No. _____

IN THE

Supreme Court of the United States

IN RE PROVIDENT ROYALTIES, L.L.C.,
Debtor,

MILO H. SEGNER, JR.,
Petitioner,

V.

CIANNA RESOURCES INCORPORATED,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition presents two important questions concerning the pursuit of Ponzi-scheme proceeds in bankruptcy proceedings—including one that has provoked conflicting decisions by the Fourth and Fifth Circuits.

1. The Bankruptcy Code grants transferees an affirmative defense to a trustee's avoidance power allowing them to retain any transfer received for value, in good faith, and without knowledge of voidability. The Code does not define good faith.

Here, the Fifth Circuit affirmed a jury finding of good faith for a transferee that admitted violating a criminal statute in connection with every transfer it received from a $485-million Ponzi scheme. In essence, the court deemed the transferee a "good faith criminal" based on testimony that other members of the same industry commit the same crime.

But the Fourth Circuit rejects this approach, holding that evidence of routine criminal violations in an industry cannot establish the observance of reasonable commercial standards necessary to prove good faith.

This Court should grant review to resolve this division over the following question:

Can a party who receives transfers that are the undisputed proceeds of a Ponzi scheme—and who admits committing a crime in connection with every transfer—act in good faith as a matter of law?

2. The transferee faced mounting evidence of fraud in 197 transfers occurring over eight months.

Because the transferee had greater reason to question the later transfers than earlier ones—and bore the burden of proof—the trustee asked that the jury decide good faith separately for each transfer. Instead, the district court folded all 197 transactions into a single question on good faith.

The question presented is:

Where a transferee receives multiple transfers over many months, and the evidence of fraud grows during that period, must the jury decide whether the transferee proved good faith as to each transfer?

PARTIES TO THE PROCEEDING

The parties in the Fifth Circuit were Milo Segner, Jr. (court-appointed Liquidating Trustee of the PR Liquidating Trust) and Cianna Resources Incorporated.

Segner died after the Fifth Circuit issued its decision. He remains the named petitioner but the new trustee is Kelly McCullough.

If the Court grants this petition, McCullough will file a motion under Rule 35 to be substituted as the named petitioner.

STATEMENT OF RELATED PROCEEDINGS

In re Provident Royalties, LLC, et al., No. 09-33886-hdh11 (Bkrtcy. Ct. N.D. Tex.) (bankruptcy case filed June 22, 2009; plan confirmed June 10, 2010; case remains pending in the bankruptcy court)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Milo H. Segner, Jr. respectfully submits this petition for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS AND ORDERS BELOW

The Fifth Circuit's panel opinion affirming the district court's judgment (App. 1a–4a) is unreported officially but published at 777 Fed. Appx. 115. The opinion of the district court (App. 8a–33a) is unreported but available at 2018 WL 3155827.

STATEMENT OF JURISDICTION

The Fifth Circuit entered judgment affirming the district court's judgment on September 18, 2019. This Court has jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

Section 548(a)(1) of the Bankruptcy Code states that:

> The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition . . . .

Section 550(a) of the Bankruptcy Code states that:

> Except as otherwise provided in this section, to the extent that a transfer is avoided . . . the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from—
>
> (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
>
> (2) any immediate or mediate transferee of such initial transferee.

Section 550(b) of the Bankruptcy Code states that:

> The trustee may not recover under section (a)(2) of this section from—
>
> (1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or
>
> (2) any immediate or mediate good faith transferee of such transferee.

INTRODUCTION

This case presents two important questions concerning a trustee's power to claw back Ponzi-scheme proceeds in bankruptcy proceedings.

The Bankruptcy Code affords an affirmative defense to transferees who receive transfers for value,

in good faith, and without knowledge of voidability. The Code does not define good faith and the lower courts have reached conflicting results in attempting to do so. Here, this lack of consistency resulted in a transferee essentially being deemed a "good faith criminal."

Cianna Resources received $21 million in connection with its acquisition of mineral interests for a $485-million Ponzi scheme. Though Cianna disclaimed any knowledge of that scheme, it admitted illegally falsifying deed records in connection with every transfer it received. These falsified records obstructed investigation of the scheme and helped its architects secretly siphon off cash for themselves.

