No. 24-

IN THE

Supreme Court of the United States

JAMES W. MILLER,

Petitioner,

v.

MBC DEVELOPMENT, LP, MBC MANAGEMENT, LLC, MBC PROPERTIES, LP, JAMES L. MILLER, AND MILLER PROPERTIES MANAGEMENT, LLC,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In this case, a divided Supreme Court of Pennsylvania held that because the parties' limited partnership agreements contained a Pennsylvania choice-of-law provision, the Federal Arbitration Act did not preempt two Pennsylvania statutes providing for "court review" of special litigation committee determinations, notwithstanding the limited partnership agreements' express specification that "[a]ny dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration."

The question presented is whether the Federal Arbitration Act preempts state statutes providing that a certain type of claim is exclusively subject to judicial review where the parties to the dispute have expressly agreed to arbitrate all such claims between them?

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption found on the cover of this Petition for Writ of Certiorari.

RELATED PROCEEDINGS

MBC Development, LP v. *Miller*, 316 A.3d 51 (Pa. 2024).

MBC Development, LP v. *Miller*, 281 A.3d 332 (Pa. Super. Ct. 2022).

MBC Development, LP v. *Miller*, 2021 WL 12256482 (Pa. Ct. Common Pleas Schuylkill Cty. June 12, 2021).

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PETITION FOR WRIT OF CERTIORARI

James W. Miller respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania, Middle District.

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania is reported at 316 A.3d 51 (Pa. 2024). Pet. App. 1a.

The opinion of the Superior Court of Pennsylvania is reported at 281 A.3d 332 (Pa. Super. Ct. 2022). Pet. App. 57a.

And the opinion of the Pennsylvania Court of Common Pleas for Schuylkill County is reported at 2021 WL 12256482 (Pa. Ct. Common Pleas Schuylkill Cty. June 12, 2021). Pet. App. 76a.

JURISDICTION

The Supreme Court of Pennsylvania issued its decision on May 31, 2024. Pet. App. 1a. This Court has jurisdiction pursuant to 28 U.S.C. §1257(a); S. Ct. R. 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution, Art. VI, Cl. 2, provides in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof

> . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Section 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §2, provides in pertinent part:

> A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, . . . or an agreement in writing to submit to arbitration an existing controversy arising out of such contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Pennsylvania's Uniform Limited Partnership Act of 2016 provides in pertinent part:

> (a) General rule.—Subject to section 8693 (relating to eligible partner plaintiffs and security for costs) and subsection (b), a plaintiff may maintain a derivative action to enforce a right of a limited partnership only if:
>
> . . .
>
> (3) the action is maintained for the limited purpose of seeking **court review under section 8694(f)**.

15 Pa. Cons. Stat. Ann. §8692(a)(3) (emphasis added).

The Uniform Limited Partnership Act further provides:

> (c) Limitations.—A partnership agreement may not do any of the following:
>
> . . .
>
> (18) Vary the provisions of section 8694 (relating to special litigation committee), except that the partnership agreement may provide that the partnership may not have a special litigation committee.

15 Pa. Cons. Stat. Ann. §8615(c)(18).

Lastly, §8694(f) of the Uniform Limited Partnership Act provides:

> (f) Court review and action.—If a special litigation committee is appointed and an action is commenced before a determination is made under subsection (e):
>
> > (1) The limited partnership shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee. The partnership shall serve each party with a copy of the determination and report. If the partnership moves to file the report under seal, the report shall be served on the parties subject to

an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The partnership shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall:

(i) dissolve any stay of discovery entered under subsection (b);

> (ii) allow the action to continue under the control of the plaintiff; and
>
> (iii) permit the defendants to file preliminary objections and other appropriate motions and pleadings.

15 Pa. Cons. Stat. Ann. §8694(f).

The official comment to §8694 refers to the definition of "court" in §102 of the Uniform Limited Partnership Act, which defines it as a Pennsylvania court of common pleas. *See* 15 Pa. Cons. Stat. Ann. §102(a).

STATEMENT OF THE CASE

This Petition presents a common and recurring issue of great significance to the enforceability of arbitration agreements that fall within the scope of the Federal Arbitration Act, 9 U.S.C. §1, *et seq.* Congress enacted the FAA nearly 90 years ago, 43 Stat. 883 (1925), to combat deep-seated judicial hostility to arbitration. Anti-arbitration sentiment was not confined to federal courts, but pervaded state courts and state laws as well. So in the FAA, Congress established federal arbitrability rights that inhere in arbitration agreements solely by virtue of their involvement in interstate commerce and made those rights enforceable in every domestic court.

Section 2 of the FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity

for the revocation of any contract." 9 U.S.C. §2. The provision requires courts to rigorously enforce arbitration agreements according to their terms and preempts state laws that would interfere with such enforcement.

Since this Court's decision in *Southland Corp.* v. *Keating*, 465 U.S. 1 (1984), this Court has strongly defended the FAA against various state court efforts to avoid enforcing arbitration agreements through attempted impositions of state law barriers to enforcement. Time and again, this Court's review and intervention have been necessary to safeguard the FAA's federal right of arbitration enforceability against efforts by the States to undermine arbitration agreements, as more and more the anachronistic judicial hostility to arbitration manifests itself in the holdings of state courts.

As explained below, this Petition involves several Pennsylvania statutes that Pennsylvania's highest court has construed to prohibit arbitration of the precise claims that are at issue in this case, which the parties had expressly agreed to arbitrate. And the majority of the Supreme Court of Pennsylvania squarely rejected petitioner's argument that the Federal Arbitration Act precludes that result, over a spirited dissent concluding that FAA preemption should apply. Certiorari is warranted here to reinforce the obligation of state courts to enforce the FAA and faithfully apply the precedents of this Court.

1. Petitioner James W. Miller (JWM or Son) is the minority owner of two Pennsylvania limited partnerships. Pet. App. 2a. His father, James L. Miller (JLM or Father), is the majority owner of those limited partnerships. *Id.*

The contractual agreements creating both limited partnerships contain this identical arbitration provision:

> **Section 11.1 Mandatory Arbitration**
>
> A. Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in accordance with the rules of the American Arbitration Association in effect at the time of submission to arbitration. Each Partner consents for himself or itself, and for his or its respective successors in interest, to the submission of any dispute or controversy hereunder to the arbitration process as aforesaid, where such submission is initiated by any other Partner (or that Partner's successor in interest). The arbitration shall be conducted by a single arbitrator selected by the parties or, if they cannot agree, then the arbitrator or arbitrators shall be selected under the procedures of the American Arbitration Association.
>
> B. All decisions of the arbitrator shall be final, binding and conclusive on all Partners (including any decision with regard to costs as set out below in Section 11.2), and no Partner (and no successor in interest) shall have a right of appeal from any such decision to any Court. However, solely for the purpose of implementing the arbitrator's decision, judgment may be entered on the arbitrator's award in any court having jurisdiction.

Pet. App. 3a-4a.

Another provision found in both limited partnership agreements, titled "Purpose of the Partnership; Title to Property," included as among "[t]he specific characteristics of this Partnership which have motivated the Partners as co-owners to engage in this business include the following: . . . (vi) the ability to conduct business with mandatory arbitration as the mechanism for resolving any business dispute among the co-owners." MBC Properties, LP Partnership Agreement at 2, §1.3(A)(vi); MBC Development, LP Partnership Agreement at 2, §1.3(A)(vi).

Both limited partnership agreements contain the identical choice-of-law provision: "Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Pennsylvania." Pet. App. 4a.

The Supreme Court of Pennsylvania held that the claims at issue in this case would be subject to arbitration pursuant to the above-quoted contractual provisions but for the existence of Pennsylvania statutes requiring that such claims be exclusively subject to court review instead of arbitration. Pet. App. 23a-27a.

2. After a dispute arose between Son and Father over Father's operation of the limited partnerships, Son served written demands on the limited partnerships, pursuant to Section 8692 of the Pennsylvania Uniform Limited Partnership Act, 15 Pa. Cons. Stat. Ann. §8692. Pet. App. 4a. The demands requested that the partnerships bring derivative actions to enforce the partnerships' rights relating to breaches of the partnership agreements, breaches of fiduciary duty, and sought other equitable relief, including an accounting. Pet. App. 4a-5a.

In response to Son's demands, the limited partnerships notified Son that they were appointing a special litigation committee in accordance with §8694 of Pennsylvania's Limited Partnership Act, 15 Pa. Cons. Stat. Ann. §8694, to investigate the claims and determine if it was in the limited partnerships' best interests to pursue an action. Pet. App. 5a-6a. Following its investigation, the special litigation committee issued a final report on February 28, 2020 recommending that the partnerships take certain actions to address Son's issues but ultimately concluding the partnerships should not pursue any action against Father or any other third parties. Pet. App. 6a.

The special litigation committee's report itself included a footnote recognizing that its determinations would be subject to review in an arbitration proceeding:

> The Pennsylvania statutes discuss the review undertaken by a court. As discussed in Section V.D., *infra*, any review conducted in this case will be made by an arbitrator. Even though any review will be conducted by an arbitrator, the SLC uses "court" here because that is the language of the statute and for ease of reference.

Pet. App. 7a.

3. Dissatisfied with the special litigation committee's final report, Son filed a demand for arbitration on May 17, 2021 with the American Arbitration Association (AAA) asserting derivative claims, including a request for the arbitrator to determine whether the special litigation committee complied with the requirements of 15 Pa. Cons.

Stat. Ann. §8694(f). Pet. App. 10a. In response, on June 2, 2021, respondents filed a petition to permanently stay arbitration pursuant to 42 Pa. Cons. Stat. Ann. §7304(b) in the Court of Common Pleas of Schuylkill County, Pennsylvania asserting that any review of the special litigation committee's determination must be litigated in that court. Pet. App. 10a-11a.

On September 28, 2021, the trial court granted respondents' petition to permanently stay the arbitration. Pet. App. 11a, 74a-75a. The trial court reasoned that, under the provisions of Pennsylvania's Uniform Limited Partnership Act, "court review" was "the only mechanism to challenge an SLC's investigations and determinations," and the comment to §8694(f) incorporates the definition of "court" as "the court of common pleas" in 15 Pa. Cons. Stat. Ann. §102. Pet. App. 12a, 87a. Accordingly, the trial court ruled that Son's claims could not be subject to arbitration, even though the Limited Partnership Agreements required arbitration of any disputes arising thereunder. Pet. App. 90a-91a.

4. Son thereafter appealed from the trial court's order permanently staying arbitration to the Superior Court of Pennsylvania. Pet. App. 58a. Son's briefing to the Superior Court expressly relied on the Federal Arbitration Act as a basis for reversing the trial court's order permanently staying arbitration. *See* Pa. Super. Ct. Br. for Appellant, available at 2022 WL 3022148, at *21-*23, *32-*33. Respondents, in their Brief for Appellees, disagreed that the FAA compelled arbitration, but they did not argue that Son had waived his arguments for reversal under the FAA or that the FAA was categorically inapplicable to this dispute. *See* Pa. Super. Ct. Br. for Appellees, available at 2022 WL 3022155, at *20-*22.

The Superior Court overturned the trial court's order to the extent that it had permanently stayed Son's arbitration against respondents, thereby permitting the arbitration to proceed. Pet. App. 71a-72a. Noting that "[b]oth Pennsylvania and federal law impose a strong public policy in favor of enforcing arbitration agreements," the Superior Court remarked that it was undisputed that the arbitration clauses were valid, and that both Son and the respondents are parties to and bound by the arbitration agreements. Pet. App. 63a, 71a.

The Superior Court held that the underlying derivative claims Son sought to arbitrate were within the scope of the arbitration agreements. Pet. App. 71a. As Son's derivative claims asserted breach of the general partner's fiduciary duty to the partnership, the Superior Court concluded they "are plainly disputes 'arising under or in connection with' the Partnership Agreements, as the general partner's duties to the Partnerships arise under and are governed by the Partnership Agreements." Pet. App. 65a. The Superior Court further remarked that the comments to Pennsylvania's Uniform Limited Partnership Act §8615(c)(17), 15 Pa. Cons. Stat. Ann. §8615(c)(17), indicate that derivative claims may be subject to arbitration, which is consistent with the conclusions of courts in other jurisdictions and the special litigation committee. Pet. App. 65a.

Addressing the trial court's conclusion that the Uniform Limited Partnership Act's use of "court review" and "the court" required a court of common pleas to decide whether a derivative action may proceed when a special litigation committee's determination is challenged, the Superior Court concluded that those references did

not mean that the courts of common pleas have exclusive jurisdiction over challenges to a special litigation committee's determination. Pet. App. 70a-71a.

Rather, the Superior Court interpreted those provisions of the Uniform Limited Partnership Act as "simply refer[ring] to 'the court' as the adjudicator of the effect of a special litigation committee determination where the action is brought in a court and refer[ring] to 'court review' without any suggestion of intent to bar other adjudicators from addressing the issue." Pet. App. 70a-71a. In the Superior Court's view, even though 15 Pa. Cons. Stat. Ann. §102 defined "court" as the court of common pleas, the Uniform Limited Partnership Act's use of "court" was not intended to preclude arbitration. Pet. App. 70a-71a. Relying on the comments to the Act, the Superior Court found that Section 102 and the references to "court review" and "the court" in Sections 8692 and 8694 "do not bar arbitrators from deciding issues where the partnership agreement provides for arbitration." Pet. App. 71a. Accordingly, the Superior Court held the trial court erred in granting the petition to stay arbitration. Pet. App. 72a.

5. Respondents thereafter sought discretionary review from the Supreme Court of Pennsylvania, which agreed to hear and decide their appeal on the merits. Pet. App. 16a.

The Court's majority opinion, in which four of the six participating justices joined, begins:

> We granted allowance of appeal to consider whether a limited partner may invoke the

> mandatory arbitration provision in the limited partnership agreements to compel arbitration of his challenges to a special litigation committee's recommendation. Because we conclude the limited partnerships' agreements incorporated the Pennsylvania Uniform Limited Partnership Act of 2016 (PULPA), 15 Pa.C.S. §§8611-8695, which clearly and unambiguously provides for judicial review of a special litigation committee's recommendation, we reverse the Superior Court's decision concluding an arbitrator could conduct the review of the special litigation committee's determination.

Pet. App. 2a.

Before turning to address Son's argument that the Federal Arbitration Act necessitated affirmance of the Superior Court's decision enforcing the agreements' arbitration provisions, the Supreme Court summarized its holding on the Pennsylvania law aspects of this case as follows: "To give effect to the parties' intent to incorporate Pennsylvania law, we conclude that challenges to the SLC's determination must be subject to court review because that is the forum specified in the PULPA, and the PULPA further provides that a limited partnership agreement cannot vary its provisions." Pet. App. 27a.

The Supreme Court of Pennsylvania next addressed "Appellee's suggestion that interpreting the term 'court' in the PULPA to preclude arbitration 'runs afoul of the FAA,'" rejecting Son's argument as "not persuasive given the parties' agreement to be bound by the PULPA." Pet. App. 27a.

After citing to §2 of the FAA and to this Court's rulings in *Southland Corp.* v. *Keating*, 465 U.S. 1 (1984), and *Volt Information Sciences, Inc.* v. *Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989), the Supreme Court of Pennsylvania concluded that "the parties' agreements incorporated the PULPA rules governing the review of an SLC determination, and the trial court's decision to permanently stay the arbitration to enforce those rules as per the parties' agreement does not run afoul of the FAA." Pet. App. 27a-29a.

Addressing the dissenting opinion's conclusion that the FAA mandated enforcing the parties' express arbitration agreement notwithstanding Pennsylvania law requiring "court review" of such claims, the majority opinion explained:

> This case is more analogous to *Volt* because the parties' agreement incorporated Pennsylvania law, which includes PULPA, and we are enforcing the entirety of the parties' agreement. Further, our decision is not at odds with *Southland* because we are not applying state law to deny the enforcement of the parties' arbitration agreement. . . . Like *Volt*, the parties here agreed to abide by Pennsylvania law, which includes the requirement that SLC determinations are subject to court review. Accordingly, as in *Volt*, enforcing the parties' agreement here does not violate the FAA.

Pet. App. 30a-31a (footnote omitted).

6. Justice Wecht dissented, concluding that the FAA and this Court's decisions applying it required enforcement

of the parties' express agreement to arbitrate the dispute at issue, notwithstanding the existence of Pennsylvania statutes that would otherwise mandate "court review" of such claims. Pet. App. 46a-56a.

His dissenting opinion explained:

> Appellant here makes no effort whatsoever to suggest that the agreement at issue does *not* involve commerce, a suggestion that would in any event be difficult to sustain given that the matter involves the business activities of a commercial entity. Appellant also does not suggest that the partnership agreement or the arbitration clause are invalid under any contract theory, such as fraud, duress, or unconscionability. Appellee, by contrast, invokes the FAA and quotes the Supreme Court of the United States' declaration that, "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA."

Pet. App. 46a-47a.

Justice Wecht recognized that "[b]y virtue of the United States Constitution's Supremacy Clause, we are without authority to declare PULPA superior to the FAA, regardless of how plain we find the language of Pennsylvania's statute." Pet. App. 47a (footnote omitted).

As Justice Wecht's dissenting opinion explained:

> *Southland* is particularly noteworthy here. In that case, the Supreme Court of the United States considered a California statute that the state court interpreted as requiring "judicial resolution" of claims brought thereunder, notwithstanding a contrary arbitration agreement. "So interpreted," the *Southland* Court concluded, the statute "directly conflicts with §2 of the Federal Arbitration Act and violates the Supremacy Clause." Before us is a Pennsylvania statute that, as the Majority correctly opines, requires judicial resolution of a claim brought thereunder, notwithstanding an otherwise valid and applicable arbitration clause. The reasoning of *Southland* would seem to apply equally here.

Pet. App. 49a (footnotes omitted).

The dissenting opinion discussed and rejected the majority opinion's reliance on this Court's ruling in *Volt* to deny enforcement of arbitration here:

> The issue in the instant case is not merely a matter of applying different state-law arbitration rules than those set forth in the FAA. The operative language of PULPA does not set forth an alternative arbitration process. As the Majority correctly explains, the plain language of PULPA precludes arbitration entirely in this context. Accordingly, this is not a matter of choosing between different rules

> "governing the conduct of arbitration." This is not a *Volt* case; it is a *Southland* scenario. The Majority suggests that *Volt* controls here "because the parties' agreement incorporated Pennsylvania law, which includes PULPA, and we are enforcing the entirety of the parties' agreement." But the Majority is not enforcing the entirety of the agreement; it is specifically declining to enforce the clause that mandates arbitration of all disputes under the agreement. It does so because PULPA, as the Majority correctly interprets it, requires "a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." The Majority's approach is directly "at odds with *Southland*" because the Majority is "applying state law to deny the enforcement of the parties' arbitration agreement." Under state law, this is a perfectly acceptable result. Under the FAA, it is not.

