

No. 23-225

IN THE SUPREME COURT
OF THE UNITED STATES

KEITH M. KRUPKA AND JOSEPH J. LEE,
ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED,

Petitioners,

v.

STIFEL NICOLAUS & CO., INC.

Respondent.

REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

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REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Keith M. Krupka and Joseph J. Lee respectfully submit this Reply Brief in Support of their Petition for Writ of Certiorari to address only two new points raised in the Respondent's Brief in Opposition: (1) Respondent's misapprehension of this Court's jurisdiction and (2) Respondent's misrepresentation of Petitioners' position and the corresponding relief sought.

I. Respondent's Misapprehension of this Court's Jurisdiction

While Respondent agrees that "this Court has jurisdiction under 28 U.S.C. § 1254(1) to review interlocutory decisions of a federal court of appeals," Respondent argues that doing so now "would be unprecedented, where, as here, the case remains pending in the District Court[.]" (Opposition, p.2.) Such argument is inaccurate. In *U.S. v. Nixon*, 418 U.S. 683 (1974), this Court granted certiorari before judgment in the district court where the district court had stayed its order denying a motion to quash a subpoena duces tecum "pending appellate review," and the Special Prosecutor had filed a petition for writ of certiorari "before judgment" in the Court of Appeals. *Id.* at 683-84. Likewise, here, the District Court has now stayed the proceedings in light of the Petitioners' Petition for Writ of Certiorari which challenges the District Court's subject matter jurisdiction over certain categories of class actions. (Appendix, p. 1a)

Further, Respondent argues that Petitioners are seeking to appeal an interlocutory order of the Eighth Circuit pursuant to 28 U.S.C. § 1453(c)(1). Yet, the Eighth Circuit entered a “judgment” denying Petitioners’ petition for permission to appeal pursuant to 28 U.S.C. § 1453. This Court has previously determined that it has jurisdiction to review judgments of appellate courts which decide remand issues under 28 U.S.C. § 1453. *Hertz Corp. v. Friend*, 559 U.S. 77, 83-84 (2010). This Court has also granted a petition for writ of certiorari where the Eighth Circuit declined to hear an appeal pursuant to 28 U.S.C. § 1453. *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 591 (2013). Accordingly, granting certiorari here is not unprecedented.

Last, Respondent’s argument that this Court should not even consider certiorari review until final judgment is an affront to the goal of judicial economy. Respondent’s argument that the parties must undergo years of protracted litigation and further appeals before raising again the subject matter jurisdiction issue ignores the purpose of 28 U.S.C. § 1453. Such purpose is to “prevent undue delay” in adjudicating class actions by ensuring that the putative class action is before the proper court at the outset of the litigation. *Morgan v. Gay*, 466 F.3d 276, 278-79 (3d Cir. 2006). Respondent’s argument also ignores Supreme Court Rule 13.1 which provides, in pertinent part, that a petition for a writ of certiorari to review a judgment in a civil case is timely when filed within 90 days after entry of judgment.

Here, the Eighth Circuit entered its judgment on June 9, 2023, and Petitioners timely filed their petition for writ of certiorari on September 7, 2023. Accordingly, Petitioners' Petition for Writ of Certiorari is properly before the Court.

II. Respondent's Mischaracterization of Petitioners' Arguments and the Relief Sought

Respondent also makes a strawman out of Petitioners' position by arguing that Petitioners are attempting to abrogate *Estate of Pew v. Cardarelli*, 527 F.3d 25 (2d Cir. 2008). So, to be clear, Petitioners are arguing that the District Court lacks subject matter jurisdiction over their putative class action pursuant to 28 U.S.C. § 1332(d)(9)(C) (the "Securities Exception") because Respondent, as the underwriter of municipal bonds, had a duty and obligation under state law to conduct its due diligence in good faith and report accurately and correctly on the same. Such failure relates to the rights, duties, and obligations arising out of or created by securities because the official statements, which Respondent promulgated, are the instrument which created and defined the municipal bond offering.

Moreover, it is not just *Estate of Pew* that is in question, but the general failure of the circuit courts to create a consistent and workable construction of the Securities Exception since *Estate of Pew* was decided in 2008. This uneven analysis and application of the Securities Exception has continued through the Fourth Circuit's decision in

Dominion Energy, Inc. v. City of Warrant Police and Fire Retirement System, 928 F.3d 325 (4th Cir. 2019). With there being over fifteen years of failed attempts of the circuit courts to provide a useful or even rational construction of the Securities Exception, Petitioners respectfully submit that the time is ripe for this Court to address the scope of the Securities Exception.

CONCLUSION

Petitioners' respectfully request that this Honorable Court grant this Petition for Writ of Certiorari on the question presented therein.

Dated: October 23, 2023
Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

KEITH M. KRUPKA, et al.,
Plaintiffs,

vs.

Case No. 4:23-cv-00049-JAR

STIFEL NICOLAUS & CO., INC.,
Defendant.

ORDER

After a conference call with counsel on September 19, 2023, and in light of the Plaintiffs' Petition for Writ of Certiorari before the United States Supreme Court, the Court has reconsidered Plaintiffs' Motion to Stay.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Stay Pending Disposition of Petition for Writ of Certiorari (ECF No. 29) is granted. All deadlines and proceedings in this case are stayed pending the outcome of Plaintiffs' petition.

IT IS FURTHER ORDERED that the Clerk of Court shall administratively close the case pending the outcome of Plaintiffs' petition.

Dated this 19th day of September, 2023.

JOHN A. ROSS
UNITED STATES DISTRICT JUDGE