

936 F.3d 324

United States Court of Appeals, Fifth Circuit.

Joseph BROYLES; [M. Badi Asbahi](#); Preston Cloyd; Steve Collins; [Eileen Collins](#); [Charles Richey](#); Anne Richey; Susan B. Beninati; Russ P. Barranco; Janice B. Virgadamo; Jody A. Barranco; Karen L. Barranco; [Municipal Employees Retirement System of Louisiana](#); [Firefighters Retirement System](#); Registrar of Voters Employee Retirement System, Plaintiffs-Appellants

v.

COMMONWEALTH ADVISORS, INCORPORATED; Walter A. Morales, Defendants-Appellees

No. 17-30092

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FILED August 28, 2019

### Synopsis

**Background:** Investors in hedge fund securities filed suit against their former investment advisors for securities fraud under Louisiana law. The United States District Court for the Middle District of Louisiana, [James J. Brady, J.](#), [2014 WL 6886186](#), granted investment advisors summary judgment and dismissed, then denied reconsideration, [2015 WL 12911720](#). Investors appealed.

The Court of Appeals, [Dennis](#), Circuit Judge, held that investors suffered injury in fact, as required for Article III standing.

Vacated and remanded.

**Procedural Posture(s):** On Appeal; Motion to Dismiss for Lack of Standing; Motion for Summary Judgment.

\*325 Appeal from the United States District Court for the Middle District of Louisiana, [James J. Brady](#), U.S. District Judge

### Attorneys and Law Firms

[James Richard Swanson](#), Attorney, [Jason W. Burge](#), [Alysson Leigh Mills](#), Esq., Fishman Haygood, L.L.P., New Orleans, LA, for Plaintiffs-Appellants.

[Fredrick R. Tulley](#), [John Anthony Milazzo, Jr.](#), Taylor, Porter, Brooks & Phillips, L.L.P., Baton Rouge, LA, for Defendants-Appellees.

[Royal B. Lea, III](#), Bingham & Lea, P.C., San Antonio, TX, for Amicus Curiae Public Investors Arbitration Bar Association.

[Robert David Klausner](#), Esq., Klausner, Kaufman, Jensen & Levinson, Plantation, FL, for Amici Curiae Louisiana Sheriffs Pension and Relief Fund, National Conference on Public Employee Retirement Systems.

Before [DENNIS](#), [OWEN](#), and [SOUTHWICK](#), Circuit Judges.

### Opinion

[JAMES L. DENNIS](#), Circuit Judge:

The issue in this appeal is whether the investor plaintiffs have Article III standing to sue their former investment advisers for securities fraud under Louisiana law. To establish a securities fraud claim under Louisiana law a plaintiff must show that “(1) the defendant made an untrue statement of a material fact; (2) the plaintiff did not know of the untruth; and (3) the defendant knew, or in the exercise of reasonable care could have known, of the untruth.” *Meadaa v. Karsan*, 822 F.3d 202, 206 (5th Cir. 2016). Investor plaintiffs’ petition stated a cause of action for securities fraud against their former investment adviser and its CEO for fraudulently inducing them to purchase over \$95 million in falsely inflated hedge fund securities. The defendants filed an answer asserting that plaintiffs lacked standing to sue them directly because the hedge funds were Delaware corporations and the law of that state requires that plaintiffs must join the hedge funds in bringing a derivative action. The investor plaintiffs moved for partial summary judgment recognizing their standing. The district court, however, sua sponte granted summary judgment for the defendants holding that Delaware law required investor plaintiffs to bring a derivative claim in behalf of the hedge funds.

\*326 We conclude plaintiffs have Article III standing and therefore vacate the district court’s summary judgment to the contrary and remand for further proceedings. The district court erred in deciding that plaintiffs lacked standing under Delaware law to bring a direct action against their investment advisers rather than initiating a derivative action in behalf of the hedge funds that the advisers had assembled and managed for fraudulent inducement purposes. The investor plaintiffs adequately supported their motion for partial summary judgment demonstrating their Article III standing with appropriate evidence of their injury-in-fact that arose immediately upon their purchase of the falsely overvalued securities; were induced and caused by the defendant advisers’ fraudulent advice and solicitations; and likely will be redressed by a favorable decision on the merits. See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). The district court erred by refusing to grant the plaintiffs’ motion and by instead granting summary judgment sua sponte for the defendant investment advisers. Standing requires only that the investor plaintiffs have an arguable, rather than a valid, cause of action along with the irreducible triad of elements. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998). Under the circumstances of this case, it is at least arguable that Delaware law does not relegate the investor plaintiffs to a derivative action in behalf of the hedge funds for losses indirectly caused them by the funds’ decline or lack of value, but instead recognizes their cause of action directly against the defendant sellers of the hedge fund securities for securities fraud under Louisiana law. In *Citigroup Inc. v. AHW Investment Partnership*, 140 A.3d 1125, 1126, 1139–41 (Del. 2016), the Delaware Supreme Court made clear that securities fraud claims directly against perpetrators created by the laws of other states for the fraudulent inducement of the purchase, sale or holding of securities are not converted into derivative actions merely because the securities were issued by a Delaware corporation or entity.

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VACATED and REMANDED.

## All Citations

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