Pet. App. 55a (footnotes omitted).

As demonstrated above, the Supreme Court of Pennsylvania's decision in this case squarely considered and decided the federal question that this case presents and rejected petitioner's argument that the Federal Arbitration Act preempts Pennsylvania statutory law that denies arbitration of the specific types of claims at issue in this case.

REASONS FOR GRANTING THE PETITION

Certiorari should be granted to review and correct the Supreme Court of Pennsylvania's plainly erroneous refusal to recognize that the Federal Arbitration Act required the arbitration of the claims at issue in accordance with the parties' express agreement notwithstanding Pennsylvania statutes specifying that these particular claims are exclusively subject to court review.

Despite constant reminders from this Court that "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA," *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 341 (2011), the decision below demonstrates that a state court of last resort remains capable of misunderstanding or purposefully evading the holding of this Court in *Southland*, 465 U.S. at 10, that "[i]n enacting §2 of the federal Act, Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for resolution of claims which the contracting parties agreed to resolve by arbitration."

As this Court explained in *Nitro-Lift Technologies, L.L.C.* v. *Howard*, 568 U.S. 17 (2012) (per curiam), "State courts rather than federal courts are most frequently called upon to apply the Federal Arbitration Act, including the Act's national policy favoring arbitration. It is a matter of great importance, therefore, that state supreme courts adhere to a correct interpretation of the legislation." *Id.* at 17-18 (citation omitted).

In both *Marmet Health Care Center, Inc.* v. *Brown*, 565 U.S. 530, 533 (2012) (per curiam), and *Nitro-Lift*, *supra*, this Court held that the FAA preempted state-law rules prohibiting the arbitration of particular types of claims altogether. The Supreme Court of Pennsylvania's decision in this case squarely conflicts with this Court's rulings.

This Court's review is warranted because the approach that the Supreme Court of Pennsylvania took in this case, in utter defiance of this Court's FAA jurisprudence, would wreak havoc were it to be followed by other courts. Furthermore, given the clearly erroneous nature of the Pennsylvania Supreme Court's failure to accord preemptive force to the Federal Arbitration Act in a manner contrary to numerous of this Court's decisions, summary reversal is appropriate here.

I. The Federal Arbitration Act Preempts Pennsylvania's Statutory Prohibition In The Uniform Limited Partnership Act On Arbitrating Claims Challenging The Determination Of A Special Litigation Committee

The majority opinion of the Supreme Court of Pennsylvania considered this to be an easy case. The limited partnership agreements that the parties had entered into were governed by Pennsylvania law. Pet. App. 3a-4a. As definitively construed by Pennsylvania's highest court in this very case, the applicable provisions of Pennsylvania's Uniform Limited Partnership Act precluded the parties from agreeing to resort to arbitration to decide any and all disputes arising between them if the dispute concerned a challenge to the determination of a special litigation committee appointed under that state Act. Pet. App. 27a.

Insofar as the Supreme Court of Pennsylvania was concerned, the parties' choice of Pennsylvania law, without more, represented a conscious decision to except from arbitration the precise type of claims at issue here, which Pennsylvania law decrees cannot be subject to arbitration, despite the parties' having expressly agreed in the limited partnership agreement that any and all such claims would be subject to arbitration. Pet. App. 3a-4a (quoting mandatory arbitration provision contained in the parties' agreements).

To be sure, the parties in their limited partnership agreements could have expressly exempted from the broad, all-encompassing arbitration clause any dispute concerning the determination of a special litigation committee appointed under Pennsylvania law. But the Supreme Court of Pennsylvania's majority opinion forthrightly acknowledged that the limited partnership agreements' broadly-worded arbitration clauses would have covered the parties' dispute but for Pennsylvania statutory law supposedly dictating a contrary result. Pet. App. 26a-27a.

It is difficult to construct an argument more compelling than Justice Wecht's dissenting opinion for why this Court's review is merited here. Pet. App. 46a-56a. In *Southland*, 465 U.S. at 10, this Court recognized that in §2 of the FAA "Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claim which the contracting parties agreed to resolve by arbitration."

In *Marmet Health Care Center, Inc.* v. *Brown*, 565 U.S. 530 (2012), this Court, quoting from its decision in

Concepcion one year earlier, summarized in language dispositive of the outcome here that "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." *Id* at 533 (quoting *Concepcion*, 563 U.S. at 341).

Similarly, in *Mastrobuono* v. *Shearson Helman Hutton, Inc.*, 514 U.S. 52, 56 (1995), this Court recognized that in its earlier decisions in *Southland* and *Perry* v. *Thomas*, 482 U.S. 483 (1987), this Court "held that the FAA pre-empted two California statutes that purported to require judicial resolution of certain disputes."

The rationale that the Supreme Court of Pennsylvania offered for why the Federal Arbitration Act did not require arbitration of petitioner's claims, notwithstanding the all-encompassing nature of the arbitration agreement that the parties had entered into, is directly contrary to this Court's holdings. This Court's decision two years ago in *Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639 (2022), recognized that "the FAA preempts any state rule discriminating on its face against arbitration—for example, a law 'prohibit[ing] outright the arbitration of a particular type of claim." *Id.* at 650 (quoting *Kindred Nursing Centers Ltd. Partnership* v. *Clark*, 581 U.S. 246, 251 (2017) (in turn quoting *Concepcion*, 563 U.S. at 341)).

As this Court explained in *Viking River*, §2 of the FAA "contains two clauses: An enforcement mandate, which renders agreements to arbitrate enforceable as a matter of federal law, and a saving clause, which permits invalidation of arbitration clauses on grounds applicable to 'any contract.'" 596 U.S. at 650. This Court continued:

> These clauses jointly establish an equal-treatment principle: A court may invalidate an arbitration agreement based on generally applicable contract defenses like fraud or unconscionability, but not on legal rules that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.

Id.

In this case, respondents have never argued that the broadly worded arbitration clause in the limited partnership agreements are invalid based on generally applicable contract defenses. Instead, they argued, and the Supreme Court of Pennsylvania proceeded to hold, that provisions of Pennsylvania's Uniform Limited Partnership Act precluded arbitration of the very sort of claims that petitioner sought to pursue in arbitration pursuant to the parties' express dispute resolution agreement. Pet. App. 23a-27a. As a result, Pennsylvania's highest court herein reached the very sort of holding that this Court's cases applying §2 of the FAA expressly prohibit under the Supremacy Clause.

Although this Court's FAA decisions in recent years have often examined more esoteric issues, this case demonstrates a need for this Court's intervention in what might be described as the heartland of FAA preemption in a case involving sophisticated parties on both sides. This case involves the interplay between this Court's decisions in *Southland* from 1984 and *Volt* from 1989, demonstrating that nearly 40 years later it remains possible for a state court of last resort to misunderstand or purposefully evade the clear holdings of those two decisions.

Justice Wecht, in his dissenting opinion, cogently explained why this Court's holding in *Volt* did not apply here:

> The issue in the instant case is not merely a matter of applying different state-law arbitration rules than those set forth in the FAA. The operative language of PULPA does not set forth an alternative arbitration process. As the Majority correctly explains, the plain language of PULPA precludes arbitration entirely in this context. Accordingly, this is not a matter of choosing between different rules "governing the conduct of arbitration." This is not a *Volt* case; it is a *Southland* scenario.

Pet. App. 55a.

As Justice Wecht's dissenting opinion correctly understood, the reason why a California court could refuse to order arbitration in *Volt*, and yet remain in compliance with the FAA, was that the outcome in *Volt* was dictated by a California procedural statute applicable to arbitration more generally. *See Volt*, 489 U.S. at 474-75. This case, by contrast, does not involve a Pennsylvania statute that governs arbitration *generally*. Rather, this case involves a substantive statute applicable to limited partnerships only, and arbitration is prohibited only in the *specific circumstances* presented in this case, where a limited partner seeks to challenge the decision of a special litigation committee.

The approach that the Supreme Court of Pennsylvania took in this case, misconstruing this Court's decision in

Volt to allow *any* state law prohibition on arbitration to take precedence over this Court's holding in *Southland*, if followed by other state courts of last resort, threatens to undermine a substantial body of this Court's precedents recognizing that enforcing a state law precluding arbitration of a specific type of state law claim runs directly afoul of the preemptive force of FAA §2.

Indeed, even the Supreme Court of California, in *Pinnacle Museum Tower Ass'n* v. *Pinnacle Market Development (US), LLC*, 282 P.3d 1217 (Cal. 2012), recognized that it would violate federal law to take the approach that the Supreme Court of Pennsylvania opted for in this case. *Pinnacle* involved a suit brought by a condominium owners' association against the developer of the condominium alleging construction defects. The developer moved to compel arbitration based on an agreement that the parties had previously entered into agreeing to resolve such claims through arbitration.

The Supreme Court of California's opinion explained that California "Code of Civil Procedure section 1298.7 . . . allows a purchaser to pursue a construction and design defect action against a developer in court, even when the parties have signed a real property purchase and sale agreement containing an arbitration clause." Yet, as the Supreme Court of California recognized in *Pinnacle*, "[e]ven assuming this California statute might otherwise extend to a recorded condominium declaration, the FAA would preempt its application here because it discriminates against arbitration." 282 P.3d at 1224.

The Supreme Court of Pennsylvania's decision in this case can also be understood to have held that, because the

parties included a Pennsylvania choice-of-law clause in their limited partnership agreements, they affirmatively agreed not to arbitrate claims of the nature at issue here because such claims are excluded from arbitration under Pennsylvania's Uniform Limited Partnership Act. Pet. App. 26a-27a. But such a holding itself runs headlong into FAA preemption and is directly contrary to this Court's jurisprudence.

In *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47 (2015), this Court held that the choice-of-law clause at issue in that case, making California law applicable to the parties' dispute, could not lawfully be understood to require enforcement of a California statute precluding arbitration under the specific circumstances of that case, given that the California statute in question was itself preempted by federal law under the FAA. *Id.* at 57.

Similarly, here, it is not possible to understand the limited partnership agreements' choice of Pennsylvania law to mean that the parties agreed not to arbitrate claims of the nature at issue here given that, as demonstrated above, the relevant provisions of Pennsylvania's Uniform Limited Partnership Act so understood are preempted by the FAA.

Simply put, the Supreme Court of Pennsylvania in this case misunderstood the interplay between this Court's decisions in *Southland* and in *Volt*, and the Supreme Court of Pennsylvania's attempt to characterize its holding as simply reflecting what the parties must have intended since they chose to have Pennsylvania law apply is directly contrary to this Court's ruling in *DIRECTV*.

Only by granting the petition for writ of certiorari can this Court avoid and prevent continuing state court evasion of the proper preemptive scope of the FAA.

II. As An Alternative To Granting Plenary Review, This Court Should Summarily Reverse The Holding Of The Supreme Court Of Pennsylvania As Contrary To The Federal Arbitration Act's Preemptive Force

The manner in which the Supreme Court of Pennsylvania applied state law to hold that arbitration of the parties' dispute was unavailable because Pennsylvania's Uniform Limited Partnership Act does not permit arbitration of challenges to a special litigation committee's decision was directly contrary to this Court's repeated holdings that "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." *Marmet*, 565 U.S. at 533. Notably, *Marmet* itself represents this Court's per curiam summary reversal of the judgment of the West Virginia Supreme Court of Appeals precluding arbitration in that case.

In every case in which this Court has held that the Supremacy Clause required applying §2 of the Federal Arbitration Act to override conflicting state law, otherwise applicable state law would have precluded arbitration. Thus, contrary to the Supreme Court of Pennsylvania's decision below, the fact that it construed Pennsylvania's Uniform Limited Partnership Act to preclude arbitration of petitioner's claim against respondents is not sufficient to avoid FAA preemption. Rather, on the contrary, under this Court's holdings, the Supreme Court of Pennsylvania's

understanding of what Pennsylvania law requires—no arbitration may occur of only a particular type of state law claim—compels FAA preemption in this case.

Justice Wecht, in his dissenting opinion, correctly understood the import of this Court's holdings on the subject of FAA preemption and accurately recognized that the majority had improperly refused to order the arbitration of petitioner's claims as the FAA compels notwithstanding any specific Pennsylvania statutory provisions to the contrary. Pet. App. 46a-56a.

Given the clearly erroneous nature of the Supreme Court of Pennsylvania's decision in this case, summary reversal of its decision disregarding the preemptive effect of the FAA is warranted.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT, DATED SEPTEMBER 13, 2023

SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 1 MAP 2023

MBC DEVELOPMENT, LP, MBC MANAGEMENT, LLC, MBC PROPERTIES, LP, JAMES L. MILLER, MILLER PROPERTIES MANAGEMENT, LLC, MARTIN CERULLO, WILLIAM KIRWAN

v.

JAMES W. MILLER.

APPEAL OF: MBC DEVELOPMENT, LP, MBC MANAGEMENT, LLC, MBC PROPERTIES, LP, JAMES L. MILLER, AND MILLER PROPERTIES MANAGEMENT, LLC

Appeal from the Order of the Superior Court dated August 12, 2022 at No. 1295 MDA 2021 Vacating in Part/Affirming In Part the Order of the Schuylkill County Court of Common Pleas, Civil Division, dated September 28, 2021 at No. S-797-2021 and Remanding.

September 13, 2023, Argued
May 31, 2024, Decided

OPINION

Appendix A

JUSTICE MUNDY

We granted allowance of appeal to consider whether a limited partner may invoke the mandatory arbitration provision in the limited partnership agreements to compel arbitration of his challenges to a special litigation committee's recommendation. Because we conclude the limited partnerships' agreements incorporated the Pennsylvania Uniform Limited Partnership Act of 2016 (PULPA), 15 Pa.C.S. §§ 8611-8695, which clearly and unambiguously provides for judicial review of a special litigation committee's recommendation, we reverse the Superior Court's decision concluding an arbitrator could conduct the review of the special litigation committee's determination.

I. FACTUAL AND PROCEDURAL HISTORY

James W. Miller (Appellee) and his father James L. Miller (JLM) are two of the limited partners in MBC Properties, LP and MBC Development, LP (LPs), two entities engaged in real estate development, investment, acquisition, and management.[1] The general partners are two limited liability corporations, MBC Management, LLC and Miller Properties Management, LLC (LLCs), of which JLM owns more than 99%. JLM founded the LPs and LLCs and serves as the managing member of the LLCs. As relevant to this appeal, the limited partnership

1. The limited partners in MBC Development, LP are JLM, Appellee, and Rebecca Hoover. The limited partners of MBC Properties, LP are JLM, Appellee, the James L. Miller GST Exempt Trust, and the Michelle L. Miller GST Trust.

agreements contain a mandatory arbitration clause providing, in part, "[a]ny dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in accordance with the rules of the American Arbitration Association." Limited Partnership Agreement of MBC Development, LP, 5/14/02, at 23-24, § 11.1 (R.R. at 109-10a); Limited Partnership Agreement of MBC Properties, LP, 8/1/11, at 26, § 11.1 (R.R. at 140a).[2] The limited partnership agreements also

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2. The full mandatory arbitration provision in the limited partnership agreements is as follows:

> Section 11.1 Mandatory Arbitration
>
> A. Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in accordance with the rules of the American Arbitration Association in effect at the time of submission to arbitration. Each Partner consents for himself or itself, and for his or its respective successors in interest, to the submission of any dispute or controversy hereunder to the arbitration process as aforesaid, where such submission is initiated by any other Partner (or that Partner's successor in interest). The arbitration shall be conducted by a single arbitrator selected by the parties or, if they cannot agree, then the arbitrator or arbitrators shall be selected under the procedures of the American Arbitration Association.
>
> B. All decisions of the arbitrator shall be final, binding and conclusive on all Partners (including any decision with regard to costs as set out below in Section 11.2, and no Partner (and no successor in interest) shall have a right of appeal from any such decision to any Court.

contain a choice-of-law provision stating "[t]his Agreement shall be construed and enforced in accordance with the laws of the State of Pennsylvania." Limited Partnership Agreement of MBC Development, LP, 5/14/02, at 25, § 12.6 (R.R. at 109-10a); Limited Partnership Agreement of MBC Properties, LP, 8/1/11, at 26, § 12.6 (R.R. at 140a).

On July 16, 2019 and August 12, 2019, Appellee in capacity as a limited partner served written demands on the LPs, pursuant to Section 8692 of the PULPA, 15 Pa.C.S. § 8692.[3] The demands requested that the

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> However, solely for the purpose of implementing the arbitrator's decision, judgment may be entered on the arbitrator's award in any court having jurisdiction.

MBC Properties, LP Partnership Agreement at 26, § 11.1; MBC Development, LP Partnership Agreement at 23, § 11.1.

3. Section 8692 of the 2016 PULPA provided, in part:

> **(a) General rule**.-- Subject to subsection (b), a partner may maintain a derivative action to enforce a right of a limited partnership only if:
>
> > (1) the partner first makes a demand on the general partners requesting that they cause the partnership to bring an action to enforce the right, and:
> >
> > > (i) if a special litigation committee is not appointed under section 8694 (relating to special litigation committee), the partnership does not bring the action within a reasonable time; or
> > >
> > > (ii) if a special litigation committee is appointed under section 8694, a determination is made:

partnerships bring actions to enforce the partnerships' rights relating to breaches of the partnership agreements, breaches of fiduciary duty, and sought other equitable relief, including an accounting. Appellee supplemented the initial demand letters in late 2019 and early 2020.

In response to Appellee's demands, on July 18, 2019 and August 13, 2019, the LPs notified Appellee that they were appointing a special litigation committee (SLC) under Section 8694 of PULPA, 15 Pa.C.S. § 8694, to investigate the claims and determine if it was in the

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> (A) under section 8694(e)(1) that the partnership not object to the action; or
>
> (B) under section 8694(e)(5)(i) that the plaintiff continue the action;
>
> (2) demand is excused under subsection (b);
>
> (3) the action is maintained for the limited purpose of seeking court review under section 8694(f); or
>
> (4) the court has allowed the action to continue under the control of the plaintiff under section 8694(f)(3)(ii).

