

No. _____

**In The
Supreme Court of the United States**

BARRY L. RUPERT, CAROL RUPERT,
MICHAEL RISHMAGUE, LIONEL ALESSIO,
DAN AULI PANOS, EDNA ABLE, et al.,

Petitioners,

v.

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

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

RANDALL A. PULMAN
Counsel of Record
LESLIE SARA HYMAN
MATTHEW J. MCGOWAN
PULMAN, CAPPUCCIO &
PULLEN, LLP
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San Antonio, Texas 78213
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Counsel for the Rupert Parties

MICHAEL J. STANLEY
W. SHAWN STAPLES
STANLEY LAW, P.C.
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Houston, Texas 77007
(713) 980-4381
*Counsel for the
Able Parties*

QUESTION PRESENTED FOR REVIEW

Petitioners were investors who lost their investment in the Stanford International Bank Ponzi scheme. Petitioners brought suit in state court against two brokers that made independent misrepresentations to investors about the bank's financial soundness and its insurance coverage. The suit was stayed by the federal court overseeing the bank's receivership. The receiver brought and settled his own claims against the insurance brokers, but, over Petitioners' objections, that settlement included a bar order precluding Petitioners from litigating their own claims in state court. The district court and the court of appeals found that the receiver had standing to assert and settle Petitioners' claims.

The question presented is whether the standing requirement of Article III limits receivers to bringing claims that are coextensive with the receivership estate and thus whether Article III precludes receivers from bringing, settling, and barring claims of third parties against non-receivership entities.

PARTIES TO THIS PROCEEDING**Petitioners “Rupert Parties”**

Petitioners David Quintos; Barry L. Rupert; Diana Dimitiova; Carol Rupert; Michael Rishmague; Odde Jalil Rishmague; Elizabeth Pora Cabrera; Marianela Collado de Perez; Nayade Panos Peche; David Hazouri Neme; Abraham Diamant; Adela Levy de Charua; Alberto Baron; Alfonso Urquiza; Ana Berrocal Ballesteros; Antonio Assad Kanahuati; Arnolde DeLeon Sanchez; Bernardo Ramon Antonio Collado Perez; Bertha Kleiman; Carlos Estrada; Carlos Augusto Hernandez Guerrero; Carmen Berrocal; Carmen Gonzalez Urquiza Gonzalez; Carol Lovil; Cecelia Benner; Cindy Kuhn; Damian Lyder; Dan Auli Panos; Daniel Luis Kleiman Guindic; Diana Quintos Dimitrova; Eduardo Urquiza; Elias Charua Lladani; Elisa Kusner; Elizabeth Runkle; Eva Uchmany; Francisco Cabrera; Frank Cammisano (CAMM International Trust); Frank Cammisano (Trinicria Trust); Fred Teller; German Bricio; Gil Rodriguez Isaacson; Gonzalo Urquiza; Isak Lempert; Jacobo Tartakovski; Jaime Urquiza; Jorge Manuel Brenes-Ramirez (Brenes Murillo Trust); Jorge Manuel Brenes-Ramirez (Hermanos Brenes Trust); Jorge Carlos Gonzalez DeCossio; Jorge DeLeon Sanchez; Jose Beitman; Jose Estrada; Juan Carlos Sanchez; Juan Ignocio Urquiza; Juana Ines Perdomo; Lab Tec Rodriguez Lezama; Laboratorio Rodriguez Lezama; Libby Diamant; Lilia Garcia de Charua; Lionel Alessio; Luis Charua Guindic; Luis DeLeon Sanchez; Luis

PARTIES TO THIS PROCEEDING—Continued

Gonzaga DeLeon Gonzalez; Luisa Martha Haddad Abdunour; Marcos Gil Rodriguez Lezama; Mari Del Carmen Urquiza; Maria Nelina Collado de Perez; Maria Isabel Gonzalez Cossio Septien; Maria Isaacson; Maria Teresa Urquiza; Maria del Pilar Gonzales DeCossio; Mariana DeLeon; Martha Gonzales DeCossio; Martha Suarez; Menahen Shueke Esses; Miguel Angel Gonzales DeCossio; Mike Kuhn; Moises Charua Guindic; Moises Guakil; Monica DeLeon; Natalia Tartakovski; Neal Benner; Paulo Costal; Rebeca Waxtein (Regent 5 Trust); Rebeca Waxtein (BOICHIK Trust); Ricardo Estrada; Ronald J Kuhner; Ruth Charney de Baron; Sara Guindic de Hait; Sergio Kusner; Sergio Raul Suarez; Susy Kuhn; Sylvia Baron; and Victor Auli Panos were objecting parties in the district court and appellants in the court of appeals.

Joint petitioners “Able Parties”

Co-petitioners Edna Able; Robert C. Ahders; Rodrigo Rivera Alcayaga; David and Carlie Arntsen; Dr. Charles E. Baker; Robert Lewis Bambauer; Anne H. Barrett; Lawrence D. Bartell; Kyle J. Bauer; Thomas and Camilla Bauersfeld; Randy C. Bellelo; David J. Belock, Jr.; Sheri Berger; Russell R. Bergeron; Stanley J. Bertman; Scott M. Boeker; Daniel J. Bonfiglio; Angela K. Bonfiglio; John C. Bonfiglio; Boundless Insurance Co, LTD.; Beverly Braud; Ernesto A. Brizuela; S. Meghan Trust u/w/o Fred G. Burk; Esther Bromley Burk UAD; Marcus Bromley Trustee; Jon

PARTIES TO THIS PROCEEDING—Continued

Michael and Nancy Bryant; Kenneth and Shara Bubes; Charles and Rhonda L. Buck; Dr. James R. Calvin, MD; Camellia Family Partnership; Kela Campbell; Ralph V. and Lee Caplan; Carol E. Cappello; Allen R. and Diane F. Caradine; D. Smith Family Limited Partnership; Donald Carey, individually and as Trustee of the Eileen R. Carey Irrevocable Living Trust; John L. and Patricia A. Carey; Thomas P. Carroll; Alene M. Casemore; Rosine Chappell; Danette Sue Chimenti; Joann A. Clabby; Garland M. Cohlmiia; Keith C. Cook; William T. and Mary Alice Cook; Corwin Randall Courtney or Tammy Jean Courtney; Linda G. Cowart; Albert L. Cox; Susan Trimble Crane; Ruben J. Cruz; Kimberly Stewart is attorney in fact for Barbara Pichnie Culotta; Robert S. Culvern; Jerome J. and Delia M. Cwiok; Calvin Darden; Charles Stephen and Joyce Dark; Charley Davidson; Stephen and Mary Davis; Gerrit S. and Rhonda D. Dawson; Steven R. and Kathleen Day; Emma Bray Deavours; Frances G. (Cromers) Deavours; Jason Deavours; John DeChaud; Edward L. and Nancy L. Diefenthal; Gennaro or Elsa DiMeo; Albert J. DiVagno, Jr.; William H. and Anna Marie Downing; James G. Dubos, individually and as trustee of the James Gillen Dubos Revocable Trust; Richard D. and Nanciann Eames; Karen S. Egedy; James Escort; Rick B. Ferguson; Rose and John Fife; Edward Fiori; Kimberly Fleming is the representative of the Estate of Barbara Fleming, deceased; Michael C. Fleming; Josette M. Fleszar; Jamey R. Folland; Stanley Fountain; Jorgina Franzheim; Richard Henry and

PARTIES TO THIS PROCEEDING—Continued

Harriet L. Friedman; William J. Garrity III and Janet M. Garrity; Richard Garza MD; Kenneth D. and Linda L. Gaspard; Debra S. Gibbs; James J. Gillespie; Ellen P. Gilmore; Gail Giorgio, individually and as trustee of the Gail B. Giorgio Trust (Rev) UAD 05 17 91 Gail B. Giorgio Trustee; Betty Gosda; Carolyn R. Gould; Bart and Shawnda Greer; George Greisinger, individually and as trustee of The George W. Greisinger Revocable Living Trust; Barbara Griffin; Richard Lee and Jacquelyn Groesbeck; Suzanne Haggard; James S. and Beth L. Hake; John A. Harrill Jr., individually and as trustee of the Upstate Carolina Radiology PA Retirement Plan FBO John A. Harrill; James Stanley Harris; George and Diane Hart; Reno and Linda Hartfiel; Susan C. Heim; Gerald T. and Dorothy E. Hennings Juan Manuel Hernaiz, individually and as trustee of the Vasco Trust; Patricia Herr; Robert G. Higgins; Rose Mareyna Hinz; John Hobgood as the Executor of the Estate of Lorene Hobgood, Deceased; Robert and Georgia Ann Holt; Debbie W. Hughey; William Huse, individually and as Trustee of the William Huse Charitable Remainder Trust (Mr. Huse is also the Trustee of the William H. Huse Revocable Trust and the 2C9 Foundation); Gordon Jaehne as attorney-in-fact for Doris A. Jaehne; Plas T. James; Brian and Lisa M. Janz; Jacqueline F. Jenkins; Morris L. and Molly R. Jenkins; Max is Jensen; Anne Rush as attorney-in-fact for Theresa Joffrion; Jacob P. and Lanette P. Johnson; Robert L. Johnston; Paul A. Jones; Portia L. Jones; Mary Jordan; William E. and Carol

