

# 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

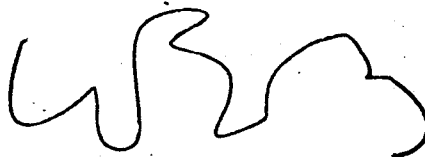
CHAMBERS OF  
THE CHIEF JUSTICE

January 19, 1970

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

Dear John:

Please join me.

A handwritten signature in dark ink, consisting of stylized, overlapping loops and curves, characteristic of W.E.B. Dubois's signature.

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 Fortas  
Mr. Justice Marshall

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**SUPREME COURT OF THE UNITED STATES**

From: Black, J.

No. 64.—OCTOBER TERM, 1969

Circulated: JAN 1 1970

Received: \_\_\_\_\_

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 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 providing 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.

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January 8, 1970

Dear John:

In No. 64 - Mills v. Electric

Auto-Lite, please join me in your opinion.

W. O. D.

Mr. Justice Harlan

20. THE CHIEF JUSTICE  
Mr. Justice Black  
Mr. Justice Douglas  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

2

From: Harlan, J.

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.
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[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,<sup>1</sup> 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.

## I

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

<sup>1</sup> 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

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From: Harlan, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

JAN 16 1970

JAN 16 1970

Recirculated:

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,<sup>1</sup> 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 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. The merger was with Mergenthaler, and a third company, the Linotype Manufacturing Company, Inc.

<sup>1</sup> As amended, 15 U. S. C. § 78n.

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,

  
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

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

Dear John:

Please join me.

Sincerely,

B.S.V.

Mr. Martin Raylan

Mr. Martin Raylan

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