No. 24A___

IN THE

Supreme Court of the United States

STEWART A. FELDMAN; THE FELDMAN LAW FIRM, L.L.P.; CAPSTONE ASSOCIATED SERVICES (WYOMING), LIMITED PARTNERSHIP; CAPSTONE ASSOCIATED SERVICES, LIMITED; CAPSTONE INSURANCE MANAGEMENT, LIMITED,

Applicants,

v.

SCOTT SULLIVAN; FRANK DELLACROCE; ST. CHARLES SURGICAL HOSPITAL, L.L.C.; ST. CHARLES HOLDINGS, L.L.C.; CENTER FOR BREAST RESTORATIVE SURGERY, L.L.C.; SIGMA DELTA BILLING, L.L.C.; CERBERUS INSURANCE CORPORATION; JANUS INSURANCE CORPORATION; ORION INSURANCE CORPORATION,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

RAFFI MELKONIAN
ERIC B. BOETTCHER
ROSE DODA
WRIGHT CLOSE & BARGER, LLP
One Riverway, Suite 2200
Houston, Texas 77056
(713) 572-4321

JESSICA L. ELLSWORTH
Counsel of Record
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com

Counsel for Applicants

June 20, 2025

Additional counsel listed on inside cover

E. JOHN GORMAN
JOSEPH F. GREENBERG
THE FELDMAN LAW FIRM LLP
510 Bering Dr., Suite 500
Houston, Texas 77057
(713) 850-0700

SEAN MAROTTA
MICHAEL J. WEST
ERICA J. SHULER
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants make the following disclosures:

The Feldman Law Firm LLP is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of the Feldman Law Firm.

Capstone Associated Services (Wyoming), Ltd. Partnership is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of Capstone Associated Services (Wyoming), Ltd. Partnership.

Capstone Associated Services, Ltd., is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of Capstone Associated Services, Ltd.

Capstone Insurance Management, Ltd., was the doing-business name of Capstone Insurance Management (Anguilla), Ltd., an Anguilla corporation that has since been dissolved. It had no parent company, and no publicly held company owned 10% or more of its stock.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicants Stewart A. Feldman, the Feldman Law Firm LLP, Capstone Associated Services (Wyoming), Ltd. Partnership, Capstone Associated Services, Ltd., and Capstone Insurance Management, Ltd., respectfully request a 30-day extension of time, to and including August 28, 2025, within which to file a petition for a writ of certiorari to review the judgment of the Court of Appeals for the Fifth Circuit in this case.

1. The Court of Appeals for the Fifth Circuit issued its decision on March 11, 2025. *See Sullivan* v. *Feldman*, 132 F.4th 315 (5th Cir. 2025) (Appendix A). The Fifth Circuit denied Applicants' petition for rehearing en banc on April 30, 2025 (Appendix B). Unless extended, the time to file a petition for a writ of certiorari will expire on July 29, 2025. *See* Sup. Ct. R. 13.1. This application is being filed more than ten days before that date. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. This case presents the question of whether the incorporation of an arbitration association's rules in an arbitration agreement constitutes clear and unmistakable evidence that the parties intended to delegate the gateway issue of class arbitrability to an arbitrator.

3. Respondents are Louisiana doctors and business entities owned by them. App. 3a. In 2015, the doctors (hereafter referred to as "Respondents") signed an engagement letter with Applicants for certain insurance services. *Id.*[1] This engagement letter was then incorporated into a services agreement between the parties. App. 6a.

4. The engagement letter contains an arbitration agreement. App. 4a. As relevant here, the arbitration agreement requires that all arbitrations be conducted "pursuant to the Commercial Arbitration Rules (and not the rules for Large, Complex Commercial Cases) of the American Arbitration Association (AAA) then in effect." *Sullivan* v. *Feldman*, No. 4:20-CV-2236, Dkt. 7-1 at 15 (S.D. Tex. July 2, 2020). The arbitration agreement further provides that "the issue of arbitrability shall * * * be decided by the arbitrator, and not by any other person." App. 5a. The Commercial Arbitration Rules do not expressly provide for class arbitration.