PARTIES TO THIS PROCEEDING—Continued

Junell; Karpen 1994 Family L.P.; Paul M. and Ruth M. Kelly are the trustees of the Paul M. and Ruth M. Kelly Revocable Trust; Micheal Kepesky; William and Susan B. Kessler; Mark W. Kidd; Todd S. Klumok and Lisa Klumok; George Koshy and Aleyamma George Koshy; Joseph L. Krause; Shirley Ladd, individually and as trustee of the Shirley Ladd Trust; Louis L. LaFontisee III; Jesse Lamberth; Byron S. and Linda L. Landry; Isaac Ward Lang III as the representative of the Estates of I. Ward Lang, deceased, and Marian Lang, deceased; Linda G. Lanoux; Alton B. and Cynthia Ann Laskowski; Martin Paul Lassoff and Kathryn Ellen Urbanek; Grace Chen LeBlanc; Patrick and Sandra LeBlanc; Ronald E. Lee, individually and as trustee of the Ronald Lee Trust; Ann Lestarjette as the representative of the Estate of Larry Greene Lestarjette, deceased; Michelle Levet; Sherrill M. Lineberger; Patricia Lorie; Yolanda Lorie; Louis Mechanical Contractors, Inc.; Thomas J. Low; Jerry D. Lund; Lusky Investment Partnership, LP; Geoffrey M. and Andrea Lee Lyman; MSM Ventures, L.P.; MACO Investments, LLC; MSM Ventures, L.P.; John M. Maddox; Robert Maher and Ann Maher; Ammaji Malineni and Sayi Prasad Malineni; Vasavi Malineni; William A. and Jean G. Mancuso; Norris A. Marchand; Marilyn A. Martin; Manuel L. and Natalie Martinez; Gregory Martinoia; Robert Matejek; Debra Sledge is the attorney-in-fact for Carroll S. Mayer, Jr.; Martha A. McDonald; Dolores McLaughlin; Ernest D. and Joan Mercer; Keith Ellis and Janet Merkley; Jennifer

PARTIES TO THIS PROCEEDING—Continued

Miller; Fred H. Mills, Jr. and Deborah Mills; Henry J. Mills Company, Inc.; Mills Cashway Pharmacy, Inc.; Martha M. Minish; Calvin D. Mitchell, Jr.; Billy E. Moak; Juan Pablo Molano; John and Betty Montague; Timothy R. and Sandra E. Moore as partners of the Timothy R. and Sandra E. Moore Family, LP.; Rolando H. and Hannelore Mora; Maurice S. Moragne; Frank H. and Cynthia D. Morgan; Thomas Newland; Danny R. Myers; Mark Najarian; Marc and Lisa Nekhom; David N. or Pamela J. Nelson; Robert L. Nicholls; Barbara Offerman; William and Jennifer Ohrt; Pedro Ruenes, individually and as trustee of the Oxford Trust; John R. and Pamela C. Packer; Don M. and Marilyn Parkinson; Kenneth D. Parks; Doug Shaw as trustee of the Patricia Shaw Trust; Steven W. Payette; Hannah K. Peck Finley, individually and as trustee of the Peck Family Trust UAD; Barry Philips as trustee of the Molly Christine Phillips Trust; Charlotte L. Pippin; William Pippin III; Paulette Porcaro; Thomas Clark Pritchard; Harry Pure; Quaint Properties, LTD; Daniel L. Quinter; Gurdarshan K. Rai; Elwood, S.A. Trust; Marilyn H. Rangel; Byron A. and Evelyn Ann Ratliff; Dennis C. Redding; Frank E. and Susan S. Rinaldo; Kerry Rinehart; Karen Lynn Robbins; James E. and Rose Rohde; Rene J. and Martha A. Saenz; Joseph C. Schneider, Jr.; Thomas H. and Lynn L. Schneider; Robert L. and Janice Scholie as trustees of the Janice E. Scholie Intervivos Trust and the Robert L. Scholie Intervivos Trust; Thomas G. Schultz; Linda R. Seager; Julius J. Sedtal Jr. and Sherry A. Sedtal;

PARTIES TO THIS PROCEEDING—Continued

Bela Sen; Dennis R. Schaffer; Norma Shaw; Robert Scott Shean and Valerie Shean; Suzanne T. Shean, individually and as Executrix of the Estate of Michael C. Shean, deceased; Gregory M. Shelton, Robert D. Shingler, individually and as trustee of the Elizabeth D. Shingler Trust; Michael R. Short; Harold D. and Paula C. Siegel; Silver Lake Risk Services, Inc.; Larry S. Simeral and Virginia H. Simeral; Mark T. Simon; Guy Wayne and Debra M. Sledge; Richard Shannon Smith is the Representative of the Estate of Richard Lane Smith, deceased; Wanda Smith; Bruce Smitherman; Saul and Adrienne Solomon; Iakovos Spetsiotakis; Michael L. Spurlock; Franklin H. Stansel; Mary Cote Stegen; Janet A. Steinway; Thomas W. and Mary C. Stoll; Charles and Donna M. Sydney; Barbara Tassin; Dorothy F. Taylor; Robert and Patricia Taylor; William P. Tedeschi; Gerald J. Thomas; Terence R. Thompson; James J. and Maureen E. Trucksess; Michael H. Turner; Thomas E. Van Autreve; Michael S. Vaughan; Edward L. Vaughn; Jose Antonio Vigorena; Reginald and Maria Elena Villalovas; Joan W. Villarubia; Deborah Vollmer; Ticker Tape Partners, Ltd; Hemant and Chuni Vyas; Mack H. Walpole; James A. Hollabaugh Wanserski; Ed Weinlein; Elizabeth N. Whitaker; Mr. and Mrs. White; Anne Whittle; William Hampton Morris as the trustee of William Pippin III Insurance Trust; Thornton Tye Investments LP.; Thornton Tye Medical LP.; John M. Wilson, Jr.; Richard and Maxine Wilson; Kenneth J. and Ginger Winningkoff; Kate Lane Withers; Moonyean Wood;

PARTIES TO THIS PROCEEDING—Continued

Douglas E. Young; Vince and Brett Zagone; Adriana Zaragoza; and Gordon W. and Alice M. Zothner were objecting parties in the district court and co-appellants in the court of appeals.

The Able Parties join the Rupert Parties in this petition.

“Zacarias Parties”

Abarca, Ernesto Urcuyo; Abdalnour, Luisa Martha Haddad; Abel, Edna; Acuna, Gladis Judis de; Acuna, Gladis Judis de; Ahders, Robert C.; Alba, Mario Ruben Ferrufino; Alba, Mario Ruben Ferrufino; Alcayaga, Rodrigo Rivera; Alessio, Lionel; Alvarez, Claude Dumont; Alvarez, Roberto Dumont; Arias, Anabella Viaud Vda De; Arntsen, Charlie; Arntsen, David; Autreve, Thomas E. Van; Baker, Charles E.; Ballesteros, Edith Marleyn Saca; Ballesteros, Ana Berrocall; Ballesteros, Jenny Sorel Saca; Bambauer, Russell R.; Robert Lewis; Bandek, Jose Antonio Miguel; Barbar, Alberto; Barbar, Roberto; Barbar, Roberto; Barbar, Samir; Baron, Alberto; Baron, Ruth Charney de; Baron, Slvia; Barrett, Anne H.; Bartell, Lawrence D.; Bauer, Kyle J.; Bauersfeld, Camilla; Bauersfeld, Thomas; Beitman, Jorge; Bellelo, Randy C.; Belmonte, Carmine Antonio; Belmonte, Eduardo; Belmonte, Gianpaolo; Belmonte, Laura Ruiz De; Belmonte, Mauro; Belmonte, Mauro; Belock, David J. Jr.; Benner, Cecelia; Benner, Neal; Berger, Sheri;

PARTIES TO THIS PROCEEDING—Continued

Bergeron, Russell R.; Bermudez, Omaira; Berrocal, Carmen; Bertman, Stanley J.; Bittan, Mercedes; Blanchet, Martha; Blanchet, Martha; Boeker, Scott M.; Bonfiglio, Angela K.; Bonfiglio, Daniel J.; Bonfiglio, John C.; Bonilla, Jose Ricardo Nuila; Bonilla, Jose Ricardo Nuila; Boundless Insurance Co., LTD; Braud, Beverly; Bricio, Gil Rodriguez Isaacson; Brizuela, Ernesto A.; Bromley, Marcus; Bronstein, Ethel Tisminesky de; Bronstein, Felipe; Bryant, Jon Michael; Bryant, Nancy; Bubes, Kenneth; Bubes, Shara; Buck, Charles; Buck, Rhonda L.; Cabrera, Elizabeth Pora; Cabrera, Francisco; Cabrera, Judith; Cabrera, Javier; Cabrera, Jose Luis; Calvin, James R.; Camellia Family Limited Partnership; Cammisano, Frank (CAMM International Trust); Cammisano (Trinicria Trust); Campbell, Kela; Caplan, Lee; Caplan, Ralph V.; Cappello, Carol E.; Capriles, Tulio; Caradine, Allen R.; Caradine, Diane F.; Carey, Donald; Carey, John L.; Carey, Patricia A.; Carlos, Estrada Carlos; Carroll, Thomas P.; Casemore, Alene M.; Cellini, Maria Teresa; Cellini, Maria Teresa; Chacon, Imelda A.; Chacon, Jesus Emiro; Chamorro, Rhina Auxiliadora Urcuyo de; Chappell, Rosine; Charua, Adela Levy; Chimenti, Danette Sue; Clabby, Joann A.; Cohlma, Garland M.; Colmenares, Jose E.; Colmenares, Raul; Cook, Kieth C.; Cook, Mary Alice; Cook, William T.; Cotton, Judith; Costal, Paul; Courtney, Corwin Randal; Courtney, Tammy Jean; Cowart, Linda G.; Cox, Albert L.; Crane, Susan Trimble; Cruz, Ruben J.; Cuadra, Bernardo Ramon Chamorro; Culotta, Barbara Pichnie; Culvern,

