No. 18-1308

In the Supreme Court of the United States

KPMG, LLP,

Petitioner,

v.

SINGING RIVER HEALTH SYSTEM A/K/A SINGING RIVER HOSPITAL SYSTEM,

Respondent.

KPMG, LLP,

Petitioner,

v.

JACKSON COUNTY, MISSISSIPPI,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

BRIEF IN OPPOSITION

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D1218666.1

QUESTION PRESENTED

For over one hundred years, the Mississippi Supreme Court has consistently held that public boards speak only through their minutes and their acts are evidenced solely by the entries on their minutes. *KPMG, LLP v. Singing River Health System a/k/a Singing River Hospital System* ___ So. 3d ___, Case No. 2017-CA-01047, 2018 WL 5291088 ¶19 (citing *Wellness v. Pearl River County* 178 So. 3d 1287, 1290 Miss. 2015). The Mississippi Supreme Court continued this precedent when it found that the agreements between Singing River Health System and KPMG were not properly recorded on the minutes of the Board, and therefore an arbitration clause was not enforceable.

KPMG's Petition for Writ of Certiorari ("Petition") over complicates a very simple matter, and fails to present any issues warranting consideration by this Court, because:

1. The Mississippi minutes rule requires that the terms of a contract with a public board must be sufficiently spread upon the minutes to be enforceable; and it is undisputed that the arbitration provision at issue is not properly spread on the minutes of the board of trustees. *Wellness v. Pearl River County*, 178 So. 3d 1287(Miss. 2015); *Thompson v. Jones Cty. Cmty. Hosp.*, 352 So. 2d 795, 796 (Miss. 1997).

2. Singing River Health System a/k/a Singing River Hospital System's negligence and professional negligence claims are not dependent upon the existence of the contract, and as a result of the failure to properly spread the contracts, and arbitration provisions on the minutes of the Board of Trustees there is no arbitration provision, or delegation clause, to be enforced.

CORPORATE DISCLOSURE STATEMENT

Singing River Health System a/k/a Singing River Hospital System is a county-owned community health system and a public subdivision of Jackson County, Mississippi, organized in accordance with the community hospital statutes of the State of Mississippi, Mississippi Code Annotated §41-13-1 *et. seq.*

Singing River Health System a/k/a Singing River Hospital System has no parent corporation and no publically held company holds 10% or more of its stock.

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INTRODUCTION

On October 29, 2015, Singing River Health System ("SRHS") filed a Complaint in the Circuit Court of Hinds County, Mississippi asserting claims for breach of contract, negligence and professional negligence that resulted in significant damages to SRHS. This action involves a dispute between SRHS and KPMG, LLP ("KPMG") over certain audits that KPMG conducted for SRHS. KPMG audited SRHS's financial statements from 1978 to 2012. In fiscal years 2008 through 2012, KPMG's audits were so negligently performed that the audits resulted in an eighty-eight million dollar ($88,000,000.00) overstatement of SRHS's accounts receivable. As a proximate result of KPMG's negligent audits, SRHS's pension plan was underfunded by nearly one-hundred-fifty million dollars ($150,000,000.00), which resulted in SRHS not being in compliance with certain bond covenants.

On December 7, 2015, KPMG filed its Motion to Compel Arbitration and to Stay Proceedings Pending Arbitration of the instant action. KPMG's motion asserted that an arbitration clause contained in an attachment to the engagement letters entered into by

KPMG and SRHS should be enforced. On December 17, 2015, SRHS filed its Response in Opposition to the Motion to Compel Arbitration and to Stay Proceedings Pending Arbitration. On April 1, 2016, KPMG filed its Reply Brief.

On June 13, 2016, the Motion was heard by the trial court, and on July 12, 2017, an Order denying KPMG's Motion to Compel Arbitration and to Stay Proceedings Pending Arbitration was entered. The Order specifically found that the terms of the contract were not sufficiently spread across the hospital board minutes as required by applicable Mississippi law, and thus, the arbitration agreement is not enforceable. KPMG Appealed to the Mississippi Supreme Court from that Order seeking reversal of the trial court's ruling and an Order compelling arbitration.

