

No. 24-\_\_\_\_\_

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**In the Supreme Court of the United States**

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Over the Line, LLC, and Jordan Maupin,

*Petitioners,*

v.

Christine Thompson,

*Respondent.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

The opportunity to be informed of and heard on matters pending is a fundamental requisite of due process. U.S. Const. amend. XIV § 1; *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950). This Court has recognized that appellate courts’ discretion to raise and rule on issues *sua sponte* is limited to “exceptional cases” “where the proper resolution is beyond any doubt” and “where ‘injustice might otherwise result.’” *Hormel v. Helvering*, 312 U.S. 552, 556, 61 S. Ct. 719, 721 (1941).

This Court recognizes that its “particularity” requirement, as applied to Rule of Civil Procedure 9(b), directs parties to plead most allegations of fraud with a greater specificity than its “plausibility” standard. *Ashcroft v. Iqbal*, 556 U.S. 662, 686-87, 129 S. Ct. 1937, 1954 (2009). Similarly, Federal Rule of Civil Procedure 7(b) requires movants to state their grounds for relief with “particularity.” Fed. R. Civ. P. 7(b)(1)(B).

The questions presented here are:

1. Can the Third Circuit United States Court of Appeals raise and rule on a non-jurisdictional or dispositive argument alleging fraud, that was expressly disavowed by the benefitting party and neither supported with evidence nor allegation, to overcome the District Court’s grant of summary judgment?
2. Does the “particularity” provision of Federal Rule of Civil Procedure 7(b) require the same specificity as the “particularity” provision of 9(b)?

## **CORPORATE DISLCOSURE STATEMENT**

Petitioner Over the Line VI, LLC, has no parent corporations and no publicly held corporation owns 10% or more of its stock.

## RELATED PROCEEDINGS

This matter originally filed in the Superior Court of the Virgin Islands, division of St. Thomas and St. John (“State Court Case”). The State Court Case was captioned *Christine Thompson v. Over The Line VI, LLC, and Jordan Maupin*, Case No. ST-2021-CV-00312. Respondent voluntarily dismissed the State Court Case and refiled this matter in the U.S. District Court of the Virgin Islands, Division of St. Thomas and St. John (“District Court Case”). App. 1a. The District Court Case was captioned *Christine Thompson v. Over The Line VI, LLC, and Jordan Maupin*, Case No. 3:21-CV-70. App. 1a. Respondent appealed from a final decision of the Virgin Islands District Court to the Third Circuit Court of Appeals. The Appeal maintained the same caption and was assigned Case No. 23-3110. App. 1a.

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## **PETITION FOR WRIT OF CERTIORARI**

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Over the Line VI, LLC, and Jordan Maupin respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this matter.

### **OPINIONS BELOW**

This Petition concerns the Virgin Islands' District Court for the Island of St. Thomas's oral grant of summary judgment in *Christine Thompson v. Over the Line VI, LLC, and Jordan Maupin*, Case No. 3:21-CV-00070. The District Court's grant of summary judgment and associated findings appear on Docket No. 225, attached as Appendix 12a-13a and 28a-32a. The United States Court of Appeals for the Third Circuit's unpublished opinion for this matter, Case No. 23-3110, was filed on February 28, 2025, attached as Appendix 1a-11a, and is available at 2025 U.S. App. LEXIS 1963.

### **JURISDICTION**

The Court of Appeal's judgment was entered on January 28, 2025. App. 1a-11a. A petition for rehearing was denied on February 20, 2025. App. 14a-15a. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

## **STATUTORY PROVISIONS INVOLVED**

The Fourteenth Amendment to the United States' Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV § 1.

Section 2072(a) of Title 28 of the United States Code provides: "The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals." Federal Rule of Civil Procedure 7(b) states "[a] request for a court order must be made by motion. The motion must . . . state with particularity the grounds for seeking the order." Fed. R. Civ. P. 7(b)(1)(B). Rule 9(b) provides: "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally."

