No. 13-913

IN THE
Supreme Court of the United States

RALPH S. JANVEY,
Petitioner,

v.

JAMES R. ALGUIRE, ET AL.,
Respondents.

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

BRIEF FOR ALGUIRE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

This is an interlocutory dispute over a motion to compel arbitration. Ralph Janvey, in his capacity as the court-appointed Receiver for Stanford International Bank ("SIB"), Stanford Group Company ("SGC"), and other related entities controlled by Allen Stanford, seeks to recover employment compensation that SGC paid to the defendant financial advisors. SGC is registered as a broker-dealer with the Securities and Exchange Commission ("SEC") and is a member of the Financial Industry Regulatory Authority ("FINRA").

The defendant financial advisors filed a motion to compel arbitration, arguing that the Receiver stands in the shoes of the receivership entities, and therefore, must arbitrate his claims pursuant to FINRA rules and the terms of the defendants' written arbitration agreements with SGC. The Receiver sought to avoid arbitration under the theory that he is acting on behalf of third-party creditors rather than the Stanford entities, and therefore is not a party to Stanford's arbitration agreements. The district court adopted the Receiver's theory and denied the motion to compel arbitration. The Fifth Circuit reversed "because a federal equity receiver may not pursue claims on behalf of creditors," and remanded the case to the district court to determine whether the Receiver "is bound by the arbitration clauses if he sues, as he must, on behalf of the Stanford Entities."

The question presented is whether a federal receiver has standing to assert claims on behalf of the receivership's creditors.

LIST OF PARTIES SUBMITTING THIS BRIEF IN OPPOSITION

This Brief in Opposition is filed on behalf of 115 respondents, including named respondent James R. Alguire. These respondents (collectively referred to herein as the "Alguire Respondents") are listed below.

1. James R. Alguire
2. Orlando Amaya
3. Victoria Anctil
4. Tiffany Angelle (Degeyter)
5. Sylvia Aquino
6. George Arnold
7. Mike Arthur
8. Donal Bahrenburg
9. Brown Baine
10. Stephen Barber
11. John Barrack
12. Andrea Berger (Freedman)
13. Norman Blake
14. Michael Bober
15. Nigel Bowman
16. Alexandre Braune
17. Nancy Brownlee
18. George Cairnes
19. Frank Carpin
20. Scott Chaisson
21. Neal Clement
22. Jay Comeaux
23. Michael Conrad
24. John Cravens
25. Patrick Cruickshank
26. Greg Day
27. Bill Decker

28. Mike DeGolier
29. Arturo Diaz
30. Tom Espy
31. Jason Fair
32. Evan Farrell
33. Roger Fuller
34. Attlee Gaal
35. Gregg Gelber
36. Michael Gifford
37. Steven Glasgow
38. John Glennon
39. Ward Good
40. Stephen Greenhaw
41. Billy Ray Gross
42. Patricia Herr
43. John Mark Holliday
44. Charles Hughes
45. Wiley Carter Hutchins, Jr.
46. David Innes
47. Allen Johnson
48. Bruce Lang
49. Jim LeBaron
50. Bill Leighton
51. Robert (Bobby) Lenoir
52. Trevor Ling
53. Chris Long
54. Robert Long
55. Humberto Lopez
56. Michael Macdonald
57. Maria Manerba
58. Mike Mansur
59. Bert “Deems” May
60. Doug McDaniel
61. Matt McDaniel

62. Pamela McGowan
63. Lawrence Messina
64. Bill Metzinger
65. Trent Miller
66. Peter Montalbano
67. David Morgan
68. Jonathan Mote
69. Carroll Mullis
70. Jon Nee
71. Aaron Nelson
72. Norbert Nieuw
73. Scott Notowich
74. Monica Novitsky
75. Bill Peerman
76. Saraminta Perez
77. Randy Pickett
78. Edward Prieto
79. Christopher Prindle
80. Andrew Pritsios
81. Judith Quinones
82. Sumeet Rai
83. Michael Ralby
84. Nelson Ramirez
85. Steven Restifo
86. Jeff Ricks
87. Alan Riffle
88. Steve Robinson
89. Eddie Rollins
90. Rocky Roys
91. John Santi
92. Bill Scott
93. Haygood Seawell
94. Leonard Seawell IV
95. Doug Shaw

