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Stoneridge and the Continued Reconceptualization of Implied Private Rights of Action

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In *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, the Supreme Court held that the private right of action implied under Rule 10b-5, the principal anti-fraud provision of the federal securities laws, "does not reach" even deceptive conduct by secondary actors.[1] In *Stoneridge* itself, suppliers that entered into "sham" contracts with an issuer, allegedly with knowledge that the issuer would use the arrangements to falsify its financial statements, were held immune from private liability.[2]

The *Stoneridge* majority's decision that secondary actors are not liable to investors in private class actions was a relatively straightforward application of extant law. It was largely presaged by the 1994 decision in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, which held that the anti-fraud proscription does not reach those who "aid and abet" the misconduct of others,[3] as well as the congressional response to *Central Bank*, which gave federal regulators–but not private plaintiffs–authority to go after those who provide "substantial assistance" to primary violators.[4]

The *Stoneridge* majority's refusal to expand the private right of action to include secondary actors will have immediate consequences for a number of pending securities class actions. For example, already the Supreme Court has declined to review the Fifth Circuit's dismissal of the $40 billion case against investment banks sued in connection with the collapse of Enron Corporation, while ordering further review of the Ninth Circuit's refusal to dismiss a class action involving an alleged scheme to inflate the revenues of Homestore.com.[5]

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Stoneridge's limitation of private lawsuits against secondary actors will also be invoked in other contexts, with results that remain to be seen.[6]

The real impact of *Stoneridge*, however, may lie not in its specific holding or the applicability of that holding to other cases, but in the jurisprudential methodology employed by the majority. *Stoneridge* caps a series of recent decisions in which the Supreme Court has redefined the respective roles of the Judiciary and Legislature in making policy decisions regarding the optimal enforcement of the securities laws: The majority held that "[t]he decision to extend the cause of action is for Congress, not for us,"[7] while the dissent, charging the majority with "judicial policymaking," complained of "the Court's continuing campaign to render the private cause of action ... toothless."[8]

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The *Stoneridge* majority allowed that the private 10b-5 class action "remains the law," but held that it "should not be extended beyond its present boundaries."[9] A fair reading of *Stoneridge* is that the enactment of the Private Securities Litigation Reform Act of 1995 (PSLRA) served to halt at least some judicial innovation in the realm of securities class actions, and "froze" the substantive scope of the private right as it then existed unless changed by subsequent legislative, not judicial, action. As a result, *Stoneridge* has profound implications for many important issues in private securities litigation.

Background

The *Stoneridge* plaintiff – Stoneridge Investment Partners, a professional money management firm based in Malvern, Pa. – invested in the common stock of Charter Communications, Inc. On behalf of a shareholder class, it sued Charter for, among other things, "entering into sham transactions with two equipment vendors that improperly inflated Charter's reported operating revenues and cash flow."[10] The equipment vendors – Scientific-Atlanta Inc. and Motorola Inc. – were also named as defendants, based on the allegation that they "entered into these sham transactions knowing that Charter intended to account for them improperly and that analysts would rely on the inflated revenues and operating cash flow in making stock recommendations."[11]

As the Supreme Court explained the core allegation against the equipment vendors: "It is alleged [they] 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 on by research analysts and investors."[12] The plaintiff's theory was that the equipment vendors thereby violated § 10(b) of the Securities Exchange Act of 1934 and the Securities and Exchange Commission's Rule 10b-5, which broadly prohibit fraud and deceit in connection with the purchase or sale of securities.[13]

The district court dismissed the case against the equipment vendors for failure to state a claim, and the court of appeals affirmed. The Supreme Court granted *certiorari* to resolve a conflict among the lower courts "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)."[14] In a 5-3 decision, the Court affirmed the dismissal of the claims against the equipment vendors. Justice Anthony Kennedy's majority opinion was joined by Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas, and Samuel Alito. Justice John Paul Stevens dissented, joined by Justices David Souter and Ruth Bader Ginsburg. Justice Stephen Breyer, who apparently owns stock in the parent company of one of the equipment vendors, did not participate in the decision.[15]

The Supreme Court began with the commonplace that "Rule 10b-5 encompasses only conduct already prohibited by § 10(b),"[16] and reiterated that "[i]n a typical § 10(b) private action a

plaintiff must prove (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."[17]