The Mississippi Supreme Court issued an opinion upholding the trial court's denial of the Motion to Compel Arbitration on October 25, 2018[1]. The

[1] *KPMG, LLP v. Singing River Health System a/k/a Singing River Hospital System* ___ So. 3d ___, Case No. 2017-CA-01047, 2018 WL 5291088

Mississippi Supreme Court correctly held that the Motion to Compel Arbitration should be denied, as it was unclear from the minutes of the SRHS Board of Trustees that the parties agreed to have an arbitrator decide the merits of the dispute, nor the gateway question of arbitrability. KPMG simply did not, and cannot, meet its burden to demonstrate an agreement to arbitrate pursuant to the Mississippi Supreme Court decision in *Wellness v. Pearl River County,* 178 So.3d 1287 (Miss. 2015), which holds that the terms of a community hospital's agreement must be sufficiently spread upon the board's minutes. Furthermore, KPMG's argument that the delegation clause requires that arbitrators must resolve the effect of the minutes rule in the first instance, fails for the same reason - - there was no agreement to arbitrate, and thus no agreement to delegate the question of arbitrablity. Pet. App. 46a-48a, 53a-56a.

SRHS respectfully requests that this Court deny the Petition for Certiorari.

STATEMENT OF THE CASE

This Court has a long line of cases involving arbitration matters, and the enforcement of arbitration provisions. However complex the matter presented, the prevailing state of the law is that arbitration is a matter of contract law, and that "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *AT&T Techs. Inc. v. Communs. Workers of Am.*, 475 U.S. 643, 648 (1986) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960)). In fact, the plain language of the Federal Arbitration Act ("FAA") states that arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exists at law or in equity for the revocation of any contract." 9 U.S.C. §2.

KPMG states, without any support in the record or in fact, that the Mississippi Supreme Court's rulings evidence a "hostility to arbitration in a politically charged environment." Pet. 3. To the contrary, the ruling in *KPMG, LLP v. Singing River Health System* properly applies state law principals of contract formation to determine that there was no contract between SRHS and KPMG; therefore there was no agreement to arbitrate. ____ So. 3d. ___, Case No., 2017-CA-01047, 2018 WL 5291088; Pet. App. 1a–30a.

For the reasons stated herein, the Petition for review of the Mississippi Supreme Court decision in *KPMG, LLP v. Singing River Health System a/k/a Singing River Hospital System* ___ So. 3d. ___, Case No. 2017 -CA-01047, 2018 WL 5291088. Pet. App. 1a – *30a*, does not present any issues appropriate for review by the United States Supreme Court, and the Petition for Certiorari should be denied.

REASONS FOR DENYING THE PETITION

I. The Mississippi minutes rule requires that the terms of a contract, with a public board, must be sufficiently spread upon the minutes to be enforceable; and it is undisputed that the arbitration provision at issue is not properly spread on the minutes of the board of trustees.

The Federal Arbitration Act ("FAA") provides that arbitration agreements are enforceable "save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. §2. Courts, not arbitrators, must consider validity challenges to the arbitration provision; arbitration provisions are for the court to decide. "[U]nless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided

by the court, not the arbitrator." *AT &T Technologies, Inc.,* 475 U.S. at 649.

Accordingly, under Mississippi law, the question for the trial court as to whether the parties agreed to arbitrate involves two considerations: "(1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement." *Sanderson Farms, Inc. v. Gatlin*, 848 So. 2d 828, 834 (Miss. 2003). "It has been recognized that in order to determine whether legal constraints exist which would preclude arbitration, 'courts generally . . . should apply ordinary state-law principles that govern the formation of contracts.'" *Id.* at 835. (quoting *Webb v. Investacorp, Inc.*, 89 F.3d 252, 257 (5th Cir. 1996); *Bank One, N.S. v. Coates*, 125 F. Supp.2d 819, 827 (S.D. Miss. 2001)).

The present inquiry stops at the first consideration: whether there is a valid agreement to arbitrate between the parties. Simply, there is not.

