NO. _____

In the
Supreme Court of the United States

WILLIS OF COLORADO INC.; WILLIS GROUP HOLDINGS LIMITED; WILLIS LIMITED; BOWEN, MICLETTE & BRITT, INC.; and SEI INVESTMENTS COMPANY

Petitioners,

v.

SAMUEL TROICE, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Securities Litigation Uniform Standards Act of 1998 ("SLUSA") precludes state law class actions that allege a misrepresentation or omission "in connection with" the purchase or sale of a covered security. 15 U.S.C. § 78bb(f)(1). The complaints at issue in this case plainly included such alleged misrepresentations. The district court, applying Eleventh Circuit precedent, recognized as much and dismissed the complaints. However, the Fifth Circuit disagreed and, purporting to apply the Ninth Circuit's test, found the fact that the complaints included alleged misrepresentations in connection with a covered security insufficient to invoke SLUSA because the complaints also included *other* misrepresentations that were not made "in connection with" a covered securities transaction. In doing so, the Fifth Circuit acknowledged that it was departing from the holding of the Eleventh Circuit and several other circuits.

The question presented is whether a covered state law class action complaint that unquestionably alleges "a" misrepresentation "in connection with" the purchase or sale of a SLUSA-covered security nonetheless can escape the application of SLUSA by including other allegations that are farther removed from a covered securities transaction.

LIST OF PARTIES TO THE PROCEEDINGS

Petitioners Willis Limited, Willis of Colorado, Bowen, Miclette & Britt, Inc., and SEI Investments Company were defendants in two separate actions in the district court and appellees in a consolidated action in the court of appeals.

The Willis Respondents are the following individuals who were plaintiffs in the district court action in which Willis Limited, Willis of Colorado, and Bowen, Miclette & Britt, Inc. were defendants and appellants in the consolidated action in the court of appeals: Samuel Troice; Martha Diaz; Paula Gilly-Flores; Punga Punga Financial, Ltd., individually and on behalf of a class of all others similarly situated; Promotora Villa Marino, CA; Daniel Gomez Ferreiro; and Manuel Canabal.

The SEI Respondents are the following individuals who were plaintiffs in the district court action in which SEI Investments Company was a defendant and appellants in the consolidated action in the court of appeals: James Roland; Susan Roland; Michael J. Giambrone; Thomas E. Bowden, individually and on behalf of the Thomas E. Bowden SEP IRA; T.E. Bowden Sr. Ret. Trust; G. Kendall Forbes, individually and on behalf of G. Kendall Forbes IRA; Deborah S. Forbes, individually and on behalf of the Deborah S. Forbes IRA; William Bruce Johnson on behalf of the Benton Bruce Johnson Trust #1; William Bruce Johnson on behalf of the Mark Calvin Johnson Trust #1; William Bruce Johnson on behalf of the Martha J.C. Johnson GEN SKPG TR-SAS; William Bruce Johnson on behalf of the Aimee Lynn Johnson Trust #1-SAS; William

Bruce Johnson on behalf of the Benton B. Johnson TEST TR II-SAS; Terence Beven, individually and on behalf of Terrence Beven IRA; Thomas J. Moran; Ralph D. D'Amore, individually and on behalf of FBO Ralph Daniel D'Amore MD, A Professional Corporation; Ralph D. D'Amore IRA; Daniel P. Landry, individually and on behalf of Daniel P. Landry IRA; Ronald R. Marston, individually and on behalf of Ronald R. Marston IRA; Rodney P. Starkey, individually and on behalf of Rodney P. Starkey IRA; Stephen Wilson, individually and on behalf of Bone and Joint Clinic FBO Stephen Wilson; Jeanne Anne Mayhall, individually and on behalf of Microchip ID Services Inc. Retirement Plan; John Wade, individually and on behalf of Microchip ID Services Inc. Retirement Plan; Lynn J. Philippe, individually and on behalf of Lynn J. Philippe IRA; Leah Farr; Troy Lillie; Kenneth Dougherty; Charles White; Martha Jean Witmer; Sharon Witmer; Olivia Sue Warnock; Clyde J. Chisholm; Ronald McMorris; Arthur Ordoyne; William Dawson; Terry Tullis; James Stegall; Anthony Ventrella; Robert Smith; Thomas Slaughter; Larry Perkins; William Phillips; Charles Hart; Richard Feucht; Lonnie Ordoyne; Arthur Waxley; Darrell Courville; Merrill Laplante; James Brown; Ira Causey; Jerry Burris; Jacqueline Millet; Louis Mier; Mamie Baumann; Charles Sanchez; Joseph Chustz; Robert Bush; Bobby Nix; Claude Marquette; Gwen Fabre; Robert Schwendimann; Wanda Bevis; Terry Tarver; Marcel Dumestre; Ronald Valentine; Bennie O'Rear; Julie Savoy; Laura Lee; Dennis Kirby; Billie Ruth McMorris; Larry Smith; Kenneth Wilkewitz; Murphy Buell; Kerry Kling; Lynn Gildersleeve Michelli;

Willa Mae Gildersleeve; Anita Ellen Carter; Fred Demarest; Nancy Gill; Linda Boyd; Virginia Buscheme; Robert Gildersleeve; Walter Stone; Virginia McMorris; Carol Stegall; Monty Perkins; Joan Feucht; Kathleen Mier; Mamie Sanchez; Margaret S. Nix; Margaret Dumestre; Claudia O'Rear; Gordon C. Gill; John Buscheme; Charles Massey; and Gary Magee.

RULE 29.6 STATEMENT

Petitioners Willis Limited and Willis of Colorado, Inc., are indirect, wholly owned subsidiaries of Willis Group Holdings Public Limited Company, a publicly held corporation listed on the New York Stock Exchange. No other publicly held corporation owns 10% or more of Willis Group Holdings' stock.