15 Pa.C.S. § 8692(a), Pa. Pub. Act. No. 2016-170 (H.B. No. 1398). In 2022, the General Assembly amended portions of the PULPA, including parts of Sections 8692 and 8694, effective January 3, 2023. *See* Pa. Pub. Act No. 2022-122, § 103 (H.B. No. 2057) (Nov. 3, 2022). Our discussion pertains to the 2016 PULPA, which was in effect at the time of the SLC determination and Appellee's arbitration demand. The parties, however, do not contend that the amendments to the PULPA are substantive.

LPs' best interests to pursue the claims.[4] Accordingly, the LPs appointed Martin J. Cerullo, Esq. and William E. Kirwan, Esq., CPA to serve as the members of the SLC. Following its investigation, the SLC issued a final report on February 28, 2020, recommending that the partnerships take certain actions to address Appellee's issues but ultimately concluding the partnerships should not pursue any action against JLM or any other third parties. Report of the SLC, 2/28/20, at 41 (R.R. 222a) (explaining "[t]he majority of the claims raised by [Appellee] are either barred by the applicable statute of limitations or do not otherwise establish that the

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4. The general rule pertaining to SLCs stated in Section 8694 is:

> If a limited partnership or the general partners receive a demand to bring an action to enforce a right of the partnership, or if a derivative action is commenced before demand has been made on the partnership or the general partners, the general partners may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the limited partnership or recommend to the general partners whether pursuing any of the claims asserted is in the best interests of the partnership. The partnership shall send a notice in record form to the plaintiff promptly after the appointment of the committee under this section notifying the plaintiff that a committee has been appointed and identifying by name the members of the committee.

15 Pa.C.S. § 8694(a), Pa. Pub. Act. No. 2016-170 (H.B. No. 1398) (amended by Pa. Pub. Act No. 2022-122, § 103 (H.B. No. 2057) (Nov. 3, 2022)).

general partner or manager was acting recklessly and/or willfully."). Additionally, as relevant to this appeal, the SLC's report included a footnote stating its position was that an arbitrator would review its determination even though the PULPA expressly provides for court review:

> The Pennsylvania statutes discuss the review undertaken by a court. As discussed in Section V.D., *infra*,[5] any review conducted in this case will be made by an arbitrator. Even though any review will be conducted by an arbitrator, the SLC uses "court" here because that is the language of the statute and for ease of reference.

Report of the SLC, 2/28/20, at 2 n.3 (R.R. at 183a).

As alluded to by the SLC report, Section 8694(c) of the PULPA requires that an SLC "shall be composed of two or more individuals who: (1) are not interested in the claims asserted in the demand or action; (2) are capable as a group of objective judgment in the circumstances; and (3) may, but need not, be general or limited partners." 15 Pa.C.S. § 8694(c). After an SLC issues a determination that it is in the best interests of the limited partnership that "an action not be brought based on any of the claims asserted in the demand," 15 Pa.C.S. § 8694(e)(4), Section 8694(f) provides for limited review of that determination as follows:

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5. The SLC's report does not contain a "Section V.D." and does not discuss this point any further.

(f) **Court review and action.--**If a special litigation committee is appointed and an action is commenced before a determination is made under subsection (e):

> (1) The limited partnership shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee. The partnership shall serve each party with a copy of the determination and report. If the partnership moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.
>
> (2) The partnership shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).
>
> (3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made

> its recommendation in good faith, independently and with reasonable care. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall:
>
> > (i) dissolve any stay of discovery entered under subsection (b);
> >
> > (ii) allow the action to continue under the control of the plaintiff; and
> >
> > (iii) permit the defendants to file preliminary objections and other appropriate motions and pleadings.

15 Pa.C.S. § 8694(f), Pa. Pub. Act. No. 2016-170 (H.B. No. 1398) (amended by Pa. Pub. Act No. 2022-122, § 103 (H.B. No. 2057) (Nov. 3, 2022)).[6] Additionally, Section 8692(a)

6. Section 8694(f) was amended to add the following italicized language to Section 8694(f): "If a special litigation committee is appointed and a derivative action is commenced before *or after either the committee makes* a determination under subsection (e) *or the general partners determine under that subsection to accept*

states that a plaintiff "may maintain a derivative action to enforce a right of a limited partnership only if," *inter alia*, "the action is maintained for the limited purpose of seeking court review under section 8694(f)[.]" 15 Pa.C.S. § 8692(a)(3). Moreover, Section 8615(c)(18) provides that a partnership agreement may not "[v]ary the provisions of section 8694 (relating to special litigation committee), except that the partnership agreement may provide that the partnership may not have a special litigation committee." 15 Pa.C.S. § 8615(c)(18).[7]

In this case, after the SLC issued its report, Appellee filed a demand for arbitration on May 17, 2021 with the American Arbitration Association (AAA) asserting derivative claims, including a request for the arbitrator to determine whether the SLC complied with Section 8694(f). Demand for Arbitration at 10-11 (R.R. at 46a-47a). In response, on June 2, 2021, the LPs, LLCs, JLM, Cerullo, and Kirwan filed a petition to permanently stay arbitration pursuant to 42 Pa.C.S. § 7304 in the Court of Common Pleas of Schuylkill County. The petition to stay asserted that the AAA lacked subject matter jurisdiction over Appellee's claims because those claims arose by statute,

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the recommendation of the committee . . ." 15 Pa.C.S. § 8694(f) (italics added to indicate amendment); Pa. Pub. Act No. 2022-122, § 103 (H.B. No. 2057) (Nov. 3, 2022).

7. We note that the relevant provisions and comments of Sections 8615 and 8694 of the PULPA involved in this case are modeled after the Uniform Law Commission's Uniform Limited Partnership Act. *Compare* 15 Pa.C.S. § 8615 *with* Unif. Ltd. P'shp Act § 105; *compare* 15 Pa.C.S. § 8694 *with* Unif. Ltd. P'shp Act § 905.

not under or in connection with the limited partnership agreements. Pet. to Permanently Stay Arbitration, 6/2/21, at 2, ¶ 5 (R.R. at 14a). Further, the petition to stay argued that any review of the SLC determination must be litigated in a court of common pleas. *Id.* at 3, ¶ 7 (R.R. at 15a).

On September 28, 2021, the trial court granted the petition to permanently stay the arbitration, concluding that Appellee's challenge to the SLC report arose statutorily and not under the limited partnership agreements. Trial Ct. Op., 9/28/21, at 12. The trial court began its analysis by noting that under 42 Pa.C.S. § 7304, a trial court may stay an arbitration "on a showing that there is no agreement to arbitrate." *Id.* at 4 (quoting 42 Pa.C.S. § 7304). The trial court explained that when confronted with a petition to stay arbitration, the law circumscribes a court's review to only: (1) whether the parties have a valid arbitration agreement; and (2) whether the dispute is within the scope of the arbitration provision. *Id.* at 5. Additionally, the court noted arbitration agreements must be strictly construed and any doubts or ambiguity as to arbitrability must be resolved in favor of arbitration. *Id.* (citing *Midomo Co., Inc. v. Presbyterian Hous. Dev. Co.*, 739 A.2d 180, 186 (Pa. Super. 1999)).

Applying the two-pronged test, the trial court concluded the first prong was met because "the parties, at the hearing and in the pleadings, have acknowledged the broad scope and validity of the arbitration clauses contained in the [a]greements." *Id.* However, the trial court held the second prong was not met because the

issues in the arbitration demand arose statutorily, not from the partnership agreements. *Id.* at 7. The court found Appellee's issues "arise from the statute because of [Appellee's] own contention that the SLC did not act in accordance with the statute." *Id.* Looking to the arbitration demand, the court explained that it used 15 Pa.C.S. § 8694(f) as the legal standard for reviewing the SLC's actions. *Id.* at 7-8. Even though the arbitration clauses employed the broadest and most encompassing language, the court found Appellee's demand did not contain issues arising under or in connection with the partnership agreements; instead, the demand challenged the SLC, which arose from the statutory procedure invoked by the LPs. *Id.* at 8. Turning to Section 8694(f), the trial court noted "court review" was "the only mechanism to challenge an SLC's investigations and determinations," and the comment to Section 8694(f) incorporates the definition of "court" as "the court of common pleas" in 15 Pa.C.S. § 102. *Id.* at 9. Accordingly, the trial court found that Appellee's claims arose statutorily and could not be subject to arbitration. *Id.* at 12. Appellee appealed to the Superior Court.

In a unanimous published opinion, the Superior Court vacated the trial court's order to the extent it permanently stayed Appellee's arbitration in its entirety.[8] *MBC Dev., LP v. Miller*, 281 A.3d 332, 341 (Pa. Super. 2022). Noting that "[b]oth Pennsylvania and federal law impose a strong

8. The Superior Court affirmed the portion of the trial court's order staying arbitration of the claims against Cerullo and Kirwan because they were not parties to the partnership agreements. Neither party appealed that aspect of the Superior Court's order.

public policy in favor of enforcing arbitration agreements," the Superior Court employed the same two-factor test as the trial court. *Id.* at 337. Like the trial court, the Superior Court remarked that it was undisputed that the arbitration clauses were valid, and the LPs, the LLCs, and JLM are parties to and bound by the arbitration agreements. *Id.*

Next, the Superior Court found the underlying derivative claims Appellee sought to arbitrate were within the scope of the arbitration agreements. *Id.* at 338. As Appellee's derivative claims asserted breach of the general partner's fiduciary duty to the partnership, the Superior Court concluded they "are plainly disputes 'arising under or in connection with' the Partnership Agreements, as the general partner's duties to the Partnerships arise under and are governed by the Partnership Agreements." *Id.* The court further remarked that the comments to PULPA Section 8615(c)(17) indicate that derivative claims may be subject to arbitration, which is consistent with the conclusions of courts in other jurisdictions, the trial court in this case, and the SLC. *Id.*

Regarding the second factor, the Superior Court disagreed with the trial court's conclusion that Appellee's challenge to the SLC's determination did not arise from the partnership agreements. *Id.* at 338-339. Instead of setting forth a distinct statutory cause of action, the Superior Court viewed Sections 8692 and 8694 of PULPA as establishing "prerequisites to and limitations on a partner's assertion of derivative claims on behalf of the limited partnership." *Id.* at 339. The court continued that

"[w]hether a prerequisite or limitation bars a claim that is within the scope of a valid arbitration agreement is a question that must be resolved by the arbitrator, not an additional requirement for arbitration that a court may determine before allowing arbitration to proceed." *Id.*

In support, the Superior Court relied on its decision in *Ross Development Co. v. Advanced Building Development, Inc.*, 803 A.2d 194 (Pa. Super. 2002), which distinguished between "substantive arbitrability" and "procedural questions." Specifically, the *Ross* Court explained that a trial court has jurisdiction to determine "substantive arbitrability," which is limited to the existence and scope of an arbitration agreement; however, the arbitrator must resolve procedural questions such as whether a party properly or timely invoked arbitration. *Id.* Applying *Ross*, the Superior Court opined that an arbitrator must decide the merits of defenses that do not go to the existence or scope of the arbitration agreement, even when a statute provides the defense or limitation on arbitrability. *Id.* at 340 (noting courts have held an arbitrator must resolve statute of limitations defenses).

Addressing the trial court's conclusion that the PULPA's use of "court review" and "the court" requires a court of common pleas to decide whether a derivative action may proceed when an SLC's determination is challenged, the Superior Court concluded that those references did not mean that the courts of common pleas have exclusive jurisdiction over challenges to an SLC determination. *Id.* Instead, the Superior Court interpreted those provisions of the PULPA as "simply

refer[ring] to 'the court' as the adjudicator of the effect of a special litigation committee determination where the action is brought in a court and refer[ring] to 'court review' without any suggestion of intent to bar other adjudicators from addressing the issue." *Id.* In the Superior Court's view, even though 15 Pa.C.S. § 102 defined court as the court of common pleas, the PULPA's use of "court" was not intended to preclude arbitration. *Id.* Relying on the comments to the PULPA, the Superior Court found that Section 102 and the references to "court review" and "the court" in Sections 8692 and 8694 "do not bar arbitrators from deciding issues where the partnership agreement provides for arbitration." *Id.* (noting the comments to Sections 8681(a)(6) and 8615(c)(15) state an arbitrator may dissolve a partnership whose agreement provides for binding arbitration). Accordingly, the Superior Court held the trial court erred in granting the petition to stay arbitration.

> Because there was a valid arbitration agreement binding on [the parties], [Appellee's] derivative claims were within the scope of that arbitration agreement, and the determination required by Section 8694 of the [PULPA] is a prerequisite and defense to those claims, rather than a cause of action, the determination of whether Section 8694 permits [Appellee] to litigate his derivative claims is a matter for the arbitrator to determine, not a ground for denying or staying arbitration.

Id. at 340-41.

II. ISSUE AND STANDARD OF REVIEW

This Court granted review and rephrased the issue as follows:

> Whether a limited partner can force arbitration of his challenges to a special litigation committee—despite the Limited Partnership Act's mandate that a partnership agreement "may not . . . vary" the Act's requirement that those challenges be subjected only to a "court review"?

MBC Dev., LP v. Miller, 290 A.3d 643 (Pa. 2023) (per curiam).

This issue presents a legal question of statutory interpretation over which our standard of review is de novo and our scope of review is plenary. *Kornfeind v. New Werner Holding Co., Inc.*, 280 A.3d 918, 925 (Pa. 2022). In construing a statute, a court must give effect to the legislature's intent and to all the statute's provisions. 1 Pa.C.S. § 1921(a). The statute's plain language is the best indication of the legislature's intent. *Kornfeind*, 280 A.3d at 925. To determine a statute's plain meaning, a court must analyze the operative statutory language in context and give words and phrases their common and approved usage. *Id.* When the statutory language is clear and unambiguous, we must give effect to it and cannot disregard it to implement its objectives. *Id.* However, "[a] statute is ambiguous when there are at least two reasonable interpretations of the text." *A.S. v. Pa. State Police*, 636 Pa. 403, 143 A.3d 896, 905-06 (Pa. 2016). "Only

if the statute is ambiguous, and not explicit, do we resort to other means of discerning legislative intent." *Matter of Private Sale of Prop. by Millcreek Twp. Sch. Dist.*, 646 Pa. 339, 185 A.3d 282, 291 (Pa. 2018). When a statute is ambiguous, courts apply the factors in the Statutory Construction Act to discern the legislature's intent. 1 Pa.C.S. § 1921(c).

III. REVIEW OF A SPECIAL LITIGATION COMMITTEE'S DETERMINATION PURSUANT TO THE PARTIES' AGREEMENT

A. PARTIES' ARGUMENTS

JLM, the LPs, and the LLCs (collectively Appellants) argue the application of the unambiguous statutory language resolves this case. Appellants' Brief at 14. Appellants maintain that challenges to an SLC determination cannot be submitted to arbitration under the PULPA because: (1) the Act specifies that SLC decisions are subject to only "court review;" (2) the Act defines "court" as solely the courts of common pleas; and (3) the Act states that a partnership agreement "may not . . . vary" the Act's court review procedure. Appellants fault the Superior Court for ignoring the Act's plain language.

Reading the PULPA, Appellants note that a derivative action must begin with a partner's formal demand. Appellants' Brief at 15 (citing 15 Pa.C.S. § 8692(a)(1)). One way the statute permits a partnership to respond to a formal demand is by forming an SLC comprised of at least two people to conduct an objective investigation to determine the best interests of the partnership.

Id. (citing 15 Pa.C.S. § 8694). If the SLC recommends against suing, Appellants insist the only recourse for a demanding partner is to bring an action "for the limited purpose of seeking court review under section 8694(f)." *Id.* at 16 (quoting 15 Pa.C.S. § 8692(a)(3)). Appellants emphasize that "court review" is statutorily defined, with "court" meaning "the court of common pleas" (15 Pa.C.S. § 102) and "review" is statutorily limited to a court determination of (1) whether the SLC members were disinterested and objective; and (2) whether the SLC made its recommendation in good faith, independently, and with reasonable care. *Id.* at 16 (citing 15 Pa.C.S. § 8694(f)(3)). In Appellant's view, if the court's review determines the SLC met those two requirements, it must enforce the SLC's determination, which ends the matter. *Id.* at 17. Appellants emphasize that the PULPA mandates the foregoing process. Moreover, the Act states that a partnership agreement "may not . . . vary the provisions of section 8694 (relating to special litigation committee), except that the partnership agreement may provide that the partnership may not have a [SLC]." *Id.* (quoting 15 Pa.C.S. § 8615(c)(18)). Based on the foregoing, Appellants' position is that the PULPA unambiguously provides that "a partnership cannot make any change to the directive that an SLC review can occur only in the local court of common pleas" unless the partnership agreement opts out of the SLC process entirely. *Id.* at 19.

In support of their position that the PULPA imposes mandatory rules on limited partnerships, Appellants note that our Court has recognized that the Act contains mandatory duties in *Hanaway v. Parkesburg Group, LP*, 641 Pa. 367, 168 A.3d 146 (Pa. 2017). *Id.* at 20. Appellants

argue that the *Hanaway* Court recognized that PULPA shifted away from the freedom to contract in partnerships and established mandatory duties and restrictions on contractual freedom. *Id.* (citing *Hanaway*, 168 A.3d at 154-56 & n.15, 157-58 & n.20). Additionally, Appellants observe the Superior Court had previously recognized PULPA contained provisions that a partnership agreement could not vary in *Ratner v. Iron Stone Real Estate Fund I, LP*, 212 A.3d 70 (Pa. Super. 2019). *Id.* Appellants explain that the *Ratner* Court interpreted Section 8615(c)(16), which states that a partnership agreement may not vary the Act's wind-up provisions, and concluded a partnership agreement providing that the agreement would remain in effect after the partnership ended was unenforceable because it contravened Section 8615(c)(16). *Id.* at 21. In Appellants' view, *Hanaway* and *Ratner* show that the "may not . . . vary" language in Section 8615's subsections are "inflexible commands, no matter what a partnership agreement might say." *Id.* at 22. Accordingly, Appellants urge us to hold that Section 8615(c)(18) is a similarly "strict directive that a partnership agreement may not change." *Id.*

In response, Appellee characterizes his arbitration demand as "a derivative action that includes review of the SLC's determinations." Appellee's Brief at 15. As the partnership agreements broadly require arbitration of all disputes, Appellee argues that review of the SLC's determinations are part of the derivative action which must be resolved by an arbitrator. *Id.* Appellee acknowledges that a partnership agreement cannot alter some provisions of the PULPA, but he maintains that Section 8615(c)(18) does not create a carveout requiring "court review" when an SLC is involved. *Id.* at 17-19.

