

Injured Investors are Without a Private Right of Action
Against Aiders and Abettors of Primary Actors Where the
Investors Did Not Rely on the Secondary Actors:
*Stoneridge Investment Partners, L.L.C. v. Scientific-Atlanta,
Inc.*

SECURITIES LAW – SECURITIES EXCHANGE ACT OF 1934 – IMPLIED PRIVATE RIGHTS OF ACTION – The Supreme Court of the United States affirmed the judgment of the Court of Appeals for the Eighth Circuit by denying an injured investor’s private right of action against aiders and abettors of the primary actor because the investor did not rely on the secondary actors’ actions.

Stoneridge Investment Partners, L.L.C. v. Scientific-Atlanta, Inc., 128 S. Ct. 761 (2008).

Petitioner, Stoneridge Investment Partners, L.L.C., had its securities fraud claim dismissed in the United States District Court for the Eastern District of Missouri on the respondents’ motion to dismiss for failure to state a claim upon which relief could be granted.¹ Respondents, Scientific-Atlanta, Inc. and Motorola, Inc., also won on appeal in the Eighth Circuit Court of Appeals, and the United States Supreme Court granted certiorari to decide the issue of whether an injured investor, under the implied private right of action found in § 10(b) of the Securities Exchange Act of 1934, can impose liability on a secondary actor whose actions were not relied upon by the injured investor.²

Charter Communications, Inc., a cable operator, used fraudulent practices to increase the revenue reported on its financial statements.³ Charter purchased digital cable converter boxes from Scientific-Atlanta and Motorola.⁴ Charter, Scientific-Atlanta, and Motorola entered into an agreement where Charter would pay twenty dollars more than the actual cost of each converter

1. *Stoneridge Inv. Partners, L.L.C. v. Scientific-Atlanta, Inc.*, 128 S. Ct. 761, 767 (2008). Stoneridge was the lead plaintiff of a class-action lawsuit filed against defendants Charter Communications, Inc., Scientific-Atlanta, Inc., Motorola, Inc., and others. *Stoneridge Inv. Partners, L.L.C. v. Charter Commc’ns, Inc.*, No. 1506, 2004 U.S. Dist. LEXIS 29647, at *7 (E.D.Mo. Oct. 12, 2004), *aff’d sub nom. Stoneridge Inv. Partners, L.L.C. v. Scientific-Atlanta, Inc.*, 443 F.3d 987 (8th Cir. 2006), *cert. granted*, 127 S. Ct. 1873 (2007). Scientific-Atlanta and Motorola are the only respondents. *Stoneridge*, 128 S. Ct. at 766.

2. *Stoneridge*, 128 S. Ct. at 767-68.

3. *Id.* at 766. In August 2000, Charter found that it “would miss projected operating cash flow numbers by \$15 to \$20 million.” *Id.* See also *Stoneridge*, 2004 LEXIS 29647, at *14 (stating that in August of 2000 Charter’s executives realized the year-end shortfall of cash flow).

4. *Stoneridge*, 128 S. Ct. at 766.

box.⁵ In turn, Scientific-Atlanta and Motorola used the overpayment to purchase advertising from Charter.⁶ At Charter's request, Scientific-Atlanta and Motorola documented the overpayment and advertising purchases in a manner that prevented Charter's auditor from gaining knowledge of the agreement.⁷ Charter reported the revenue realized from the advertising purchases on its financial statements.⁸ Charter's financial statements were filed with the Securities and Exchange Commission (SEC) and available for public use.⁹ Charter prepared and submitted its financial statements without any involvement of Scientific-Atlanta or Motorola.¹⁰

In the United States District Court for the Eastern District of Missouri, Stoneridge led a class-action suit against Charter, Scientific-Atlanta, Motorola, and others, alleging securities fraud.¹¹ Stoneridge bases its claim on § 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.¹² Scientific-Atlanta and Motorola filed a motion to dismiss, which the district court granted.¹³ The district court first found that Scientific-Atlanta and Motorola had only aided and abetted Charter.¹⁴ Second, the district court found that Charter did not rely on any alleged misstatement made by Scientific-Atlanta

5. *Id.*

6. *Id.* Charter recorded the advertising purchases as revenue and, at the same time, capitalized the purchase of the converter boxes. *Id.* This method violated generally accepted accounting principles. *Id.*

7. *Id.* Scientific-Atlanta provided Charter with documentation falsely stating that its production costs had increased. *Id.* Charter agreed to pay Motorola liquidated damages for each of the converter boxes it failed to purchase. *Id.* This documentation was backdated by one month before the advertising purchase contracts in order to give the appearance of separate and distinct transactions. *Id.*

8. *Id.* Revenue and operating cash flow was increased by \$17 million. *Id.*

9. *Stoneridge*, 128 S. Ct. at 767.

10. *Id.* Scientific-Atlanta and Motorola reported the transactions on their financial statements as a wash in accordance with generally accepted accounting principles. *Id.*

11. *Id.* at 766-67. Stoneridge alleged that Scientific-Atlanta and Motorola "knew or were in reckless disregard of Charter's intention to use the transactions to inflate its revenues and knew the resulting financial statements issued by Charter would be relied upon by research analysts and investors." *Id.* at 767.

12. *Id.* at 767. Section 10(b) provides in pertinent part that:

[i]t shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange . . . [t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Securities Exchange Act of 1934 § 10(b), 48 Stat. 891 (1934) (Current version available at 15 U.S.C. § 78(j)(b) (2000)). The corresponding rule promulgated by the SEC states that:

[i]t shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, (a) To employ any device, scheme, or artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5 (1951).

13. *Stoneridge*, 128 S. Ct. at 767.

14. *Stoneridge*, 2004 LEXIS 29647, at *18.

or Motorola when reporting and distributing its financial statements.¹⁵ Therefore, the district court concluded that neither Scientific-Atlanta nor Motorola owed a duty to Stoneridge to provide Stoneridge with information.¹⁶

In reaching their conclusion, the district court followed the United States Supreme Court decision of *Central Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.* and held that § 10(b) does not provide a cause of action for injured investors against aiders and abettors.¹⁷ Following the decision of *Central Bank*, Congress enacted the Private Securities Litigation Reform Act of 1995 (PSLRA).¹⁸ Section 104 of the PSLRA provided for the prosecution of aiders and abettors by the SEC.¹⁹

Stoneridge appealed to the United States Court of Appeals for the Eighth Circuit.²⁰ The court of appeals affirmed the district court's judgment in favor of Scientific-Atlanta and Motorola.²¹ The court of appeals agreed with the district court that *Central Bank* should be read broadly.²² The court of appeals then explained its interpretation of the key holdings of *Central Bank*.²³ Like the district court, the court of appeals found no liability under § 10(b)

15. *Id.*

16. *Id.* at *21. “[Stoneridge] [did] not allege[] that Scientific-Atlanta or Motorola had any duty to Charter’s investors.” *Id.*

17. *Id.* at *18.

