

Securities: Certiorari Petitions Denied

MARCH 13, 2013

WilmerHale compiles lists of certiorari petitions that raise securities-law issues. This page contains a consolidated list of all denied petitions, organized in reverse chronological order by date of certiorari petition.

Cahill v. SEC, No. 11-1161

Question Presented:

The federal securities laws empower the Securities and Exchange Commission ("SEC"), in its civil law enforcement role, to seek a wide range of remedies and sanctions in federal court against securities law violators. Those remedies and sanctions include "equitable relief" for the benefit of investors. As exemplified by this case, the SEC routinely demands "disgorgement" of ill-gotten gains, and district courts routinely grant it, based on the essential premise that this monetary sanction in fact constitutes "equitable relief" rather than punitive or legal relief. But in many cases - this one being a quintessential example - the defendant does not possess or have access to the ill-gotten gains because they were long ago transferred to unrelated parties, and thus the so-called "disgorgement" order merely imposes a personal liability on the defendant to pay a sum of money approximating gains that are no longer available for the defendant to "disgorge."

The question presented is:

Whether a district court's "disgorgement" order in an SEC law enforcement case is a permissible form of "equitable relief" when it merely imposes a personal liability on the defendant to pay a substitutionary sum of money equal to an approximation of ill-gotten gains that long ago passed on to unrelated parties and are no longer available to the defendant.

Cert petition filed 3/21/12, conference 6/21/12. **Petition denied.**

Brown v. Calamos, et al., No. 11-1173

Question Presented:

1. Does the Securities Litigation Uniform Standards Act of 1998 (SLUSA), 15 U.S.C. § 78bb(f), require dismissing with prejudice a class action complaint that contains no claim for relief

“alleging a misrepresentation or omission of a material fact”?

Cert petition filed 3/23/12, conference 6/14/12. **Petition denied.**

Barnard, et al. v. Verizon Communications, Inc., et al., No. 11-1081

Questions Presented:

1. Whether the U.S. 3rd Circuit Court of Appeals may dismiss, under F.R.C.P. 12(b)(6), this post-bankruptcy shareholder recovery action against Verizon Communications, Inc. and JP Morgan Chase Bank, as co-authors of an alleged fraudulent debt off-loading spin transaction, where a same action by creditors against Verizon Communications, Inc. was: (i) authorized by res adjudicata bankruptcy decree, and (ii) upheld (by the United States District Court, N.D. of Texas) against a same motion to dismiss. See U.S. Bank Nat'l Ass'n v. Verizon U.S. Dist. Ct., N.Dist. of Texas, [No.3:10-cv-01842, Docket 106, 9/19/11, Appx. F].
2. Whether federal district court, herein, may deny: (A) commonplace diversity jurisdiction to a multi-state plaintiffs' complaint that alleges common law deceit, and (B) federal question jurisdiction for said complaint that also alleges violation of the Federal Communications Act and the Federal Securities Exchange Act, where (i) :documentary evidence attached to the complaint, and (ii) other documentary evidence, timely filed, and (iii) the language of the Complaint itself, were contradicted or excluded from consideration.

Cert petition filed 2/28/12. Waiver by respondent JP Morgan Chase Bank 3/12/12, waiver filed by respondent Verizon Communications, Inc. 3/26/12, conference 4/27/12. **Petition denied.**

Ryan, et al. v. Picard, No. 11-969

Question Presented:

1. Did the Court of Appeals for the Second Circuit err in holding that a trustee, appointed under the Securities Investor Protection Act (“SIPA”) for the liquidation of a broker, has unlimited discretion to deny SIPC insurance to securities customers by defining “net equity” (i.e., a customer's claim) in different ways, depending upon the particular circumstances of the case, despite
 - (a) SIPA's clear and unambiguous definition of “net equity;”
 - (b) SIPA's prohibition of the Securities Investor Protection Corporation (“SIPC”) changing the definition of “net equity;” and
 - (c) the absence in SIPA, of any delegation of discretion to a SIPA trustee to change the definition of “net equity.”

Cert petition filed 2/3/12. Waiver filed by respondent SEC 2/24/12, response requested 3/29/12, conference 6/21/12. **Petition denied.**

Velvel v. Securities Investor Protection Corporation, et al., No. 11-986

Questions Presented:

1. Is it a violation of separation of powers, and does it constitute judicial legislation, for a Court of Appeals, when determining which of two statutory provisions will control and in order to reach a result which the Court considers more fair, to fail to consider, and to ignore, the purpose of Congress repeatedly stated by (leading) members of the House and Senate on the floors of those bodies?
2. When a statute is enacted to provide customers with protection against losses arising from misconduct by securities dealers, specifically defines how the customers' "net equity" with a securities dealer is to be determined, and says the definition may not be changed by the Securities Investor Protection Corporation ("SIPC"), is it a violation of Article I of the Constitution giving the legislative power to Congress, is it a violation of separation of powers, and is it judicial legislation for SIPC to change the definition of net equity and for the Court of Appeals to rule that, instead of the single unchangeable definition given by Congress, net equity can be defined however SIPC and a SIPC trustee wish to define it in any particular case - and for SIPC and the Court, in the bargain, to thereby eliminate the assurance of protection on which Congress intended customers to be able to rely?
3. In accordance with the positions of SIPC and the Bankruptcy Trustee in proceedings involving the all-important question of "net equity," the Bankruptcy Court refused to grant victims of the Madoff fraud any discovery into what happened or why SIPC and the Trustee acted as they did (a matter which is widely questioned). Then the Bankruptcy Court, on a de facto summary judgment on the all-important question of net equity, accepted all the facts put forth by SIPC and the Trustee (some of which are already known to be wrong even without discovery), and ruled for SIPC and the Trustee and against the Madoff victims. The refusal of discovery into the facts of what happened and why, and the wholesale acceptance of the facts put forth by SIPC and the Trustee on a de facto motion for summary judgment, was a subject of appeal to the Second Circuit, but the Circuit did not mention this question and correspondingly did not rule on it or reverse on it. In these circumstances, the question is: Is it permissible for the federal courts to grant summary judgment to one side on a crucial issue while giving the losing side no opportunity to obtain discovery of the facts, and for the courts to, instead, merely accept the version of the facts put forth by the winning side?