96. Paul Stanley
97. Sandy Steinberg
98. David Heath Stephens
99. William O. Stone, Jr.
100. Paula Sutton
101. Brent Sutton
102. Scot Thigpen
103. Jose Torres
104. Al Trullenque
105. Audrey Truman
106. Roberto Ulloa
107. Tim Vanderver
108. Pete Vargas
109. Ed Ventrice
110. Maria Villanueva
111. Charles Vollmer
112. Bill Whitaker
113. Donald Whitley
114. Hunter Widener
115. Tom Woolsey

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INTRODUCTION

This interlocutory petition does not warrant Supreme Court review. The Stanford Receiver is seeking to avoid arbitration on the grounds that he represents third-party creditors rather than the debtor in receivership. At the same time, he is pursuing alternative arguments in the district court, where the dispute over arbitration continues unabated after the Fifth Circuit's remand. For this reason alone, the Court should deny the petition.

Moreover, the Receiver's standing argument is fundamentally flawed. Indeed, it is contradicted by an unbroken line of authority dating back 75 years. To put it simply, a federal receiver cannot assert claims on behalf of third-party creditors. This rule is axiomatic, and it was reaffirmed by this Court in *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416 (1972).

The Receiver's strained interpretation of *McCandless v. Furlaud* was rejected by this Court in *Caplin*, and his creditor-standing argument has been rejected by the First, Second, Third, Fifth, Sixth, Seventh, and Ninth Circuit Courts of Appeal. The law is not "in disarray," as the Receiver claims. Since 1935, no federal appellate court has *ever* permitted a federal receiver to assert claims on behalf of third-party creditors in the manner suggested by the Petition.

Furthermore, the Receiver's standing argument is designed to achieve a single goal – avoiding arbitration. This Court, however, has repeatedly emphasized that the Federal Arbitration Act embodies a strong public policy in favor of

arbitration. Indeed, the Receiver's concerns over the expense and procedural inefficiency of arbitration were explicitly rejected by this Court in *American Express Co. v. Italian Colors Restaurant*, 133 S. Ct. 2304 (2013).

The Receiver's arguments are ill-timed, unsupported by the law, and contrary to public policy. The petition should be denied.

STATEMENT OF THE CASE

A. The Receiver's Lawsuit

This case arises from the Stanford Ponzi scheme. Petitioner Ralph Janvey is the court-appointed Receiver for Stanford International Bank ("SIB"), Stanford Group Company ("SGC"), and other related entities controlled by Allen Stanford. In this lawsuit, the Receiver has sued 329 former SGC employees seeking to "claw back" the employment compensation they received from SGC. SGC is registered as a broker-dealer with the Securities and Exchange Commission ("SEC") and is a member of the Financial Industry Regulatory Authority ("FINRA").

In February 2009, the district court froze all accounts introduced through SGC, and it directed the Receiver to take custody and control of those accounts. The frozen accounts included customer-owned accounts, plus the personal and retirement accounts of Stanford's employee financial advisors ("FAs"). The Receiver began releasing investor accounts over the next few weeks and months, but he refused to release the FAs' personal accounts even after he terminated their employment.

In April 2009, the Receiver sued 66 former Stanford FAs to recover a portion of their employment compensation. Subsequently, without seeking leave of court, the Receiver amended or supplemented his complaint at least six times, adding more than 200 additional defendants, altering his legal theories, and increasing the amounts he seeks to recover.

In earlier versions of his complaint, the Receiver sought disgorgement under a "relief defendant" theory. The Fifth Circuit, however, rejected similar claims that the Receiver had filed against Stanford investors. The court held that investors were not proper relief defendants because they had a legitimate ownership interest in their frozen accounts, even if those accounts contained SIB CD proceeds. *See Janvey v. Adams*, 588 F.3d 831 (5th Cir. 2009).