[P]laintiffs’ claims against these defendants are barred by the Supreme Court’s decision in *Central Bank*. *Central Bank* held that “there is no private aiding and abetting liability under § 10(b)” of the Exchange Act. The Supreme Court examined the text of the Exchange Act and concluded that Congress did not intend to impose secondary liability under § 10(b). The Court also observed that allowing recovery for aiding and abetting would permit plaintiffs to circumvent the reliance element of a Rule 10b-5 claim – a requirement that places “careful limits” on recovery under Rule 10b-5.

Id. (citations omitted) (emphasis added) (quoting *Cent. Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.*, 511 U.S. 164, 191 (1994)).

18. *Stoneridge*, 128 S. Ct. at 769.

19. *Id.* (citing Private Securities Litigation Reform Act of 1995 § 104, 15 U.S.C.S. § 78t(e) (Lexis-Nexis 2000)). Section 104 provides in pertinent part:

(e) Prosecution of persons who aid and abet violations. For purposes of any action brought by the Commission . . . any person that knowingly provides substantial assistance to another person in violation of a provision of this title [15 U.S.C.S. § 78(a) et seq.], or of any rule or regulation issued under this title [15 U.S.C.S. § 78(a) et seq.], shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

15 U.S.C.S. § 78t(e).

20. *Stoneridge*, 128 S. Ct. at 769; *Stoneridge*, 443 F.3d at 989.

21. *Stoneridge*, 128 S. Ct. at 767; *Stoneridge*, 443 F.3d at 992-93.

22. *Id.* “Like the district court, we reject Stoneridge’s narrow interpretation of *Central Bank*.” *Id.*

23. *Id.* The court of appeals found the three governing principles of *Central Bank* to be:

(1) The Court’s categorical declaration that a private plaintiff “may not bring a 10b-5 suit against a defendant for acts not prohibited by the text of § 10b,” (2) A device or contrivance is not “deceptive,” within the meaning of § 10(b), absent some misstatement or a failure to disclose by one who has a duty to disclose. (3) The term “manipulative” in § 10(b) has the limited contextual meaning ascribed in [*Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 476-77 (1977)]. Thus, any defendant who does not make or affirmatively cause to be made a fraudulent misstatement or omission, or who does not directly engage in manipulative securities trading practices, is at most guilty of aiding and abetting and cannot be held liable under § 10(b) or any subpart of Rule 10b-5.

Id. (citations omitted) (footnote omitted).

because the actions of Scientific-Atlanta and Motorola were not deceptive as required by § 10(b).²⁴

Stoneridge submitted a petition for writ of certiorari to the United States Supreme Court and the Court granted the petition.²⁵ The question presented to the Court was whether an injured investor, under the implied private right of action found in § 10(b) of the Securities Exchange Act of 1934, can impose liability on a secondary actor whose actions were not relied upon by the injured investor.²⁶ The Supreme Court held that, in a private right of action, the injured investor must have relied on the secondary actor's statements or actions for the secondary actor to incur liability.²⁷ The Court affirmed the court of appeals judgment, finding no reliance by Stoneridge on the statements or actions of Scientific-Atlanta or Motorola.²⁸

Justice Anthony M. Kennedy delivered the opinion of the Court.²⁹ Although § 10(b) does not explicitly provide a private right of action, the majority reaffirmed its previous holding that a private right of action is implied.³⁰ The elements of the implied private right of action are: (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.³¹ The Court found that Charter, in filing its fraudulent financial statements, did not rely on the statements or conduct of Scientific-Atlanta or Motorola.³² Stoneridge relied on Charter's fraudulent

24. *Stoneridge*, 128 S. Ct. at 767; *Stoneridge*, 443 F.3d at 992-93.

[N]either Motorola nor Scientific-Atlanta was alleged to have engaged in any such deceptive act [as defined by *Central Bank*]. They did not issue any misstatement relied upon by the investing public, nor were they under a duty to Charter investors and analysts to disclose information useful in evaluating Charter's true financial condition. None of the alleged financial misrepresentations by Charter was made by or even with the approval of [Scientific-Atlanta or Motorola].

Stoneridge, 443 F.3d at 993.

25. *Stoneridge*, 127 S. Ct. 1873.

26. *Stoneridge*, 128 S. Ct. at 767. "Decisions of the Courts of Appeals are in conflict respecting when, if ever, an injured investor may rely upon § 10(b) to recover from a party that neither makes a public misstatement nor violates a duty to disclose but does participate in a scheme to violate § 10(b)." *Id.*

27. *Id.* at 769. "Reliance by the plaintiff upon the defendant's deceptive acts is an essential element of the § 10(b) private cause of action." *Id.*

28. *Id.* at 774.

29. *Id.* at 765. Justice Kennedy was joined by Chief Justice John G. Roberts Jr. and Justices Antonin Scalia, Clarence Thomas, and Samuel Anthony Alito, Jr. *Id.* Justice Stevens filed a dissenting opinion. *Id.* Justice Stevens was joined by Justices David Hackett Souter and Ruth Bader Ginsburg. *Id.* Justice Stephen G. Breyer did not participate. *Id.*

30. *Id.* at 768. (citing *Superintendent of Ins. of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 13 n.9 (1971)).

31. *Stoneridge*, 128 S. Ct. at 768. (citing *Dura Pharm., Inc., v. Broudo*, 544 U.S. 336, 341-42 (2005)). Scienter is defined as "a wrongful state of mind . . ." *Dura*, 544 U.S. at 341. Loss causation is defined as "a causal connection between the material misrepresentation and the loss . . ." *Id.* at 342.

