Commentary

SLUSA Precludes 'Actions,' Not Claims

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Introduction

The Securities Litigation Uniform Standards Act of 1998, or SLUSA, provides that "[n]o covered class action . . . may be maintained in any State or Federal court."[1] The statute further defines covered class actions as certain "lawsuits" brought under state law by private persons alleging specified misconduct in connection with the purchase or sale of nationally traded securities.[2] A recurring question in modern securities litigation is what a district court should do with a complaint that alleges both SLUSA-precluded claims and other claims that are not precluded by SLUSA. For example, the same factual allegations could give rise to a claim for relief under the federal securities laws and also a claim for relief under state common law. If both claims are pleaded in the complaint, and the state-law claim is precluded by SLUSA, should the district court dismiss only that claim or the entire action?

Confronting this issue head on, the Third Circuit recently resolved it incorrectly. The court of appeals in *In re Lord Abbett Mutual Funds Fee Litigation* summarized its position as follows: "This appeal presents the question whether SLUSA requires the dismissal of the entire action when the action includes some state law class action claims that clearly may not be maintained under SLUSA as well as other claims that are not so prohibited. We hold that SLUSA does not require such a dismissal."[3]

As we explain below, the text, structure, and purpose of SLUSA all compel a result contrary to that reached by the Third Circuit in *Lord Abbett*. Congress expressly provided in SLUSA that covered class *actions* — not "claims" — may not be maintained in any court. The precluded actions are further defined as *lawsuits* — not "claims" — and the statutory context makes clear that it speaks to entire cases, not individual claims. Giving effect to the plain text and structure of SLUSA would best effectuate its purpose, which was to channel most allegations of misconduct involving nationally traded securities into federal court to be resolved under federal law. Accordingly, if a "covered class action" (as defined by Congress) includes a precluded claim, then the entire case must be dismissed by the district court.

Background

Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful to "use or employ, in connection with the purchase or sale of any security . . ., any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange Commission] may prescribe."[4] The SEC's Rule 10b-5 implements Section 10(b) by making it unlawful, "in connection with the purchase or sale of any security," to "employ any

device, scheme, or artifice to defraud"; "make any untrue statement of a material fact or . . . omit to state a material fact necessary in order to make the statements made . . . not misleading"; or "engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."[5]

Neither Section 10(b) nor Rule 10b-5 expressly provides a private right of action. The Supreme Court has, however, inferred a private right of action allowing private plaintiffs to bring suits for money damages and other relief, alleging violations of Section 10(b) and Rule 10b-5.[6] Congress enacted and the President signed into law two statutes in the 1990s that together aimed to regularize private enforcement of the securities laws at the federal level and to significantly limit private securities litigation at the state level.

Corporations that issued securities traded on national exchanges were frequently forced to settle, rather than fight against, meritless class actions under the federal securities laws, because such "strike suits" are *tremendously* expensive to litigate.[7] Congressional critics of such class actions argued that they "resulted in extortionate settlements" and "deterred qualified individuals from serving on boards of directors" out of fear of being dragged into litigation.[8] Congress concluded that the "private securities litigation system is too important to the integrity of American capital markets to allow this system to be undermined by those who seek to line their own pockets by bringing abusive and meritless suits."[9] As a result, Congress enacted the Private Securities Litigation Reform Act of 1995 (PSLRA),[10] to "implement[ ] needed procedural protections to discourage frivolous litigation."[11]

The PSLRA established new and rigorous pleading requirements on plaintiffs in federal securities suits.[12] It also established an automatic stay of discovery during the pendency of motions to dismiss,[13] constrained who can serve as lead plaintiff in a securities class action,[14] and authorized sanctions for frivolous litigation.[15] In addition to those procedural reforms, the PSLRA also created "a safe harbor for forward looking statements, to encourage issuers to disseminate relevant information to the market without fear of open-ended liability."[16]

The PSLRA's requirements collectively made it more difficult for plaintiffs to plead, and to prove, class actions under the federal securities laws; conversely, the statute made it easier for defendants to prevail earlier in the litigation process — namely, at the motion-to-dismiss stage. As the Supreme Court summarized the statute's impact: "The effort to deter or at least quickly dispose of those suits whose nuisance value outweighs their merits placed special burdens on plaintiffs seeking to bring federal securities fraud class actions."[17]

In enforcing the PSLRA's provisions, the Supreme Court has demonstrated respect for Congress's conclusion that "[p]rivate securities fraud actions . . . if not adequately contained, can be employed abusively to impose substantial costs on companies and individuals whose conduct conforms to the law."[18] Thus, in *Dura Pharmaceuticals, Inc. v. Broudo*, the Supreme Court gave effect to the PSLRA's clear Congressional intent to require securities fraud plaintiffs to properly plead an economic loss legally and factually caused by the misconduct alleged.[19] In addition, in *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, the Court held that under the PSLRA a securities fraud complaint would "survive . . . only if a reasonable person would deem the inference" that the defendant acted with the requisite intent to be "cogent and at least as compelling as any opposing inference one could draw from the facts alleged."[20] Most recently, in *Stoneridge Investment Partners v. Scientific-Atlanta, Inc.*, the Court interpreted the PSLRA to have "ratified" the implied private right of action under § 10(b) as it existed when the statute was enacted in 1995, therefore supporting the Court's decision not to extend the implied right to reach alleged deceptive conduct by secondary actors.[21]

The plaintiffs' bar responded to the PSLRA by filing "frivolous and speculative lawsuits in State court, where essentially none of the [PSLRA's] procedural or substantive protections against abusive suits" applied.[22] When the PSLRA was enacted, "state-court class actions involving nationally traded securities were virtually unknown."[23] But the "decline in federal securities class action suits that occurred after the passage of the PSLRA was accompanied by a nearly identical increase in state court filings" that previously had been a rarity.[24]

Recognizing plaintiffs' effort to evade the PSLRA by moving to state courts, Congress determined that "[t]he solution to this problem is to make Federal court the exclusive venue for most securities fraud class action litigation involving nationally traded securities."[25] Congress therefore permitted the removal of affected cases from state to federal courts.[26] But Congress *also* responded to the evasion problem by "establish[ing] uniform national rules for securities class action litigation involving our national capital markets."[27]