Petitioner Bowen, Miclette & Britt does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner SEI Investments Company does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

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PETITION FOR CERTIORARI

Petitioners Willis Limited and Willis of Colorado (collectively, "Willis"), Bowen, Miclette & Britt ("BMB"), and SEI Investments Company ("SEI") respectfully submit this petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 675 F.3d 503 and reproduced at Pet.App.1–43. The district court's opinion and order dismissing the action against SEI is reproduced at Pet.App.48–75. The district court's order dismissing the action against Willis and BMB is reproduced at Pet.App.76–77.

JURISDICTION

The Fifth Circuit rendered its decision on March 19, 2012, Pet.App.3, and denied rehearing en banc on April 19, 2012, with three judges recused, Pet.App.46–47. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 101(b) of the Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb provides in relevant part:

> **(f) Limitations on remedies**
>
> **(1) Class action limitations**
>
> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private

> party alleging— (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security….

INTRODUCTION

In the decision below, the Fifth Circuit disregarded the plain text of the Securities Litigation Uniform Standards Act ("SLUSA") and this Court's precedent and, in doing so, expressly refused to follow decisions from the Second and Eleventh Circuits. Certiorari is warranted to resolve this acknowledged circuit split, which—if allowed to stand—will allow securities plaintiffs to easily evade important restrictions on the scope of class or mass action securities fraud claims.

In order to prevent abusive practices and deter vexatious litigation, Congress and this Court have carefully limited the circumstances in which private plaintiffs may bring claims for damages under the federal securities laws. In the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Congress imposed heightened pleading standards in federal securities fraud cases and placed restrictions on recoverable damages and attorneys' fees. *See* 15 U.S.C. §§ 77z-1, 78u-4. This Court has also held, in a series of cases, that claims under Rule 10b-5 may be brought only by those who bought and sold securities (not mere holders), *see Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), and against only primary wrongdoers (not alleged aiders and abettors or other third parties), *see Stoneridge Inv. Partners v. Scientific-Atlanta*, 552 U.S. 148

(2008); *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994).

Many plaintiffs' attorneys sought to evade the PSLRA's restrictions by abandoning federal claims altogether and instead filing class or mass action complaints that were limited to state law securities claims. Congress responded in 1998 by enacting SLUSA, which precludes any state law class or mass actions alleging "a" misrepresentation "in connection with" the purchase or sale of a covered security. 15 U.S.C. § 78bb(f)(1). This Court has emphasized that a "broad construction" of SLUSA is warranted in light of "the particular concerns that culminated in SLUSA's enactment." *Merrill Lynch, Pierce, Fenner & Smith v. Dabit*, 547 U.S. 71, 86 (2006). In construing the meaning of SLUSA's "in connection with" requirement, the Court has held that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Id.* at 85.

This case arises out of the massive Ponzi scheme perpetrated by Allen H. Stanford and his affiliated corporate entities. Respondents (plaintiffs below) in the action against Willis and BMB are a group of Mexican and Venezuelan citizens who purchased certificates of deposit ("CDs") from the Antigua-based Stanford International Bank ("SIB") based on, among other things, misrepresentations by Stanford and SIB that the CDs were backed by highly liquid, publicly traded securities (*i.e.*, SLUSA-covered securities). Respondents in the action against SEI are a group of U.S. investors who also purchased SIB CDs, and who seek to hold SEI secondarily liable

under the Louisiana Securities Law for alleged misrepresentations made by Stanford and SIB.

Because Allen Stanford and his affiliated companies were insolvent and in receivership, Respondents brought class or mass action complaints against several deep-pocketed third parties with remote connections to Stanford or SIB. For example, Willis is an insurance broker that helped SIB procure ordinary commercial insurance policies. Respondents allege that Willis aided and abetted the Stanford fraud by writing letters accurately confirming that SIB had purchased insurance policies for its own behalf from Lloyd's of London. Other than writing those letters, Respondents do not allege that Willis had any role whatsoever in developing, marketing, or selling the SIB CDs. Similarly, SEI is merely alleged to have had a contract with Stanford Trust Company, a Stanford affiliate, to provide "investing processing," "fund processing," and "business outsourcing solutions" through SEI's proprietary computer software system that it provides to clients.

Respondents did *precisely* what SLUSA sought to prevent: they filed class and mass action complaints under Texas and Louisiana state law alleging claims in connection with securities transactions that, if brought under federal law, would have been subject to the PSLRA's requirements (such as heightened pleading standards), not to mention the limits on private claims against third parties set forth by this Court in *Stoneridge* and *Central Bank*. The district court correctly held that Respondents' covered class action claims were barred by SLUSA. Recognizing that there is a split of authority over the meaning of

SLUSA's "in connection with" requirement, the court chose to follow the Eleventh Circuit's test. Under that standard, a class action is precluded if the plaintiffs' allegations "depend upon" the purchase or sale of SLUSA-covered securities, or if the plaintiffs were "induced" to invest through misrepresentations regarding covered securities. That was plainly the case here, as Respondents specifically alleged that they were induced to purchase SIB CDs based, at least in part, on misrepresentations that those CDs were backed by publicly traded securities.

The Fifth Circuit reversed. In doing so, the Fifth Circuit did something no circuit court has ever done—it refused to apply SLUSA even though it found that the action included a misrepresentation "in connection with" a covered security. The court acknowledged that the misrepresentations at the very core of the Stanford Ponzi scheme—that the SIB CDs were backed by safe, liquid, publicly traded securities—were made "in connection with" the purchase or sale of covered securities. That, by itself, should have been sufficient to trigger SLUSA preclusion under any circuit's standard. But the court did not stop there. It instead concluded that Respondents' complaints were not precluded because they also contained *other* alleged misrepresentations that were not made in connection with a covered securities transaction. In reaching that holding, the Fifth Circuit purported to apply the Ninth Circuit's test (but actually went beyond anything permitted by the Ninth Circuit or any other circuit), and expressly declined to follow decisions from the Second and Eleventh Circuits.

* * *

The Fifth Circuit's decision cannot be squared with the plain text of SLUSA and this Court's decision in *Dabit*. SLUSA unambiguously provides that a state law covered class action is precluded if the complaint alleges "a" misrepresentation in connection with the purchase or sale of a covered security. A single misrepresentation is all that is required. Nothing in SLUSA remotely suggests that a complaint that includes such an allegation can be saved from preclusion if it also includes *other* alleged misrepresentations that are farther removed from a covered securities transaction. And the Fifth Circuit's decision is flatly contrary to this Court's holding that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff *or by someone else*." *Dabit*, 547 U.S. at 85 (emphasis added).

