Nos. 19-1402 and 19-1411

IN THE

Supreme Court of the United States

ANTONIO JUBIS ZACARIAS, *et al.*,

Petitioners,

v.

RALPH S. JANVEY, *et al.*

Respondents.

BARRY L. RUPERT, *et al.*,

Petitioners,

v.

RALPH S. JANVEY, as Court-Appointed Receiver for Stanford Receivership Estate, *et al.*

Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION FOR RESPONDENTS WILLIS GROUP HOLDINGS PLC, WILLIS LIMITED, WILLIS NORTH AMERICA INC. AND WILLIS OF COLORADO, INC.

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QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to entertain petitions for writs of *certiorari* filed after this Court's statutory jurisdiction had already expired.

2. Whether the investors' claims were sufficiently similar to the Receiver's claims to fall within the scope of the district court's equitable authority to enjoin further litigation, or whether the investors' claims were too distinct or independent to be subject to a bar order under the facts of these cases.

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RULE 29.6 DISCLOSURE

Willis Group Holdings plc (n/k/a Willis Towers Watson plc) is a publicly held corporation. In connection with the consummation of the merger between Willis Group Holdings plc and Towers Watson & Co., legacy Willis Group Holdings plc changed its name to Willis Towers Watson plc, voluntarily delisted its ordinary shares from the New York Stock Exchange on January 4, 2016, and transferred the listing of its ordinary shares to the NASDAQ Global Select Market under the ticker symbol "WLTW" on January 5, 2016. As of June 30, 2020, based solely on Schedule 13G/A filings with the U.S. Securities and Exchange Commission, the following entities beneficially owned more than 10% of Willis Towers Watson plc's outstanding shares: (i) T. Rowe Price Associates, Inc. (12.83%); and (ii) The Vanguard Group, Inc. (11.07%).

Willis Limited, Willis North America Inc., and Willis of Colorado, Inc. are or were non-public, indirect, wholly-owned subsidiaries of Willis Towers Watson plc. On December 31, 2019, Willis of Colorado, Inc. merged with and into Willis Towers Watson Insurance Services West, Inc. and no longer exists as a separate entity.

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INTRODUCTION

These petitions should be denied, as the remaining Respondents' briefs show. Willis[1] submits this brief to explain the practical importance of the Bar Orders that Petitioners have challenged.[2]

Willis has agreed to pay $120 million to the Stanford receivership estate to end more than a decade of very costly litigation against it. That is by far the largest settlement that has been reached in any Stanford-related case, and the settlement funds will be shared pro rata with all eligible Stanford investors—including the overwhelming majority of Petitioners here—in accordance with the Receiver's distribution criteria. Petitioners now ask this Court to grant *certiorari* and reject a linchpin of the Settlement—the Bar Order and the Judgment and Bar Orders precluding other Stanford-related claims against Willis. If those critical

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[1] "Willis" refers collectively to Respondents Willis Group Holdings plc ("WGH") (n/k/a Willis Towers Watson plc ("WTW")), Willis Limited, Willis North America Inc., Willis of Colorado, Inc., and Amy S. Baranoucky, who joins in this brief.

[2] Capitalized terms used but not defined have the meanings ascribed to them in the Motion to Approve Proposed Settlement with the Willis Defendants, to Enter the Bar Order, to Enter the Final Judgment and Bar Orders, and to Enter the Notices of Bar Order, filed in the district court on September 7, 2016. *S.E.C. v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-0298-N (N.D. Tex.) [Dkt. No. 2369] (ROA.17-11073.66637-70).

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orders are reversed, Willis will exercise its right to terminate the Settlement.

Terminating the Settlement would have a number of negative consequences for the receivership estate and the Stanford investors who have asserted claims against it. For one thing, if Petitioners' cases go forward, they will inevitably drain the estate's resources and therefore reduce distributions to the investor-claimants. Petitioners have sued Willis for allegedly facilitating Stanford's fraud. If the cases proceed, the estate will necessarily be embroiled in the litigation. Among other things, Willis would argue that Stanford, *not* Willis, was responsible for Petitioners' alleged losses. And if Petitioners were able to recover from Willis, Willis would argue that any liability it had to the estate (and Stanford's investor-claimants) must be reduced.

