

04-1371 MERRILL LYNCH, PIERCE, FENNER & SMITH V. DABIT

DECISION BELOW: 395 F3d 25

LOWER COURT CASE NUMBER: 03-7499, 03-7458

QUESTION PRESENTED:

Through passage of the Securities Litigation Uniform Standards Act of 1998, Pub. L. No. 105-353, 112 Stat. 3227 ("SLUSA "), Congress, inter alia, amended Section 28 of the Securities Exchange Act of 1934 to preempt any private action brought on behalf of 50 or more persons from proceeding under the statutory or common law of any State in any state or federal court if such action alleges "[a] misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A), (5)(B). In *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), this Court adopted a "purchaser-seller" standing limitation in private actions brought under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), by requiring the private plaintiff to be an actual purchaser or seller. The decision below implicates whether that judicially crafted "purchaser-seller" standing requirement articulated as a limit on private fraud actions under Section 10(b) applies to limit SLUSA's broad preemptive scope over state law claims. The question presented in this petition is:

Whether, as the Seventh Circuit held earlier this month and in direct conflict with the decision below, SLUSA preempts state law class action claims based upon allegedly fraudulent statements or omissions brought solely on behalf of persons who were induced thereby to hold or retain (and not purchase or sell) securities?

CERT. GRANTED 9/27/2005