Following the Fifth Circuit's decision in *Adams*, the Receiver was forced to recognize that the defendant FAs had a legitimate claim to the compensation they received from SGC, and he abandoned his relief defendant theories. *See id.* at 834 ("receipt of funds as payment for services rendered to an employer constitutes one type of ownership interest and would preclude proceeding against the holder of the funds as a nominal defendant").

The Receiver is now asserting direct claims against the FAs (including the 115 FA defendants represented by the undersigned counsel and referred to herein as the "Alguire Respondents") for

fraudulent transfer and unjust enrichment. These claims are subject to mandatory arbitration.

The FA defendants were licensed stockbrokers employed by SGC, a registered broker-dealer. SGC was, and still is, a member of FINRA and is bound by the FINRA requirement to arbitrate all disputes with its registered employees. FINRA MANUAL Rule 0140(a) ("The Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under the Rules."). FINRA rules provide that "a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among: members; members and associated persons; or associated persons." FINRA CODE OF ARBITRATION PROCEDURE FOR INDUSTRY DISPUTES Rule 13200(a). Indeed, it is a violation of FINRA Rules for SGC to fail to submit its disputes with the FAs to arbitration. *See* FINRA IM-13000.

Additionally, the FAs' upfront loan payments were documented with Promissory Notes that included substantially the same broad-form arbitration clause: "Borrower hereby agrees that any controversy arising out of or relating to this Note, or default of this Note, shall be submitted to and settled by arbitration pursuant to the constitutions, by-laws, rules and regulations of the Financial Industry Regulatory Authority (FINRA) [or its predecessor, the NASD] in the local area of the office the Borrower is employed" [or in some cases, "of the principal office"]. *See* Fifth Cir. Record 1303 (Doc. # 202).

B. The First Fifth Circuit Appeal

In January 2010, the Alguire Respondents filed a motion to compel arbitration pursuant to 9 U.S.C. § 4, seeking to enforce the arbitration agreements contained in FINRA's governing rules and their Stanford employment agreements, and to stay all proceedings in the district court pursuant to 9 U.S.C. § 3. In response, the Receiver did not challenge the arbitration agreements themselves, but instead sought to side-step Stanford's arbitration agreements by arguing that he stands in the shoes of third-party creditors rather than the Stanford entities.

Prior to issuing a ruling on the motions to compel arbitration, the district court entered a preliminary injunction freezing the personal assets of former Stanford employees. The FAs filed an interlocutory appeal (docketed as Fifth Circuit Case No. 10-10617), arguing *inter alia* that the district court lacked the power to enter a preliminary injunction because the Receiver's claims are subject to arbitration.

On appeal, the FAs and the Receiver agreed that it would be more efficient for the Fifth Circuit to address the threshold question of arbitrability at the same time that it considered the propriety of the injunction. *See Commerce Park at DFW Freeport v. Mardian Const. Co.*, 729 F.2d 334, 340 (5th Cir. 1984) (noting that Supreme Court "expressly approved the court of appeals' *sua sponte* determination that the underlying dispute was arbitrable").

In the Fifth Circuit's initial opinion dated December 15, 2010, the court held that "[t]he Receiver's claims are not subject to arbitration because he is suing on behalf of estate creditors." *Janvey v. Alguire* ("*Alguire I*"), 628 F.3d 164, 185 (5th Cir. 2010). The court stated that Stanford's third-party creditors "are not party to the arbitration agreements and therefore [the Receiver] is not bound by the arbitration agreements." *Id.*

On January 4, 2011, the FAs filed a petition for rehearing *en banc*. The Fifth Circuit subsequently requested additional briefing on the petition for rehearing. On July 22, 2011, the court withdrew its prior opinion and issued a substitute opinion affirming the district court's preliminary injunction and remanding the motion to compel arbitration to the district court "for a ruling in the first instance." *Janvey v. Alguire* ("*Alguire II*"), 647 F.3d 585, 605 (5th Cir. 2011).

As a result, the Fifth Circuit's December 15, 2010 opinion in *Alguire I* is no longer good law. Indeed, the court's withdrawal of this opinion, six months after the filing and briefing of a petition for rehearing *en banc*, was the first step in the establishment of a uniform rule in the Fifth Circuit prohibiting receivers from asserting claims on behalf of creditors.