The *Stoneridge* Court confirmed the holding of *Central Bank* "that § 10(b) liability [does] not extend to aiders and abettors."[18] Congress responded to that decision not by expanding the private right to include aiders and abettors, as some had urged; "[i]nstead, in § 104 of the [PSLRA], it directed prosecution of aiders and abettors by the SEC."[19] Accordingly, "[t]he conduct of a secondary actor must satisfy *each* of the elements or preconditions for liability" in a private class action, and the Court proceeded to "consider whether the allegations here are sufficient to do so."[20]

The Court first rejected as "erroneous" the contention that "there must be a specific oral or written statement before there could be liability under § 10(b) or Rule 10b-5."[21] Rather, the Court explained, "[c]onduct itself can be deceptive."[22] And the majority appeared to agree that the equipment vendors had engaged in "deceptive acts" in their dealings with Charter, such that they would be subject to an action to enforce § 10(b) brought by public officials pursuant to the authority conferred by Congress in the wake of *Central Bank*.[23]

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But the Court held that the same conduct did not subject the equipment vendors to liability in a *private* class action brought under Rule 10b-5. The Court's holding ultimately turned on the reliance element of the private action–the Court's "own determination that [the equipment vendors'] acts or statements were not relied upon by the investors and that, as a result, liability cannot be imposed upon [them]"[24]–although its discussion ranged considerably farther afield.

The Court noted that it has allowed a "rebuttable presumption of reliance in two different circumstances."[25] The first is where a person with a duty to disclose makes a material omission, which was laid out in *Affiliated Ute Citizens of Utah v. United States*;[26] and the second is where public statements are made and incorporated into the price of a traded security, as decided in *Basic Inc. v. Levinson*.[27] The Court held that "[n]either presumption applies here," because the equipment vendors "had no duty to disclose" and "their deceptive acts were not communicated to the public."[28] Without the benefit of a presumption, the *Stoneridge* plaintiff would have to show *actual* reliance on the equipment vendors' deceptive conduct.

The plaintiff in *Stoneridge* attempted to show reliance in two steps, arguing that "in an efficient market investors rely not only upon the public statements relating to a security but also upon the transactions those statements reflect."[29] This was a step too many for the majority, which was concerned that under this theory "the implied cause of action would reach the whole marketplace in which the issuing company does business," a result for which it could find "no authority."[30]

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The Court emphasized that "reliance is tied to causation," and used the language of causa-

tion in concluding that the equipment vendors' "deceptive acts, which were not disclosed to the investing public, are too remote to satisfy the requirement of reliance."[31] This was so, the Court continued, even if there could be a finding of reliance on these allegations in a common-law fraud action[32]–indicating that the reliance element of a private 10b-5 action is more rigorous than at common law.

The majority was also concerned that a contrary conclusion would allow a private action to proceed "against all aiders and abettors except those who committed no deceptive act in the process of facilitating the fraud," which "would undermine Congress' determination that this class of defendants should be pursued by the SEC and not by private litigants."[33] The Court stressed that the private right of action had been implied by the Judiciary, not enacted by Congress, and that "[t]he decision to extend the cause of action is for Congress, not for us."[34]

The dissent levied three principal charges at the majority. First, the dissenters claimed that a correct reading of *Central Bank* "poses no obstacle to [the plaintiff's] argument that it has alleged a cause of action under § 10(b)."[35] Second, the dissenters argued that the majority's "view of reliance is unduly stringent and unmoored from authority."[36] Third, the dissenters chastised the majority for "its mistaken hostility towards the § 10(b) private cause of action,"[37] and, after briefly surveying the history of implied rights of action, went so far as to suggest that "Congress enacted § 10(b) with the understanding that federal courts respected the principle that every wrong would have a remedy."[38]

Discussion

The interpretive approach to private § 10(b) actions adopted by the *Stoneridge* majority will have important ramifications for the future of securities litigation. In addition to its obvious applicability to cases involving secondary actors, *Stoneridge* is likely to be invoked in connection with three more general topics–the scope of the private right itself, the adequacy of a plaintiff's pleading, and the preclusion of state-law claims–that frequently arise in complex securities cases. While the last two build on other recent developments, the *Stoneridge* majority's reformulation of the mode of analysis to be employed in construing the scope of the 10b-5 private action is likely to have the most dramatic impact on future litigation.