## **STATEMENT OF THE CASE**

Respondent/Plaintiff Christine Thompson filed suit in the United States District Court of the Virgin Islands on September 8, 2021. App. 4a. She claims damages for alleged personal injuries resulting from an incident that occurred on a boat charter operating in the coastal waters of the United States Virgin Islands. App. 4a. Respondent alleged three counts of negligence against Petitioner/Defendant Over the

Line VI, LLC (“OTL”), the charter company and boat owner; one count of negligence against Petitioner/Defendant Jordan Maupin (“Captain Maupin”), who captained the subject vessel; and one count alleging gross negligence against both Petitioners. App. 4a. The case concerns a maritime contract, a maritime activity, and an incident that occurred on the navigable waters of the United States Virgin Islands. Therefore, it is undisputed that the claims fall within the admiralty jurisdiction of the District Court of the Virgin Islands. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995); *Exec. Jet Aviation, Inc. v. Cleveland*, 409 U.S. 249, 253 (1972)).

Petitioners timely filed a motion for summary judgment on August 15, 2023. App. 4a. Petitioners’ motion argued that: (1) Respondent’s negligence claims are barred by an exculpatory agreement (“Release”) she voluntarily signed and (2) Respondent’s claim of gross negligence lacks evidentiary support. App. 4a-4b. Respondent opposed Petitioners’ motion, arguing: (a) the exculpatory language of the Release was not clearly and unequivocally expressed, so Respondent was unaware of the exculpatory language, and (b) her claims for gross negligence had sufficient evidentiary support. App. 49a-57a. The District Court granted Petitioners’ motion in part, dismissing the negligence claims with prejudice upon a finding there was no genuine issue of fact that Respondent had an opportunity to read, examine, and ask questions about the waiver, but chose not to do so. App. 30a-31a. The District Court denied Petitioners’ motion to dismiss the gross negligence claims, and the case proceeded to trial

solely on those. App. 12a. Following trial, the jury found in Petitioners' favor and the District Court entered final judgment dismissing those claims with prejudice as well. App. 5a.

Respondent then appealed the District Court's summary judgment dismissing the negligence claims to the Third Circuit U.S. Court of Appeals. App. 5a. Respondent's appellate argument concerning enforceability of the Release repeated the "clearly and unequivocally expressed" argument to the District Court. App. 79a-80a. During oral arguments the Appellate Court asked Respondent a series of questions about whether she was alleging that "fraud in the factum" rendered the Release unenforceable. App. 25a-26a. Respondent maintained that she was *not* alleging fraud concerning her admitted failure to read and execution of the Release. App. 25a-26a. The Appellate Court then characterized its line of questioning concerning possible fraud as "a softball." App. 26a. Respondent then took the hint and grudgingly conceded: "I guess." App. 26a.

The Appellate Court then reversed and remanded the District Court's ruling. App. 11a. The Appellate Court expressly found that the Release was not issued by a party with excessive bargaining power and the exculpatory language was clearly and unequivocally expressed. App. 7a-8a. However, the Appellate Court unilaterally characterized Respondent's argument "in substance" as "fraud in the factum." App. 8a. Consequently, the Appellate Court reversed the District Court solely upon a defense to the Release that it asserted *sua sponte* and was neither presented to the District Court nor raised on appeal. App. 33a-84a. Rather, the argument was

expressly disavowed by Respondent. App. 25a-26a, The Appellate Court’s *sua sponte* ruling disregards the Due Process Clause and effectively invalidates the “particularity” requirement of Federal Rule of Civil Procedure 7(b). Petitioners requested a rehearing on February 7, 2025, and the Appellate Court denied the petition for rehearing February 20, 2025, without comment. App. 14a-15a.

The decision below warrants this Court’s review. The Third Circuit decision improperly expands appellate discretion at the expense of due process protections, conflicting with this Court’s clear precedent. The decision disregards the Rules of Civil Procedure as prescribed by this Court, so resolution here ensures that the procedural rules are enforced uniformly in the lower courts.

### **REASONS FOR GRANTING THE PETITION**

- A. The decision below conflicts with this Court’s precedent and improperly broadens the Appellate Court’s discretionary authority.