PARTIES TO THIS PROCEEDING—Continued

Robert S.; Cwiok, Delia M.; Cwiok, Jerome J.; Darden, Calvin; Darden, Julia Dark, Charles Stephen; Dark, Joyce; Davidson, Charley; Davidson, Lauren Drews; Davis, Mary; Davis, Stephen; Dawson, Gerrit S.; Dawson, Rhonada D.; Day, Kathleen; Day, Steven R.; De Barbar, Salma Hanna; Deavours, Emma Bray; Deavours, Frances G. (Cromers); Deavours, Jason; DeChaud, John; DeCossio, Carlos Gonzalez; DeCossio, Maria del Pilar Gonzalez; DeLeon, Monica; Derwanik, James D.; Derwanik, Duane J.; Diamant, Lilia Garcia de Charua; Diefenthal, Edward L.; Diefenthal, Nancy L.; DiMeo, Elsa; DiMeo, Dimitiova, Diana; Gennaro; DiVagno, Albert J.; Domenech, Juan Jose; Downing, Anna M.; Downing, William H.; Duarte, Ruben; Dubon, Humberto Jose Lacayo; Dubos, James G.; Dumont, Catia Eserski de; Dumont, Roberto; Eames, Naciann; Eames, Richard D.; Egedy, Karen S.; Escort, James; Eserski, Robert Javier Dumont; Esther Bromley Burk UAD; Estrada, Ricardo; Ferguson, Rick B.; Ferrufino, Claudia Andrea; Ferrufino, Juana Camila; Ferrufino, Ligia Echaeverri De; Fife, John; Fife, Rose; Fiori, Edward; Fleming, Kimberly; Fleming, Michael C.; Fleszar, Josette M.; Flynn, Joseph James; Folland, Jamey R.; Fortuna, Francisco Roberto Duenas; Fountain, Stanley; Frank, Larry; Franzheim, Jorgina; Friedman, Harriet L.; Friedman, Richard Henry; Fuentes, Jose Nuila; Fuentes, Jose Nuila; Gadala-Maria, Ana Lorena Nuila de; Gallegos, Claudia Lizete Saca de; Garrity, Janet M.; Garrity, William J. III; Garza, Richard; Gaspard, Kenneth D.; Gaspard, Linda

PARTIES TO THIS PROCEEDING—Continued

L.; Gautreaux, Russell Shane; Gavilan, Salvador; Gerby, Guy; Giacomani, Eileen Nicolle Saca de; Gibbs, Debra S.; Giha, Eduardo Elias Miguel; Gillespie, James J.; Gillot, Kahne; Gilmore, Ellen P.; Giorgio, Gail; Goitia, Ruben Mario Ferrufino; Gonzalez, Carmen Gonzalez Urquiza; Gonzalez, Luis Gonzaga DeLeon; Gosda, Betty; Gould, Carolyn R.; Greer, Bart; Greer, Shawnda; Greisinger, George; Griffin, Barbara; Groesbeck, Jacquelyn; Groesbeck, Richard Lee; Guakil, Moises; Guillot, Kim; Guindic, Daniel Luis Kleiman; Guindic, Luis Charua; Guindic, Moises Charua; Guerrero, Augusto Hernandez; Gutierrez, Arely Arguello de; Gutierrez, Dora Ernestina Echevarria Canas; Haggard, Suzanne; Hait, Sara Guinic de; Hake, Beth L.; Hake, James S.; Harb, Camila Ana Maria; Harb, Patricia D.; Harrill, John A. Jr.; Harris, James Stanley; Hart, Diane; Hart, George; Hartfiel, Linda; Hartfiel, Reno; Hawk, Claude Dumont de; Hawk, Tom; Heim, Susan C.; Henery J. Mills Company, Inc.; Hennings, Gerald T.; Herdocia, Maria Auxiliadora; Herdocia, Maria Nora Icaza de; Hernaiz, Juan Manuel; Hernandez, Martha; Herr, Patricia; Herrero, Jorge Casaus; Higgins, Robert G.; Hinz, Mareyna; Hobgood, John; Holt, Georgia Ann; Holt, Robert; Hughey, Debbi W.; Huse, William; Inizia Holdings, S.A.; Isaacson, Maria; Jaehne, Gordon; James, Plas T.; Janz, Brian; Janz, Lisa M.; Jaramillo, Juan Feleipe Moreno; Jaramillo, Paula Maria Moreno; Jenkins, Jacqueline F.; Jenkins, Molly R.; Jenkins, Morris L.; Jensen, Max; Johnson, Jacob P.; Johnson, Lanette P.; Johnston,

PARTIES TO THIS PROCEEDING—Continued

Robert L.; Jones, Paul A.; Jones, Portia L.; Jordan, Mary; Judis, Ana Virginia Gonzalez de; Judis, Eric Acuna; Junell, Carol; Junell, William E.; Kafati, Oscar; Kanahuati, Antonio Assad; Kauffman, Standford; Kelly, Paul M.; Kelly, Ruth M.; Kepesky, Michael; Kessler, Susan B.; Kessler, William; Kidd, Mark W.; Kimmel, Tal E.; Kleiman, Bertah; Klumok, Lisa; Klumok, Todd S.; Kornswiet, Lina; Koshy, Aleyamma; Koshy, George; Krause, Joseph L. Jr.; Kuhn, Cindy; Kuhn, Mike; Kuhn, Susy; Kuhner, Ronald J.; Kusner, Elisa; Kurner, Sergio; Lab Tec Rodriguez Lezama; Laboratorio Rodriguez Lezama, Lacayo, Ariel; Lacayo, Ceclia Josefina Vivas de; Lacayo, Filiberto Antonio Herdocia; Lacayo, Leonel; Lacayo, Mercedes Arguello de; Lacayo, Mylena del Socorro Icaza; Ladd, Shirley; Laennec, Vivian Tatiana Molins de; LaFontisee, Luis L. III; Lamberth, Jesse; Landry, Byron S.; Landry, Linda L.; Lang, Issac Ward III; Lanoux, Linda G.; Lapinski, Stephen A.; Laskowski, Alton B.; Laskowski, Cynthia Ann; Lassoff, Martin Paul; LeBlanc, Grace Chen; LeBlanc, Patrick; LeBlanc, Sandra; Lee, Ronald E.; Lempert, Isak; Lenorovitz, David; Lestarjette, Michelle Levet; Leu, Carroll D.; Lezama, Marcos Gil Rodriguez; Lineberger, Sherrill M.; Little, John J.; Lladani, Charua; Longarela, Amparo Mateo; Lopez, Emma; Lopez, Marta Orinai de Gutierrez; Lorie, Patricia; Lorie, Yolanda; Louis Mechanical Contractors Inc.; Lovil, Carol; Low, Thomas J.; Lund, Jerry D.; Lusky Investment Partnership, LP; Lyder, Damian; Lyman, Andrea Lee; Lyman, Geoffrey M.; M. Tag Ventures, LP;

PARTIES TO THIS PROCEEDING—Continued

MACO Investments, LLC; Neme, Abraham Diamant; Madan, Paul; Madan, Stephanie; Maddox, John M.; Maher, Robert; Malineni, Ammaji; Malineni, Vasavi; Mancuso, Jean G.; Mancuso, William A.; Mantague, Betty; Mantague, John; Marchand, Norris A.; Marini, Guillermo Aceto; Martin, Gary; Martin, Marilyn A.; Martin, Rose Ann; Martinez, Manuel L.; Martinez, Natalie; Martinoia, Gregory; Matejek, Robert; Mayer, Carroll S. Jr.; McDonald, Martha A.; McLaughlin, Delores; Mercer, Ernest D.; Mercer, Joan; Merkley, Janet; Merkley, Keith Ellis; Miller, Jennifer; Mills Cashway Pharmacy; Mills, Deborah; Mills, Fred H. Jr.; Minish, Martha M.; Mitchell, Calvin D.; Moak, Billy E.; Molano, Juan Pablo; Molero, Isabel; Mora, Hannalore; Mora, Rolando H.; Moragne, Maurice S.; Morales, Gina Maria Umana de; Moreno, Maria Helena Jaramillo De; Morgan, Cynthia D.; Morgan, Frank H.; Morris, William Hampton; MSM Ventures, LP; Myers, Danny R.; Najarian, Mark; Nekhom, Lisa; Nekhom, Mark; Nelson, David N.; Nelson, Pamela J.; Newland, Thomas; Nuila, Gladys Bonilla De; Nuila, Jose; Nustas, Jorge Victor Saca; Nustas, Monica Emely Saca; Ocean Waters Holdings, S.A.; Offerman, Barbara; Ohrt, Jennicer; Ohrt, William; Olmos, Maria Teresa; Oriani, Carlos Armando Gutierrez; Oriani, Jose Rolando Gutierrez; Quintos, David; Packer, John R.; Packer, Pamela C.; Palau, Julieta; Panos, Dan Auli; Panos, Victor Auli; Parkinson, Don M.; Parkinson, Marilyn; Parks, Kenneth D.; Payette, Hanna; Peck, Finley; Perdomo, Juana Ines; Perez, Beatriz E.; Perez,

PARTIES TO THIS PROCEEDING—Continued

Bernardo Ramon Antonio Collado; Perez, Jose Ofilio Lacayo; Perez, Maria Nelina Collado de; Perez, Marianela Collado de; Peche, Nayada Panos; Philips, Barry; Philips, Rebecca; Pippin, Charlotte L.; Pippin, William III; Ponce, Gladys Elena Nuila de; Porcaro, Paulette; Posada, Mauricio Bigit; Pritchard, Thomas Clark; Promotora Marino, CA; Pure, Harry; Quaint Properties, LLC; Queyrouze, Anne; Queyrouze, Steven; Quinter, Daniel L.; R&A Consulting Ltd.; Raeder, Jerry Stephen; Raeder, Patricia; Rai, Gurdarshan K.; Ramirez, Jorge Manuel Bernes (Brenes Murillo Trust); Ramirez, Jorge Manuel Bernes (Hermanos Brenes Trust); Ramos, Adriana; Rangel, Marilyn H.; Ratliff, Byron A.; Ratliff, Evelyn Ann; Reader, Justin; Redding, Dennis C.; Rinaldo, Frank E.; Rinaldo, Susan S.; Rinehart, Kerry; Rishmague, Michael; Rishmague, Odde Jalil; Robbins, Karen Lynn; Rohde, James E.; Rohde, Rose; Rojas, Aydee Ferrufino VDA. De; Rubio, Jose Adolfo; Ruenes, Pedro; Runkle, Elizabeth; Rupert, Carol; Rupert, Barry L.; Rush, Anne; S. Meghan Trust u/w/o Fred G. Burk; Saca, Catalina Nustas de; Saca, Catalina Nustas de; Saca, Katia Maria Ghattas de; Saca, Monica Emely; Saenz, Martha A.; Saenz, Rene J.; Sanchez, Arnold DeLeon; Sanchez, Jorge, Deleon; Sanchez, Juan Carlos; Sanchez, Luis DeLeon; Schaffer, Dennis R.; Schneider, Joseph C.; Schneider, Lynn L.; Schneider, Thomas H.; Scholie, Janice; Scholie, Robert L.; Schuelke, John Michael; Schultz, Thomas G.; Seager, Linda R.; Sedtal, Julius J. Jr.; Sedtal, Sherry A.; Sen, Bela; Septien, Maria Isabel Gonzalez Cossio;