Appellee asserts that Sections 8615(c)(17) and (18), when read together in context, are ambiguous because they support "two interpretations of how partnerships may handle derivative actions." *Id.* at 20. Appellee highlights the comment to Section 8615(c)(17), which states that a partnership agreement cannot unreasonably restrict derivative actions, provides that "the partnership agreement might select a forum or provide for arbitration of both direct and derivative claims." *Id.* at 21-22 (quoting Pa.C.S. § 8615 cmt. 5, subsection (c)(17)). Additionally, Appellee observes that the comment to Section 8615(c)(15), relating to the prohibition against varying the grounds for judicial dissolution, states that the partnership agreement may nonetheless select the forum for dissolution and acknowledges "arbitration and forum selection clauses are commonplace in business relationships in general and in partnership agreements in particular." *Id.* at 22 (quoting 15 Pa.C.S. § 8615 cmt. 5, subsection (c)(15)). These comments to Section 8615, in Appellee's view, evince legislative recognition that a partnership could choose arbitration as the forum for derivative claims. *Id.* Moreover, Appellee points out that Section 8681(a)(6) provides that a limited partnership can be dissolved by "the entry by the court of an order dissolving the partnership," which cross-references the definition of "court" in Section 102; however, Section 8681's comments provide that the partnership agreement can change the forum from a court to binding arbitration. *Id.* at 23 (quoting 15 Pa.C.S. § 8681(a)(6)). Appellee contends that this shows the legislature considers arbitration as an appropriate forum even when the statutory language explicitly refers to "the court." *Id.*

Unlike Appellants, Appellee reads Section 8615(c)(18) as stating the partnership agreement cannot "vary the provisions of section 8694" as meaning it cannot alter the substantive rules of Section 8694. *Id.* at 24. Appellee maintains that selecting arbitration as the forum does not change the rules in Section 8694 because an arbitrator can apply those rules just like a court can. *Id.* Further, Appellee posits that Section 8615(c) provides substantive rights that a partnership agreement cannot alter, but it does not address procedural rights. *Id.* at 25. Because the forum in which disputes are resolved is procedural, Appellee argues Section 8615 does not preclude arbitration. *Id.* at 26.

Further, Appellee contends the phrase "court review" in Section 8694(f) is not dispositive because permitting the parties to select arbitration as a forum to resolve their disputes does not vary the substantive portions of Section 8694 as an arbitrator can apply the statute's requirements in the same manner as a court. Appellee points out that the U.S. Supreme Court has recognized that an arbitration agreement is "a specialized kind of forum-selection clause that posits not only the situs of the suit but also the procedure to be used in resolving the dispute" but "does not alter or abridge substantive rights." *Id.* at 27-28 (quoting *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 142 S.Ct. 1906, 1919 (2022)). Additionally, Appellee explains that Pennsylvania courts have followed federal precedent favoring arbitration, such that our state's courts have enforced arbitration agreements regarding statutory claims even when the statute refers to the power of a "court" to award relief. *Id.* at 28-29 (citing, among other cases, *Saltzman v.*

Thomas Jefferson Univ. Hosps., Inc., 166 A.3d 465 (Pa. Super. 2017) and *Provenzano v. Ohio Valley Gen. Hosp.*, 121 A.3d 1085 (Pa. Super. 2015)). Accordingly, Appellee argues that Appellants' strict interpretation of "court" in the PULPA "runs afoul of the [Federal Arbitration Act], the Pennsylvania Uniform Arbitration Act, and the case law interpreting the enforceability of arbitration agreements." *Id.* at 30.

Appellee maintains the Superior Court's analysis was correct because Section 8694 is a prerequisite to a derivative claim, and "[t]he question of whether a prerequisite or limitation bars a claim that falls within the scope of an arbitration agreement is a question for the arbitrator, not a decision for the court prior to allowing an arbitration to proceed." *Id.* at 33 (citing *TTSP Corp. v. Rose Corp.*, 217 A.3d 1269, 1281-82 (Pa. Super. 2019); *Theodore C. Wills Co. v. Sch. Dist.*, 837 A.2d 1186, 1189 (Pa. Super. 2003); *Ross Dev. Co. v. Advanced Bldg. Dev., Inc.*, 803 A.2d 194, 196-199 (Pa. Super. 2002)). Appellee stresses that he is not attempting to alter the substantive process for derivative actions or the limited standard of review for SLC determinations. Instead, he is merely seeking to enforce the contractual arbitration agreement and have an arbitrator apply Section 8694 to review the SLC determination. Accordingly, Appellee asks us to affirm the Superior Court and permit the claims to proceed to arbitration.

In their reply brief, Appellants argue that this case would require the court of common pleas to hear only challenges to the SLC determination which leaves in place

the partnerships' arbitration agreements. Appellants' Reply Brief at 3-4. Further, Appellants disagree that this is a derivative action; instead, it is a challenge to the SLC's recommendations which subjects it to court review per Section 8694. *Id.* at 5-6. In Appellants' construction of Section 8615, subsection (c)(17) permits arbitration of derivative actions but subsection (c)(18) precludes arbitration of challenges to an SLC's recommendations. *Id.* at 6-7. Lastly, Appellants dispute Appellee's procedural/substantive distinction, contending that Section 8615 states a partnership agreement "may not vary" the SLC process, which includes court review of an SLC determination. *Id.* at 7-9. Appellants further note that Section 8615(c) contains both substantive and procedural limitations on partnership agreements, and the statute does not distinguish between substantive and procedural limits. *Id.* at 9-10.

B. ANALYSIS

Judicial review of a petition to stay arbitration, "is limited to the question of whether an agreement to arbitrate was entered into and whether the dispute falls within the scope of the arbitration provision." *Kardon v. Portare*, 353 A.2d 368, 369 (Pa. 1976); *accord* 42 Pa.C.S. § 7304(b). As noted above, the limited partnership agreements contained an arbitration clause and a choice-of-law provision stating that the agreements would be construed and enforced according to Pennsylvania law. By selecting Pennsylvania law, the parties' limited partnership agreements chose to follow the SLC procedure outlined in the PULPA. For the reasons discussed below,

the dispute over an SLC's determination pursuant to the PULPA, is not within the scope of the parties' arbitration agreement.

The clear and unambiguous language of Section 8694(f) of the PULPA mandates court review of an SLC's determination, and a partnership agreement may not vary Section 8694 pursuant to Section 8615(c)(18). As explained above, the PULPA provides that a limited partnership may appoint an SLC to investigate a limited partner's demand to bring an action to enforce a limited partnership's right and determine whether pursuing any of the claims in the demand is in the best interest of the partnership. 15 Pa.C.S. § 8694(a). The PULPA requires that an SLC be composed of at least two individuals who are not interested in the claims and are capable of objective judgment. 15 Pa.C.S. § 8694(c). If the SLC issues a determination, which the general partners accept, that it is not in the best interests of the partnership to bring an action based on the claims in the demand, the demanding partner may seek "court review" in which "the court shall determine whether the members of the [SLC] met the qualifications required under subsection (c)(1) [disinterested] and (2) [objective] and whether the committee conducted its investigation and made its determination or recommendation in good faith, independently and with reasonable care." 15 Pa.C.S. § 8694(f)(3). If "the court" finds the SLC met those criteria, "the court shall enforce the determination of the committee." *Id.*[9] Further, the PULPA specifies that

9. We further note that Section 8694(f) provides for court review in cases where an SLC determines that (1) the partnership bring an action based on the claims in the demand; (2) the parties

"court" is defined in Section 102 as "the court of common pleas of the judicial district embracing the county where the registered office of the corporation or other association is or is to be located[.]" 15 Pa.C.S. § 102; *see also* 15 Pa.C.S. § 8612(b) (providing the definition of court in Section 102 applies to the PULPA). Accordingly, we conclude the clear and unambiguous language of Section 8694 provides for only court review of a demanding partner's challenges to an SLC's determination.

Additionally, Section 8615(c)(18) is clear and unambiguous that "[a] partnership agreement may not . . . [v]ary the provisions of section 8694 (relating to special litigation committee, except that the partnership agreement may provide that the partnership may not have a special litigation committee." 15 Pa.C.S. § 8615(c)(18). Taken together, the plain language of Sections 8694 and 8615(c)(18) authorize only court review of an SLC's determination, a mandate that a partnership agreement may not vary. This is confirmed in Section 8692(a), which repeats that a plaintiff may bring a derivative action "only if" it "is maintained for the limited purpose of seeking court review under section 8694(f)[.]" 15 Pa.C.S. § 8692(a)(3). Section 8615(c)(18) provides that a limited partnership agreement may opt out of the SLC procedure in Section 8694, but the parties' agreements in this case did not

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settle the claims on terms the SLC recommends; (3) an action already commenced continue under the control of the plaintiff, the limited partnership, or the SLC; (4) the parties settle the claims in an action already commenced on terms the SLC recommends; or (5) an action already commenced be dismissed. 15 Pa.C.S. § 8694(f)(3). In some of those other situations, it may be the limited partnership that is seeking court review of an SLC determination.

contain such a provision. *See* 15 Pa.C.S. § 8615(c)(18). By selecting Pennsylvania law to govern the construction and enforceability of the partnership agreements and choosing not to opt out of the SLC process, the parties' agreement elected to follow the SLC process as provided in the PULPA.

Moreover, as we conclude the operative statutory language is clear and unambiguous, we do not consider the comments to the PULPA. "When a statute is unambiguous, the commentary can serve only to confirm the statute's import, rendering resort to the commentary redundant, or to contradict the statute's plain meaning, which is impermissible. Thus, when a court identifies a statute as unambiguous, any reference it makes to the commentary is gratuitous." *In re Trust Under Deed of Kulig*, 175 A.3d 222, 230 (Pa. 2017). To the extent Appellee and the Superior Court invoke the commentary to the PULPA to supplement the plain text or create an ambiguity, their analysis is unavailing as the comments are outside of the clear and unambiguous language of Sections 8615 and 8694.

Appellee's position that the partnership agreement's mandatory arbitration provision requires the challenges to the SLC's determination to proceed to arbitration contravenes the plain language of the PULPA, which the parties selected to govern their agreements, and therefore fails. In interpreting a contract, we must give effect to all its provisions, and we "will not interpret one provision of a contract in a manner which results in another portion being annulled." *Com. Ex. Rel. Kane v. UPMC*, 129 A.3d 441, 464 (Pa. 2015) (quoting *LJL Transp. v. Pilot Air*

Freight, 962 A.2d 639, 648 (Pa. 2009)). Because Appellee's position renders the choice-of-law provision superfluous in that requiring arbitration of challenges to the SLC's determination would negate the parties' agreement to be bound by the PULPA, which provides for court review of the SLC's determination, we reject Appellee's argument. To give effect to the parties' intent to incorporate Pennsylvania law, we conclude that challenges to the SLC's determination must be subject to court review because that is the forum specified in the PULPA, and the PULPA further provides that a limited partnership agreement cannot vary its provisions.

Additionally, Appellee's suggestion that interpreting the term "court" in the PULPA to preclude arbitration "runs afoul of the FAA" is not persuasive given the parties' agreement to be bound by the PULPA.[10] *See* Appellee's Brief at 28-30. Section 2 of the FAA states that an agreement to arbitrate in a contract involving interstate commerce or a maritime transaction "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," 9 U.S.C. § 2, and Section 4 of the FAA allows a party to an arbitration agreement to "petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4. The United States Supreme Court has explained that the FAA "was designed

10. Appellee's cursory treatment of the FAA does not identify which section of the FAA is purportedly violated nor does it argue that the FAA preempts any provision of the PULPA. *See* Appellee's Brief at 28-30 (mentioning the FAA).

to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate, and place such agreements upon the same footing as other contracts[.]" *Volt Info. Scis. Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 474 (1989) (internal quotation marks and citations omitted). Further, "[Section] 4 of the FAA does not confer a right to compel arbitration of any dispute at any time; it confers only the right to obtain an order directing that 'arbitration proceed *in the manner provided for in [the parties'] agreement*.'" *Id.* at 474-75 (quoting 9 U.S.C. § 4) (emphasis in original).

In *Volt*, the Supreme Court affirmed a California state appellate court's decision that a choice-of-law provision in the parties' contract, stating the contract was governed by "the law of the place where the project is located," meant they intended to incorporate the state rules of arbitration, including a provision staying arbitration pending the resolution of litigation between a party to the arbitration agreement and third parties, to apply to their arbitration agreement. *Id.* at 472, 476. In rejecting the argument that the state court violated the federal policy favoring arbitration, the Court explained "[t]here is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate." *Id.* Further, the Court acknowledged that the FAA preempts state laws that "require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Id.* at 478 (quoting *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984)). However, the Court continued:

> [I]t does not follow that the FAA prevents the enforcement of agreements to arbitrate under different rules than those set forth in the Act itself. Indeed, such a result would be quite inimical to the FAA's primary purpose of ensuring that private agreements to arbitrate are enforced according to their terms. Arbitration under the Act is a matter of consent, not coercion, and parties are generally free to structure their arbitration agreements as they see fit. Just as they may limit by contract the issues which they will arbitrate, so too may they specify by contract the rules under which that arbitration will be conducted. Where, as here, the parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA, even if the result is that arbitration is stayed where the Act would otherwise permit it to go forward. By permitting the courts to rigorously enforce such agreements according to their terms, we give effect to the contractual rights and expectations of the parties, without doing violence to the policies behind by the FAA.

Id. at 479 (internal quotation marks and citations omitted). Similarly, in this case, the parties' agreements incorporated the PULPA rules governing the review of an SLC determination, and the trial court's decision to permanently stay the arbitration to enforce those rules as per the parties' agreement does not run afoul of the FAA.

In a dissenting posture, Justice Wecht opines that the FAA mandates the opposite outcome. Dissenting Op. at 8. He reads *Volt* as limited to situations where the parties' agreement selects alternative arbitration rules, which he insists is not this case because the rules to which the parties agreed, *i.e.*, the PULPA, preclude arbitration of the SLC determination in this case. *Id.* at 7-8. Based on this, he contends "[t]his is not a *Volt* case; it is a *Southland* scenario." *Id.* at 8. However, this is a false dichotomy. *Volt* and *Southland* are complementary decisions. *Southland* held that the FAA preempts state laws that "require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Southland*, 465 U.S. at 10. *Volt* explained that *Southland*'s holding does not stand for the proposition "that the FAA prevents the enforcement of agreements to arbitrate under different rules than those set forth in the Act itself." *Volt*, 489 U.S. at 479. The key difference between *Southland* and *Volt* is that *Southland* involved a state applying state law to deny the enforcement of the parties' arbitration agreement whereas *Volt* involved a state enforcing the parties' arbitration agreement including its choice-of-law provision incorporating state rules of arbitration. *Compare Southland*, 465 U.S. at 10, *with Volt*, 489 U.S. at 472.[11] This case is more analogous to *Volt* because the parties' agreement incorporated Pennsylvania law, which includes PULPA, and we are enforcing the entirety of the parties' agreement. Further, our decision is not at

11. As quoted above, the parties' agreement in *Volt* included a general choice-of-law provision selecting "the law of the place where the project is located," and did not specifically select any state rules for arbitration to govern their agreement. *Volt*, 489 U.S. at 472.

odds with *Southland* because we are not applying state law to deny the enforcement of the parties' arbitration agreement. Justice Wecht maintains that *Volt* cannot apply here because this case is "not merely a matter of applying different state-law arbitration rules than those set forth in the FAA." Dissenting Op. at 7. However, the state law in *Volt* mandated a stay of arbitration pending the resolution of related litigation with third parties, which the Supreme Court acknowledged would have the effect of staying arbitration where the FAA would otherwise permit it, and the PULPA similarly requires a stay of arbitration pending the judicial resolution of challenges to the SLC determination. Like *Volt*, the parties here agreed to abide by Pennsylvania law, which includes the requirement that SLC determinations are subject to court review.[12] Accordingly, as in *Volt*, enforcing the parties' agreement here does not violate the FAA.

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12. Justice Donoaue's concurring opinion declares that "there is no reason to look to" the express choice-of-law provision in the parties' agreement. Concurring Op. at 4. However, based on the above discussion of *Volt*, an express contractual provision reflecting the intent of the parties to incorporate Pennsylvania law into their agreement is essential to enforcing the terms of the parties' agreement. Moreover, the concurrence's approach of using state law to imply the terms of a statute into the parties' agreement raises an FAA preemption problem because under such approach there is no indication the parties intended to be bound by the PULPA, particularly when the express language of the mandatory arbitration provision suggests otherwise. The concurrence acknowledges the conflict between its implied term and the mandatory arbitration provision and resolves it by finding that the express arbitration provision cannot negate the implied term. *Id.* at 7-8.

Additionally, the Superior Court's discussion of the distinction between substantive and procedural arbitrability is inapt in this case. *Ross*, upon which the Superior Court relied, is distinguishable from this case. The *Ross* Court concluded that the procedural arbitrability issue of whether the contractor's claims were timely submitted to the architect was a condition precedent to arbitration, which an arbitrator could decide if the court held the dispute was substantively arbitrable. *Ross*, 803 A.2d at 197. However, this case involves a statutory scheme, which the parties contracted to govern their agreements, in which the legislature expressly provided a trial court is the exclusive forum that must resolve the "procedural" issue of whether the SLC complied with Section 8694 and further provided that a partnership agreement cannot vary that requirement. Similarly, even accepting the Superior Court's analysis that review of an SLC's determination is not a distinct cause of action but part of a derivative action, we cannot agree that a partnership agreement can alter Section 8694's unambiguous requirement that a court review the SLC's determination before permitting the case to proceed to arbitration. Section 8694 sets forth prerequisites to a derivative claim, but it also provides the forum in which they must be adjudicated. Both Appellee and the Superior Court read "court" and "court review" out of Section 8694 and ignore the "may not vary" language of Section 8615(c)(18).

IV. CONCLUSION

For these reasons, we conclude that the parties' agreements incorporated the plain language of Section 8694, which mandates court review of a special litigation committee's determination. Accordingly, the order of the Superior Court that vacated the trial court's stay of arbitration is reversed, and the case is remanded for proceedings consistent with this opinion.

Jurisdiction relinquished.

Chief Justice Todd and Justices Dougherty and Brobson join the opinion.

Justice Donohue files a concurring opinion.

Justice Wecht files a dissenting opinion.

