The Burger Court Opinion Writing Database

Piper v. Chris-Craft Industries, Inc.

430 U.S. 1 (1977)

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

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From:

Circulated: DEC 21 1976

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–353, 75–354 AND 75–355

Howard Piper et al., Petitioners,
75–353 *v.*
Chris-Craft Industries, Inc., et al.

The First Boston Corporation, Petitioner,
75–354 *v.*
Chris-Craft Industries, Inc., et al.

Bangor Punta Corporation et al., Petitioners,
75–355 *v.*
Chris-Craft Industries, Inc., et al.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in these cases to consider whether an unsuccessful tender offeror in a contest for control of a corporation has an implied cause of action for damages under § 14 (e) of the Securities Exchange Act of 1934, as amended by the Williams Act of 1968, 15 U. S. C. § 78n (e), or under Rule 10b–6, 17 CFR § 240.10b.6 (1975), based on alleged antifraud violations by the successful competitor, its investment adviser, and the management of the target corporation.

I

Background

The factual background of this complex contest for control, including the protracted litigation culminating in this

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

CHAMBERS OF
THE CHIEF JUSTICE

December 28, 1976

Re: (75-353 - Piper v. Chris-Craft Industries, Inc.
(
(75-354 - First Boston Corp. v. Chris-Craft Industries, Inc.
(
(75-355 - Bangor Punta Corp. v. Chris-Craft Industries, Inc.

MEMORANDUM TO THE CONFERENCE:

Thurgood has raised a valid question about the injunction issue in this case, treated at page 42. The circulated draft states that since Chris-Craft expressly abandoned any claim to injunctive relief, the injunction ordered by the Court of Appeals (without any discussion of Chris-Craft's abandonment) is inappropriate under the circumstances of this case. That ought to be a closed chapter. In light of Thurgood's comments to me by phone this morning, I think we may want to focus more closely on whether I have taken the appropriate tack in handling the injunction issue. Had I not been somewhat tired of this case, I would properly have explained my reasoning in a cover letter.

It appears that the outstanding injunction, which will remain in effect until 1979, would, if allowed to stand, operate to give Chris-Craft voting control of Piper for the next two years plus. As the opinion indicates, Chris-Craft at a pretrial hearing expressly waived its previous request for an injunction. Judge Pollack mentions this fact on four occasions in his opinion on liability. 337 F. Supp., at 1136 n. 8, 1137, 1142 n. 18, 1146. In the last reference, Judge Pollack said:

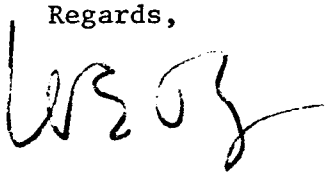
> "However, at a pre-trial conference, [Chris-Craft] announced its election on the record to have its case considered as only a straight non-jury damage case rather than an equitable suit for injunction."

Notwithstanding this, the Court of Appeals ordered the entry of an injunction against Bangor without referring to Chris-Craft's abandonment of its claim or explaining its action.

In their briefs, the parties do not focus on this issue at all; naturally everyone concentrated on the damages question due, no doubt, to Chris-Craft's litigation choice of remedy. Indeed the injunction issue having been abandoned, it was not raised by Bangor in its cert petition. Accordingly, although we did not focus on this explicitly in Conference, I took it to be the sense of the majority to dispose of the entire case, as the draft presently does, by reversing on the injunction issue, while reserving the broader issues of standing to seek an injunction, see footnote 28. A remand to have the District Court conduct further proceedings with respect to the propriety of the injunction in light of Chris-Craft's waiver would seem to unnecessarily prolong this extended litigation, with Judge Pollack's determination predictable.

This approach seems far more desirable, as well as correct. First, I am convinced that CA 2 was wrong in ordering an injunction where the moving party had abandoned any claim to that relief in the District Court. Second, the injunction, ordered some four years after the contest for control had ended, appears to have been entered solely to aid Chris-Craft, not the Piper shareholders as a class. Third, a remand will necessarily prolong this litigation and perhaps re-open the contest for control on a new front. I would surely not vote to give Chris-Craft voting control of Piper.*

Regards,



*

At present, Bangor owns 50% plus of Piper stock but is enjoined from voting 14½%, leaving Chris-Craft with approximately 42%, all of which it can now vote.