Redefining the Scope of the Private Right

The Supreme Court's jurisprudence on the implication of private rights of action under the federal securities laws has gone through three distinct phases. In the initial phase, which lasted until 1975, the Court was generally receptive to claims that private lawsuits could be premised on violations of the securities laws even in the absence of an express provision to that effect.[39] In the second phase, the Court expressed considerable reluctance to recognize new private rights, and articulated a four-factor test to constrain its own authority.[40] And in the third phase, since 2001, the Court has announced that as a general rule it will no longer imply private rights, but rather must await clear guidance from Congress.[41]

The Court's willingness to tinker with the contours of private rights of action has evolved accordingly. In the first phase, the Court invoked policy considerations to decide which private actions should, and which should not, be allowed to proceed.[42] In the second phase, the Court invoked the fiction of what the enacting Congress "would have done" had it been presented with the question of the appropriate scope of a private right of action that it had not enacted.[43] *Stoneridge*, which arose in the third phase, illustrates the Court's unwillingness to "extend" even previously implied private rights of action, at least where Congress has legislated in the area.[44]

Stoneridge marks a sharp break from the interpretive methodology employed by *Central Bank*, its closest analogue. The Court in *Central Bank* explained that "[w]hen the text of § 10(b) does not resolve a particular issue, [the Court] attempt[s] to infer how the 1934 Congress would have addressed the issue."[45] Of course, that was something of a jump ball: Since the 1934 Congress never contemplated private actions under

§ 10(b) at all,[46] it was unlikely to have given much thought to their details.

Stoneridge marks a sharp break from the interpretive methodology employed by Central Bank, its closest analogue.

The *Stoneridge* Court eschewed any attempt to divine what the 1934 Congress might have thought, focusing instead what Congress *actually did* in 1995, when it enacted the first significant legislation to expressly acknowledge the existence of a private right of action under § 10(b). The PSLRA imposed limitations on "any private action" arising under the Exchange Act,[47] and the *Stoneridge* Court thought it "clear [that] these requirements touch upon the implied right of action."[48] According to the majority, "Congress thus ratified the implied right of action after the Court moved away from a broad willingness to imply private rights of action."[49]

The *Stoneridge* majority summarized its third-phase approach to construing private securities class actions in what is perhaps the single most important sentence in its opinion: "It is appropriate for us to assume that when [the PSLRA] was enacted, Congress accepted the § 10(b) private cause of action *as then defined* but chose to extend it *no further*."[50] In other words, the substantive scope of the private right was fixed in 1995, when Congress "ratified" the previous judicial implication.

The *Stoneridge* majority's focus on the scope of the private 10b-5 action as it existed in 1995, when the PSLRA was enacted, is likely to become a focus in future litigation over the scope or contours of the private right. For issues that had been litigated and resolved by the Supreme Court before that date, *Stoneridge* may signal an end to further judicial innovation in this area. Yet many issues were deliberately left unresolved at the time of the PSLRA, or have arisen since.

For example, the Supreme Court had recognized a presumption of reliance in only two instances before 1995: The "fraud on the market" doctrine articulated in *Basic*, and the *Affiliated Ute* presumption for omissions by persons with a duty to disclose. The approach to the private right of action adopted by the *Stoneridge* majority suggests that, in the absence of congressional action, courts should not be receptive to pleas from securities plaintiffs to recognize additional presumptions. Indeed, *Stoneridge* itself suggests as much, requiring the plaintiff in that case to show actual reliance because "[n]either presumption applies here."[51]

Although many securities plaintiffs can invoke the presumptions articulated in *Basic* or *Affiliated Ute*, many more cannot. And where no presumption is applicable, a case generally cannot proceed as a class action–as the Supreme Court recognized in *Basic* itself.[52] Indeed, several recent appellate decisions have decertified securities class actions where the plaintiffs' claims do not fall within one of the recognized presumptions of reliance, on the theory that in the absence of such a presumption individualized issues will predominate and preclude class treatment.[53] Thus, an immediate, if indirect, consequence of *Stoneridge* could very well be fewer private securities-fraud suits being certified as class actions.