The Fourteenth Amendment holds that no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV § 1 (“Due Process Clause”). This Court has held that a “fundamental requisite of due process of law is the opportunity to be heard.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 783 (1914)). “This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose

for himself whether to appear or default, acquiesce or contest.” *Id.*

“Ordinarily an appellate court does not give consideration to issues not raised below.” *Hormel v. Helvering*, 312 U.S. 552, 556, 61 S. Ct. 719, 721 (1941). “[I]t is . . . essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence. *Id.* Nonetheless, “[t]he matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the court of appeals, to be exercised on the facts of individual cases.” *Singleton v. Wulff*, 428 U.S. 106, 121, 96 S. Ct. 2868, 2877 (1976). Instances in which the Appellate Court is justified in resolving issues not passed on below include “where the proper resolution is beyond any doubt” and “where ‘injustice might otherwise result.’” *Id.* (citing *Turner v. City of Memphis*, 369 U.S. 350 (1962); quoting *Hormel v. Helvering*, 312 U.S. 552, 557 (1941) (“There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below.”)).

The permissible scope of an Appellate Court’s ability to consider issues not raised before the District Court limits discretion to raise issues *sua sponte*. *Wilkins v. United States*, 598 U.S. 152, 157, 143 S. Ct. 870, 876 (2023). The importance of parties’ right to be heard is reflected in this Court’s recognition of the Appellate Courts’ limited discretion to raise and rule on issues *sua sponte*. Notable examples of when an

Appellate Court may consider issues *sua sponte* include jurisdictional bars, egregious issues at the trial-court level that hinder justice, erroneous assumptions of standing, issues antecedent to and ultimately dispositive of disputes, and the identification and application of the governing law. *Wilkins*, 598 U.S. at 157 (“Jurisdictional bars, however, ‘may be raised at any time’ and courts have a duty to consider them *sua sponte*” (quoting *Henderson v. Shinseki*, 562 U.S. 428, 432, 131 S. Ct. 1197, 1201 (2011)); *Massaro v. United States*, 538 U.S. 500, 502, 123 S. Ct. 1690, 1692 (2003) (“[T]here may be cases in which trial counsel’s ineffectiveness is so apparent from the record that appellate counsel will raise the issue on direct appeal or in which obvious deficiencies in representation will be addressed by an appellate court *sua sponte*. In such cases, certain questions may arise in subsequent § 2255 proceedings concerning the conclusiveness of determinations made on the claims raised on direct appeal”); *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110, 122 S. Ct. 511, 514 (2001) (“We are obliged to examine standing *sua sponte* where standing has erroneously been assumed below.”); *United States Nat’l Bank v. Indep. Ins. Agents of Am.*, 508 U.S. 439, 447, 113 S. Ct. 2173, 2178 (1993) (“[A] court may consider an issue ‘antecedent to . . . and ultimately dispositive of’ the dispute before it, even an issue the parties fail to identify and brief.”) (quoting *Arcadia v. Ohio Power Co.*, 498 U.S. 73, 77, 112 L. Ed. 2d 374, 111 S. Ct. 415 (1990)); *United States Nat’l Bank v. Indep. Ins. Agents of Am.*, 508 U.S. 439, 113 S. Ct. 2173 (1993) (Finding that the Appellate Court did not abuse its discretion in



determining whether a potentially controlling law existed because parties did not urge the Court to resolve the issue).

Appellate discretion is primarily tailored to address Courts' authority, promote judicial efficiency, and render decisions on existing legal grounds.

For good reason, appellate courts ordinarily abstain from entertaining issues that have not been raised and preserved in the court of first instance. That restraint is all the more appropriate when the appellate court itself spots an issue the parties did not air below and therefore would not have anticipated in developing their arguments on appeal.

*Wood v. Milyard*, 566 U.S. 463, 473, 132 S. Ct. 1826, 1834 (2012).