Cert petition filed 2/6/12. Waiver filed by respondent SEC 2/24/12, conference 4/13/12, response requested 3/29/12, conference 6/21/12. **Petition denied.**

McCall v. United States, No. 11-882

Questions Presented:

1. Whether petitioner's convictions must be reversed because "reckless" conduct does not meet the mens rea requirement under the federal criminal securities laws. 15 U.S.C. §§ 77x, 78ff.
2. Alternatively, whether petitioner was entitled to an instruction defining "recklessness" to mean at least what it means in civil securities fraud cases - i.e., "an intentional and

extreme departure from standards of ordinary care that presents a danger of misleading buyers and sellers that is either known to the defendant or so obvious that he must have been aware of it.”

Cert petition filed 1/18/12, response requested 2/14/12, conference 6/21/12. **Petition denied.**

Jasper v. SEC, No. 12-535

Questions Presented:

1. Whether an accounting restatement based on an investigation by a team of outside lawyers and accountants conducted years after the events in question took place is admissible pursuant to the business records exception to the hearsay rule, Federal Rule of Evidence 803(6).
2. Whether a defendant has a Seventh Amendment right to a jury trial on a forfeiture claim under Section 304 of the Sarbanes-Oxley Act, 15 U.S.C. §7243.

Cert petition filed 10/29/12, conference 3/1/13. **Petition denied.**

Fisher, et al. v. JP Morgan Chase & Co., et al., No. 12-298

Questions Presented:

1. Under ERISA is there a presumption of prudence which immunizes from liability the fiduciaries of 401(k) plans when they offer employer stock as an investment option?
2. If such a presumption exists, is it applicable to all eligible individual account plans (defined herein), or only those eligible individual account plans which mandate or strongly favor employer stock?
3. If such a presumption exists, what facts or circumstances (such as plan directives, or what a plan settlor would presumably intend under the circumstances) give rise to the presumption, and what facts or circumstances overcome it?
4. If such a presumption exists, is it properly applied to test the sufficiency of a complaint on a Rule 12 dismissal motion?

Cert petition filed 9/5/12, conference 11/9/12. **Petition denied.**

Lauer v. SEC, No. 12-260

Questions Presented:

1. Whether a federal court may strike a defendant's motion to dismiss for lack of subject-matter jurisdiction and for other relief, yet ignore the question whether it in fact has subject-matter jurisdiction.
2. Whether, in denying a defendant a trial, a federal court may rely on collateral estoppel based on a state-court case it had stayed; and whether the court may base collateral estoppel on a default judgment in a case between different parties.
3. Whether a court of appeals satisfies the requirement for de novo review of a grant of summary judgment by finding that either “ample” or “overwhelming” evidence supported

summary judgment rather than undisputed evidence.

4. Whether a disgorgement order (of over \$43 million) that simply takes every dollar defendant received from his business without findings or explanation is consistent with the Federal Rules of Civil Procedure and with equitable principles that limit disgorgement to unjust enrichment and require findings of fact.
5. Whether, when the defendant had neither use of nor access to the funds in question because a court had frozen all his assets, the court may nevertheless award plaintiff SEC nearly \$19 million as prejudgment interest.

Cert petition filed 8/27/12, conference 10/26/12. **Petition denied.**

Santomenno v. John Hancock Life Insurance Co. (USA), No. 12-202

Questions Presented:

1. Does the decision of the Third Circuit Court of Appeals, that an explicit private right of action does not exist under Investment Company Act (“ICA”) § 47(b), 15 U.S.C. § 80a-46(b), to enforce violations of ICA § 26(f), 15 U.S.C. § 80a-26(f), conflict with the following opinions of this Court: *Alexander v. Sandoval*, 532 U.S. 275 (2001) (private right of action exists if statute contains a remedy/importance of statutory text); *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11 (1979) (construing similar statute); *Mills v. Electric Auto-Lite*, 396 U.S. 375 (1970) (construing similar statute); *Bd of Trustees of the Leland Stanford Junior Univ. v. Roche Molecular Systems, Inc.*, 131 S.Ct. 2188 (2011) (statutory terms cannot be treated as surplusage); *Sullivan v. Stroop*, 496 U.S. 478 (1990) (interpretation of a statute is based on the plain meaning of statute); *Freeman v. Quicken Loans, Inc.*, 132 S.Ct. 2034 (2012) (same) and *TRW Inc. v. Andrews*, 534 U.S. 19 (2001) (Court must give effect to every clause and word of a statute)?
2. Was it proper for the Third Circuit Court of Appeals to ignore the position of the Securities and Exchange Commission (“SEC”) that ICA § 47(b), 15 U.S.C. § 80a-46(b), contains an explicit private right of action to enforce violations of ICA § 26(f), 15 U.S.C. § 80a-26(f), (“[t]he Supreme Court precedent makes clear beyond reasonable dispute that private plaintiffs may seek rescission of a contract provision charging excessive fees [under ICA § 47(b), 15 U.S.C. § 80a-46(b)].” SEC’s Amicus Brief at Appendix p. 78)?

Cert petition filed 8/13/12, conference 10/26/12. **Petition denied.**

Chien v. Skystar Bio Pharmaceutical Co., et al., No. 12-94

Questions Presented:

1. Should the sanction be revoked based on the miscarriage of justice?
2. Can the Judges use the arbitrary power to ignore the accounting rules of the public company Skystar such as FASB Statement No. 123(R)?
3. Should Private Securities Litigation Reform Act of 1995’ (“PSLRA”) be judged under Securities Law and SEC rules to determine the disclosure of fraud?
4. Are courts required to view the facts and draw reasonable inferences “in the light most

favorable to the party opposing the summary to the party opposing the summary judgment?

Cert petition filed 7/13/12, conference 9/24/12. **Petition denied.**

Chien v. Skystar Bio Pharmaceutical Co., et al., No. 12-93

Questions Presented:

1. Do Defendants have obligation to set answer for allegation as specified in Rule 12(a)(1)(A) (i) of FRCP?
2. Should the no answer of counsels of Moore Stephens Wurth Frazer & Torbet, LLP ("MSWFT") be considered as consent to allegation against MSWFT?
3. Does Canon 1 of "Code of Conduct for United States Judges" prevent Chief Judge Jacobs of Appeals Second Circuit and Judge Kravitz of District Court for Connecticut from demand of dismissing this case on behalf of MSWFT which didn't want the dismiss?
4. Can the Judges use the arbitrary power to ignore the accounting rules and securities laws, such as FRSB Statement No, 123(R) and Section 16(a) of the Exchange Act etc., for the public company Skystar?
5. Are courts required to view the facts and draw reasonable inferences "in the light most favorable to the party opposing the summary judgment?
6. Where the Court Judges rendered a biased opinion inconsistent with law and fact in granting MSWFT for dismiss, is said conduct violating of a standing SEC Order?