A. The Mississippi Minutes Rule

The Mississippi Supreme Court has held, for over a century, that public boards speak only through their minutes, and their acts are evidenced solely by entries on their minutes. See e.g. *Wellness*, 178 So. 3d

at 1290. (Miss. 2015). The minutes requirement is generally applicable in Mississippi to contracts with a public entity. *Lefoldt for Natchez Reg'l Med. Ctr. Liquidation Tr. v. Horne, LLP*, 853 F.3d 804, 819 (5th Cir. 2017). This rule is neither hostile to arbitration, nor does it present a unique situation in a "politically charged environment." Pet. 3. The rule is in place to insure that public boards in Mississippi are accountable to the tax payers in regard to how public funds are expended. This is not a novel idea that arises out of dynamics associated with politics. It is simply a method to adequately protect public funds.

In order to know what SRHS agreed to, contracted for, or consented to one must look to the minutes of the Board of Trustees. "MISSISSIPPI CODE SECTION 41-13-35(3) (Rev. 2013) requires a board of trustees of a community hospital to "keep minutes of its official business[.]" *Wellness v. Pearl River County*, 178 So. 3d 1287, 1290-91 ¶9 (Miss. 2015). "A community hospital board of trustees, as does any public board in the State of Mississippi, speaks and acts only through its minutes." *Id.* (quoting *Thompson v. Jones Cty. Cmty. Hosp.*, 352 So. 2d 795, 796 (Miss. 1997); see also *Coast Materials v. Harrison Cty. Dev. Comm'n*, 730 So. 2d 1128, 1132 (Miss. 1998); *Nichols v. Patterson*, 678 So.2d 673, 677 (Miss. 1996).

The requirement that a board's acts must be evidenced by an entry on its minutes is an important public policy issue, and this Court requires strict adherence. See e.g. *H.L. James v. City of Pontotoc,* 364 Fed. Appx. 151 (5th Cir. 2010); *Warren County Port Comm'n v. Farrell Constr.*, 395 F. 2d 901, 904 (5th Cir. 1968); *Board of Supervisors of Tishomingo County v. Dawson*, 45 So. 2d 253, 256 (Miss. 1950). This requirement is for the protection of Mississippi tax payers so that they may have access to see what was actually done by the board. *Wellness, Inc.*, 178 So. 3d at 1293 (citing *Lee Cty. v. James*, 178 Miss. 554, 174 So. 76,77) (1937)). The Federal Arbitration Act does not exist to intrude into Mississippi's, or other state's, right to determine how governmental boards will be held accountable for their actions.

The minutes rule has been applied to a wide variety of contract provisions, and its applicability is not limited to arbitration provisions. *Lefoldt,* 853 F.3d at 819. As far back as 1921, the Mississippi Supreme Court was applying the minutes rule to all contracts involving public entities. *Smith County v. Mangum*, 89 So. 913 (Miss. 1921).

In *Thompson v. Jones County*, 352 So. 2d 795, 797-98 (Miss. 1977), Thompson brought suit for breach of contract related to his employment as the executive director of the hospital after he was discharged.

Thompson sought payment of the full amount of his unpaid salary. However, the board minutes reflected that Thompson had a four year contract, but the minutes did not include the amount of the salary to be paid. The Mississippi Supreme Court found that the court could not determine the amount of the salary and the dismissal of his claim was affirmed. *Id.*

In *Butler v. Bd. of Supervisors for Hinds Cty.*, 659 So. 2d 578, 580 (Miss. 1995), Butler, a contractor, brought suit against the County for refusal to pay for work beyond the terms of the original contract, but was performed at the direction of the county architect. The Court found that Butler was not entitled to payment for work that was not recorded on the minutes of the Board of Supervisors. *Id.* at 582. Specifically, "contracts when so entered upon the minutes may not be varied by parol nor altered by a court of equity ..." *Id.* at 581 (Miss. 1995) (citing *Warren County Port Commission v. Farrell Construction Co.*, 395 F.2d 901, 903–904 (5th Cir.1968)).

