THE STATE OF SOUTH CAROLINA
In the Supreme Court

No. 2016-001512

APPEAL FROM ABBEVILLE COUNTY
Court of Common Please
Eugene G. Griffith, Jr., Circuit Court Judge

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SC Court of Appeals

Opinion No. 5387 (S.C. Ct. App. Filed March 2, 2016)
Appellate Case No. 2014-00946

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v.

Laura B. Willis and Jesse A. Dantice, individually and as agents and/or brokers for Southern Risk Insurance Services LLC, Travelers Casualty Insurance Company of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co.; Southern Risk Insurance Services, LLC, Travelers Casualty Insurance Co. of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co.; and Laurie Williams, ... *Defendants,*

Of whom Peerless Insurance Co., Montgomery Mutual Insurance Co., and Safeco Insurance Co. of America are... *Respondents.*

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CERTIFICATION

The Court of Appeals issued its decision on March 2, 2016. (Appendix ("App.") 915-16). Petitioners filed a petition for rehearing on March 30, 2016 (App. 937), and the Court of Appeals summarily denied that petition in an amended order issued on June 27, 2016. (App. 991-92.)

QUESTIONS PRESENTED

It is black-letter law that arbitration is a matter of consent. Accordingly, this Court has held that a nonparty to a contract containing an arbitration clause cannot be bound by the clause unless the duties she alleges the defendant breached arise from the underlying contract. *Malloy v. Thompson*, 409 S.C. 557, 562, 762 S.E.2d 690, 692-93 (2014). Likewise, this Court has instructed that the mere fact that a dispute would not have arisen but for the existence of a contractual relationship does not transform the dispute into one that arises from the contract. Rather, if the claims are legally distinct from the contract, they do not fall within the scope of the contract's arbitration clause—even if they have some factual relation to the contract. *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 152, 644 S.E.2d 705, 709, *cert. denied*, *World Fin. Corp. of S. Carolina v. Aiken*, 552 U.S. 991 (2007); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 119-20 (2001). The questions presented are:

1. Did the Court of Appeals err by enforcing an arbitration clause in a contract between Defendants and another party against Plaintiffs, who are not parties to that contract and do not seek any benefit under that contract, in conflict with this Court's decision in *Malloy*? (Yes.)

2. Did the Court of Appeals err by holding that Plaintiffs' claims are within the scope of Defendants' arbitration clause, despite the fact the clause is limited to five categories of disputes, none of which are implicated by Plaintiffs' claims; and that Plaintiffs' claims arise from duties established by South Carolina law, not the contract containing the arbitration clause, in conflict with this Court's decisions in *Aiken* and *Zabinski*? (Yes.)

SUMMARY OF ARGUMENT

This appeal raises a simple question, but one of great consequence: can a person who did not agree to arbitration with a corporation nevertheless have her claims forced into arbitration based on an arbitration clause contained in a contract between that corporation and another party, even though the person is not a party to the contract containing the arbitration clause, and even though her claims are legally independent of that contract? The Court of Appeals answered this question in the affirmative—in direct conflict with decisions by this Court and the South Carolina Court of Appeals. If the decision below stands, the core principle of arbitration—consent—will be at risk, the legitimacy of arbitration agreements in South Carolina will be eroded, and confusion will spread in the lower courts. This Court's intervention is needed to resolve these conflicts, clarify the proper application of South Carolina law and the Federal Arbitration Act, and affirm that arbitration clauses may only be enforced against nonparties under narrow circumstances not present here. *See* Rule 242, SCACR.

The underlying allegations in this case arise from the allegedly illegal actions of an insurance agent, Laura Willis, who issued policies and made representations on behalf of Peerless Insurance Company, Montgomery Mutual Insurance Company, and Safeco Insurance Company ("Defendants") to customers in Abbeville County. Plaintiffs, customers and insurance agents in Abbeville who allege they were harmed, brought statutory unfair trade practices claims and common-law tort claims against Defendants alleging that they are responsible for Willis' conduct. In response, Defendants sought to force Plaintiffs' claims into arbitration, citing an arbitration clause in a contract (the "Agency Agreement") between Defendants and Southern Risk Insurance Services, which is another defendant in this case.

The Agency Agreement governs the relationship between each Defendant insurance company and Southern Risk, and says nothing about customers or competing agents. Plaintiffs

are not parties to this Agency Agreement or its arbitration clause. They have never sought to enforce any part of the Agency Agreement, nor do they allege any breach-of-contract claims. None of the allegations in Plaintiffs' complaints rely on any provision in the Agency Agreement or rely on any legal duty created by that agreement. Rather, Plaintiffs' claims arise solely from South Carolina law. Indeed, Plaintiffs were not even aware of the contract or its arbitration clause until Defendants decided to seek arbitration a year into the litigation.

Despite these facts, the Court of Appeals held that Plaintiffs are required to arbitrate their claims. According to the court, Plaintiffs are seeking to enforce duties that arise from, and obtain benefits under, the Agency Agreement, and thus they are equitably estopped from avoiding the contract's arbitration clause. This ruling misunderstands both Plaintiffs' claims and South Carolina law. Plaintiffs have never sought any benefits under the Agency Agreement. They allege only that Defendants violated their legal duties under South Carolina's consumer protection statutes and the common law—duties that Defendants owed their customers and the public regardless of any contractual promises they may have chosen to make to Southern Risk. And this Court has explained that where a nonparty plaintiff seeks to vindicate legal duties that exist independently of a contract between other parties, the nonparty is not bound by an arbitration clause in that contract. *Malloy*, 409 S.C. at 562; 762 S.E.2d at 692-93.

The court below further held that Plaintiffs' claims were within the scope of Defendants' arbitration clause, despite the fact that those claims arise from South Carolina law, not the Agency Agreement, and even though Willis' allegedly illegal conduct was not contemplated by the contract. But this Court rejected that argument in *Aiken*, 373 S.C. at 151, 644 S.E.2d at 709. The decision below flies in the face of *Malloy* and *Aiken*.

This Court's intervention is warranted to correct these errors and resolve these conflicts.

The Court should grant review to clarify that in South Carolina, as in other jurisdictions, individuals seeking to vindicate their legal rights cannot be compelled into arbitration on the basis of an arbitration clause in a contract to which they are not parties, never saw, never invoked, and never sought to enforce. The Petition should be granted.

