

No. 11-13254

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

COMPU CREDIT HOLDINGS CORPORATION,
Plaintiff-Appellant,

v.

AKANTHOS CAPITAL MANAGEMENT, LLC, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia, Civ. No. 11-117
Before the Honorable Timothy C. Batten

**MOTION OF AMICUS CURIAE THE CREDIT ROUNDTABLE FOR
LEAVE TO FILE EN BANC BRIEF IN SUPPORT OF DEFENDANT-
APPELLEE, AKANTHOS CAPITAL MANAGEMENT, LLC**

ALI M. STOEPPELWERTH
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
202-663-6000

*Counsel for Amicus Curiae The
Credit Roundtable*

June 29, 2012

CompuCredit Holdings Corp. v. Akanthos Capital Management, LLC, *et al.*

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to 11th Cir. Rule 26.1-1, Amicus Curiae The Credit Roundtable certifies that the following individuals or entities have or may have an interest in the outcome of this case:

1. Akanthos Capital Management, LLC
2. AQR Absolute Return Master Account
3. Aria Opportunity Fund Ltd.
4. Arnall Golden & Gregory LLP
5. Batten, Sr., Honorable Timothy C.
6. Beckett, E. Casey
7. Bondurant, Emmet J., II
8. Bosch, Thomas B.
9. Bragman, Karen B.
10. Bramlett, Jeffrey O.
11. Caplan, Michael A.
12. Carter, Jason J.
13. CC Arbitrage, Ltd.

CompuCredit Holdings Corp. v. Akanthos Capital Management, LLC, *et al.*

14. CNH CA Master Account, L.P.
15. Cockson, Michael F
16. CompuCredit Corporation
17. CompuCredit Holdings Corporation
18. Corona, Gregory J.
19. Credit Roundtable, The
20. Dantzler, James David, Jr.
21. Davis, Dwight J.
22. Dickerson, W. Brinkely, Jr.
23. Ettinger, Yoon
24. Faegre & Benson LLP
25. Galileo Partners Fund I, L.P.
26. Getzendanner, Kevin B.
27. Gilbert, Richard W.
28. GLG Global Convertible Fund plc
29. GLG Investments IV plc: sub-fund GLG Global Convertible UCITS (Distributing) Fund
30. GLG Investments plc: sub-fund GLG Global Convertible UCITS Fund

CompuCredit Holdings Corp. v. Akanthos Capital Management, LLC, *et al.*

31. GLG Market Neutral Fund
32. Greenberg Traurig, LLP
33. Hanna, David G.
34. Hanna, Frank J., III
35. Heller, Lisa L.
36. Highbridge International LLC
37. House, Richard R., Jr.
38. Jordan, Jonathan W.
39. Kamunting Street Master Fund, Ltd.
40. KBC Financial Holdings, Inc.
41. KBC Financial Products (Cayman Islands) Ltd.
42. KBC Group N.V. (KBC)
43. King, Michael J.
44. King & Spalding, LLP
45. Kingstown Partners, L.P.
46. Kirpalani, Rohit
47. Kyle, Honorable Richard H.
48. Lowrey, Frank M. IV

CompuCredit Holdings Corp. v. Akanthos Capital Management, LLC, *et al.*

49. Madel, Christopher W.
50. Maslia, David
51. Mast, J. Timothy
52. Michael, Heather Smith
53. Niska, Harry N.
54. Nodzou, Bernard E.
55. Nugent, Janna S.
56. Orenstein, John
57. Pandora Select Advisors, LLC
58. Parsoon Opportunity Fund Ltd.
59. Pierce, Kelly K.
60. Rains, John H., IV
61. Ramachandrappa, Naveen
62. Robins Kaplan Miller & Ciresi
63. Rosenbaum, Honorable James M.
64. Rosencrants, Thomas G.
65. Ross & Orenstein, LLC
66. Ross, Jeff I.

