Although we agree with the ultimate conclusion reached by the court of appeals, we do not consider the timing of the employees' tortious conduct to be relevant to the arbitrability of Aiken's claim. Instead, we pronounce a more definitive rule for determining whether a significant relationship exists between a dispute between parties to a contract and the underlying contract, thereby implicating an arbitration agreement in the contract. Because even the most broadly-worded arbitration agreements still have limits founded in general principles of contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings.[4]

In this case, we find the theft of Aiken's personal information by World Finance employees to be outrageous conduct that Aiken could not possibly have foreseen when he agreed to do business with World Finance. Consequently, in signing the agreement to arbitrate, Aiken could not possibly have been agreeing to provide an alternative forum for settling claims arising from this wholly unexpected tortious conduct.[5] Accordingly, we hold that Aiken's claims for unanticipated

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articulation of this test is found in a footnote containing references to tests used by "other jurisdictions" and therefore has not been adopted by this Court as a separate test applicable specifically to tort claims in this context.

[4] Because the parties do not raise the issue of whether any arbitration agreement purporting to apply to such outrageous and unforeseen tortious acts is unconscionable, we leave this determination for another day.

[5] *See also Towles v. United Healthcare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999) ("When a party invokes an arbitration agreement after the contractual relationship between the parties has ended, the parties' intent governs whether the clause's authority extends beyond the termination of the contract." (citing *Zandford v. Prudential-Bache Sec., Inc.*, 112 F.3d 723, 727 (4th Cir. 1997))).

and unforeseeable tortious conduct by World Finance's employees are not within the scope of the arbitration agreement with World Finance.[6]

In establishing the line for claims subject to arbitration, this Court does not seek to exclude all intentional torts from the scope of arbitration. For instance, the parties in the instant case stipulate that a tort claim which essentially alleges a breach of the underlying contract (e.g., breach of fiduciary duty, misappropriation of trade secrets) would be within the contemplation of the parties in agreeing to arbitrate. We only seek to distinguish those outrageous torts, which although factually related to the performance of the contract, are legally distinct from the contractual relationship between the parties. *See McMahon v. RMS Electronics, Inc.*, 618 F. Supp. 189, 191 (S.D.N.Y. 1985).

Our decision today does not ignore the state and federal policies favoring arbitration as a less formal and more efficient means for resolving disputes. *See Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 396, 498 S.E.2d 898, 902 (Ct. App. 1998). This Court merely seeks, as a matter of public policy, to promote the procurement of arbitration in a commercially reasonable manner. To interpret an arbitration agreement to apply to actions completely outside the expectations of the parties would be inconsistent with this goal.

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[6] Additionally, we are somewhat puzzled by the concurring opinion's characterization of identity theft as a foreseeable tort. Although this Court indicated its concern over the "rampant growth of identity theft" in *Huggins v. Citibank, N.A.*, 355 S.C. 329, 334, 585 S.E.2d 275, 277 (2003), the rule we set forth today is based on the concept of the expectations of a "reasonable man," a standard deeply rooted in tort law. Therefore, a determination of foreseeability under the rule is to be made from the standpoint of the injured party; not this Court. We do not believe that this Court should proclaim that fraudulent acts such as identity theft are foreseeable in the course of normal business dealings.

CONCLUSION

For the foregoing reasons, we affirm as modified the decision of the court of appeals denying World Finance's motion to compel arbitration.

MOORE, WALLER and BURNETT, JJ., concur. PLEICONES, J. concurring in a separate opinion.

JUSTICE PLEICONES: I agree with the majority that the first issue is not preserved, and I concur in the decision holding that Aiken's tort claims are without the parties' arbitration agreement. I write separately, however, as I do not agree with the majority's decision to the extent it finds that identity theft is not foreseeable. See Huggins v. Citibank, N.A., 355 S.C. 329, 585 S.E.2d 275 (2003) ("[The Court] is greatly concerned with the rampant growth of identity theft and financial fraud . . . ."). I would hold that parties executing a lender-borrower contract containing an arbitration provision do not intend identity theft to be within the ambit of the contract, and further that there is no "significant relationship" between the loan agreement and the allegations of Aiken's tort claims. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 553 S.E.2d 110 (2001).

With this reservation, I concur.