Cert petition filed 7/13/12, conference 9/24/12. **Petition denied.**

Rothstein v. Ohio Public Employees Retirement System, et al., No. 12-40

Questions Presented:

1. Was it the intent of Congress in enacting 15 U.S.C. § 78u-4(a)(7)(B) that class members always be given notice of the Potential Outcome of the Case concerning the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged?
2. Do subsections (i), (ii), and (iii) of 15 U.S.C. § 78u-4(a)(7)(B), when read in *pari materia*, demonstrate that the 1995 Private Securities Litigation Reform Act mandates disclosure of potential damages to the class, expressed as the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged, irrespective of disagreement between class counsel and the defendant concerning the amount of damages per share?

Cert petition filed 7/5/12, conference 9/24/12. **Petition denied.**

Hagen v. US, No. 11-1508

Questions Presented:

1. In *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 346 (2005), this Court held that a

complaint must allege that the defendant's misrepresentations "proximately caused" the plaintiff's losses to state a claim under the Private Securities Litigation Reform Act of 1995, 109 Stat. 737. Applying the logic of *Dura Pharmaceuticals* to criminal cases, the Second, Fifth, and Tenth Circuits have adopted a "strict" approach that requires a sentencing judge to base sentences solely on the losses proximately caused by defendant's fraud exclusive of other factors that caused the price of a security to decline. In contrast, the Fourth, Eighth, and Ninth Circuits have held that *Dura Pharmaceuticals* does not apply in the criminal context and, therefore, have adopted a "more general loss causation analysis" that does not require a sentencing judge to consider whether factors other than the defendant's fraud resulted in a loss of the security's value. The question presented is whether actual losses that are not proximately caused by the defendant's fraud may be attributed to the defendant for purposes of determining the defendant's sentence.

2. Whether the trial court violated Petitioner's right to the assistance of counsel through its "unreasoning and arbitrary 'insistence upon expeditiousness in the face of a justifiable request for delay' " contrary to this Court's decision in *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983) when it denied his request for the appointment of new counsel without making any inquiry to whether his current counsel had adequately prepared a defense.

Cert petition filed 6/11/12, waiver of respondent United States filed 6/19/12, conference 9/24/12.

Petition denied.

***Cole, et al. v. Harris, et al.*, No. 11-1334**

Question Presented:

Victims of securities fraud who sue the wrongdoers for damages in federal court must file a complaint that meets the requirement of Rule 9(b) FRCP that the circumstances of the fraud be stated "with particularity" and additional requirements added by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), including the requirement to plead facts "giving rise to a strong inference" of scienter. If a complaint is dismissed for failing to meet these requirements, should the dismissal be "with prejudice," despite the general provision of Rule 15(a)(2) FRCP that courts should "freely give" leave to amend a pleading "when justice so requires," on the grounds that to allow a plaintiff to file an amended complaint with more detail would "frustrate the purpose" of the PSLRA?

In this case, the Sixth Circuit has so held (Appendix A: Opinion, pp. 2a-3a), affirming a first dismissal made "with prejudice" as a result of the PSLRA, and confirming a rule that had appeared to be dicta in its earlier decisions, beginning with *Miller v. Champion Enterprises, Inc.*, 346 F.3d 660 (6th Cir. 2003). Other circuits have rejected this idea. See, e.g., *ACA Financial Guaranty Corp. v. Advent, Inc.*, 512 F.3d 46, 56-57 (1st Cir. 2008) ("To the extent that Miller may embody a rule that the PSLRA modifies the operation of Rule 15(a), however, we disagree."); *Carol Gamble Trust 86 v. E-Rex, Inc.*, 84 Fed. Appx. 975, 979, 2004 U.S. App. LEXIS 88, *11, Fed. Sec. L. Rep. (CCH) ¶ 92,698 (9th Cir. 2004) (rejecting "Defendants' suggestion that, under the PSLRA, plaintiffs have only a single 'bite at the apple.' ").

Cert petition filed 5/2/12, response requested 6/21/12, conference 9/24/12. **Petition denied.**

Findwhat.com, et al., v. Findwhat Investor Group, No. 11-1250

Questions Presented:

1. In a claim brought under Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder, what is the standard for creating a genuine dispute of material fact on loss causation?
2. Whether the Eleventh Circuit erred under *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), when it concluded, in conflict with the Second, Ninth, and Tenth Circuits, that loss causation may be established without requiring a plaintiff to show that the price inflation removed at the end of the class period was actually caused by the class period statements for which the plaintiff seeks to recover.
3. Whether the Eleventh Circuit erred under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), when it concluded that a Section 10(b) claim may exist for statements that supposedly “maintain” pre-existing price inflation where that inflation arose prior to the start of the class period and was caused by statements that have been held to be inactionable.
4. Whether the Eleventh Circuit erred in holding, in direct conflict with other Circuit Court precedent, that a plaintiff may rely on the “fraud-on-the-market” theory for “confirmatory” statements that do not interject any new information into the marketplace.

Conference 4/27/12, waiver of respondent FindWhat Investor Group filed 5/21/12, response requested 6/6/12, conference 9/24/12. **Petition denied.**

Miller v. Nationwide Life Insurance Co., No. 11-1083

Questions Presented:

1. Whether charging a variable annuity contract owner redemption fees is a breach of contract when the contract provides that the owner has the right to “transfer variable assets among the various funds without a charge”?
2. Whether limiting the number of telephone exchanges to twenty per year is a breach of contract when the variable annuity contract provides that the owner has the right to “make telephone exchanges where permitted by state law”?

Cert petition filed 2/29/12. Waiver filed by respondent Nationwide Life Insurance Co. 3/14/12, conference 4/13/12. **Petition denied.**

WilmerHale represents respondent Nationwide Life Insurance Co.

VCG Special Opportunities Master Fund, Ltd v. Wachovia Bank, et al., No. 11-1157

Question Presented:

Whether the United States Court of Appeals for the Second Circuit's decision is in conflict with

Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002), because the Court of Appeals exceeded its power when it relied upon the disclaimer language in an agreement with a third party in making its finding that the Petitioner was not a customer of the Respondent Wachovia Capital Markets LLC, which affirmative defense is a procedural issue that goes to the merits of the case for the FINRA arbitrators to decide, not to the issue of arbitrability, and thus denied Petitioner's right, under the Federal Arbitration Act, to have its dispute with Respondent Wachovia Capital Markets LLC, a FINRA member, arbitrated before FINRA.

Cert petition filed 3/21/12, conference 5/17/12. **Petition denied.**

Poulsen v. United States, No. 11-1005

Questions Presented:

1. Whether the Sixth Circuit condoned improper procedures followed by the district court relating to the proof and rebuttal for alleged complex securities fraud losses at trial, and calculating and applying them for purposes of sentencing—which prevented the Defendant from fully developing his defense, and resulted in an illegal 30-year sentence.
2. Whether the Sixth Circuit erred by ignoring the substantially unfair prejudice arising from the district court's failure to exclude irrelevant and unfairly prejudicial facts from a separate criminal prosecution.
3. Whether the Sixth Circuit deprived Petitioner of due process by affirming his money laundering conviction, and depriving him of a resentencing that had been properly given to his alleged co-conspirators.

[Cert petition](#) filed 2/14/12. Waiver filed 2/24/12, conference 3/16/12. **Petition denied.**

Sterling Equities Associates, et al. v. Picard, No. 11-968

Question Presented:

1. Did the Court of Appeals for the Second Circuit err when it ruled that the definition of “net equity” in the Securities Investor Protection Act (“SIPA”), which determines the calculation of a customer’s priority claim in a stockbroker liquidation, may be interpreted differently in different cases, depending upon the circumstances of the broker’s failure and without reference to customer ownership rights, under uniform state law, to securities reflected on brokerage statements, thereby creating uncertainty as to the scope of the protection provided by SIPA in a stockbroker liquidation?

[Cert petition](#) filed 2/3/12. Waiver filed by respondent SEC 2/24/12, response requested 3/29/12.

Petition dismissed under Rule 46 6/4/12.

Reyes v. United States, No. 11-1003

Question Presented:

1. This federal criminal prosecution for alleged securities fraud turned on the omission from corporate financial statements of hypothetical, non-cash compensation “expenses” that a

since-discarded accounting standard once required companies to report with respect to certain employee stock options. The question presented is:

2. Whether the court of appeals erred in holding that the prosecution could bear its burden of proving that the omitted information was “material”—i.e., that it “would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available”—based solely on evidence that it significantly affected the company’s “earnings” as reported under Generally Accepted Accounting Principles (GAAP), without (i) acknowledging or addressing critical differences between GAAP income and actual cash or business-related earnings or (ii) requiring evidence explaining why, in light of those differences and the other information made available, rational investors would have viewed the omitted information as significantly altering the “total mix.”

WilmerHale represents petitioner Gregory Reyes.

[Cert petition](#) filed 2/10/12. Waiver filed 2/17/12, conference 3/16/12. **Petition denied.**

Vancook v. Securities Exchange Commission, No. 11-803

Question Presented:

Whether the Second Circuit's deference to the Securities and Exchange Commission's expansive interpretation of the ambit of liability under Rule 10b-5 violates the rules set down by this Court in *Janus Capital Group, Inc. v. First Derivative Traders*, ___ U.S. ___ 131 S. Ct. 2296; 180 Lawyers Ed. 2d 166; 2011 U.S. LEXIS 4380 (2011) and *Stoneridge Investing Partners LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008).

[Cert petition](#) filed 12/23/11, waiver filed 1/20/12, conference 2/17/12. **Petition denied.**

Flint v. New York Stock Exchange, et al., No. 11-619

Questions Presented:

1. Can the Congress of the United States grant absolute immunity to the Security and Exchange Commission (SEC) and all entities connected to it, which deprives a citizen their rights of Due Process of law as granted by the Constitution to protect his property?
2. Did Congress also grant absolute immunity to all self-regulatory organizations (SRO) under the supervisory of the SEC, regardless of the action taken by them or just certain items?
3. Does the immunity granted by Congress to the SEC and SROs also extend beyond the stock exchanges, to its employees or contractures and to the Brokers, (Market Makers) who sell the stocks and sets the price of the stock and therefore are they extended the same immunity?
4. If Brokers manipulates the sale of stocks on exchanges would that be fraud and if it was fraud, would absolute immunity still apply?
5. Is it possible that Congress has written a perfect law and there are no cheaters involved in selling or reporting the sale of stocks?

[Cert petition](#) filed 11/14/11, waiver filed 11/28/11, conference 1/20/12. **Petition denied.**

Standard Investment Chartered, Inc., v. National Association of Securities

Dealers, et al., No. 11-381

Question Presented:

Are Self Regulatory Organizations entitled to absolute immunity for unlawful conduct that is "incident to" their regulatory powers but does not involve performance of any regulatory duty on behalf of the government?

Cert. petition filed 9/22/2011, conference 1/13/12. **Petition denied.**

Kornfeld, et al. v. Flood, et al., No. 11-523

Questions Presented:

1. Whether the United States Court of Appeals for the Eleventh Circuit applied an erroneous standard for alleging scienter under § 10(b) of the Securities Exchange Act of 1934 that directly conflicts with the standard established by this Court in *Tellabs, Inc. v. Makor Issues & Rights*, 551 U.S. 308 (2007), by requiring that Petitioner's pleading of scienter "rule out" innocent explanations for the alleged behavior.
2. Whether the Eleventh Circuit applied an erroneous standard for alleging scienter under § 10(b) that amounts to a "beyond a reasonable doubt" pleading standard that violates the Seventh Amendment right to trial by jury.
3. Whether the Eleventh Circuit applied an erroneous standard that directly conflicts with the standards established by this Court in, among other cases, *Tellabs*, 551 U.S. 308 and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), in assessing Petitioner's scienter allegations by adopting Respondents' theory of the case based on factual arguments that are not alleged in the operative complaint and could not be the subject of judicial notice.

[Cert petition](#) filed 10/24/11, conference 1/6/12. **Petition denied.**

The Blackstone Group, L.P., et al. v. Litwin, et al., No. 11-15

Question Presented:

Whether, in assessing the materiality of alleged omissions in a registration statement for an initial public offering, the court below, in conflict with the Third and Eighth Circuits, used an erroneous legal standard in (i) considering only whether the alleged omission related to a significant business segment of the issuer's business, ignoring the alleged omission's relationship to the issuer's business as a whole, thereby overriding the requirement of *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. ___, 131 S. Ct. 1309, 1321 (2011), that any omissions must "significantly" alter the total mix of investor information; (ii) discarding long-standing judicial and regulatory authority regarding the importance of quantitative analysis in making materiality determinations, including a rule of thumb that omissions affecting amounts less than 5% are likely immaterial; and (iii) impermissibly requiring issuers to flood investors with unnecessary and confusing detail, *id.* at

1318.

Cert. petition filed 6/28/11; amicus brief 8/1/11; amicus brief 8/1/11; reply of petitioners 9/6/11; conference 9/7/11. **Petition denied.**

Gentry v. United States, No. 11-58

Question Presented:

Whether a district court may “suspend the running” of a statute of limitations pursuant to 18 U.S.C. § 3292 after the statute of limitations has already expired.

Cert. petition filed 7/11/11. **Petition denied.**

FirstBank Puerto Rico v. La Vida Merger Sub, Inc., et al., No. 11-72

Questions Presented:

1. Whether the Court of Appeals erred in using a pre-*Merck v. Reynolds* operative inquiry notice limitations standard in affirming a pre-*Merck* Rule 12(b)(6) dismissal of a securities fraud action.
2. Whether the Court of Appeals erred in not remanding the case to the District Court for specific findings on what are all the facts that need to be discovered and what information must be acquired on them for the statute of limitations of a securities fraud action to begin to run.

Cert. petition filed 7/13/11; waiver filed on 8/9/11; waiver filed 8/17/11; conference for 9/26/11 on 8/31/11. **Petition denied.**

Deloitte & Touche LLP, et al. v. The RGH Liquidating Trust, et al., No. 11-510

Question Presented:

Whether the New York Court of Appeals, in agreement with the Ninth Circuit but in conflict with the Third Circuit, correctly derived from the Securities Litigation Uniform Standards Act’s (SLUSA) “Counting of Certain Class Members” provision a “single-entity exemption” under which a state-law securities fraud action that indisputably was brought on behalf of more than 50 bondholders and would otherwise be precluded by SLUSA is permissible so long as the named plaintiff entity itself was not established for the “primary” purpose of bringing the lawsuit?

[Cert petition](#) filed 10/20/11, conference 1/6/12. **Petition denied.**

Gottlieb v. SEC, No. 11-487

Questions Presented:

1. The court should grant Certiorari to determine if Petitioner’s claim of prejudicial treatment and extreme favoritism toward the SEC is cause enough to reverse the decision of the District Court; and separately if such prejudicial rulings rose to the level of an “Abuse of

Discretion," based upon erroneous assessments of the weight of the evidence and if such warrants reversal of the District Court's decision as it never ordered an investigation into the merits of several pivotal claims, glossed over exculpatory issues, resulting in Petitioner's unequal protection and loss of his Due Process to his day in court, on top of which there was no evidence that Petitioner had "scienter"?

2. The court should grant Certiorari to determine whether the Court's Summary Order dismissing the admissibility of the Supervisory FBI Special Agent's Amicus Curiae Affidavit should be reversed and the Affidavit received into evidence, or remanded for investigation, for possible relief under Rule 60; as it was unavailable for pleading any earlier; and because the Court misapplied the Doctrine of Res Judicata in this instance?
3. Whether Pro Se Petitioner's timely filing in the wrong court should be excused as it was corrected immediately upon discovering the error, and, more importantly, the U.S. Agency involved was properly noticed in a timely manner?
4. (This question was never addressed by the Court of Appeals; nevertheless it is crucial to grasp the depth or extreme prejudice): Whether the District Court's findings of "vexatious" pleadings were warranted, or were the Petitioner's pleading necessary to defend his lawful interests, fair and/or just under the circumstances?
5. (This question was never addressed by the Court of Appeals, but is required for Due Process as permission to file Rule 60 documents has been previously granted by the District Court who even volunteered to assist Petitioner in the accumulation of unlawfully withheld documents): Whether the District Court's decision to bar the Petitioner's use of the judicial court system would unlawfully bar the Petitioner from the (re)introduction of evidence under Rule 60, due to "special circumstances", as Petitioner was already granted this right by the Court, who also agreed to assist Petitioner with Subpoena power in another case before the same court, *Morgan v. Gottlieb*, which documents would be identical?
6. The Court should grant Certiorari to answer the unanswered Civil Rights violations of "Double Jeopardy" as the District Court never addressed this issue which remains unanswered and put before the Supreme Court.

[Cert petition](#) filed 8/5/11, waiver filed 10/25/11. **Petition denied.**

Schupak Group, Inc. v. Travelers Casualty and Surety Company of America,
No. 11-440

Question Presented:

Whether petitioner's ERISA plan investment advisor - Bernard Madoff - is a covered person under the ERISA Compliance Bond that respondent sold to petitioner.

[Cert petition](#) filed 9/20/11, conference 12/9/11. **Petition denied.**

Burns v. Plumbers & Pipefitters National Pension Fund, et al., No. 11-404

Question Presented:

On a motion to dismiss a complaint for failure to allege a strong inference of scienter as required by the 1995 Private Securities Litigation Reform Act and the principles of *Tellabs Inc. v. Makor Issues & Rights Ltd.*, 551 U.S. 308, 75 U.S.L.W. 4462 (2007), must all factual allegations be accepted as true, including those within the scope of 15 U.S.C. § 78u-4(b)(1) and (2) that are not stated with particularity?

[Cert petition](#) filed 9/28/11, waiver filed 10/7/11, conference 11/4/11. **Petition denied.**

***Katyle, et al. v. Penn National Gaming, Inc., et al.*, No 10-1501**

Question Presented:

Whether the Fourth Circuit incorrectly held, in direct conflict with this Court's dicta in *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005) and the Fifth Circuit in *Lormand v. US Unwired, Inc.*, 565 F.3d 228 (5th Cir. 2009), that plaintiffs in securities fraud actions must plead the "loss causation" element pursuant to Rule 9(b) of the Federal Rules of Civil Procedure?

[Cert. petition](#) filed on 6/13/11; waiver filed 6/27/11; conference 9/26/11. **Petition denied.**

***Full Value Advisors, LLC v. SEC*, No. 10-1372**

Questions Presented:

1. Whether Section 13(f) of the Securities Exchange Act of 1934 violates the First Amendment as applied to compel a private hedge fund investment advisor to disclose its securities holdings, and hence, reveal its proprietary research and investment ideas to others that copy and profit from it, when the SEC has conceded that § 13(f) has not meaningfully advanced a legitimate regulatory purpose.
2. Whether the Court of Appeals erred in applying "rational" basis review to of § 13(f)'s compelled disclosure of fully-protected non-personal expression of opinion about securities.
3. Whether, even if commercial speech standards could apply, the Court of Appeals erred in applying the *Zauderer* rational basis standard instead of the *Central Hudson* test, when § 13(f) disclosures are not aimed at preventing deception or curing misleading speech.

[Cert. petition](#) filed 5/5/11.

Conference 6/9/11. **Petition denied.**

***Amorosa, et al. v. Ernst & Young LLP*, No. 10-1357**

Questions Presented:

1. Whether a plaintiff who purchased and later held securities in reliance on alleged misrepresentations and omissions by defendant, can maintain a "holder" claim under the federal securities laws in light of *Dabit v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 126 S.Ct 1503, 1513, 164 L.Ed.2d 179 (2006), which held that the statutory phrase "in

connection with the purchase or sale of a covered security” was broad enough to apply to any fraudulent conduct that merely coincides with a securities transaction (*Dabit*, 126 S. Ct. at 1514 [Emphasis supplied]), notwithstanding that the lower courts have previously interpreted the nearly identical statutory phrase “in connection with the purchase or sale of any security” in Rule 10b-5 far more restrictively to prohibit an action by a “holder.” *Cf.*, *Blue Chip Stamps*, 421 U.S. 723, 737- 738, 95 S.Ct. 1917, 1926 (1975) (“in connection with” purchase or sale of security language was not broad enough to cover persons who never dealt in the subject security (but this Court’s holding did not address fact pattern where plaintiff in fact purchased and later held stocks based on misrepresentations)).

2. In the context of a complex multidistrict securities litigation assigned to a single federal judge, whether a plaintiff’s individual state law claims are pre-empted by the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”) notwithstanding that plaintiff’s individual “opt-out” case did not seek relief on behalf of more than 50 persons and was not consolidated or jointly prosecuted with the class action or any other opt-out actions, and therefore did not fall within the statutory language defining a preempted “covered class action.”
3. Whether the loss causation element of a claim under Section 10(b) of the Securities Exchange Act can be satisfied in the context of a claim against an auditor by pleading that plaintiff suffered losses when information concerning the accuracy and integrity of the issuer’s reported financial results was revealed, resulting in statistically significant drops in the issuer’s share price that were unexplained by market factors or other non-issuer specific events.

[Cert. petition](#) filed 5/3/11.

Conference 6/9/11. **Petition denied.**

***Lingis, et al. v. Dorazil, et al.*, No. 10-1318**

Question Presented:

Is intent to deceive an element of a claim for breach of ERISA’s duty of loyalty?

[Cert. petition](#) filed 4/21/11; conference 9/26/11. **Petition denied.**

***Simmonds v. Credit Suisse Securities LLC, et al.*, No. 10-1218**

Questions Presented:

1. Under the Securities Exchange Act of 1934, 15 U.S.C. § 78p, what is required of an outside shareholder’s Section 16(b) demand when the targeted insider has failed to comply with its Section 16(a) reporting obligations?
2. Where an insider has failed to file a Section 16(a) report and the district court nevertheless deems the shareholder’s pre-suit demand factually insufficient, may the shareholder argue demand futility when the issuer has been served with a viable complaint yet continues to manifest its intent not to pursue the Section 16(b) claim?

3. Does a Section 16(b) insider who has failed to file a Section 16(a) report have standing to challenge the sufficiency of the shareholder's pre-suit demand?
4. Should a dismissal for sending a Section 16(b) pre-suit demand deemed factually insufficient be with or without prejudice where the targeted insider has failed to file a Section 16(a) report?

[Cert. petition](#) filed 4/5/11.

Conference 6/23/11. **Petition denied.**

Marion v. Peninsula Bank, et al., No. 10-714

Questions Presented:

1. Whether the Court of Appeals for the Third Circuit exceeded its authority and erred in creating a new federal common law defense (not based on the laws of any state and contrary to all federal precedent) to defeat the state law claims of a Receiver appointed at the request of the Securities and Exchange Commission, wherein: a) the jury found that Respondents had knowingly assisted the perpetrator of a nationwide Ponzi scheme by providing funds to the perpetrator so that the scheme could continue and b) the Court of Appeals accepted this jury finding but then overruled the jury finding of proximate cause by holding that the fact that the perpetrator of the scheme used the funds provided by Respondents to continue the scheme (as intended by Respondents) constituted a superseding, intervening cause absolving the Respondents of all liability both to the Receiver and to the investors defrauded by the scheme?
2. Whether an SEC Receiver for a corporation through which its sole shareholder operated a Ponzi scheme can recover on behalf of a corporation under Rule 10b-5 for the corporation's unmet obligations to its defrauded customers?

[Cert. petition](#) filed 11/29/10.

Waivers filed 12/20/10, 12/29/10 and 12/30/10; conference 2/18/11. **Petition denied.**

Lay v. United States, No. 10-695

Questions Presented:

1. Do investment advisers to hedge funds owe fiduciary duties to investors in the funds?
2. Can the offenses of mail and wire fraud be committed in circumstances where there is no "gain" of any nature to the defendant nor use of the mail or wires to cause a person to part with money or property?
3. Was it reversible error for the trial court to fail to give a proper limiting instruction to the jury in connection with the use at Petitioner's trial of transcript testimony from an earlier deposition?

[Cert. petition](#) filed 11/23/10.

Conference 2/25/11. **Petition denied.**

Apollo Group, Inc. v. Policemen's Annuity and Benefit Fund of Chicago, No. 10-649

Questions Presented:

1. The Supreme Court has held that an efficient market automatically incorporates all publicly available information into stock price. Based upon this presumption, plaintiffs who invoke the efficient market theory do not have to prove that they personally knew of and relied on a misrepresentation. Under this theory, a corrective disclosure that reveals the previously undisclosed material facts should immediately produce a decline in price. Where a plaintiff invokes the efficient market theory to avoid having to prove reliance, is the plaintiff barred from trying to prove loss causation based on a decline in price that happened weeks or months after the corrective disclosure?
2. If the stock price does not decline after the facts are publicly revealed, but does decline after an analyst issues a report that merely synthesizes and comments upon the already-public information, is the plaintiff barred from treating that report as a fraud-revealing corrective disclosure that suffices to prove loss causation?

[Cert. petition](#) filed 11/15/2010.

Conference 3/4/11. **Petition denied.**

RH Capitol Associates LLC, et al. v. Mayer Brown LLP, et al., No. 10-535

Questions Presented:

1. Whether the Second Circuit erred by holding that an actor who drafts false securities offering documents for public distribution that are not explicitly attributed to that actor has not made a false statement in violation of Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5(b) promulgated thereunder, which ruling is directly contrary to the Fourth Circuit's holding in *In re Mutual Funds Investment Litig.*, 566 F.3d 111 (4th Cir. 2009), cert. granted sub. nom, *Janus Capital Group, Inc. v. First Derivative Traders*, No. 09-525?
2. Whether the Second Circuit erred by holding that where false securities offering documents are not explicitly attributed to their drafter at the time of dissemination, an investor who is defrauded by those documents cannot satisfy the element of reliance in a Section 10(b) action against the drafter, a holding that, again, is directly contrary to the Fourth Circuit's decision in *Mutual Funds*?
3. Whether the Second Circuit erred by holding that where a law firm engineers sham loan transactions on behalf of its client, and then drafts false securities offering documents that fail to disclose those transactions, the law firm is not liable to defrauded investors under Rule 10b-5 for "engag[ing] in any act, practice, or course of business which operates ... as a fraud or deceit upon any person"?

[Cert petition](#) filed 10/19/10.

Conference 1/21/11; conference 6/16/11. **Petition denied.**

Holmes v. Grubman, No. 10-409

Questions Presented:

1. Does the pleading standard established by *Dura Pharmaceuticals v. Broudo*, 544 U.S. 336 (2005), for the element of loss causation for a claim under the Private Securities Litigation Reform Act (“PSLRA”) § 101(b), 15 U.S.C. § 78u-4(b)(4), apply to a plaintiff’s claim for breach of fiduciary duty against its stockbroker if the claim involves publicly traded securities?
2. Does the pleading standard established by *Dura*, for the element of loss causation for a claim under the PSLRA § 101(b), 15 U.S.C. § 78u-4(b)(4), apply to a plaintiff’s claim for fraud or negligent misrepresentation against its stockbroker, where a direct misrepresentation is alleged to have been made to the plaintiff, direct reliance on the misrepresentation is alleged, and publicly traded securities are involved?

[Cert. petition](#) filed 9/21/10.

Conference 12/3/10. **Petition Denied.**

Mark Jackson v. Rohm & Haas Company, et al., No. 09-1556

Questions Presented:

1. Whether a court, relying upon its inherent authority to punitively dismiss claims based upon a pleadings violation, must first provide a party with explicit notice and an opportunity to respond to the threat of dismissal?
2. Pursuant to Rule 72(b), where a party timely objects to a magistrate judge’s report and recommendation, whether the district court must review the actual record based upon the party’s objections and issue its own findings?
3. Where the district court determines that a particular pleading contains sanctionable elements, whether a sanction of more than \$80,000 is contrary to Rule 11’s purpose to deter baseless filings?
4. Pursuant to 18 U.S.C. § 1964(a), where the claim has been brought by a private party, whether the district court has the authority to award the full range of equitable remedies, including: a) setting aside a merger where the shareholder vote authorizing the transaction is based upon a false or misleading proxy solicitation or proxy materials; and/or b) disgorgement of ill-gotten gains?

[Cert. petition](#) filed 6/16/10.

Conference 9/27/10. **Petition Denied.**

The Laborers District Council Construction Industry Pension Fund, et al. v.

Omnicare, Inc, et al., No. 09-1400

Questions Presented:

1. Are claims under Securities Act §11, 15 U.S.C. §77k(a), for which proof of fraud or mistake is no element of prima facie liability, subject to Federal Rule of Civil Procedure 9(b)'s heightened pleading requirement, that a party alleging claims of fraud or mistake "must state with particularity the circumstances constituting fraud or mistake"?
2. May investors seeking relief under Securities Act §11, for which neither negligence nor fraud is an element of liability, be required to plead facts showing either fraud or negligence?
3. May the courts reverse the burden that Congress placed on certain defendants, of demonstrating due diligence as an affirmative defense, by requiring plaintiffs to plead facts rebutting it?

Cert. petition filed 5/14/10.

Conference 9/27/10; CVSG 10/4/10; **Rule 46 Dismissed.**

Michael Frederick Siegel v. Securities and Exchange Commission, No. 09-1236

Question Presented:

Once the Securities and Exchange Commission reviews the facts and law presented in the record of a self-regulatory organization's determination and renders its own autonomous decision, should a court of appeals entertain arguments made for the first time in response to the decision of the SEC rather than that of the self-regulatory organization?

Cert. petition filed 4/12/10.

Conference 5/20/10. **Petition Denied.**

Pirate Investor LLC and Frank Porter Stansberry v. United States Securities and Exchange Commission, No. 09-1176

Questions Presented:

1. Whether Section 10(b) and Rule 10b-5 apply to speech by a party that offers no personalized investment advice, does not trade in the relevant stock, and owes no applicable fiduciary duty?
2. Whether such a case may proceed without the protections of the First Amendment, such as independent appellate review of factual findings, a showing of reckless disregard for the truth based on clear and convincing evidence, and a prohibition on sweeping prior restraints on speech?

Cert. petition filed 3/26/10.

Conference 6/24/10. **Petition Denied.**

***Brandt v. B.A. Capital*, No. 09-1152**

Question Presented:

The question presented is whether the Third Circuit erred in holding that the exception provided by § 546(e) of the United States Bankruptcy Code includes a transaction that does not involve the sale or transfer of a publicly traded security and uses a financial institution solely as an intermediary for distribution of funds to selling shareholders, thereby immunizing selling shareholders in virtually every leveraged buyout from the fundamental avoidance powers granted to a trustee pursuant to § 544?

Cert. petition filed 3/19/10.

Conference 4/23/10. **Petition Denied.**

***Daniel J. Segal, on behalf of himself, his minor children and all others similarly situated, v. Fifth Third Bank N.A.*, No. 09-1128**

Question Presented:

Did the Sixth Circuit err in holding that, in conflict with other circuits, a class action alleging traditional state-law breach of fiduciary duty and contract claims that are not premised on any misrepresentation, omission, or other deceptive conduct that could violate the federal securities laws or induce the purchase, sale, or retention of a security, is precluded by the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”), 15 U.S.C. § 78bb(f)(1), if any conduct incidental to those claims involved a transaction in a security?

Cert. petition filed 3/16/10.

Conference 5/20/10. **Petition Denied.**

***Jeffrey W. Bader v. Lloyd Blankfein, et al.*, No. 09-1113**

Question Presented:

In a stockholder’s derivative action under § 14(a) of the Securities Exchange Act, where the exceptions to the pre-suit demand rule are governed by the law of the state of incorporation, did the Second Circuit blatantly nullify state law by holding that the business judgment rule protects the disclosure of false information in a proxy statement?

Cert. petition filed 3/15/10.

Conference 5/13/10. **Petition Denied.**

***Electronic Trading Group LLC, et al. v. Banc of America Securities LLC, et al.*, No. 09-1059**

Questions Presented:

1. Does a Second Circuit decision immunizing Wall Street prime brokers from the antitrust laws materially conflict with this Court's recent holding in *Credit Suisse Securities (USA) LLC v. Billing*, 551 U.S. 264 (2007)? The Second Circuit held that hypothetical future Securities and Exchange Commission ("SEC") regulations were in conflict with Section 1 of the Sherman Antitrust Act and thus created implied antitrust immunity—barring a private civil price-fixing complaint against Wall Street "prime brokerage" houses that conspired horizontally to fix fees they charged to customers. Although the SEC has never regulated such fees (for lending stock in connection with short sales), the Second Circuit held that the possibility that the SEC "may decide to regulate" them in the future gave rise to antitrust immunity?
2. Should a court of appeals, without statutory interpretation and without hearing the views of any of the agencies concerned, delineate jurisdictional boundaries between different federal agencies in the context of a private dispute? In contrast with *Billing*, neither the SEC nor federal antitrust enforcement authorities expressed any view below on the alleged conflict between their regulatory regimes. Nonetheless, the Second Circuit, finding that the SEC "may decide to regulate" in the future, barred any action under the antitrust laws in the area of short sales because of "implied immunity"?
3. Can enforcement of the antitrust laws prohibiting price-fixing properly coexist with securities regulation in the arena of securities short selling?

Cert. petition filed 3/3/10.

Conference 5/13/10. **Petition Denied.**

***Brett Berger v. Securities and Exchange Commission*, No. 09-1054**

Questions Presented:

1. Is NASD Procedural Rule 8210 contrary to 15 U.S.C. § 78o-3(b)(8)'s requirement that the NASD provide a "fair" disciplinary procedure, when Rule 8210 results in a lifetime industry bar through a procedure that precludes good faith, counsel-advised jurisdictional challenges to its authority to compel testimony, unless the challenger is willing to forfeit all merit defenses if the jurisdictional challenge fails?
2. Is the Securities Exchange Commission ("SEC"), in affirming a lifetime bar sanction imposed by the NASD, obligated under 15 U.S.C. § 78s(d)(2) & (e)(2) to explain why a lesser sanction would be insufficient to meet any legitimate remedial regulatory goal, a question on which there is a current split among the courts of appeals?

Cert. petition filed 3/2/10.

Conference 4/23/10. **Petition Denied.**

***Thomas W. Heath, III v. Securities and Exchange Commission*, No. 09-959**

Question Presented:

Whether, on a petition to review the affirmance by the Securities and Exchange Commission (“Commission” or “SEC”) of a finding by NYSE Regulation, Inc. (“NYSE”) that a member violated NYSE’s catch-all “just and equitable” disciplinary rule, a court of appeals must determine as a fundamental norm of administrative law whether the NYSE and the Commission articulated and then applied an “ascertainably certain” standard for the rule specific enough to provide fair notice of the conduct that could result in such a finding (as required by precedents of the D.C. Circuit that the court below did not follow)?

Cert. petition filed 2/5/10.

Conference 4/2/10. **Petition Denied.**

Disraeli v. Securities and Exchange Commission, No. 09-941

Questions Presented:

1. Did the Court of Appeals issue a decision in direct contradiction to its own prior decisions relating to the SEC’s decision to use the harshest possible sanction in lieu of any other possible sanction for violations of its statutes?
2. Is the Court of Appeals ruling in direct contradiction with this Court with respect to the proper analysis of what is a material fact in securities fraud cases?
3. Did the Court of Appeals allow the SEC to abuse its discretion by failing to consider all mitigating factors before finding fraud and assessing penalties?

Cert. petition filed 11/30/09.

Conference 3/19/10. **Petition denied.**

Pharmacia Corporation, et al. v. Alaska Electrical Pension Fund, et al., No. 08-1315

Questions Presented:

1. Did the Third Circuit err with respect to the following questions concerning the statute of limitations for a claim under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”): a. Under what circumstances is the “inquiry notice” standard triggered by the existence of “storm warnings” that would cause a reasonable investor to investigate his or her claims? b. Do “storm warnings” exist when the plaintiff is on notice of facts contradicting the defendant’s allegedly false statements? c. Is a plaintiff on “inquiry notice,” and does the limit limitations period begin to run only when the plaintiff becomes aware, without conducting an investigation, of evidence supporting each element of its claim, including evidence of the defendant’s fraudulent intent?
2. Did the Third Circuit err in holding that the complaint adequately pleads scienter for purposes of a claim under Section 10(b) of the Exchange Act where the Third Circuit failed to engage in any analysis of the plaintiff’s scienter allegations, let alone the analysis

required by this Court in *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499 (2007)?

Cert. petition filed 4/22/09; opposition filed 6/25/09.

Conference 9/29/09; conference 4/30/10. **Petition Denied.**