The Fifth Circuit held that Cianna's confessed criminal conduct did not preclude the jury's finding of good faith because others in the same industry also falsify deed records.

But the Fourth Circuit has held that evidence of criminal conduct by others cannot establish the observance of reasonable commercial practices necessary to prove good faith under the Code. *Goldman* v. *Capital City Mortg. Corp. (In re Nieves)*, 648 F. 3d 232, 239 (4th Cir. 2011). The Ninth Circuit has reached the same conclusion in interpreting the meaning of good faith under the Uniform Commercial Code. *Rudiger Charolais Ranches* v. *Van De Graaf Ranches*, 994 F. 2d 670 (9th Cir. 1993).

So a transferee's criminal violations preclude a finding of good faith in the Fourth Circuit (and, presumably, the Ninth Circuit) but not in the Fifth Circuit. And the Fifth Circuit's decision cost

thousands of elderly retirees the chance to recoup millions of dollars stolen from their savings.

Finally, the district court refused the trustee's request to have the jury decide Cianna's good faith for each of the 197 transfers it received.

The trustee presented evidence of mounting red flags over Cianna's eight-month relationship with the scheme—suggesting that Cianna could have acted in good faith on early transfers but not later ones. But the district court prevented the jury from differentiating among transfers by folding all 197 of them into one question on good faith. This all-or-nothing question enabled Cianna to "prove" good faith by convincing the jury of its good faith on just the first of 197 transfers.

This Court should grant review to address both issues, which affect the proliferating number of Ponzi-scheme cases—involving billions of dollars in stolen money—in bankruptcy courts.

STATEMENT

This adversary proceeding concerns entitlement to millions of dollars of illegally procured booty—the undisputed proceeds of a $485 million Ponzi scheme operated by Provident Royalties, LLC and targeting elderly retirees. The district court had jurisdiction under 28 U.S.C. § 1334(b).

Provident's Ponzi scheme. Provident operated a Ponzi scheme based on flipping Oklahoma mineral interests. Provident engaged Ruthven Oil & Gas, LLC to assist it in acquiring mineral interests. Ruthven, in turn, asked Oklahoma landman Kyle

Shutt of Cianna Resources Incorporated to acquire the interests. Record.20202, 25356–25357.

In more than 150 transactions spanning eight months, Cianna purchased mineral interests on 197 properties in its own name. Cianna then flipped each interest to Ruthven at double the price, and Ruthven then executed a second flip to Provident—again doubling the price. Record.25458–25459, 20203. This enabled Provident to attract investors by reflecting inflated asset values on its books while secretly siphoning cash from the flips. Record.26097, 26277–26278.

In eight months, Provident transferred $48.8 million to Ruthven, which then transferred $21.1 million to Cianna. Record.25423, 25940–25941. Around $14 million went to the mineral owners—leaving Cianna with $7 million. Record.25417–25418. Even if Shutt worked six days a week throughout the entire scheme, this amounts to ***more than $35,000 a day***.

After Provident filed for bankruptcy, the court appointed Milo Segner, Jr. as trustee of a trust created to recover funds for the company's 6,000 victims. Segner filed this adversary proceeding. The sole issue at trial was Cianna's affirmative defense that it received the transfers for value, in good faith, and without knowledge they were voidable. *See* 11 U.S.C. § 550(b).

Evidence of red flags accruing over time. Segner introduced evidence of red flags that he argued put Cianna on inquiry notice of Provident's scheme. As is common in Ponzi schemes, these red flags arose over time.

From the start, Cianna was instructed to offer every mineral owner the same per-acre price—triple the market rate—without trying to negotiate better deals. Record.26219. And Provident used its double-flip, double-markup acquisition process from the get-go with no explanation of why. Record.25439, 25524.

For example, Cianna bought mineral interests from Joe and Wanda Faye Meyers for $64,000. Cianna flipped the interests to Ruthven for $91,000, and Ruthven flipped them to Provident for $126,000. Record.28522. This pattern was repeated over and over in the Cianna-to-Ruthven-to-Provident flips.

Another red flag arose months later when the parties signed a contract for Cianna's work—with no provision for the millions of dollars being paid to Cianna. Record.26670–26704. Later, Provident requested deeds for the interests it had acquired and Ruthven refused to provide them—as though legitimate investors spend millions of dollars for properties without getting deeds. Record.28536.