Emphasizing the "dangers of maintaining differing federal and state standards of liability for nationally-traded securities," Congress gave "due consideration to the benefits flowing to investors from a uniform national approach."[28] Congress understood that "[s]ome critics of establishing a uniform standard of liability have attacked such legislation as being an affront on Federalism," but it "found the interest in promoting efficient national markets to be the more convincing and compelling consideration in this context."[29] Consequently, Congress enacted SLUSA "in order to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the [PSLRA]."[30]

The centerpiece of SLUSA is a provision that precludes certain securities class actions from being maintained in *any* court:

> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging —
>
> (1) an untrue statement or omission of material fact in connection with the purchase or sale of a covered security; or
>
> (2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.[31]

A "covered class action" under SLUSA is one that seeks damages on behalf of 50 or more persons.[32] "Covered securit[ies]" include those that trade on a national exchange, including mutual fund shares.[33] SLUSA has a removal provision authorizing removal to federal district court of "covered class action[s]" brought in state court involving a covered security.[34] Expressly carved out from SLUSA's preclusive reach are derivative actions,[35] actions under the law of the state of incorporation involving proxy solicitations,[36] actions by States or their securities commissioners,[37] and actions between an issuer and indenture trustee.[38]

In its two decisions construing SLUSA, the Supreme Court has enforced the statute according to its terms. In *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*,[39] the Court held that the background, text, and purpose of SLUSA supported preclusion of an action by a class of state law security holders — investors who had not bought or sold their securities because of the alleged fraud and who therefore could not have brought a claim under the federal securities laws, which require a securities fraud plaintiff to have made a purchase or sale causing loss.[40] Then, in *Kircher v. Putnam Funds Trust*,[41] the Court held that federal district court orders remanding removed securities class actions to state court on the ground that the actions were not SLUSA-precluded were not reviewable on appeal under a provision in the removal statute, 28 U.S.C. §1447(d).

A recurrent practical question under SLUSA is how courts should dispose of cases in which the complaint contains multiple claims, some precluded under SLUSA and others not. This question arises because of a basic rule in practice and procedure that not only *allows* parties to plead different, alternative theories of relief supported by the factual allegations in the complaint, but actually *requires* to them to plead the theories available, because if they fail to do so, they cannot raise a new theory after judgment under the doctrine of claim preclusion (res judicata).[42] In other words, suits raising multiple theories of relief based on the same set of factual allegations — some of which may be SLUSA-precluded while others are not — can be expected to be filed with some frequency.

Whether the appropriate response to a suit raising both SLUSA-precluded and not-precluded claims is to dismiss the entire suit, or only the precluded claims, is the very question the Third Circuit confronted in *Lord Abbett*. The plaintiffs in *Lord Abbett* were mutual fund investors who sued the adviser

and distributor of the funds. On behalf of a purported class, their complaint in federal court "alleged (among other misdeeds) that Lord Abbett charged its existing investors excessive fees that were improperly used to pay brokers to market Lord Abbett funds to other investors."[43] They asserted "violations of both federal and state law."[44]

The district court "dismissed the four state claims . . . as pre-empted by SLUSA," and dismissed the federal claims for failure to state a claim. In an amended complaint, the plaintiffs "assert[ed] only two derivative claims alleging violations of Sections 36(b) and 48(a) of the Investment Company Act."[45] The district court dismissed those federal claims on the ground that SLUSA precludes entire actions, not individual claims.[46]

On appeal, the Third Circuit vacated the district court's judgment and remanded for further proceedings.[47] It noted that that "[n]either the Supreme Court nor this Court has squarely addressed the issue raised in this appeal: whether the inclusion of a SLUSA pre-empted state-law claim in a complaint, also alleging non-SLUSA pre-empted claims, requires dismissal of the entire action."[48] The court of appeals, "considering this as a matter of first impression, and mindful of SLUSA's purpose," concluded "that neither the statutory language, the legislative history, nor the relevant case law supports the complete dismissal of such an action."[49]

The Third Circuit devoted a single paragraph to the "plain language" of SLUSA, concluding that it "does not clearly indicate whether Congress intended SLUSA to pre-empt entire actions that include an offending state-law claim." The court of appeals first acknowledged that the plain language is completely consistent with dismissal of the entire action:

> SLUSA provides, "No covered class *action* based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court . . ." 15 USC 78bb(f)(1) (emphasis added). The term "covered class action," in turn, is defined to include a "single lawsuit" or "*group* of lawsuits." *Id.* at 78bb(f)(5)(B) (emphasis added). As we suggested in [dicta in a prior Third Circuit case, *Rowinski v. Salomon Smith Barney Inc.*, 398 F.3d 294 (3d Cir. 2005)], the terms "no . . . action," "lawsuit," and "group of lawsuits" indeed suggest that SLUSA intends that entire actions, as opposed to particular claims, should fail. [*Id.*] at 305.[50]

The court of appeals then noted that "[h]owever, the word 'action' is modified by the phrase 'based upon the statutory or common law of any State.'"[51] From this *non sequitur*, the court of appeals drew the conclusion that "[t]he plain language of SLUSA does not refer to actions, such as this one, based in part on state law."[52]

The court of appeals' discussion of the legislative history was even more cursory: "The legislative history is silent as to whether Congress intended an action to be dismissed in its entirety when it includes pre-empted claims or whether only the pre-empted claims must be dismissed."[53]

The Third Circuit's decision ultimately rested not on the text of SLUSA or its history, but on what the court of appeals perceived to be the statute's "goals":

> It is entirely consistent with the purposes of SLUSA to require the dismissal of those state law securities claims that are clearly pre-empted by the statute. To require the dismissal of all of the other claims in the same action, in contrast, would not appear to serve those goals and is not supported by the plain language or legislative history.[54]

"We hold therefore," the Third Circuit concluded, "that SLUSA does not mandate dismissal of an action in its entirety where the action includes only some pre-empted claims."[55]

Discussion

SLUSA requires the dismissal of "covered class action[s]," not individual claims. The Third Circuit's contrary decision in *Lord Abbett* conflicts with the statutory text, structure, and purpose. It should not be followed in future cases, and may ultimately require correction by the Supreme Court. Moreover, as we address more fully below, the Third Circuit's rule has meaningful practical effects that run contrary to the purpose of SLUSA. It would allow plaintiffs free reign to include SLUSA-covered claims in their

complaints, a strategic choice plaintiffs may make in an effort to boost the settlement value of their suits. Consequently, the Third Circuit's rule treats the statute as conferring a boon on securities class action plaintiffs while burdening defendants and the courts — promoting the very ailments Congress sought to cure in enacting SLUSA. That cannot be correct.