PARTIES TO THIS PROCEEDING—Continued

Shaw, Doug; Shaw, Norma; Shean, Robert Scott; Shean, Suzanne T.; Shean, Valerie; Shelton, Gergory M.; Shingler, Robert D.; Short, Michael R.; Siegel, Harold D.; Siegel, Paula C.; Silver Lake Risk Services; Simeral, Larry S.; Simeral, Virginia H.; Simon, Mark T.; Sledge, Debra; Sledge, Guy Wayne; Smith, Richard Shannon; Smith, Wanda; Smitherman, Bruce; Solomon, Adrienne; Solomon, Saul; Spetsiotakis, Iakovos; Spurlock, Michael L.; Stansel, Franklin H.; Stegen, Mary Cote; Steinway, Janet A.; Stemich International Holdings Corporation; Stoll, Mary C.; Stoll, Thomas W.; Suarez, Sergio Raul; Suarez, Vicente Juaristi; Sydney, Charles; Sydney, Donna M.; Tartakovski, Jacobo; Tartakovski, Natalia; Tassin, Barbara; Taylor, Dorothy F.; Taylor, Patricia; Taylor, Robert; Tedeschi, William P.; Teller, Fred; The D Smith Family Limited Partnership; The Karpen 1994 Family, LP; The Timothy R. and Sandar E. More Family, LP; Thomas, Gerald J.; Thompson, Justin; Thompson, Terence R. Jr.; Thornton Tye Investments LP; Thornton Tye Medical, LP; Thyree, Elise; Ticker Tape Partners; Timothy, Moore R.; Tisminesky, Carlos; Tisminesky, Rachel; Torgerson, Jane; Torres, Elba De La; Trucksess, James J.; Trucksess, Maureen E.; Trustee of the Eileen R. Carey Irrevocable Living Trust; Tueme, Elias Saca; Tueme, Victor Jorge Saca; Turner, Michael H.; Turner, Thomas H.; Uchmany, Eva; Umana, Gina Dordelly de; United States of America; Urbanek, Kathryn Ellen; Urcuyo, Lorna Maria Lacayo de; Urquiza, Carmen; Urquiza, Eduardo; Urquiza,

PARTIES TO THIS PROCEEDING—Continued

Gonzalo; Urquiza, Jaime; Urquiza, Juan Ignacio; Urquiza, Maria Teresa; Vassilatos, Faye; Vollmer, Charles J.; Vollmer, Deborah; Vargas, Braulio; Vaughan, Michael S.; Vaughn, Edward L.; Velez, Margarita Maria; Vigorena, Jose Antonio; Villalovas, Maria Elena; Villalovas, Reginald; Villamizar, Jesus Enriquez; Villarubia, Joan W.; Vollmer, Deborah; Vyas, Chuni; Vyas, Hemant; Walpole, Mack H.; Wanserki, James A. Hollabaugh; Wantuck, Catherine A.; Waxtein, Rebeca (Regent 5 Trust); Waxtein, Rebeca (BOICHICK Trust); Weidler, Charles R.; Weidler, C. Eric; Yanutola, Peter J.; Yanutola Mary Jean; Walton Houston Galleria Office, LP; Whitaker, Elizabeth N.; White, Nancy; White, Richard; Whittle, Anne; Wienlein, Ed John; William, Judy; Wilson, John M. Jr.; Wilson, Maxine; Wilson, Richard; Winningkoff, Ginger; Winningkoff, Kenneth J.; Withers, Kate Lane; Woo, Fae; Wood, Moonyean; Young, Douglas E.; Zabala, Luis; Zacarias, Antonio Jubis; Zagone, Brett; Zaragonza, Adriana; Zothner, Alice M.; and Zothner, Gordon W. were objecting parties in the district court and co-appellants in the court of appeals.

The Zacarias Parties are filing a petition for writ of certiorari separately.

Respondent Receiver

Respondent Ralph S. Janvey, in his Capacity as Court-Appointed Receiver for Stanford International

PARTIES TO THIS PROCEEDING—Continued

Bank Limited, Stanford Group Company, Stanford Capital Management L.L.C., Stanford Financial Group, and Stanford Financial Group Bldg. was a movant in the district court action and an appellee in the court of appeals.

Respondent Willis Parties

Respondents Willis of Colorado, Incorporated; Willis, Limited; Willis Group Holdings Limited; Willis North America, Incorporated; and Amy S. Baranoucky were movants in the district court and appellees in the court of appeals.

Respondent Committee

Respondent Official Stanford Investors Committee was appointed by the district court to represent the interests of investors. The Committee was a movant in the district court and an appellee in the court of appeals.

Respondents Samuel Troice and Manuel Canabal

Respondents Samuel Troice and Manuel Canabal were two plaintiffs and putative class-action representatives in the district court. Troice and Canabal were movants in the district court and appellees in the court of appeals.

PARTIES TO THIS PROCEEDING—Continued

Respondent Bowen, Milette & Britt, Incorporated

Respondent Bowen, Milette & Britt, Incorporated, was a movant in the district court and an appellee in the court of appeals.

RULE 29.6 DISCLOSURE

Pursuant to Rule 29.6, no disclosure is required because none of the Rupert Parties or Able Parties is a corporation and, thus, there is no parent or publicly held company to be disclosed.

RELATED PROCEEDINGS

Proceedings in the Supreme Court of the United States of America

Chadbourne & Parke LLP v. Troice, Case Nos. 12–79, 12–86, 12–88 (decided February 26, 2014, 571 U.S. 377).

Proceedings in the United States Court of Appeals for the Fifth Circuit

Antonio Jubis Zacarias, et al. v. Stanford International Bank, Limited, Barry L. Rupert, et al. v. Official Stanford Investors Committee, et al., Willis Group Holdings Limited, et al., Case No. 17-11073 (substituted opinion issued on December 19, 2019, 945 F.3d 883).

RELATED PROCEEDINGS—Continued

—consolidated with—

The Official Stanford Investors Committee, et al. v. Carlos Tisminesky, et al. v. Willis of Colorado, Incorporated, et al. v. Barry L. Rupert, et al., Case No. 17-11114 (substituted opinion issued on December 19, 2019, 945 F.3d 883).

—consolidated with—

Edna Able, et al. v. Willis of Colorado, Incorporated, Case No. 17-11122 (substituted opinion issued on December 19, 2019, 945 F.3d 883).

—consolidated with—

Antonio Jubis Zacarias, Individual, et al. v. Willis Limited, et al., Case No. 17-11127 (substituted opinion issued on December 19, 2019, 945 F.3d 883).

—consolidated with—

Ana Lorena Nuila de Gadala-Maria, Individual, et al. v. Willis Limited, a United Kingdom Company, et al., Case No. 17-11128 (substituted opinion issued on December 19, 2019, 945 F.3d 883).

—consolidated with—

Carlos Tisminesky, Individual, et al. v. Willis Limited, et al., Case No. 17-11129 (substituted opinion issued on December 19, 2019, 945 F.3d 883).

RELATED PROCEEDINGS—Continued

Rishmague v. Winter, Case Nos. 14–11118, 14–11119 (opinion issued on September 16, 2015, 616 Fed. Appx. 138).

Janvey v. Alguire, Case No. 11-10838 (opinion issued on August 30, 2013, 539 Fed. Appx. 478).

Janvey v. Democratic Senatorial Campaign Comm., Inc., Case No. 11-10704 (opinion issued on March 18, 2013, 712 F.3d 185).

Proceedings in Federal District Courts

Securities & Exchange Commission v. Stanford International Bank, Inc., Case No. 3:09-cv-00298-N, in the United States District Court for the Northern District of Texas (bar orders issued on August 23, 2017).

Ralph S. Janvey, Receiver for the Receivership Estate of Stanford International Bank, Ltd., et al. v. Willis of Colorado Inc., et al., Case No. 3:13-cv-3980-N in the United States District Court for the Northern District of Texas (bar orders entered on August 23, 2017).

Able et al. v. Willis of Colorado Inc. et al., Case No. 3:09-md-02099-N-BQ in the United States District Court for the Northern District of Texas (bar order entered on August 23, 2017).

RELATED PROCEEDINGS—Continued

Ana Lorena Nuila de Gadala-Maria, et al. v. Willis Group Holdings Public, et al., Case No. 3:13-cv-2572 in the United States District Court for the Northern District of Texas (bar orders entered on August 23, 2017).

Antonio Zacarias, et al. v. Willis Group Holdings Public, et al., Case No. 3:13-cv-2570 in the United States District Court for the Northern District of Texas (bar orders entered on August 23, 2017).

Carlos Tisminesky, et al. v. Willis Group Holdings Public, et al., Case No. 3:13-cv-2573, in the United States District Court for the Northern District of Texas (bar orders entered on August 23, 2017).

Troice et al. v. Willis of Colorado, Inc. et al., Case No. 3:09-CV-01274, in the United States District Court Northern District of Texas (bar orders entered on August 23, 2017).

Roberto Barbar et al. v. Willis Group Holdings Public, et al., Case No. 17-11073, in the United States District Court Northern District of Texas (bar orders entered on August 23, 2017).

RELATED PROCEEDINGS—Continued

State Trial Court Proceedings

Rupert v. Winter, et al., Case No. 20090C116137, filed on September 14, 2009 in Texas state court (Bexar County).

Rishmague v. Winter, et al., Case No. 2011C12585, filed on March 11, 2011 in Texas state court (Bexar County).

MacArthur v. Winter, et al., Case No. 2013-07840, filed on February 8, 2013 in Texas state court (Harris County).

Barbar v. Willis Group Holdings Public Limited Company, et al., Case No. 13-05666CA27, filed on February 14, 2013, in Florida state court (Miami-Dade County).