Cianna admits breaking the law in every Provident transaction. Oklahoma law imposes a tax on every transfer of a real-property interest. Okla. Stat., Tit. 68, § 3201 (West 2018). This tax is paid through documentary stamps (doc stamps) affixed on the transfer instrument. Okla. Stat., Tit. 68, § 3203(B) (West 2018). The doc stamp must reflect the exact price paid; each violation is punishable by up to one year in prison. Okla. Stat., Tit. 68, § 3206(A) (West 2018). The doc stamp helps regulate the marketplace by enabling the public to determine what is paid for Oklahoma mineral interests and property.

Cianna violated the doc-stamp statute in every one of its purchases. Rather than showing the true amount paid to the landowner, Cianna inflated the price by adding its hefty profit from the subsequent flip to Ruthven. Record.25464–25465.

Shutt admitted that Cianna lied on every doc stamp associated with Provident. Record.25465–25466. He admitted these misrepresentations prevented anyone from knowing how much Cianna—and thus Provident—paid for the interests. Record.25466, 25468.

Cianna also violated the doc-stamp statute in every one of its flips to Ruthven by claiming an inapplicable exemption. Record.25468. This allowed Cianna to hide the first flip—thus concealing its involvement in the scheme. Record.26281.

Shutt claimed he falsified the doc stamps to mislead competitors. Record.25465–25467, 25513. Cianna's expert witness testified that other people in the Oklahoma oil and gas industry also violate the doc-stamp law. Record.25799.

But Segner and Provident's SEC receiver testified that Cianna's doc-stamp fraud helped to enable and conceal Provident's Ponzi scheme. Segner testified that the misrepresentations obstructed his investigation. Record.25944. The SEC receiver testified that the doc-stamp fraud enabled Provident to bleed off victim funds through the double flips. Record.26281.

The bombshell red flag. Segner presented evidence of a "bombshell" red flag that occurred about halfway through the scheme.

One of the mineral owners—retired geologist William Ball—discovered the inflated doc stamp in his transaction with Cianna and wrote a letter to the Provident entity (Somerset) involved in the deal. Cianna paid Ball $16,000, but recorded the price as $24,000 on the doc stamp. Ruthven flipped the interests to Somerset/Provident for $30,000. In two contemporaneous transactions, the purchase price nearly doubled and the public records concealed that fact. Record.25510–25512.

To explain, according to the (misrepresented) public record, the property was acquired for $24,000 and sold to Provident for $30,000, leaving Cianna and Ruthven to split the $6,000 difference. Actually, though, (1) Cianna acquired the property for $16,000 and flipped it to Ruthven for $24,000, leaving an $8,000 profit for Cianna, and (2) Ruthven acquired the property for $24,000 and flipped it to Provident for $30,000, leaving a $6,000 profit for Ruthven.

Ball recognized these shenanigans for what they were and explained them in his letter:

> WHY WOULD Mr. Shutt want the Court House records to indicate (falsely) that he paid me $24,000 for a property when he actually paid only $16,000 for it? I'll let you derive your own explanation for his deception.

Not knowing Provident's role as architect of this scheme, Ball wondered: "Have we both been hoodwinked?" And—not dreaming that Provident would pay Shutt such outrageous compensation—Ball concluded by saying:

> If you willingly pay your contract landmen fees such as this ($30,000 for a property which was obtained for $16,000), I think I should come out of retirement and work for Somerset!

Recognizing the doc-stamp lies as hallmarks of fraud, Ball mentioned referring the matter to law enforcement officials. Record.26711.

Shutt knew about Ball's letter. Record.25507.

Cianna ignores it all and keeps pocketing millions. Cianna received more than $20 million of Provident's money from Ruthven. But Shutt never asked a single question about Provident—not its name, not its business, and not the source of its $20 million. Record.25438–25441, 25449.

After seeing the Ball letter, Cianna received another $13 million from Provident. Record.28522–28524.

The trial court collapses 197 transfers into one jury question. Having introduced evidence of mounting red flags—making Cianna's claim of good faith far less plausible for later transfers than earlier ones—Segner requested the jury be required to decide Cianna's good faith for each transfer. Record.21839–21869, 26450.