Text

Interpretation of SLUSA must concentrate, of course, on the statutory language — and it must give meaning in particular to the statutory use of the terms "action" and "lawsuit," not "claim." Statutory interpretation begins with statutory text, and ends there where the text is unambiguous, as the Supreme Court has emphasized time and again: "[W]hen the statute's language is plain, the sole function of the courts — at least where the disposition required by the text is not absurd — is to enforce it according to its terms."[56] As Justice Frankfurter succinctly put it, there are three important commands in statutory interpretation: "(1) Read the statute; (2) read the statute; (3) read the statute!"[57]

In SLUSA's text Congress spoke in terms of "covered class *action*[*s*]," which are defined as "lawsuits." More specifically, SLUSA provides: "No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party" alleging fraud or manipulation in connection with covered securities.[58] The term "covered class action" is defined in the statute to mean either of two things. First, a "covered class action" means "any single lawsuit" in which either (i) more than 50 persons or class members seek damages, and the legal or factual questions common to those persons predominate over individual questions (disregarding individualized questions of reliance on allegedly fraudulent statements); or (ii) a named party seeks to recover damages as a representative of similarly-situated unnamed parties, and the legal or factual questions common to those persons predominate over individualized questions.[59] Second, a "covered class action" means "any group of lawsuits" pending in the same court raising common legal or factual questions, (i) seeking damages on behalf of more than 50 persons, and (ii) where the "lawsuits" are "joined, consolidated, or otherwise proceed as a single action for any purpose."[60]

The precise and explicit definition of the term "covered class action" is paramount because, as the Supreme Court has held repeatedly, where Congress defines a term in a statute, that definition is controlling, even if in ordinary legal or everyday usage the term might be understood to mean something else.[61] The statutory definition of "covered class action" makes it crystal clear that the unit of analysis for SLUSA purposes is "lawsuits," not "claims." As a result, it is not that covered class "claims" may not "be maintained" in court — it is covered class *actions*, which are whole *lawsuits*, either singular or plural, that may not "be maintained" by private parties alleging securities fraud.

Indeed, even if Congress had *not* clearly defined "action" to mean "lawsuit," in legal terms as ordinarily used, an "action" means an entire suit, and not a claim that is a component of the suit.

The Federal Rules of Civil Procedure confirm the ordinary understanding that claims are components of actions, not synonymous with them. Under Rule 2, "[t]here is one form of action — the civil action."[62] The "action" thus covers the entire proceeding. Indeed, Rule 2 embodies "the modern trend in civil pleading," which "has been to encourage that all claims for relief be brought in a single suit."[63] As the Fifth Circuit put it in rejecting an argument that a third-party claim fell outside the scope of a foreign state defendant's right to removal under 28 U.S.C. § 1441(d): "In federal practice, the terms 'case' and 'action' refer to the same thing, i.e., the entirety of a civil proceeding, which necessarily includes any third-party claims" — and, *a fortiori*, any claims between the original opposing parties.[64] Likewise, numerous courts of appeals have relied on Rule 2 in concluding that the cap on compensatory damages set forth in the Civil Rights Act of 1991 applies to entire suits — not to individual claims within those suits — because the relevant statute limits the relief obtainable "in an action."[65]

That a claim is a piece of an action is also made clear by, among other rules, Rule 18, which provides that a "party asserting a claim . . . may join, as independent or alternative claims, as many claims as it has against an opposing party."[66] Rule 18 clarifies that actions encompass joined claims — alternative or indepen-

dent — between opposing parties. A mosaic is made up of joined tiles, and the tiles individually cannot be mistaken for the mosaic, which is the whole. Likewise, in the language of the Federal Rules, an action is made up of joined claims, and the claims individually cannot be mistaken for the action, which is the whole. And it is beyond question that Congress is aware of their provisions.[67] Indeed, Congress had the Federal Rules in view when it enacted the PSLRA, which imposed on securities fraud class actions stringent procedural requirements they previously did not have to satisfy when they were subject only to the Federal Rules.[68] If Congress wanted to depart in the PSLRA and SLUSA from the understanding of claims and actions contained in the Federal Rules, Congress would have done so.

Just as "actions" and "claims" are distinct under the Federal Rules, so they are distinct as defined in the legal dictionary. The district court recognized as much in *Lord Abbett* as part of its thorough treatment of the statutory language.[69] For example, the 1999 edition of *Black's Law Dictionary*, roughly contemporaneous with enactment of SLUSA in 1998, defines an "action" as "the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment,"[70] but defines a "claim" as the "assertion of an existing right to payment or an equitable remedy."[71]

The text of other parts of SLUSA and the closely related PSLRA reinforce the conclusion that, because the units of preclusion analysis are lawsuits or actions and not claims, the courts must dismiss mixed lawsuits in full, rather than limit dismissal only to SLUSA-precluded claims. Reading SLUSA and the PSLRA together teaches that Congress knew the difference between claims and actions, and did not say one thing when it meant the other. To give meaning only to a linguistic morsel while ignoring other parts of a statute is, of course, a misguided method of interpretation, because "[s]tatutory construction is a holistic endeavor."[72] Moreover, when two statutes relate to the same subject matter, as SLUSA and the PSLRA do, they must be interpreted in light of one another and consistent with one another.[73] That principle applies with special force here because the two statutes address the same problem — abusive class actions under the securities laws — and do so in similar language.[74]

In that regard, the district court in *Lord Abbett* correctly recognized that in PSLRA provisions addressing the requirements for the notice that must be given to the members of a class in a securities fraud class action, Congress distinguished between the terms "claim" and "action."[75] For example, the PSLRA requires that class members be given information about "the pendency of the action, the claims asserted therein, and the purported class period."[76] And the PSLRA provides that when "more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) [the lead plaintiff selection provision] until after the decision on the motion to consolidate is rendered."[77] Such statutory provisions make it obvious that actions include one or more claims, but actions and claims are not the same thing. Congress presumably had that distinction in view when it used the term "action" in SLUSA.