C. The Second Fifth Circuit Appeal

On August 26, 2011, the district court issued an order denying the FAs' motion to compel arbitration, basing its holding on the Fifth Circuit's now-withdrawn December 2010 opinion. On August 31,

2011, the Alguire Respondents filed a second interlocutory appeal.

The Fifth Circuit heard oral argument on September 4, 2012. Prior to issuing its decision, the court issued a revised opinion *sua sponte* in a related case involving the same issues of receivership standing, so that it could "confront and correct" its prior errors of law in *Alguire I*:

> In previous panel opinions, now withdrawn, this court erroneously asserted that a federal equity receiver has standing to assert the claims of the investor-creditors of a corporation in receivership against third-party transferees who receive assets of the corporation that were fraudulently conveyed to them by the principal of a Ponzi scheme who owned the corporation and used its funds to make the transfers. *See* [*DSCC I*], 699 F.3d at 848 (withdrawn by the instant opinion); *Janvey v. Alguire*, 628 F.3d 164 (5th Cir. 2010) (*Alguire I*), withdrawn, *Janvey v. Alguire*, 647 F.3d 585 (5th Cir. 2011) (*Alguire II*). . . As we explain more fully below, a federal equity receiver has standing to assert only the claims of the entities in receivership, and not the claims of the entities' investor-creditors ....

Janvey v. Democratic Senatorial Campaign Comm., Inc. ("*DSCC II*"), 712 F.3d 185, 190 (5th Cir. 2013).

As the Receiver acknowledged in his Petition, *DSCC II* "held, *unequivocally and without exception*, that 'a federal equity receiver has standing to assert

only the claims of the entities in receivership, and not the claims of the entities' investors-creditors.'" Petition, at 21 (emphasis added).

On August 30, 2013, the Fifth Circuit issued its opinion in the present case, reversing the decision of the district court and rejecting the Receiver's creditor-standing arguments. *See* Petition, App. A. "The Receiver argues that he has standing to bring suit on behalf of creditors and, therefore, that he is a stranger to the arbitration agreements between Stanford and the Employee Defendants. However, this argument is foreclosed by this court's recent decision in [*DSCC II*]." *Id.* at 4a (citing *DSCC II*, 712 F.3d at 190). "We reverse the district court's denial of the motions to compel because a federal equity receiver may not pursue claims on behalf of creditors." *Id.* at 2.

D. Current Activity in the District Court

The Fifth Circuit remanded the case to the district court to consider a single question: "whether [the Receiver] is bound by the arbitration clauses if he sues, as he must, on behalf of the Stanford Entities." *Id.* at 6a.

On November 21, 2013, the parties filed a joint stipulation establishing a post-remand briefing schedule in accordance with the Fifth Circuit's remand order. *See* Doc. #1008 in Case 3:09-cv-00724-N. Subsequently, on December 23, 2013, the Receiver urged the district court to give "the highest priority" to this dispute:

> The issue of arbitrability is on remand from the Fifth Circuit, which has twice

> considered the issue. The parties are re-briefing the arbitration issues in light of the Fifth Circuit's most recent pronouncement regarding the Receiver's standing, and the motions to compel arbitration will be fully briefed on March 6, 2014. Because of the significant monetary value of these claims and the length of time the threshold arbitration issue has been pending, the Receiver, OSIC, the Examiner, and the SEC believe that the determination of the motions, once fully briefed, should be given the highest priority.

See Doc # 1946 in Case 3:09-cv-00298-N.

The Alguire Respondents filed a post-remand brief in support of their motion to compel arbitration on January 10, 2014. *See* Doc. #1018 in Case 3:09-cv-00724-N. The Alguire Respondents reiterated their prior arguments, and they emphasized that the Fifth Circuit had rejected the Receiver's sole argument in opposition to the motion to compel. Through two appeals, and multiple briefs filed in the district court since 2010, the Receiver has never attempted to challenge the existence, validity, or scope of Stanford's arbitration agreements. Instead, he has solely relied on a creditor-standing argument in an attempt to side-step his obligation to arbitrate.