STATEMENT OF THE CASE

A. Factual Background

Laura Willis was an insurance agent in Abbeville County. Working under the supervision of broker Jesse Dantice for his insurance agency Southern Risk, Willis sold policies for Defendants to local residents. Willis was no ordinary agent. Between 2008 and 2012, she allegedly engaged in extensive unlawful and unethical practices designed to enlist as many customers as possible, corner the retail insurance market, and put her competition out of business—without regard to the law or the fate of the customers who depended on her to ensure that they were adequately protected from risk. (App. 328-30.)

Among other things, Willis allegedly repeatedly forged insurance documents; changed information on applications without customers' permission to omit facts that would have warranted higher rates; submitted applications using her own personal drivers' license and Social Security Number in order to obtain lower rates than those for which customers would have actually qualified; quoted severely reduced premiums in violation of state regulations; issued policies on unsigned applications; appropriated cash payments for her own personal use; issued bogus policies; pretended policies were in effect when losses occurred; fraudulently adjusted loss claims made against the policies; and charged customers for nonexistent and duplicative policies. (App. 328-30; 375.) When customers inquired whether they indeed had coverage or whether they needed to obtain insurance elsewhere, Willis discouraged them from seeking other coverage, reassuring them all was in order—even as lienholders and government agencies were

notifying customers that they were not insured. (App. 329.) Willis allegedly used these illegal tactics on Defendants' behalf, with their authorization, and for their benefit—and thereby generated rapid growth and profits for Defendants. (App. 330.)

In 2011, the South Carolina Insurance Commission fined Willis, publicly reprimanded her, and placed her on probation for dishonesty. (App. 328.) Nonetheless, Defendants allegedly never investigated Willis, never questioned the increased profits she generated, and never stopped her from engaging in these unlawful practices. She continued to work in the industry issuing policies for Defendants. (App. 328-30.)

Willis' allegedly illegal practices harmed two groups of people in Abbeville. First, they harmed Defendants' customers ("Customers"), who were led to believe they had purchased legitimate insurance policies. As a result of Willis' allegedly unlawful business practices, Customers lost a great deal of their money, ended up with damaged credit, and had difficulty obtaining new insurance policies. (App. 331.) Second, Willis' allegedly unlawful practices harmed local insurance agents who operated responsible, law-abiding insurance agencies in Abbeville and competed with Willis for business ("Agents"). Willis' tactics lowered insurance premiums for the general public, making it impossible for Agents to compete for customers. (App. 130.) As a result, Agents lost revenue and clients, were unable to compete in the local insurance market, and effectively had their businesses destroyed. (*See* App. 128.)

B. Trial Court Proceedings and Defendants' Arbitration Clause

Plaintiffs Customers and Agents filed lawsuits against Defendants Montgomery, Peerless, and Safeco; other insurance companies; the Southern Risk agency; and Willis and her boss Jesse Dantice. They allege that Defendants should have been on notice of Willis' activities based on the volume of new business she generated in a short amount of time, and that they should have discovered and stopped her activities. (App. 130; 330.) Plaintiffs also allege that Defendants

had a duty to investigate, train, and supervise her—especially after she was publicly disciplined by the Insurance Commission. (App. 127-28; 328.) Plaintiffs allege causes of action for violations of the South Carolina Unfair Trade Practices Act and common-law unfair trade practices (App. 130-31; 331-32; 378-79); fraud, conversion, and negligent misrepresentation (Customers only) (App. 332-35; 380-82); and civil conspiracy and tortious interference with contractual relations (Agents only) (App. 132-33). They seek damages, restitution, disgorgement, injunctive relief, and attorneys' fees and costs. (*E.g.*, App. 331-35.)

Defendants filed several Motions to Compel Arbitration. (*E.g.*, App. 561; 573.) The arbitration clause Defendants sought to enforce appeared in the Agency Agreement, a contract between "the undersigned Agency [Southern Risk] and Liberty Mutual Agency Corporation on behalf of" each Defendant "Company" identified in the addenda. (App. 459.) Attached to the Agency Agreement are two addenda—one for Montgomery (App. 468), and one for Safeco (App. 470). There is no addendum for Peerless in the record.[1]

The Agency Agreement sets out the business relationship between each Defendant "Company" and the "Agency" Southern Risk. (App. 459.) It addresses the "[a]uthority" of Southern Risk to act as an agent for Defendants; the "[r]esponsibilities" of Southern Risk to Defendants; the allocation of ownership between Defendants and Southern Risk of "expirations" and work product (App. 460); the payment of commissions by Defendants to Southern Risk; and the handling of "[d]irect-[b]illed" and "[a]gency-[b]illed" business. (App. 459-62.)

The Agency Agreement expressly disclaims any duties to nonparties such as Plaintiffs,

[1] Only three insurance companies—Peerless, Montgomery, and Safeco—sought to compel arbitration. Neither the other party to the Agency Agreement, Southern Risk, nor any of the other defendants sought to compel arbitration. Therefore, for the sake of clarity, the use of "Defendants" herein refers only to Peerless, Montgomery, and Safeco.

providing that "Company's obligations under this Agreement extend only to the Agency named in this Agreement and not to its employees, sub producers, *or anyone else*."[2] (App. 466 (emphasis added).) Numerous other provisions likewise make clear that the agreement is between the two named parties only. (*See, e.g.*, App. 466 ("This Agreement and any addenda hereto constitute the entire agreement between Company and Agency . . . ."); App. 465 ("Each party is providing to the other . . . information that is confidential and proprietary . . . ."); *id.* ("[N]either party will disclose such Confidential or Proprietary Information of the other . . . . ").) The addenda, likewise, make clear that they apply only to each Defendant and Southern Risk. (*See, e.g.*, App. 468 ("This Addendum applies only to Agency's relationship and transactions with Montgomery Insurance . . . .").)

The Agency Agreement includes an arbitration clause, which states, in relevant part:

> If any dispute arises in connection with the interpretation of this Agreement, its performance or nonperformance, its termination, the figures and calculations used or any nonpayment of accounts, the parties will make efforts to meet and settle their disputes in good faith informally. If the parties cannot agree . . ., then the matter in controversy, upon request of either party, will be settled by arbitration . . .; provided, however, that this provision will not apply to claims for equitable relief or, at Company's election, Company's claims for unpaid premiums. . . .

