

The Burger Court Opinion Writing Database

Mills v. Electric Auto-Lite Co.
396 U.S. 375 (1970)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 19, 1970

Re: No. 64 - Mills & Susman v. Electric Auto-Lite Co.

Dear John:

Please join me.

W.B.
W.E.B.

Mr. Justice Harlan

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Mearns
Mr. Justice Marshall

1

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 64.—OCTOBER TERM, 1969

Circulated: JAN 14 1970

Elmer E. Mills and Louis
Susman, Petitioners,
v.
The Electric Auto-Lite
Company et al.

On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

Received: [Signature]

[January —, 1970]

MR. JUSTICE BLACK, concurring in part and dissenting
in part.

I substantially agree with Parts II and III of the
Court's opinion holding that these stockholders have
sufficiently proven a violation of § 14 (a) of the Securities
and Exchange Act of 1934 and are thus entitled to
recover whatever damages they have suffered as a result
of the misleading corporate statements, or perhaps to an
equitable setting aside of the merger itself. I do not
agree, however, to what appears to be the holding in
Part IV that stockholders who hire lawyers to prosecute
their claims in such a case can recover attorneys' fees
in the absence of a valid contractual agreement so pro-
viding or an explicit statute creating such a right of
recovery. The courts are interpreters, not creators, of
legal rights to recover and if there is a need for recovery
of attorneys' fees to effectuate the policies of the Act
here involved, that need should in my judgment be met
by Congress, not by this Court.

January 8, 1970

Dear John:

In No. 64 - Hills v. Electric

Auto-Lite, please join me in your opinion.

W. O. D.

Mr. Justice Harlan

From: Harrison, J.

2

Circulated

JAN 7 1970

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 64.—OCTOBER TERM, 1969

Elmer E. Mills and Louis
Susman, Petitioners,
v.
The Electric Auto-Lite
Company et al. } On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[January —, 1970]

MR. JUSTICE HARLAN delivered the opinion of the Court.

This case requires us to consider a basic aspect of the implied private right of action for violation of § 14 (a) of the Securities Exchange Act of 1934,¹ recognized by this Court in *J. I. Case Co. v. Borak*, 377 U. S. 426 (1964). As in *Borak* the lower courts have found that a corporate merger was accomplished through the use of a proxy statement that was materially false or misleading. The question with which we deal is what causal relationship must be shown between such a statement and the merger to justify a private recovery based on the violation of the Act.

1

Petitioners were shareholders of the Electric Auto-Lite Company until 1963, when it was merged into Mergenthaler Linotype Company. They brought suit on the day before the shareholders' meeting at which the vote was to take place on the merger, against Auto-Lite, Mergenthaler, and a third company, American Manufacturing Company, Inc. The complaint sought an

¹ As amended, 15 U. S. C. § 78n (a).

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 14, 16, 18, 19, 20

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

3

From: Harlan, J.

~~JAN 16 1970~~

circulated:

~~JAN 16 1970~~

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 64.—OCTOBER TERM, 1969

Elmer E. Mills and Louis
Susman, Petitioners, } On Writ of Certiorari to the
 v. } United States Court of
 The Electric Auto-Lite } Appeals for the Seventh
 Company et al. } Circuit.

[January —, 1970]

MR. JUSTICE HARLAN delivered the opinion of the Court.

This case requires us to consider a basic aspect of the implied private right of action for violation of § 14 (a) of the Securities Exchange Act of 1934,¹ recognized by this Court in *J. I. Case Co. v. Borak*, 377 U. S. 426 (1964). As in *Borak* the lower courts have found that a corporate merger was accomplished through the use of a proxy statement that was materially false or misleading. The question with which we deal is what causal relationship must be shown between such a statement and the merger to establish a cause of action based on the violation of the Act.

I

Petitioners were shareholders of the Electric Auto-Lite Company until 1963, when it was merged with the Mergenthaler Linotype Company. They brought this action on the day before the shareholders' meeting, when the vote was to take place on the merger. The merger was between the Electric Auto-Lite Company, the Mergenthaler, and a third company, the Manufacturing Company, Inc.

¹ As amended, 15 U. S. C. § 78u.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 14, 1970

RE: NO. 64 - Mills v. Electric Autolite Co.

Dear John:

I agree with your opinion in the above
case.

Sincerely,

Seil
W.J.B. Jr.

Mr. Justice Harlan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 7, 1970

No. 64 - Mills v. Electric Auto-Lite Co.

Dear John,

I am glad to join the opinion you have
written for the Court in this case.

Sincerely yours,

P. S.

Mr. Justice Harlan

Copies to the Conference

January 8, 1970

No: No. 64 - Mills v. The Electric
Auto-Lite Company

Dear John:

Please join me.

Sincerely,

B.C.W.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 8, 1970

Re: No. 64 - Mills and Susman v. Electric
Auto-Lite Company

Dear John:

Please join me.

Sincerely,



T.M.

Mr. Justice Harlan

cc: The Conference