32. *Stoneridge*, 128 S. Ct. at 770. "It was Charter, not [Scientific-Atlanta or Motorola], that misled its auditor and filed fraudulent financial statements; nothing [Scientific-Atlanta or Motorola] did made it necessary or inevitable for Charter to record the transactions as it did." *Id.*

financial statements when it invested in Charter,³³ but this reliance, however, is too far removed from Charter's reliance on the actions of Scientific-Atlanta or Motorola to satisfy the reliance requirement under § 10(b).³⁴ Justice Kennedy concluded that, because Stoneridge failed to satisfy the reliance element of the implied private right of action, its claim must fail.³⁵

Justice John Paul Stevens authored a dissenting opinion in which he disagreed with the Court's rationale of the merits.³⁶ Justice Stevens found that when Stoneridge purchased shares of Charter's stock, it not only relied on Charter's financial statements, but also on the fact that Stoneridge had relied on the fraudulent documentation provided by Scientific-Atlanta and Motorola.³⁷ The dissent further argued that the court of appeals, when basing its judgment on § 10(b), misinterpreted the language of the statute.³⁸ Justice Stevens found that the actions of Scientific-Atlanta and Motorola fell within the language of § 10(b).³⁹ Justice Stevens also argued that the present case is distinguishable from *Central Bank*.⁴⁰ The dissent claimed that the defendant in *Central Bank* was in a similar position as Charter in the present case, because neither took affirmative steps to mislead its investors.⁴¹ Finally, Justice Stevens explained that Congress incorporated an implied private cause of action within the Securities Exchange Act of 1934.⁴²

The Securities and Exchange Commission (SEC) is a federal agency whose mission is to ensure that investors have a safe and fair environment in which they can buy, sell, and trade securities.⁴³ A security consists of any interest, whether of debt or ownership, one may have in a company, with

33. *Id.* at 767. "[R]esulting financial statements issued by Charter would be relied upon by research analysts and investors." *Id.*

34. *Id.* at 770. The Court concluded that the "deceptive acts" of Scientific-Atlanta and Motorola, "which were not disclosed to the investing public, are too remote to satisfy the [§ 10(b)] requirement of reliance." *Id.*

35. *Id.* at 774.

36. *Id.* (Stevens, J., dissenting). Justices Souter and Ginsburg joined. *Id.*

37. *Stoneridge*, 128 S. Ct. at 774 (Stevens, J., dissenting).

38. *Id.* at 775. Justice Stevens argued that the court of appeals erred when it interpreted § 10(b) to mean that "[a] device or contrivance is not 'deceptive,' within the meaning of § 10(b), absent some misstatement or a failure to disclose by one who has a duty to disclose." *Id.* (quoting *Stoneridge*, 443 F.3d at 992).

39. *Id.* Justice Stevens found that the actions of Scientific-Atlanta and Motorola, where they "produced documents falsely claiming costs had risen and signed contracts they knew to be backdated in order to disguise the connection between the increase in costs and the purchase of advertising—plainly describe[d] 'deceptive devices' under any standard reading of the phrase." *Id.*

40. *Id.*

41. *Id.* "[T]he fact that [the] Central Bank [of Denver] engaged in no deceptive conduct whatsoever—in other words, that it was at most an aider and abettor—sharply distinguishes *Central Bank* from cases that do involve allegations of such conduct." *Id.* (citing *Central Bank*, 511 U.S. at 167). The present facts show that Charter did issue fraudulent financial statements because Charter inflated its revenue and cash flow. *Id.* at 767.

42. *Stoneridge*, 128 S. Ct. at 779-82 (Stevens, J., dissenting). "[T]he Court is simply wrong when it states that Congress did not impliedly authorize this private cause of action 'when it first enacted the [§ 10(b)] statute' . . . Congress enacted § 10(b) with the understanding that federal courts respected the principle that every wrong would have a remedy." *Id.* (citation omitted).

43. BLACK'S LAW DICTIONARY 1384 (8th ed. 2004).

common examples being a stock, bond, or note.⁴⁴ The SEC was established in 1934 by the Securities Exchange Act of 1934.⁴⁵ Prior to 1933, only state law governed securities.⁴⁶ After the stock market crash of 1929, however, the federal government took action to restore investor confidence in the markets by passing comprehensive legislation to regulate securities.⁴⁷ Congress' efforts resulted in the Securities Act of 1933 and the Securities Exchange Act of 1934.⁴⁸

The SEC has the duty of enforcing the securities laws passed by Congress.⁴⁹ In addition to SEC enforcement, the Securities Act of 1933 and the Securities Exchange Act of 1934 provide for a private right of action in eight sections.⁵⁰ Section 10(b) of the Securities Exchange Act of 1934, however, does not expressly provide for a private right of action.⁵¹ Contrary to the express language of the statute, federal courts have recognized an implied private right of action under § 10(b).⁵²

The seminal case regarding an implied private right of action under § 10(b) is *Kardon v. National Gypsum Co.*⁵³ Kardon was persuaded, through fraudulent misrepresentations by the defendants, the Slavins and National, to sell their shares of stock at less than market value.⁵⁴ The Slavins and National argued that the court did not have jurisdiction over them because Kardon was a private party and private parties are precluded from bringing an

44. Securities Act of 1933 § 2(1), 15 U.S.C.S. § 77b(a)(1) (LexisNexis 2000).

The term "security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, an of the foregoing.

15 U.S.C.S. § 77b(a)(1).

45. BLACK'S LAW DICTIONARY 1384 (8th ed. 2004).

46. James D. Gordon III, *Acorns and Oaks: Implied Rights of Action Under the Securities Acts*, 10 STAN. J.L. BUS. & FIN. 62, 64 (2004).

47. U.S. Securities and Exchange Commission, <http://www.sec.gov/about/whatwedo.shtml> (follow "Creation of the SEC" hyperlink) (last visited Sept. 28, 2008).

48. U.S. Securities and Exchange Commission, *supra* note 47.

The main purposes of these laws can be reduced to two common-sense notions: [1] Companies publicly offering securities for investment dollars must tell the public the truth about their businesses, the securities they are selling, and the risks involved in investing. [2] People who sell and trade securities – brokers, dealers, and exchanges – must treat investors fairly and honestly, putting investors' interests first.

U.S. Securities and Exchange Commission, *supra* note 47.

49. U.S. Securities and Exchange Commission, *supra* note 47.

50. Gordon, *supra* note 46.

51. 15 U.S.C.S. § 78(j).