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

CHAMBERS OF
THE CHIEF JUSTICE

December 29, 1976

Re: (75-353 Piper v. Chris -Craft Industries, Inc.
(
(75-354 First Boston Corp. v. Chris -Craft Industries, Inc.
(
(75-355 Bangor Punta Corp. v. Chris -Craft Industries, Inc

MEMORANDUM TO THE CONFERENCE:

I have now read John's dissent in this case. As a result, I propose to add the following material.

A. First, the following will be added as two new paragraphs to the text on page 32, immediately prior to subsection B.

> "The dissent suggests, however, that Chris -Craft is suing for injuries sustained in its status as a Piper shareholder, as well as in its capacity as a defeated tender offeror. That suggestion is raised for the first time. Chris-Craft's position in this Court on standing is narrowly that the Williams Act was designed to protect not only target company shareholders, but rival contestants for control as well. Brief for Respondent, at 36-40, 43, 46-48, 50-54. It is clear, therefore, that Chris-Craft has simply not asserted standing under § 14(e) as a Piper stockholder. The reason is not hard to divine. As a tender offeror actively engaged in competing for Piper stock, Chris-Craft was not in the posture of a target shareholder confronted with having to decide whether to tender or retain its stock. The fact that Chris-Craft necessarily acquired Piper stock as a means of seeking control of Piper Aircraft adds nothing to its § 14(e) standing arguments; Chris-Craft has correctly recognized this through seven years of litigation. Moreover, the Court of Appeals at no time intimated that it rested Chris-Craft's standing under § 14(e) on Chris-Craft's being a Piper stockholder. Its opinion in this respect could hardly be clearer:

> "This is a case of first impression with respect to the right of a tender offeror to claim damages for statutory violations by his adversary. And our holding is premised on the belief that the harm done the defeated contestant is not that it had to pay more for the stock but that it got less stock than it needed for control." 480 F.2d, at 362 (Emphasis supplied).

Moreover, the items of damages cited in dissent, infra, at 4 n.4, as attributable to Chris-Craft in its status as a Piper shareholder are, upon analysis, actually related under these circumstances to Chris-Craft's status as a contestant for control of a corporation. First, the alleged "loss of control premium," which Chris-Craft presumably otherwise would have enjoyed, relates on its face not to Chris-Craft as a Piper shareholder per se, but to its status as a shareholder who failed to gain control. Second, the alleged loss of value as to a "locked-in.....exceptionally large block" of Piper stock likewise relates under these circumstances to a particular kind of Piper shareholder, namely one whose efforts to secure control necessarily resulted in the acquisition of major stockholdings in the company. In this regard, the Court of Appeals plausibly assumed in this case that in order to dispose of its Piper holdings Chris-Craft would have to file a registration statement with the SEC, since Chris-Craft would presumably be engaged in a distribution of Piper stock. 516 F.2d, at 188-189. In contrast, no ordinary Piper shareholder would have to comply with the 1933 Act's registration requirements in order to sell his or her stock, since the typical shareholder is not "an issuer, underwriter, or dealer." 15 U.S.C. § 77d (1).

Consequently, neither element of damages mentioned in the dissent is peculiar to an ordinary Piper shareholder "injured" by Bangor's alleged violations of the securities law."

B. I will also add the following material in footnotes:

19/ (To appear at the end of the sentence of the first line of p. 30)

The dissent emphasized that Borak involved a derivative suit brought on behalf of the corporation, in addition to the shareholder's direct cause of action. Since corporations were not the primary beneficiaries of § 14 (a) --the statute involved in Borak-- the dissent concludes that Borak itself fails to meet the "especial class" requirement articulated by Cort v. Ash. Infra, at 11-12. But this is a misreading of Borak: there the Court observed that deceptive proxy solicitations violative of § 14(a) injure the corporation in the following sense:

> "The damage suffered results not from the deceit practiced on (the individual shareholder) alone but rather from the deceit practiced on the stockholders as a group." 377 U.S., at 432 (Emphasis supplied.)

The Borak court was thus focusing on all stockholders, the owners of the corporation, as the beneficiaries of § 14 (a). Stockholders as a class therefore constituted the "especial class" for which the proxy provisions were enacted.

23/ (To appear as a new paragraph at the end of present footnote 23 on page 36)

This should dispose of many observations made in dissent. Thus, the argument with respect to the "exclusion" from standing for "persons most interested in effective enforcement" is simply unwarranted in light of today's narrow holding. See infra, at n. 28.