In *Kennedy v. Claiborne Cty. by & through its Bd. of Supervisors*, 233 So. 3d 825 (Miss. Ct. App. 2017), another hospital administrator brought suit for breach of contract, and other claims, after he was terminated. Kennedy alleged that he had a five year contract at a salary of $240,000 per year. Despite minutes of the board which reflected a five year

agreement and a $240,000 salary, there were later minutes that reflected a five year contract with incentives. The Court found that minutes did not contain enough of the terms and conditions to determine the incentives or other obligations and liabilities to create an enforceable contract and the claim was properly dismissed. *Id.* at 832 ¶¶ 30-31.

B. There is No Arbitration Agreement to be Enforced.

KPMG seeks to compel arbitration, despite the fact that the parties did not agree to arbitration. "It has been recognized that in order to determine whether legal constraints exist which would preclude arbitration, 'courts generally . . . should apply ordinary state-law principles that govern the formation of contracts.'" *Sanderson Farms, Inc.*, 848 So. 2d at 834 (citing *Bank One, N.S. v. Coates*, 125 F. Supp.2d 819, 827 (S.D. Miss. 2001) (quoting *Webb v. Investacorp, Inc.*, 89 F.3d 252, 257 (5th Cir. 1996)). As discussed *supra*, in order to determine what the obligations and liabilities of the parties are you must look to the minutes of the SRHS Board. The arbitration provision at issue is not properly spread on the minutes of the board of trustees, and therefore was never agreed to.

In the years at issue in this action, 2008-2012, SRHS's former Chief Financial Officer signed

engagement letters issued by KPMG regarding the audit services. In 2008 and 2009, the engagement letters referenced various attachments which contained dispute resolution provisions. In 2010, 2011, and 2012, the engagement letter contained no such attachment and no such dispute resolution provisions. *KPMG*, 2018 WL 5291088 *1 ¶3.

The minutes of the Audit & Compliance Committee, which where incorporated by reference into the Board's minutes reflect that the committee discussed the breakdown of proposed audit fees in detail, and approved the engagement letter, including all proposed audit fees. However, the minutes do not reflect that the committee discussed or approved the arbitration provision, and there is no mention of arbitration or alternative dispute resolution in any of the Board of Trustees' minutes. *KPMG*, 2018 WL 5291088 *7-8. The Mississippi Supreme Court found that the obligations and liabilities of the parties cannot be determined by the minutes of the Board, and therefore the engagement letters cannot be enforced, and neither can the occasionally attached dispute-resolution provisions. *Id.* at *11 ¶40.

The minutes "are the sole and exclusive evidence of what the board did" and "must be the repository and the evidence of their official acts." *Kennedy*, 233 So. 3d at 829. (citing *Pike Cty., Miss. ex rel. Bd. of*

Supervisors v. Indeck Magnolia, LLC, 866 F.Supp.2d 589, 591–92 (S.D. Miss. 2012) (quoting *Thompson v. Jones Cty. Cmty. Hosp.*, 352 So.2d 795, 796 (Miss. 1977)). Without a recording of the agreement to arbitrate on the Boards minutes, there can be no enforcement of such a provision.

The argument submitted by KPMG that Mississippi minutes rule is a creative way to circumvent the Federal Arbitration Act, is unfounded and not supported in the record. If the minutes of the SRHS Board do not reflect that a contract was entered into, then there can be no agreement to arbitrate under Mississippi law. KPMG has failed to meet its burden of showing that this Court should review the Mississippi Supreme Court's decision finding that there was no evidence the parties agreed to arbitration.

C. Courts Decide the Threshold Question of Arbitrability

Of all the cases cited by KPMG, those decided by this Court and other federal courts and the plain language of the Federal Arbitration Act, are clear that courts must decide whether an arbitration agreement exists. *Henry Schein, Inc., v. Archer and White Sales, Inc.*,139 S. Ct. 524 (2019) (Citing *Rent-A-Center, W., Inc v. Jackson*, 561 U.S. 63 (2010), *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 115 S. Ct. 1920,

131 L. Ed. 2d 985 (1995) The test for arbitrability remains whether the parties consented to arbitrate the dispute in question. *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 305, 130 S. Ct. 2847, 2861, 177 L. Ed. 2d 567 (2010). In the present case, there is no evidence that SRHS agreed to arbitrate any dispute with KPMG, and the Mississippi Supreme Court correctly decided this matter.

