

impose liability for reckless or negligent behavior and how to create strict liability for violations of the federal securities laws.⁸ But Congress did not use such language to impose Section 10(b) liability on reckless behavior. Therefore, just as there is no liability for aiding and abetting a violation of Section 10(b) because Congress knew how to create such liability but did not,¹⁰ and just as there is no liability under Section 12(l) of the Securities Act, 17 U.S.C. § 771(l), for participants who are merely collateral to an offer or sale because Congress knew how to create such liability but did not,¹¹ and just as there is no remedy under Section 10(b) for those who neither purchase nor sell securities because Congress knew how to create such a remedy but did not,¹² there can be no liability for reckless conduct under Section 10(b) because Congress clearly knew how to impose liability for reckless behavior but did not.

The Supreme Court has, moreover, emphasized that the securities laws "should not be read as a series of unrelated and isolated provisions."¹³ The federal securities laws are to be interpreted consistently and as part of an interrelated whole.¹⁴ In *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083 (1991), the Court reserved "the question whether scienter was necessary for liability under § 14(a)."¹⁵ The Court nonetheless held that statements of "reasons, opinions or belief" are actionable under § 14(a), 15 U.S.C. 78n(a), and Rule 14a-9, 17 C.F.R. § 240.14a-9, as false or misleading only if there is proof of (1) subjective "disbelief or undisclosed motivation," and (2) objective falsity. 501 U.S. at 1095-96. Justice Scalia explained the Court's holding as follows:

As I understand the Court's opinion, the statement "In the opinion of the Directors, this is a high value for the shares" would produce liability if in fact it was not a high value and the Directors knew that. It would not produce liability if in fact it was not a high value but the Directors honestly believed otherwise. The statement "The Directors voted to accept the proposal because they believe it offers a high value" would not produce liability if in fact the Directors' genuine motive was quite different—except that it would produce liability if the proposal in fact did not offer a high value and the Directors knew that.¹⁶

It follows that, if: (A) a statement must be subjectively disbelieved in order to be actionable under Section 14(a), a provision that may or may not require scienter, then: (B) *a fortiori*, under Section 10(b), a provision that clearly requires scienter, plaintiffs must show subjective awareness of a scheme or device.

Any other result would lead to the anomalous conclusion that statements actionable under Section 10(b), the more restrictive "catchall" provision of the federal securities laws, *Hochfelder*, 425 U.S. at 203, would not be actionable under Section 14(a). Indeed, "[t]here is no indication that Congress intended anyone to be made liable [under § 10(b)] unless he acted other than in good faith [and] [t]he catchall provision of § 10(b) should be interpreted no more broadly." *Id.* at 206.¹⁷

The language of the text, the legislative history, and the structure of the statute therefore each compel the conclusion that intentional conduct is a prerequisite for liability under Section 10(b).

Additionally, the Reform Act established a heightened pleading standard for private secu-

rities fraud lawsuits. The Conference Report accompanying the Reform Act stated in relevant part:

The Conference Committee language is based in part on the pleading standard of the Second Circuit. The standard also is specifically written to conform the language to rule 9(b)'s notion of pleading with "particularity."

Regarded as the most stringent pleading standard, the Second Circuit requirement is that the plaintiff state facts with particularity, and that these facts must give rise to a strong inference of the defendant's fraudulent intent. Because the Conference Committee intends to strengthen existing pleading requirements, it does not intend to codify the Second Circuit's case law interpreting this pleading standard. Footnote: For this reason, the conference Report chose not to include in the pleading standard certain language relating to motive, opportunity, or recklessness.¹⁸

The Conference Report accompanying S. 1260 is consistent with that heightened pleading standard articulated in 1995.

FOOTNOTES

¹ 425 U.S. 185 (1976).

² 17 C.F.R. § 240.10b-5.

³ 459 U.S. 375 (1983).

⁴ We are grateful to Professor Joe Grundfest and Ms. Susan French of Stanford University for guidance to us on these questions.

⁵ *Hochfelder*, 425 U.S. at 197 (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring). See also *Gustafson v. Alloyd Co.*, 115 S. Ct. 1061, 1074 (1995) (Thomas, J., Dissenting). *Central Bank*, 114 S. Ct. at 1446; *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985); *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 472 (1977).

⁶ *Central Bank*, 114 S. Ct. at 1441-42 (quoting *Musick, Peeler* 113 S. Ct. at 2089-90).