(App. 464.) Like the contract in which it is contained, the arbitration clause makes clear that it is between two parties: each Defendant insurance company and Southern Risk. It provides, for example, that "[t]he parties will agree to submit the dispute to one arbitrator," that costs are to be borne "equally by the parties," that "[e]ach party is responsible for its own attorneys' fees," and that "either party" may elect to have the dispute decided by a panel of three arbitrators. (*Id.*)

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[2] While Safeco's Addendum purports to amend several provisions in the Agency Agreement, including this one (*see* App. 473), the Addendum's language continues to make clear that the contract is between the two parties and no one else. (*See, e.g.*, App. 474 ("This Addendum applies only to the Agency's relationship and transactions with Safeco . . . .").)

Despite the fact that the arbitration clause in the Agency Agreement is Defendants' sole basis for their argument that they are entitled to compel Plaintiffs to arbitrate, Defendants provided no admissible evidence whatsoever to authenticate the Agency Agreement, nor any testimony by a declarant with personal knowledge to verify Defendants' relationships with Liberty Mutual and Southern Risk—only arguments of counsel. (*See* App. 563; 575-76.)[3]

Defendants conceded that Plaintiffs are not parties to the Agency Agreement or its arbitration clause, but insisted that they should be required to arbitrate anyhow. According to Defendants, the Plaintiffs' claims are "premised on the Insurers' alleged duties that would not exist but for the Insurers' agency agreement with the agency, Southern Risk." (App. 561-62.) Defendants argued that the mere fact that Plaintiffs "did not personally sign" the Agency Agreement should be no barrier to its enforcement against them. (App. 564.) Citing cases where courts enforced arbitration clauses against plaintiffs who brought breach of contract claims, Defendants contended that Plaintiffs should be bound by the Agency Agreement under the doctrine of equitable estoppel. (*See generally* App. 564-69.)

Plaintiffs opposed the motions, explaining that their claims were premised not on the Agency Agreement between Defendants and Southern Risk—of which they were unaware until Defendants' motion to compel arbitration—but on legal duties established by South Carolina law. (App. 619; 624-25; 627; 628-30.) They also argued that their claims are outside the scope of Defendants' clause, which, unlike the clauses South Carolina courts have found to be broad, limits arbitration to only five kinds of dispute. (App. 626-28; 630-31.) Plaintiffs also argued that Defendants had waived any right to arbitration they may have had, and that the clause was not

[3] After Judge Griffith had closed the evidentiary record (App. 444), Defendants submitted an affidavit by James Berry, a territory manager for Safeco and Montgomery. (App. 520.) However, even if it were admissible, Berry's testimony does not authenticate the Agency Agreement or its addenda.

validly formed because Southern Risk had not signed the Agency Agreement. (App. 620-24.)

Judge Griffith held a hearing on the enforceability of the arbitration clause (App. 407), and on March 25, 2014, the court denied Defendants' motions to compel arbitration. (App. 16.) The court held that the non-party Plaintiffs are not bound by Defendants' arbitration clause. The court reasoned that, because "there is absolutely no evidence whatsoever that the Plaintiffs have consistently maintained the provisions of the Agency Agreement between Defendants and Southern Risk should be enforced to benefit them," they are not equitably estopped from asserting that they are not bound by the agreement's arbitration clause. (App. 21.) The trial court also found that because "Plaintiffs' claims do not hinge on any alleged rights found in the Agency Agreement but instead are grounded in South Carolina law," and because they "do not utilize its terms to support the allegations in the Complaints" and "seek *no direct benefit* from the Agency Agreement," equitable estoppel does not apply against them. (App. 22.)

Second, the court examined the scope of the arbitration clause, which the court found to be "narrowly worded" given that it limits arbitration to five specific kinds of dispute. (App. 19-21.) Examining Plaintiffs' allegations, the court determined that the clause is "inapplicable on its face" to the claims. (App. 20.) The court emphasized that the Agency Agreement controls "only the business relationship between the agency and the insurance company, not the relationship between the insurers and [their] insureds," and noted that "there are no allegations in the Plaintiffs' tort claims which allege or relate to any dispute or disagreement in connection with the interpretation of the agreement, its performance or nonperformance, or its termination." (App. 20-21.) As further basis for its holding that Plaintiffs' claims were outside the scope of the arbitration clause, the court noted that Defendants' alleged actions constituted "illegal and outrageous acts" that were unforeseeable in the context of normal business dealings. (App. 22-

23 (citing *Partain v. Upstate Auto Grp.*, 386 S.C. 488, 493-95, 698 S.E.2d 602, 604-05 (2010).)

Finally, the trial court found Defendants' arbitration clause invalid on two additional grounds: (1) because no signature appeared on the Agency Agreement on behalf of Southern Risk, Defendants had failed to establish the existence of a validly formed agreement; and (2) Defendants waived any right they may have had to arbitration by seeking substantive relief from the court and waiting a year before seeking arbitration. (App. 18-19; 23-25.)

C. The Court of Appeals Decision

The Court of Appeals reversed on all counts. On the nonparty issue, the court acknowledged that Plaintiffs are not parties to the Agency Agreement and that they had not even seen it prior to bringing their claims, but believed that "the duties the Insureds and Agents contend the Insurers allegedly breached arise from the . . . Agency Agreement," and that therefore Plaintiffs "receive a 'direct benefit' from that agreement." (App. 928 (quoting *Int'l Paper Co. v. Schawbedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000)).) On that basis, the court held that Plaintiffs "are equitably estopped from arguing their status as nonsignatories precludes enforcement of the arbitration provision when their complaints seek to benefit from the enforcement of other provisions in the . . . Agency Agreement." (App. 928.)