28/ (To appear as a new paragraph at the end of present footnote 28 on page 42)

The extravagant suggestion that § 14 (e) is a "virtual nullity" unless standing encompasses rival contestants is therefore premature, as well as unwarranted; this case does not present the issue which the dissent mistakenly concludes has been resolved by the Court's holding.

C. Finally, the following will be added and enlarged as new footnote 22, to appear on page 36, line 18.

22/ It is a novel idea to suggest that an adversary position asserted by a regulatory agency in an amicus brief in this Court--as distinguished from a long-standing agency interpretation of its own statute--comes within the reach of judicial recognition of the so-called "expertise" of such an agency. The present adversary position of the SEC is, of course, in conflict with the testimony of the SEC chairman in the evolution of § 14 (e). Ante at 25, 31-32.

Regards,

WRB

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

CHAMBERS OF
THE CHIEF JUSTICE

Personal

January 21, 1977

Re: (75-353 - Piper v. Chris-Craft Industries, Inc.
(
(75-354 - First Boston Corp. v. Chris-Craft Industries
(
(75-355 - Bangor Punta Corp. v. Chris-Craft Industries

Dear Lewis:

I agree that a strong disclaimer is needed as to CA 2's findings of securities-law violations. The prior draft contained this sort of caveat as to the alleged Rule 10b-6 violations and we are trying to make sure "alleged" is used in these references. Fn. 25, at p. 38. The second draft which is being circulated today not only retains the Rule 10b-6 footnote (new footnote 30 under the renumbering), but I am also adding a new footnote 24:

> "In light of our holding, there is, of course, no occasion to pass on the Court of Appeals' underlying determination that petitioners actually violated the securities laws in their efforts to defeat Chris-Craft's bid. See also infra, at 41 n. 30.

Finally, our footnote about the Piper family's alleged violations (old footnote 22; new footnote 26) should also put the reader on notice that we are not giving any endorsement on the Second Circuit's reading of the 1934 Act.

Regards,

WEB

Mr. Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

January 21, 1977

RE: 75-353, 354, 355 - Howard Piper, et al.; The First Boston Corporation; Bangor Punta Corporation, et al. v. Chris-Craft Industries, Inc., et al.

MEMORANDUM TO THE CONFERENCE:

Enclosed is the second (and perhaps final) draft, with marginal markings to show changes.

Except for purely stylistic changes, you have seen the few substantive changes in type. Possible exceptions are treatment of injunction at page 45 and footnote 34.

Regards,

WEB

STYLISTIC CHANGES

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: JAN 21 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–353, 75–354 AND 75–355

Howard Piper et al., Petitioners,
75–353 *v.*
Chris-Craft Industries, Inc., et al.

The First Boston Corporation, Petitioner,
75–354 *v.*
Chris-Craft Industries, Inc., et al.

Bangor Punta Corporation et al., Petitioners,
75–355 *v.*
Chris-Craft Industries, Inc., et al.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in these cases to consider, among other issues, whether an unsuccessful tender offeror in a contest for control of a corporation has an implied cause of action for damages under § 14 (e) of the Securities Exchange Act of 1934, as amended by the Williams Act of 1968, 15 U. S. C. § 78n (e), or under Rule 10b–6, 17 CFR § 240.10b.6 (1975), based on alleged antifraud violations by the successful competitor, its investment adviser, and individuals comprising the management of the target corporation.

I

Background

The factual background of this complex contest for control, including the protracted litigation culminating in the

STYLISTIC CHANGES

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Pp. 2, 6, 16, 22, 30, 34, 37, 40, 46.

Circulated:

Recirculated: FEB 16 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–353, 75–354 AND 75–355

Howard Piper et al., Petitioners,
75–353 *v.*
Chris-Craft Industries, Inc., et al.

The First Boston Corporation, Petitioner,
75–354 *v.*
Chris-Craft Industries, Inc., et al.

Bangor Punta Corporation et al., Petitioners,
75–355 *v.*
Chris-Craft Industries, Inc., et al.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in these cases to consider, among other issues, whether an unsuccessful tender offeror in a contest for control of a corporation has an implied cause of action for damages under § 14 (e) of the Securities Exchange Act of 1934, as amended by the Williams Act of 1968, 15 U. S. C. § 78n (e), or under Rule 10b–6, 17 CFR § 240.10b.6 (1975), based on alleged antifraud violations by the successful competitor, its investment adviser, and individuals comprising the management of the target corporation.