As the Fifth Circuit, the district court, and several other courts have recognized, there is a split of authority over the meaning of SLUSA's "in connection with" requirement. It is critically important that the Court resolve this split by reversing the decision below. If allowed to stand, the Fifth Circuit's decision will create a gaping loophole in the SLUSA regime by allowing securities plaintiffs to avoid preclusion as long as they load up their complaints with extraneous allegations. Indeed, it will reward plaintiffs for bringing claims that are the least meritorious in the eyes of federal law because they target defendants farther removed from the core fraud, contrary to this Court's decisions in *Central Bank* and *Stoneridge*. That is exactly what is happening here, as Respondents'

counsel has boasted that his goal was to use artful pleading tactics to "get around" *Central Bank* and *Stoneridge*. The Fifth Circuit's decision allowed that gambit to succeed. The petition for certiorari should be granted.

STATEMENT OF THE CASE

A. Congress' Efforts to Prevent Abusive Practices in Securities Litigation

Congress enacted the Private Securities Litigation Reform Act of 1995, P.L. No. 104-67, 109 Stat. 737, in order to combat numerous abusive practices involving securities class action suits. According to the House Conference Report, "nuisance filings, targeting of deep-pocket[ed] defendants, vexatious discovery requests, and 'manipulation by class action lawyers of the clients whom they purportedly represent' had become rampant." *Dabit*, 547 U.S. at 81 (quoting H.R. Rep. No. 104-369, at 31 (1995) (Conf. Rep.)). The PSLRA sought to prevent these practices by, *inter alia*, imposing heightened pleading standards in federal securities fraud cases, authorizing a stay of discovery pending a motion to dismiss, imposing restrictions on the selection and compensation of lead plaintiffs, and placing limits on recoverable damages and attorneys' fees. *See* 15 U.S.C. §§ 77z-1, 78u-4.

In response to these new restrictions on federal securities claims, many plaintiffs' lawyers abandoned the federal forum altogether and began filing securities class actions in state courts under state law. Congress thus enacted SLUSA in 1998 in order to "prevent certain State private securities

class action lawsuits alleging fraud from being used to frustrate the objectives" of the PSLRA. *See* SLUSA, P.L. No. 105-353 §§ 2(2), (5), 112 Stat. 3227. The central provision of SLUSA provides that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging— (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). SLUSA does not completely displace state securities law or force individual plaintiffs to assert federal law claims, but instead "makes some state-law claims nonactionable through the class-action device in federal as well as state court." *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 636 n.1 (2006).

This Court has emphasized that a "broad construction" of SLUSA is warranted in light of "ordinary principles of statutory construction" as well as "the particular concerns that culminated in SLUSA's enactment." *Dabit*, 547 U.S. at 86. In particular, the Court has held that the phrase "in connection with" in SLUSA must be given the same, broad interpretation that it has been given in the context of section 10(b) and Rule 10b-5. In *Dabit*, the respondent had argued that an alleged fraud was "in connection with" a purchase or sale of securities only when the plaintiff himself was defrauded into purchasing or selling particular securities. As a holder of a security, the respondent suggested that his claims, forbidden under federal law, *see Blue Chip Stamps*, 421 U.S. 723, could be maintained as class actions in state court despite SLUSA. The

Court unanimously rejected that argument, holding that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Dabit*, 547 U.S. at 85.

B. The Stanford Ponzi Scheme and Respondents' Complaints

In February 2009, the Securities and Exchange Commission brought suit under the federal securities laws against Allen Stanford and numerous Stanford-affiliated corporate entities, alleging that Stanford had perpetrated a massive Ponzi scheme. The core of this fraudulent scheme involved sales of CDs issued by the Antigua-based Stanford International Bank. SIB maintained a high volume of CD sales by promising above-market returns and assuring investors that the CDs were backed by "safe, secure, and liquid assets," including "first grade investment bonds" and "shares of stock." Willis/BMB Complaint[1] ¶ 34 & Ex.2. In reality, however, Stanford used the proceeds from SIB's CD sales to finance his lavish lifestyle and invest in highly speculative real estate projects in various Caribbean countries. The SEC identified the CDs as securities for purposes of the federal securities laws and alleged multiple violations, including violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5.[2] In addition to the SEC complaint,

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[1] Plaintiffs' Third Amended Class Action Complaint, *Troice v. Willis of Colorado*, No. 3:09-cv-1274-L (N.D. Tex. Apr. 1, 2011).

[2] *See* First Amended Complaint, *SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-298-N (N.D. Tex. Feb. 27, 2009).

Stanford also faced criminal charges, and was convicted in March 2012 on 13 counts of fraud, conspiracy, and obstruction of justice; he was recently sentenced to 110 years in prison.

Respondents are individuals and companies that purchased SIB CDs through Stanford subsidiaries in the United States, Mexico, and Venezuela. Respondents did not even attempt to sue Stanford and his affiliated companies, which are now insolvent and in receivership. Instead, Respondents and other plaintiffs cast a wide net in suing deep-pocketed defendants with any tangential connection to Stanford and his frauds. They have now sued a number of individuals, financial services firms, law firms, insurance companies, insurance brokers, and other companies that are alleged to have some remote connection to Stanford or SIB.

In July 2009, the Willis Respondents filed a class action complaint in U.S. District Court for the Northern District of Texas against Willis and BMB.[3] Willis and BMB are insurance brokers that placed certain lines of commercial insurance for SIB. There is no allegation in the Complaint that Willis or BMB knew about Stanford's Ponzi scheme or sold the fraudulent CDs. They merely assisted SIB in procuring ordinary commercial insurance policies, in exchange for standard brokerage fees.

The Willis Respondents' complaint is carefully limited to Texas state law claims, including alleged violations of the Texas Securities Act and Texas

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[3] Respondents also sued two employees of Willis and BMB.