Appendix A

CONCURRING OPINION

JUSTICE DONOHUE

In this appeal, we agreed to decide whether, pursuant to the terms of a mandatory arbitration clause in these limited partnership agreements,[1] a limited partner can force arbitration of his challenges to the recommendations of a special litigation committee — despite that the Pennsylvania Uniform Limited Partnership Act ("Limited Partnership Act")[2] mandates that a partnership agreement "may not ... vary" the statutory requirement that those challenges be subject only to a "court review." 15 Pa.C.S. § 8615(c)(18). The Majority resolves the issue based on the interpretation of Sections 8615(c)(18) and 8694 of the Limited Partnership Act which it views as being incorporated into the Agreements through the Agreements' "Applicable Law" provisions. Majority Op. at 3, 18-19 (citing MBC Properties Limited Partnership Agreement, § 12.6 (providing that "This Agreement shall be construed and enforced in accordance with the laws of the State of Pennsylvania[]"); MBC Development Limited Partnership Agreement, § 12.6 (same)). I agree with the Majority that Section 8694[3] mandates that a review of

1. There are two limited partnerships agreements at issue in this appeal: MBC Properties Limited Partnership Agreement and MBC Development Limited Partnership Agreement ("Agreements"). As relevant here, their terms are identical.

2. 15 Pa.C.S. §§ 8611-8695.

3. Section 8694 is entitled "Special litigation committee" and scrupulously details the parameters of such committees, their

a special litigation committee's determination must be done in a court of common pleas and that pursuant to Section 8615(c)(18), a limited partnership agreement cannot vary Section 8694. Further, I agree with the Majority that the arbitration clauses in the Agreements at issue in this appeal do not encompass challenges to the recommendation of a special litigation committee.[4] Majority Op. at 18. However, I do not view the "Applicable Law" provisions as having any substantive bearing on the scope of the arbitration provisions in the Agreements. Instead, my conclusion and reasoning emanate from the unique nature of limited partnerships formed pursuant to the Limited Partnership Act and the choices made by the parties in the formulation of the Agreements.

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composition, the procedures, the permissible determinations, and the method to challenge their recommendations. 15 Pa.C.S. § 8694 (a)-(i). For purposes of this appeal, only its mandate of court review of committee determinations is relevant. 15 Pa.C.S. § 8694(f).

4. Whether a dispute is within the scope of the arbitration agreement is a question of law subject to judicial review. *See Flightways Corp. v. Keystone Helicopter Corp.*, 331 A.2d 184, 186 (Pa. 1975) (citing *Borough of Ambridge Water Authority v. J. Z. Columbia*, 328 A.2d 498 (Pa. 1974)). "[J]udicial inquiry is limited to the questions of whether an agreement to arbitrate was entered into and whether the dispute involved falls within the scope of the arbitration provision." *Id.* Thus, as the trial court explained, judicial review of a petition to stay arbitration requires courts to determine (1) whether a valid arbitration agreement exists and (2) whether the arbitration agreement encompasses the dispute. Trial Court Opinion, 9/28/2021, at 5 (citing *Midomo Co., Inc. v. Presbyterian Housing Dev. Co.*, 739 A.2d 180, 186 (Pa. Super. 1999)).

As contract interpretation presents questions of law, our scope of review is plenary and standard of review is de novo. *Pa. Nat. Mut. Cas. Ins. Co. v. St. John*, 106 A.3d 1, 14 (Pa. 2014). Under Pennsylvania law,[5] when interpreting the terms of a contract, the purpose is to ascertain and give effect to the intention of the parties. *Binswanger of Pa., Inc. v. TSG Real Estate LLC*, 217 A.3d 256, 262 (Pa. 2019) (citing *Murphy v. Duquesne Univ. of the Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001)). "[T]he entire contract should be read as a whole ... to give effect to its true purpose." *Com. Ex. Rel. Kane v. UPMC*, 129 A.3d 441, 463-64 (Pa. 2015) (citing *Pritchard v. Wick*, 178 A.2d 725, 727 (Pa. 1962)). A contract must be interpreted in a manner giving effect to all of its provisions. *Id.* (citing *Murphy*, 777 A.2d at 429).

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5. Although it is not necessary to precisely divine the purpose of the "Applicable Law" provision in the Agreements, it obviously calls for the application of Pennsylvania contract interpretation principles in deciding the scope of the arbitration clauses at issue in this dispute. It is pertinent to note that Section 8615(c)(6) prohibits a partnership agreement from varying the law applicable under Section 8614 (relating to governing law). 15 Pa.C.S. §§ 8614, 8615. Not surprisingly, Section 8614 requires that Pennsylvania law governs, among other things, the internal affairs of the limited partnership. 15 Pa.C.S. § 8614(a)(1). According to the comment to Section 8614, the concept of internal affairs "certainly includes interpretation and enforcement of the partnership agreement[.]" 15 Pa.C.S. § 8614(a)(1) cmt. With or without Section 12.6 of the Agreements, Pennsylvania law would apply since this is a non-variable term. Furthermore, the comment accompanying Section 8614 indicates that it, like its counterpart in the Uniform Limited Partnership Act, is intended as a choice of law provision to control when more than one state's law may come into play in partnership disputes.

We "will not interpret one provision of a contract in a manner which results in another portion being annulled." *Id.* (citing *LJL Transp. v. Pilot Air Freight*, 962 A.2d 639, 648 (Pa. 2009)). Thus, an interpretation of the contract will be rejected if it leaves portions of the contract language meaningless or superfluous.

The Majority's focus on the "Applicable Law" provisions of the contract as the lynchpin in the determination of the parties' intent as to the scope of the arbitration provision is perplexing. The Majority states that this provision signals the parties' intent for the Limited Partnership Act to govern the Agreements and for them to be bound by the Act. Majority Op. at 18-21. It is axiomatic that these partnerships are governed by the statute that allows their formation. These parties expressly announced their intentions to conduct their relationship pursuant to the Limited Partnership Act and to derive the benefits derived from the utilization of that business form. MBC Properties Limited Partnership Agreement, § 1.3 A-F; MBC Development Limited Partnership Agreement, § 1.3 A-F. The prefatory clauses of the Agreements identify the limited partnerships as Pennsylvania Limited Partnerships; designate the date of filing of the Certificate of Limited Partnerships of record with the Department of State of the Commonwealth of Pennsylvania as the effective dates of the Agreements and indicate that "the General Partner and the Limited Partners ... desire to form a [l]imited partnership under the Pennsylvania Revised Uniform Limited Partnership Act, 15 Pa.C.S. § 8501 et seq. upon the terms and conditions set forth [in the body of the Agreements.]"

MBC Properties Limited Partnership Agreement, at 1; MBC Development Limited Partnership Agreement, at 1. Given these express provisions announcing the centrality of the Limited Partnership Act to the Agreements, there is no reason to look to the "Applicable Law" provision to find the parties' intent to be bound by the Act.[6]

The Limited Partnership Act is integral to the interpretation of any agreement governing such partnerships formed in this Commonwealth. A limited partnership is governed by both the terms of the partnership agreement as well as the Limited Partnership Act. *Hanaway v. Parkesburg Grp., LP*, 168 A.3d 146, 157 (Pa. 2017) (distinguishing analysis of limited partnership agreements from that applicable to employment and other contracts on the basis that limited partnership agreements are governed by statute). The terms of a limited partnership agreement are interpreted with

6. The Majority believes that it is essential to glean the parties' intent to be bound by the terms of the Limited Partnership Act from the "Applicable Law" provision in the Agreements because a choice of law provision was the lynchpin for the discerning parties' intent by the state court in *Volt Information Sciences v. Board of Trustees*, 489 U.S. 468 (1989). Majority Op. at 24 n.12. This was apparently the **only** indication of the parties' intent to be bound by California law, including its procedural rules governing arbitration. Here, as shown, the parties repeatedly expressed their intent to operate under the provisions of the Pennsylvania Limited Partnership Act. The Majority's statement that without the "Applicable Law" provision, the parties otherwise did not express their intent to be bound by the Limited Partnership Act is baffling given the repeated invocation of it in the Agreements. *Id.*

reference to the Limited Partnership Act. The "'rights, duties, and liabilities of the partners in a limited partnership formed in [Pennsylvania] are governed, first and foremost, by ... legislative acts.'" *Hanaway*, 168 A.3d at 151-52 (citing *Hanaway v. Parkesburg Group, LP*, 132 A.3d 461, 477 (Pa. Super. 2015) (Donohue, J., dissenting) *aff'd in part, rev'd in part*, 168 A.3d 146 (Pa. 2017)).

Section 8615 of the Limited Partnership Act prescribes the contents of partnership agreements. Section 8615(c) sets forth what a partnership agreement may not do. Relevant to this appeal, Section 8615(c)(18) establishes that a partnership agreement may not "vary the provisions of Section 8694 (relating to special litigation committees), except that **the partnership agreement may provide** that the partnership may not have a special litigation committee." 15 Pa.C.S. § 8615(c)(18) (emphasis added).

When the partnership Agreements in this case were being formulated and finalized, the partners had a choice regarding how to address demands for litigation made by limited partners. They could agree that in the event of a demand by a limited partner, the partnership could utilize a special litigation committee to address the demand and then be bound by the provisions of Section 8694. Alternatively, they could agree that in the event of a demand, the partnership could not utilize a special litigation committee to resolve it, thereby avoiding any application of Section 8694. The parties chose the first alternative, as the limited partnership Agreements do

not contain a provision specifying that "the partnership may not have a special litigation committee" as allowed by Section 8615(c)(18).[7] Because these partnership Agreements do not preclude the use of a special litigation committee, the Agreements contain the statutorily implied term that if a special litigation committee is formed to address the demand,[8] Section 8694 would apply. This was a choice made by the parties in formulating these Agreements.

In addition to the provision binding the partnerships to the dictates of Section 8694 — including resolution of challenges to the recommendations of a special litigation committee in the courts of common pleas — the partnership Agreements include a mandatory arbitration clause.[9] The arbitration clause is broad as it applies to

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7. At a hearing before the trial court, the parties agreed that the Agreements do not preclude the use of a special litigation committee, and no objections were raised regarding the limited partnerships' appointment of a special litigation committee at the time it was formed. Trial Court Opinion, 9/28/2021, at 6.

8. Once a demand is made, the partnership may decide not to use a special litigation committee. *See* 15 Pa.C.S. § 8694(a) (providing that, once a demand is received, "the general partners **may** appoint a special litigation committee to investigate the claims asserted") (emphasis added). Here, the general partners invoked such a committee when faced with the limited partner's demand for litigation.

9. The Agreements contain the following mandatory arbitration clause:

Section 11.1 Mandatory Arbitration

"any dispute or controversy arising under or in connection with this agreement[.]" MBC Properties Limited Partnership Agreement, § 11.1; MBC Development Limited Partnership Agreement, § 11.1. Moreover, it provides for a single arbitrator to resolve any such disputes whose decision is conclusive.

The broad mandatory arbitration provision in the

> A. Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in accordance with the rules of the American Arbitration Association in effect at the time of submission to arbitration. Each Partner consents for himself or itself, and for his or its respective successors in interest, to the submission of any dispute or controversy hereunder to the arbitration process as aforesaid, where such submission is initiated by any other Partner (or that Partner's successor in interest). The arbitration shall be conducted by a single arbitrator selected by the parties or, if they cannot agree, then the arbitrator or arbitrators shall be selected under the procedures of the American Arbitration Association.
>
> B. All decisions of the arbitrator shall be final, binding and conclusive on all Partners (including any decision with regard to costs as set out below in Section 11.2, and no Partner (and no successor in interest) shall have a right of appeal from any such decision to any Court. However, solely for the purpose of implementing the arbitrator's decision, judgment may be entered on the arbitrator's award in any court having jurisdiction.

MBC Properties Limited Partnership Agreement, § 11.1; MBC Development Limited Partnership Agreement, § 11.1.

limited partnership Agreements and the implied provision to be bound by Section 8694 of the Limited Partnership Act, each in isolation, appear to be in conflict relative to resolution of challenges to recommendations of a special litigation committee because a dispute over such recommendations clearly arises under or in connection with the partnership Agreement per the arbitration provisions but requires court review per the agreement to be bound by Section 8694. In interpreting the contract, our dual goal is to give effect to the intention of the parties as evidenced by the terms of the contract as a whole and, in doing so, to give meaning to all of the terms of the contract. An interpretation of a contract that leaves portions of the contract meaningless or superfluous must be rejected. *Com. Ex. Rel. Kane*, 129 A.3d at 463-64 (citing *Pritchard*, 178 A.2d at 727; *Murphy*, 777 A.2d at 429; *LJL Transp.*, 962 A.2d at 648).[10]

Given these interpretive precepts, the arbitration clause cannot encompass the resolution of challenges to the recommendations of the special litigation committee.

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10. The Dissenting Justice is apparently of the view that in interpreting the Limited Partnership Agreements, we should not give effect to terms that are implied by virtue of the Limited Partnership Act. *See* Dissenting Op. at 4-5 n.15. This is flat out in contravention of *Hanaway*. Contrary to the Dissenting Justice's characterization, the parties' rejection of the opt out in Section 8615(c)(18) did not result in "invisible" or "nonexistent contractual language[.]" *Id.* at 5 n.15. It resulted in an implied contractual term requiring submission of a dispute to a Court of Common Pleas in the circumstances presented here. In interpreting the Agreements, this agreed upon term must be given effect.

To read the Agreements in that manner negates the agreement of the parties to be bound by Section 8694 in the event of the circumstances giving rise to the utilization of a special litigation committee. Moreover, once the parties agreed to allow the partnership to utilize a special litigation committee, by statute the provisions of Section 8694 could not be varied. 15 Pa.C.S. § 8615(c)(18). Thus, an arbitrator could not be designated to resolve a special litigation committee dispute. To effectuate the intent of the parties, the two provisions must be reconciled in a way that does not make either provision superfluous: the mandatory arbitration clause excludes special litigation committee challenges because the Agreements provide for a different forum for resolution of such disputes.

Contrary to the argument advanced by Appellee James W. Miller ("Miller"), this appeal does not raise any issue involving the Federal Arbitration Act. *See* Miller's Brief at 27-30 (citing *Marmet HealthCare Ctr., Inc. v. Brown*, 565 U.S. 530 (2012) (providing that, "when state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: the conflicting rule is displaced by the FAA[]") (internal citations omitted)).[11] While the FAA forbids state law from

11. Miller asserts that the Limited Partnership Agreements are subject to the FAA. He offers no language in the Agreements or other advocacy to support the interstate commerce requirement for FAA application. *See Allied-Bruce Terminix Co., Inc. v. Dobson*, 513 U.S. 265, 275 (1995) (reading the FAA's commerce requirement as "insisting that the 'transaction' in fact 'involv[e]' interstate commerce, even if the parties do not contemplate an interstate commerce connection"); *Southland v. Keating*, 465

prohibiting outright the arbitration of a particular type of claim,[12] it has no application to contracts or arbitration clauses that by their own terms limit the scope of the matters subject to arbitration. Here, by the choice of the parties, the arbitration clauses do not encompass the resolution of disputes involving the recommendation of a special litigation committee. This is so because the Agreements recognized another forum for resolution of such disputes — a court of common pleas.[13]

U.S. 1, 14 (1984) (discussing the FAA's "interstate commerce requirement"). My review of the Limited Partnership Agreements indicates that they trigger FAA analysis.

12. The relevant FAA provision is as follows:

> **§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate**
>
> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

9 U.S.C. § 2.

13. The Dissenting Justice is of the view that Section 8694 of the Limited Partnership Act triggers application of the FAA because review of a determination of a special litigation committee must be conducted in the Court of Common Pleas and

For the foregoing reasons, I concur in the result reached by the Majority reversing the order of the Superior Court.

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thus, arbitration of the matter is precluded. Dissenting Op. at 8. The Dissenting Opinion states that this conclusion springs from the Majority's correct conclusion that the Limited Partnership Act "precludes arbitration entirely in this context." *Id.* This position ignores the choice of the partners to avoid arbitration in this context. The partners could have but did not opt out of the application of Section 8694. As a result, the arbitration clauses in the Agreements do not extend to review of SLC determinations. It is the Agreements, not the Limited Partnership Act, that preclude the arbitration of these disputes.

Appendix A

DISSENTING OPINION

JUSTICE WECHT

I agree that the plain language of the Pennsylvania Uniform Limited Partnership Act of 2016[1] requires "court review" of a special litigation committee recommendation, and that a limited partnership agreement may not "[v]ary the provisions" of the section that sets forth the procedures relating to such committees.[2] As the Majority aptly concludes, this suggests that arbitration of the matter is unavailable. Pennsylvania law is clear enough on the question. If that were the end of our inquiry, I would concur fully with the Majority's disposition.

However, as Appellee argues, federal law has something to say on the matter. Section 2 of the Federal Arbitration Act declares that arbitration agreements in contracts "involving commerce" are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract . . . ."[3] Appellant here makes no effort whatsoever to suggest that the agreement at issue does *not* involve commerce, a suggestion that would in any event be difficult to sustain given that the matter involves the business activities of a commercial entity. Appellant also does not suggest that

1. 15 Pa.C.S. §§ 8611-95 ("PULPA").

2. *Id.* §§ 8694(f), 8615(c)(18); *see* Maj. Op. at 18-20.

3. 9 U.S.C. § 2 ("FAA").

the partnership agreement or the arbitration clause are invalid under any contract theory, such as fraud, duress, or unconscionability. Appellee, by contrast, invokes the FAA and quotes the Supreme Court of the United States' declaration that, "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA."[4]

Appellee's position has facial merit. The FAA is not merely a guideline, and its application is not restricted to federal court. We also must observe the FAA's requirements. By virtue of the United States Constitution's Supremacy Clause,[5] we are without authority to declare PULPA superior to the FAA, regardless of how plain we find the language of Pennsylvania's statute.[6] In *Southland Corporation v. Keating*, the Supreme Court of the United States made clear that the FAA is "applicable in state as well as federal courts."[7] As the Court explained there, through the FAA, "Congress declared a national policy favoring arbitration and *withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by*

4. Appellee's Br. at 28 (quoting *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 (2012)).

5. U.S. Const. art. VI, cl. 2.

6. *See Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 499-504 (Pa. 2016) (discussing the evolution of federal law establishing that the FAA displaces contrary state law).

7. *Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984).

arbitration."[8] With that enactment, Congress specifically "intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements."[9] "The FAA's displacement of conflicting state law is 'now well-established.'"[10] As Appellee notes, this proposition is so well-settled that the Supreme Court deems the analysis "straightforward."[11] The FAA's sweep is broad. Indeed, as we have previously noted, commentators have characterized the FAA as a "preemption juggernaut" due to its far-reaching displacement of contrary state law.[12]

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8. *Id.* at 10 (emphasis added).