52. Gordon, *supra* note 46, at 67.

53. *Kardon v. Nat'l. Gypsum Co.*, 69 F. Supp. 512 (E.D. Pa. 1946).

54. *Kardon*, 69 F. Supp. at 513.

action under § 10(b).⁵⁵ The court held that although § 10(b) did not provide an express private right of action, an implied private right of action did exist.⁵⁶ First, the court relied on the *Restatement (First) of Torts* § 286 which held that a person is liable when his actions violate the interests protected by a statute.⁵⁷ Second, the court held that, as a matter of statutory interpretation, the statute's broad purpose outweighed the fact that a private right of action was absent from the explicit statutory text, thereby creating an implied private right of action.⁵⁸

This implied private right of action under § 10(b) was first promulgated by the Supreme Court of the United States in the 1971 decision of *Superintendent of Insurance of New York v. Banker's Life and Casualty Co.*⁵⁹ The Manhattan Casualty Co., represented here by the Superintendent of Insurance of New York, was liquidating all its stock.⁶⁰ Banker's Life conspired with one Begole and others to sell Manhattan's stock by having Manhattan pay for the stock with its own assets rather than the assets of the purchaser.⁶¹ This stock purchase was valued at \$5 million.⁶² Manhattan was deceived into selling its treasury bonds, and the funds realized from this sale were used by Begole to pay for the stock.⁶³ The Superintendent of Insurance of New York brought an action in alleging violations of § 17(a) of the Securities Act of 1933 and § 10(b) of the Securities Exchange Act of 1934.⁶⁴ The United States District Court for the Southern District of New York dismissed the complaint for failure to state a claim because, in its opinion, the alleged fraud was not a part of the securities transaction.⁶⁵ The court of appeals affirmed, holding that there was no injury to the investors from the alleged fraud.⁶⁶ The Supreme Court granted certiorari,⁶⁷ and reversed and remanded

55. *Id.*

56. *Id.* at 513-14.

57. *Id.* at 513.

The violation of a legislative enactment by doing a prohibited act, or by failing to do a required act, makes the actor liable for an invasion of an interest of another if:

(a) the intent of the enactment is exclusively or in part to protect an interest of the other as an individual; and

(b) the interest invaded is one which the enactment is intended to protect

RESTATEMENT (FIRST) OF TORTS § 286 (1934).

58. *Kardon*, 69 F. Supp. at 514. The court stated that "the whole statute discloses a broad purpose to regulate securities transactions of all kinds [I]n view of the general purpose of the [Securities Exchange Act of 1934], the mere omission of an express provision for civil liability is not sufficient to negative what the general law implies." *Id.*

59. *Superintendent of Ins. of N.Y. v. Banker's Life and Cas. Co.*, 404 U.S. 6, 13 n.9 (1971). "It is now established that a private right of action is implied under § 10(b)." *Id.*

60. *Superintendent of Ins. of N.Y.*, 404 U.S. at 7.

61. *Id.*

62. *Id.*

63. *Id.* at 8.

64. *Id.* at 7.

65. *Superintendent of Ins. of N.Y. v. Banker's Life and Cas. Co.*, 300 F. Supp. 1083, 1104 (S.D. N.Y. 1969).

66. *Superintendent of Ins. of N.Y. v. Banker's Life and Cas. Co.*, 430 F.2d 355, 361 (2d Cir. 1970).

67. *Superintendent of Ins. of N.Y. v. Banker's Life and Cas. Co.*, 401 U.S. 973 (1971).

the circuit court's decision.⁶⁸ Justice William Orville Douglas delivered the unanimous decision of the Court⁶⁹ which criticized the court of appeals' narrow reading of § 10(b) and held that the statute shall be given a broad interpretation.⁷⁰ The Court made clear that an implied private right of action exists under § 10(b).⁷¹

The use of the implied right of action continued to grow during the time period beginning with *Kardon* in 1946 and lasted until the mid 1970s.⁷² In 1975, the United States Supreme Court case of *Cort v. Ash* sought to reign in the use of the implied right of action.⁷³ In *Cort*, the Bethlehem Steel Corporation used corporate funds to pay for political advertisements during the months prior to the 1972 presidential election.⁷⁴ Ash, a shareholder in the Bethlehem Steel Corporation, filed suit seeking, inter alia, an injunction against Cort to stop the use of corporate funds in conjunction with the political advertisements.⁷⁵ Ash claimed a private right of action for relief under 18 U.S.C. § 610.⁷⁶ Section 610, however, is a criminal statute that did not provide for a private right of action.⁷⁷ The district court held that no implied private right of action was available to Ash.⁷⁸ The Court of Appeals for the Third Circuit reversed the district court's judgment and held that Ash had an implied private right of action under § 610.⁷⁹ The Court granted certiorari⁸⁰ to determine whether an implied private right of action existed under § 610.⁸¹ The Court answered this question in the negative.⁸² The Court presented four elements that must be satisfied before a court may recognize an implied private right of action under a statute that does not expressly provide one.⁸³ The first element asks whether the statute is meant to benefit a person

68. *Superintendent of Ins. of N.Y.*, 404 U.S. at 13.

69. *Id.* at 7.

70. *Id.* at 12. The Court held that "§ 10(b) must be read flexibly, not technically and restrictively. Since there was a 'sale' of a security and since fraud was used 'in connection with' it, there is redress under § 10(b), whatever might be available as a remedy under state law." *Id.*

71. *Id.* at 13 n.9.

72. Gordon, *supra* note 46, at 76.

73. *Id.*

74. *Cort v. Ash*, 422 U.S. 66, 70-71 (1975). A picture of Stewart S. Cort, chairman of the board of directors of the Bethlehem Steel Corporation, along with a speech he authored, appeared in the advertisements. *Id.* at 70. The political advertisements appeared in national publications like *Time*, *Newsweek*, and *U.S. News and World Report*. *Id.* Bethlehem also included the advertisement with stockholders' quarterly dividend checks. *Id.*

75. *Cort*, 422 U.S. at 71.

76. *Id.*

77. *Id.* at 74. While *Cort* was on appeal, § 610 was amended to provide a private right of action. *Id.* at 74-75.

78. *Cort v. Ash*, 496 F.2d 416, 420 (3d Cir. 1974), *rev'd*, 422 U.S. 66 (1975). The district court granted Cort's motion for judgment as a matter of law. *Id.*

79. *Cort*, 496 F.2d at 424.

80. *Cort*, 422 U.S. at 74.

