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### Supreme Court Decides Scope of 'In Connection With' Requirement of the Securities Litigation Uniform Standards Act of 1998 (SLUSA)

Today, in a 7-2 decision, the United States Supreme Court appeared to narrow the scope of the "in connection with the purchase or sale of a covered security" as used in SLUSA. Justice Breyer delivered the opinion of the Court in *Chadbourne & Parke LLP v. Troice*, No. 12-79, *Willis of Colorado v. Troice*, No. 12-86, and *Proskauer Rose LLP v. Troice*, No. 12-88. Justices Roberts, Scalia, Thomas, Ginsburg, Sotomayer and Kagan joined. Justices Kennedy and Alito dissented.

SLUSA precludes certain class actions that are based on state law and "allege a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." In its opinion today, the Court concluded that SLUSA did not preclude a state-law class action where plaintiff investors alleged that they were induced to purchase CDs (noncovered securities) based on false representations that the CDs were safely backed by past and future purchases of covered securities. In support of this holding, the Court explained that SLUSA's primary focus is on transactions in covered securities, not in uncovered securities. For purposes of SLUSA's "in connection with" requirement, the "connection matters where the misrepresentation makes a significant difference to someone's decision to purchase or to sell a covered security, not to purchase or to sell an uncovered security, something about which the Act expresses no concern." Further, the "someone" making the decision to purchase covered securities cannot be the fraudster himself. In the first decision to reach the Court relating to SLUSA, *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*,<sup>1</sup> the Court had earlier stated that the "in connection with" requirement warrants the same "broad interpretation" as under Section 10(b) of the Securities Exchange Act and that SLUSA may preclude state law claims so long as the "fraud alleged coincide[s]" with a transaction in covered securities.

<sup>1</sup> Skadden represented the petitioner in that case.