⁷ See *Hochfelder*, 425 U.S. at 199 n. 20 ("device" means "that which is devised, or formed by design; a contrivance; an invention; project; scheme; often a scheme to deceive; a stratagem; an artifice") (quoting Webster's International Dictionary (2d ed. 1934)); *id.* (defining "contrivance" as "'[a] thing contrived or used in contrivance; a scheme . . .").

⁸ *Hochfelder*, 425 U.S. at 193 n. 12. Cf. *Santa Fe Industries*, 430 U.S. at 478; *Schreiber v. Burlington Northern Inc.*, 472 U.S. 1, 5-8 (1985).

⁹ Section 11 of the Securities Act of 1933, 15 U.S.C. § 77k, for example, imposes strict liability on the issuer for material misstatements or omissions in a registration statement and a "sliding scale" negligence standard on other participants in the offering process. See *Hochfelder*, 425 U.S. at 208. Sections 17 (a)(2) and (3) of the Securities Act, 15 U.S.C. § 77(a)(2), (3), impose liability for negligent or reckless conduct in the sale of securities. *Aaron*, 446 U.S. at 697.

¹⁰ *Central Bank*, 114 S. Ct. at 1448 ("Congress knew how to impose aiding and abetting liability when it chose to do so.") (citing statutes).

¹¹ *Pinter v. Dahl*, 486 U.S. 622, 650 & n.26 (1988) (Congress knew how to provide liability for collateral participants in securities offerings when it chose to do so).

¹² *Blue Chip*, 421 U.S. at 734 ("When Congress wished to provide a remedy for those who neither purchase nor sell securities, it has little trouble doing so expressly.")

¹³ *Gustafson v. Alloyd Co.*, 115 S. Ct. 1061, 1067 (1995).

¹⁴ See, e.g., *Hochfelder*, 425 U.S. at 206 (citing *Blue Chip*, 421 U.S. at 727-30; *SEC v. National Sec., Inc.*, 393 U.S. 453, 466 (1969)).

¹⁵ 501 U.S. at 1090 n. 5 (citing *TSC Indus. Inc. v. Northway, Inc.*, 426 U.S. 438, 444 n. 7 (1976) (reserving the same question)).

¹⁶ 501 U.S. at 1108-09 (Scalia, J., concurring in part and concurring in the judgment).

¹⁷ The Supreme Court has previously extended holdings from § 14(a)'s proxy antifraud provisions to § 10(b)'s general antifraud provision. See, e.g., *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (adopting for purposes of § 10(b) liability the standard for materiality initially defined under § 14(a) by *TSC*, 426 U.S. at 445).

¹⁸ Conference Report accompanying the Private Securities Litigation Reform Act of 1995, p. 41, 48.

OMISSION FROM THE CONGRESSIONAL RECORD OF OCTOBER 14, 1998, PAGE H10875

ANNOUNCEMENT OF LEGISLATION TO BE CONSIDERED UNDER SUSPENSION OF THE RULES ON THURSDAY, OCTOBER 15, 1998

Mr. FOLEY. Mr. Speaker, pursuant to House Resolution 589, I hereby give notice that the following suspensions will be considered on Thursday, October 15, 1998:

1. S. 1733—To Require the Commissioner of Social Security and Food Stamp State Agencies to Take Certain Actions to Ensure that Food Stamp Coupons are not Issued for Deceased Individuals.

2. H.R. 4821—A bill to extend into fiscal year 1999 the visa processing period for diversity applicants whose visa processing was suspended during fiscal year 1998 due to embassy bombings.

3. S.J. Res. 35—granting the consent of Congress to the Pacific Northwest Emergency Management Arrangement.

4. S. 1134—granting the consent and approval of Congress to an interstate forest fire protection compact.

S. 610.—Chemical Weapons Convention Implementation.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. GREEN (at the request of Mr. GEPHARDT) for today, on account of official business in the district.

Mr. THOMPSON (at the request of Mr. GEPHARDT) for today, on account of official business in the district.

Mr. HUTCHINSON (at the request of Mr. ARMEY) for today until 7 p.m., on account of official business.

Mr. SCARBOROUGH (at the request of Mr. ARMEY) for October 14, on account of personal reasons.

Ms. EDDIE BERNICE JOHNSON of Texas (at the request of Mr. GEPHARDT) for today and October 16, on account of events in the district.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

The following Members (at the request of Mr. FILNER) to revise and extend their remarks and include extraneous material:

Mr. FILNER, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Mr. BECERRA, for 5 minutes, today.

