbia, SC 29201

June 20, 2016



Susan Locklier, Paralegal to John G. Felder, Jr.