Insurance Code, as well as various common-law claims. The crux of the Willis Respondents' allegations is that Willis and BMB aided and abetted Stanford's fraudulent scheme by drafting letters confirming that SIB had purchased directors-and-officers liability insurance and a bankers' blanket bond from Lloyd's of London. *See* Willis/BMB Complaint ¶¶ 75–90 & Ex.4. Those statements were true, as SIB *did* purchase the insurance products in question from Lloyd's.

The SEI Respondents filed two separate actions in Louisiana state court in August 2009.[4] The nearly identical complaints were brought by more than 80 individual purchasers of SIB CDs who asserted a single claim against SEI under the Louisiana Securities Law. The complaints allege that Stanford employees induced Respondents' purchases of SIB CDs through misrepresentations that SIB's assets were "invested in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." According to the complaints, the "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients." The SEI Respondents seek to hold SEI liable for the alleged Stanford misrepresentations through "secondary liability" principles.

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[4] Those two actions were styled below as *Roland v. Green* and *Farr. v. Green*.

After SEI removed the two actions to the Middle District of Louisiana, they were transferred by order of the Judicial Panel on Multi-district Litigation to the Northern District of Texas. The actions were consolidated by the district court under the *Roland* caption, *Roland v. Green*, No. 10-cv-224 (N.D. Tex.), thereby satisfying the statutory definition of a "covered class action" under SLUSA. 15 U.S.C. § 78bb(f)(5)(B)(ii).

C. The District Court's Decision

The district court dismissed the complaints against Willis, BMB, and SEI, holding that SLUSA applies to Respondents' state law class action claims. *See* Pet.App.75, 76–77. The court held in *Roland v. Green* that the claims against SEI were precluded, and it subsequently applied the same reasoning to dismiss Respondents' claims against Willis and BMB.

The plaintiffs first argued that SLUSA was categorically inapplicable because the SIB CDs were not themselves covered securities. The district court acknowledged that "the SIB CDs are not covered securities under SLUSA," but emphasized that this fact "does not end the SLUSA inquiry." Pet.App.62. As the district court explained, this Court has expressly rejected the argument that "'an alleged fraud is "in connection with" a purchase or sale of securities only when the plaintiff himself was defrauded into purchasing or selling particular securities.'" Pet.App.62–63 (quoting *Dabit*, 547 U.S. at 85). The district court thus concluded that "SLUSA do[es] not require actual dealing in ascertainable securities." Pet.App.63 (citing *Grippo*

v. Perazzo, 357 F.3d 1218, 1223 (11th Cir. 2004)). The fact that the CDs' value was dependent on representations that they were backed by covered securities sufficed to make SLUSA applicable.[5]

Turning to the question presented in this case, the district court noted that "[c]ourts have come to varying conclusions on what 'in connection with' requires." Pet.App.61. In light of "this mélange of opinions and in the absence of controlling Fifth Circuit authority," the court chose to adopt the Eleventh Circuit's test, which asks whether the plaintiffs' claims are premised on either "'fraud that induced [the plaintiffs] to invest with [the defendants] … or a fraudulent scheme that coincided and depended upon the purchase or sale of securities.'" Pet.App.65 (quoting *Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1349 (11th Cir. 2008) ("*IPM*")).

According to the complaint, "SIB led the Plaintiffs to believe that the SIB CDs were backed, at least in part, by SIB's investments in SLUSA-covered securities." Pet.App.66. That belief, in turn, "induced the Plaintiffs to purchase SIB CDs." *Id.* Applying the Eleventh Circuit's "induced or depended" test, the district court concluded that the alleged misrepresentations were made "in connection

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[5] *See Newman v. Family Mgmt. Corp.*, 748 F. Supp. 2d 299, 312 (S.D.N.Y. 2010) (holding that "misrepresentations related to non-covered limited partnership interests" were covered by SLUSA because "the Funds were created for the purpose of investing in such securities, and the misrepresentations 'had the effect of facilitating [the] fraud'").

with" the purchase or sale of a covered security. The court also relied upon numerous district court decisions holding that SLUSA applied to suits arising out of the Bernard Madoff Ponzi scheme. As the court explained, "[b]oth Stanford and Madoff purported to take investors' funds and purchase covered securities for their investors' benefit." Pet.App.67–68 n.12. Thus, any suit against third parties arising out of those schemes necessarily involves misrepresentations in connections with covered securities transactions.

The district court accordingly held that SLUSA "precludes this action" against SEI. Pet.App.75. Citing its decision in *Roland*, the district court also dismissed the plaintiffs' state law covered class actions against Willis and BMB, without prejudice to refiling individual claims. Pet.App.76–77.

D. The Fifth Circuit's Decision

Both the Willis Respondents and the SEI Respondents appealed the district court's decision. The Fifth Circuit consolidated the appeals and reversed. In articulating its view of the meaning of "in connection with" under SLUSA, the court described the test set forth in *Dabit*—that the alleged fraud must "coincide" with a covered securities transaction—as "not particularly descriptive." Pet.App.17. The Fifth Circuit thus canvassed the disparate decisions of other courts to formulate the relevant standard.

The Fifth Circuit described the Eleventh Circuit's test—which asks "whether the plaintiffs thought they were investing in covered securities or investing because of (representations about) transactions in

covered securities"—as a "good starting point." Pet.App.30–31. The court nonetheless concluded that this standard "asks the wrong question" because it "unnecessarily imports causation into a test whose language ('coincide') specifically disclaims it." Pet.App.31–32.

The Fifth Circuit instead endorsed a "defendant-oriented perspective" that focuses on "the relationship between the defendants' fraud and the covered securities transaction without regard to the fraud's effect on the plaintiffs." Pet.App.32. In doing so, the court explicitly declined to follow decisions from the Second and Eleventh Circuits holding that SLUSA preclusion was appropriate where the alleged fraud "'necessarily involve[d]'" or "'depended upon'" the purchase or sale of covered securities. Pet.App.32–33 (quoting *IPM*, 546 F.3d at 1349; *Romano v. Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010)). The Fifth Circuit believed that this standard was "too stringent," citing Sixth and Eighth Circuit decisions suggesting that this was "too high a bar." Pet.App.32–33 (citing *Segal v. Fifth Third Bank*, 581 F.3d 305, 310 (6th Cir. 2009); *Siepel v. Bank of America*, 526 F.3d 1122, 1127 (8th Cir. 2008)).