Moreover, there is a good chance that continued litigation would result in no liability at all by Willis in any of the Stanford cases—to Petitioners or the estate. The claims against Willis are baseless and, in fact, Willis has already obtained the dismissal of several of Petitioners' initial complaints, and Willis has other strong defenses that have not yet been adjudicated. Accordingly, if the Settlement is terminated, the result

may well be years of further litigation at significant cost to all parties and, ultimately, no recovery from Willis by any Stanford investor.

Finally, if Willis did ever agree to settle these claims again, there is no guarantee that it would pay the high premium that is reflected in this Settlement. Since the parties' agreement, for example, an intervening decision has shown that Willis's arguments against class certification in the *Troice* and *Janvey* actions—an issue pending at the time the Settlement was reached—would almost certainly succeed in the district court. In the absence of the Settlement, such a development, as well as other case law developments more broadly, would have the potential effect of significantly reducing the cases' settlement value. There are, of course, other litigation risks that could also impair the Receiver's bargaining power. Simply put, starting the litigation up again would likely result in a substantially lower settlement or no settlement at all. And it likely would be the worst thing for the victims of this massive fraud.

JURISDICTION

Willis incorporates by reference the statement of Jurisdiction set forth in the brief in opposition filed by Respondents Ralph S. Janvey, et al.

STATEMENT

Willis incorporates by reference the Statement set forth in the brief in opposition filed by Respondents Ralph S. Janvey, et al., except to the extent it describes the allegations against Willis, which Willis denies.

SUMMARY OF ARGUMENT

Willis joins, and will not repeat, the arguments advanced by the other Respondents showing that the *certiorari* petitions should be denied. Willis submits this brief to make several discrete, additional points in response to Petitioners' briefs and in support of the district court's Settlement orders:

- *There is no Settlement without the Bar Order and the Judgment and Bar Orders.* Willis has the express right to terminate the Settlement in the event that the district court's approval of the Bar Order and the Judgment and Bar Orders is not affirmed on appeal, and Willis would exercise that right.
- *Continued litigation would assuredly drain receivership assets.* If Petitioners' suits proceed, the Receiver and the receivership estate would have to participate in discovery and could be liable for contribution or have receivership claims reduced by the amount of any payments to Petitioners. Any

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costs or liability placed on the receivership estate would reduce distributions to Stanford's investor-claimants.

- *There is a substantial likelihood that the claims against Willis would fail on the merits.* Petitioners presume both victory against and full recovery from Willis, and ignore Willis's substantial, meritorious defenses, which have yet to be tested in discovery and ruled upon.

- *If the Settlement is terminated, any future settlement would likely be much lower and might even be zero.* A subsequent decision by the district court (denying class certification in another Stanford-related case) highlights that, if the present Settlement were to be undone, the future settlement value of these cases could be materially affected by developments in related cases or in the case law more broadly.

ARGUMENT

I. There Is No Settlement In The Absence Of The Bar Order And The Judgment And Bar Orders.

The Bar Order and the Judgment and Bar Orders are a *sine qua non* of the Settlement. If they are not affirmed on appeal, Paragraph 34 of the Settlement Agreement (ROA.17-11073.66692-93) expressly provides Willis with the right to terminate the Settlement. Willis would unquestionably exercise that right.

The $120 million Settlement amount that Willis agreed to pay is by far the largest settlement in these cases to date. The amount was heavily negotiated, over a number of months, with the assistance of Judge Layn Phillips (Ret.), the mediator who also participated in other settlements of

related Stanford litigations. Willis would not have agreed to pay this amount, or anything close to it, if the Settlement did not buy peace—a final end to all Stanford-related claims against it. In the event the Bar Order and the Judgment and Bar Orders are reversed, Willis will terminate the Settlement, pay nothing now (and possibly ever) to the Receiver and the receivership estate, and resume its vigorous defense of all Stanford-related claims.