In *Henry Schein*, this Court held that "[u]nder the Act and this Court's cases, the question of who decides arbitrability is itself a question of contract. The Act allows parties to agree by contract that an arbitrator, rather than a court, will resolve the threshold arbitrability questions as well as underlying merits disputes." *Id.* The overarching consideration is the parties agreement. In this case, there is no evidence that SRHS agreed to arbitration, much less the delegation of the question of arbitration.

If the parties did not agree to arbitration of disputes, then neither did they agree to the delegation of the determination of whether the arbitration provision is enforceable. "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *AT&T Techs. Inc. v. Communs. Workers of Am.*, 475 U.S. 643, 648 (1986) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*,

363 U.S. 574, 582 (1960)). The question of whether the parties agreed to arbitrate involves two considerations: "(1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement." *Sanderson Farms, Inc. v. Gatlin*, 848 So. 2d 828, 834 (Miss. 2003). The inquiry stops at the first consideration, whether there is a valid agreement to arbitrate between the parties. In this matter there is not. The minutes do not reflect that the committee discussed or approved the arbitration provision.

The Mississippi Supreme Court's opinion in this action, and the companion matter of *Jackson County, Mississippi v. KPMG, LLP*, ___ So. 3d. ___, Case No. 2018-CA-00071, 2019 WL 242688. Pet. App. 35a – 45a, clearly and concisely applied Mississippi contract law to this matter, and found that no contract was formed between SRHS and KPMG. Without a contract, there is clearly no arbitration provision and no delegation clause. The Mississippi Supreme Court's decision was supported by the trial court record and was correctly decided. The decision did not decide an important federal question; rather, the decision involved the application of the long standing rule in Mississippi that public boards speak only through their minutes, and without the agreement to arbitrate, or delegate the question of arbitrability expressly stated in the

minutes there is no agreement between the parties. *Wellness, Inc.,* 178 So. 3d at 1290.

The cases cited by KPMG are inapplicable because they do not involve public boards. Simply, the only issue present in this case is whether there was an agreement to arbitrate. Because no such agreement is evidenced by the minutes of SRHS's board then there is no agreement. This court's favor of arbitration only extends to those cases where the parties clearly agreed to arbitrate, that is not what happened in this case.

Without an agreement to arbitrate, the remainder of KPMG's argument is moot.

II. SRHS's negligence and professional negligence claims are not dependent on the existence of the contract, and as a result of the failure to spread the contracts on the minutes of the Board of Trustees there is no arbitration provision, nor delegation clause to be enforced.

KPMG argues that SRHS's entire case is "expressly based upon the contracts," and without the contracts at issue the matter cannot survive a Motion to Dismiss. Pet. 17. It should be noted that no motion to dismiss has been filed and any issue associated with the same is not ripe for review.

In support of this its position, KPMG cites to *Wirtz ex rel Whitley v. Switzer*, 586 So. 2d 775, 779 (Miss. 1991) (holding that professional negligence claims require the existence of a professional relationship), *abrogated on other grounds by Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n*, 964 So. 2d 1100 (Miss. 1991) (holding that the duties of a professional in tort, contract, and otherwise only arise if the professional was engaged by the client.)

This argument fails, as there is no dispute that SRHS engaged KPMG, and that KPMG actually performed audits of SRHS financial statements, an A-133 audit, and a benefit plan audit. In addition to the claim for breach of contract, SRHS also asserts claims of negligence and professional negligence, neither of which require the existence of a contract. If KPMG truly believed that the Mississippi Supreme Court's holding was fatal to SRHS's claims then it would have simply moved to dismiss the claims on remand, following the holding of the Mississippi Supreme Court. Clearly, KPMG chose not to pursue such an avenue for relief.