The court ultimately found the "best articulation" of the "in connection with" requirement to be the Ninth Circuit's test, under which "'a misrepresentation is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide or are *more than tangentially related*.'" Pet.App.33 (quoting *Madden v. Cowen & Co.*, 576 F.3d 957, 965–66 (9th Cir. 2009)). The Fifth Circuit believed that this formulation would ensure that the

"in connection" requirement was not "'construed so broadly as to [encompass] every common-law fraud that happens to involve [covered] securities.'" Pet.App.33 (quoting *SEC v. Zandford*, 535 U.S. 813, 820 (2002)).

The court purported to apply the Ninth Circuit's test, but actually went further than the Ninth Circuit in holding that SLUSA did not preclude Respondents' complaints. The Fifth Circuit acknowledged that "the CDs' promotional material touted that SIB's portfolio of assets was invested in 'highly marketable securities issued by stable governments, strong multinational companies, and major international banks.'" Pet.App.36. It nonetheless found that this was "but one of a host of (mis)representations made to the Appellants in an attempt to lure them into buying the worthless CDs." Pet.App.36–37 (footnote omitted). Even though Respondents' complaint unquestionably alleged misrepresentations "in connection with" the purchase or sale of a covered security, the court held that those allegations were not controlling because they were only "tangentially related" to the "heart," "crux," or "gravamen" of the alleged fraud. Pet.App.37–38. And the court reached this conclusion even though the complaints described the misrepresentations about the liquidity and marketability of SIB's invested assets as so important that, had plaintiffs "'been aware of the truth' that SIB's 'portfolio consisted primarily of illiquid investments or no investments at all,' they 'would not have purchased the SIB CDs.'" Pet.App.12. In sum, the court held that SLUSA did not apply because the fact that "the CDs were

marketed with some vague references to SIB's portfolio containing the instruments that might be SLUSA-covered securities seems tangential to the schemes advanced by the SEI and Willis Defendants." Pet.App.38.

Willis, BMB, and SEI subsequently filed petitions for rehearing en banc, which the court denied on April 19, 2012, with three judges (Chief Judge Jones, Judge Smith, and Judge Haynes) recused. Pet.App.46–47.

REASONS FOR GRANTING THE PETITION

This petition presents an ideal opportunity for the Court to resolve the acknowledged circuit split over the meaning of SLUSA's "in connection with" requirement. That issue is both squarely presented and outcome determinative. The district court dismissed Respondents' claims under the Eleventh Circuit's "inducement" test, and the Fifth Circuit reversed, purporting to apply the Ninth Circuit's test and expressly rejecting the Eleventh Circuit's test (and the Second Circuit's similar test). Certiorari is warranted to resolve this circuit split and prevent the Fifth Circuit's unduly cramped reading of SLUSA from creating a significant loophole that will allow plaintiffs to evade the limits on private class action securities fraud claims established by Congress and this Court.

I. THE COURT SHOULD GRANT CERTIORARI TO CLARIFY THE PROPER STANDARD FOR APPLICATION OF SLUSA PRECLUSION

A. The Fifth Circuit's Decision Conflicts with the Plain Text of SLUSA and this Court's Decision in *Dabit*

1. SLUSA provides that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging— (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). Respondents are indisputably seeking to bring a "covered class action" under Texas and Louisiana state law alleging "a misrepresentation or omission of a material fact."[6] The sole issue on appeal is whether the misrepresentation or omission pled was made "in connection with" the purchase or sale of a covered security. It plainly was.

In their complaints, Respondents allege that they purchased SIB CDs based on misrepresentations by SIB and other Stanford-affiliated entities that the CDs were backed by highly liquid, publicly traded securities. For example, according to the

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[6] The definition of a "covered class action" under SLUSA includes "any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which— (I) damages are sought on behalf of more than 50 persons; and (II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose." 15 U.S.C. § 78bb(f)(5)(B)(ii).

Willis/BMB complaint, "Stanford Financial led Plaintiffs, verbally and through written marketing materials … to believe that their money was being invested in *safe, liquid investments* that were insured, *which was a material misstatement*." Willis/BMB Complaint ¶ 180 (emphasis added); *see also id.* Ex. 2 (marketing materials asserting that SIB's investment portfolio included "first grade investment bonds (AAA, AA+, AA) and shares of stock (of great reputation, liquidity, and credibility)"); SEI Complaint[7] ¶ 20 (Stanford investment advisors induced plaintiffs to purchase SIB CDs based on the representation that the CDs were "'invested in a well-diversified portfolio of highly marketable securities issued by stable government, strong multinational companies and major international banks'").[8] These alleged misrepresentations regarding SLUSA-covered securities were at the very core of the Stanford Ponzi scheme, and were the primary reason why Respondents believed the SIB CDs had greater value

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[7] Plaintiffs' Original Petition, *Roland v. Green*, No. 3:10-cv-224 (N.D. Tex. Aug. 21, 2009) (filed as Ex. A to Defendants' Notice of Removal).

[8] The Department of Justice has similarly noted that "[a]ccording to SIB's annual reports and marketing brochures, the bank purportedly invested CD proceeds in highly conservative, marketable securities that were also highly liquid, meaning the bank could sell its assets and repay depositors very quickly." Press Release, DOJ, *Allen Stanford Sentenced to 110 Years in Prison for Orchestrating $7 Billion Investment Fraud Scheme* (June 14, 2012).

than other bank CDs with lower returns, and accordingly purchased them.

The Fifth Circuit recognized that: (1) the complaints alleged a fraudulent scheme "to lure [Respondents] into buying the worthless CDs"; and (2) this scheme involved misrepresentations in connection with the purchase or sale of covered securities. *See* Pet.App.36–37 (noting SIB's false assertion that its "portfolio of assets was invested in 'highly marketable securities issued by stable governments, strong multinational companies, and major international banks'").[9] Those allegations of fraud in connection with a covered securities transaction should have been the end of the matter for purposes of SLUSA.

