dri™
Center for Law and Public Policy

News Release

For Immediate Release

For more information, contact:
Tim Kolly 312-698-6220 | tkolly@dri.org

DRI – The Voice of the Defense Bar Files Amicus Brief With the Supreme Court in Three Consolidated Troice Cases

CHICAGO – May 13, 2013 – DRI's Center for Law and Public Policy has filed an amicus brief on merits with the U.S. Supreme Court in support of the petitioners in three consolidated cases: *Chadbourne & Parke LLP v. Troice*, *Proskauer Rose LLP v. Troice*, and *Willis of Colorado v. Troice*. DRI last year submitted an amicus brief supporting a petition for a writ of certiorari in these cases, which all seek review from a decision by the 5th Circuit captioned *Roland v. Green*.

The cases arise out of the collapse of a fraudulent scheme perpetrated by R. Allen Stanford and his affiliated companies, including Stanford International Bank, which issued worthless certificates of deposit that were allegedly backed by highly liquid securities. The Court granted review to resolve a split in the circuits regarding the scope of the preclusion provision in the Securities Litigation Uniform Standards Act ("SLUSA"), which was enacted by Congress to ensure the efficacy of federal reforms in the area of private securities class action litigation.

Congress and the Supreme Court have long been sensitive to the potential for abuse in these kinds of cases, and for that reason they have strictly limited both the kinds of securities claims that private plaintiffs may bring and where and how they may bring them. Primary responsibility for securities law enforcement lies with the SEC and the Justice Department. SLUSA provides that no covered class action <u>based upon state law</u> may be maintained in any state or federal court by any private party alleging a "misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security."

Unable to recover against the primary wrongdoers, the investor plaintiffs in the Stanford cases turned their attention to a series of secondary actors, raising claims that would face significant obstacles in federal court. The suits asserted three basic types of claims: first, claims against an insurance company for its assurances that SIB had purchased insurance; second, claims against SEI Investment Company, which provided fund management software to a fund that invested in the worthless SIB certificates of deposit; and finally, claims against Stanford's attorneys for allegedly misleading the SEC regarding its ability to regulate SIB.

The district court held that SLUSA precluded these claims because the underlying fraud unquestionably involved the purchase or sale of covered securities. The Fifth Circuit disagreed, and, purporting to apply a test from the Ninth Circuit, found that the three types of claims in this case were only tangentially related to the "purchase or sale of a security," in large part because they also alleged misrepresentations that did *not* reference any investment in covered securities. The core question for the Supreme Court is whether SLUSA prohibits private class actions based on state law only where the alleged purchase or sale of a covered security is "more than tangentially related" to the "heart, crux, or gravamen" of the alleged fraud.

DRI's brief addresses the practical impact of allowing expanded securities-related litigation under state law—particularly with respect to secondary actors like lawyers and auditors. As the brief explains, "the Fifth Circuit's approach would pave the way for expanded state-law litigation against law firms, auditors, and other third-party professional services firms for aiding and abetting misstatements by their clients. These types of lawsuits—which often attempt to shift the entire cost of an investment-related fraud to a third party—are fraught with risk and impose costs that are inevitably passed on to direct participants in U.S. capital markets."

The case has not yet been scheduled for oral argument. The author of DRI's brief, Linda Coberly of Winston & Strawn LLP, is available for interview or comment through DRI's Communications Office.