I

Background

The factual background of this complex contest for control, including the protracted litigation culminating in the

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

CHAMBERS OF
THE CHIEF JUSTICE

February 17, 1977

MEMORANDUM TO THE CONFERENCE

Re: 75-353, 354,355 Piper v. Chris-Craft Industries

Attached is one final relatively minor change on page 36.

Regards,

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 29, 1976

RE: Nos. 75-353, 354 & 355 Piper, First Boston Corp. & Bangor Punta Corp. v. Chris-Craft Industries, Inc.

Dear John:

I passed at conference but your splendid dissent is completely convincing, particularly in its persuasive treatment of the policy considerations. I'd very much appreciate your joining me.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 22, 1976

Nos. 75-353, 75-354 & 75-355
Piper v. Chris-Craft Ind. Inc.

Dear Chief,

I think your opinion for the Court is a fine piece of work and am glad to join it. It is possible that I may have some minor verbal changes to suggest after my return to Washington next week.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 29, 1976

Re: Nos. 75-353, 75-354 & 75-355 - Piper v. Chris-Craft Industries Inc.

Dear Chief:

Although I may have some minor suggestions, I agree.

Sincerely,

The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 4, 1977

Re: Nos. 75-353, 354 & 355 -- Piper, First Boston Corp., & Bangor Punta Corp. v. Chris Craft Industries, Inc.

Dear Chief:

Please join me.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 17, 1977

Re: No. 75-353 - Piper v. Chris-Craft Industries
No. 75-354 - First Boston Corp. v. Chris-Craft Industries
No. 75-355 - Bangor Punta Corp. v. Chris-Craft Industries

Dear Chief:

In line with my vote at the conference, I am writing separately, concurring in the judgment. This will go to the printer today and will be circulated as soon as it emerges from his shop.

Sincerely,

Harry

The Chief Justice

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 1/18/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–353, 75–354 AND 75–355

Howard Piper et al., Petitioners,
75–353 *v.*
Chris-Craft Industries, Inc., et al.

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75–354 *v.*
Chris-Craft Industries, Inc., et al.

Bangor Punta Corporation, et al., Petitioners,
75–355 *v.*
Chris-Craft Industries, Inc., et al.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1977]

MR. JUSTICE BLACKMUN, concurring in the judgment.

I concur in the judgment. For the reasons set out in MR. JUSTICE STEVENS' dissenting opinion, *post*, —, I am willing to begin with the premise that respondent Chris-Craft had "standing" in the sense that it possessed an implied right to sue under § 14 (e) of the Securities Exchange Act of 1934, 15 U. S. C. § 78n (e). Unlike the dissenters, however, I do not conclude, from this, that the Court of Appeals' judgment is to be affirmed. Since I am of the opinion that respondent failed to prove that petitioners' violations of the securities laws caused its injury, I agree with the Court that the judgment below should be reversed.[1]

I

For the sake of clarity, it is useful to review briefly the

[1] Like the dissenters, I also accept the premise that the petitioning defendants violated § 14 (e) and Rule 10 (b) (6).

pp. 1, 11, 6

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 2/10/77

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–353, 75–354 AND 75–355

Howard Piper et al., Petitioners,
75–353 *v.*
Chris-Craft Industries, Inc., et al.

The First Boston Corporation, Petitioner,
75–354 *v.*
Chris-Craft Industries, Inc., et al.

Bangor Punta Corporation et al., Petitioners,
75–355 *v.*
Chris-Craft Industries, Inc., et al.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1977]

MR. JUSTICE BLACKMUN, concurring in the judgment.

I concur in the judgment. For the reasons set out in MR. JUSTICE STEVENS' dissenting opinion, *post,* —, I am willing to begin with the premise that respondent Chris-Craft had "standing" in the sense that it possessed an implied right to sue under § 14 (e) of the Securities Exchange Act of 1934, 15 U. S. C. § 78n (e). Unlike the dissenters, however, I do not conclude, from this, that the Court of Appeals' judgment as to liability is to be affirmed. Since I am of the opinion that respondent failed to prove that petitioners' violations of the securities laws caused its injury, I agree with the Court that the judgment below should be reversed.[1]

I

For the sake of clarity, it is useful to review briefly the

[1] Like the dissenters, I also accept the premise that the petitioning defendants violated § 14 (e) and Rule 10 (b) (6).