5. The parties' business relationship eventually broke down, and Applicants and Respondents each initiated multiple arbitrations over the course of 2020 to address the fallout. *See* App. 6a-8a. Each arbitration was conducted by a single arbitrator. Four of these arbitrators, proceeding in parallel, conducted "a single evidentiary hearing, where the same evidence and witnesses were presented." App. 8a. And two of these four proceedings included claims for class relief against

[1] Jeff Carlson was a separately represented appellant in the Fifth Circuit. The panel below held that Carlson was not bound by the arbitration agreement. *See* App. 30a-34a.

Applicants. *See Sullivan* v. *Feldman*, No. H-20-2236, 2022 WL 17822451, at *13 (S.D. Tex. Dec. 20, 2022).

6. The arbitrators in the two putative class arbitrations diverged as to whether the arbitration agreement permitted class arbitration. *See* App. 9a-10a. One arbitrator, Mark Glasser, concluded that class arbitration was not permitted. *See id.* Another arbitrator, Judge Charles Jones, concluded that class arbitration was permitted. *See* App. 9a. During the joint hearing, these two arbitrators from these two arbitrations "disagreed with each other vocally from the bench" regarding this "hotly disputed subject." App. 8a.

7. Judge Charles Jones, the arbitrator who concluded class arbitration was permitted, certified an arbitration class. As the Fifth Circuit later recognized, in doing so, he "questionably used 'opt-out notices' * * * even though 'where absent class members have not been required to opt in, it is difficult to see how an arbitrator's decision to conduct class proceedings could bind absent class members who have not authorized the arbitrator to decide on a classwide basis which arbitration procedures are to be used.'" App. 9a-10a n.2 (quoting *Oxford Health Plans LLC* v. *Sutter*, 569 U.S. 563, 574-575 (2013) (Alito, J., concurring)). This "approach was also in tension with required federal court practices" codified in Rule 23, "which protect the constitutional due process rights of defendants." App. 10a n.2. Despite the complicated predominance questions involved in certifying a multi-state class, the certification order "was a mere eight pages, * * * and with only two conclusory paragraphs addressing predominance." *Id.*

8. The other arbitrator (Mark Glasser), who had concluded class arbitration was not permitted, expressly raised "concern with [Judge Charles Jones's] apparent inattention to governing procedural rules and substantive law" in certifying the class. *Sullivan* v. *Feldman*, No. 4:20-CV-2236, Dkt. 72-5 at 385-386, 392 (S.D. Tex. Apr. 25, 2022).

9. The four arbitrators eventually entered final awards against Applicants. The three arbitrators who did not certify a class entered awards ranging from roughly $1.5 million to $4.5 million. *See* App. 9a. Judge Jones entered significantly larger awards: He awarded $31 million in class damages (not including fees and costs), and $89 million in individual damages, fees, and costs. *See* App. 9a & n[†].

10. The parties filed cross-motions to vacate and confirm the awards before the District Court for the Southern District of Texas. As relevant here, Applicants sought to vacate the Jones award finding that class arbitration was permitted on the ground that the arbitrator lacked authority to decide the question of class arbitrability. *See Sullivan*, 2022 WL 17822451, at *15. The district court rejected that argument, reasoning that by "'incorporat[ing] the AAA rules for arbitration,'" the parties gave Judge Jones "exclusive authority to determine which issues were properly before him, including * * * whether a class-wide arbitration would proceed." *Id.* at *17 (quoting *Sun Coast Res., Inc.* v. *Conrad*, 956 F.3d 335, 338 (5th Cir. 2020)). The district court did not acknowledge that the Commercial Arbitration Rules governing the parties' proceeding do not refer in any way to class arbitration.

11. The district court confirmed all four individual awards, *see id.* at *12, and soon thereafter entered a partial final judgment, *see* App. 10a-11a. The district court "'left the claims for damages of Class Members still outstanding' until after [the Fifth Circuit's] judgment on appeal." App. 9a n.† (quoting district court).

12. The Fifth Circuit "reluctantly" affirmed that, under circuit precedent, the arbitration agreement's incorporation of the AAA rules conclusively established that "the parties *intended* to delegate class-wide arbitrability to the arbitrator." App 17a.