Notably, the word "claim" does not appear in SLUSA. That omission must be given effect.

The Third Circuit in *Lord Abbett* did not give sustained attention to the statutory language, concluding with little analysis that the statutory text did not "clearly indicate" whether the term "action" can be read to mean only "claim."[78] In proceeding to equate actions and claims, the Third Circuit compared the case before it to the Supreme Court's decision in *Jones v. Bock*,[79] which construed the Prisoner Litigation Reform Act of 1995.[80] The comparison was inapt. The Prisoner Litigation Reform Act placed procedural limitations on prisoner suits, including by requiring prisoners "to exhaust prison grievance procedures before filing suit."[81] In applying the statute, the Sixth Circuit adopted procedural rules not found in the text, including a rule requiring dismissal of prisoner complaints containing a mix of exhausted and unexhausted claims.[82] The Supreme Court in *Jones* invalidated that total exhaustion rule for mixed complaints,[83] even though that rule found some footing in the statutory text, namely the instruction that "'[n]o action shall be brought' unless administrative procedures are exhausted."[84] The Court characterized the statutory phrase "no action shall be brought" as "boilerplate language," which was "[a]s a general

matter" insufficient to indicate that Congress had departed from the "general" precept that "if a complaint contains both good and bad claims, the court proceeds with the good and leaves the bad."[85] Thus, "[i]f Congress meant to depart from this norm," the Court remarked, "we would expect some indication of that," but the Court simply found none in the Prisoner Litigation Reform Act.[86]

In contrast, as we have explained, in SLUSA's *explicit definition* of "covered class action" Congress clearly expressed its intention "to depart from th[e] norm" described by the Supreme Court in *Jones*, and the Third Circuit erred in failing to consider that intention.[87]

Indeed, the Court's vocabulary in *Dabit* indicates that the Supreme Court takes the statutory definition to mean what it says. The Court noted that a "'covered class action' is a lawsuit in which damages are sought on behalf of more than 50 people."[88] And it would be illogical, the Court noted, to exempt from SLUSA's preclusive "sweep" a "particularly troublesome subset of class actions," namely one consisting only of security holders who had neither purchased nor sold securities during the period they allege they were harmed.[89] That is, the language in which the Supreme Court addressed the specific question presented in *Dabit* shows that the Court understands the statute governs disposition of entire actions, not component claims.

Structure

It "is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute."[90] Thus, SLUSA's language defining covered class actions must be read with a view to its place in the overall statutory scheme.[91] At least two other features of SLUSA — its removal provision and its carefully crafted exceptions — confirm that under the better reading of the statute dismissal applies to entire actions, not mere claims.

SLUSA contains a specialized removal provision: "Any covered class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b)."[92] This provision does not call upon the courts to split a case into constituent claims and send some of those claims piecemeal to federal court while leaving others in state court; rather, it requires analysis of the plaintiffs' case in its entirety. In other words, the unit of analysis is the entire suit, not the claim. The Supreme Court's understanding of the removal provision is consistent with that view.

Kircher holds that 28 U.S.C. § 1447(d) blocks a court of appeals from reviewing a district court order remanding a removed class action to state court on the ground that the removed case is not a "covered class action" precluded under SLUSA.[93] In describing SLUSA's provisions for removal to federal court, the Court stated that "authorization for the removal" of "covered class actions" is "confined to cases . . . with claims of untruth, manipulation, and so on."[94] The Court noted that the statute contained "language describing removable cases as covered class actions involving covered securities" — that is, securities traded on a national exchange — as well as language that "limit[ed] removal to covered class actions involving claims like untruth or deception."[95] While SLUSA-precluded "cases" are described with reference to the nature of the asserted factual or legal theories — that is, "claims like untruth or deception" — it is "cases" or "actions" as a whole, not mere claims, that are subject to removal to federal court. The Court's summary of SLUSA's bottom line rule was that "[i]f the *action* is precluded, neither the district court nor the state court may entertain it, and the proper course is to dismiss."[96] And that summary did not carve out an exception for unprecluded claims contained within the action. *Kircher*, then, indicates that SLUSA's rules operate on whole cases, not component claims.

SLUSA also contains precisely calibrated exceptions for suits that Congress decided not to preclude, all of which are described as actions, not in terms of claims. Those exceptions relate to shareholder derivative actions, actions based on some contractual rights, actions brought by States or their political subdivisions or state pension plans; and certain actions arising under the law of the issuer's state of incorporation.[97] Again, the Supreme Court's understanding of the exceptions is consistent with the view that they are cast in terms of actions, not

constituent claims. In *Dabit*, the Court rejected the argument that the general presumption against federal pre-emption of state law compelled an interpretation of SLUSA that allowed class actions by state law securities holders (not purchasers or sellers) to go forward. That presumption did not apply in part because the "tailored exceptions" in SLUSA demonstrated Congressional concern for preservation of state law.[98] "The statute carefully exempts from its operation certain class actions," the Court noted in summarizing the exceptions.[99] "The existence of these carve-outs," the Court concluded, "both evinces congressional sensitivity to state prerogatives in this field and makes it inappropriate for courts to create additional, implied exceptions."[100] The statute's coverage, under *Lord Abbett*, would be decided claim-by-claim, while the statute's exceptions, under the presuppositions of *Dabit*, would be decided action-by-action. That would not only be asymmetric; it would defy the "broad construction" of SLUSA coverage that Congress "envisioned" in enacting the statute.[101]

As attention to statutory structure teaches, the SLUSA "covered class action" definition "do[es] not exist in isolation," but rather is "embedded within a complex statutory framework."[102] There is no warrant for concluding that while the other parts of that framework — the removal mechanism and the exceptions from SLUSA coverage — operate upon actions as a whole, the dismissal requirement alone operates on component claims. Rather, the structure confirms that the definition means what it says.