Ranni v. Willis Group Holdings Public Limited Company, et al., Case No. 13-05673CA06, filed on February 14, 2013 in Florida state court (Miami-Dade County).

TABLE OF CONTENTS

| | Page |
|--|------|
| QUESTION PRESENTED FOR REVIEW | i |
| PARTIES TO THIS PROCEEDING | ii |
| RULE 29.6 DISCLOSURE..... | xix |
| RELATED PROCEEDINGS | xix |
| TABLE OF CONTENTS | xxiv |
| TABLE OF AUTHORITIES..... | xxvi |
| OPINIONS BELOW..... | 1 |
| STATEMENT OF JURISDICTION | 1 |
| STATUTORY PROVISIONS INVOLVED | 2 |
| STATEMENT OF THE CASE..... | 2 |
| REASONS FOR GRANTING THE PETITION ... | 7 |
| A. The Fifth Circuit split from five other cir- cuits by holding that receivers have greater standing than bankruptcy trustees | 8 |
| B. This case is a good vehicle for resolving the circuit split | 15 |
| CONCLUSION..... | 22 |

APPENDIX

| | |
|---|---------|
| Opinion, United States Court of Appeals for the Fifth Circuit (December 19, 2019)..... | App. 1 |
| Order, United States District Court for the Northern District of Texas, Dallas Division (August 23, 2017) | App. 46 |

TABLE OF CONTENTS—Continued

| | Page |
|---|----------|
| Final Bar Order, United States District Court for the Northern District of Texas, Dallas Division (August 23, 2017) | App. 61 |
| Order, United States District Court for the Northern District of Texas, Dallas Division (August 23, 2017) | App. 77 |
| Final Bar Order, United States District Court for the Northern District of Texas, Dallas Division (August 23, 2017) | App. 88 |
| Order, United States District Court for the Northern District of Texas, Dallas Division (August 23, 2017) | App. 103 |
| Denial of Rehearing, United States Court of Appeals for the Fifth Circuit (January 21, 2020) | App. 114 |

TABLE OF AUTHORITIES

| | Page |
|--|------------|
| CASES | |
| <i>Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers</i> , 398 U.S. 281 (1970) | 18, 19 |
| <i>Bendall v. Lancer Mgmt. Group, LLC</i> , 523 Fed. Appx. 554 (11th Cir. 2013) | 16 |
| <i>Boston Trading Group, Inc. v. Burnazos</i> , 835 F.2d 1504 (1st Cir. 1987) | 11 |
| <i>Broadbent v. Advantage Software, Inc.</i> , 415 Fed. Appx. 73 (10th Cir. 2011) | 17 |
| <i>Caplin v. Marine Midland Grace Tr. Co. of New York</i> , 406 U.S. 416 (1972) | 11, 19, 20 |
| <i>Carney v. Beracha</i> , 996 F. Supp. 2d 56 (D. Conn. 2014) | 16 |
| <i>Carney v. Horion Investments Ltd.</i> , 107 F. Supp. 3d 216 (D. Conn. 2015)..... | 16 |
| <i>Chadbourne & Parke LLP v. Troice</i> , 571 U.S. 377 (2014) | 3, 16 |
| <i>Cobalt Multifamily Inv'rs I, LLC v. Arden</i> , 46 F. Supp. 3d 357 (S.D.N.Y. 2014) | 16 |
| <i>Commodity Futures Trading Comm'n v. Walsh</i> , 712 F.3d 735 (2d Cir. 2013) | 16 |
| <i>Donell v. Keppers</i> , 835 F. Supp. 2d 871 (S.D. Cal. 2011) | 17 |
| <i>DSQ Prop. Co., Ltd. v. DeLorean</i> , 891 F.2d 128 (6th Cir. 1989)..... | 12, 20 |

TABLE OF AUTHORITIES—Continued

| | Page |
|---|------------|
| <i>Eberhard v. Marcu</i> , 530 F.3d 122 (2d Cir. 2008) | 11 |
| <i>Fleming v. Lind-Waldock & Co.</i> , 922 F.2d 20 (1st Cir. 1990) | 11 |
| <i>Goodman v. Federal Communications Commission</i> , 182 F.3d 987 (D.C. Cir. 1999) | 9, 10, 14 |
| <i>Grassmueck v. Potala Vill., LLC</i> , C17-0236JLR, 2018 WL 2984831 (W.D. Wash. June 14, 2018)..... | 16 |
| <i>Hirsch v. Arthur Andersen & Co.</i> , 72 F.3d 1085 (2d Cir. 1995) | 20 |
| <i>In Re: J & S Properties, LLC</i> , 872 F.3d 138 (3d Cir. 2017) | 19 |
| <i>Jarrett v. Kassel</i> , 972 F.2d 1415 (6th Cir. 1992)..... | 12 |
| <i>Jones v. Wells Fargo Bank, N.A.</i> , 666 F.3d 955 (5th Cir. 2012)..... | 17 |
| <i>Lank v. N.Y. Stock Exch.</i> , 548 F.2d 61 (2d Cir. 1977) | 12 |
| <i>Liberte Capital Group, LLC v. Capwill</i> , 248 Fed. Appx. 650 (6th Cir. 2007) | 10, 12, 14 |
| <i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992) | 8 |
| <i>McCandless v. Furlaud</i> , 296 U.S. 140 (1935) | 11 |

TABLE OF AUTHORITIES—Continued

| | Page |
|---|------------|
| <i>Miller v. Harding</i> , 248 F.3d 1127 (1st Cir. 2000) | 10, 11 |
| <i>Ortiz v. Fibreboard Corp.</i> , 527 U.S. 815 (1999) | 21 |
| <i>Protective Life Ins. Co. v. Mosier</i> , 461 Fed. Appx. 562 (9th Cir. 2011) | 17 |
| <i>Raines v. Byrd</i> , 521 U.S. 811 (1997) | 8 |
| <i>Rishmague v. Winter</i> , 616 Fed. Appx. 138 (5th Cir. 2015) | 5 |
| <i>Ritchie Capital Mgmt., L.L.C. v. Jeffries</i> , 653 F.3d 755 (8th Cir. 2011)..... | 17, 19 |
| <i>S.E.C. v. Byers</i> , 609 F.3d 87 (2d Cir. 2010) | 17 |
| <i>S.E.C. v. Callahan</i> , 193 F. Supp. 3d 177 (E.D.N.Y. 2016)..... | 16 |
| <i>S.E.C. v. DeYoung</i> , 850 F.3d 1172 (10th Cir. 2017)..... | 14, 15, 16 |
| <i>S.E.C. v. First Choice Mgmt. Services, Inc.</i> , 678 F.3d 538 (7th Cir. 2012)..... | 16 |
| <i>S.E.C. v. Kaleta</i> , 530 Fed. Appx. 360 (5th Cir. 2013) | 16 |
| <i>S.E.C. v. Kuipers</i> , 399 Fed. Appx. 167 (9th Cir. 2010) | 17 |
| <i>S.E.C. v. Malek</i> , 397 Fed. Appx. 711 (2d Cir. 2010)..... | 17 |

TABLE OF AUTHORITIES—Continued

| | Page |
|--|---------------|
| <i>S.E.C. v. Orgel</i> , 407 Fed. Appx. 504 (2d Cir. 2010) | 17 |
| <i>S.E.C. v. Pension Fund of Am. L.C.</i> , 377 Fed. Appx. 957 (11th Cir. 2010) | 17 |
| <i>S.E.C. v. Quan</i> , 870 F.3d 754 (8th Cir. 2017)..... | 16 |
| <i>S.E.C. v. Scoville</i> , 913 F.3d 1204 (10th Cir. 2019)..... | 16 |
| <i>S.E.C. v. Stanford Int’l Bank, Ltd.</i> , 927 F.3d 830 (5th Cir. 2019)..... | 4, 19 |
| <i>S.E.C. v. Torchia</i> , 183 F. Supp. 3d 1291 (N.D. Ga. 2016)..... | 16 |
| <i>S.E.C. v. Vescor Capital Corp.</i> , 599 F.3d 1189 (10th Cir. 2010)..... | 16 |
| <i>S.E.C. v. Wealth Mgmt. LLC</i> , 628 F.3d 323 (7th Cir. 2010)..... | 17 |
| <i>Scholes v. Lehmann</i> , 56 F.3d 750 (7th Cir. 1995)..... | <i>passim</i> |
| <i>Smith v. Bayer Corp.</i> , 564 U.S. 299 (2011) | 21 |
| <i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016) | 8, 9, 13 |
| <i>Steel Co. v. Citizens for Better Environment</i> , 523 U.S. 83 (1998) | 9 |
| <i>Taylor v. Sturgell</i> , 553 U.S. 880 (2008) | 21 |

TABLE OF AUTHORITIES—Continued

| | Page |
|---|---------------|
| <i>Troelstrup v. Index Futures Group, Inc.</i> , 130 F.3d 1274 (7th Cir. 1997)..... | 10 |
| <i>Wiand v. Dancing \$, LLC</i> , 578 Fed. Appx. 938 (11th Cir. 2014) | 16 |
| <i>Zacarias v. Stanford Int’l Bank, Ltd.</i> , 931 F.3d 382 (5th Cir. 2019)..... | 6 |
| <i>Zacarias v. Stanford Int’l Bank, Ltd.</i> , 945 F.3d 883 (5th Cir. 2019)..... | <i>passim</i> |
| STATUTES | |
| 28 U.S.C. § 1254 | 2 |
| 28 U.S.C. § 2283 | 2, 18 |
| RULES | |
| Fed. R. Civ. P. 23..... | 7, 20, 21, 22 |
| OTHER AUTHORITIES | |
| G. Ray Warner & Keith Sharfman, <i>The SEC in Bankruptcy</i> , 18 AM. BANKR. INST. L. REV. 569 (2010) | 16, 17 |

PETITION FOR WRIT OF CERTIORARI

Petitioners Rupert Parties and Able Parties respectfully submit this petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

**OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Fifth Circuit is published at *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883 (5th Cir. 2019) (withdrawing and superseding 931 F.3d 382 (5th Cir. 2019)). Not reported are the district court orders approving a settlement of claims brought by a receiver, putative class action plaintiffs, and an investors' committee against Willis of Colorado, Incorporated; Willis, Limited; Willis Group Holdings Limited; Willis North America, Incorporated; and Amy S. Baranoucky (collectively, "Willis") and also against Bowen, Miclette & Britt, Incorporated ("BMB"). The district court orders include a global bar of and permanent injunction against all existing and prospective claims by any other plaintiff against the two insurance brokerage companies. *See* Pet.App.46–102.