CompuCredit Holdings Corp. v. Akanthos Capital Management, LLC, *et al.*

67. Smith, Michael R.
68. Srinivasan, K.K.
69. Stoeppelwerth, Ali M.
70. Tenor Opportunity Master Fund, Ltd.
71. Tietjen, Randall
72. Troutman Sanders, LLP
73. Volling, James L.
74. Whitebox Advisors, LLC
75. Whitebox Combined Advisors, LLC
76. Whitebox Convertible Arbitrage Advisors, LLC
77. Whitebox Hedged High Yield Advisors, LLC
78. Whitehead, J. Paul, III
79. Wildfang, K. Craig

Pursuant to Fed. R. App. P. 29(b) and 11th Circuit Rule 35-9, the Credit Roundtable (“CRT”) moves for leave to file the attached brief as amicus curiae in support of Defendant-Appellees, Akanthos Capital Management, LLC, *et al.* The CRT supports affirmance of the district court’s grant of judgment on the pleadings. Counsel for all parties have consented to the CRT’s proposed motion to participate in this appeal as amicus curiae.

STATEMENT OF INTEREST

The CRT was formed in 2007 by a group of large institutional fixed-income managers. It currently has thirty member firms which include investment advisors, insurance companies, pension funds, and mutual funds, representing more than \$3.5 trillion of fixed-income assets under management. The object of CRT’s efforts is to benefit all bond market participants through increased transparency, efficiency and liquidity. Its primary mission is to advocate for and facilitate improvements in the market for investment-grade corporate bonds by, among other things, strengthening bondholder covenant protections and promoting reforms in the underwriting and distribution of new issues, as well as in the tender offer and consent process.

The issue presented in the *en banc* petition is of extraordinary concern to CRT members. Holders of corporate bonds regularly encounter circumstances in which market developments or issuer actions threaten their ability to obtain the

consideration they are entitled to under a bond indenture. Often the only avenue available for bondholders in this situation to prevent losses to their clients is to work together to protect their contractual rights.

The CRT's interest in this case is to avoid adoption of a new, unprecedented interpretation of the Sherman Act that would chill and potentially condemn all sorts of bondholder collaborations that now are not only routine, but essential to the efficient functioning of the credit markets. CompuCredit advocates a rule that would deem any coordination among bondholders with respect to debt that is not yet mature or in default a *per se* violation of the Sherman Act—even if that conduct occurs in connection with litigation aimed at enforcing the bondholders' contractual rights. As explained more fully in the proposed amicus brief, such a radical departure from the current understanding of and uniform federal rulings addressing this issue would inevitably restrict the mechanisms available to issuers and their bondholders to resolve any differences short of litigation or bankruptcy—to the eventual detriment of all credit market participants and the economy at large.

**CRT'S PROPOSED AMICUS CURIAE BRIEF IS DESIRABLE AND
GERMANE TO THE DISPOSITION OF THIS CASE**

Under Federal Rule of Appellate Procedure 29, this Court may grant leave for the filing of an amicus brief. Fed. R. App. P. 29(a). The CRT here explains

why its proposed brief is “desirable” and asserts matters “relevant to the disposition of th[is] case.” Fed. R. App. P. 29(b)(2).

This Court has frequently granted motions for leave to file amicus briefs, including in cases raising antitrust issues and issues impacting bondholders and other participants in the financial services industry. *See, e.g., Financial Sec. Assurance, Inc. v. Stephens, Inc.*, 500 F.3d 1276, 1288 n.3 (11th Cir. 2007) (per curiam) (referring to amicus brief filed by the Bond Market Association in a securities case); *Prewitt Enter., Inc. v. Organization of Petroleum Exporting Countries*, 353 F.3d 916, 924 n.12 (11th Cir. 2003) (amicus brief permitted in antitrust case); *Blackfeet Nat’l Bank v. Nelson*, 171 F.3d 1237, 1240 n.4 (11th Cir. 1999) (amicus briefs allowed from affected industry groups, including the American Bankers Association and the National Association of Life Underwriters). One benefit of a permissive policy toward allowing amicus briefs is to aid the court in understanding any broader ramifications of a specific decision, particularly where the decision affects an entire industry, or the public at large. *See* Michael E. Tigar & Jane B. Tigar, *Federal Appeals Jurisdiction & Practice* § 2:20 (3d ed. 1999) (“Amici can sometimes address the implications of a particular rule, ... in a broader context than the advocate for a party”); *Worthen Bank & Trust Co. v. National BankAmericard Inc.*, 485 F.2d 119, 120 n.2 (8th Cir. 1973) (inviting amicus submission because it was “apparent that any decision in this case would

affect the bank credit card industry generally” and “the importance of the bank credit card industry to the general public was undisputed”).