Purpose

Congress made the purposes of SLUSA — to which we have already alluded — abundantly clear in the enactment itself, and courts may give effect to such congressional findings.[103] Here, Congress explicitly determined that, after the PSLRA became law, "a number of securities class action lawsuits . . . shifted from Federal to State courts,"[104] and that "this shift . . . prevented [the PSLRA] from fully achieving its objectives."[105] Thus, Congress found that:

> in order to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the [PSLRA], it is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators and not changing the current treatment of individual lawsuits.[106]

Unlike, say, the color of the sky, the shape of a lawsuit is not a gift from Nature, but instead the product of deliberate human choices. It is up to the plaintiff (and, of course, plaintiffs' counsel) to decide whether to proceed through an "individual lawsuit[ ]" that is not within SLUSA's scope, or instead to press a "securities class action lawsuit[ ]" (or "covered class action") that *is* within SLUSA's scope. Congress decided through SLUSA to hold the plaintiff to particular consequences as a result of that conscious and strategic decision. When the plaintiff decides to plead claims both precluded by SLUSA and unaffected by SLUSA in a single case, dismissal of the action as a whole simply holds the plaintiff to the logical consequences of the decision. A total dismissal rule therefore advances the purposes of SLUSA. After all, SLUSA embodies Congress' policy decision that securities class actions should not be brought in state court, but instead in federal court where they are subject to the substantive and procedural controls the PSLRA "installed."[107]

By creating a strong incentive for plaintiffs to bring only those securities class actions that contain claims not precluded by SLUSA, a total dismissal rule would reduce the advantage that securities fraud plaintiffs enjoyed over defendants prior to enactment of the PSLRA. To reiterate: The PSLRA responded to Congress's perception that "nuisance filings" of securities fraud class actions — and the associated "targeting of deep-pocket defendants, vexatious discovery requests, and 'manipulation by class action lawyers'" — led issuers to pay out "extortionate settlements."[108] When a plaintiff loads multiple legal theories into a single complaint, those theories gain the appearance of strength from one another (particularly if some are styled as class action claims raising the prospect of liability to numerous plaintiffs). There is a "safety in numbers" effect for plaintiffs which makes it easier to proceed past the motion to dismiss by advancing two or more independent grounds for relief than it is to do so by concentrating on only one. The compounding effect may well lead the defendant to conclude that it is simply cheaper to settle than to go

to court and prove that the entire case is unfounded. Being able to load up with multiple theories, in other words, makes it easier for a plaintiff "with a largely groundless claim to simply take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value, rather than a reasonably founded hope that the [discovery] process will reveal relevant evidence."[109]

A total dismissal rule gives a clear and simple instruction to securities plaintiffs that they must omit any SLUSA-covered claims from their complaint on pain of dismissal. Such a rule changes the calculus when drafting the complaint. If inclusion of invalid state law claims subjects the entire case to dismissal, the plaintiff will omit invalid state law claims — just as Congress intended. In contrast, the rule the Third Circuit endorsed gives the plaintiff an incentive to attempt to boost the settlement value of a suit. It encourages the plaintiff to include, along with any claims not touched by SLUSA, claims barred by it — even ones *unmistakably* barred by it. That invites rather than deters "extortionate settlements," which cannot be correct, because courts certainly do not "imput[e] to Congress a purpose to paralyze with one hand what it sought to promote with the other."[110]

The Third Circuit surmised that a total dismissal rule would have no deterrent effect because "plaintiffs could simply bring two or more actions in order to avoid having all of their claims dismissed — one action with the potentially pre-empted state law claims and or more with the remaining claims."[111] Yet class actions precluded under SLUSA cannot be brought in *any* court, state or federal, so the suit with the SLUSA-covered claims would be terminated, wherever it is filed. Moreover, SLUSA's "group of lawsuits" provision expressly anticipates that courts will use available joinder, consolidation, and other procedural mechanisms for putting related cases together, and that when taken together such groups will be subject to dismissal as "covered class action[s]."[112] In other words, if a plaintiff files two separate actions based on a common set of facts, one containing SLUSA-precluded claims and one containing claims outside SLUSA, the defendant is entitled under SLUSA to use the available procedural means to consolidate those actions, and then to obtain appropriate dismissal.[113]

Statutory text and structure point in only one direction, and it is outside the judicial role to decline to move in that direction based on an independent judgment that doing so would be "punitive," as the Third Circuit suggested.[114] By enacting the PSLRA and then SLUSA to deter circumvention of the PSLRA, Congress articulated *its* view of the proper balance between the advantages and disadvantages of private securities fraud class actions, accounting for both the need "to curb frivolous, lawyer-driven litigation," and the desire to "preserv[e] investors' ability to recover on meritorious claims."[115] The Supreme Court noted in *Tellabs* that "[i]t is the federal lawmaker's prerogative . . . to allow, disallow, or shape the contours of . . . § 10(b) private actions," through the PSLRA.[116] Because class actions under state law can damage "the federal interest in protecting the integrity and efficient operation of the market for nationally traded securities,"[117] the Supreme Court recognized in *Dabit* that it *also* is Congress's prerogative to "den[y] plaintiffs the right to use the class-action device to vindicate certain claims" under state law, through SLUSA.[118] In addition, the Court emphasized in *Stoneridge* that once Congress has acted, the space for judicial innovation in the private securities litigation realm shrinks substantially; the Court remarked that "[t]he decision to extend the cause of action is for Congress, not for us,"[119] and indeed the same can be said about Congress's decision to enact the particular controls on class actions that are set forth in SLUSA.[120]

Consequently, it was *not* the Third Circuit's "prerogative" to conclude that enforcing the total dismissal rule — a control Congress enacted in SLUSA — would be impermissibly punitive. The total dismissal rule is more consistent with the statutory text and structure than is the alternative, and also has the benefit of being more consistent with the evident purpose of SLUSA, which was to prevent evasion of the PSLRA.

Conclusion

The financial system has been beset by turbulence of late, including the contraction of the credit markets, the failure of major Wall Street firms, and the crisis in the subprime mortgage and mortgage-backed securities markets. Those events have already generated dozens of private class actions alleging securities fraud with respect to nationally traded securities, and

no doubt will continue to do so for years to come. It is precisely in such turbulent times, however, that it becomes critically important for courts to adhere to bedrock principles of statutory interpretation, which are essential to the stability of the law and to the even-handed administration of justice.