81. *Id.* at 68.

82. *Id.* at 68-69.

83. *Id.* at 78.

such as the plaintiff.⁸⁴ The second element looks for legislative intent that indicates a remedy for the plaintiff exists.⁸⁵ Third, the implied remedy must not interfere with the statute's purpose.⁸⁶ Last, the remedy for the plaintiff's claim must be one where, normally, state law does not provide such a remedy.⁸⁷ Ash did not satisfy any of the four elements and accordingly, the Court did not find an implied private right of action.⁸⁸

The Court, in building upon its trend of narrowing the implied private right of action under § 10(b), next excluded aiders and abettors from § 10(b) implied private right of action liability.⁸⁹ *Central Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.* provided the Court with its last opportunity, prior to *Stoneridge*, to continue to limit the implied private right of action under § 10(b).⁹⁰

In *Central Bank*, the Colorado Springs-Stetson Hills Public Building Authority (Authority) issued bonds totaling \$26 million to finance a residential and commercial development project.⁹¹ AmWest Development Corporation (AmWest) was the general partner of the developer, AmWest Development I Limited Partnership.⁹² Central Bank served as trustee for the bonds.⁹³ The bond covenants required the bonds to be secured by liens with a value of at least 160% of the bonds' outstanding principal and interest.⁹⁴

In January 1988, Central Bank received from AmWest an updated appraisal of the land that secured the bonds.⁹⁵ Central Bank compared the

84. *Id.* The Court first asked whether "the plaintiff [is] 'one of the class for whose especial benefit the statute was enacted,' – that is, does the statute create a federal right in favor of the plaintiff?" *Id.* (citation omitted).

85. *Cort*, 422 U.S. at 78. The second element asks whether there "is [] any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one?" *Id.*

86. *Id.* The Court next inquired whether the plaintiff's complaint "is [] consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?" *Id.*

87. *Id.* Last, the Court asked whether "the cause of action[, sought by the plaintiff to be implied by the court,] one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action bases solely on federal law?" *Id.*

88. *Id.* at 81-85.

89. Meyer Eisenberg, *Meyer Eisenberg on Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc., et al.*, LEXISNEXIS EXPERT COMMENTARIES, March 2008, available at <http://www.lexis.com/research/transactionalAdvisor> (last visited Oct. 19, 2008).

[*Stoneridge v. Scientific-Atlanta*] continues the process of narrowing the ability of investors to bring Section 10(b) civil actions for securities fraud. Both the courts and Congress have in recent years reversed the trend of 1960-75 where implied private rights of action for defrauded investors under Section 10(b) were broadly recognized in virtually every circuit, as well as under other sections of the 1934 Act . . .

Eisenberg, *supra* note 89.

90. Eisenberg, *supra* note 89. 511 U.S. 164.

91. *Cent. Bank*, 511 U.S. at 167. The Colorado Springs-Stetson Hills Public Building Authority issued the bonds first in 1986 and again in 1988. *Id.* The bonds were secured by landowner assessment liens. *Id.*

92. *First Interstate Bank of Denver, N. A., v. Cent. Bank of Denver*, 969 F.2d 891, 893 (10th Cir. 1992).

93. *Cent. Bank*, 511 U.S. at 167.

94. *Id.*

95. *Id.*

1988 appraisal to the previous 1986 appraisal and found little change.⁹⁶ Soon after Central Bank received the January 1988 appraisal, the underwriter for the bonds notified Central Bank that the bonds were not secured according to the 160% requirement.⁹⁷ Central Bank's in-house appraiser found that the January 1988 appraisal was over-valued and suggested that an outside appraiser independently review the appraisal.⁹⁸ In a letter to AmWest dated March 22, 1988, Central Bank directed AmWest to have its January 1988 appraisal independently reviewed.⁹⁹ Central Bank and AmWest then engaged in a series of meetings and, as a result, Central Bank agreed to postpone the independent review of the January 1988 appraisal until the end of 1988.¹⁰⁰ The December 1988 appraisal was started but the Authority defaulted on the bonds before it was complete.¹⁰¹ First Interstate Bank had previously bought \$2.1 million of the 1988 bonds.¹⁰²

First Interstate Bank brought a fraud action under § 10(b) against the primary defendants AmWest, the Authority, and the underwriter.¹⁰³ First Interstate Bank also brought an action against Central Bank alleging that it aided and abetted the alleged fraud committed by the primary defendants under § 10(b).¹⁰⁴ The district court dismissed the complaint against Central Bank.¹⁰⁵ The court of appeals reversed the district court's judgment finding that First Interstate Bank had alleged sufficient facts to go forward with its complaint.¹⁰⁶ The Court granted certiorari and directed the parties to address the issue of whether § 10(b) implied secondary liability on aiders and abettors.¹⁰⁷ The Court then reversed the court of appeals¹⁰⁸ and refused to recognize an implied private right of action for aiding and abetting under § 10(b).¹⁰⁹

96. *Id.*

97. *Id.* The underwriter based his finding on the fact that the value of the landowner assessment liens had been calculated using appraisals that were already sixteen months old and that property values were declining. *Id.*

98. *Cent. Bank*, 511 U.S. at 167-68.

99. *First Interstate Bank*, 969 F.2d at 894-95.

100. *Id.* at 895.

101. *Cent. Bank*, 511 U.S. at 168.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *First Interstate Bank*, 969 F.2d at 904.

107. *Cent. Bank*, 511 U.S. at 170 (citing *Cent. Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.*, 509 U.S. 959 (1993)). The Court directed the parties to answer the question of "[w]hether there is an implied private right of action for aiding and abetting violations of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5." *Cent. Bank*, 508 U.S. at 959.

108. *Cent. Bank*, 511 U.S. at 191.