But the Fifth Circuit did not stop there. It instead concluded that the presence of *additional* alleged misrepresentations in Respondents' complaints somehow diluted or rendered irrelevant the misrepresentations that unquestionably fell within SLUSA. *See* Pet.App.37–39. In other words, the Fifth Circuit refused to apply SLUSA even

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[9] Because the purpose of the CDs was to invest in SLUSA-covered securities, it is irrelevant whether the CDs *themselves* were "covered securities." *See Newman*, 748 F. Supp. 2d at 312 (holding that "misrepresentations related to non-covered limited partnership interests may be nonetheless 'in connection with' covered securities where the Funds were created for the purpose of investing in such securities, and the misrepresentations 'had the effect of facilitating [the] fraud'") (quoting *In re Beacon Assocs. Litig.*, 745 F. Supp. 2d 386, 430 (S.D.N.Y. 2010)).

though it found a misrepresentation "in connection with" a covered security.

That holding cannot be squared with the text of the statute, which precludes any state law covered class action alleging "a" misrepresentation or omission in connection with the purchase or sale of a covered security. The Fifth Circuit effectively rewrote the statute by limiting SLUSA preclusion to complaints that *predominantly* allege misrepresentations in connection with transactions in covered securities. But the actual statute is written in the singular: "a" misrepresentation in connection with a covered securities transaction is sufficient to trigger preclusion, particularly where, as here, that misrepresentation is central to the alleged fraudulent scheme. Adding additional allegations about events farther removed from the core fraud should not allow a plaintiff to escape SLUSA.

The Fifth Circuit further erred by focusing narrowly on the alleged misstatements attributed to *Petitioners* (third parties far removed from the actual fraud), while ignoring the alleged misstatements made by the primary violators at the heart of the fraudulent scheme (SIB and other Stanford-affiliated entities). That approach disregards the text of the statute and creates a perverse incentive to pursue parties far removed from the core fraud. SLUSA preclusion is not limited to alleged misstatements made *by the defendants*; the statute broadly precludes state law class actions alleging *any* misrepresentation "in connection with" the purchase or sale of covered securities. 15 U.S.C. § 78bb(f)(1)(A). Indeed, the very next clause of the

statute is more limited, barring state law class actions alleging "that *the defendant* used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(B) (emphasis added). But no such limitation is present in the clause at issue here, and Congress' careful choice of words must be given effect.

In sum, the Fifth Circuit erred by focusing myopically on Petitioners' alleged misstatements while ignoring the SLUSA-covered misstatements by Stanford and SIB that were at the heart of the Ponzi scheme and were a necessary ingredient in the plaintiffs' losses and claims against tangential third parties.

2. The Fifth Circuit's approach not only disregards the text of SLUSA, but is also inconsistent with this Court's decision in *Dabit*. In that case, the plaintiffs brought state law "holder" claims, alleging that the defendants' misrepresentations caused them to refrain from selling overvalued securities. 547 U.S. at 76. The plaintiffs argued that SLUSA did not preclude their claims because they were too far removed from a covered securities transaction. This Court unanimously rejected that overly narrow reading of the statute, emphasizing that a "broad construction" of the preclusion provision is warranted in light of "the particular concerns that culminated in SLUSA's enactment." *Id.* at 86. The Court thus held that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff *or by someone else*." *Id.* at 85 (emphasis added). The "requisite showing" is "deception in connection with

the purchase or sale of any security, not deception of an identifiable purchaser or seller." *Id.* at 85; *see also id.* at 89 (SLUSA preclusion does not turn on "the identity of the plaintiffs").

This case is the mirror image of *Dabit*. In that case, the plaintiffs asserted that *they* were too far removed from a covered transaction for SLUSA to apply, while Respondents here assert that the *defendants* are too far removed from a covered securities transaction. That gambit failed in *Dabit* and it should fare no better here. The Fifth Circuit held that an alleged misrepresentation is "in connection with" the purchase or sale of a covered security only if it goes to the "heart," "crux," or "gravamen" of *the defendant's* alleged fraud. Pet.App.37–38. But that holding flouts this Court's reasoning in *Dabit*. Given that Respondents have unquestionably alleged "a" misrepresentation in connection with a covered securities transaction—namely, SIB's false statement that the CDs were backed by liquid, publicly traded securities—it simply does not matter whether that alleged misrepresentation was made by "the [defendant] *or by someone else*." *Dabit*, 547 U.S. at 85 (emphasis added). The "requisite showing" is "deception in connection with the purchase or sale of any security, not deception [by] an identified [defendant]." *Id.* at 85.

B. The Fifth Circuit's Decision Conflicts with the Decisions of Other Circuits

Both the Fifth Circuit and the district court acknowledged that the lower courts are split over the meaning of SLUSA's "in connection with"

requirement. *See* Pet.App.30–33 (expressly rejecting Second and Eleventh Circuits' tests and finding the Ninth Circuit's test to be the "best articulation" of the standard); Pet.App.61 (courts have "come to varying conclusions on what 'in connection with' requires"). That conflict of authority is well-documented and is outcome determinative here.

1. The Eleventh Circuit has emphasized that nothing in SLUSA requires a court to "act like a prospector panning for a few non-precluded theories amid a river of precluded ones." *IPM*, 546 F.3d at 1350. Under the Eleventh Circuit's standard, the critical inquiry is whether the complaint alleges "fraud that induced [the plaintiff] to invest with [the defendant] or a fraudulent scheme that coincided and depended upon the purchase or sale of securities." *Id.* at 1349. In *IPM*, the plaintiffs lost money in a scheme in which the primary fraudster claimed to be investing their money but was actually embezzling it (as Allen Stanford did here). The plaintiffs did not sue that company, but instead brought a state law class action against Merrill Lynch, alleging that Merrill had aided and abetted the fraud. The Eleventh Circuit held that those claims were barred by SLUSA because the complaint alleged misrepresentations that "induced [the plaintiffs] to invest with [the primary fraudster]." *Id.* at 1349; *see also id.* at 1350 (complaint further alleged that Merrill "failed to stop the fraudulent misrepresentations that induced" the plaintiff to invest).