Here, the Third Circuit disregards clear precedent by issuing its decision below, reversing the District Court solely upon a defense that the Appellate Court raised *sua sponte*. The Third Circuit crosses the line between justice and counsel by unilaterally raising a non-dispositive, non-jurisdictional argument that was repeatedly disavowed by the benefited party. In doing so, the decision below disregards Due Process considerations by stripping Petitioners of their fundamental right to knowingly address arguments against them and present an informed response. Therefore, this Court should grant this Petition to ensure that Appellate Courts refrain from abusing their discretion and unjustly acting as counsel.

i. Decision Below

Respondent claims damages for personal injuries that allegedly resulted during a maritime charter. App. 2a. Before the charter, Respondent admittedly signed but did not read a Release with exculpatory language insulating Petitioners from negligence liability. App. 51a. Respondent argued to the District Court that the Release was invalid because it did not “clearly and unequivocally indicate the intentions of the parties.” App. 50a-51a. Respondent argued that she signed a “blank” document, because the exculpatory language was on the back of the page. App. 51a. However, Respondent maintained that Petitioners did not deliberately attempt to hide the exculpatory language or fraudulently misrepresent the contents of the Release. App. 33a-58a.

The District Court appropriately determined the Release was “clear and unambiguous” as a matter of the law. App. 30a-31a. The District Court expressly observed that it is undisputed Respondent had an opportunity to examine the Release or ask questions but signed without doing so. App. 30a-31a. The District Court therefore granted summary judgment dismissing Respondent’s claims of negligence with prejudice and allowing the claims alleging gross negligence to proceed to jury trial. App. 12a.

Following a jury verdict and final judgment in Petitioners’ favor on the claims for gross negligence, Respondent appealed the grant of summary judgment. App. 4a-5a. Respondent summarized her appellate argument as:

[T]here were genuine issues of fact in dispute as to whether the waiver language was ‘clearly and unequivocally’ communicated, as [Respondent did not know] this language existed, or saw it, as [she was] simply asked to sign the page presented to [her] without any explanation as to what it was or that there was language on the back of the clipped page that waived any of [her] rights.

App. 62a. Petitioners addressed Respondent’s *sole* argument by emphasizing that the exculpatory language and nature of the Release was clear and unambiguous, and Respondent’s undisputed failure to read the document does not render the contract unenforceable. App. 92a-101a.

During oral arguments on appeal, Respondent argued that she had no duty to examine the Release, because Petitioners did not indicate that she was signing an exculpatory waiver. App. 26. The Third Circuit then asked Respondent, “you seem to be arguing that there is some sort of excusable ignorance or fraud in the execution, of whatever this waiver was; right?” App. 25-26. Respondent replied, “[n]o, I think the captain . . . [did] not mak[e Respondent] understand what [the Release] was.” App. 26a. The Appellate Court then interjected again, “your argument would be then that there was some sort of excusable negligence . . . or fraud in the execution of this waiver.” App. 26a. After a brief delay, the Court then followed up, “it’s a softball.” App. 26a.

Respondent finally took the hint, stating “I guess.” App. 26a.

The Appellate Court then issued an opinion reversing and remanding the District Court’s decision solely upon its *sua sponte* “softball” line of questioning. App. 1a-11a. In so doing, the Appellate Court unilaterally characterized “[Respondent’s] argument [as], *in substance*, ‘a claim of excusable ignorance of the contents of the writing signed,’ [ ] also known as ‘fraud in the execution’ or ‘fraud in the factum.’” App. 8a (emphasis added). Thus, the decision below wholly relies upon an argument never plead, but expressly disavowed, by Respondent.

Following the appellate decision and remand, Respondent again disavowed the fraud argument, representing to the District Court that Petitioners will “keep trying to recast this as a fraud claim” and “once you look at the pleading there is no issue of fraud.” App. 17a-20a. The District Court correctly observed that “the central holding of the Third Circuit’s Opinion was there are genuine issues of material fact . . . primarily based on the fraud and execution principles.” App. 22a.

ii. The Third Circuit’s Reversal of the District Court’s Decision was an Abuse of Discretion