109. *Id.* The Court held that there is "no private aiding and abetting liability under § 10(b) [and accordingly] Central Bank may not be held liable as an aider and abettor. The District Court's grant of summary judgment to Central Bank was proper, and the judgment of the Court of Appeals is reversed." *Id.*

Justice Kennedy delivered the opinion of the Court in *Central Bank*.¹¹⁰ The majority began by acknowledging the fact that Congress did not provide an express private right of action under § 10(b), but that an implied private right of action has been inferred under § 10(b).¹¹¹ The Court stated that although an implied private right of action exists, the defendant's alleged conduct for which a remedy is sought must be within the statutory language of § 10(b).¹¹² The majority reached the conclusion that the language of § 10(b) does not include liability against aiders and abettors of parties who violated § 10(b).¹¹³ The Court reaffirmed its previous holding that § 10(b) liability only exists where the alleged conduct of the violator includes a material misstatement, omission, or manipulative act.¹¹⁴ First Interstate Bank argued that § 10(b) includes aiding and abetting liability because the statutory language expressly includes direct and indirect acts of an alleged violator.¹¹⁵ The majority rejected this argument.¹¹⁶ The majority stated that aiding and abetting liability encompasses actions even more remote than an indirect action in relation to the primary violation.¹¹⁷

The Court held that the absence of aiding and abetting provisions in the statutory language of § 10(b) is determinative and did not discuss any other issues.¹¹⁸ The Court, however, went on to state that even if the absence of aiding and abetting in the statutory language did not resolve the case, the Court would still reach the same conclusion based on the intent of Congress.¹¹⁹ In support of this position, the majority looked to other sections of the Securities Act of 1934 where Congress expressly provided a private right

110. *Id.* at 165-66. Justice Kennedy was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Scalia, and Thomas. *Id.* Justice Stevens filed a dissenting opinion. *Cent. Bank*, 511 U.S. at 192 (Stevens, J., dissenting). Justice Stevens was joined by Justices Harry A. Blackmun, Souter and Ginsburg. *Id.*

111. *Id.* at 173.

112. *Id.*

Of course, a private plaintiff now may bring suit against violators of § 10(b). But the private plaintiff may not bring a 10b-5 suit against a defendant for acts not prohibited by § 10(b) [Supreme Court] cases considering the scope of conduct prohibited by § 10(b) in private suits have emphasized adherence to the statutory language. . . .

Id.

113. *Cent. Bank*, 511 U.S. at 177. "[T]he text of [§ 10b] of the 1934 Act does not itself reach those who aid and abet a § 10(b) violation." *Id.*

114. *Id.* The Court stated that "we again conclude that the [§ 10(b)] statute prohibits only the making of a material misstatement (or omission) or the commission of a manipulative act." *Id.* (citing *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 473 (1977); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 214 (1976)).

115. *Cent. Bank*, 511 U.S. at 175. The SEC amicus curiae brief made this same argument. *Id.*

116. *Id.* at 176.

117. *Id.* According to the majority, "[t]he problem . . . is that aiding and abetting liability extends beyond persons who engage, even indirectly, in a proscribed activity; aiding and abetting liability reaches persons who do not engage in the proscribed activities at all, but who give a degree of aid to those who do." *Id.*

118. *Id.* at 178. "Because this case concerns the conduct prohibited by § 10(b), the statute itself resolves the case . . ." *Id.*

119. *Id.* "[E]ven if [the statutory language] did not [resolve the case], we would reach the same result." *Id.*

of action.¹²⁰ This examination led to the finding that none of the express private rights of action contained language regarding the liability of aiders and abettors.¹²¹ Based on that reasoning, the Court concluded that if Congress intended to include an express private right of action under § 10(b) that made aiders and abettors liable, Congress would have expressly included aiders and abettors in the statutory language.¹²² Congress' failure to include such a clause, in the Court's opinion, meant that aiders and abettors are not to be liable.¹²³

In the dissent, Justice Stevens disagreed with the majority and concluded that § 10(b) does include an implied private right of action against aiders and abettors.¹²⁴ Justice Stevens first supported his conclusion with the decisions of the courts of appeal, and cited eleven circuit court cases that dealt with this issue and recognized liability for aiders and abettors.¹²⁵ The dissent also pointed out that because the inclusion of aider and abettor liability has been repeatedly recognized by the courts, any change to the courts' interpretation should come from Congress.¹²⁶ Due to Congress' inaction regarding the courts' interpretation of aider and abettor liability, the dissent argued that the courts' interpretation and application of the statute are correct.¹²⁷

In an Op-Ed piece in the WALL STREET JOURNAL, former SEC Commissioner Mr. Paul S. Atkins supported the majority opinion in *Stoneridge*.¹²⁸ Further, one cannot deny that the statutory text of § 10(b) does not expressly provide a private cause of action for violations of the statute.¹²⁹ The Supreme Court, however, incorrectly held that Motorola and Scientific-Atlanta are not liable under the implied private right of action of § 10(b).¹³⁰

The following three arguments contradict the majority's opinion and will be discussed at length in the following analysis. First, it was not Congress' intent to hold only primary actors liable under § 10(b). Second, it is clear that Charter's reliance upon Motorola and Scientific-Atlanta to carry out its misrepresentation carried over to *Stoneridge*. Finally, third, the Court failed

120. *Cent. Bank*, 511 U.S. at 179.

121. *Id.*

122. *Id.* "From the fact that Congress did not attach private aiding and abetting liability to any of the express causes of action in the securities Acts, we can infer that Congress likely would not have attached aiding and abetting liability to § 10(b) had it provided a private § 10(b) cause of action." *Id.*

123. *Id.*

124. *Id.* at 192 (Stevens, J., dissenting).

125. *Cent. Bank*, 511 U.S. at 192-94 (Stevens, J., dissenting).

126. *Id.* at 196.

127. *Id.* The dissent stated that "a 'settled construction of an important federal statute should not be disturbed unless and until Congress so decides.'" *Id.* (citing *Reves v. Ernst & Young*, 494 U.S. 56, 74 (1990) (Stevens, J., concurring)).

128. Paul S. Atkins, Op-Ed., *Public Statement by SEC Commissioner: Stoneridge and the Rule of Law*, WALL ST. J., January 25, 2008, available at <http://www.sec.gov/news/speech.shtml> (last visited Oct. 28, 2008) (Mr. Atkins was an active SEC Commissioner when his Op-Ed piece was published.).

129. *Stoneridge*, 128 S. Ct. at 768.

130. *Id.* at 774 (Stevens, J., dissenting).

to distinguish the present facts under *Stoneridge* from the circumstances in the Court's previous decision of *Central Bank*.