13. As the Fifth Circuit explained, "class arbitrability is a gateway issue that courts leave to arbitrators only when the agreement evinces that the parties 'clearly and unmistakably' intended that result." App. 16a (quoting *20/20 Commc'ns, Inc.* v. *Crawford*, 930 F.3d 715, 718-719 (5th Cir. 2019)). The court recognized that the circuits "disagree on whether an agreement's incorporation of generic rules permitting class arbitration can ever constitute clear and unmistakable consent to class arbitration." App. 19a (citing decisions from Second, Third, Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits). And the court indicated that, were it writing on a blank slate, it would conclude that, under this Court's decision in *Lamps Plus, Inc.* v. *Varela*, 587 U.S. 176, 182-183 (2019), an ambiguous reference to generic arbitration rules is insufficient to delegate the question of class arbitrability to the arbitrator. *See* App. 20a-22a. The panel, however, was bound by *Work* v. *Intertek Research Solutions, Inc.*, 102 F.4th 769 (5th Cir. 2024), in which the Fifth Circuit held that an agreement incorporating a JAMS rule providing that "arbitrability disputes

* * * shall be submitted to and ruled on by the Arbitrator" was "sufficient to commit the arbitration of a collective action, an employment claim similar to a class action, to the arbitrator." App. 17a-18a.

14. In light of *Work*, the panel explained that it "must hold that the Engagement Letter unambiguously delegated the question of class-wide arbitrability to the arbitrators." App. 18a. The panel explained that the arbitration agreement's reference to the AAA Commercial Rules also reached the separate and unreferenced AAA Supplementary Rules for Class Arbitration, one of which "provides that 'the arbitrator shall determine as a threshold matter * * * whether the applicable arbitration clause permits the arbitration to proceed on behalf of or against a class.'" App. 17a. And because this Supplementary Rule—which is not referenced in either the Commercial Arbitration Rules or the parties' arbitration agreement itself—is "clearer than that found in *Work*," the panel held that it could not set aside Judge Charles Jones's decision to permit class arbitration. App. 18a.

15. The panel expressly recognized that the circuits are deeply split over the crucial issue in the case: does incorporation of generic arbitration rules provide clear and unmistakable evidence that the parties intend to delegate to an arbitrator whether arbitration can proceed on a classwide basis. App. 19a-20a.

16. Four Circuits—the Third, Fourth, Sixth, and Eighth Circuits—hold that the incorporation of standard arbitration rules "is insufficient evidence that the parties intended for an arbitrator to decide the substantive question of class arbitration." *Catamaran Corp.* v. *Towncrest Pharmacy*, 864 F.3d 966, 973 (8th Cir.

2017); *see also Chesapeake Appalachia, L.L.C.* v. *Scout Petroleum, L.L.C.*, 809 F.3d 746, 758 (3d Cir. 2016); *Dell Webb Cmtys., Inc.* v. *Carlson*, 817 F.3d 867, 876-877 (4th Cir. 2016); *Reed Elsevier, Inc. ex rel. LexisNexis Div.* v. *Crockett*, 734 F.3d 594, 599-600 (6th Cir. 2013).

17. In stark contrast, four other Circuits—the Second, Fifth, Tenth, and Eleventh Circuits—hold that the incorporation of standard arbitration rules "is clear and unmistakable evidence that the parties chose to have an arbitrator decide whether their agreement provided for class arbitration." *Spirit Airlines, Inc.* v. *Maizes,* 899 F.3d 1230, 1233-34 (11th Cir. 2018); *see also Wells Fargo Advisors, LLC* v. *Sappington,* 884 F.3d 392, 398-399 (2d Cir. 2018); *Dish Network L.L.C.* v. *Ray,* 900 F.3d 1240, 1246-48 (10th Cir. 2018); App. 19a. As the panel itself recognized, the Fifth Circuit is "an outlier on the far side of" this split; the Fifth Circuit alone "has held that a rule generally delegating arbitrability questions carries with it a delegation of class arbitrability." App. 22a, 20a.

18. The question that will be presented in Applicants' petition for certiorari is rooted in the bedrock principle underlying this Court's arbitration jurisprudence: "arbitration is strictly a matter of consent." *Lamps Plus*, 587 U.S. at 184 (quotation marks and brackets omitted). Under the FAA, "arbitrators wield only the authority they are given." *Id.* And given the fundamental differences between traditional bilateral arbitration and class arbitration, "there is reason to doubt the parties' mutual consent to resolve disputes through classwide arbitration." *Id.* at 185 (quotation marks omitted). Just as much as silence or ambiguity is not enough to

conclude that the parties agreed to classwide arbitration, *see id.*, a boilerplate reference to standard arbitration rules is not enough to conclude that the parties agreed to delegate to the arbitrator the predicate question of whether the agreement allows for class arbitration. This is especially so where those standard arbitration rules themselves do not even expressly reference class arbitration.