The Third Circuit’s *sua sponte* justification for reversing the decision of the District Court is beyond the Appellate Court’s discretion. The justification is non-jurisdictional, as the Court determined that the undisputed facts “satisfy the three-part test for admiralty jurisdiction.” App. 6a-7a. The justification is non-dispositive, as emphasized by the Court’s

instructions, remanding the matter for further fact finding. App. 11a. The Appellate Court's justifications do not concern validity of governing statutes or the records before the Court on appeal. The Third Circuit emphasized that "an outward expression of assent may be ineffective when, as here, there is evidence that the offeror misrepresented the contents of the agreement or tried to hide key provisions therein." App. 10a (internal quotations omitted). However, the record before the Court on appeal lacked *any* evidence or allegation concerning affirmative efforts to fraudulently misrepresent the exculpatory language of the Release. Respondent neither plead nor argued fraudulent misrepresentation, but simply maintained that Petitioners should have better explained the Release. In fact, Respondent summarized the facts as: "[she was] simply asked to sign the page presented to [her] without any explanation as to what it was or that there was language on the back of the clipped page that waived any of [her] rights." App. 62a. Thus, the Third Circuit's *sua sponte* justification for reversal assumes facts not in the record before it and disregard Respondent's very argument.

The Third Circuit's unsupported reliance upon possible fraud as a justification to reverse the District Court undermines basic principles of our adversarial system of justice. Petitioners were improperly denied an opportunity to present an informed response to the fraud allegations raised *sua sponte* by the Appellate Court during oral argument. The Third Circuit effectively assumed the role of advocate and thus undermined protections instilled in Federal Rule of Procedure 9(b) which provides that allegations of fraud must be stated with particularity. Fed. R. Civ.

P. 9(b). The Third Circuit ostensibly recognizes the importance of the Rule as to “place defendants on notice of the precise misconduct with which they are charged, and to safeguard defendants against spurious charges of immoral and fraudulent behavior.” *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 742 F.2d 786, 791 (3d Cir. 1984). In so doing, the Third Circuit generally implements a “who, what, when, where, and how” test for allegations of fraud, with “what” constituting “a detailed description of the alleged fraudulent conduct.” *Lopez v. N.J. Sun Tech., LLC*, No. 3:24-cv-01354, 2025 U.S. Dist. LEXIS 9797, at \*34-35 (M.D. Pa. Jan. 21, 2025). Here, however, the Third Circuit raised allegations of possible fraud during oral argument, much to the surprise to both Respondent and Petitioners.

Respondent never alleged possible fraud, either in the District Court or on appeal to the Third Circuit. Rather, Petitioner expressly disavowed the prospect of fraud until the Third Circuit advocated that issue as a possible defense to enforceability of the Release. Following reversal and remand Respondent again disavowed possible fraud as a defense, arguing to the District Court that Petitioners are “recast[ing]” the issue to sound in fraud. App. 17a-18a. The Third Circuit improperly advocated for Respondent when it *sua sponte* raised and then favorably ruled on a defense wholly unsupported by the record on appeal. In doing so, the Appellate Court surprised both Respondent and Petitioners and ensured that Petitioners would not have an opportunity or the right to present an informed response. Therefore, the Appellate Court abused its limited discretion and eliminated Petitioners’ right to due process under law

by raising and then favorably ruling on issues not properly before it.

B. The Decision Below Violates Federal Rules of Civil and Appellate Procedure.

“The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates [magistrate judges] thereof) and courts of appeals.” 28 U.S.C. § 2072(a) (“Rules Enabling Act”). Under the power conferred by the Rules Enabling Act, this Supreme Court promulgated the Federal Rules of Civil Procedure to “govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81.” Fed. R. Civ. P. 1.

Rule 9(b) requires allegations of fraud or mistake to be stated “with particularly [concerning] the circumstances constituting fraud or mistake,” except for allegations concerning *mens rea*. Fed. R. Civ. P. 9(b). Though the Circuits diverge on the scope of the Federal Rules of Civil Procedure’s “particularity” requirement, this Court recognizes that “particularity” is a heightened standard than the “plausibility” standard outlined in Rule 8. Fed. R. Civ. P. 8(a); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 n.14, 127 S. Ct. 1955, 1973 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 686-87, 129 S. Ct. 1937, 1954 (2009). Thus, parties are required to plead the circumstances constituting fraud or mistake with greater specificity than other matters. *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168, 113 S. Ct. 1160, 1163 (1993).