Mr. MINGE, for 5 minutes, today.

The following Members (at the request of Mr. FILNER) to revise and extend their remarks and include extraneous material:

Mr. GOODLING, for 5 minutes, today.

Mr. SAXTON, for 5 minutes, today.

Mr. RIGGS, for 5 minutes, today.
 Mr. EWING, for 5 minutes, today.
 Mr. SMITH of Michigan, for 5 minutes, today.

Mr. TIAHRT, for 5 minutes, today.

The following Members (at their own request) to revise and extend their remarks and include extraneous material:

Mr. HAYWORTH, for 5 minutes, today.

Mr. WELLER, for 5 minutes, today.

The following Members (at their own request) to revise and extend their remarks and include extraneous material:

Mr. WAMP, for 5 minutes, today.

Mr. MCCOLLUM, for 5 minutes, today.

The following Members (at their own request) to revise and extend their remarks and include extraneous material:

Mr. BUYER, for 5 minutes, today.

Mr. MCINNIS, for 5 minutes, today.

Mr. SESSIONS, for 5 minutes, today.

Mr. NETHERCUTT, for 5 minutes, today.

Mr. LATHAM, for 5 minutes, today.

Mr. TAYLOR of Mississippi, for 5 minutes, today.

Mr. CUNNINGHAM, for 5 minutes, today.

Mr. SOUDER, for 5 minutes, today.

A BILL PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Oversight, reported that that committee did on this day present to the President, for his approval, a bill of the House of the following title:

H.R. 8. To amend the Clean Air Act to deny entry into the United States of certain foreign motor vehicles that do not comply with State laws governing motor vehicle emissions, and for other purposes.

ADJOURNMENT

Mr. SHADEGG. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 22 minutes p.m.), under its previous order, the House adjourned until tomorrow, Friday, October 16, 1998, at 1 p.m.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BURTON: Committee on Government Reform and Oversight. Hepatitis C: Silent Epidemic, Mute Public Health Response (Rept. 105-820). Referred to the Committee of the Whole House on the State of the Union.

Mr. BURTON: Committee on Government Reform and Oversight. Medicare Home Health Services: No Surety in the Fight Against Fraud and Waste (Rept. 105-821). Referred to the Committee of the Whole House on the State of the Union.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. SHUSTER. Committee on Transportation and Infrastructure. H.R. 2748. A bill to amend title 49, United States Code, to provide assistance and slots with respect to air carrier service between high density airports and airports not receiving sufficient air service, to improve jet aircraft service to underserved markets, and for other purposes; with an amendment; referred to the Committee on Judiciary for a period ending not later than October 16, 1998, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(j), rule X. (Rept. 105-822, Pt. 1).

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred, as follows:

By Mrs. THURMAN (for herself and Mr. SCARBOROUGH):

H.R. 4842. A bill to release the reversionary interests retained by the United States in four deeds that conveyed certain lands to the State of Florida so as to permit the State to sell, exchange, or otherwise dispose of the lands, and to provide for the conveyance of certain mineral interests of the United States in the lands to the State of Florida; to the Committee on Agriculture.

By Ms. ROYBAL-ALLARD:

H.R. 4843. A bill to amend titles XVIII and XIX of the Social Security Act to require skilled nursing facilities and nursing facilities filing for relief under title 11 of the United States Code to provide to appropriate State agencies written notice of such filing, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STARK:

H.R. 4844. A bill to improve the quality of child care through grants and a commission on child care standards, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. WATERS:

H.R. 4845. A bill to prohibit the Federal Communications Commission from increasing the national audience reach limitations established under the Telecommunications Act of 1996; to the Committee on Commerce.

By Mr. CAMPBELL:

H.R. 4846. A bill to amend the Internal Revenue Code of 1986 to increase the deduction allowed for interest on education loans; to the Committee on Ways and Means.

By Mr. MCHALE:

H. Con. Res. 351. Concurrent resolution directing the Clerk of the House of Representatives to make a technical correction in the enrollment of the bill H.R. 3910; considered and agreed to.

By Mr. YOUNG of Alaska:

H. Con. Res. 352. Concurrent resolution directing the Clerk of the House of Representatives to make technical corrections in the enrollment of a bill; considered and agreed to.

By Mr. CRANE:

H. Res. 601. A resolution returning to the Senate the bill S. 361; considered and agreed to.

By Mr. SHUSTER:

H. Res. 602. A resolution providing for the concurrence by the House with an amend-

ment in the Senate amendment to H.R. 2204; considered and agreed to.