The Receiver filed a response on February 10, 2014, raising an entirely new argument in an effort to avoid arbitration. Disregarding all of his prior briefing, the Receiver now claims that he is acting solely on behalf of SIB, as a distinct and separate

entity from SGC, which employed the defendant financial advisors. *See* Receiver's Post-Remand Brief, at 1-2, 6-22 (Doc. #1029 in Case 3:09-cv-00724-N).

This argument is meritless. The Receiver has argued repeatedly that SIB and SGC were alter egos. *See, e.g.*, Receiver's Response to the Antiguan Liquidators' Supplemental Brief, at 2 (Doc #61 in Case 3:09-cv-00721) ("[t]he facts of the Stanford Ponzi scheme are such that multiple alter ego grounds ... support disregarding SIB's supposed corporate separateness"). Moreover, the district court has issued multiple orders holding that the Stanford entities operated as a single business enterprise. *See, e.g.*, Order, at 26 (Doc #176 in Case 3:09-cv-00721) ("the Court is of the opinion that the evidence supports piercing SIB's corporate veil").

The Receiver also is arguing to the district court that he is not "bound by SGC's pre-receivership arbitration agreements," despite the Fifth Circuit's decisions in *DSCC II* and the instant case. Here, in his petition for certiorari, the Receiver expresses significant concern regarding the Fifth Circuit's decision: "If receivers are limited to claims that the entities and principals (like Stanford himself) could assert, while being subject to all burdens, obligations, and defenses that could be raised against those entities and principals, it is readily apparent that receivers can only ineffectively perform their duties." Petition, at 25. But the Receiver has no such concerns at the district court level, where he continues to argue that he "is *not* bound by the actions that the Ponzi scheme principals took in furtherance of the fraud."

Receiver's Post-Remand Brief, at 25 (emphasis added).

The Alguire Respondents filed their reply brief in the district court on March 6, 2014. *See* Doc. #1037 in Case 3:09-cv-00724-N. Respondents' motions to compel arbitration are therefore fully-briefed and ripe for decision in the district court.

REASONS FOR DENYING THE PETITION

I. THE PETITION IS INTERLOCUTORY

The Fifth Circuit's opinion was unpublished and interlocutory. This fact "of itself alone" is sufficient grounds to deny the Receiver's petition. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); *see also Va. Military Inst. v. United States*, 508 U.S. 946, 113 S. Ct. 2431, 2432 (1993) (Scalia, J., concurring) ("We generally await final judgment in the lower courts before exercising our certiorari jurisdiction."); *Mount Soledad Mem'l Ass'n v. Trunk*, 132 S. Ct. 2535, 2536 (2012) (Alito, J., concurring) ("Because no final judgment has been rendered . . . I agree with the Court's decision to deny the petitions for certiorari.").

Here, the Fifth Circuit has remanded the case to the district court. In light of his attempt to raise new arguments in the district court, the Receiver does not believe that the standing issues raised in his petition for certiorari are outcome determinative. *See* Petition, at 29 ("the Receiver believes that these cases are not arbitrable regardless of which theory of standing he pursues"). In essence, the Receiver is seeking an advisory opinion from this Court in the midst of an interlocutory dispute over arbitration.

The Receiver's petition will become moot if he prevails in the district court, and the Alguire Respondents will file a new interlocutory appeal under 9 U.S.C. § 16. Accordingly, this case is not ripe for the Court's review. *See Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R.. Co.*, 389 U.S. 327, 328 (1967) (per curiam) ("because the Court of Appeals remanded the case, it is not yet ripe for review by this Court").

Furthermore, the Fifth Circuit's decision was unpublished and is "not precedent" under the court's local rules. *See* Petition, App. A, at 2a ("Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4."); 5TH CIR. R. 47.5.4 ("Unpublished opinions ... are not precedent, except under the doctrine of res judicata, collateral estoppel or law of the case ...").