The Second Circuit has adopted a similar test, holding that a state law class action is precluded if the "plaintiff's claims 'necessarily allege,' 'necessarily

involve,' or 'rest on' the purchase or sale of securities." *Romano*, 609 F.3d at 522. In *Romano*, the plaintiffs were a class of Kodak retirees who alleged that the defendants gave them faulty investment advice. The plaintiffs attempted to plead around SLUSA by downplaying their investment losses and instead arguing that the defendants induced them to retire early based on misrepresentations about returns on their retirement assets. *Id.* at 523–24. The court was not fooled, holding that "at the end of the day, this is a case where defendants' alleged misrepresentations induced [plaintiffs] to retire early, receive lump sum benefits, and invest their retirement savings with defendants." *Id.* at 524. Because "both the misconduct complained of, and the harm incurred, rest[] on and arise[] from securities transactions, SLUSA applies." *Id.*

The Sixth Circuit has emphasized that plaintiffs may not "avoid [SLUSA's] application through artful pleading that removes the covered words from the complaint but leaves in the covered concepts." *Segal*, 581 F.3d at 311. In contradiction with the Fifth Circuit's holding here, the court emphasized that SLUSA "does not ask whether the complaint makes 'material' or 'dependent' allegations of misrepresentations in connection with buying or selling securities." *Id.* It instead "asks whether the complaint *includes* these types of allegations, pure and simple." *Id.* (emphasis added); *see also id.* at 312 (noting that "[t]he terms of SLUSA do not speak

to 'material,' 'dependent' or 'extraneous' allegations").[10]

The Ninth Circuit, in contrast, has adopted something akin to a proximate cause standard, under which "a misrepresentation is 'in connection with' the purchase or sale of securities if there is 'a relationship in which the fraud and the stock sale coincide or are *more than tangentially related*.'" *Madden*, 576 F.3d at 965–66. The Seventh Circuit has not articulated a specific test, but has stated that a "but-for" relationship is insufficient, and that the "in connection with" requirement must be taken "'seriously.'" *Gavin v. AT&T Corp.*, 464 F.3d 634, 639–40 (7th Cir. 2006).

2. This well-documented circuit split is not merely semantic. The district court applied the Eleventh Circuit's "induced or depended" test and concluded that Respondents' claims were precluded because Respondents were induced to invest in SIB CDs based on misrepresentations that the CDs were backed by SLUSA-covered securities. Pet.App.64–67. The Fifth Circuit rejected the Eleventh Circuit's (and Second Circuit's) test and reversed. Pet.App.32–33. The test was and is outcome determinative.

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[10] The Fifth Circuit cited the Sixth Circuit's decision in *Segal* with approval, *see* Pet.App.32–33, which is surprising given that the Sixth Circuit expressly refused to do what the Fifth Circuit did here—namely, parse the complaint to determine whether unquestionably covered misrepresentations were too far removed from the defendant's conduct to give rise to preclusion. *See Segal*, 581 F.3d at 311–12.

There is no question that this case would have come out differently had it arisen in the Second Circuit, where the test is whether the plaintiff's claims "necessarily allege," "necessarily involve," or "rest on" the purchase or sale of SLUSA-covered securities. *Romano*, 609 F.3d at 522. Applying that test, district courts in the Second Circuit have repeatedly held that claims against third parties arising out of the Bernard Madoff Ponzi scheme are barred by SLUSA.[11] The Madoff and Stanford schemes are essentially identical—in both sets of cases, the plaintiffs were induced to invest with the fraudsters based on false promises that their funds would be invested in SLUSA-covered securities. As the district court noted, "[b]oth Stanford and Madoff purported to take investors' funds and purchase covered securities for their investors' benefit." Pet.App.67–68 n.12.

The circuit split is well-illustrated by *In re Herald, Primeo & Thelma Sec. Litig*, No. 09-289,

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[11] *See*, *e.g.*, *In re Merkin*, 817 F. Supp. 2d 346, 360–61 (S.D.N.Y. 2011); *In re Kingate Mgmt. Litig.*, No. 09-5386, 2011 WL 1362106, at *9 (S.D.N.Y. Mar. 30, 2011); *Backus v. Conn. Cmty. Bank*, 789 F. Supp. 2d 292, 302–06 (D. Conn. 2011); *Newman*, 748 F. Supp. 2d at 313; *In re Beacon Assocs. Litig.*, 745 F. Supp. 2d at 430; *Wolf Living Trust v. FM Multi-Strategy Inv. Fund*, No. 09-1540, 2010 WL 4457322, at *3 (S.D.N.Y. Nov. 2, 2010). Two courts have adopted the minority view that SLUSA is inapplicable to Madoff-related claims against third parties, but those decisions only reinforce the stark division of authority over the proper standard for finding SLUSA preclusion. *See Levinson v. PSCC Servs., Inc.*, No. 09-269, 2010 WL 5477250 (D. Conn. Dec. 29, 2010); *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372 (S.D.N.Y. 2010).

2011 WL 5928952 (S.D.N.Y. Nov. 29, 2011), a case arising out of the Madoff fraud with facts strikingly similar to this case. The plaintiffs in that case sued Bernard Madoff's bankers (J.P. Morgan and the Bank of New York), alleging that they aided and abetted Madoff's fraud, failed to disclose relevant information, and ignored warning signs of fraudulent conduct. But, unlike the Fifth Circuit here, the court in *Herald* did not parse the complaint searching for non-precluded allegations against the third-party defendants. Instead, applying the Second Circuit's test, the court concluded that "[i]t is clear that [plaintiffs'] claims against [defendants] are 'in connection with' Madoff's fraud in that they 'necessarily allege, necessarily involve, or rest' on Madoff's purported intention to purchase and sell covered securities." *Id.* at *5–*8 (quoting *Romano*, 609 F.3d at 521–22). Regardless of any *additional* alleged misrepresentations that could be pled in an effort to implicate third-party defendants, the core Madoff fraud involved misrepresentations in connection with covered securities transactions, which was, by itself, sufficient to trigger preclusion. There is no question that the instant case would have been decided differently under the reasoning of the Madoff-related cases in the Second Circuit.