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 30, 1976

Nos. 75-353, 75-354 and 75-355
(The Bangor Punta Cases)

Dear Chief:

Please join me in the exceptionally fine opinion that you have written for the Court.

I have noted your memorandum of December 28 commenting on the injunction issue, and I am in accord with your resolution of it. Indeed, if we allowed the injunction to stand, the victory of Piper and Bangor Punta might have Pyrrhic overtones. If Chris-Craft were allowed to retain voting control for another two years, knowing that at the end of the period control must be surrendered, it would have little or no incentive to manage the company with a view to its long term best interests.

As the foregoing possibility demonstrates, there is some incongruity in distinguishing, for standing purposes, between injunctive and damage relief. I am aware that some courts have drawn this distinction, but I am not entirely at rest on this issue. I would prefer, therefore, that you omit the last two sentences in footnote 28 which seem - despite the disclaimer in the first sentence - to lean in favor of standing for injunctive relief. It may be preferable to remain strictly neutral.

One further comment. John emphasized in his dissent that the Court of Appeals concluded that the petitioners were guilty of violating § 14(e) and Rule 10b-6. But the issues of liability (i.e., whether there were violations of law) are not before us and are irrelevant to our decision. I would like to make clear that we imply no view as to liability.

You do indicate in note 22 (p. 35), with respect to the Piper family, that the half-a-dozen judges who have expressed opinions as to liability - including the district judges who perhaps were in the best position to decide the issues - sharply disagreed. As I indicated at Conference, if the liability issues were before us I would have agreed with Judge Pollock. The imposing of liability on the Piper family for its relatively bland (and ambiguously worded) defense of a corporation that family had created and built up over the years, strikes me as little short of outrageous. It would be quite unfair to the parties, and especially the Pipers, to leave any inference that this Court endorsed the view of CA2 as to culpability.*

Moreover, if our opinion could be construed as impliedly affirming the CA2 standard of liability, the management of target corporations may well be deterred from interposing a vigorous defense against takeover bids for fear of being sued for relatively trivial inaccuracies or overstatements. A takeover fight resembles an election contest. There must be reasonable latitude for hyperbole, for widely differing opinions as to value, as to management and other relevant facts.** There is nothing in the Williams Act that is intended to limit expression of this kind.

In sum, although I will join the opinion as circulated I do feel rather strongly that it is important - as a matter of fairness to the parties involved and also to prevent possible misunderstanding - to make clear that no inferences are to be drawn from the Court's opinion that we either agree or disagree with CA2's decision or with its rationale with respect to the issues of liability.

Sincerely,

The Chief Justice

lfp/ss
cc: The Conference

*The principal "culpability" of Bangor Punta in the view of CA2 was its perceived violation of 10b-6. As the District Court held, even if there were a technical violation of 10b-6 (and until the SEC clarified its rules, the prevailing understanding at the time was that the purchases would not have violated the Rule), there was no causation between the alleged violation and the asserted damage.

**Not infrequently, the tender offeror is a predatory type company that seeks control for the purpose of liquidating (sometimes "looting") the target company to the disadvantage of minority stockholders.

January 19, 1977

Bangor Punta 353, 354, 355

Dear Chief:

I notice that footnote No. 1 in Harry's dissent states:

> "Like the dissenters, I also accept the premise that the petitioning defendants violated § 14(e) and Rule 10b-6."

This will be read, I am afraid, as implying that the dissenting Justices agree as to these violations. Of course, the dissenters are privileged to entertain that view, but I again express the hope that you will add a note making somewhat more explicit the factsthat issues of liability are not before us, and we imply no view with respect thereto.

In the section of your opinion dealing with Rule 10b-6, there are two or three references - without any qualification - to the "violation" by Bangor Punta of this rule. For reasons we have discussed, I would prefer to say "alleged violation" unless the general footnote mentioned above makes clear that we are not endorsing CA2's finding of guilt.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 30, 1976

Re: Nos. 75-353, 75-354 and 75-355 - Piper v. Chris-Craft Industries, Inc.

Dear Chief:

Please join me in your opinion. Like Byron and Potter, I might have some minor changes to suggest with respect to the final part; I think your memorandum of December 28th is an entirely satisfactory justification for the reversal of the injunction, and I think that the printed draft of that part of the opinion might conceivably be improved by incorporating a couple of the ideas in that memorandum which do not presently appear in the printed draft.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 22, 1976

Re: 75-353, 354, 355 - Piper v. Chris-Craft Industries, Inc.