The court further held that Plaintiffs' claims "are inextricably linked" to duties that "arose out of the agency relationship" created by the Agency Agreement, and that the claims are thus within the scope of the arbitration clause. (App. 925-26.) The court acknowledged this Court's decision in *Aiken*, 373 S.C. at 150, 644 S.E.2d at 708, where the Court rejected as "illogical and unconscionable" the argument that if the conduct at issue would not have occurred "but for" the contractual relationship, the claims must be within the scope of the contract's arbitration clause. (App. 926.) But the court insisted that various terms in the Agency Agreement—terms addressing Southern Risk's authority to act "pursuant to written authority and

guidelines furnished" by Defendants; terms requiring Southern Risk to notify Defendants "when any employees have their licenses suspended;" and terms addressing billing, accounting, and collection procedures—"touch[ed] upon" Plaintiffs' allegations. (*Id.*) The court also held that the fact that *Willis'* alleged conduct constituted illegal and outrageous acts unforeseeable to a reasonable consumer under *Partain*, 386 S.C. at 494-95, was irrelevant, because Plaintiffs' allegations that Defendants failed to sufficiently investigate, train, and supervise Willis are, in the court's opinion, "ordinary." (App. 929.) Finally, the Court of Appeals reversed the trial court's rulings on contract formation, and waiver, and additional grounds Plaintiffs had raised on appeal. (App. 920-24; 930-36.) Plaintiffs' motion for reconsideration was denied.[4] (App. 991.)

ARGUMENT

I. The Court of Appeals Erred by Enforcing an Arbitration Clause in a Contract Between Defendants and Another Party Against Plaintiffs, Who Are Nonparties and Who Seek No Benefits Under the Contract.

The court below enforced an arbitration clause in a contract between Defendants and Southern Risk against Plaintiffs who are not parties to that contract and did not agree to arbitrate any disputes with Defendants—despite the fact that Plaintiffs seek only to vindicate their rights under South Carolina law and have never sought to enforce Defendants' contract or obtain any benefit from it. This decision flies in the face of this Court's decision in *Malloy*, conflicts with rulings by the U.S. Court of Appeals for the Fourth Circuit, and should be reversed.

It is black-letter law under both the FAA and South Carolina law that "[a]rbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118; *see also Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp.*, 130 S. Ct. 1758, 1775 (2010) (stressing "the foundational FAA

[4] While Plaintiffs believe that these other rulings are also erroneous, this Petition seeks this Court's review only of the Court of Appeals' rulings on the nonparty and scope issues.

principle that arbitration is a matter of consent"). "[T]he FAA does not require parties to arbitrate when they have not agreed to do so . . . ." *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989). "While ambiguities in the language of the agreement should be resolved in favor of arbitration," courts must "not override the clear intent of the parties, or reach a result inconsistent with the plain text of the contract, simply because the policy favoring arbitration is implicated." *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002); *see also Ridgeway v. Litchfield Co. of South Carolina Ltd. P'ship*, No. 2004-UP-631, 2004 WL 6339730, at *2 (D.S.C. Dec. 15, 2004) (arbitration clauses "must not be so broadly construed as to encompass claims and parties that were not intended by the original contract"). Accordingly, courts may compel nonparties to arbitrate their claims only under very unusual circumstances. No such circumstances are present here.

It is undisputed that Plaintiffs are not parties to the Agency Agreement or the arbitration clause in it. By its own terms, the agreement applies only to each Defendant insurance company and the Southern Risk agency. (App. 459.) Plaintiffs have never relied on or sought to enforce any part of the Agency Agreement, have not alleged breach of contract, and were not even aware of the agreement until Defendants decided to seek arbitration almost a year into the litigation.

The Court of Appeals acknowledged all these facts, but held that Plaintiffs should be required to arbitrate their claims anyway. The sole basis for the court's ruling was the doctrine of equitable estoppel, which provides that a nonparty cannot "claim the benefit of the contract and simultaneously avoid its burdens." (App. 927 (quoting *Int'l Paper Co.*, 206 F.3d at 418).) According to the court, the "duties [Plaintiffs] contend the Insurers allegedly breached arise from the . . . Agency Agreement," and thus Plaintiffs "receive a 'direct benefit' from that agreement." (App. 928 (quoting *Int'l Paper*, 206 F.3d at 418).) The court reasoned that Defendants' only

connection to the dispute is through their contractual relationship with Southern Risk, and that "in the absence of the agreement establishing the agency relationship," Plaintiffs would not be able to bring any claims against Defendants. (App. 928.) Therefore, the court argued, Plaintiffs "seek to benefit from the enforcement of the . . . Agency Agreement." (*Id.*)

This holding was wrong on both the law and the facts. It is beyond dispute that one cannot pick and choose contract terms, invoking the benefits of some terms while avoiding others. But Plaintiffs have never sought *any* benefit under the Agency Agreement, let alone a "direct benefit." Nor could they have: The contract expressly states that each Insurer's "obligations under this Agreement extend only to the Agency named in this Agreement and not to its employees, sub producers, *or anyone else*." (App. 466 (emphasis added).) What Plaintiffs do allege is that Defendants, in engaging in the insurance business in Abbeville, had a duty not to violate South Carolina's statutory and common-law protections. Defendants allegedly accepted money from Plaintiff Customers in exchange for insurance policies that were forged, inapplicable, illegal, and in some cases even nonexistent. (*See* App. 328-30.) And Defendants allegedly stood by while their agent's unlawful practices nearly forced Plaintiff Agents out of business. Plaintiffs simply allege that Defendants failed to comply with the law. (*See* App. 22.)

In *Malloy*, this Court refused to enforce an arbitration clause against a nonparty who, like Plaintiffs here, sought to vindicate legal rights that existed independently of the contract containing the arbitration clause. 409 S.C. 557, 762 S.E.2d 690. The plaintiff in *Malloy* sued Merrill Lynch for allegedly interfering with the inheritance he was owed by the estate of a deceased client of the company. *Id.* at 559-60, 762 S.E.2d at 691. The plaintiff had no contractual relationship with Merrill Lynch. Nonetheless, the investment company moved to compel arbitration on the basis of an arbitration agreement in its contract with the decedent.

Like Defendants here, Merrill Lynch argued that this contract was "its only connection to this dispute," that "any duty" it had to the plaintiff was "derivative of its duties to Decedent under the [contract]," and that the plaintiff was therefore bound by the arbitration clause despite not being a party to the contract. *Id.* at 560, 562, 762 S.E.2d at 691, 692. This Court rejected that argument. Merrill Lynch's position, the Court explained, "conflates the duties created by the . . . contract[] and general tort duties." *Id.* at 562, 762 S.E.2d at 692. "The contractual duties between Decedent and Merrill Lynch," the Court explained, "are irrelevant to whether Merrill Lynch intentionally interfered with Malloy's inheritance." *Id.* at 562, 762 S.E.2d at 693. The Court concluded that "as a non-signatory Malloy cannot be compelled to arbitrate under these agreements." *Id.* at 559, 762 S.E.2d at 691.