KPMG cites *Henry Schein.*, in support of its argument that "when the parties' contract delegates arbitrability questions to an arbitrator, the courts must respect the parties' decision as embodied in the contract." 139 S. Ct. at 531. However, this assertion

ignores the finding of the trial court and the Mississippi Supreme Court that there was no contract, and no evidence that the parties agreed to arbitration or delegation. It is clear that the Court has the responsibility to review the making of the arbitration agreement, before compelling arbitration. 9 U.S.C. §4. See e.g. *Henry Schein*, 139 S. Ct. at 530; *Granite Rock Co. v. Int'l Bhd. Of Teamsters*, 561 U.S. 287, 297 (2010). KPMG also agrees that the test for arbitrability is whether the parties consented to arbitrate the dispute in question. *Granite Rock Co.* At 304 n. 11 ([b]ut it is not the mere labeling of a dispute for contract law purposes that determines whether an issue is arbitrable. The test for arbitrability remains whether the parties consented to arbitrate the dispute in question.)

KPMG submits that the Mississippi Supreme Court is flouting "the FAA's purpose, substituting its own public policy concerns for Congress's. Congress enacted the FAA 'to reverse the longstanding judicial hostility to arbitration agreements' and 'manifest a liberal federal policy favoring arbitration agreements." *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002) Pet. 23. This is a misstatement of the facts and the law. The Mississippi Supreme Court applied its contract law to the subject dispute, and as it has for over a century it found that the minutes rule precluded arbitration of this action.

Any argument that the minutes requirement singles out arbitration provisions for unfavorable treatment is simply unfounded. In fact, one of the cases on which KPMG relies, *Lefoldt v. Natchez Regional Medical Center*, 853 F. 3d 804 (5th Cir. 2017), the Fifth Circuit recognized that the minutes requirement had been applied in a wide variety of contracts and its applicability is not limited to arbitration provisions. *Id* at 819. The minutes rule requires that enough of the terms and conditions of any contract entered into by an entity which is governed by a Board, and therefore speaks through its minutes, be sufficiently set forth in the minutes.

KPMG argues that "there was a meeting of the minds regarding KPMG's engagement to perform audits for Singing River." Pet. 25. Although KPMG did conduct audits, albeit negligently, for the years in question, there is no question that the parties did not have a meeting of the minds as to the arbitration and delegation issues. Furthermore, it is the responsibility of the entity contracting with the Board, not the responsibility of the board itself, to ensure that the "contract is legal and properly recorded on the minutes of the board." *Wellness*, 178 So.3d at 1291 ¶10 (Miss. 2015).

As the Mississippi Supreme Court found: "KPMG, the party seeking to invoke the dispute-

resolution clause, must first establish the existence of a contract including such a clause." 2018 WL 5291088 *9 ¶34. KPMG is one of the largest audit, tax, and advisory firms in the United States, and it was KPMG's responsibility to ensure that the letters and the attachments, including the dispute resolution clause, were legally and properly recorded on the Board's minutes. KPMG did not, and therefore there was no agreement between SRHS and KPMG to arbitrate its disputes.

KPMG submits that there is confusion regarding nationwide consistency in the application of the FAA and this confusion undermines the certainty of contracts. Pet. P. 27-29. There is no confusion in the present matter, and this issue is unequivocally certain – KPMG failed to ensure that its engagement letters, and dispute resolution attachments, were properly recorded on the minutes so that they were unquestionably agreed upon. Although, the contracts were not properly recorded, SRHS maintains it claims for negligence and professional negligence and those claims are not dependent on the existence of a contract. SRHS is entitled to a jury trial on its claims, and KPMG's petition should be denied in order that the action can proceed to trial in the Circuit Court of Hinds County, Mississippi.

CONCLUSION

This case is not appropriate for United States Supreme Court review, because it presents no novel issues for review by this Court and does not pertain to a division among state courts of last resort; a division among United States courts of appeal; nor a conflict with relevant decisions of this Court. Furthermore, it does not pertain to any important unsettled issues of federal law. Rather, the Mississippi Supreme Court's opinion in this case relied upon established principles of Mississippi contract law and said decision should not be disturbed.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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