9. *Id.* at 16.

10. *Preston v. Ferrer*, 552 U.S. 346, 353 (2008) (citing *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 272 (1995); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006); *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 684-85 (1996); *Perry v. Thomas*, 482 U.S. 483, 489 (1987)).

11. *See* Appellee's Br. at 28 (quoting *Marmet Health Care*, 565 U.S. at 533); *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011) (citing *Preston*, 552 U.S. at 353) ("When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.").

12. *Taylor*, 147 A.3d at 502 (quoting Lisa Tripp & Evan R. Hanson, AT&T v. Concepcion*: The Problem of A False Majority*, 23 Kan. J. L. & Pub. Pol'y 1 (Fall 2013)).

Southland is particularly noteworthy here. In that case, the Supreme Court of the United States considered a California statute that the state court interpreted as requiring "judicial resolution" of claims brought thereunder, notwithstanding a contrary arbitration agreement.[13] "So interpreted," the *Southland* Court concluded, the statute "directly conflicts with § 2 of the Federal Arbitration Act and violates the Supremacy Clause."[14] Before us is a Pennsylvania statute that, as the Majority correctly opines, requires judicial resolution of a claim brought thereunder, notwithstanding an otherwise valid and applicable arbitration clause. The reasoning of *Southland* would seem to apply equally here.[15] Absent

13. *Southland*, 465 U.S. at 10. Specifically, the statute at issue, similar to Section 8615(c)(18) of PULPA, forbade "[a]ny condition, stipulation or provision purporting to bind any person acquiring any franchise to *waive compliance with any provision of this law*," which the California Supreme Court interpreted as requiring "judicial resolution" of claims brought under the statute. *Id.* (quoting Cal. Corp. Code § 31512 (West 1977)) (emphasis added). PULPA analogously provides that a limited partnership agreement may not "[v]ary the requirements" of the section that requires "court review" of the matter at issue. 15 Pa.C.S. §§ 8615(c)(18), 8694(f).

14. *Southland*, 465 U.S. at 10.

15. The only appreciable distinction is that Section 8615(c)(18) of PULPA allows a partnership agreement to opt out of the use of a special litigation committee altogether. 15 Pa.C.S. § 8615(c)(18) (stating that a partnership agreement may not "[v]ary the provisions of section 8694 (relating to special litigation committee), *except that the partnership agreement may provide that the partnership may not have a special litigation committee*")

(emphasis added). The parties do not address whether this option has any effect upon the FAA's otherwise vast scope.

The Concurrence takes up the issue and, volunteering an argument on Appellants' behalf, suggests that, by declining to specifically *exempt* themselves from the special litigation committee process, the parties affirmatively *chose* to render arbitration unavailable for this species of claim. Concurring Opinion at 9 n.13 (Donohue, J.). This proposition dovetails with the Concurrence's overarching view that the arbitration clause at issue must be read to incorporate the relevant provisions of PULPA, notwithstanding what the clause says on its face. As it concerns the FAA, this argument—had Appellants bothered to make it—would be more attractive than some of the alternatives, but it is unavailing nonetheless. The argument would be more persuasive if PULPA provided the opposite—a default rule that would allow enforcement of the plain language of the arbitration clause, with an "opt-in" for those who specifically desired court review of this class of dispute. Were that the case, one would be able to point to textual evidence that the parties actually agreed to exclude such claims from the scope of the arbitration clause.

As things stand, there is no indication in the text of the arbitration clause that the parties intended it to exclude any sort of claim. As the Concurrence notes, the clause provides: "*Any dispute or controversy arising under or in connection with this Agreement* shall be settled exclusively by arbitration . . . ." *Id.* at 6 n.9 (quoting MBC Properties Limited Partnership Agreement, § 11.1; MBC Development Limited Partnership Agreement, § 11.1) (emphasis added). The Concurrence accurately characterizes the clause as "broad" and "mandatory." *Id.* at 7. Yet, the Concurrence suggests nonetheless that we must disregard the plain language of the clause and then proceed to read it to say something altogether different. The Concurrence discerns an "implied term" binding the parties to Section 8694 of PULPA, and, because this (apparently invisible) term cannot be made "meaningless or superfluous," the

any other reason to conclude that the FAA is inapplicable to this matter, I must conclude that Appellee's position is meritorious.

Concurrence suggests that we must read the arbitration clause as including an unspoken carveout for challenges to special litigation committee recommendations. *Id.* This approach, the Concurrence suggests, is necessary to "effectuate the intent of the parties"—an intent not reflected in the words that the parties actually used. *Id* at 8. Because it relies upon nonexistent contractual language, this approach is too strained to carry the weight that the Concurrence asks of it.

A more straightforward analysis recognizes that the arbitration clause, in fact, says what it says. It applies to "any dispute or controversy" arising under the partnership agreements. The parties intended it so apply. *See Kripp v. Kripp*, 849 A.2d 1159, 1163 (Pa. 2004) ("When the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the document itself."). Yet, under the plain language of Section 8694(f) of PULPA, this outcome would be precluded. Such a result remains facially problematic under the FAA.

The Concurrence further asserts that I maintain that the Court should "not give effect to terms that are implied by virtue of the Limited Partnership Act." Concurring Opinion at 7 n.10 (Donohue, J.). This assertion is incorrect. It is the circumstances of this case and the involvement of the FAA that compel this result. Here, the parties' agreement contains an arbitration clause that appears not to exclude any type of claim. PULPA would prohibit arbitration of the challenge to the special litigation committee's recommendations. The FAA requires that such state law be displaced. Here, whether we like it or not, PULPA must give way to the FAA.

Appellants dispute none of this, and they make no attempt to demonstrate that Appellee's argument fails on the merits. Appellants' only mention of the FAA comes in their reply brief, in which they argue that Appellee's federal argument is waived, either for lack of preservation or want of development.[16] Issue-preservation concerns are unavailing, given that Appellee's argument for affirmance implicates the right-for-any-reason doctrine.[17,18] Moreover, this Court previously has endorsed the proposition that

16. *See* Appellants' Reply Br. at 5 n.2.

17. *See, e.g., Ario v. Ingram Micro, Inc.*, 965 A.2d 1194, 1200 (Pa. 2009) ("an appellate court may uphold an order of a lower court for any valid reason appearing from the record"); *Bearoff v. Bearoff Bros.*, 327 A.2d 72, 76 (Pa. 1974) (citing *Taylor v. Churchill Valley Country Club*, 228 A.2d 768, 769 (Pa. 1967); *Sherwood v. Elgart*, 117 A.2d 899 (Pa. 1955)) ("We have often stated that where a court makes a correct ruling, order, decision, judgment or decree, but assigns an erroneous reason for its action, an Appellate Court will affirm the action of the court below and assign the proper reason therefor.").

18. Appellants also assert that any argument concerning the FAA was waived below due to Appellee's failure to specifically list the matter in his Pa.R.A.P. 1925(b) statement when appealing to the Superior Court. *See* Appellants' Reply Br. at 5 n.2. Although this is a plausible position, it is noteworthy that Appellee offered the same arguments about the FAA and related case law in his brief to the Superior Court, and Appellants did not complain of waiver at that point. In any event, even assuming that Appellee's argument was not fairly encompassed within his Rule 1925(b) statement and that a finding of waiver is permissible here, this strikes me more as an argument in favor of dismissing this appeal as improvidently granted, than an argument in favor of issuing a decision in conflict with federal law.

"a claim of state law preemption by federal law is of such fundamental importance that it may be considered for the first time on appeal."[19] With regard to the adequacy of Appellee's development of the issue, Appellee certainly could have written more on the matter. But his argument was nonetheless sufficient for me to notice it in his brief, and to warrant my inquiry into the merit of his position.[20] I do not discern a clear basis for deeming Appellee's argument to be waived. In any event, such a fact-specific conclusion would simply mean that this particular case does not warrant this Court's review. Even if the dispositive issue is waived, we cannot issue a decision that is in conflict with federal law. If waiver did apply here, the law would be better served by us issuing no decision at all.

The Majority attempts to avoid this problem by insisting that the FAA does not control this case. To support this position, the Majority invokes the Supreme Court of the United States' decision in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University.*[21] *Volt* affirmed a state court's judgment applying a contract's choice-of-law provision. In that provision, the parties agreed to be bound by state law, which contained rules allowing a stay of arbitration pending the outcome of related litigation with third parties. The application of these state arbitration rules, the *Volt* Court held, did not violate the FAA. But *Volt*

19. *In re Novosielski*, 992 A.2d 89, 98 (Pa. 2010) (citing *Oatts v. Jorgenson*, 821 P.2d 108, 112 (Wyo. 1991)).

20. *See* Appellee's Br. at 28-30.

21. 489 U.S. 468 (1989).

concerned exactly that—state arbitration rules. The Majority suggests that *Volt* is applicable here because the "parties' agreements incorporated the PULPA rules" concerning review of special litigation committee recommendations—rules that *preclude* arbitration.[22]

Volt held that "[i]nterpreting a choice-of-law clause to make applicable state rules governing the conduct of arbitration—*rules which are manifestly designed to encourage resort to the arbitral process*—simply does not offend the rule of liberal construction . . . nor does it offend any other policy embodied in the FAA."[23] The *Volt* Court reiterated *Southland*'s holding that the FAA precludes state laws that "require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."[24] "But it does not follow," the *Volt* Court reasoned, "that the FAA prevents the enforcement of *agreements to arbitrate under different rules* than those set forth in the Act itself."[25] The Court continued: "Where, as here, the parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA . . . ."[26]

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22. Maj. Op. at 22.

23. *Volt*, 489 U.S. at 476.

24. *Id.* at 478 (quoting *Southland*, 465 U.S. at 10).

25. *Id.* at 479 (emphasis added).

26. *Id.*

The issue in the instant case is not merely a matter of applying different state-law arbitration rules than those set forth in the FAA. The operative language of PULPA does not set forth an alternative arbitration process. As the Majority correctly explains, the plain language of PULPA precludes arbitration entirely in this context. Accordingly, this is not a matter of choosing between different rules "governing the conduct of arbitration."[27] This is not a *Volt* case; it is a *Southland* scenario. The Majority suggests that *Volt* controls here "because the parties' agreement incorporated Pennsylvania law, which includes PULPA, and we are enforcing the entirety of the parties' agreement."[28] But the Majority is not enforcing the entirety of the agreement; it is specifically declining to enforce the clause that mandates arbitration of all disputes under the agreement. It does so because PULPA, as the Majority correctly interprets it, requires "a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."[29] The Majority's approach is directly "at odds with *Southland*" because the Majority is "applying state law to deny the enforcement of the parties' arbitration agreement."[30] Under state law, this is a perfectly acceptable result. Under the FAA, it is not.

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27. *Id.* at 476.

28. Maj. Op. at 23.

29. *Southland*, 465 U.S. at 10; *Volt*, 489 U.S. at 478.

30. Maj. Op. at 23.

Because we "may uphold an order of a lower court for any valid reason appearing from the record,"[31] and because Appellee presents a facially meritorious reason for such affirmance, I conclude that we are bound by federal law to affirm the order of the Superior Court.

Accordingly, I respectfully dissent.

31. *Ario*, 965 A.2d at 1200.

APPENDIX B — OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA, FILED AUGUST 12, 2022

SUPERIOR COURT OF PENNSYLVANIA

No. 1295 MDA 2021

MBC DEVELOPMENT, LP, MBC MANAGEMENT, LLC, MBC PROPERTIES, LP, JAMES L. MILLER, MILLER PROPERTIES MANAGEMENT, LLC, MARTIN CERULLO, WILLIAM KIRWAN

v.

JAMES W. MILLER,

Appellant

March 21, 2022, Submitted
August 12, 2022, Filed

Appeal from the Order Entered September 28, 2021. In the Court of Common Pleas of Schuylkill County Civil Division at No(s): S-797-2021

BEFORE: MURRAY, J., McLAUGHLIN, J., and COLINS, J.*

* Retired Senior Judge assigned to the Superior Court.

Appendix B

OPINION BY COLINS, J.:

This is an appeal from an order of the Court of Common Pleas of Schuylkill County (trial court) permanently staying an arbitration initiated by Appellant, James W. Miller, against MBC Development, LP, MBC Properties, LP, MBC Management, LLC, Miller Properties Management, LLC, James L. Miller (JLM), Martin Cerullo, and William Kirwan. For the reasons set forth below, we vacate the trial court's order insofar as it stayed Appellant's arbitration in its entirety, but affirm the stay of the arbitration with respect to appellees Cerullo and Kirwan.

Appellant and JLM, who is Appellant's father, are limited partners in MBC Development, LP and MBC Properties, LP (collectively, the Partnerships). N.T. Oral Argument of Motion to Stay Arbitration (N.T. Oral Argument) at 3. MBC Properties, LP is a Pennsylvania limited partnership founded in the 1970s by JLM and JLM's brother. Trial Court Opinion at 2. MBC Development, LP is a Pennsylvania limited partnership founded in 2002 by JLM and Appellant. ***Id.*** Miller Properties Management, LLC and MBC Management, LLC (collectively, the LLCs) are the respective general partners of MBC Properties, LP and MBC Development, LP. N.T. Oral Argument at 3; 2/28/20 Report of Special Litigation Committee Investigating Potential Claims on Behalf of MBC Properties, LP, MBC Development, LP, MBC Grings Hill, LP, MBC Danville, LP, MBC Carlisle, LP, and MBC Hamburg LLC (SLC Report) at 6-7. JLM owns more than fifty percent of each of the Partnerships and more than 99% of each of the LLCs. ***Id.***

Appendix B

The partnership agreements of the Partnerships (the Partnership Agreements) both contain the following arbitration clause:

Section 11.1 **Mandatory Arbitration**

A. **Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in accordance with the rules of the American Arbitration Association** in effect at the time of submission to arbitration. **Each Partner consents for himself or itself, and for his or its respective successors in interest, to the submission of any dispute or controversy hereunder to the arbitration process as aforesaid, where such submission is initiated by any other Partner** (or that Partner's successor in interest). The arbitration shall be conducted by a single arbitrator selected by the parties or, if they cannot agree, then the arbitrator or arbitrators shall be selected under the procedures of the American Arbitration Association.

B. **All decisions of the arbitrator shall be final, binding and conclusive on all Partners** (including any decision with regard to costs as set out below in Section 11.2, **and no Partner (and no successor in interest) shall have a right of appeal from any such decision to any Court**. However, solely for the purpose

> of implementing the arbitrator's decision, judgment may be entered on the arbitrator's award in any court having jurisdiction.

MBC Properties, LP Partnership Agreement at 26 § 11.1 (emphasis added); MBC Development, LP Partnership Agreement at 23 § 11.1 (emphasis added)

On July 16, 2019 and August 12, 2019, Appellant served written demands on the Partnerships and other entities not involved in this case asking that they bring legal actions against JLM. Trial Court Opinion at 2; 2/28/20 SLC Report at 1. In response to these demands, the Partnerships and other entities invoked the special litigation committee process provided by Section 8694 of the Pennsylvania Uniform Limited Partnership Act of 2016 (the Limited Partnership Act), 15 Pa.C.S. § 8694, and appointed Cerullo and Kirwan as a special litigation committee (the SLC) to investigate and address the claims asserted in Appellant's demands.[1] Trial Court Opinion at 2; 2/28/20 SLC Report at 1. On February 28, 2020 and August 31, 2020, the SLC issued reports addressing Appellant's July and August 2019 demands and subsequent demands submitted by Appellant. Trial Court Opinion at 2-3. In these reports, the SLC directed that the Partnerships take certain actions to address issues raised in Appellant's demands, but concluded that no suit should

1. Although Section 8694 and the other provisions of the Limited Partnership Act did not become law until long after the Partnership Agreements were executed, they apply to all Pennsylvania limited partnerships, including those formed before these statutes were enacted. 15 Pa.C.S. § 8611(c).

be brought against JLM. ***Id.*** at 3; 2/28/20 SLC Report at 41-48. Following the SLC's February 28, 2020 report, the parties entered into an agreement tolling the statute of limitations on the claims in Appellant's demands from February 28, 2020 through April 24, 2021.

On May 17, 2021, Appellant filed a demand for arbitration against the Partnerships, the LLCs, JLM, Cerullo, and Kirwan (collectively, Appellees) asserting derivative claims on behalf of the Partnerships against JLM for breach of the fiduciary duty that the general partner owes to the Partnerships and a direct claim against MBC Development, LP for failure to make a mandatory distribution to him. On June 2, 2021, Appellees filed a petition to permanently stay arbitration. In this petition, Appellees sought to stay the arbitration *in toto* on the ground that Appellant's claims are challenges to the SLC determinations under Section 8694 of the Limited Partnership Act, not claims arising under or in connection with the Partnership Agreements, and on the ground that Section 8694 requires that a court determine whether a special litigation committee's determination bars a derivative action. Appellees also sought, in the alternative, to permanently stay the arbitration as to Cerullo and Kirwan on the ground that they were not parties to any agreement to arbitrate.

Following briefing and oral argument, the trial court on September 28, 2021 issued an order permanently staying the arbitration. The trial court concluded that Appellant's derivative claims were within the scope of the Partnership Agreements' arbitration clauses, but

held that Appellant could not proceed with the arbitration because the issue of whether the SLC's determination barred Appellant from bringing the derivative claims was a statutory claim that was not within the scope of the arbitration clauses and because the Limited Partnership Act requires that a court determine whether a special litigation committee's rejection of derivative claims must be enforced. Trial Court Opinion at 5-12. The trial court also concluded that Cerullo and Kirwan could not be compelled to arbitrate because they were not parties to the Partnership Agreements and never consented to arbitration. ***Id.*** at 12. This timely appeal followed.

Appellant presents the following issues for our review:

A. Did the trial court commit an error of law or abuse its discretion by ordering a permanent stay of the arbitration initiated by Appellant based on its interpretation of the Pennsylvania Limited Partnership Act, 15 Pa. C.S. §8611, *et seq.*, and in particular sections 8615, 8692 and 8694, as requiring "court review" of determinations of a special litigation committee even when the parties have chosen arbitration as the exclusive and mandatory forum for any dispute or controversy arising under or in connections [*sic*] with the Partnership Agreement?

B. Did the trial court commit an error of law in finding that Appellees Martin Cerullo and William Kirwan, as members of the special

> litigation committee appointed as agents acting on behalf of the Partnerships, could not be bound to the arbitration clause in the Partnership Agreements?