As we have explained, a principled approach to SLUSA calls for courts to enforce a total dismissal rule terminating suits that mix claims outside SLUSA's reach with claims subject to its constraints. The Third Circuit's contrary holding in *Lord Abbett* is incorrect, and should not be followed. If Congress concludes that the abusive litigation that gave rise to the PSLRA and SLUSA is no longer a threat, of course, it may see fit to change the law. But that is for Congress, not the courts, to decide.

Endnotes

1. SLUSA § 2, Pub. L. No. 105-353, 112 Stat. 3227, codified at 15 U.S.C. § 77p(b) and 15 U.S.C. § 78bb.

2. *Id.*

3. *In re Lord Abbett Mutual Funds Fee Litig.*, 553 F.3d 248, 249 (3d Cir. 2009).

4. 15 U.S.C. § 78j(b).

5. 17 C.F.R. § 240.10b-5.

6. *See, e.g., Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 128 S. Ct. 761, 768 (2008).

7. *See Behlen v. Merrill Lynch*, 311 F.3d 1087, 1090-91 (11th Cir. 2002) (citing H.R. Conf. Rep. No. 104-369, at 31 (1995)); *Greebel v. FTP Software, Inc.*, 194 F.3d 185, 191 (1st Cir. 1999); *see also Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1967 (2007) (noting "potentially enormous expense of discovery" imposed on defendant when complex case, such as securities fraud or antitrust case, proceeds past the motion-to-dismiss stage).

8. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 81 (2006).

9. H.R. Conf. Rep. No. 104-369, at 31-32 (1995).

10. Pub. L. No. 104-67, 109 Stat. 737 (1995).

11. H.R. Conf. Rep. No. 104-369, at 31-32 (1995).

12. 15 U.S.C. § 78u-4(b)(1), (2); *see Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2504-05 (2007) (PSLRA requires plaintiff to plead facts such that inference that defendant acted with requisite intent is not merely plausible but "cogent and at least as compelling as any opposing inference"); *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (PSLRA requires pleading of loss causation). *See generally* Mark A. Perry, *The Impropriety of Amendment Following Dismissal in Federal Securities Cases*, 40 BNA Sec. Reg. & L. 25 (June 23, 2008) (describing pleading requirements governing securities fraud claims by private plaintiffs).

13. 15 U.S.C. §§ 77z-1(b), 78u-4(b)(3).

14. 15 U.S.C. §§ 77z-1(a)(3), 78u-4(a)(3); *see, e.g.*, *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002).

15. 15 U.S.C. §§ 77z-1(c), 78u-4(c); *see, e.g.*, *Morris v. Wachovia Sec., Inc.*, 448 F.3d 268, 276-77 (4th Cir. 2006).

16. H.R. Conf. Rep. No. 104-369, at 32 (1995); *see* 15 U.S.C. §§ 77z-2(c), 78u-5(c).

17. *Dabit*, 547 U.S. at 82.

18. *Tellabs*, 127 S. Ct. at 2504.

19. 544 U.S. at 346.

20. 127 S. Ct. at 2510.

21. *Stoneridge*, 128 S. Ct. at 766, 773; *see also* Mark A. Perry, Stoneridge *and the Continued Reconceptualization of Implied Private Rights of Action*, 12 Wall St. Lawyer 1, 7 (2008) (describing the teaching in *Stoneridge* that "the substantive scope of the private right was fixed in 1995, when Congress 'ratified' the previous judicial implication").

22. H.R. Conf. Rep. No. 105-803, at 14-15 (1998).

23. S. Rep. No. 105-182, at 4 (1998).

24. *Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 292 F.3d 1334, 1341 n.12 (11th Cir. 2002).

25. H.R. Conf. Rep. No. 105-803, at 15 (1998).

26. *See* 15 U.S.C. § 78bb(f)(2).

27. H.R. Conf. Rep. No. 105-803, at 13 (1998).

28. S. Rep. No. 105-182, at 3 (1998).

29. *Id.* at 4.

30. SLUSA § 2(5), Pub. L. No. 105-353, 112 Stat. 3227 (1998).

31. 15 U.S.C. § 77p(b), 15 U.S.C. § 78bb(f)(1).

32. 15 U.S.C. § 77p(f)(2), 15 U.S.C. § 78bb(f)(5)(B).

33. 15 U.S.C. § 77p(f)(3), 15 U.S.C. § 78bb(f)(5)(E).

34. 15 U.S.C. § 77p(c), 15 U.S.C. § 78bb(f)(2).

35. 15 U.S.C. § 77p(f)(2)(B), 15 U.S.C. § 78bb(f)(5)(C).

36. 15 U.S.C. § 77p(d)(1), 15 U.S.C. § 78bb(f)(3)(A)(ii)(II).

37. 15 U.S.C. §§ 77p(d)(2), 77p(e), 15 U.S.C. §§ 78bb(f)(3)(B)(i), 78bb(f)(4)

38. 15 U.S.C. § 77p(d)(3), 15 U.S.C. § 78bb(f)(3)(C).

39. *Dabit*, 547 U.S. at 78-89.

40. *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 754-55 (1975) (limiting private Rule 10b-5 plaintiffs to those who have actually purchased or sold securities).

41. *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 640-48 (2006).

42. *See Parklane Hosiery Co. v. Shore*, 439 U. S. 322, 326 n.5 (1979) ("Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action"); *Herrmann v. Cencom Cable Assocs., Inc.*, 999 F.2d 223, 226 (7th Cir. 1993) (reasoning that "two claims are one [*i.e.*, are based on the same cause of action] for purposes of res judicata if they are based on the same, or nearly the same, factual allegations").

43. *In re Lord Abbett Mutual Funds Fee Litig.*, 553 F.3d 248, 249 (3d Cir. 2009).

44. *Id.*

45. *Id.* at 251. Mutual funds are regulated as registered investment companies under the Investment Company Act of 1940. 15 U.S.C. § 80a-1 *et seq*.