But instead, the district court prevented the jury from differentiating among the transfers by folding all 197 of them into one question:

> Did Cianna show by a preponderance of the evidence that it received the money in good faith?

(App. 45a). The jury found for Cianna (App. 35a) and the district court entered a take-nothing judgment. (App. 7a).

The Fifth Circuit's decision. Segner appealed, arguing that (1) Cianna's crimes precluded the finding of good faith as a matter of law, and (2) the collapse of all 197 transactions into a single question permitted Cianna to avoid having to prove good faith for each transfer. The Fifth Circuit affirmed in a three-page opinion (App. 1a–4a).

The Fifth Circuit dispatched Cianna's criminal violations in a footnote calling these acts "shady" but excusing them based on the testimony of similar doc-stamp violations by others:

> In affirming the district court, we in no way sanction or condone the conduct or business practices of any of the pertinent entities—the debtor (Provident Royalties, LLC), Ruthven Oil & Gas, LLC, or Cianna. While many of the business practices employed here appear ill-advised and sloppy, if not shady . . . acceptable business and legal practices differ, to some extent, between regions and industries . . . Cianna's fact and the expert witnesses offered some explanation(s) in response to Trustee's contentions . . . .

(App. 3a).

With regard to the jury question, the Fifth Circuit affirmed without even discussing Segner's

argument—the entirety of the Fifth Circuit's discussion of the jury question is contained in the following two sentences:

> Rather, the record reflects that the jury . . . received the necessary instruction regarding applicable law by the district court.

(App. 2a).

> [W]e find no abuse of discretion relative to . . . formulation of the jury verdict form.

(App. 4a).

REASONS FOR GRANTING THE WRIT

This case presents two important questions concerning a trustee's power to obtain relief for victims of Ponzi schemes—including a question that provokes disagreement among the circuit courts.

1. This Court should grant the writ to resolve the division over whether a transferee's criminal conduct precludes a finding of good faith as a matter of law.

The Bankruptcy Code provides an affirmative defense to transferees why prove they received a transfer for value, in good faith, and without knowledge of voidability. 11 U.S.C. § 550(b)(1).

The Bankruptcy Code does not define good faith. 5 Collier on Bankruptcy § 548.09[2][B] (Richard Levin & Henry J. Sommer eds. 16th ed. 2019). "As a result, courts have struggled in applying this term, and the caselaw discussing Section 548(c)'s good faith affirmative defense is marked by a lack of clarity if

not outright confusion." *Christian Bros. High School Endowment* v. *Bayou No Leverage Fund, LLC (In re Bayou Group, LLC)*, 439 B.R. 284, 309 (S.D.N.Y. 2010).

Some circuit courts refuse to define good faith, assessing the defense on a case-by-case basis. *Brown* v. *Third Nat. Bank (In re Sherman)*, 67 F. 3d 1348, 1355 (8th Cir. 2011); *Hayes* v. *Palm Seedlings Partners-A (In re Agric. Research & Tech. Grp., Inc.)*, 916 F. 2d 528, 536 (9th Cir. 1990); *Jobin* v. *McKay (In re M&L Bus. Mach. Co., Inc.)*, 84 F. 3d 1330, 1335 (10th Cir. 1996).

The Fifth Circuit applies a two-part test for deciding good faith:

> (1) Did the transferee have information putting it on inquiry notice of the transferor's insolvency or that the transfer might be for a fraudulent purpose?
>
> (2) If so, did the transferee investigate diligently?

Templeton v. *O'Cheskey (In re Am. Housing Found.)*, 785 F. 3d 143, 164 (5th Cir. 2015) (citation omitted).

The Fourth Circuit applies a different two-part test requiring proof of: (1) subjective honesty-in-fact, and (2) the objective observance of reasonable commercial standards. *Goldman* v. *Capital City Mortg. Corp. (In re Nieves)*, 648 F. 3d 232, 239 (4th Cir. 2011); *Gold* v. *First Tennessee Bank Nat. Assn. (In re Taneja)*, 743 F. 3d 423, 430 (4th Cir. 2014) (citation omitted).

The nuances of the differences in these tests aside, the real disagreement—pointed up here—concerns the role of criminal acts in deciding good faith. The Fourth Circuit's objective component for good faith involves examining routine practices in the transferee's industry. *Goldman*, *supra*, at 239–240. But the Fourth Circuit considers only ***legal practices***—a "reasonable commercial practice includes a 'custom or practice' ***unless in conflict with a statute*** . . . ." *Id.* at 239 (citation omitted and emphasis added).