**STATEMENT OF JURISDICTION**

The Fifth Circuit rendered its decision on December 19, 2019, and issued its mandate the same day. Pet.App.1–45. The appellants filed a petition for

rehearing en banc, which the Fifth Circuit denied on January 21, 2020. Pet.App.114–119. This petition is timely.¹ The Court has jurisdiction under 28 U.S.C. § 1254(1).

This case arises from a final judgment granting and effectuating a settlement agreement. No further trial proceedings on this issue are ongoing, and none will occur unless this Court reverses. These issues are therefore ripe, and no further impediments will interfere with this Court’s review.

◆

STATUTORY PROVISIONS INVOLVED

| | |
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| 28 U.S.C. § 2283 | “A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” |
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◆

STATEMENT OF THE CASE

Federal district courts appoint equity receivers to oversee and coordinate the windup of troubled entities. Receivers, like bankruptcy trustees, are intended to

¹ This Court issued an order on March 19, 2020, that extended all deadlines to seek petitions for a writ of certiorari by 60 days, for a total of 150 days.

marshal the assets of the entity in receivership or bankruptcy, and in connection with that mandate, may bring claims belonging to the entity to recover for harm done to the entity. Here, in settling his own claims, a receiver also sought and obtained an order barring non-party plaintiffs from suing non-receivership entities for harms done to those non-party plaintiffs. The Fifth Circuit's approval of a receiver's ability to assert and settle the claims of third parties that do not belong to the receivership entities raises important questions of constitutional standing and grants receivers powers that differ, in kind and degree, from those that other courts of appeals have historically and generally understood as belonging to receivers. The powers granted receivers by the Fifth Circuit carry significant implications for future receiverships, as well as future bankruptcy cases, and create a divide in the circuit courts.

This case arises from the Ponzi scheme designed by Allen Stanford and the 2008/2009 collapse of his Houston-based bank, Stanford International Bank, Ltd. ("Stanford"), that peddled bogus certificates of deposit ("CDs") to investors across the globe. *See, e.g., Chadbourne & Parke LLP v. Troice*, 571 U.S. 377 (2014). When the scheme went bust, the Securities and Exchange Commission initiated civil enforcement proceedings in the United States District Court for the Northern District of Texas that were followed closely by state- and federal-court private lawsuits by Stanford's victims. The SEC requested appointment of a receiver to marshal assets owed to Stanford and related entities, and the district court appointed Ralph Janvey

to that role.² The district court now presides over both the Stanford-related multidistrict litigation and the Stanford receivership estate administered by the Receiver.³

The Rupert Parties⁴ are approximately 90 plaintiffs in a state-court action in Bexar County, Texas, who in 2009 sued two insurance brokers for their contribution to and participation in Stanford's fraud scheme.⁵ Willis's and BMB's role in the fraud came, in part, in the form of letters and financial statements presented to potential CD purchasers, including some of the Petitioners. The letters and financial statements vouched for Stanford's financial integrity, making, among other misstatements, the assertions that Stanford was "first class business people," that Stanford had undergone, and satisfied, a "stringent" risk-management review

² Janvey is the Court-Appointed Receiver for Stanford International Bank Limited, Stanford Group Company, Stanford Capital Management L.L.C., Stanford Financial Group, and Stanford Financial Group Bldg. (the "Receiver").

³ The receivership is the district court case in which the order being appealed was issued. That case was styled *S.E.C. v. Stanford International Bank, Inc.*, Cause No. 3:09-cv-00298-N, in the United States District Court for the Northern District of Texas.

⁴ The Rupert Parties are individually identified in the Parties to this Proceeding.

⁵ The insurance brokers in question are Willis of Colorado, Incorporated; Willis, Limited; Willis Group Holdings Limited; Willis North America, Incorporated; and Amy S. Baranoucky (collectively, "Willis") and Bowen, Miclette & Britt, Incorporated ("BMB"). The Able Parties, who are individually identified in the Parties to this Proceeding, later sued Willis and BMB.

and audit by outside experts, and that Stanford had insurance coverage equal to or better than FDIC. These statements were, at the very least, misleading, when not simply false.

Not long after the Rupert Parties filed their claims in Texas state court, the district court stayed those state-court proceedings along with similar claims against Willis/BMB filed by the other parties in state and federal court, leaving those suits sitting idle on their respective dockets for a decade as those plaintiffs repeatedly, unsuccessfully sought to lift the stay. *See, e.g., Rishmague v. Winter*, 616 Fed. Appx. 138 (5th Cir. 2015).

In 2016, the Receiver, together with two putative class action plaintiffs and an investors' committee, sought approval of a proposed settlement of the receivership's own, distinct lawsuit against Willis and BMB. The proposed settlement included a request that the district court permanently bar and effectively eliminate a number of state- and federal-court lawsuits, including the action in Texas state court brought by the Rupert Parties (the "Bar Orders"). The district court approved the settlement and granted the Bar Orders over the objections of the Rupert Parties, the Abel Parties, and the Zacarias Parties.⁶

⁶ The Zacarias Parties are individually identified in the Parties to this Proceeding. The Zacarias Parties have indicated that they will be seeking this Court's review separately. The Rupert Parties, Able Parties, and Zacarias Parties are collectively referred to herein as the Investor Parties.

The Rupert Parties, Able Parties, and Zacarias Parties separately appealed and the cases were consolidated. The Fifth Circuit affirmed, initially and primarily on the ground that declining to enter the Bar Orders would scuttle the Receiver’s settlement with Willis/BMB and “frustrate the central purposes of the receivership and confound the SEC mission to achieve maximum recovery from the malefactors for distribution pro rata to all investors.” *Zacarias v. Stanford Int’l Bank, Ltd.*, 931 F.3d 382, 401 (5th Cir. 2019). Judge Willett dissented, arguing that the district court’s jurisdiction and authority to enter the Bar Orders was “thin to none.” *Id.* (Willett, J., dissenting). When the Investor Parties jointly petitioned for en banc review, the Fifth Circuit granted a panel rehearing and, in December 2019, withdrew its initial opinion and issued a substitute opinion in which the result was the same and in which the panel majority essentially elaborated on the same bases for its initial holding. *Zacarias*, 945 F.3d 883 [Pet.App.1–43]. Once again, Judge Willett dissented. *Id.* at 905 [Pet.App.43–45]. The Fifth Circuit denied subsequent requests for rehearing (filed by the Zacarias Parties with the Rupert Parties joining).

The Fifth Circuit’s opinion runs counter to the fundamental notion that a party—including a receiver—may not seek to settle and enjoin claims that the party itself has no standing to bring. It reflects a divide between the Fifth Circuit and Tenth Circuit, on the one hand, and on the other hand, the First, Second, Sixth, Seventh, and D.C. Circuits, which hold that receivers, like bankruptcy trustees, “may sue only to redress

injuries to the entity in receivership, corresponding to the debtor in bankruptcy.” *Scholes v. Lehmann*, 56 F.3d 750, 753 (7th Cir. 1995).

In addition to constituting a circuit split, this case raises several important and recurring issues that warrant this Court’s review, particularly given the uptick in receivership proceedings in recent years. Not only does the Fifth Circuit’s holding invite abuse of these sorts of proceedings, it also threatens to erode important 11th Amendment protections for state-court lawsuits that should not be subject to federal-court interference simply because of a nexus to a federal equity receivership. This case also opens the door to de facto class settlements without the protections of Rule 23.



REASONS FOR GRANTING THE PETITION

Article III requires that a party who brings a federal lawsuit have standing to assert the claims made. This case raises the question whether that standing requirement can be met when the party bringing the suit is the receiver of an entity that has been placed under court supervision, but the claims brought involve injuries suffered by third parties, not the entity. The First, Second, Sixth, Seventh, and D.C. Circuits hold that a receiver’s standing is coextensive with the entity in receivership and thus the receiver may not assert, and therefore bar, claims belonging to third parties. The Fifth Circuit, invoking a test of substantial identity of interest, has created a rule of standing that

allows a receiver to bring claims of third parties so long as the receiver's actions increase the amount of assets a receivership may recover. That rule appears contrary to the Court's precedent, creates a division among the circuits, and threatens to unsettle the law governing bankruptcy trustees and class actions. The Court should grant certiorari to resolve the division among the circuits and to clarify what, if any, standing, receivers have to resolve suits belonging to third parties.

A. The Fifth Circuit split from five other circuits by holding that receivers have greater standing than bankruptcy trustees.

A party acting on its own behalf can sue only on its own claims that it has standing to assert. It lacks standing to litigate and settle the claims of others. A component of Article III's case-or-controversy requirement, standing requires that the litigant show "he has a 'personal stake' in the alleged dispute, and that the alleged injury suffered is particularized as to him." *Raines v. Byrd*, 521 U.S. 811, 819 (1997) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 583 (1992)). "The doctrine limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), as revised (May 24, 2016).

Generally, parties sue on their own behalf, but in some instances, suit is brought by one acting in another's interests, such as a receiver appointed by a federal district court after a company has been placed into

receivership. The creation of a receivership would not seem to excuse or alter the requirements of standing. Indeed, most circuits have been careful to observe the limits established by Article III and this Court and have ruled that a receiver's standing is exactly coextensive with that of the receivership entity or individual. Stated differently, these courts have held that a receiver, like any other litigant, must satisfy the "first and foremost" of standing's three elements" by demonstrating as to each particular claim brought that the receivership entity suffered an injury in fact. *Spokeo*, 136 S. Ct. at 1547–48 (quoting *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 103 (1998)).