The Court of Appeals below did not even acknowledge *Malloy*. Rather, in enforcing the Agency Agreement's arbitration clause against Plaintiffs, the court relied on two cases: the South Carolina Court of Appeals' decision in *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), and the Fourth Circuit's decision in *International Paper*, 206 F.3d 411. (App. 927-29.) But *Pearson* and *International Paper* turned on a single, critical fact: in both cases, the plaintiffs alleged breach of, and thus sought a "direct benefit" under, the contract that contained the arbitration clause. *Pearson*, 400 S.C. at 290, 733 S.E.2d at 601; *Int'l Paper*, 206 F.3d at 418. That decisive fact is completely absent here.

In *Pearson*, a doctor entered into a contract with a medical placement firm, and that firm also entered into a contract with a hospital. Both contracts had identical arbitration clauses. 400 S.C. at 285-86, 733 S.E.2d at 599. When the doctor was fired, he sued both the placement firm and the hospital for breach of contract. *Id.* The court reasoned that the doctor was "seeking either to receive damages under [the first contract], or to hold the hospital accountable under [the

second contract]." *Id.* at 297, 733 S.E.2d at 605. "Therefore," the court explained, "he is either seeking a benefit under the Hospital's contract or attempting to hold the Hospital accountable under his [contract]." *Id.* Given that both contracts had arbitration clauses, the court concluded that the doctor "should not be allowed to hold the Hospital to one of the contracts to allege a breach but not be subject to the arbitration provisions." *Id.*

In *International Paper*, the purchaser of an allegedly defective industrial saw sued the saw's manufacturer, seeking to enforce guarantees and warranties in a contract between the manufacturer and the distributor. 206 F.3d at 413-14. That contract included a broad arbitration clause that required arbitration of "any dispute arising out of the contract." *Id.* at 414. While the plaintiff was not a party to the contract, its complaint expressly alleged that the manufacturer "failed to honor the warranties in the [contract], and it [sought] damages, revocation, and rejection 'in accordance with' that contract." *Id.* at 418. The Fourth Circuit concluded that, not only did the contract "provide[] part of the factual foundation for every claim" in the complaint, but the plaintiff's "*entire case* hinge[d] on its asserted rights under the . . . contract." *Id.* Thus, equitable estoppel clearly applied. *Id.*; *see also Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 345 F.3d 347, 361-62 (5th Cir. 2003) ("Direct benefits estoppel applies when a nonsignatory 'knowingly exploits the agreement containing the arbitration clause.") (quoting *E.I. DuPont de Nemours & Co. v. Phone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 199 (3d Cir. 2001)).[5]

[5] While there has been some confusion as to whether South Carolina courts should apply federal or state rules of equitable estoppel, the Court of Appeals' ruling is wrong regardless of which law governs. *See Thompson v. Pruitt Corp.*, 416 S.C. 43, 58-50, 784 S.E.2d 679, 687-88 (Ct. App. 2016) (explaining that the U.S. Supreme Court has held that whether "a contract may be enforced by or against nonparties" depends on "traditional principles of state law") (quoting *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009)). Under South Carolina law, rather than examining whether a nonparty "knowingly exploits" the underlying contract or receives a "direct benefit" from it, courts look at three elements with respect to

cont'd on next page

The holdings of *Pearson* and *International Paper* make perfect sense: where a nonparty seeks a direct benefit from a contract—such as seeking damages for its breach, or invoking its warranty protections—that party should be estopped from avoiding an arbitration clause in the contract. In contrast, the mere fact that allegations in a complaint bear some resemblance to contractual obligations does not warrant applying equitable estoppel to force a nonparty to arbitrate. Thus, in *R.J. Griffin & Co. v. Beach Club II Homeowners Assoc., Inc.*, the Fourth Circuit rejected a construction contractor's attempt to force a South Carolina homeowners association to arbitrate its claims pursuant to an arbitration clause in the construction contract between the contractor and the developer, where the plaintiff's claims arose from South Carolina law rather than the contract. 384 F.3d 157, 162-64 (4th Cir. 2004). The homeowners sued the contractor for breach of implied warranty and negligence after their condominium building started leaking water through its external walls. *Id.* at 160. The contractor moved to compel arbitration, arguing that the arbitration clause in the construction contract was enforceable against the homeowners through the doctrine of equitable estoppel because the homeowners' claims were based on the construction contract. *Id.* The Fourth Circuit disagreed. The court explained that a builder constructing a dwelling has certain legal duties that "are not dependent on the terms of the general contract," but rather arise from the contractor's role as builder under South Carolina common law. *Id.* at 162. The contractor insisted that, but for the general contract, it would not have constructed the condominium and thereby assumed these common-law legal duties. But the Fourth Circuit emphatically rejected that argument, explaining that

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the party estopped: (1) conduct that amounts to a false representation or concealment of material facts; (2) the intention that such conduct will be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. *Id.* at 60, 784 S.E.2d at 689; *see also Zabinski*, 346 S.C. at 589, 553 S.E.2d at 114. Given that it is undisputed that Plaintiffs had no knowledge of the Agency Agreement until after they brought their claims, Defendants have not, and could not, claim that any of these factors are met.

"equitable estoppel does not apply when a benefit results from the contractual relation of parties to an agreement and not from the agreement itself." *Id.* (quoting *MAG Portfolio Consult v. Merlin Biomed Group*, 268 F.3d 58, 61 (2d Cir. 2001) (internal quotations and alterations omitted). Thus, the homeowners were not estopped from avoiding arbitration. *Id.*

Here, unlike in *Pearson* and *International Paper*, Plaintiffs have not and do not seek to exploit or benefit from the underlying contract. Rather, as in *Malloy* and *R.J. Griffin & Co.*, the legal duties Plaintiffs allege Defendants violated arise from South Carolina statutory and common law. Plaintiffs have never alleged that Defendants breached their contractual duties to their co-defendant Southern Risk. They would have no reason to make that argument, because the rights Plaintiffs seek to vindicate through this lawsuit—the right to be free from fraud, the right not to have one's money misappropriated, the right not to be a victim of unfair competition—are not rights that came into being when Defendants and Southern Risk entered into the Agency Agreement. Surely Defendants cannot seriously contend that they would have no obligation to comply with South Carolina's unfair trade practices laws and other consumer protection laws were it not for the Agency Agreement. The fact that Defendants have a contract with Southern Risk is irrelevant.[6] *See Malloy*, 409 S.C. at 562, 762 S.E.2d at 693.

