

No. 25-1269

IN THE
Supreme Court of the United States

BURFORD GERMAN FUNDING LLC, *et al.*,

Petitioners,

v.

FINANCIALRIGHT CLAIMS GMBH,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL BRIEF OF RESPONDENT

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RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, respondent financialright claims GmbH states the following: financialright claims GmbH is wholly owned by Cars s.r.o., a privately held company organized under the laws of the Czech Republic. No publicly held corporation owns 10% or more of financialright claims GmbH's stock.

SUPPLEMENTAL BRIEF OF RESPONDENT

Respondent financialright claims GmbH (“FRC”) files this Supplemental Brief under Supreme Court Rule 15.8 to call the Court’s attention to an “intervening matter not available” at the time Respondent filed its Brief in Opposition. Sup. Ct. R. 15.8.

On October 2, 2026, FRC and Petitioner Burford German Funding (“Burford”) received a partial final award in the arbitration referenced in FRC’s Brief in Opposition. *See* Brief in Opposition, 8 n.2. In that award, the tribunal mooted Burford’s petition by squarely rejecting the ultimate relief Petitioners seek here should their appeal succeed: arbitration of FRC’s Section 1782 Application. *See* Supp. App. 2-3.¹

In the arbitration, Burford had asked the tribunal to resolve the issue of whether FRC’s filing of its Section 1782 Application had breached the arbitration clause in the litigation funding agreement between FRC and Burford. Burford argued that the Section 1782 Application was subject to the exclusive jurisdiction of the arbitral tribunal, not the District Court (to which Section 1782 itself grants sole authority). The District Court and the Third Circuit, however, declined to compel arbitration. Seeking to delay FRC’s statutory right to discovery (which they have now done for nearly three years through serial motions, appeals and *Coinbase* stays), Petitioners

1. To avoid any dispute with Burford over confidentiality with respect to the arbitration, FRC appends hereto only the relevant section of the Tribunal’s ruling regarding FRC’s federal court actions and the arbitration clause. FRC notes that although the award is dated September 26, 2026, it was not transmitted to the parties until October 2.

brought the issue before this Court. But just last Friday, the arbitral tribunal to whom Petitioners seek the Section 1782 Application to be referred unequivocally rejected arbitral jurisdiction and instead agreed that exclusive jurisdiction over FRC’s Section 1782 Application lies with the District Court because it is a “third-party proceeding arising out of” FRC’s German litigation against Hausfeld, not out of the litigation funding agreement between FRC and Burford.

Because the tribunal has held that the District Court is the appropriate forum for FRC’s Section 1782 Application because it is outside the scope of the arbitration agreement, the Petition for Certiorari is moot—even if Petitioners are correct in their complaints about the Third Circuit’s decision (which they are not), the ultimate outcome of District Court resolution of the application would be unchanged. The Court should thus promptly deny the Petition and allow FRC the opportunity to take the discovery that Petitioners have improperly withheld since 2024.

ARGUMENT

A. The Tribunal’s Award Disclaiming Arbitral Jurisdiction Over FRC’s Section 1782 Application Moots the Petition.

A case becomes moot where “it is impossible for a court to grant any effectual relief whatever” to the prevailing party. *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 377 (2019). Naturally, the parties have a “continuing duty to inform the Court of any development which may conceivably affect the outcome of the litigation.” *Bd. of License Comm’rs of Tiverton v. Pastore*, 469 U.S.

238, 240 (1985) (per curiam). The tribunal’s unequivocal conclusion that the Section 1782 Application falls outside the arbitration agreement here undeniably affects the outcome of this dispute and bars Petitioners’ requested relief.²

After the parties filed their respective Petition, Brief in Opposition and Reply, the LCIA-formed tribunal issued a partial final award finding that FRC’s Section 1782 application “is neither a ‘dispute, controversy or claim’, . . . nor does it ‘aris[e] out of’” the agreement between FRC and Burford. Supp. App. 3. In other words, the plain language of the arbitration agreement does not encompass Section 1782 proceedings. The tribunal further concluded that it “cannot accept” that the parties “agreed to arbitrate their statutory right to have U.S. court assistance in the collection of third-party evidence in the territorial United States in aid of a foreign proceeding.” *Id.*

In so holding, the Tribunal agreed with the core premise that Section 1782 applications are simply not the type of proceeding contemplated by arbitration. Section 1782 applications “present[] no question involving construction of . . . or in respect of the parties’ rights and obligations under” the parties’ agreement. Supp. App. 2 (citing *Collins & Aikman Prods. Co. v. Bldg. Sys., Inc.*, 58 F.3d 16, 23 (2d Cir. 1995)). The Tribunal thus dismissed Burford’s request to declare that FRC breached the

2. Particularly given the expenditure of this Court’s scarce resources in preparing for the upcoming October 16 conference at which the Petition will be considered, counsel for Respondent reached out to Petitioners’ counsel and requested that he immediately withdraw the moot Petition. Petitioners’ counsel declined either to withdraw the Petition or even to notify the Court of this development.

parties' contract by filing the Section 1782 application and declined to order FRC to refrain from pursuing it in federal court. *Id.*³

That is dispositive of the issue before this Court. Petitioners sought certiorari to compel arbitration of FRC's Section 1782 application and argued that it is for the arbitral tribunal to decide whether that application falls within or without the scope of the arbitration agreement. That tribunal has now concluded that the Section 1782 Application falls outside the scope of the arbitration agreement. It is therefore impossible for this Court (or any court) to grant Petitioners the relief they seek—compelling arbitration of a matter that the arbitrators have found not to be arbitrable would accomplish nothing but further delay, and the return of the Application to Delaware court is inevitable.