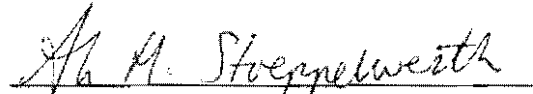
The CRT’s members include some of the largest institutional purchasers and holders of corporate bonds in the United States. They are intimately familiar with the workings of this industry and the myriad circumstances in which bondholder collaboration currently occurs and is necessary for the efficient functioning of the capital markets. The proposed amicus brief explains why this Court’s endorsement of the decisions of every other court to rule on the subject of this appeal is not only correct from a legal standpoint, but also critical to avoid the potential for significant disruption to a key sector of the American economy. It does this by bringing a perspective and discussing relevant authority – including the provisions and legislative history of the Trust Indenture Act of 1939 – that have not been a subject of focus in the parties’ briefs below.

Permitting the CRT’s participation here would therefore provide the Court with a different and broader perspective on the far-reaching and harmful impacts of a decision reversing the district court’s ruling below. Because these adverse ramifications would extend beyond the parties’ individual interests to the credit markets and consumers generally, the Court may find the CRT’s real-world experience helpful in assessing the arguments presented.

CONCLUSION

For these reasons, the CRT respectfully seeks this Court's leave to file the attached brief for amicus curiae.

Respectfully submitted.



ALI M. STOEPPELWERTH
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
202-663-6000

*Counsel for Amicus Curiae The
Credit Roundtable*

June 29, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June, 2012, I caused an original and three copies of the foregoing Motion of Amicus Curiae The Credit Roundtable for Leave to File En Banc Brief to be filed with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by Federal Express overnight courier, postage prepaid.

I also hereby certify that on this 29th day of June, 2012, I caused one copy of the Motion of Amicus Curiae The Credit Roundtable for Leave to File En Banc Brief to be served by Federal Express overnight courier, postage prepaid, on the below-listed addresses, and in Portable Document Format to the below-listed electronic mail addresses:

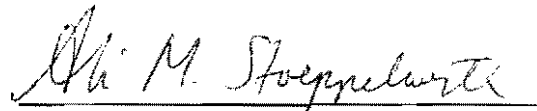
EMMET J. BONDURANT, II
FRANK M. LOWREY IV
JASON J. CARTER
MICHAEL A. CAPLAN
BONDURANT, MIXON & ELMORE, LLP
1201 W. PEACHTREE ST., NW
SUITE 3900
ATLANTA, GA 30339
bondurant@bmelaw.com
lowrey@bmelaw.com
carter@bmelaw.com
caplan@bmelaw.com

K. CRAIG WILDFANG
RANDALL TIETJEN
CHRISTOPHER W. MADEL
E. CASEY BECKETT
ROBINS, KAPLAN, MILLER & CIRESI, LLP
2800 LASALLE PLAZA
800 LASALLE AVENUE
MINNEAPOLIS, MN 55402
kcwildfang@rkmc.com
rtietjen@rkmc.com
cwmadel@rkmc.com
ecbeckett@rkmc.com

LISA L. HELLER
ROBINS, KAPLAN, MILLER & CIRESI, LLP
1201 PEACHTREE STREET
SUITE 2200
ATLANTA, GA 30309
lheller@rkmc.com

KAREN B. BRAGMAN
KEVIN B. GETZENDANNER
HEATHER SMITH MICHAEL
ARNALL GOLDEN & GREGORY LLP
171 17TH STREET, NW
SUITE 2100
ATLANTA, GA 30363
karen.bragman@agg.com
kevin.getzendanner@agg.com
heather.michael@agg.com

JEFF I. ROSS
HARRY N. NISKA
KELLY K. PIERCE
ROSS & ORENSTEIN, LLC
222 SOUTH NINTH STREET
SUITE 470
MINNEAPOLIS, MN 55402
jross@rossbizlaw.com
hniska@rossbizlaw.com
kpierce@rossbizlaw.com



ALI M. STOEPPELWERTH
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 663-6000

June 29, 2012