The Fifth Circuit has determined that this case does not "establish new law" or "interest persons other than the parties" to the case. *See* 5TH CIR. R. 47.5.4. As such, it is a poor candidate for review by this Court. *See Williams v. Dallas Area Rapid Transit*, 256 F. 3d 260, 261 (5th Cir. 2001)(Smith, J., dissenting)("The primary justification for refusing to grant unpublished opinions precedential weight – at least in this circuit – is ... that an unpublished opinion will not 'in any way interest persons other than the parties to [that particular] case,' because the opinion neither establishes a new rule of law, modifies an existing rule of law, applies an existing rule to distinct facts, nor concerns any issue of significant public interest.").

The Receiver is actually challenging the Fifth Circuit's published decision in *DSCC II*, but this case is not an appropriate vehicle in which to do so.

II. THE QUESTION PRESENTED DOES NOT WARRANT REVIEW

A. The Law Governing Federal Equity Receivers Is Well-Settled

A federal receiver cannot assert claims on behalf of third-party creditors. This rule is axiomatic, and it is supported by an unbroken line of authority dating back 75 years. "Since 1935 it has been well established that the plaintiff in his capacity of receiver has no greater rights or powers than the corporation itself would have. . . . In other words, the receiver can only make a claim which the corporation itself could have made." *Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 25 (1st Cir. 1990) (citing *McCandless v. Furlaud*, 296 U.S. 140, 148 (1935)).

In *Caplin v. Marine Midland Grace Trust Co. of New York*, 406 U.S. 416 (1972), the Supreme Court reaffirmed this rule: "the [*McCandless*] opinion by Mr. Justice Cardozo clearly emphasizes that the receiver in that case was suing on behalf of the corporation, not third parties." *Id.* at 429.

Every circuit court to consider the issue has followed this long-standing rule. *See Fleming*, 922 F.2d at 25 ("the receiver can only make a claim which the corporation could have made"); *Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008) ("the authority of a receiver is defined by the entity or entities in the receivership"); *Marion v. TDI Inc.*, 591

F.3d 137, 147 (3d Cir. 2010) (an "equity receiver may sue only to redress injuries to the entity in receivership"); *Janvey v. Democratic Senatorial Campaign Committee, Inc.*, 712 F.3d 185, 190 (5th Cir. 2013) ("federal equity receiver has standing to assert only the claims of the entities in receivership"); *Javitch v. First Union Sec., Inc.*, 315 F.3d 619, 625 (6th Cir. 2003) ("Because they stand in the shoes of the entity in receivership, receivers have been found to lack standing to bring suit unless the receivership entity could have brought the same action."); *Scholes v. Lehmann*, 56 F.3d 750, 753 (7th Cir. 1995) ("an equity receiver may sue only to redress injuries to the entity in receivership"); *Donell v. Kowell*, 533 F.3d 762, 777 (9th Cir. 2008) (following *Scholes*).

The Receiver confuses bringing a suit for the *benefit* of creditors (i.e., a suit to secure funds that will ultimately be paid to creditors) with bringing a suit on *behalf* of creditors. This represents a misunderstanding of the law. Even if the Receiver is acting for the ultimate benefit of Stanford investors and other creditors, he can only assert claims that belong to the entities in receivership. *See, e.g., Javitch*, 315 F.3d at 627 ("although the stated objective of a receivership may be to preserve the estate for the benefit of the creditors, that does not equate to a grant of authority to pursue claims belonging to the creditors").

B. There Is No Conflict with Supreme Court Precedent

The Receiver concedes that he lacks standing to assert claims that are "personal to a particular

creditor," but argues that he may bring claims "that belong to all creditors generally." Petition, at 10. This argument, however, is contrary to established law.

The Receiver claims that *McCandless* supports his position, but it does not. In *McCandless*, Justice Cardozo stated:

> As we have striven to make clear, *the receiver does not claim to have succeeded to the rights of bondholders or noteholders* to recover damages for deceit. The wrong that is here redressed is the unlawful depletion of the assets *whereby the company was made insolvent* and the creditors were defrauded of their lawful rights and remedies.

McCandless, 296 U.S. at 167 (emphasis added).