46. *In re Lord Abbett Mutual Funds Fee Litig.*, 463 F. Supp. 2d 505, 515 (D.N.J. 2006). In holding that dismissal was required for the entire action, not for only the SLUSA-covered claims, the district court relied on the text of SLUSA. *Id.* at 511-13. The district court also relied on dicta in *Rowinski v. Salomon Smith Barney Inc.*, 398 F.3d 294, 305 (3d Cir. 2005), where, although not called upon to decide if SLUSA permits "count-by-count analysis," the Third Circuit "question[ed] whether preemption of certain counts and remand of others is consistent with the plain meaning of SLUSA. The statute does not preempt particular 'claims' or 'counts' but rather preempts 'actions,' 15 U.S.C. § 78bb(f)(1), suggesting that if any claims alleged in a covered class action are preempted, the entire action must be dismissed." 463 F. Supp. 2d at 509.

47. *In re Lord Abbett Mutual Funds Fee Litig.*, 553 F.3d at 249.

48. *Id.* at 254.

49. *Id.*

50. 553 F.3d at 254-55.

51. *Id.* at 255.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* at 255-56. As *Lord Abbett* illustrates, the lower federal courts are in some disarray over whether mixed complaints should be totally dismissed, or whether instead only the SLUSA-precluded claims in such complaints should be dismissed while the claims not precluded survive. For example, while the Third Circuit in *Lord Abbett* cited a recent Southern District of New York decision favoring its side of the divide (*In re Salomon Smith Barney Mut. Fund Fees Litig.*, 528 F. Supp. 2d 332, 334 n.3 (S.D.N.Y. 2007), cited at *Lord Abbett*, 553 F.3d at 257), the district court had previously cited a case from the Northern District of Georgia supporting its contrary view (*Greaves v. McAuley*, 264 F. Supp. 2d 1078, 1084-86 (N.D. Ga. 2003), cited at 463 F. Supp. 2d 505, 510 & n.5 (D.N.J. 2006)). The disagreement among the courts suggests that Supreme Court review may be warranted, perhaps once "several courts of appeals" have "explore[d]" the question. *United States v. Mendoza*, 464 U.S. 154, 160 (1984); *see also* Indraneel Sur, *How Far Do Voices Carry: Dissents From Denial of Rehearing En Banc*, 2006 Wis. L. Rev. 1315, 1334 n.81.

56. *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (internal quotation marks omitted); *see, e.g.*, *United States v. Clintwood Elkhorn Mining Co.*, 128 S. Ct. 1511, 1518 (2008) ("The strong presumption that the plain language of the statute expresses congressional intent is rebutted only in rare and exceptional circumstances") (alterations and internal quotation marks omitted); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there"); *see also United States v. Alvarez-Sanchez*, 511 U.S. 350, 356 (1994) ("When interpreting a statute, we look first and foremost to its text").

57. *In re England*, 375 F.3d 1169, 1182 (D.C. Cir. 2004) (Roberts, J.) (quoting HENRY J. FRIENDLY, BENCHMARKS 202 (1967)). To be sure, faithful application of Justice Frankfurter's instructions sometimes leads judges to reach different conclusions. *Compare Sierra Club v. EPA*, 536 F.3d 673, 674, 678 (D.C. Cir. 2008) (citing Justice Frankfurter in vacating agency rule for failure to comply with statutory language), *with id.* at 680-81 (Kavanaugh, J., dissenting) (citing Justice Frankfurter in arguing that statutory language supported agency's rule).

58. 15 U.S.C. § 77p(b), 15 U.S.C. § 78bb(f)(1).

59. 15 U.S.C. § 77p(f)(2)(A)(i), 15 U.S.C. § 78bb(f)(5)(B)(i).

60. 15 U.S.C. § 77p(f)(2)(A)(ii), 15 U.S.C. § 78bb(f)(5)(B)(ii).

61. *See Burgess v. United States*, 128 S. Ct. 1572, 1577 (2008) ("As a rule, a definition which declares what a term 'means' excludes any meaning that is not stated") (internal quotation marks and alterations omitted); *see also Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949) ("[s]tatutory definitions control the meaning of statutory words"); *W. Union Tel. Co. v. Lenroot*, 323 U.S. 490, 502 (1945) ("Of course, statutory definitions of terms used therein prevail over colloquial meanings"). In contrast, a term left undefined in a statute carries its ordinary or natural meaning. *See, e.g.*, *Crawford v. Metro. Gov't of Nashville & Davidson County*, No. 06-1595 (slip op. 4) (Jan. 26, 2009); *FDIC v. Meyer*, 510 U.S. 471, 476 (1994).

62. Fed. R. Civ. P. 2.

63. *United States ex rel. Rahman v. Oncology Assocs., P.C.*, 198 F.3d 502, 508-09 (4th Cir. 1999) (reasoning that, because Rule 2 recognizes only "one form of action," single civil action could be used to seek both mandamus and other, unrelated relief).

64. *Nolan v. Boeing Co.*, 919 F.2d 1058, 1066 (5th Cir. 1990).

65. *See Fogg v. Ashcroft*, 254 F.3d 103, 107 (D.C. Cir. 2001) (construing 42 U.S.C. § 1981a(a)(1), and noting identical conclusion of the Sixth, Seventh, and Tenth Circuits).

66. Fed. R. Civ. P. 18(a).

67. *See, e.g.*, *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988) ("We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts"). Congress usually accepts without change amendments to the Federal

Rules prescribed by the Supreme Court, but Congress retains authority to modify the rules by statute. *See* 28 U.S.C. § 2074; *see also Henderson v. United States*, 517 U.S. 654, 668 (1996) ("a Rule made law by Congress supersedes conflicting laws no less than a Rule this Court prescribes").

68. The basic pleading standard provides one example of an area where the PSLRA specifically departed from the Federal Rules. Before the PSLRA became law, the sufficiency of the allegations in a securities fraud complaint was tested under Rule 9(b), which requires that "the circumstances constituting fraud . . . [be stated] with particularity," even though "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). In contrast, as the Supreme Court explained in *Tellabs*: "Under the PSLRA's heightened pleading instructions, any private securities complaint alleging that the defendant made a false or misleading statement must: (1) 'specify each statement alleged to have been misleading [and] the reason or reasons why the statement is misleading," 15 U.S.C. § 78u-4(b)(1); and (2) 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind,' § 78u-4(b)(2)." 127 S. Ct. at 2508.