The Fourth Circuit based this rule about criminal conduct on the Ninth Circuit's decision in *Rudiger*. Discussing the UCC, the Ninth Circuit held that "a custom or practice which violates a statute is not a reasonable commercial standard." *Rudiger Charolais Ranches* v. *Van de Graaf Ranches*, 994 F. 2d 670, 673 (9th Cir. 1993).

But here, the Fifth Circuit reached the opposite result. Instead of following *Goldman* and *Rudiger*, the Fifth Circuit held that Cianna proved its good faith by testimony that others in the same industry also violate the doc-stamp statute. The Fifth Circuit's holding is inconsistent with the rule followed by the Fourth and Ninth Circuits.

The Court should grant review to resolve this division—and to adopt the rule followed by the Fourth and Ninth Circuits. A transferee who breaks the law in connection with every transfer it receives should not be permitted to carry its burden on a good-faith defense and overcome the trustee's avoidance powers. This interpretation comports with the notion of good faith in other areas of the law.

In corporate law, "[a] well-established principle under the duty of good faith is that a manager may not knowingly cause the corporation to violate the law, even when it is rational to believe that the violation would maximize corporate profits and shareholder gain . . . ." Melvin A. Eisenberg, *The Duty of Good Faith in American Corporate Law*, 31 Del J. Corp. Law 1, 31 (2006). "[T]here is a strong social interest in prohibiting managers from causing the corporation to knowingly disobey the law in the search of profits." *Id.* at 32.

Public policy concerns also compel rejection of Cianna's good-faith defense. A transferee should not be able to commit crimes involving dishonesty and yet still claim good faith in the very same transactions.

Shutt admitted his dishonesty in recording mineral deeds with incorrect doc-stamp taxes. Record.25465–25466. By misrepresenting what it paid for mineral rights, Cianna corrupted the public records—potentially causing secondary consequences such as artificially inflating the values of adjoining tracts.

Deceiving these public officials was dishonest and the antithesis of good faith. Public policy demands a penalty. Unfortunately, the risk of prosecution may be low due to lack of detection or scarce prosecutorial resources. And, in any event, "[a] complex society in which individuals obeyed the law only because they feared prosecution could not thrive." Eisenberg, 31 Del J. Corp. Law at 31. Thus, "public policy requires condemning the merchant who violates a statute and he is not excused from doing so by the fact that it is customary to violate the statute."

Rudiger, *supra*, at 673 (quoting 1 Ronald A. Anderson, Uniform Commercial Code, § 2-103.28, at 520 (1981)).

These concerns hit their zenith in cases involving Ponzi schemes. Cianna holds millions of dollars that it concedes were stolen from elderly retirees. A transferee like Cianna—who acts dishonestly, fails to observe reasonable commercial practices, and commits a crime in every transfer—should not be permitted to avail itself of a good-faith affirmative defense.

2. This Court should grant the writ to clarify whether a Ponzi-scheme transferee must prove good faith for each transfer it wishes to avoid.

Cianna had to prove good faith for each transfer it wished to retain. *See* 11 U.S.C. § 550(b). The trial court's decision to collapse all 197 transfers—occurring over an eight-month period with mounting red flags—essentially flipped this burden of proof. Rather than meeting its burden to prove good faith for each transfer it wished to retain, the trial court's "all-or-nothing" question permitted Cianna to retain funds from 197 transfers by convincing the jury that it acted in good faith on just the first one of them.

The transactions among Cianna, Ruthven, and Provident spanned eight months with mounting red flags throughout that period. This is common in Ponzi schemes, where some participants may begin as innocents but gradually discover the truth over time.

Not all Ponzi schemes begin with fraudulent intent. Sometimes they start with bad investment decisions that "transmute to a Ponzi scheme, even if there was no intention of doing so when the business

began." Mervyn K. Lewis, Understanding Ponzi Schemes: Can Better Financial Regulation Prevent Investors From Being Defrauded? 28 (2015).