The Supreme Court has recognized an implied private right of action under § 10(b) for primary actors where this right of action originates from the Securities Exchange Act of 1934, as distinguished from the rules promulgated by the SEC.¹³¹ The implied private right of action provides for the enforcement and implementation of the legislative intent of the Securities Exchange Act of 1934, of which § 10(b) is promulgated under.¹³² In *Central Bank*, however, the Court refused to extend this implied private right of action to secondary actors.¹³³ It is true that a secondary actor conducting itself as an aider and abettor and not performing a manipulative or deceptive act is not liable under § 10(b).¹³⁴ The actions of Motorola and Scientific-Atlanta acknowledged by the Court to be unfair and dishonest,¹³⁵ however, were actions that the Securities Exchange Act of 1934 was intended to regulate.¹³⁶ Therefore, § 10(b) liability does extend to secondary actors whose actions are within the intent of the Securities Exchange Act as already declared by the Court in *Stoneridge*.¹³⁷ The Court erred when it did not recognize the primary violations performed by Motorola and Scientific-Atlanta.¹³⁸

The Supreme Court chose not to recognize any reliance by Stoneridge on either Motorola or Scientific-Atlanta.¹³⁹ Stoneridge, however, did rely on the acts of Motorola and Scientific-Atlanta.¹⁴⁰ Stoneridge relied on Char-

131. *Id.* at 768. See also Stuart M. Grant & James J. Sabella, *Stoneridge: Did it Close the Door to "Scheme Liability"?*, 1692 PRAC. L. INST. CORP. L. & PRAC. COURSE HANDBOOK SERIES 430, 438 (2008). "[T]he Court affirmed that an implied private right of action under Section 10(b) comes from the test of the Securities Exchange Act itself, not merely from the SEC's rules promulgated thereunder" Grant & Sabella, *supra*, at 438.

132. Securities Exchange Act of 1934 § 2, 15 U.S.C.S. § 78b (LexisNexis 1975).

"For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national *public* interest which makes it necessary to provide for regulation and control of such transactions and of the *practices and matters related* thereto . . . to insure the maintenance of *fair and honest* markets in such transactions"

15 U.S.C.S. § 78b (emphasis added).

133. *Stoneridge*, 128 S. Ct. at 767.

134. *Cent. Bank*, 511 U.S. at 177.

135. *Stoneridge*, 128 S. Ct. at 767.

136. 15 U.S.C.S. § 78b. See also *supra* text accompanying note 132.

137. *Stoneridge*, 128 S. Ct. at 773-74. The Court stated that "[t]he securities statutes provide an express private right of action against accountants and underwriters in certain circumstances, see 15 U.S.C. § 77k, and the implied right of action in § 10(b) continues to cover secondary actors who commit primary violations." *Id.*

138. *Id.* at 775 (Stevens, J., dissenting).

The allegations in this case – that [Motorola and Scientific-Atlanta] produced documents falsely claiming costs had risen and signed contracts they knew to be backdated in order to disguise the connection between the increase in costs and the purchase of advertising – plainly describe "deceptive devices" under any standard reading of the phrase [as used in § 10(b)].

Id.

139. *Id.* at 769.

140. *Id.* at 775 (Stevens, J., dissenting). "[Stoneridge] relied on Charter's revenue statements in deciding whether to invest in Charter and in doing so relied on [Motorola's and Scientific-Atlanta's]

ter's financial statements that were a product of the false documentation provided by Motorola and Scientific-Atlanta.¹⁴¹

The acts of Motorola and Scientific-Atlanta were an essential, and therefore material, part of Charter's scheme to misstate its earnings. If this was not the case, Charter would not have requested Motorola and Scientific-Atlanta to supply the false documentation of the transactions. Charter's objective was to hide its fraudulent practices from its auditor to give the perception that it would meet its financial projections.¹⁴² In order to deceive its auditor, Charter requested that Motorola and Scientific-Atlanta provide the false documentation.¹⁴³ Charter would also want to limit knowledge of its fraudulent practices to the least number of parties to reduce the risk that its auditor, the investing public, and the SEC would gain such knowledge.

To limit the number of parties having knowledge of Charter's fraudulent practices, Charter would have only involved the parties necessary to hide its fraudulent practices. It is logical to discern that, if Charter did not find it necessary to obtain the false documentation from Motorola and Scientific-Atlanta, it would not have requested them and simply would have provided the false information directly to its auditor. This, however, was not the case. Motorola's and Scientific-Atlanta's production of false documents was an essential element in Charter's misrepresentation to its auditor and to the public. The essential, and therefore material, nature of the false documents demonstrates Charter's reliance on the acts of Motorola and Scientific-Atlanta.

To argue in the alternative, the only explanation of non-reliance by Charter upon Motorola and Scientific-Atlanta is that Charter carelessly took unnecessary risks when requesting the false documentation. The complexity of the fraudulent schemes Charter deliberately employed to improve its cash flow make it highly unlikely that Charter would take such unnecessary risks.

Although the court of appeals failed to find reliance by Stoneridge on the acts of Motorola and Scientific-Atlanta, the court did not find this fact alone dispositive of Stoneridge's claim.¹⁴⁴ The Eighth Circuit found it necessary to label Motorola and Scientific-Atlanta as aiders and abettors and invoke the Supreme Court's holding from *Central Bank* where the Court held that aiders and abettors are not liable under an implied private right of action.¹⁴⁵ Therefore, it was *Central Bank* that allowed the court of appeals to affirm the district court's dismissal of Stoneridge's claim.¹⁴⁶

fraud, which was itself a "deceptive device" prohibited by § 10(b) of the Securities Exchange Act of 1934." *Id.*

141. *Id.* See also *supra* text accompanying note 140.

142. *Stoneridge*, 128 S. Ct. at 767.

143. *Id.*

144. *Stoneridge*, 443 F.3d at 992.