Rule 7(b) requires parties to “state with particularity the grounds for seeking [a court] order.” Fed. R. Civ. P. 7(b)(1)(B). This Court has not defined “particularity” as applied in Rule 7(b). However, the presumption of consistent usage provides “that a term generally means the same thing each time it is used” and “is most commonly applied to terms appearing in the same enactment.” *United States v. Castleman*, 572 U.S. 157, 174, 134 S. Ct. 1405, 1417 (2014) (citing *IBP, Inc. v. Alvarez*, 546 U. S. 21, 33-34, 126 S. Ct. 514, 163 L. Ed. 2d 288 (2005)). Relevantly, “particularity” appears in both 7(b) and 9(b) of this Court’s Rules of Civil Procedure and pertain to written representations to the District Court. Fed. R. Civ. P. 7(b)(1)(B); Fed. R. Civ. P. 9(b). Therefore, a presumption arises that Rule 7(b) requires movants to state the grounds for their requested order with the requisite specificity identified in Rule 9(b).

The Third Circuit’s discussion about possible “fraud in the factum” relies upon this Court’s interpretation of the Uniform Commercial Code in *Langley v. Fed. Deposit Ins. Co.* 484 U.S. 86, 93 (1987); *MZM Constr. Co. v. N.J. Bldg. Laborers Statewide Benefit Funds*, 974 F.3d 386, 404 (3d Cir. 2020). App. 8. When analyzing a claim of fraud in the factum, the Third Circuit must conduct three distinct analyses: (1) that Petitioners committed fraud or misconduct to prevent a Respondent from reading the Release; (2) that Respondent was unaware of the contents of the Release; and (3) that Respondent did not have reasonable opportunity to learn of the character of the Release. *MZM Constr. Co. v. N.J. Bldg. Laborers Statewide Benefit Funds*, 974 F.3d 386, 404 (3d Cir. 2020); *Connors v. Fawn Mining Corp.*, 30 F.3d 483,



492 (3d Cir. 1994); *Delponte v. Coral World V.I., Inc.*, 233 Fed. Appx. 178, 180-181 (3d Cir. 2007). The Third Circuit's application of Rule 7(b) is central to this analysis.

Respondent here sought an order denying Petitioners' motion for summary judgment. App. 34a. Respondent's reason for denial of the summary judgment motion were purported issues of fact:

as to whether the waiver language was 'clearly and unequivocally' communicated, as [Respondent did not know] this language existed, or saw it, as [she was] simply asked to sign the page presented to [her] without any explanation as to what it was or that there was language on the back of the clipped page that waived any of [her] rights.

App. 62a. Respondent neither alleges that possible "fraud" was a basis for denial of summary judgment, nor alleges that Petitioners misrepresented contents of the Release. Thus, Respondent did not even ask the District Court to consider and rule on possible fraud or misrepresentation.

Notwithstanding, the Appellate Court determined that elements of possible fraud were genuine issues of fact that should have been considered by the District Court and then reversed the grant of summary judgment. In doing so, the Appellate Court ignored Respondent's burden of stating grounds for its opposition to summary judgment with particularity. Rather, the Appellate Court's decision effectively holds that under Rule 7(b),

parties may state their grounds for requesting a trial court order generally, which are thereafter inferred “in substance” by an Appellate Court. App. 8a.

The decision below defies the plain meaning of Rule 7(b) and nullifies this Court’s “particularity” requirement, permitting parties to generally plead grounds for requested trial court orders. Therefore, this Court should grant this Petition to ensure uniformity among the Appellate Courts in enforcing Rule 7(b).

### **CONCLUSION**

For on the foregoing reasons, this honorable United States Supreme Court should grant this writ of certiorari and review the judgment of the Third Circuit U.S. Court of Appeals.

Respectfully submitted,

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