For example, in *Goodman v. Federal Communications Commission*, the D.C. Circuit held that a receiver of a company that administratively obtained mobile data licenses lacked standing to challenge a Federal Communications Commission order that detrimentally affected licensees. *Goodman v. Federal Communications Commission*, 182 F.3d 987, 992 (D.C. Cir. 1999). The entity in receivership was a so-called "license mill" that obtained FCC licenses for investors who planned to later resell those airwave rights at a profit. *Id.* When the licenses lapsed for nonuse and a disagreement arose regarding a potential extension, the receiver administratively challenged the FCC's ruling. *Id.* The district court dismissed the receiver's challenge for lack of standing because the licenses belonged to the investors. The D.C. Circuit agreed, reasoning that "the decision is a straightforward application of the rule that a receiver has authority to bring a suit only if the

entity in receivership could itself properly have brought the same action.” *Id.* at 991–92.

The Seventh Circuit made the same point clear in the oft-cited *Scholes* decision, where the court applied bankruptcy principles to receiverships and held that, “[l]ike a trustee in bankruptcy or for that matter the plaintiff in a derivative suit, an equity receiver may sue only to redress injuries to the entity in receivership, corresponding to the debtor in bankruptcy and the corporation of which the plaintiffs are shareholders in the derivative suit.” *Scholes*, 56 F.3d at 753. Although the *Scholes* court ultimately decided that the receiver there had adequate standing to recover fraudulent transfers by the receivership corporations, its holding has since been cited extensively for the proposition that a receiver’s standing is coextensive with that of the receivership entity. *Id.*; *see, e.g., Liberte Capital Group, LLC v. Capwill*, 248 Fed. Appx. 650, 655 (6th Cir. 2007) (“The appointment of a receiver is inherently limited by the jurisdictional constraints of Article III and all other curbs on federal court jurisdiction.”) (quoting *Scholes*, 744 F. Supp. at 1421); *Miller v. Harding*, 248 F.3d 1127 (1st Cir. 2000) (citing same); *see also Troelstrup v. Index Futures Group, Inc.*, 130 F.3d 1274, 1277 (7th Cir. 1997) (holding that “the defrauder . . . has no possible claim . . . on behalf of the investors, the victims of the fraud, because he was not their receiver”).

The First Circuit likewise has held that a receiver lacked standing to sue financial institutions that mismanaged the receivership entity’s investors’ funds

because such claims “belonged entirely to investors,” meaning the “equity receiver cannot assert these investors’ claims.” *Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 25 (1st Cir. 1990). The *Fleming* court explained that “[s]ince 1935 it has been well settled that ‘the plaintiff in his capacity of receiver has no greater rights or powers than the corporation itself would have.’” *Id.* (quoting *McCandless v. Furlaud*, 296 U.S. 140, 148 (1935)); see also *Boston Trading Group, Inc. v. Burnazos*, 835 F.2d 1504, 1515 (1st Cir. 1987) (“The Receiver here, like the trustee in *Caplin*, derives his authority from federal law. The *Caplin* court expressly analogized the ‘trustee in reorganization’ to a receiver in equity.”) (citing/discussing *Caplin v. Marine Midland Grace Tr. Co. of New York*, 406 U.S. 416, 429 (1972)). Thus, the First Circuit has made clear that “[a]n equity receiver, like a bankruptcy trustee, has standing for all claims that would belong to the entity in receivership, and which would thus benefit its creditors and investors, but no standing to represent the creditors and investors in their individual claims.” *Miller*, 248 F.3d at 1127.

The Second Circuit, too, has held that a receiver of a securities fraudster’s estate lacked standing to recover fraudulent transfers made by the fraudster because the receivership entity lacked that standing under Article III. *Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008) (“A receiver may commence lawsuits, but ‘stands in the shoes of the corporation and can assert only those claims which the corporation could have

asserted.’”) (quoting *Lank v. N.Y. Stock Exch.*, 548 F.2d 61, 67 (2d Cir. 1977)).

Sixth Circuit jurisprudence also adheres to these principles. That circuit has held that receivers and bankruptcy trustees lack authority to bring and settle claims belonging to the receivership entity’s customers (in receivership cases) and the debtor’s creditors (in bankruptcy cases). See *Jarrett v. Kassel*, 972 F.2d 1415, 1426 (6th Cir. 1992) (holding that a receiver “had authority to sue on behalf of the receivership itself but had no authority to bring a cause of action on behalf of the individual customers”); see also *Liberte Capital Group, LLC*, 248 Fed. Appx. at 656 (discussing, *inter alia*, *Scholes*, 744 F. Supp. at 1420–23); *DSQ Prop. Co., Ltd. v. DeLorean*, 891 F.2d 128, 131 (6th Cir. 1989) (“The district court correctly followed *Caplin* in holding that a trustee, who lacks standing to assert the claims of creditors, equally lacks standing to settle them.”). In *Liberte*, the Sixth Circuit noted that “this proposition is replete in federal appellate case law.” *Liberte Capital Group, LLC*, 248 Fed. Appx. at 656.

Replete as this proposition may be, the Fifth Circuit, while citing two of these authorities for general propositions of receivership law, chose not to follow the law of these other circuits, under which the Bar Orders in this case would have been prohibited. See *Zacarias*, 945 F.3d at 895–96 nn.29, 32, 35–36 [Pet.App.21–23].

Confronted with the Bar Orders and the threshold, jurisdictional issue of the Receiver’s deficient standing to seek them, the Fifth Circuit began its

analysis with an exposition of receiverships' history and more modern role in securities cases during the past century. *Id.* at 895 [Pet.App.20–25]. That emphasis on the utility of receiverships set the tone and framed much of the Fifth Circuit's analysis of the Receiver's standing. The majority explained that receivers "stand[] in the shoes of the injured corporations" and are "entitled to pursue the corporation's claims 'for the benefit not of [the wrongdoers] but of innocent investors.'" *Id.* at 896 (quoting *Scholes*, 56 F.3d at 754) [Pet.App.22–23]. Although the Fifth Circuit acknowledged the "limits to a receivership court's power," it declined to enforce those limits here because, the court reasoned, the Bar Orders were necessary to effectuate the purposes of the federal receivership. *See id.* at 900 [Pet.App.32–33].

The Fifth Circuit embraced an exception to standing's requirement that a plaintiff may sue only to remedy its own injury-in-fact, one where a receiver may seek to recover for a third party's injury so long as the receivership entity's claims are "substantially identical" to the third-party claims that a receiver seeks to bring, settle, or bar. *See id.* at 898. This exception subverts traditional notions of standing by reading injury in fact, the "first and foremost" element of standing, out of the rule. *Compare id. with Spokeo*, 136 S. Ct. at 1547–48. Going a step further, under the Fifth Circuit's analysis, any receiver could satisfy this "substantially identical" test merely by demonstrating that bringing claims for another's injury might benefit the receivership estate. As the dissent pointed out, the Fifth

Circuit’s majority focused on the “settlement’s practical value” and found that value to be sufficient to confer on the receiver the Article III standing to assert and settle a claim that ordinarily would not belong to the receivership estate. *Id.* at 905 [Pet.App.43] (Willett, J., dissenting).

This exception to Article III standing is irreconcilable with the holdings of the other circuits discussed above. *Compare Goodman*, 182 F.3d at 992 (finding receiver’s standing absent where “[h]e does not represent the parties who sustained the injury of which he complains”) *with Zacarias*, 945 F.3d at 899 [Pet.App.30] (“[T]he receivership exists precisely to gather such interests in the service of equity and aggregate recovery.”); *compare also Liberte*, 248 Fed. Appx. at 656 (“The mere fact that the [receiver] *would like* to pull the arbitration proceeds into the receivership pool does not establish a ‘personal stake’ for the receivership entities.”) (emphasis in original) *with Zacarias*, 945 F.3d at 900 [Pet.App.32] (holding that the Receiver could bar Petitioners’ claims because those “claims affect receivership assets because every dollar the [Petitioners] recover from Willis and BMB is a dollar that the receiver cannot”).

The Tenth Circuit appears to be aligned with the Fifth Circuit in this circuit split. In *S.E.C. v. DeYoung*, 850 F.3d 1172 (10th Cir. 2017), the Tenth Circuit held that a receiver’s settlement could include a bar order precluding claims by account holders of the entity in receivership. The court concluded this was so on the basis that the account holders’ and receiver’s claims

were “substantially identical” simply because they were “‘all from the same loss, from the same entities, relating to the same conduct, and arising out of the same transactions and occurrences by the same actors.’” *Id.* at 1176 (quoting trial court’s findings and order).⁷

The conflict between the Fifth and Tenth Circuits’ holdings and the law of the numerous other circuits discussed above makes plain that a circuit split exists that only this Court may remedy. The Court therefore should grant review on these grounds.

B. This case is a good vehicle for resolving the circuit split.

This case provides a good vehicle by which to resolve the standing issue that has divided the circuits. It well illustrates the circuit split, and Petitioners’ objections to the settlements would have come out differently in five other circuits. The Fifth Circuit’s affirmance of the Bar Orders would not have been possible if the court had concluded that the receiver lacked standing to bring and settle the claims. For Petitioners, the consequences are enormous. The Rupert Parties alone—to say nothing of the Zacarias Parties and Able Parties—collectively spent approximately \$87 million

⁷ The Fifth Circuit in *Zacarias* embraced this “substantially identical” language in its favorable discussion of *DeYoung*. *Zacarias*, 945 F.3d at 898 [Pet.App.28]. In doing so, the Fifth Circuit signaled that it was siding with the Tenth Circuit in the recognition of this new doctrine that in some instances exempts receivers from traditional Article III standing requirements.

on Stanford's worthless CDs. If the Bar Orders are left undisturbed, Petitioners will never see a dime of that money again except for the estimated three cents on the dollar that they may or may not recover through their receivership claims. The circuit split therefore means both that standing rules for receivers differ in different areas of the country and that the ability of investors to bring claims, as this Court previously held they had the right to do,⁸ differs from circuit to circuit. This case, with its clear presentation of the legal question about the standing of receivers to bring and bar claims, provides an opportunity for the Court to bring clarity, uniformity, and fairness to this important tenet of American jurisprudence.