B. In the Alternative, the Tribunal's Award Further Emphasizes That This Case Is a Poor Vehicle for Review.

Even if the Petition were not moot, the tribunal's award underscores why this case is a uniquely poor vehicle for the Court's review. Should the Court nonetheless reach and decide in the affirmative the broad question presented

3. While Petitioners Burford Capital LLC ("Burford Capital") and German Litigation Solutions ("GLS") are not even parties to the arbitration agreement in the first place, they claim (dubious) rights under the arbitration agreement derivative of Burford's as its shareholders and thus surely have no right to arbitrate in light of the tribunal's ruling (in an arbitration involving all parties to the arbitration agreement) that the 1782 Application is outside the scope of that agreement.

by Petitioners, Petitioners themselves will not be able to obtain the relief they seek. Even if this Court effectively holds that Section 1782 applications in the abstract can be arbitrable under the FAA, FRC's application is not the type of "dispute, controversy or claim arising out of or in connection with" that falls within the scope of the specific agreement between the parties. Supp. App. 3. The Court should at a minimum save its consideration of these issues for a later case and a different agreement, should such a rare case arise.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Dated: October 7, 2026

New York, New York

Respectfully submitted,

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**APPENDIX — EXCERPT OF PARTIAL FINAL
AWARD DATED SEPTEMBER 26, 2026**

LONDON COURT OF
INTERNATIONAL ARBITRATION

LCIA Case No. 246335

BURFORD GERMAN FUNDING LLC (U.S.A.),

Claimant,

vs.

FINANCIALRIGHT CLAIMS GMBH (Germany),

Respondent.

September 26, 2026

PARTIAL FINAL AWARD

The Tribunal

Grant Hanessian (Co-Arbitrator)

Lucy Reed (Co-Arbitrator)

Lady Arden DBE (President of the Tribunal)

Pia Tavidian (Tribunal Secretary)

* * *

[63] **3. The Tribunal’s Analysis**

256. The Tribunal does not consider that FRC’s commencement of the Delaware Actions violated Section 27(a) of the CPA.

257. Turning first to the Section 1782 Application, the Tribunal observes that this is a third-party U.S. statutory discovery proceeding in aid of the Berlin Action, in which FRC seeks to enforce its rights against Hausfeld under German law, with the assistance of the U.S. court. The statute under which FRC brought the action, 28 U.S.C. Section 1782, provides that: “[t]he district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal”²⁵⁷

258. The CPA’s arbitration provision, Section 27(a), requires that “[a]ny dispute, controversy or claim arising out of or in connection with [the CPA] . . . be referred to and finally resolved by arbitration under the [LCIA Rules].”²⁵⁸ Borrowing the language of the Second Circuit Court of Appeals in *Collins & Aikman Products v. Building Systems*, because the 1782 Application “present[s] no question involving construction of . . . or in respect of the parties’ rights and obligations under” the CPA, the Tribunal finds that the 1782 Application is “beyond the scope”

257. 28 USC § 1782(a) (CLA-194).

258. C-1.

Supp. App. 3

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[64] of the CPA's arbitration agreement.²⁵⁹ The Tribunal finds that the Section 1782 Application is neither a "*dispute, controversy or claim*", as those terms are used in the CPA, nor does it "*aris[e] out of*" or is "*in connection with*" the CPA. To the contrary, it is a third-party discovery proceeding arising out of the Berlin Action, in which FRC seeks to enforce its rights under its contract with Hausfeld. The Tribunal cannot accept that the Parties to the CPA agreed to arbitrate their statutory right to have U.S. court assistance in the collection of third-party evidence in the territorial United States in aid of a foreign proceeding.

- 259. FRC therefore has not breached Section 27(a) of the CPA by exercising its rights to apply to the Delaware District Court for discovery under 28 U.S.C. Section 1782 in support of the Berlin Action.
- 260. Nor does the Tribunal find that FRC breached Section 27(a) of the CPA by filing the Declaratory Judgment Action challenging the validity of the CPA on grounds of fraudulent inducement of the arbitration agreement.
- 261. Under New York law, the arbitration clause is severable and survives even if the contract itself was procured by fraud. Fraudulent inducement of the contract does not defeat the court's authority

259. *See Collins & Aikman Prods. Co. v. Bldg. Sys., Inc.*, 58 F.3d 16, 23 (2d Cir. 1995) (**RLA-65**).

Appendix

to decide whether the arbitration agreement was fraudulently induced.²⁶⁰

262. Putting aside the merits of FRC's allegation that BGF fraudulently induced it to enter into the arbitration agreement in Section 27(a) (as distinct from the CPA as a whole), the Tribunal acknowledges that the Delaware District Court has authority to decide if the arbitration agreement itself was fraudulently induced. FRC's allegations that BGF fraudulently induced the CPA's arbitration agreement provided a basis for FRC to bring an action in U.S. court concerning the scope and validity of the arbitration agreement in the CPA.²⁶¹
263. Accordingly, the Tribunal dismisses BGF's requests that it: (a) declare that FRC breached Section 27(a) of the CPA by filing the Delaware Actions; (b) declare that the Delaware Actions must be arbitrated pursuant to Section 27(a) of the CPA; and (c) order that FRC refrain from commencing, continuing, or pursuing the Delaware Actions.

* * *

260. See PO 2, ¶ 3, stating that under U.S. law, courts may decide a claim that the arbitration agreement was fraudulently induced, *citing Rent-a-Center v. Jackson*, 561 U.S.63, 70 (2010) (CL-16) (*citing Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U. S. 395, 403–404 (1967)).

261. *Id.*