By Mr. ROHRABACHER:

H. Res. 603. A resolution expressing the sense of the House of Representatives that the seat in the United Nations that is reserved to Burma should be occupied by a representative of the National League for Democracy; to the Committee on International Relations.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 836: Mrs. LINDA SMITH of Washington.
 H.R. 1636: Mrs. JOHNSON of Connecticut and Mr. KILDEE.

H.R. 2273: Mrs. MCCARTHY of New York and Mr. FORD.

H.R. 2351: Mr. LAFALCE.

H.R. 2545: Mr. SHAW.

H.R. 2635: Mr. NADLER.

H.R. 2669: Mr. BOB SCHAFER, Mr. KINGSTON, Mr. BARR of Georgia, Mr. HANSEN, Mrs. CUBIN, Mr. HILLEARY, and Mr. MORAN of Kansas.

H.R. 2704: Ms. MILLENDER-MCDONALD, Mr. YATES, Mrs. CLAYTON, Ms. ROYBAL-ALLARD, and Ms. HARMAN.

H.R. 2789: Mr. PAYNE.

H.R. 3081: Mr. FORBES, Ms. LOFGREN, and Mr. MENENDEZ.

H.R. 3320: Mr. CRAMER and Mr. DOYLE.

H.R. 3400: Mr. JACKSON of Illinois.

H.R. 3439: Mr. FRANK of Massachusetts.

H.R. 3553: Mr. MORAN of Virginia.

H.R. 3572: Mr. BROWN of Ohio.

H.R. 3629: Mr. GUTKNECHT.

H.R. 3862: Mr. STRICKLAND, Mrs. MINK of Hawaii, Mr. SERRANO, Mr. NEY, and Mr. FRELINGHUYSEN.

H.R. 3918: Mr. BERMAN.

H.R. 3956: Mr. BROWN of California.

H.R. 4018: Mr. BARRETT of Wisconsin, Mr. UNDERWOOD, and Mr. LUTHER.

H.R. 4035: Mr. LAZIO of New York.

H.R. 4036: Mr. PITTS, Mrs. LOWEY, and Mr. ROGERS.

H.R. 4214: Mr. MILLER of California.

H.R. 4233: Mr. PALLONE.

H.R. 4235: Mr. WEYGAND.

H.R. 4242: Mr. ROEMER.

H.R. 4344: Mr. KUCINICH, Mr. TURNER, Mr. CLEMENT, Mr. EDWARDS, Mrs. THURMAN, Mr. BENTSEN, Ms. EDDIE BERNICE JOHNSON of Texas, and Ms. JACKSON-LEE of Texas.

H.R. 4403: Mr. OLVER.

H.R. 4492: Mrs. LINDA SMITH of Washington and Mr. GOODLATTE.

H.R. 4552: Mr. BROWN of California and Ms. KILPATRICK.

H.R. 4553: Mr. DEGETTE.

H.R. 4621: Mr. LUTHER and Ms. KILPATRICK.

H.R. 4653: Mr. OLVER.

H.R. 4659: Mrs. NORTHUP and Mr. STOKES.

H.R. 4683: Mr. HALL of Texas.

H.R. 4684: Mr. REDMOND.

H.R. 4789: Mrs. MYRICK.

H.R. 4795: Mr. PORTMAN.

H.R. 4837: Mr. BARTON of Texas, Mr. CASTLE, Mr. EHRLICH, Mr. GUTKNECHT, Mr. HASTINGS of Washington, Mr. HOEKSTRA, Mr. INGLIS of South Carolina, Mr. MILLER of Florida, Mr. PARKER, Mr. PITTS, Mr. ROYCE, Mr. SHADEGG, Mr. SHAYS, and Mr. SMITH of Washington.

H.J. Res. 130: Mr. BILEY.

H. Con. Res. 229: Mr. FOX of Pennsylvania.

H. Con. Res. 283: Mr. PRICE of North Carolina.

H. Con. Res. 307: Mr. MILLER of California and Mrs. CAPPS.

H. Con. Res. 325: Ms. WATERS.

H. Res. 554: Mr. ABERCROMBIE.

H. Res. 556: Mr. SAWYER.

H. Res. 596: Mr. BISHOP.

H. Res. 598: Mr. COSTELLO, Mr. BUYER, Mr. STUPAK, Mr. EVANS, Mr. ADERHOLT, Ms. LEE, Mr. DAN SCHAEFER of Colorado, and Mr. SKEEN.