This case also illustrates well how critical a correct and uniform resolution of the receiver-standing question is. Receiverships are an increasingly common method of handling investment fraud cases.⁹ See G.

⁸ *Chadbourne*, 571 U.S. 377.

⁹ See, e.g., *S.E.C. v. Scoville*, 913 F.3d 1204 (10th Cir. 2019), *cert. denied*, 140 S. Ct. 483 (2019); *Grassmueck v. Potala Vill., LLC*, C17-0236JLR, 2018 WL 2984831 (W.D. Wash. June 14, 2018); *S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189 (10th Cir. 2010); *S.E.C. v. Quan*, 870 F.3d 754 (8th Cir. 2017); *DeYoung*, 850 F.3d 1172 (2017); *S.E.C. v. Callahan*, 193 F. Supp. 3d 177 (E.D.N.Y. 2016); *S.E.C. v. Torchia*, 183 F. Supp. 3d 1291 (N.D. Ga. 2016); *Carney v. Horion Investments Ltd.*, 107 F. Supp. 3d 216 (D. Conn. 2015); *Cobalt Multifamily Inv'rs I, LLC v. Arden*, 46 F. Supp. 3d 357 (S.D.N.Y. 2014); *S.E.C. v. First Choice Mgmt. Services, Inc.*, 678 F.3d 538 (7th Cir. 2012); *Wiand v. Dancing \$, LLC*, 578 Fed. Appx. 938 (11th Cir. 2014); *Carney v. Beracha*, 996 F. Supp. 2d 56 (D. Conn. 2014); *Bendall v. Lancer Mgmt. Group, LLC*, 523 Fed. Appx. 554 (11th Cir. 2013); *S.E.C. v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013); *Commodity Futures Trading*

Ray Warner & Keith Sharfman, *The SEC in Bankruptcy*, 18 AM. BANKR. INST. L. REV. 569, 569 (2010) (recognizing “the increased use of receiverships and corporate monitors in Ponzi scheme and other cases both inside and outside of chapter 11”). The standing of a receiver to act or not act on claims belonging to third parties will therefore affect an increasing number of cases and the geographic disparity of opportunity between investors able to pursue their own claims and investors whose claims may be barred will continue to grow. At best this will result in forum shopping; at worst, it will result in claims foreclosed based on nothing more than location.

The Fifth Circuit’s creation of a different rule of standing for receivers seems likely to alter the substantive approach that receivers take with their estates. One of the most troubling possible results of the Fifth Circuit’s decision is that it creates incentives for both defendants and receivers to freeze out individual

Comm’n v. Walsh, 712 F.3d 735 (2d Cir. 2013); *Jones v. Wells Fargo Bank, N.A.*, 666 F.3d 955 (5th Cir. 2012); *Protective Life Ins. Co. v. Mosier*, 461 Fed. Appx. 562 (9th Cir. 2011); *Donell v. Keppers*, 835 F. Supp. 2d 871 (S.D. Cal. 2011); *Ritchie Capital Mgmt., L.L.C. v. Jeffries*, 653 F.3d 755, 757 (8th Cir. 2011); *Broadbent v. Advantage Software, Inc.*, 415 Fed. Appx. 73 (10th Cir. 2011); *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323 (7th Cir. 2010); *S.E.C. v. Orgel*, 407 Fed. Appx. 504 (2d Cir. 2010); *S.E.C. v. Malek*, 397 Fed. Appx. 711 (2d Cir. 2010); *S.E.C. v. Kuipers*, 399 Fed. Appx. 167 (9th Cir. 2010); *S.E.C. v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010); *S.E.C. v. Pension Fund of Am. L.C.*, 377 Fed. Appx. 957 (11th Cir. 2010). These cases surface in just a casual query on a legal database; there are no doubt many more.

investor claimants. A person or entity liable to both a receivership and other plaintiffs would have significant reason to negotiate a comparatively small settlement paid to the receiver alone in return for the receiver's agreement to seek an equitable bar of all other claims. Such a tactic should not be available to defendants, yet that is exactly what this case instructs—that defendants may tactically avoid significant third-party liabilities by settling with receivers, who themselves will be conflicted between recovery for the estate and the rights of absentee plaintiffs.

The Fifth Circuit's standing rule also has the potential to undermine federalism. The coexistence of state and federal courts is safeguarded by the more than 200-year-old Anti-Injunction Act ("AIA"). *See* 28 U.S.C. § 2283. This Court has previously expressed concern over enlargement of the very limited exceptions provided in the AIA. *See Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281, 287 (1970) ("[S]ince the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction."). The limited power to enjoin state lawsuits allowed by the AIA is markedly expanded by the Fifth Circuit's receiver-standing ruling because the receiver-standing rule greatly broadens the in-aid-of-jurisdiction exception contained in the AIA. Absent the Fifth Circuit's rule, a federal district court lacks jurisdiction to settle and bar state court lawsuits to which none of the settling parties are a plaintiff and thus would not

be able to assert that any money in the hands of the non-receivership defendants that third-party claims might someday reach were part of the receivership “res in custody of the federal district court.” 945 F.3d at 903 [Pet.App.39] (“The bar orders here prevent Florida and Texas state-court proceedings from interfering with the res in custody of the federal district court.”).

A simple hypothetical demonstrates the flaws in the Fifth Circuit’s holding. If the district court had approved the Receiver’s settlement but refused to enter the Bar Order, the Rupert Parties’ state court claims would have proceeded in Texas courts, after which a judgment would have been entered solely against Willis/BMB. Nothing about such a scenario would have affected the receivership estate’s assets, certainly not to the extent that the state-court judgments would have “so interfer[ed] with [the district court’s] consideration or disposition of a case as to seriously impair [the district court’s] flexibility and authority to decide [receivership-related] case[s].” *See Atl. Coast Line R. Co.*, 398 U.S. at 295.

The Fifth Circuit’s expansion of receivers’ standing could also spill over into bankruptcy proceedings, which are regarded as analogous to receiverships. *See, e.g., Caplin*, 406 U.S. at 429; *see also S.E.C. v. Stanford Int’l Bank, Ltd.*, 927 F.3d 830, 842 (5th Cir. 2019) (rejecting the Receiver’s standing after looking to recognized bankruptcy principles for guidance); *Zacarias*, 945 at 899 n.61 [Pet.App.29]; *In Re: J & S Properties, LLC*, 872 F.3d 138, 150 (3d Cir. 2017); *Scholes*, 56 F.3d at 753; *Ritchie*, 653 F.3d at 763. In bankruptcy cases, a

trustee lacks standing to bring claims as a representative of creditors and may only bring, and settle, claims belonging to the bankrupt estate. *See, e.g., Caplin*, 406 U.S. at 434; *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1093 (2d Cir. 1995) (“[W]hen creditors, such as the investors in the Colonial limited partnerships, have a claim for injury that is particularized as to them, they are exclusively entitled to pursue that claim, and the bankruptcy trustee is precluded from doing so.”); *DSQ Prop. Co.*, 891 F.2d at 131.

By concluding that a receiver has standing to bring any claims, whether belonging to the receiver or to third parties, so long as the claims would increase the receivership estate, and bar the third parties from bringing their own claims against the same defendants, the Fifth Circuit opened the door to the same sort of analysis in bankruptcy proceedings. At the very least, the Fifth Circuit cast doubt on the longstanding rule barring a trustee from bringing claims of creditors. Bankruptcy courts and trustees could look to this case in support of a contention that bankruptcy courts may enjoin creditors’ claims against non-debtor defendants so long as the creditors’ claims arguably “compete with the [trustee] for the dollars in [the defendants’] pockets.” *Cf. Zacarias*, 945 F.3d at 900 [Pet.App.32].

The Fifth Circuit’s opinion also threatens to erode class-action-related constitutional protections preserved in Rule 23. In 2013, two individuals, Troice and Canabal, filed a putative class action against Willis/BMB and moved the district court for certification

under Rule 23(a) and 23(b). The district court never ruled on the fully briefed question of class certification. That class action would have qualified, if at all, only as a permissive class-action under Rule 23(b)(3), allowing would-be class members like the Petitioners to opt out of any judgment or settlement proceeds. *See* Fed. R. Civ. P. 23(c)(2)(B)(v); *see also id.* at 23(e)(4). That opt-out right is of constitutional magnitude and is among the “procedural protections built into the Rule to protect the rights of absent class members.” *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 847 (1999).

The Receiver invited Troice and Canabal to sit at the bargaining table with Willis/BMB, and Troice and Canabal’s counsel shared in the Receiver’s settlement proceeds. Pet.App.81–82, 84–85, 107–108, 110–111. The resulting settlement, with its Bar Orders, accomplished what the Troice/Canabal class action lawsuit could not—the equivalent of a class action settlement with no opt outs.

The Fifth Circuit’s opinion effectively adds a new exception to Rule 23’s codification of constitutional opt-out rights, a judicial improvisation that this Court has unequivocally prohibited. *See Smith v. Bayer Corp.*, 564 U.S. 299, 315 (2011) (“We could hardly have been more clear that a properly conducted class action, with binding effect on nonparties, can come about in federal courts in just one way—through the procedure set out in Rule 23.”) (internal quotation omitted); *Taylor v. Sturgell*, 553 U.S. 880, 901 (2008) (denouncing common-law, “virtual representation” class actions).

These potential ramifications in bankruptcy proceedings and class action litigation are resolved if the Court grants this petition and the circuit split is resolved in favor of the better-reasoned rule of the First, Second, Sixth, Seventh, and D.C. Circuits. If a receiver lacks standing to bring or settle claims that do not belong to the receivership estate, receivers remain on the same footing as bankruptcy trustees and a party that wishes to buy peace from a class of investors may do so through the normal Rule 23 procedures.



CONCLUSION

This Court should grant this petition and review the Fifth Circuit's opinion on the merits to resolve the circuit split and provide guidance on receivers' Article III standing to resolve third parties' claims against non-receivership defendants.

The Rupert Parties and Abel Parties pray that the Court grant this petition and review the lower court's issuance of the Bar Orders on the merits.

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