II. Allowing Petitioners' Actions To Proceed Would Divert Resources from the Receivership And Could Lead To Adverse Rulings With Collateral Impact On The Claims Of Others And Reduce Distributions.

If Petitioners' suits go forward, the Receiver and the receivership estate would inevitably become embroiled in those litigations. As the U.S. Court of Appeals for the Fifth Circuit recognized in the context of a separate Stanford-related appeal, Willis "would argue as a defense that the Stanford companies were at least partially responsible for the investors' losses." *S.E.C. v. Stanford Int'l Bank Ltd.*, 424 Fed. Appx. 338, 341 (5th Cir. 2011). Thus, at a minimum, the Receiver and the receivership estate would have to participate in expensive and time-consuming discovery, and could also be held responsible for some or all of Petitioners' alleged losses. Additionally, if Petitioners recovered any

damages from Willis through their individual actions, Willis would argue that its payment(s) to Petitioners should reduce Willis's liability, if any, in the *Troice* and *Janvey* actions because the plaintiffs in the *Troice* and *Janvey* actions largely assert the same claims and allegations against Willis as Petitioners. That is, if Willis ultimately paid a judgment to Petitioners, its potential liability, if any, to the receivership estate—and, in turn, distributions to investor-claimants—would be reduced. What is more, the result would be a disproportionate recovery by Petitioners, as compared to the pro rata distribution that will be made to investor-claimants in connection with the Settlement.

Any cost, liability, or offset of claims by the Receiver and the receivership estate would reduce distributions to Stanford's investor-claimants.

III. Petitioners Presume Both Victory And Full Recovery, And Simply Ignore Willis's Substantial Meritorious Defenses.

Petitioners' briefs to this Court presume there will be both victory against and a full recovery from Willis. Petitioners ignore that Willis has substantial, meritorious defenses against all of the Stanford-related claims against it, which have yet to be tested or adjudicated. Petitioners also disregard the many years of further litigation—including

interlocutory appeals, fact and expert discovery and related disputes, summary judgment, and trial (and then ensuing appeals)—that would be left before any judgment could be enforced in any of these cases. Indeed, Willis has yet to even submit motions to dismiss in a number of Petitioners' cases, which it will certainly do if those cases proceed. And prior rulings by the district court on similar legal issues suggest that Willis's motions would likely succeed. For example, Willis has *already* moved against and obtained the dismissal of the initial complaints in the *Zacarias*, *Nuila de Gadala-Maria*, and *Tisminesky* actions.[3] And while the plaintiffs in those actions have since amended their complaints, with leave of the district court, motions to dismiss the amended complaints (on largely the same grounds) are fully briefed and await disposition.

Not only do Petitioners ignore the steep challenges that they and other plaintiffs would face on the merits, they suggest that Willis should

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[3] *See Zacarias v. Willis Group Holdings Public Limited Company, et al.*, No. 3:13-cv-2570-N (N.D. Tex.), Order (July 15, 2015) [Dkt. No. 59] (ROA.17.11127.1055-62); *Nuila de Gadala-Maria v. Willis Group Holdings Public Limited Company, et al.*, No. 3:13-cv-2572-N (N.D. Tex.), Order (July 21, 2015) [Dkt. No. 57] (ROA.17-11128.1067-68); *Tisminesky v. Willis Group Holdings Public Limited Company, et al.*, No. 3:13-cv-2573-N (N.D. Tex.), Order (July 21, 2015) [Dkt. No. 56] (ROA.17.11129.981).

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pay much more than $120 million to settle these claims simply because WTW, the ultimate parent company,[4] is a publicly-traded company with a healthy balance sheet. Willis's resolution of these cases, however, is based upon the value to Willis of terminating protracted and expensive litigation and obtaining finality—*not* on allegations or innuendo, and most certainly *not* on WTW's status as a perceived deep pocket.[5]

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[4] Subsequent to the closing of the merger of WGH and Towers Watson & Co. on January 4, 2016, WGH effected a consolidation (*i.e.*, a reverse stock split under Irish law) of WGH ordinary shares into WTW ordinary shares and changed its name from WGH to WTW. *See* Willis Towers Watson plc Form 10-K (filed with the U.S. Securities and Exchange Commission on Mar. 1, 2017), at 5.

