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Securities and Exchange Commission's (SEC) Alleged Failure to Notify Securities Investor Protection Corporation (SIPC) of Ponzi Scheme Does Not Create Liability

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A Florida federal court has dismissed a class action alleging that the Securities and Exchange Commission was negligent for failing to report that Robert Allen Stanford's $7 billion fund was a Ponzi scheme, finding the Misrepresentation Exception to the Federal Tort Claims Act (FTCA) shielded the SEC. The Misrepresentation Exception bars claims against the United States arising from alleged misrepresentation or deceit and protects the United States from tort liability for pecuniary injuries attributable to reliance on the government's negligent misstatements.

Plaintiffs asserted that the SEC, after several investigations in 1997 and 2004, concluded the Stanford Group was a Ponzi scheme but failed to report those findings to the Securities Investor Protection Corporation (SIPC). Plaintiffs sought to hold the SEC liable for its losses on the basis that the SEC is responsible for reporting the findings of its investigations to regulatory and consumer protection agencies and that their losses would have been avoidable if the SEC had reported its findings to SIPC.

The US District Court for the Southern District of Florida found that plaintiffs failed to "maneuver" their claims outside of the Misrepresentation Exception because they based their cause of action on the assertion that the SEC failed to communicate information about the Stanford Group. The court reasoned that plaintiffs "cannot disguise the essence of their negligent misrepresentation claim by repackaging the SEC's alleged negligence from having failed to 'notify' or 'report'…to having failed to send the required notification.…" Accordingly, it concluded that the plaintiffs' cause of action is a "classic claim for misrepresentation" and thus falls within the Misrepresentation Exception.

Zelaya et al. v. U.S., case number 0:11-cv-62644 (S.D. Fla. August 12, 2013).

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