145. *Id.* "Accordingly, the district court properly dismissed the claims against [Motorola and Scientific-Atlanta] as nothing more than claims, barred by *Central Bank*, that [Motorola and Scientific-Atlanta] aided and abetted the Charter defendants in deceiving the investor plaintiffs." *Id.*

146. *Id.*

The court of appeals and the Supreme Court, however, failed to distinguish the present facts from the circumstances presented in *Central Bank*.¹⁴⁷ The major distinction centers around the fact that in *Central Bank*, the defendant itself did not perform an act that violated § 10(b).¹⁴⁸ Motorola and Scientific-Atlanta, on the other hand, did perform acts that violated § 10(b) in *Stoneridge*.¹⁴⁹ The Court in *Central Bank* correctly recognized that the Central Bank of Denver was merely an aider and abettor because it had not performed a deceptive act.¹⁵⁰ The Court in the present case, however, failed to recognize this distinction and withheld Stoneridge's implied private right of action even though Motorola and Scientific-Atlanta were not aiders and abettors as defined in *Central Bank*.¹⁵¹ Accordingly, it follows that *Central Bank* is not dispositive of Stoneridge's claim and the court of appeals and the Supreme Court erred in relying on it as precedent.¹⁵²

The above analysis supports the only reasonable conclusion that the Court erred in holding Motorola and Scientific-Atlanta not liable under the implied private right of action found within § 10(b). First, the actions of Motorola and Scientific-Atlanta were of the type that the Securities Exchange Act of 1934 intended to regulate. Second, Stoneridge not only relied on Charter's financial statements, but also relied on the documentation provided by Motorola and Scientific-Atlanta. Third, the Court failed to distinguish between the aiders and abettors as defined in *Central Bank* and the circumstances in *Stoneridge*.

The outcome of future cases involving manipulative or deceptive acts performed by secondary actors is difficult to predict. The first action potential plaintiffs, that is, all investors, may take is a preventive approach by lobbying their congressional representatives to amend § 10(b) of the Securities Exchange Act of 1934 to provide for a private right of action for both primary and secondary actors.¹⁵³ Any new regulation, however, must address the reliance requirement between a plaintiff and both primary and secondary actors, including aiders and abettors, to avoid the type of ambiguous judicial reasoning present in *Stoneridge*.¹⁵⁴

147. *Stoneridge*, 128 S. Ct. at 775 (Stevens, J., dissenting).

148. *Id.*

149. *Id.*

150. *Id.* "[T]he fact that Central Bank engaged in no deceptive conduct whatsoever – in other words, that it was at most an aider and abettor – sharply distinguishes Central Bank from cases that do involve allegations of such conduct." *Id.*

151. *Id.*

152. *Stoneridge*, 128 S. Ct. at 775 (Stevens, J., dissenting).

153. Barbara Black, *Stoneridge Investment Partners v. Scientific-Atlanta, Inc.: Reliance on Deceptive Conduct and the Future of Securities Fraud Class Actions*, 36 No.2 SEC. REG. L.J., Summer 2008, at 1, 8.

154. See Grant & Sabella, *supra* note 131, at 431. "[T]he Court's opinion – a 5-3 decision that was based on a relatively narrow ground – left behind enough loose ends for future plaintiffs to latch onto in efforts to sue participants in fraudulent schemes who have not made a public statement." Grant & Sabella, *supra* note 131, at 431.

Second, absent an amendment of § 10(b), a private plaintiff wishing to bring a § 10(b) action against any defendant, whether it be a primary or secondary actor, must meet the reliance requirement as set forth in *Stoneridge*.¹⁵⁵ The Court set out two circumstances where reliance by the plaintiff on the actions of the defendant is presumed.¹⁵⁶ First, reliance is presumed where the defendant has a duty to disclose a material fact to the plaintiff but fails to do so.¹⁵⁷ Second, reliance is presumed once the public has knowledge of the defendant's alleged deceptive statements at issue.¹⁵⁸ When the circumstances do not permit a presumption of reliance, reliance can be shown only where: (1) the plaintiff knew or should have known of the defendant's actions at issue, and (2) the plaintiff knew the defendant's identity.¹⁵⁹

Last, the Court may have left open the possibility that the elements of the reliance requirement may change depending on the circumstances under which the deceptive conduct occurred.¹⁶⁰ The Court specifically labeled Motorola and Scientific-Atlanta as customers and suppliers.¹⁶¹ The Court also expressly distinguished the retail nature of the transactions between Charter and both Motorola and Scientific-Atlanta from transactions of a financial nature.¹⁶² It may be inferred from the Court's opinion that in a future case involving secondary actors engaged in a transaction of a financial nature, the secondary actors may be subject to a different set of elements to prove reliance.¹⁶³

The financial crisis of 2007-2008¹⁶⁴ that has gripped the economies of the United States and the world will certainly result in increased litigation.¹⁶⁵

155. *Stoneridge*, 128 S. Ct. at 769. "Reliance by the plaintiff upon the defendant's deceptive acts is an essential element of the § 10(b) private cause of action." *Id.* See also Grant & Sabella, *supra* note 131, at 438-39.

156. *Id.*

157. *Id.* "[I]f there is an omission of a material fact by one with a duty to disclose, the investor [plaintiff] to whom the duty was owed need not provide specific proof of reliance." *Id.*

158. *Id.* "[U]nder the fraud-on-the-market doctrine, reliance is presumed when the statements at issue become public. The public information is reflected in the market price of the security. Then it can be assumed that an investor who buys or sells stock at the market price relies upon the statement." *Id.*

159. *Id.* "No member of the investing public had knowledge, either actual or presumed, of [Motorola's or Scientific-Atlanta's] deceptive acts during the relevant times." *Id.* See also Black, *supra* note 153, at 4.

160. Grant & Sabella, *supra* note 131, at 441.

161. *Stoneridge*, 128 S. Ct. at 766. "[Motorola and Scientific-Atlanta] were suppliers, and later customers, of Charter." *Id.*

162. *Id.* at 774. "Unconventional as the arrangement was, it took place in the marketplace for goods and services, not in the investment sphere." *Id.*

163. Grant & Sabella, *supra* note 131, at 441.

[T]he emphasis in *Stoneridge* on the fact that the fraud occurred in the marketplace for goods, not in the realm of financing business, suggests that in future cases involving deceptive schemes relating to securities and investment transactions, a different analysis of the chain of reliance for Rule 10b-5(a) and (c) claims might be justified.

Id.

164. Gretchen Morgenson, *Bear Stearns Says Battered Hedge Funds Are Worth Little*, N.Y. TIMES, July 18, 2007, available at <http://www.nytimes.com/2007/07/18/business/18bond.html> (last visited Oct. 19, 2008).

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Investors will seek to recover damages from those who participated in unlawful conduct that resulted in losses. After *Stoneridge*, a private plaintiff attempting to recover damages under § 10(b) has a steep hill to climb.

Dennis J. Hough Jr.

165. Jonathan D. Glater, *Financial Crisis Provides Fertile Ground for Boom in Lawsuits*, N.Y. TIMES, October 18, 2008, available at <http://www.nytimes.com/2008/10/18/business/18suits.html> (last visited Oct. 19, 2008).