[5] Indeed, the record leaves no room to dispute that Willis's *de minimis* involvement in confirming insurance coverage for Stanford was done with no motive to aid any fraud and no awareness that (i) certain rogue Stanford financial advisors ("FAs") were misrepresenting the scope of insurance or (ii) Allen Stanford was secretly running one of the largest Ponzi schemes in history. Unlike the Stanford FAs, Willis received no commissions or compensation from the CD sales but, instead, was paid industry-standard commissions—from the insurance carriers, *not* from Stanford—for placing bona fide insurance policies. *See* Willis and Amy Baranoucky's Opp. to Pls.' Mtn. for Class Cert., *Troice v. Willis of Colorado, Inc., et al.*, No. 3:09-cv-01274-N (N.D. Tex.) (April 20, 2015) [Dkt. No. 234], at 10-16 (ROA.17-11073.88405-11).

IV. Continued Litigation Runs The Risk Of Driving Any Settlement Down To A Number Well South Of $120 Million—And Possibly To Zero.

If the Settlement collapses, there is good reason to think that any future settlement amount would be substantially lower or nothing at all. Indeed, the $120 million that Willis agreed to pay to settle these claims reflected the uncertainty and litigation risk at the time the Settlement Agreement was made.

For one thing, the putative class action cases, *Troice* and *Janvey*, are only at the class certification phase, and there is now even better reason to think a class would not be certified by the district court. When the parties reached this Settlement, the class certification motions were pending, and they would have to be decided if the Settlement collapses. Willis had asserted strong arguments against class certification, and post-Settlement, the district court denied class certification in another Stanford-related case based on the exact same arguments. In particular, the district court held that Stanford's investors "had different financial advisors who made varying oral representations in separate sales pitches for the SIBL CDs. *Given the varying oral representations made to individual investors, individual factual questions will likely predominate*

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here." *Rotstain v. Trustmark Nat'l Bank, et al.*, No. 3:09-CV-2384-N (N.D. Tex.), Order (Nov. 7, 2017) [Dkt. No. 428] ("*Rotstain* Order"), at p. 4 (emphasis added); *id.* at pp. 3-4 (citing *Simon v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 482 F.2d 880, 882 (5th Cir. 1973); *Gyamarthy & Assocs., Inc. v. TIG Insurance Co.*, 2003 WL 21339279, at *2 (N.D. Tex. June 3, 2003) (Godbey, J.)).[6] The district court thus "conclude[d] that common issues of fact do not predominate here" and refused to certify the putative *Rotstain* class. *Rotstain* Order at 5. This decision adopts in full the position Willis asserted against class certification in *Troice* and *Janvey* (and later advanced by the defendants in *Rotstain*). If the Settlement is terminated, the pending class certification motions in *Troice* and *Janvey* will presumably be decided the same way.

In short, if the Settlement falls apart and the class certification or other issues are ultimately decided in Willis's favor, any future settlement amount would be substantially lower and Willis might not be

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[6] *See also Simon*, 482 F.2d at 882 ("If there is any material variation in the representations made or in the degrees of reliance thereupon, a fraud case may be unsuited for treatment as a class action. Thus, courts usually hold that an action based substantially, as here, on oral rather than written misrepresentations cannot be maintained as a class action.") (internal citations omitted).

interested in settling at all. It is impossible to predict all of the facts and circumstances that could develop in the absence of the Settlement and through continued litigation. Rulings by the district court, this Court, or other courts on issues, like class certification, related to the parties' claims and defenses could have a substantial impact on settlement value. But that is precisely the point of a settlement: to eliminate, on both sides, the risks and uncertainty inherent in litigation, the future of which cannot be predicted with scientific precision.

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CONCLUSION

For the foregoing reasons, as well as those set forth in the remaining Respondents' briefs, this Court should deny the petitions for a writ of *certiorari*.

Dated: November 6, 2020

Respectfully submitted,

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