69. 463 F. Supp. 2d. at 511 n.7.

70. *Id.* (quoting BLACK'S LAW DICTIONARY 1221 (7th ed. 1991) [hereinafter BLACK'S]).

71. *Id.* (quoting BLACK'S, at 240-41). The district court also examined the word "count," and found it synonymous with "claim" — and distinct from "action." *Id.* (quoting BLACK's, at 353).

72. *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 60 (2004) (internal quotation marks omitted).

73. *See United States* v. *Stewart*, 311 U.S. 60, 64 (1940) ("[A]ll acts *in pari materia* are to be taken together, as if they were one law").

74. *See Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979) (construing Age Discrimination in Employment Act provision, which was "almost *in haec verba* with" Title VII provision, to reflect case law interpreting the latter); *see also United States v. Srnsky*, 271 F.3d 595, 602 (4th Cir. 2001) ("nearly identical language" in statutory provisions placed closely together are to be read *in pari materia*).

75. 463 F. Supp. 2d at 512 (citing 15 U.S.C. §§ 78u-4(a)(3)(A)(i)(I), -4(a)(3)(A)(ii), and -4(a)(7)(B)(i)).

76. 15 U.S.C. § 77z-1(a)(3)(A)(i)(I), 15 U.S.C. § 78u-4(a)(3)(A)(i)(I).

77. 15 U.S.C. § 77z-1(a)(3)(B)(ii), 15 U.S.C. § 78u-4(a)(3)(B)(ii).

78. 553 F.3d at 254.

79. 127 S. Ct. 910 (2007).

80. Pub. L. No. 104-134, 110 Stat. 1321-71.

81. *Jones*, 127 S. Ct. at 914 (citing 28 U.S.C. § 1915A, 42 U.S.C. § 1997e(a)).

82. *Id.*

83. *Id.* at 923-26.

84. *Id.* at 923 (quoting 42 U.S.C. § 1997e(a)).

85. *Id.* at 924.

86. *Id.* at 924 (quoting *Robinson v. Page*, 170 F.3d 747, 748-49 (7th Cir. 1999)).

87. As an example of a case where a statutory requirement that an "action" meet a condition is satisfied if just one of the claims in the action meets the condition, the Court in *Jones* cited the supplemental jurisdiction statute, 28 U.S.C. § 1367, as the Court construed it in *Exxon Mobil Corp. v. Allapattah Services, Inc.* 545 U.S. 546 (2005), cited at 127 S. Ct. 910, 924 (2007). There, the Court concluded that a district court need not have original jurisdiction over each claim in the action in order to have jurisdiction over the entire action; rather, when the district court has original jurisdiction over one component claim, the statute authorizes it to exercise supplemental jurisdiction over other claims, even though the court could not have heard those claims had they been brought on their own. *Exxon Mobil*, 545 U.S. at 560. In a sense, SLUSA and the supplemental jurisdiction statute are alike in that they both call for treating the case as a whole based on

the analysis of a component claim: Section 1367 allows the court to entertain a case as long as one claim passes the test for original jurisdiction, while SLUSA requires the court to dismiss the case once one claim passes the test for SLUSA preclusion.

88. *Dabit*, 547 U.S. at 83.

89. *Id.* at 86.

90. *Coit Independence Joint Venture v. Fed. Sav. & Loan Ins. Corp.*, 489 U.S. 561, 573 (1989) (internal quotation marks omitted).

91. *See, e.g.*, *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 127 S. Ct. 2518, 2534 (2007); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000); *W. Va. Univ. Hosp., Inc. v. Casey*, 499 U.S. 83, 100-101 (1991).

92. 15 U.S.C. § 77p(c).

93. *Kircher*, 547 U.S. at 640-48.

94. *Id.* at 642.

95. *Id.*

96. *Id.* at 644 (emphasis added).

97. *Supra*, notes 35 to 38 and accompanying text.

98. *Dabit*, 547 U.S. at 87.

99. *Id.*

100. *Id.* at 87-88.

101. *Id.* at 86.

102. *Coit Independence*, 489 U.S. at 573.

103. *See, e.g.*, *United States v. Turkette*, 452 U.S. 576, 588-90 (1981).

104. SLUSA § 2(1), 112 Stat. 3227.

105. SLUSA § 2(3), 112 Stat. 3227.

106. SLUSA § 2(5), 112 Stat. 3227.

107. *Tellabs*, 127 S. Ct. at 2508.

108. *Dabit*, 547 U.S. at 81 (quoting H.R. Conf. Rep. No. 104-369, at 31 (1995)).

109. *Dura*, 544 U.S. at 347 (quoting *Blue Chip Stamps*, 421 U.S. at 741) (alteration by the Court); *see also Stoneridge*, 128 S. Ct. at 772 ("In *Blue Chip*, the Court noted that extensive discovery and the potential for uncertainty and disruption in a lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies").

110. *Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 421 (1983) (internal quotation marks omitted).

111. 553 F.3d at 255.

112. 15 U.S.C. § 77p(f)(2)(A)(ii), 15 U.S.C. § 78bb(f)(5)(B)(ii).

113. *See also* S. Rep. No. 105-182, at 8 (1998) ("[I]t remains the [Senate Committee on Banking, Housing, and Urban Affairs]'s intent that [SLUSA] be interpreted broadly to reach mass actions and all other procedural devices that might be used to circumvent the class action definition.").

114. *See* 553 F.3d at 255 (remarking that "requiring the dismissal of an entire action pursuant to SLUSA" would have "a punitive effect").

115. *Tellabs*, 127 S. Ct. at 2509.

116. *Id.* at 2512.

117. *Dabit*, 547 U.S. at 78.

118. *Id.* at 87.

119. *Stoneridge*, 128 S. Ct. at 773.

120. *Stoneridge* also has more concrete lessons for the proper interpretation of SLUSA. *See* Perry, *supra* note 21, 12 Wall St. Lawyer at 9-10. ■