Appellant's Brief at 5-6 (suggested answers omitted).

Both Pennsylvania and federal law impose a strong public policy in favor of enforcing arbitration agreements. ***Marmet Health Care Center, Inc. v. Brown***, 565 U.S. 530, 532-33 (2012); ***Moses H. Cone Memorial Hospital v. Mercury Construction Corp.***, 460 U.S. 1, 24 (1983); ***In re Estate of Atkinson***, 231 A.3d 891, 898 (Pa. Super. 2020); ***Saltzman v. Thomas Jefferson University Hospitals, Inc.***, 166 A.3d 465, 471 (Pa. Super. 2017). If a valid agreement to arbitrate exists and the dispute falls within the scope of the arbitration agreement, the dispute must be submitted to arbitration and a lower court's denial of arbitration must be reversed. ***Estate of Atkinson***, 231 A.3d at 898; ***Saltzman***, 166 A.3d at 472; ***Provenzano v. Ohio Valley General Hospital***, 121 A.3d 1085, 1094, 1104 (Pa. Super. 2015); ***see also*** 42 Pa.C.S. §§ 7304(b), 7321.8(b), 7342(a).

We therefore employ a two-part test to determine whether the trial court erred in granting Appellees' petition to stay the arbitration: we determine 1) whether a valid agreement to arbitrate exists and 2) whether the dispute is within the scope of that agreement to arbitrate. ***Pittsburgh Logistics Systems, Inc. v. B. Keppel Trucking, LLC***, 153 A.3d 1091, 1093 (Pa. Super. 2017); ***Ross Development Co. v. Advanced Building Development, Inc.***, 803 A.2d 194, 196-97, 199 (Pa. Super.

2002); ***see also Saltzman***, 166 A.3d at 472. Whether a written contract includes an arbitration agreement and whether the parties' dispute is within the scope of the arbitration agreement are questions of law subject to this Court's plenary review. ***Estate of Atkinson***, 231 A.3d at 898; ***Provenzano***, 121 A.3d at 1095.

Applying these standards, we conclude that Appellant's first issue is meritorious and that the trial court erred in staying the arbitration in its entirety. It is undisputed that both of the Partnership Agreements contain valid arbitration clauses. Trial Court Opinion at 5; MBC Properties, LP Partnership Agreement at 26 § 11.1; MBC Development, LP Partnership Agreement at 23 § 11.1; 2/28/20 SLC Report at 14 (stating that "[t]he parties do not dispute the validity of the relevant agreements containing the arbitration agreements"). The Appellees other than Cerullo and Kirwan are parties to one or both of the Partnership Agreements and the Partnerships, the LLCs and JLM are bound by the arbitration agreements in the partnership agreement or agreements to which they are parties. N.T. Oral Argument at 4; 2/28/20 SLC Report at 14. ***See also*** 15 Pa.C.S. § 8616(a), (b) (a limited partnership and all of its partners are bound by the limited partnership's partnership agreement regardless of whether they signed the partnership agreement).

In addition, it is clear that Appellant's derivative claims are within the scope of those arbitration agreements. The Partnership Agreements' arbitration clauses each provide that "[a]ny dispute or controversy arising under or in connection with this Agreement shall be

settled exclusively by arbitration." MBC Properties, LP Partnership Agreement at 26 § 11.1(A); MBC Development, LP Partnership Agreement at 23 § 11.1(A). The derivative claims that Appellant seeks to arbitrate are claims for breach of the general partner's fiduciary duty to the partnership. Arbitration Demand at 1-3, 5-7, 16-17, 20-21, 25, 28, 31-32, 35-42. Such claims are plainly disputes "arising under or in connection with" the Partnership Agreements, as the general partner's duties to the Partnerships arise under and are governed by the Partnership Agreements. MBC Properties, LP Partnership Agreement at 11-12 §4.4; MBC Development, LP Partnership Agreement at 10-11 §4.4.

The fact that these are derivative claims does not remove them from the scope of the Partnership Agreement's arbitration clauses. The comments to the Limited Partnership Act recognize that derivative actions may be subject to arbitration. 15 Pa.C.S. § 8615, comment to subsection (c)(17) (partnership agreement may require arbitration of derivative claims). Although there is no Pennsylvania precedent on this issue,[2] courts

2. Although ***Gardner v. Vascular Access Centers, LLC***, 2113 EDA 2018, 216 A.3d 410 (Pa. Super. 2019) (unpublished memorandum), relied on by both the trial court and Appellees, involved refusal to compel arbitration of a derivative action, it does not address the arbitrability of derivative actions at all. Rather, the Court in ***Gardner*** held only that the derivative action there was not arbitrable because the claims that it asserted arose under a contract that did not contain an arbitration clause and not under the agreement that had the arbitration clause. Slip op. at 6-8. Moreover, as an unpublished decision of this Court prior to May

in other jurisdictions have held that derivative claims that assert rights within the scope of the parties' arbitration agreement are subject to arbitration. ***See, e.g., Elf Atochem North America, Inc. v. Jaffari***, 727 A.2d 286, 293-96 (Del. 1999); ***M.D. Building Material Co. v. 910 Construction Venture***, 579 N.E.2d 1059, 1063-64 (Ill. App. 1991); ***Maresca v. La Certosa***, 569 N.Y.S.2d 111, 111-12 (N.Y. App. Div. 1991); ***Sasaki v. McKinnon***, 707 N.E.2d 9, 12 (Ohio App. 1997), ***app. dismissed***, 703 N.E.2d 321 (Ohio 1998). Indeed, both the trial court and the SLC concluded that the derivative claims that Appellant asserts in his arbitration demand are within the scope of the arbitration agreements. Trial Court Opinion at 12; 2/28/20 SLC Report at 14.

The trial court, however, held, and Appellees argue, that Appellant's arbitration demand falls outside the scope of the Partnership Agreement arbitration clauses because, in their view, the challenge to the SLC's determination is a distinct statutory cause of action under Section 8694 that does not arise from the Partnership Agreements. This premise is erroneous.

Sections 8692 and 8694 of the Limited Partnership Act do not set forth a cause of action that a partner in a limited

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2, 2019, ***Gardner*** cannot be relied upon, even for its persuasive value. Pa.R.A.P. 126(b); 210 Pa. Code § 65.37(B). For that latter reason, we also do not rely on ***Etzler v. Etzler***, 2288 EDA 2014, 134 A.3d 495 (Pa. Super. 2015) (unpublished memorandum), which did address this issue and held, as we do here, that derivative claims that assert rights governed by an agreement that contains an arbitration clause are subject to arbitration.

partnership may assert; they set forth prerequisites to and limitations on a partner's assertion of derivative claims on behalf of the limited partnership. Section 8692 provides that

> **a partner may maintain a derivative action to enforce a right of a limited partnership only if**:
>
> (1) the partner first makes a demand on the general partners requesting that they cause the partnership to bring an action to enforce the right, and:
>
> (i) if a special litigation committee is not appointed under section 8694 (relating to special litigation committee), the partnership does not bring the action within a reasonable time; or
>
> (ii) if a special litigation committee is appointed under section 8694, a determination is made:
>
> (A) under section 8694(e)(1) that the partnership not object to the action; or
>
> (B) under section 8694(e)(5)(i) that the plaintiff continue the action;
>
> (2) demand is excused under subsection (b);

> (3) the action is maintained for the limited purpose of seeking court review under section 8694(f); or
>
> (4) the court has allowed the action to continue under the control of the plaintiff under section 8694(f)(3)(ii).

15 Pa.C.S. § 8692 (emphasis added). Section 8694 sets forth the procedures governing special litigation committees and the circumstances under which derivative claims may be litigated following a special litigation committee's determination. 15 Pa.C.S. §8694(a)-(f). Nothing in Section 8694 provides a cause of action that a partner may bring. Rather, what it provides is a method by which the limited partnership can make an independent decision whether to pursue litigation against a controlling party. 15 Pa.C.S. §8694(a)-(e). Subsection 8694(f), on which the trial court and Appellees rely, sets forth when that independent decision bars a derivative claim and when the derivative claim may proceed. 15 Pa.C.S. §8694(f).

Whether a prerequisite or limitation bars a claim that is within the scope of a valid arbitration agreement is a question that must be resolved by the arbitrator, not an additional requirement for arbitration that a court may be determine before allowing arbitration to proceed. ***TTSP Corp. v. Rose Corp.***, 217 A.3d 1269, 1281-82 (Pa. Super. 2019); ***Theodore C. Willis Co. v. School District of Boyertown Area***, 837 A.2d 1186, 1189 (Pa. Super. 2003); ***Ross Development Co.***, 803 A.2d at 196-99.

> [T]he determination of whether [a] matter is subject to arbitration is within the jurisdiction of the trial court. However, not all questions are to be resolved by the trial court. In a proceeding to stay or to compel arbitration, the question of whether the parties agreed to arbitrate, commonly referred to as "substantive arbitrability," is generally one for the courts and not for the arbitrators. On the other hand, resolution of procedural questions, including whether the invocation of arbitration was proper or timely is left to the arbitrator. ... [**I]f it appears that a dispute relates to a contract's subject matter and the parties agreed to arbitrate, all issues of interpretation and procedure, including requirements preliminary to the presentation of any claims, are for the arbitrators to resolve**.

Ross Development Co., 803 A.2d at 196, 198 (citations omitted) (emphasis added). The merits of defenses that do not involve the existence or scope of the arbitration agreement must be determined by the arbitrator, not the court. ***Andrew v. CUNA Brokerage Services, Inc.***, 976 A.2d 496, 502 (Pa. Super. 2009); ***Highmark Inc. v. Hospital Service Association of Northeastern Pennsylvania***, 785 A.2d 93, 100-02 (Pa. Super. 2001). The fact that a defense or restriction on the arbitrable claim is statutory, rather than based on the language of the parties' agreement, does not change the fact that it must be determined by the arbitrator and not by the court. ***Andrew***, 976 A.2d at 502 (whether claim is barred by statute of limitations

is for arbitrator to decide); ***Woodward Heating & Air Conditioning Co. v. American Arbitration Association***, 393 A.2d 917, 920 n.4 (Pa. Super. 1978) (same).

The trial court also held and Appellees argue that the references in the Limited Partnership Act to "court review," filing with "the court," and "the court" making a determination concerning the special legal committee and its investigation, 15 Pa.C.S. § 8692(a)(3), (4); 15 Pa.C.S. § 8694(f), require that a court of common pleas, rather than an arbitrator, make the determination that the derivative action may proceed. This reasoning likewise is legally invalid.

Reference to a court as an adjudicator in a statute that applies to the plaintiff's claim does not require that only a court can make such an adjudication or prohibit arbitration of the claim or issue. ***Saltzman***, 166 A.3d at 474 (reference to "court" in Whistleblower Law did not exclude Whistleblower claims from arbitration); ***Provenzano***, 121 A.3d at 1099-1103 (fact that Wage Payment and Collection Law (WPCL) provided that actions "may be maintained in any court of competent jurisdiction" and that "[t]he court" shall award certain relief did not preclude arbitration of WPCL claim that was within scope of arbitration agreement). Here, Sections 8692 and 8694 do not state that courts have exclusive jurisdiction over proceedings concerning the effect of a special litigation committee determination on a derivative claim. Rather, they simply refer to "the court" as the adjudicator of the effect of a special litigation committee determination where the action is brought in a court and refer to "court review"

without any suggestion of intent to bar other adjudicators from addressing the issue.

Moreover, no other provisions of the Limited Partnership Act suggest that its references to a court as an adjudicator are intended to limit jurisdiction to courts or bar arbitrators from deciding such matters. Although the term "court" is defined as "the court of common pleas of the judicial district embracing the county where the registered office of the [entity] is or is to be located," 15 Pa.C.S. § 102, comments to the Limited Partnership Act make clear that this definition and the references that the Limited Partnership Act makes to a "court" do not bar arbitrators from deciding issues where the partnership agreement provides for arbitration. 15 Pa.C.S. § 8681, comment to subsection (a)(6) (although subsection refers to an order of "the court" dissolving the partnership, such dissolution may be by an arbitrator if the partnership agreement provides for binding arbitration); 15 Pa.C.S. § 8615, comment to subsection (c)(15) (same).

Because there was a valid arbitration agreement binding on Appellant, the Partnerships, the LLCs, and JLM, Appellant's derivative claims were within the scope of that arbitration agreement, and the determination required by Section 8694 of the Limitation Partnership Act is a prerequisite and defense to those claims, rather than a cause of action, the determination whether Section 8694 permits Appellant to litigate his derivative claims is matter for the arbitrator to determine, not ground for denying or staying arbitration. ***TTSP Corp.***, 217 A.3d at 1281-82; ***Theodore C. Willis Co.***, 837 A.2d at 1189; ***Ross***

Development Co., 803 A.2d at 196-99; ***Highmark Inc.***, 785 A.2d at 100-02. The trial court therefore erred in granting the petition of the Partnerships, the LLCs, and JLM to stay the arbitration of Appellant's derivative claims.

The trial court, however, did not err in granting a stay of arbitration as to appellees Cerullo and Kirwan. Cerullo and Kirwan were not parties to either of the partnership agreements that provided for arbitration. Generally, only parties to an arbitration agreement can be compelled to arbitrate a dispute. ***Humphrey v. GlaxoSmithKline PLC***, 263 A.3d 8, 14 (Pa. Super. 2021); ***Civan v. Windermere Farms, Inc.***, 180 A.3d 489, 494-95 (Pa. Super. 2018); ***Elwyn v. DeLuca***, 48 A.3d 457, 461 (Pa. Super. 2012). While third-party beneficiaries of a contract that contains an arbitration agreement may be subject to arbitration of their claims under that contract, ***Civan***, 180 A.3d at 494; ***Highmark Inc.***, 785 A.2d at 99, Cerullo and Kirwan are not third-party beneficiaries of the Partnership Agreements and assert no rights under those agreements.

Appellant argues that Cerullo and Kirwan are bound by the Partnership Agreements' arbitration clauses because they were appointed agents of the Partnerships. This argument fails for two reasons. First, mere status as agent of an entity that is bound by an arbitration agreement is insufficient to compel a person to arbitrate over his objection. ***Humphrey***, 263 A.3d at 15-18. Second, Cerullo and Kirwan's acts on behalf of the Partnerships were not under the Partnership Agreements and did not involve any duties or obligations governed by the Partnership

Agreements. Any claim against them therefore is not within the scope of the arbitration agreements because it is not a "dispute or controversy arising under or in connection with [the Partnership Agreements]." MBC Properties, LP Partnership Agreement at 26 § 11.1(A); MBC Development, LP Partnership Agreement at 23 § 11.1(A).

For the foregoing reasons, we conclude that the trial court erred in holding that Appellant's claims against the Partnerships, the LLCs, and JLM are not subject to arbitration, but that it correctly ruled that Cerullo and Kirwan could not be compelled to arbitrate. Accordingly, we vacate its order insofar as it permanently stayed Appellant's arbitration in its entirety and affirm its order only insofar as it stayed arbitration of claims against Cerullo and Kirwan.

Order vacated in part and affirmed in part. Case remanded. Jurisdiction relinquished.

Judgment Entered.

/s/_____
Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/12/2022

APPENDIX C — MEMORANDUM OPINION OF THE COURT OF COMMON PLEAS OF SCHUYLKILL – CIVIL ACTION-LAW, FILED SEPTEMBER 28, 2021

IN THE COURT OF COMMON PLEAS OF
SCHUYLKILL – CIVIL ACTION-LAW.

NO. S-797-2021

MBC DEVELOPMENT, LP, MBC MANAGEMENT, LLC, MBC PROPERTIES, LP, JAMES L. MILLER, MILLER PROPERTIES MANAGEMENT, LLC, MARTIN CERULLO, and WILLIAM KIRWAN,

Petitioners

v.

JAMES W. MILLER,

Respondent

Stacey A. Scrivani, Esquire- for Petitioners
Solomon David, Esquire- Co-Counsel for Petitioners
Dean F. Piermattei, Esquire- for Respondent

ORDER OF COURT

HALE, J.

AND NOW, this 28th day of September, 2021, following consideration of Petitioners,' MBC Development, LP, MBC Properties, LP, MBC Management, LLC, Miller

Appendix C

Properties Management, LLC, James L. Miller, Martin Cerullo and William Kirwan's, Petition to Permanently Stay Arbitration, it is hereby **ORDERED** and **DECREED** that said Petition is **GRANTED;** and **FURTHER,** that the Arbitration initiated by Respondent, James W. Miller, with the American Arbitration Association on or about May 15, 2021, is hereby permanently **STAYED**. Any challenges to the Special Litigation Committee's investigation and determination shall be submitted to the Court of Common Pleas for review.

BY THE COURT:

/s/ Hale, J.

Appendix C

IN THE COURT OF COMMON PLEAS OF
SCHUYLKILL – CIVIL ACTION-LAW.

NO. S-797-2021

MBC DEVELOPMENT, LP, MBC MANAGEMENT, LLC, MBC PROPERTIES, LP, JAMES L. MILLER, MILLER PROPERTIES MANAGEMENT, LLC, MARTIN CERULLO, and WILLIAM KIRWAN,

Petitioners

v.

JAMES W. MILLER,

Respondent

Stacey A. Scrivani, Esquire- for Petitioners
Solomon David, Esquire- Co-Counsel for Petitioners
Dean F. Piermattei, Esquire- for Respondent

MEMORANDUM OPINION

HALE, J.

Before the Court for consideration is the June 2, 2021, Petition to Permanently Stay Arbitration filed pursuant to 42 Pa.C.S.A. §7304 by Petitioners.[1] Petitioners request that

1. Petitioners are MBC Development, LP ("Development"), MBC Properties, LP ("Properties," together with Development,

the arbitration ("Arbitration") initiated by James W. Miller ("Respondent"), on or about May 15, 2021, be permanently stayed. By Order of Court dated June 21, 2021, this Court temporarily stayed the Arbitration pending disposition of the instant Petition. Respondent filed an Answer to the Petition on June 23, 2021. Oral argument was scheduled for June 30, 2021, and ultimately continued to August 9, 2021, upon request by Petitioners. On August 9, 2021, counsel appeared on behalf of their respective parties for oral argument. The parties submitted briefs in advance of oral argument. The matter is now ripe for disposition.

BACKGROUND AND FACTUAL HISTORY

JLM first founded Properties with his brother in the 1970s. Years later he and James W. Miller, ("Respondent"), founded Development, a limited partnership that was started on May 14, 2002. Respondent became a limited partner in Properties and a co-manager of Miller Properties, which is the general partner of Properties. Respondent worked in both Development and Properties.

