

**IN THE  
SUPREME COURT OF THE UNITED STATES**

---

No. \_\_\_\_

---

TAMKO BUILDING PRODUCTS, INC.,  
*Applicant,*

v.

DANIEL WILLIAMS and BARBARA WILLIAMS,  
*Respondents.*

---

**APPLICATION TO THE HON. SONIA SOTOMAYOR  
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF OKLAHOMA**

---

Pursuant to Supreme Court Rule 13(5), TAMKO Building Products, Inc. (Applicant) hereby moves for an extension of time of 30 days, to and including January 29, 2020, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be December 30, 2019.

In support of this request, Applicant states as follows:

1. The Oklahoma Supreme Court issued its decision on October 1, 2019 (Exhibit 1). This Court has jurisdiction under 28 U.S.C. §1257(a).

2. This case concerns the circumstances under which the Federal Arbitration Act (FAA) requires state courts to enforce arbitration agreements printed on the exterior packaging of consumer products that are purchased and handled by an agent on a principal's behalf. Under general principles of agency law in Oklahoma

(like elsewhere), an agent has implied authority to take actions that are incidental to or reasonably necessary to accomplish the task that a principal expressly delegates to him, and those actions are legally binding on the principal. *See, e.g., Ivey v. Wood*, 387 P.2d 621, 625 (Okla. 1963); *Elam v. Town of Luther*, 787 P.2d 1294, 1296 (Okla. Civ. App. 1990). In this case, the Oklahoma Supreme Court recognized that Respondents had entered into an agency agreement that authorized their contractors to purchase and install roofing shingles for them. Those contractors, in turn, purchased Applicant’s roofing shingles, and Applicant has emblazoned a binding arbitration agreement on the exterior wrapping of each package of its shingles. In the decision below, however, the Oklahoma Supreme Court concluded that, in the absence of express authority from Respondents, the contractors could not validly enter into the arbitration agreement on Respondents’ behalf—even though that action was plainly incidental to or reasonably necessary to accomplish their delegated task—because the arbitration agreement waived Respondents’ state constitutional right to a trial by jury. Relatedly, the court further concluded that printing a binding arbitration agreement on product packaging that is likely to be handled only by an agent, rather than by a principal, is unconscionable.

3. The Oklahoma Supreme Court’s decision squarely violates the FAA and this Court’s cases interpreting it, which “require[] courts to place arbitration agreements ‘on equal footing with all other contracts’” and prohibit them from “singl[ing] out arbitration agreements for disfavored treatment.” *Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1424-25 (2017). It also conflicts with

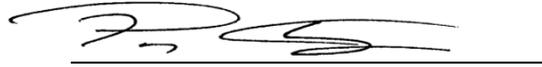
decisions from several federal courts that have examined the validity of the same arbitration agreement in materially identical factual and legal circumstances. *See, e.g., Dye v. TAMKO Bldg. Prods., Inc.*, 908 F.3d 675, 684-86 (11th Cir. 2018); *Am. Family Mut. Ins. Co. v. TAMKO Bldg. Prods., Inc.*, 178 F. Supp. 3d 1121, 1126-27 (D. Colo. 2016); *Hoekman v. TAMKO Bldg. Prods., Inc.*, No. 214CV01581TLNKJN, 2015 WL 9591471, at \*6-\*7 (E.D. Cal. Aug. 26, 2015); *Krusch v. TAMKO Bldg. Prods., Inc.*, 34 F. Supp. 3d 584, 589 (M.D.N.C. 2014). Moreover, it contributes to a broader trend by which state courts have relied upon novel state-law principles of contract formation to evade the demands of the FAA. *See, e.g., King v. Bryant*, 795 S.E.2d 340 (N.C. 2017); *Baker v. Bristol Care, Inc.*, 450 S.W.3d 770 (Mo. 2014); *Bank of Ozarks, Inc. v. Walker*, 2016 Ark. 116 (Ark. 2016).

4. Between now and the current due date of the petition, Applicant's counsel, Paul D. Clement, has substantial oral argument and briefing obligations, including oral argument in *Main Community Health Options v. United States*, Nos. 18-1023, 18-1028, and 18-1038 (U.S.); a reply brief in *Little Sisters of the Poor v. Pennsylvania*, No. 19-431 (U.S.); a petition for a writ of certiorari; and a petition for permission to appeal.

5. Applicant's counsel thus requests a modest extension to prepare a petition that fully addresses the important issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including January 29, 2020, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,



---

PAUL D. CLEMENT  
*Counsel of Record*  
KIRKLAND & ELLIS LLP  
1301 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 389-5000  
paul.clement@kirkland.com  
*Counsel for Applicant*

December 5, 2019