No. 06-43

In The
Supreme Court of the United States

STONERIDGE INVESTMENT PARTNERS, LLC,

Petitioner,

v.

SCIENTIFIC-ATLANTA, INC. AND MOTOROLA, INC.,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OUT OF TIME

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I. Introduction

Pursuant to Supreme Court Rule 37.5, Respondents Scientific-Atlanta, Inc. and Motorola, Inc. respectfully request that the Court deny the Motion for Leave to File Brief Out of Time belatedly submitted by three former representatives of the Securities and Exchange Commission (hereinafter the "Motion"). Respondents object to the proposed submission because it adds nothing new on the issues presently before the Court. These matters have already been exhaustively briefed through other timely filed *amicus curiae* briefs and in Petitioner's brief. The requested additional submission is over a month late and its proponents have failed to identify any compelling justification for the substantial delay in filing. At this point in the proceedings, the acceptance of any further briefs would be burdensome to the Court and to Respondents. Respondents ask this Court to follow its ordinary practice of denying such requests for out of time submissions.

II. Requests For Out Of Time Amicus Submissions Are Ordinarily Denied And Good Cause Does Not Exist In This Instance To Depart From This Rule.

Erroneous, unconfirmed assumptions about what someone else may say cannot justify a late *amicus* filing, particularly one that is more than a month late. If such late filings were allowed, the Court's deadlines would be meaningless. This is especially true in this case, where extensive publicity made clear to anyone paying attention that there was considerable doubt about the government's plans.

Under Supreme Court Rule 37.3(a), all *amicus curiae* submissions in support of Petitioner should have been filed no later than June 11, 2007. Thirteen other *amici* were able to comply with this deadline. The Court "[o]rdinarily" will deny an amicus curiae's motion for an extension of time or for leave to file out of time. ROBERT L. STERN,

EUGENE GRESSMAN, STEPHEN M. SHAPIRO & KENNETH S. GELLER, SUPREME COURT PRACTICE 658 (9th ed. 2002); *see also Doran v. Salem Inn, Inc.*, 421 U.S. 927 (1975). Here, the proposed brief is out of time by more than a month and the Motion offers no colorable excuse for this lengthy delay.

The sole justification given for the late filing is that the proposed *amici* thought the Solicitor General was going to file a brief supporting Petitioner. (Motion, at 1.) The Motion concedes, however, that"[t]his is one of the most important securities cases to be heard . . . in many years." *Ibid.* All aspects of this appeal have been subject to extensive media coverage. It was well known in advance of the June 11 deadline that the Commission members were closely divided as to whether the SEC should support Petitioner's position.[1] It was also well known to these *amici* that it is the Solicitor General -- who canvasses all interested segments of the government, not just the SEC -- who has the final word on whether the government will submit an *amicus curiae* brief in this Court. *Ibid.* The Solicitor General never indicated that he would file a brief in support of Petitioner. Nor was such a submission even likely, given that every court of appeals that has considered the issues on appeal, with the exception of the Ninth Circuit, has ruled in favor of Respondents' position. *See, e.g., In re Charter Comm., Inc. Sec. Litig.*, 443 F.3d 987 (8th Cir. 2006); *Regents of University of California v. Credit Suisse*

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[1] It was widely reported prior to the June 11, 2007 filing date that the Commission vote had been three against two in favor of requesting that the Solicitor General file a brief supporting Petitioner's position in the present appeal. *See, e.g.,* Greg Stohr, *Bush Administration Rebuffs Investors at High Court*, BLOOMBERG.COM, June 8, 2007, HTTP://WWW.BLOOMBERG.COM/APPS/NEWS?PID=20601070&SID=AJPHOD2BE6QW&REFER=HOME; *see also Supreme Liability*, WALL STREET JOURNAL, Saturday/Sunday, June 9-10, 2007, at A8.

First Boston (USA), Inc., 482 F.3d 372 (5th Cir. 2007); *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194 (11th Cir. 2001); *Wright v. Ernst & Young LLP*, 152 F.3d 169 (2d Cir. 1998).[2]

Movants can have had no reasonable expectation that the Solicitor General would file a brief in support of Petitioner. Indeed, there was public speculation to the contrary prior to the deadline.[3] Under these circumstances, good cause does not exist for the Court to entertain this seriously belated filing. If these individuals believe that they have unique insights about this case -- a proposition contradicted by their repetitive brief -- they should have spoken up in a timely fashion as numerous other *amici* did. The unjustified delay should not be sanctioned by the Court.

III. The Repetitive Arguments Contained In The Proposed Brief Will Not Assist The Court In Its Analysis.

Supreme Court Rule 37.1 disfavors the filing of amicus briefs that are repetitive. Rule 37.1 directs that an *amicus curiae* brief should bring to the Court's attention "relevant matter[s] not already brought to its attention by the parties." A brief "that does not serve this purpose burdens the Court, and its filing is not favored." Sup. Ct. R. 37.1; *see Stenberg v. Carhard,* 529 U.S. 1016 (2000) (denying motion to file *amicus* briefs that do not make a substantive contribution to the case).

Here, thirteen separate *amicus curiae* submissions have already been filed in support of Petitioner and, when taken in conjunction with Petitioner's brief, total over 350 pages. The subject matter of this new submission has already been discussed at length in one or more of these prior briefs and further duplication would not be helpful to the Court. For example, numerous existing briefs already purport to discuss past

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[2] *But see Simpson v. AOL Time Warner Inc.*, 452 F.3d 1040 (9th Cir. 2006).

[3] *See* Carrie Johnson, *Investors, Advocates Worry About U.S. Position on Fraud Recovery*, WASH. POST, June 9, 2007, at D01.

positions taken by the Commission regarding Section 10(b) of the Securities Exchange Act of 1934 and/or the Commission's role in deterring securities law violations.[4] This "me too" filing fails to satisfy even the most basic requirement for an *amicus curiae* brief under Rule 37.1 -- namely, that it must bring something new to the table. For this reason alone, the Motion should be denied.

IV. The Proposed Submission Would Prejudice Respondents.

Respondents will be prejudiced if additional briefs are permitted so long after the original deadline has passed. Respondents face the daunting task of preparing a brief responding to over 350 pages of argument by August 15. The amount of time Respondents sought to prepare their brief was based on the number of briefs that had been timely filed in support of Petitioner. Respondents' task should not be made more difficult by virtue of this late submission.

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[4] *See, e.g.,* Brief of the New York State Teachers' Retirement System, *et al.* as *Amici Curiae* in support of Petitioner, at 11-12; Brief of Council of Institutional Investors as *Amicus Curiae* in support of Petitioner, at 21-22; Brief for Change To Win and the CtW Investment Group as *Amici Curiae* in support of Petitioner, at 25-26; Brief of California State Teachers' Retirement System as *Amicus Curiae* in support of Petitioner, at 12-13.

V. Conclusion

For all the reasons set forth above, Respondents respectfully ask this Court to deny the Motion for Leave to File Brief Out of Time.

Respectfully submitted,

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