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[6] To the extent there are any *contractual* duties owed by the Defendant Insurers to Plaintiffs, those duties are presumably set out in the contracts between Defendants and Customers—that is, the insurance policies sold by Willis on Defendants' behalf, to the extent Willis actually issued policies. (Of course, Agents have no contractual relationship whatsoever with Defendants.) It is worth noting that Defendants could *not* have compelled arbitration of any claims Customers brought under the insurance policy contracts; the federal McCarron-Ferguson Act permits states to regulate or ban arbitration clauses in insurance contracts, effectively "reverse preempting" the FAA. *See Am. Health & Life Ins. Co. v. Hayward*, 272 F. Supp. 2d 578, 581 (D.S.C. 2003). South Carolina, like many other states, has chosen to "prohibit[] the enforcement of arbitration clauses in insurance policies under South Carolina law." *Id.* at 582 (citing S.C. Code § 15-48-10(b)(4)); *see also Cox v. Woodmen of the World Ins. Co.*, 347 S.C. 460, 556 S.E.2d 397 (Ct. App. 2001). By seeking to compel Customers to arbitrate their claims pursuant to a different contract to which Plaintiffs are not parties, Defendants are attempting to do indirectly what South Carolina law prevents them from doing directly.

The Court of Appeals' ruling that the nonparty Plaintiffs are equitably estopped from avoiding enforcement of Defendants' arbitration clause is contrary to longstanding South Carolina law. This Court should grant review and reverse it.

II. The Court of Appeals Erred by Holding that Plaintiffs' Claims Are Within the Scope of the Agency Agreement's Arbitration Clause.

Even if Plaintiffs were somehow bound by the arbitration clause in the Agency Agreement, the court below was wrong to hold that the clause encompasses Plaintiffs' claims.

A. Plaintiffs' claims are not among the specified arbitrable disputes listed in Defendants' narrow arbitration clause.

As this Court has explained, "[a]rbitration rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement." *Zabinski*, 346 S.C. at 596-97, 553 S.E.2d at 118; *see also United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 570, 80 S. Ct. 1363, 1364 (1960) (since decision to submit disputes to arbitration is itself a contract, the "parties are free to make that promise as broad or as narrow as they wish").

South Carolina law distinguishes between broad arbitration clauses—which "[do] not limit arbitration to the literal interpretation or performance of the contract, but embrace[] *every* dispute between the parties having a significant relationship to the contract"—and narrow clauses, which limit arbitration to specific kinds of disputes. *Landers v. Fed. Deposit Inc. Corp.*, 402 S.C. 100, 109-10, 739 S.E.2d 209, 213-14 (2013) (internal quotation marks and alterations omitted; emphasis added). The broadest kind of clause is one that requires arbitration of "any dispute arising out of the relationship of the parties." *Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterm., Co., Inc.*, 356 S.C. 202, 210, 588 S.E.2d 136, 140 (Ct. App. 2003). A somewhat less broad clause would be one requiring arbitration of "any controversy or claim arising out of or relating to this contract, or breach thereof." *Landers*, 402 S.C. at 103, 739 S.E.2d at 210. This Court has instructed that, "[t]o decide whether a [broad] arbitration

agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope" of the clause. *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118-19; *see also Landers*, 402 S.C. at 109-10, 739 S.E.2d at 213-14 (claims are within the scope of a broad clause if they bear a "significant relationship" to the underlying contract).

In contrast, a clause that does not require arbitration of all disputes related to the parties' relationship or arising from the underlying agreement, but instead identifies the specific kinds of disputes that are arbitrable, is considered narrow. *See, e.g.*, *Roberson v. Cliffs Communities, Inc.*, No. C/A 6:09-2701-HMH, 2010 WL 2721030, at *3, *5 (D.S.C. July 8, 2010) (clause in real estate contract providing for arbitration of "all claims, grievances and disputes . . . involving the [contract], including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof" is narrow). Only the specific claims listed in a narrow arbitration clause are arbitrable.

Here, Defendants' arbitration clause expressly restricts the types of arbitrable claims to five topics: (1) the "interpretation" of the Agency Agreement; (2) the Agreement's "performance or nonperformance"; (3) the Agreement's "termination"; (4) "the figures and calculations used"; and (5) "any nonpayment of accounts." (App. 464.) In limiting their clause to these five issues, Defendants and Southern Risk made clear that they did *not* intend to arbitrate any dispute that might possibly arise under the Agreement. Rather, the enumeration of these arbitrable disputes conveys that the parties intended for all *other* disputes not to be arbitrable. As Defendants have conceded, this is by definition a narrow arbitration clause. (App. 437.)

The Court of Appeals mistakenly held that Defendants' clause "should be broadly construed." (App. 925.) The court based its ruling on *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, where the Fourth Circuit held that an arbitration clause that provided for arbitration

of "[a]ll disputes arising in connection with the present contract" was broad. 863 F.2d 315, 319 (4th Cir. 1988). In its analysis, the court below noted that the language "in connection with" appears in both arbitration clauses. (App. 925; 464.) But by focusing myopically on this shared phrase, the court below missed the key difference between the two clauses: While the clause in *J.J. Ryan & Sons* broadly provides for arbitration of "all disputes arising in connection with the contract," 863 F.2d at 319 (emphasis added), Defendants' clause provides for arbitration only of disputes arising "in connection with . . ." the five listed topics. (App. 464.) The Court of Appeals' failure to see the difference between the two is mystifying.

As the trial court recognized, Plaintiffs' claims—for unfair trade practices, fraud, conversion, civil conspiracy, tortious interference with the competing Agents' contractual relations, and Defendants' failure to investigate and stop Willis' actions—are not among the arbitrable disputes listed in Defendants' clause. (App. 464; 19-21.) Thus, they fall outside the clause's scope. *See Ridgeway*, 2004 WL 6339730 at *1, *4 (claims for unfair trade practices, negligent misrepresentation, fraud, and civil conspiracy were outside the scope of clause in condominium purchase agreement that required arbitration of "dispute[s] or claim[s] . . . with respect to any of the terms or provisions of this Master Deed, . . . [including] claims for negligent or improper construction, failure to meet specifications, and other claims related to structural improvements").