II. THE FIFTH CIRCUIT'S DECISION UNDERMINES CONGRESS' POLICY JUDGMENTS AND THIS COURT'S DECISIONS IN *CENTRAL BANK* AND *STONERIDGE*

This Court has repeatedly looked to policy considerations in interpreting the meaning of SLUSA and Rule 10b-5. In *Dabit*, for example, the Court relied on "the particular concerns that

culminated in SLUSA's enactment," noting that "[a] narrow reading of the statute would undercut the effectiveness" of the Act. 547 U.S. at 86; *see also id.* at 84 (noting that, in *Blue Chip Stamps*, 421 U.S. at 737, the Court "relied chiefly, and candidly, on 'policy considerations'" in limiting the scope of the private right of action under Rule 10b-5)). The Fifth Circuit's decision directly undermines two key policy considerations underlying the federal securities statutes and this Court's securities law jurisprudence: (1) preventing extension of securities fraud liability to third-party actors; and (2) preventing plaintiffs from using artful pleading to evade restrictions on federal securities claims.

First, this Court has consistently refused to extend private liability under the federal securities laws to third-party actors such as aiders and abettors. The Court was unwilling to expose a "new class of defendants" to the "uncertainty and disruption" that inevitably results from lawsuits alleging "weak claims to extort settlements from innocent companies. *Stoneridge*, 552 U.S. at 163–66. Indeed, "[s]econdary liability for aiders and abettors exacts costs that may disserve the goals of fair dealing and efficiency in the securities markets." *Central Bank*, 511 U.S. at 188. Securities fraud litigation "requires secondary actors to expend large sums even for pretrial defense and the negotiation of settlements." *Id.* at 189. This "uncertainty and excessive litigation" causes "ripple effects" that fall the hardest on "newer and smaller companies" and

professional services firms that may be the targets of third-party securities fraud claims. *Id.*[12]

Here, because the actual perpetrators of the alleged fraud—Allen Stanford and his affiliated corporate entities—were all insolvent, Respondents and other plaintiffs sued a number of deep-pocketed third-party actors that only had some tangential connection to Stanford or SIB. None of those third-party actors bought, sold, brokered, marketed, or otherwise traded in the SIB CDs.

But while this Court's cases prohibit efforts to extend private securities liability to third parties only tangentially related to the principal fraud, the Fifth Circuit's narrow interpretation of SLUSA rewards such efforts. The farther removed a named defendant is from the actual fraud that caused the plaintiff's loss, the more additional misrepresentations the plaintiff will need to add to implicate the third-party defendant. The Fifth Circuit rewards those efforts by deeming the core fraud in connection with covered securities to be tangential to the misrepresentations alleged against the third-party defendant. Thus, the Fifth Circuit's decision actually makes it *easier* to bring state law class actions against third parties far removed from

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[12] *See also Regents of Univ. of Cal. v. Credit Suisse First Boston*, 482 F.3d 372, 386 (5th Cir. 2007) ("In *Central Bank*, the Court emphasized that securities fraud liability is an area of the law that demands certainty and predictability. Secondary liability brings neither; instead, it gives rise to confusion about the extent of secondary actors' obligations and invites vague and conflicting standards of proof in diverse courts.").

the actual fraud than to bring such claims against the primary wrongdoers. That paradoxical result cannot be squared with this Court's consistent refusal to extend securities law liability to third-party actors.

Second, the express purpose of SLUSA was to prevent plaintiffs from using artful pleading to evade the heightened barriers on private securities fraud litigation that Congress enacted in the PSLRA. As the Court explained in *Dabit*, a "narrow reading" of SLUSA would "run contrary to SLUSA's stated purpose, viz., 'to prevent certain State private securities class action lawsuits … from being used to frustrate the objectives' of the [PSLRA]." 547 U.S. at 86 (quoting 112 Stat. 3227, § 2(5)). In particular, the PSLRA "prompted at least some members of the plaintiffs' bar to avoid the federal forum altogether," and SLUSA was intended to "stem this 'shif[t] from Federal to State courts." *Id.* at 82.

As noted, this Court did not allow the plaintiffs in *Dabit* to circumvent SLUSA, the PSLRA and *Blue Chip Stamps*' rejection of holder claims by bringing holder class actions in state court. The Court recognized that the holder plaintiffs might be farther removed from a transaction in a covered security, but they nonetheless alleged misrepresentation "in connection with" a covered security. But claims against tangential defendants should fare no better than claims by tangential plaintiffs. Nonetheless, the Fifth Circuit has adopted a rule that, if allowed to stand, will permit plaintiffs to circumvent SLUSA, the PSLRA, *Stoneridge*, and *Central Bank*.

This case is a prime example of the gamesmanship Congress sought to prevent when it enacted SLUSA. If brought under federal law, Respondents' aiding and abetting claims against Willis, SEI, and other third parties would be barred by *Stoneridge* and *Central Bank*. Respondents thus limited their complaint to Texas and Louisiana state law claims. There is no need to speculate about their motivation for doing so: The Willis Respondents' counsel has told us the reason. He boasted to the press that he limited the complaint to "claims under state law" in order to "get around the U.S. Supreme Court's rulings in [*Central Bank*] and [*Stoneridge*], which have been the death knell to federal securities law claims against third party advisors to accused fraudsters."[13] The Fifth Circuit's decision vindicates Respondents' strategy of using artful pleading tactics to "get around" SLUSA and this Court's jurisprudence. The decision should not be allowed to stand.

CONCLUSION

The Court should grant the petition.

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[13] Julie Triedman, *Fifth Circuit Green-Lights $7 Billion Claims Against Proskauer, Other Stanford Advisers*, AmLaw Daily (Mar. 20, 2012).

Respectfully submitted,

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