As this Court subsequently recognized in *Caplin*, the *McCandless* opinion permitted a receiver to recover assets on behalf of the company; it did not authorize the receiver to pursue claims in the name of third-party creditors. Writing for the majority, Justice Marshall explained:

> Petitioner relies on *McCandless v. Furlaud*, 296 U.S. 140 (1935), to support the proposition that a receiver in equity may sue third parties on behalf of bondholders. But, the opinion of the Court by Mr. Justice Cardozo clearly emphasizes that *the receiver in that case was suing on behalf of the corporation, not third parties*; he was simply stating the same claim that the

> corporation could have made had it brought suit prior to entering receivership.

Caplin, 406 U.S. at 429 (emphasis added); *see also Fleming*, 922 F.2d at 25 ("Fleming attempts unsuccessfully to distinguish *McCandless* from *Caplin* and to deny its paternity of a long line of cases limiting the powers of equity receivers. The progeny of *McCandless* all affirm representation of the corporation and protection of its assets as the only purview of the receiver.").

Contrary to the Receiver's contentions, *Caplin* was in no way "cryptic" or "puzzling." *See* Petition, at 13. It was a straightforward decision in which the Court considered and rejected the Receiver's expansive interpretation of *McCandless*. In truth, neither *McCandless*, nor *Caplin*, nor any other federal appellate court since 1935, has permitted a federal receiver to assert claims in the name of third-party creditors. Mr. Janvey lacks legal standing to bring such claims, regardless of whether the creditor claims are characterized as "personal," or "general," or anything else. As a matter of law, the Receiver stands in the shoes of the debtor.

III. THE RECEIVER'S POLICY ARGUMENTS ARE CONTRARY TO SUPREME COURT PRECEDENT

Because the Receiver stands in the shoes of the Stanford entities, he is subject to all agreements and obligations of those entities – including arbitration. A receiver "is bound to the arbitration agreements to the same extent that the receivership entities would have been absent the appointment of the receiver." *Javitch*, 315 F.3d at 627; *see also Capitol Life Ins.*

Co. v. Gallagher, No. 94-1040, 1995 WL 66602, at *2 (10th Cir. Feb. 7, 1995) ("[the receiver] may be compelled to arbitrate because a receiver 'stands in the shoes' of the [receivership entity]"); *Wuliger v. Mfrs Life Ins. Co.*, 567 F.3d 787, 798-99 (6th Cir. 2009) (receiver is "subject to the same claims and defenses as the received entity he represents"). This is a simple proposition, and it is the crux of the parties' ongoing dispute.

The Receiver argues that as a matter of policy he should be permitted to bring claims on behalf of all creditors generally so that he can "effectively and efficiently protect" their interests. Petition, at 29. He protests that if he "is required to pursue these claims in arbitration, he may have to separately arbitrate each claim against more than 300 different Employees in different venues, at exorbitant cost to the Estate. Such multiplicity of effort and expense is precisely what a receivership is designed to avoid." *Id.* at 29, n.10.

The Receiver's arguments evince a hostility to arbitration that is squarely contrary to Supreme Court precedent. This Court has repeatedly emphasized that the Federal Arbitration Act embodies a strong public policy in favor of arbitration. *See, e.g., Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U. S. 1, 24-25 (1983) (question of arbitrability must be addressed with a "healthy regard for the federal policy favoring arbitration"); *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984) (citing "national policy favoring arbitration"); *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (courts must "rigorously enforce arbitration agreements").

Moreover, this Court has explicitly rejected similar challenges to arbitration based on expense or inconvenience. *See American Express Co v. Italian Colors Restaurant, Inc.*, 133 S. Ct. 2304 (2013) (Federal Arbitration Act does not permit courts to invalidate contractual waiver of class arbitration on the ground that plaintiff's cost of individually arbitrating federal statutory claim exceeds potential recovery); *see also McMahon*, 482 U.S. at 226 ("we are well past the time when judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals should inhibit enforcement of the [Federal Arbitration] Act"). The Receiver's policy arguments are meritless and do not warrant consideration by the Court.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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