B. Even if Defendants' arbitration clause were broad, Plaintiffs' claims are outside its scope because they arise from South Carolina law and bear no significant relationship to the Agency Agreement.

As explained above, Plaintiffs' claims arise solely from South Carolina law—not from the Agency Agreement between Defendants and Southern Risk. (*See, e.g.*, App. 130-32; 331-35). Thus, even if Defendants' arbitration clause were broad, it would not encompass Plaintiffs' claims because they do not bear a "significant relationship" to the contract. *Landers*, 402 S.C. at

109-10, 739 S.E.2d at 213-14.

This Court addressed a similar situation in *Aiken*. The defendant company's employees had allegedly used the consumer plaintiff's personal information to obtain sham loans and embezzle the proceeds for their own personal benefit. 373 S.C. at 147, 644 S.E.2d at 707. Like Plaintiffs, the consumer in *Aiken* sought to hold the company responsible for the actions of the individual, and brought claims against the company for negligence, negligent hiring/supervision, and unfair trade practices.[7] *Id.* The company moved to compel arbitration, citing a clause in the loan agreement that provided for arbitration of "all disputes, controversies or claims of any kind . . . arising out of or in connection with the loan agreement, or arising out of any loan transaction or relationship between lender and borrower or arising out of any prior or future dealings between lender and borrower[.]" *Id.* This Court acknowledged that this was a "broadly-worded" arbitration clause, but ruled that the consumer's identity theft claims were not within its scope because they did not bear a "significant relationship" to the underlying contract. The company argued that the employees would not have had access to the plaintiff's personal information but for the plaintiff's contract with the company. *Id.* at 149-50, 644 S.E.2d at 708. But the Court held that "[t]he mere fact that the dispute would not have arisen but for the existence of the contract and consequent relationship between the parties is insufficient by itself to transform a dispute into one 'arising out of or relating to' the agreement." *Id.* at 150, 644 S.E.2d at 708 (quotation and citation omitted). Rather, what matters is whether the allegedly unlawful conduct was contemplated by the underlying agreement and foreseeable at the time the parties entered into the contract. *Id.* at 151-52, 644 S.E.2d at 709. And while intentional identity theft by the

[7] Of course, the plaintiff in *Aiken*, unlike Plaintiffs here, was actually a party to the contract containing the arbitration clause.

company's employees may have been "factually related to the performance of the contract," it was outside the expectations of the parties and thus "legally distinct from the contractual relationship between the parties." *Id.* at 152, 644 S.E.2d at 709; *see also Hatcher v. Edward D. Jones & Co., LP*, 379 S.C. 549, 550-51, 666 S.E.2d 294 (Ct. App. 2008) (investor's claims against brokerage for negligence and unfair trade practices arising from an unauthorized transfer of funds were outside scope of clause requiring arbitration of "any controversy arising out of or relating to any of my accounts or transactions with you, your officers, directors, agents, and/or employees for me, to this agreement, or to the breach thereof," because they were "legally distinct from the contractual relationship between the parties).

Aiken's rationale applies here in spades. Plaintiffs allege that Willis' conduct violated South Carolina's unfair trade practices law, and that Defendants are responsible for those violations because they failed to investigate, train and supervise, and audit Willis. While it may be true that Willis would not have acted on Defendants' behalf "but for" the Agency Agreement, and that her actions may thus be "factually related to the performance of" the Agency Agreement, Plaintiffs' claims are "legally distinct" because they arise from South Carolina law. *See Aiken*, 373 S.C. at 152, 644 S.E.2d at 709. If the broad arbitration clause in *Aiken* did not encompass the consumer's tort and consumer protection claims against the company based on the actions of its employees, clearly Defendants' clause does not encompass Plaintiffs' claims against Defendants based on the actions of their agent.

The court below refused to consider Plaintiffs' underlying fraud, forgery, and misappropriation claims in its analysis of the arbitration clause's scope, claiming that "these allegations related specifically to Willis's conduct." (App. 926.) This was error. In *Aiken*, the Court specifically examined the claims related to the underlying identity theft by employees—

not just those claims against the company for negligent hiring/supervision—in holding that the arbitration clause did not encompass the plaintiff's tort and consumer protection claims against the defendant company. *See Aiken*, 373 S.C. at 151, 644 S.E.2d at 709. The decision below simply cannot be reconciled with *Aiken*.

The decision below also conflicts with this Court's decision in *Zabinski*, which held that even when a contract contains a broadly-worded arbitration clause, claims are only arbitrable if they are so interwoven with the contract that they cannot stand alone, and therefore bear a "significant relationship" to the contract. 346 S.C. at 598 & n.4, 553 S.E.2d at 119. Here, as the trial court recognized, the Agency Agreement controls only the business relationship between the Southern Risk agency and each Defendant insurance company. (App. 20.) Given that Plaintiffs' tort and consumer protection claims are rooted exclusively in South Carolina law, they can hardly be said to be so interwoven with the contractual business relationship between Defendants and Southern Risk that they cannot stand alone. *See Zabinski*, 346 S.C. at 598 n.4, 553 S.E.2d at 118 n.4. Furthermore, the Court of Appeals' ruling that the duties Defendants allegedly breached arise from the Agency Agreement cannot be reconciled with the plain language of that agreement, which states that "[Insurer's] obligations under this Agreement extend only to the Agency . . . and *not* to . . . *anyone else*." (App. 466 (emphasis added).)

The Court below attempted to fit the square pegs of Plaintiffs' claims into the round holes of the Agency Agreement, theorizing that allegations about Defendants' alleged duty to train and supervise must arise out of provisions authorizing Southern Risk "'to act as agent for [Defendants] pursuant to written authority and guidelines furnished'" by Defendants. (App. 926 (citing App. 459).) Likewise, the court speculated that a provision addressing "Agency-Billed Business," which outlines the basic procedures under which premiums will be accounted for,