On July 16, 2019, and August 12, 2019, Respondent served a written demand pursuant to 15 Pa C.S.A. §8692 on all Petitioners, except Petitioners Cerullo and Kirwan. In his written demand, Respondent requested that Development cause the partnerships to bring an action to enforce certain rights of the partnership

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the "Limited Partnerships"), MBC Management, LLC ("MBC"), Miller Properties Management, LLC ("Miller Properties," together with MBC, the "LLC Petitioners"), James L. Miller ("JLM"), Martin Cerullo, and William Kirwan.

relating to breaches of limited partnership agreements and fiduciary duties as well as for willful misconduct. He further requested equitable forms of relief, including an accounting of expenses. In response to the demand, those Petitioners elected to invoke the special litigation process afforded to Pennsylvania Limited Partnerships, under the Pennsylvania Limited Partnership Act at 15 Pa. C.S.A. §8694, to investigate and address Respondent's demands. On October 7, 2019, December 18, 2019, and January 10, 2020, Respondent issued three more demands. We will refer to all demands collectively as "Demands." Petitioners undertook the special litigation committee process ultimately selecting Petitioners Cerullo and Kirwan, both licensed attorneys with Petitioner Kirwan also being a certified public accountant, to form the special litigation committee ("SLC").

The SLC issued its report concerning Respondent's first two sets of Demands on February 28, 2020, and issued its report concerning Respondent's second two sets of Demands on August 31, 2020. The SLC decided not to proceed with any action or allow any derivative actions.

On May 15, 2021, Respondent initiated the Arbitration in this matter with the American Arbitration Association ("AAA") in reliance on the arbitration provisions found in the May 14, 2002, Limited Partnership Agreement of Development as well as the August 1, 2011, Limited Partnership Agreement of Properties (collectively "the Agreements"). The clauses contained in both Agreements, in pertinent part, state: "Any dispute or controversy arising under or in connection with this Agreement shall

be settled exclusively by arbitration . . . " (Agreements § 11.1). Respondent challenges the determination and recommendations of the SLC in his Arbitration Demand. Specifically, Respondent asserts that the SLC "ignored or did not properly investigate" his demands concerning Petitioners' alleged violations and breach of the partnership agreements. (Demand for Arbitration p. 2).

ISSUE

Whether the Court of Common Pleas or an arbitrator has jurisdiction to review the SLC's decision to determine if it was made in accordance with statutory obligations governing SLCs, as raised by Respondent in the Arbitration Demand.

The only matter for the Court to decide at this juncture is the jurisdictional issue. In support of their position, Petitioners argue that the matters Respondent seeks to Arbitrate do not arise under or in connection with any of the Agreements as is required by the arbitration clauses; and, thus, Respondent's attempt to pursue arbitration is improper. Petitioners request that the Arbitration be permanently stayed asserting AAA lacks subject matter jurisdiction to hear, consider and ultimately decide Respondent's claims. Petitioners assert the claims arise by statute because they derive from the SLC recommendations, not under or in connection with the Agreements. Petitioners cite the Pennsylvania Uniform Limited Partnership Act of 2016 (the "Act"), 15 Pa. C.S.A. 8694 in support thereof. Petitioners further argue that the

matter should also be permanently stayed as to Petitioners Cerullo and Kirwan because neither individual is a party to the Agreements. Lastly, Petitioners argue that 15 Pa.C.S.A. §8694(f)(3) requires any claims asserted by Respondent to be litigated in the Court of Common Pleas. Petitioners reserved all arguments concerning the merits of any litigation before the Court.[2]

Respondent argues that the SLC conducted a cursory investigation of his claims, interviewing only JLM, Respondent and the COO/CFO of Partnerships, Mike Major. He further argues that the SLC did not interview any other employees or individuals with knowledge of the claims, nor did the SLC gather adequate documentation to investigate Respondent's claims. Respondent asserts that he is pursing derivative and direct claims on behalf of the partnerships for the reasons set forth in his Arbitration Demand. In the Arbitration Demand itself, Respondent purports that derivative claims were ignored and not decided by the SLC, that the SLC failed to adequately investigate claims, applied an incorrect legal standard, and failed to properly analyze alleged breaches of fiduciary duty.

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2. Petitioners suggest that if this Court determines we have jurisdiction over Respondent's challenges to the SLC that those claims be limited to: 1) A review of the special litigation committee members' qualifications; and, 2) Whether the special litigation committee conducted an investigation and made its recommendations in good faith, independently, and with reasonable care.

Appendix C

LAW AND ANALYSIS

Pursuant to 42 Pa. C.S.A. §7304, a party may submit an application to a court seeking to stay an arbitration that has already commenced and such court is employed to stay the arbitration "on a showing that there is no agreement to arbitrate." Section 7304(b) provides:

> **(b) Stay of arbitration.** -- On application of a party to a court to stay an arbitration proceeding threatened or commenced the court may stay an arbitration on a showing that there is no agreement to arbitrate. When in substantial and bona fide dispute, such an issue shall be forthwith and summarily tried and determined and a stay of the arbitration proceedings shall be ordered if the court finds for the moving party. If the court finds for the opposing party, the court shall order the parties to proceed with arbitration.

In Pennsylvania, when one contracting party seeks to prevent another from proceeding with arbitration, judicial inquiry is limited to determining: (1) whether a valid arbitration agreement exists between the parties; and, if so (2) whether the dispute involved is within the scope of the arbitration provision. *Midomo Co., Inc. v. Presbyterian Housing Development Co.*, 739 A.2d 180, 186 (Pa. Super. 1999). Pennsylvania law advocates strict construction of arbitration agreements and dictates that any doubts or ambiguity as to arbitrability should be resolved in favor of arbitration. *Midomo*, 739 A.2d at 190-191.

Appendix C

This Court clearly has jurisdiction over the Petition to Permanently Stay Arbitration under 42 Pa.C.S. §7304. The first prong of our judicial inquiry is met, as we note that the parties, at the hearing and in the pleadings, have acknowledged the broad scope and validity of the arbitration clauses contained in the Agreements. The parties made their intent crystal clear when they broadly worded their arbitration clauses. The parties intended to exclude courts from resolving their disputes in favor of relying upon an arbitration process for disputes "arising under or in connection with the Agreements." With regard to the second prong of our inquiry, the issue becomes whether the disputes raised by Respondent in his Arbitration Demand, is under or in connection with the scope of the arbitration clauses. It is important to note that we also are prohibited by section 7304(e) of the Act from examining the "merits" of the underlying dispute and/or controversy and we will not undertake such examination at this time.

We will focus on determining whether the disputes raised by Respondent are within the scope of the arbitration provisions. To do so we must examine 15 Pa. C.S.A. §8694 as it statutorily delineates the procedure available to Pennsylvania Limited Partnerships which receive partner demands to bring suit against company fiduciaries and enforce rights of a limited partnership.[3]

3. Act 170 was enacted by the legislature in 2016 and took effect on February 1, 2017, modifying Pennsylvania statutes for corporation and unincorporated business entities. Act 170 repealed then existing Pennsylvania law of general partnerships, limited liability partnerships and limited liability companies,

One available procedure, which was invoked here under section 8694, is the formation of a special litigation committee to investigate claims demanded.

1. Special Litigation Committee

An SLC serves as an alternative dispute resolution mechanism. Under the Act, when a partner makes a demand, in response thereto general partners of a limited partnership "may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the limited partnership or recommend to the general partners whether pursuing any of the claims asserted is in the best interests of the partnership." 15 Pa. C.S. §8694(a). After investigation, the SLC can determine whether to allow a derivative action to proceed, among other options. 15 Pa. C.S. §8694(f). The statute makes clear that the appointment of an SLC is not mandatory and allows parties the option by way of a limited partnership agreement to preclude the use of a special litigation committee. 15 Pa. C.S.A. §8615(c)(18). The parties herein concurred at oral argument that the Agreements do not preclude the use of an SLC. (Petitioners' Exhibits B-C). Petitioners statutorily invoked the SLC process.

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and patterned new laws based upon the model Uniform Act for partnerships, limited partnerships, and limited liability companies. Act 170 also codified standards for derivative actions and special litigation committees for corporations (15 Pa.C.S. §§1781, 1783), nonprofit corporations (15 Pa.C.S. §§8692, 8694), and limited liability companies (15 Pa.C.S. §§8882, 8884). The statutes and comments under Act 170 are largely in harmony.

2. Arbitration Demands

Having found that Petitioners properly and statutorily invoked their SLC option, we now must determine whether the issues Respondent raises in his Arbitration Demand arise statutorily or from the Agreements. It is well settled that the issue of whether a particular dispute falls within a contractual arbitration provision is a matter of law for the court to decide. *Gardner, et. al. v. Vascular Access Centers, LLC*, et. al., 2019 WL 1770636 (Pa. Super. 2019) (citing, *Shadduck v. Christopher J. Kaclik, Inc.* 713 A.2d 635, 637 (Pa. Super. 1998). Parties to a contract cannot be compelled to arbitrate a given issue absent an agreement between them to arbitrate that issue. *Elwyn, v. DeLuca*, 48 A.3d 457, 461 (Pa. Super. 2012).

It is also well settled that when interpreting arbitration clauses, courts have recognized that the "arising out of or relating to" language is the " broadest conceivable language from which it must be concluded that the parties intended the scope of the submission to be unlimited." However, that language only applies to "any dispute which may arise between the parties concerning the principal contract. . . ." *Gardner*, supra (quoting *Borough of Ambridge Water Authority v. J. Z. Columbia*, 328 A.2d 498, 501 (Pa. 1974). Here, there is no doubt that the arbitration clause contained in the Agreements is extremely broad and encompassing. However, it is for this Court to determine whether the issues Respondent seeks to arbitrate arise from the agreements. We find that they do not. Rather, they arise from the statute because

of Respondent's own contention that the SLC did not act in accordance with the statute.

Although Respondent frames the issues he raises in the Arbitration Demand as direct and derivative actions pursuant to Section 11.1 of the Agreements, in actuality, upon review of the Arbitration Demand, Respondent challenges the SLC findings and recommendations. He also cites and applies the SLC statutory standards. Yet, in his Answer, Respondent seeks to avoid court review of the SLC challenges by avering that the Arbitration Demand raises derivative and direct actions based upon violations of the Agreements. (Ans. 14). Respondent's own Answer contradicts the actual content of his Arbitration Demand, which introduces 15 Pa.C.S. §8694(f) as the appropriate legal standard for reviewing SLC actions. (Arbitration Demand at pp. 9-10). Respondent even challenges and attacks the SLC and names the SLC members, individually, as parties to the Arbitration. (Arb. Demand at 2, 7-11, 18-24, 26-40, 42-43). To that end, the only avenue available to Respondent was to challenge the SLC's investigation and determination under sections 8692(a) and 8694(f)(3) of the Act.

Respondent also argues that the arbitration clauses contained in the Agreements were intended to be the exclusive dispute resolution forum for "any disputes arising under or in connection with" the Agreements, with no exceptions carved out for derivative actions, direct actions, or any other statutory rights under the Act. He cites the agreements in support of his argument. (Respondent's brief at p. 10). We agree with Respondent

that the arbitration clauses contain the broadest and most encompassing language for any disputes *arising under or connection with* the Agreements. (emphasis added). That is the key language. In this instance, Respondent is not raising issues arising under or connection with the Agreements. He is raising issues, no matter how he couches the terminology or frames those disputes, concerning discontentment with the SLC, which was statutorily invoked by the Petitioners. Therefore, they do not arise under or in connection with the agreements.

Respondent cannot have it both ways nor parse the clear language of the Act. His claims arise from his discontent with the SLC recommendations and determination. The SLC issued its recommendations and determinations in accordance with and as mandated by Section 8694 of the statute. When Respondent issued the initial Demand on July 16, 2019, he triggered, by statute, Petitioners' formation of the SLC. Once Petitioners availed themselves of the SLC option any subsequent challenges to the SLC's determinations and recommendations arose statutorily; they did not arise under or in connection with the Agreements. Because the Agreements predate the 2016 SLC enabling legislation, they do not waive the parties' SLC statutory rights.

We find jurisdiction of the SLC challenges Respondent raised in the Arbitration Demand rests solely with this Court because it arises statutorily from 15 Pa.C.S.A. §8694.

3. Court Review

Having determined we exercise proper jurisdiction, we next examine Section 8694(f) of the Act which provides "court review" as the only mechanism to challenge an SLC's investigations and determinations. The statutory framework of the Act does not contemplate a party challenging the SLC's recommendation or determination by way of arbitration. Rather, the Act specifies that where a party takes issue with a special litigation committee's determination, any review thereof must occur in "court." 15 Pa. C.S. A. § 8694(f) and § 8884(f). Section 8694(f) of the Act specifically discusses court review and, in the comment, incorporates the definition of "court" as the Court of Common Pleas, as defined in 15 Pa. C.S. §102.[4]

Section 8694(f) provides, in pertinent part, as follows:-

§ 8694. Special litigation committee

* * *

(f) Court review and action. -- If a special litigation committee is appointed and an action is commenced

4. 15 Pa.C.S.A. § 102 defines **"Court"** as follows: (1) the court of common pleas of the judicial district embracing the county where the registered office of the corporation or other association is or is to be located; or (2) where an association results from a merger, division or other transaction without establishing a registered office in this Commonwealth or withdraws as a foreign corporation or association, the court of common pleas in which venue would have been laid immediately prior to the transaction or withdrawal.

before a determination is made under subsection (e):

(1) The limited partnership shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee. The partnership shall serve each party with a copy of the determination and report. If the partnership moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The partnership shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall:

(i) dissolve any stay of discovery entered under subsection (b);

> (ii) allow the action to continue under the control of the plaintiff; and
>
> (iii) permit the defendants to file preliminary objections and other appropriate motions and pleadings.

The comment to section 8694(f) "Court review and action" provides for a review of the determination of an SLC "(ii) where the committee makes its determination before an action is commenced." (see section 8694 Comment). The comment also states that where an action has not been commenced before the committee makes its determination, the plaintiff (here the Respondent) may seek review of the determination under this subsection by filing a derivative action. Here, we have a scenario that permits Court review. The SLC made its determinations on February 28, 2020, regarding Respondent's first two sets of Demands, and on August 31, 2020, regarding the second two sets of Respondent's Demands, well before Respondent commenced his Arbitration on May 15, 2021. As we have already determined the term 'Court" is defined by statute as "Court of Common Pleas," this Court maintains jurisdiction to review the issues raised by Respondent.

The statute supports our conclusion. "When construing one section of a statute, courts must read that section not by itself, but with reference to, and in light of, the other sections." *Tr. Under Agreement of Taylor*, 164 A.3d 1147, 1155 (Pa. 2017). This is especially true considering that 15 Pa.C.S 8692(a)(3) cross references section 8694(f). The

two statutory sections must be read in conjunction. When looking at section 8692(a) we are provided with the list of occasions when a derivative action may be maintained, including when "the action is maintained for the limited purpose of seeking court review under section 8694(0." Therefore, Section 8692(a)(3) provides for court review after an SLC determination is made. It permits an aggrieved partner to maintain a derivative action "for the limited purpose of seeking court review" of an SLC determination. We recognize ambiguity is caused by the sections. However, the committee comments confirm section 8694(f) applies and court review is proper where the SLC determination precedes Respondent's action.[5] The comments state "where the [SLC] committee makes its determination before an action is commenced." See 15 Pa.C.S. §8694(f), comment. The Committee Comments mirror those in the SLC statutes included in Act 170, which all provide for court review after an SLC determination is made. See 15 Pa.C.S. §8694(f); 15 Pa.C.S. §§1783(f), 5783(f), 8884(f) and accompanying Committee Comments. This Court agrees with Petitioners that, when read together, section 8694(f), its accompanying Committee

5. Courts may look at committee comments to discern evidence of legislative intent to the extent there is any ambiguity. 1 Pa.C.S. §§1921(c), 1939; *Bricklayers of W. Pennsylvania Combined Funds, Inc. v. Scott's Dev. Co.*, 90 A.3d 682, 690 & 692 n.11 (Pa. 2014) ("although these official comments are not law, they may be given weight in the construction of the statute as they provide evidence of legislative intent.") In *Young v. Kaye*, the Pennsylvania Supreme Court considered legislative comments and then rejected a defendant's argument about burdens of proof where the modified statute only referenced plaintiffs' burdens, but was silent as to defendants' burdens. 279 A.2d 759, 765 n. 3, 766 (Pa. 1971).

Comments, Section 8692(a)(3) concerning derivative actions, and the other parallel SLC statutes from Act 170 of 2016 all confirm that a Court, not an arbitrator, must decide challenges to SLC determinations.[6]

This Court finds, however, that the claims raised by Respondent would be subject to arbitration if after Court Review of the SLC it is determined that further action is warranted to determine the merits of Respondent's claims. The arbitration clause in the Agreements, as noted earlier in the memorandum, is extremely broad and the parties do not dispute that the claims raised would be subject to arbitration. This Court cannot determine the merits of Respondent's claims with finality, but only that the matters raised in the Arbitration Demand arise statutorily based upon Respondent's disagreement with the SLC's investigation and determination as well as the challenge that the SLC failed to act in accordance with its statutory obligations.

4. Petitioners Cerullo and Kirwan

With regard to Petitioners Cerullo and Kirwan there is absolutely no evidence to indicate that they are parties to the Agreements. Notwithstanding this Court's foregoing findings, Petitioners Cerullo and Kirwan, not being parties to the agreements and having never

6. "Parts of a statute that are in *pari maieria*, i.e., statutory sections that relate to the same person or things or the same class of persons and things, are to be construed together, if possible, as one statute." *Taylor*, 164 A.3d at 1157;1 Pa.C.S. §§1921, 1932, 1939 (concerning statutory construction).

consented to any arbitration clause, are not bound by the Agreements. Petitioners Cerullo and Kirwan were improperly named as parties.

CONCLUSION

Respondent's attempt to challenge and dispute the SLC's recommendations and determinations in an arbitration forum are improper because they do not arise under the Agreements, but rather statutorily. Petitioners Cerullo and Kirwan are not signatories or parties to the underlying Agreements and, therefore, were improperly named as parties to this action. The Arbitration is hereby permanently **STAYED.** Any challenges to the SLC investigation and determination shall be submitted to the Court of Common Pleas for review. We hereby incorporate the accompanying Order of Court to this Opinion, as follows: