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Justices Throw a Rope to Stanford Ponzi Victims

By BARBARA LEONARD

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WASHINGTON (CN) - Federal law does not preclude investors allegedly defrauded by R. Allen Stanford's $7 billion Ponzi scheme from attempting recovery via state class actions, the Supreme Court ruled Wednesday.

For nearly 15 years, Stanford Group Co. and related entities sold certificates of deposit issued by its Antigua-based Stanford International Bank, and then used investor funds to cover its liabilities.

Its eponymous leader was sentenced in 2012 to 110 years in federal prison after a federal jury in Houston, Texas, convicted him on 13 of 14 counts of conspiracy, wire fraud and mail fraud.

The Northern District of Texas consolidated several class actions brought under state law.

James Roland and Leah Farr lead class actions that alleged violations of Louisiana law. Samuel Troice leads a group of Latin American investors who brought claims under Texas law. Named as defendants are SEI Investments, which advised the Stanford Trust Co., the bank's lawyers with Proskauer Rose and Chadbourne and Parke, and the bank's insurance brokers with Willis of Colorado.

In 2010, the federal judge presiding over the multidistrict litigation found that the Securities Litigation Uniform Standards Act (SLUSA) precluded the claims.

That law says plaintiffs may not maintain a class action "based upon the statutory or common law of any state" in which the plaintiffs allege "a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security."

A three-judge panel of the 5th Circuit reversed in September 2012, finding that the defendants' alleged actions "are not more than tangentially related to the purchase or sale of covered securities and are therefore not sufficiently connected to such purchases or sales to trigger SLUSA preclusion."

The U.S. Supreme Court granted the defendants a writ of certiorari last year and affirmed, 5-2, on Wednesday.

"We believe the basic consequence of our holding is that, without limiting the federal government's prosecution power in any significant way, it will permit victims of this (and similar) frauds to recover damages under state law," Justice Stephen Breyer wrote for the majority (Parentheses in original).

The ruling highlights the aims of both the SLUSA, which it dubs the Litigation Act, and the Private Securities Litigation Reform Act, or PSLRA.

Both were enacted "to protect securities *issuers*, as well as the investment advisers, accountants, and brokers who help them sell financial products, from abusive class-action lawsuits," Breyer wrote (emphasis in original).

"The dissent worries our approach will 'subject many persons and entities whose profession it is to give advice, counsel, and assistance in investing in the securities markets to complex and costly state-law litigation,'" he added. "To the contrary, the *only* issuers, investment advisers, or accountants that today's decision will continue to subject to state-law liability are those who do not sell or participate in selling securities traded on U. S. national exchanges. We concede that this means a bank, chartered in Antigua and whose sole product is a fixed-rate debt instrument not traded on a U.S. exchange, will not be able to claim the benefit of preclusion under the Litigation Act. But it is difficult to see why the federal securities laws would be - or should be - concerned with shielding such entities from lawsuits."

Breyer and the others in the majority saw no evidence of how their holding "could significantly curtail the SEC's enforcement powers."

"We find it surprising that the dissent worries that our decision will 'narro[w] and constric[t] essential protection for our national securities market,' and put 'frauds like the one here ... not within the reach of federal regulation,'" the opinion states. "That would be news to Allen Stanford, who was sentenced to 110 years in federal prison after a successful federal prosecution, and to Stanford International Bank, which was ordered to pay billions in federal fines, after the same. Frauds like the one here - including *this fraud itself* - will continue to be within the reach of federal regulation because the authority of the SEC and Department of Justice extends to all 'securities,' not just to those traded on national exchanges."

There is only one difference between the majority's approach and that of the dissent, Breyer said.

It "is that we *also* preserve the ability for investors to obtain relief under state laws when the fraud bears so remote a connection to the national securities market that no person actually believed he was taking an ownership position in that market," the ruling states.

"Thus, despite the government's and the dissent's handwringing, neither has been able to point to an example of any prior SEC enforcement action brought during the past 80 years that our holding today would have prevented the SEC from bringing," it continues.

The handwringing in the dissent, written by Justice Anthony Kennedy and joined by Justice Samuel Alito, goes on for 18 pages.

They said the SLUSA's language precludes "a broad range of state-law securities claims in order to protect those who advise, counsel, and otherwise assist investors from abusive and multiplicitous class actions designed to extract settlements from defendants vulnerable to litigation costs."

"The court's narrow reading of the statute will permit proliferation of state-law class actions, forcing defendants to defend against multiple suits in various state fora," Kennedy wrote. "This state-law litigation will drive up legal costs for market participants and the secondary actors, such as lawyers, accountants, brokers, and advisers, who seek to rely on the stability that results from a national securities market regulated by federal law. This is a serious burden to put on attorneys, accountants, brokers, and investment advisers nationwide; and that burden itself will make the national securities markets more costly and difficult to enter. The purpose of the act is to preclude just these suits. By permitting the very state-law claims Congress intended to prohibit, the court will undermine the primacy of federal law in policing abuses in the securities markets."

Justice Clarence Thomas focused on the statutory language in a concurring opinion.