collected, and paid by Southern Risk to Defendants, could implicate Defendants' duty to audit and monitor agents' conduct; and that a paragraph in the agreement requiring agents to be properly licensed could be the source of Defendants' alleged duty to investigate and conduct background checks. (*Id.*) But this attempt to match Plaintiffs' allegations to Defendants' contract does not survive scrutiny. Like any company doing business in South Carolina, Defendants have a duty to comply with South Carolina law in their dealings with the public, regardless of any contracts they may enter into with other companies. And South Carolina law is clear that where the legal duties a company allegedly breached arise from state law and not from the contract containing the arbitration clause, the fact that the harm would not have occurred "but for" the contractual relationship is insufficient to bring their claims within the scope of the arbitration provision. *Aiken*, 373 S.C. at 149-50, 644 S.E.2d at 708; *see also Vestry*, 356 S.C. at 211, 588 S.E.2d at 141 (claims not within scope of arbitration clause where there was no correlation between factual allegations in complaint and contract containing the arbitration clause); *Simpson v. World Fin. Corp. of S.C.*, 367 S.C. 184, 190-91, 623 S.E.2d 877, 880-81 (Ct. App. 2005), *aff'd*, 373 S.C. 178, 644 S.E.2d 723 (2007) (holding that claims for negligence, negligent hiring/supervision, and unfair trade practices arising from alleged misuse of personal information and embezzlement by defendant's former employees were outside the scope of broad arbitration clause contained in loan agreement, and rejecting defendant's argument that claims should be subject to arbitration "simply because [the defendant's] employees would not have had access to Simpson's personal financial information but for the loan agreement"); *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 634, 611 S.E.2d 305, 308 (Ct. App. 2005) (homeowner's claims against pool company for violations of South Carolina law arising from harassment by company's employees were not subject to arbitration under clause in construction

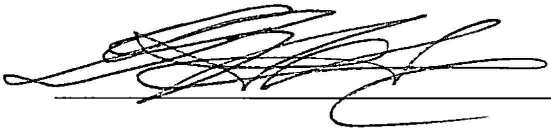
contract because they did not arise out of, and could be proved independently of, the contract); *Reuben v. Palmetto Traditional Homes, LLC*, No. 2004-UP-283, 2004 WL 6306628, at *3 (Ct. App. Apr. 29, 2004) (negligence and tort claims against home manufacturer arose from legal duty existing independently of contract and thus were not subject to arbitration clause).[8]

In sum, the unlawful conduct alleged by Plaintiffs would give rise to tort and consumer protection claims under South Carolina law whether or not a contractual relationship existed between Defendants and Southern Risk. The court below erred in finding these claims within the scope of the Agency Agreement's arbitration clause, and this Court's intervention is needed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this 2nd day of August, 2016.



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[8] South Carolina law is in keeping the law of other jurisdictions. *See, e.g.*, *Tracer Research Corp. v. Nat'l Envtl. Servs. Co.*, 42 F.3d 1292, 1295 (9th Cir. 1994) (claims for misappropriation of trade secrets outside scope of arbitration clause where they arose from legal duty independent of parties' licensing agreement, despite fact that claim would not have arisen but for the agreement); *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 641-42 (Fla. 1999) (tort claim against manufacturer for failing to warn of known risks from defective design arose from legal duty existing independently of sales agreement and therefore was not arbitrable, despite the fact that dispute would not have arisen but for agreement); *Rogers-Dabbs Chevrolet-Hummer, Inc. v. Blakeney*, 950 So. 2d 170, 176-77 (Miss. 2007) (claim of misappropriation of personal identity through forgery was not related to underlying contract).

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

RECEIVED
AUG 02 2016
SC Court of Appeals

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 5387 (S.C. Ct. App. Filed March 2, 2016)
Appellate Case No. 2014-00946

Richard Wilson, Michael J. Antoniak, Jr., Marsha L. Antoniak, Anita L. Belton, Prescott Darren Bosler, Johnny Calhoun, Sallie Calhoun, Cynthia Gary, Robert Wayne Gary, Eugene P. Lawton, Jr., Jeanette Norman, James Robert Shirley, Robert W. Spires, Crystal Spires Wiley, Lewis S. Williams, Janie Wiltshire, Benjamin Franklin Wofford, Jr., and Rebecca Hammond Wofford, ...Plaintiffs/Petitioners

v.

Laura B. Willis and Jesse A. Dantice, individually, and as agents and/or brokers for Southern Risk Insurance Services LLC, Travelers Casualty Insurance Company of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co., Southern Risk Insurance Services, LLC, Travelers Casualty Insurance Co. of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co, Laurie Williams...
...Defendants,

Of whom Peerless Insurance Co., Montgomery Mutual Insurance Co., and Safeco Insurance Co. of America are...Respondents

Of Whom Laurie Williams is...Petitioner

PROOF OF SERVICE

I, the undersigned legal assistant with the law offices of Hite and Stone, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Petition for Writ of Certiorari

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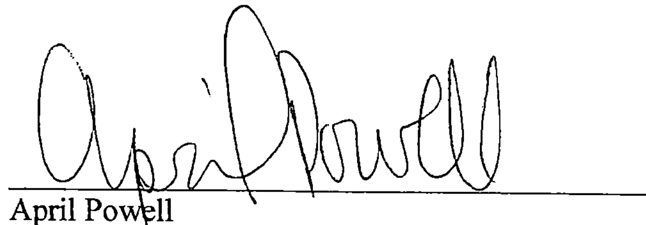


April Powell

August 2, 2016

ATTORNEYS AT LAW

Thomas E. Hite, Jr.* | Heather Hite Stone | Thomas E. Hite, III | Anne Marie Hempy

August 2, 2016

RECEIVED
AUG 02 2016
SC Court of Appeals

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

RE: *Richard W. Wilson v. Laura B. Willis, and Jesse A. Dantice, et al.*
Case No.: 2012-CP-01-00306
Appellate Case No. 2014-00946
S.C. Ct App. Opinion No.: 5387

Dear Mr. Shearouse:

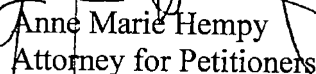
Enclosed please find the original and seven copies of Petitioner's Petition for Writ of Certiorari. Please file the original and return a clocked-in copy of the same to me. I have also enclosed the Proof of Service and $100.00 filing fee in connection with the above-referenced matter. Additionally, pursuant to SCACR 242(e), I have enclosed two copies of the Appendix for the above-referenced matter, one unbound and one bound.

I am providing opposing counsel and the Clerk of the Court of Appeals with a copy of this letter, a copy of the Petition for Writ of Certiorari and a copy of the Proof of Service.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

With kind regards, I am,

Very truly yours,



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Personal Injury - Family Law - Real Estate

Enclosures

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Jane H. Merrill, Esquire
The Honorable Jenny Kitchings