Bankruptcy courts routinely recognize that a transferee may act with good faith in early transactions but cross the line to knowing participant in later ones. *See, e.g.*, *Meoli* v. *Huntington Nat. Bank (In re Teleservices Grp., Inc.)*, 444 B.R. 767, 774, 825–26 (Bkrtcy. Ct. W.D. Mich. 2011); *CCEC Asset Mgmt. Corp.* v. *Chemical Bank (In re Consol. Capital Equities Corp.)*, 175 B.R. 629, 638 (Bkrtcy. Ct. N.D. Tex. 1994).

Cianna confronted mounting red flags over time—most critically Ball's letter midway through the scheme, explicitly raising the possibility of criminal activity based on the falsified doc stamps.

The trial court concluded none of this mattered because Shutt denied knowing about the fraud and testified that "the transactions at issue were consistent with Cianna's normal business practices." And, according to the trial court, "that testimony applies to all of the transactions." (App. 27a).

But that, of course, is the very question the jury needed to answer: whether "that testimony applie[d] to all of the transactions." It was the jury's province to decide. After all, the jury might have found Shutt's testimony to be credible about transactions before—but not after—the Ball letter.

The district court's question never permitted the jury to consider that possibility. Instead, the decision to fold 197 transfers into one question forced the jury into an all-or-nothing decision: (1) hit Cianna for $21.7 million, or (2) let it walk away scot-free.

The practical effect of the district court's mistake was to shift the burden of proof. The all-or-nothing question enabled Cianna to prove its good faith in 197 transfers over an eight-month period by convincing the jury it acted in good faith on the first transfer. The burden then shifted (improperly) to Segner to rebut this good faith for the remaining 196 transfers. A Ponzi-scheme transferee should not be able to avoid claw-back liability on 197 transfers by proving good faith on just one of them.

3. Both issues are important given the prevalence of litigation over Ponzi schemes in bankruptcy proceedings.

Ponzi schemes are an entrenched part of America's financial landscape. But "the frequency and magnitude of these schemes that has been revealed in the last few years is staggering." Dorothy T. Eisenberg & Nicholas W. Quesenberry, *Ponzi Schemes in Bankruptcy*, 30 Touro L. Rev. 499, 499 (2014).

When these schemes inevitably fail, they usually end up in bankruptcy court. *Id*. at 500; *see also* C.R. "Chip" Bowles & Ivana B. Shallcross, *Dirty Rotten Scoundrels: Ponzi Schemes in Bankruptcy Cases*, Am. Bankruptcy Inst. J. 28 (March 2009).

In those situations, the trustee's power to avoid fraudulent and preferential transfers may be the only thing standing between the victims and financial ruin. As a result, bankruptcy courts frequently confront avoidance and fraudulent-transfer issues in cases concerning Ponzi schemes. *See, e.g.*, *Perkins* v. *Haines*, 661 F. 3d 623 (11th Cir. 2011); *Gillman* v. *Russell (In re Twin Peaks Fin. Servs., Inc.)*, 562 B.R.

519 (Bkrtcy. Ct. Utah 2016); *Picard* v. *Katz*, 466 B.R. 208 (Bkrtcy. Ct. S.D.N.Y. 2012); *Barclay* v. *Swiss Finance Corp. Ltd. (In re Bankruptcy Estate of Midland Euro Exchange, Inc.)*, 347 B.R. 708 (Bkrtcy. Ct. C.D. Cal. 2006); *Picard* v. *Avellino (In re Bernard L. Madoff Inv. Sec. LLC)*, 557 B.R. 89 (Bkrtcy. Ct. S.D.N.Y. 2016).

The amount of money implicated by these cases almost defies rationality. Of course, there are the infamous mega-schemes operated by Bernie Madoff and Allen Stanford. But they are the tip of the iceberg—since 2012, an average of 65 Ponzi schemes a year have been uncovered in the United States. Bruce Love, *Investors Beware: The Ponzi Scheme is Thriving*, Financial Times (Mar. 30, 2017).

The issues presented by this petition have real-world, practical implications for trustees seeking recovery of Ponzi-scheme proceeds. These issues merit review by this Court given their potential to affect the recovery of hundreds of millions of dollars stolen from elderly retirees across the country.

CONCLUSION

Based on these two important issues concerning the pursuit of Ponzi-scheme proceeds in bankruptcy proceedings, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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