Dear Chief:

Before receiving your opinion, I prepared a draft dissent which I have just sent to the Printer. Further study will no doubt lead to some revisions, but I should be able to circulate my views in a few days.

In the meantime, have a wonderful Christmas.

Respectfully,

John

The Chief Justice

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Mr. Justice Stevens

SUPREME COURT OF THE UNITED STATES

Circulated: 1/28/76

Recirculated: _____

Nos. 75–353, 75–354 AND 75–355

Howard Piper et al., Petitioners,
75–353 *v.*
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The First Boston Corporation, Petitioner,
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Chris-Craft Industries, Inc., et al.

Bangor Punta Corporation et al., Petitioners,
75–355 *v.*
Chris-Craft Industries, Inc., et al.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1977]

MR. JUSTICE STEVENS, dissenting.

The critical issue can be framed by concentrating on the exchange offers in July 1969. The conclusion that Bangor Punta's offer violated § 14 (e) is established by prior proceedings and is not now open for review.[1] When that violation occurred, Chris-Craft owned 556,206 shares of Piper stock and was attempting to acquire sufficient additional shares to constitute control. As a result of Bangor Punta's violation, Chris-Craft claims that it was injured in two ways;

[1] This is the third chapter in the history of this monumental litigation. There have been three trials, three appeals, and three groups of certiorari petitions. The violations of § 14 (e) and Rule 10 (b) (6) are established by the prior proceedings and are not now subject to review by this Court. Only the questions presented by the certiorari petitions granted on April 5, 1976, are before us. We must therefore commence our analysis from the premise that the petitioning defendants are guilty of violating § 14 (e) and Rule 10 (b) (6).

pp. 1-2, 5-7, 11, 13, 16-18

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JAN 7 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–353, 75–354 AND 75–355

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Bangor Punta Corporation et al., Petitioners,
75–355 *v.*
Chris-Craft Industries, Inc., et al.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1977]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN joins, dissenting.

The Williams Act was passed for the protection of investors. The threshold question in this case is whether the holder of a large block of stock who is seeking to retain or to acquire control of a corporation is one of the investors the statute was intended to protect.

The critical issue can be framed by concentrating on the exchange offers in July 1969. The conclusion that Bangor Punta's offer violated § 14 (e) is established by prior proceedings and is not now open for review.[1] When that viola-

[1] This is the third chapter in the history of this monumental litigation. There have been three trials, three appeals, and three groups of certiorari petitions. Only the questions presented by the certiorari petitions granted on April 5, 1976, are before us. For the purpose of analyzing the standing issue, we must accept the premise that the petitioning defendants are guilty of violating § 14 (e) and Rule 10 (b) (6).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 13, 1977

Re: Nos. 75-353, 75-354, 75-355 - Piper v. Chris-Craft

Dear Chief:

In my dissent, I plan to add the following paragraph at the end of footnote 18 on page 12.

Respectfully,

John

The Chief Justice

Copies to the Conference

pp. 2, 5, 7-9, 13, 15-18, 20

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: FEB 8 1977

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–353, 75–354 AND 75–355

Howard Piper et al., Petitioners,
75–353 *v.*
Chris-Craft Industries, Inc., et al.

The First Boston Corporation, Petitioner,
75–354 *v.*
Chris-Craft Industries, Inc., et al.

Bangor Punta Corporation et al., Petitioners,
75–355 *v.*
Chris-Craft Industries, Inc., et al.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1977]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN joins, dissenting.

The Williams Act was passed for the protection of investors. The threshold question in this case is whether the holder of a large block of stock who is seeking to retain or to acquire control of a corporation is one of the investors the statute was intended to protect.

The critical issue can be framed by concentrating on the exchange offers in July 1969. The conclusion that Bangor Punta's offer violated § 14 (e) is established by prior proceedings and is not now open for review.[1] When that viola-

[1] This is the third chapter in the history of this monumental litigation. There have been three trials, three appeals, and three groups of certiorari petitions. Only the questions presented by the certiorari petitions granted on April 5, 1976, are before us. For the purpose of analyzing the standing issue, we must accept the premise that the petitioning defendants are guilty of violating § 14 (e) and Rule 10 (b)(6).