19. Jessica Ellsworth of Hogan Lovells US LLP, Washington, D.C., was recently retained to file a petition of certiorari on behalf of Applicants in this Court. Over the next several weeks, counsel is occupied with briefing deadlines for a variety of matters, including a reply brief in *Hetsler* v. *Ford Motor Co.*, No. 5D2024-2368 (Fla. Dist. Ct. App.), due on June 30; an answering brief in *McGuire* v. *Johnson*, No. 25-01457 (9th Cir.), due on July 16; a reply brief in *Novartis* v. *Bailey*, No. 25-01619 (8th Cir.), due on July 16; a response brief in *Warner* v. *Amgen Inc.*, No. 25-1268 (1st Cir.), due on July 17; a reply brief in *La Unión Del Pueblo Entero* v. *Federal Emergency Management Agency*, No. 24-40756 (5th Cir.), due on July 21; and an intervenor brief in *Public Employees for Environmental Responsibility* v. *Lee Zeldin*, No. 24-5294 (D.C. Cir.), due on July 23. Applicants respectfully seek this extension of time to allow counsel to research the relevant legal and factual issues and prepare a petition that comprehensively addresses the important questions raised by the decision below.

20. For these reasons, Applicants respectfully request that an order be entered extending the time to file a petition for certiorari to and including August 28, 2025.

Respectfully Submitted,

/s/ Jessica L. Ellsworth

JESSICA L. ELLSWORTH
Counsel of Record
SEAN MAROTTA
MICHAEL J. WEST
ERICA J. SHULER
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com

RAFFI MELKONIAN
ERIC B. BOETTCHER
ROSE DODA
One Riverway, Suite 2200
Houston, Texas 77056
(713) 572-4321

E. JOHN GORMAN
JOSEPH F. GREENBERG
THE FELDMAN LAW FIRM LLP
510 Bering Dr., Suite 500
Houston, Texas 77057
(713) 850-0700

Counsel for Applicants

June 20, 2025

No. 24A___

IN THE

Supreme Court of the United States

STEWART A. FELDMAN; THE FELDMAN LAW FIRM, L.L.P.; CAPSTONE ASSOCIATED SERVICES (WYOMING), LIMITED PARTNERSHIP; CAPSTONE ASSOCIATED SERVICES, LIMITED; CAPSTONE INSURANCE MANAGEMENT, LIMITED,

Applicants,

v.

SCOTT SULLIVAN; FRANK DELLACROCE; ST. CHARLES SURGICAL HOSPITAL, L.L.C.; ST. CHARLES HOLDINGS, L.L.C.; CENTER FOR BREAST RESTORATIVE SURGERY, L.L.C.; SIGMA DELTA BILLING, L.L.C.; CERBERUS INSURANCE CORPORATION; JANUS INSURANCE CORPORATION; ORION INSURANCE CORPORATION,

Respondents.

CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rules 29.3 and 29.5(b), I, Jessica L. Ellsworth, a member of the Bar of this Court, hereby certify that on June 20, 2025, a copy of the foregoing Application for an Extension of Time to File a Petition for a Writ of Certiorari was served by e-mail and first-class U.S. mail, postage prepaid, to the following counsel:

JAMES M. GARNER
THOMAS J. MADIGAN, II
JEFFREY D. KESSLER
DAVID A. FREEDMAN
SHER GARNER CAHILL RICHTER
KLEIN & HILBERT, LLC

909 Poydras Street, 28th Floor
New Orleans, Louisiana 70112
(504) 299-2100

MARK TRACHTENBERG
NATASHA BREAUX
KAYLEN STRENCH
HAYNES AND BOONE, LLP
1221 McKinney, Suite 4000
Houston, Texas 77010
(713) 547-2000

Counsel for Respondents

SAMUEL BRANAMAN HAREN
ANDREW K. MEADE
MEADE NEESE & BARR, LLP
2118 Smith Street
Houston, Texas 77002
(713) 355-1200

Counsel for Jeff Carlson

I further certify that all parties required to be served have been served.

Date: June 20, 2025

/s/ Jessica L. Ellsworth
Jessica L. Ellsworth