Other aspects of private securities litigation should be resolvable in the same way. Where the Supreme Court had authoritatively construed the scope of the private action before 1995, *Stoneridge* would appear to bar pleas–from plaintiffs and defendants alike–to alter such constructions, which (unless changed by statute) were "ratified" by Congress in the PSLRA. Examples of such constructions would include the requirement that a private plaintiff have been a purchaser or seller of the securities in issue,[54] or an issuer's potential liability for false statements of opinion.[55]

Not all issues, however, are amenable to the mode of analysis suggested by the *Stoneridge* majority. Perhaps the most obvious example is the mental state necessary to establish *scienter* under § 10(b). Before the PSLRA was enacted, the Supreme Court had expressly reserved the question whether recklessness is sufficient.[56] The 1995 Congress specifically declined to resolve this question,[57] which remains unanswered by the Supreme Court.[58] As to this question, and undoubtedly others, it would appear that Congress has elected

not to legislate, leaving the substantive question for ultimate resolution by the Supreme Court. As the *Stoneridge* Court put it in reference to the antitrust laws, this would appear to be an area in which Congress "has accepted... broad judicial authority to define substantive standards."[59]

The *Stoneridge* approach also does not resolve questions that arise out of the PSLRA itself. For example, the courts of appeals are divided on whether the PSLRA's heightened pleading standards modify the standard for amending a complaint under Federal Rule of Civil Procedure 15.[60] Similarly, while the appellate courts are in general agreement that the PSLRA abolished the so-called "group pleading" doctrine,[61] the Supreme Court has not resolved that issue. In *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, which construed the "strong inference" pleading requirement imposed on private plaintiffs in the PSLRA, the Court stressed that "[i]t is the federal lawmaker's prerogative… to allow, disallow, or shape the contours of–including the pleading and proof requirements for–§ 10(b) private actions."[62] Yet as with other questions of statutory construction, the courts must ultimately decide just what the Legislature has allowed or disallowed.

While *Stoneridge* may not directly answer such issues, it does suggest that courts should consider the "practical consequences" of adopting one position over the other, including the costs of discovery and the ability of "plaintiffs with weak claims to extort settlements from innocent companies."[63] The majority also indicated its disinclination to adopt liability rules that "rais[e] the costs of doing business," or that could cause companies to list on foreign rather than domestic exchanges.[64] And, in general, defendants in securities class actions are likely to seek solace in the *Stoneridge* majority's reference to "the narrow dimensions we must give to a right of action Congress did not authorize when it first enacted the statute and did not expand when it revisited the law."[65]

The Importance of Adequate Pleading

It bears emphasis that *Stoneridge* was a pleading case, and the majority affirmed the dismissal of the claims against the equipment vendors for failure to state a claim on which relief could be granted.[66] *Dura Pharmaceuticals., Inc. v. Broudo* likewise affirmed a Rule 12(b)(6) dismissal, while *Tellabs*, another pleading case, reversed the Seventh Circuit's reversal of such a dismissal.[67] The Supreme Court's interest in pleading standards is not limited to securities cases, as evidenced by its recent decision in an antitrust case called *Bell Atlantic. v. Twombly*.[68] As in *Stoneridge*, the *Twombly* Court pointed to the "potentially enormous expense of discovery" in requiring federal-court plaintiffs to include sufficient factual allegations in their complaint.[69]

In *Twombly*, the Court dispensed with the traditional test that "a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[70] As the Court explained, the "'no set of facts' language has been questioned, criticized, and explained away long enough…. The phrase is best forgotten as an incomplete, negative gloss on an accepted pleading standard."[71] Rather, the Court emphasized, "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."[72] Under the proper standard, the plaintiff must plead facts "plausibly suggesting (not merely consistent with)" unlawful conduct, and dismissal is required where "nothing contained in the complaint invests either the action or inaction alleged with a plausible suggestion of [unlawfulness]."[73]

The *Twombly* Court did caution that "asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage. It simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct]." *Twombly*, read together with *Dura*, marks a rather significant tightening of the standards for pleading in federal courts. Although it is an antitrust case, the pleading standard established by the Supreme Court should clearly apply to securities cases (and also to other complex litigation). Indeed, *Twombly* should be viewed as setting the *floor* for federal pleadings under Rule 8; securities fraud lawsuits are also subject to the heightened pleading standards of Rule 9(b) and the PSLRA.[74]

In this regard, another recent non-securities decision of the Supreme Court should be of interest to securities litigators. In a RICO case, *Anza v. Ideal Steel Supply Corp.*, the Court made clear that "the common-law foundations of the proximate-cause requirement" include "the demand for some direct relation between the injury asserted and the injurious conduct alleged."[75] The plaintiff in *Anza* asserted that it was injured when its competitor defrauded the New York tax authority and then used the proceeds from the fraud to offer lower prices to lure away customers. The Court identified five reasons why the relationship between the plaintiff's asserted harms and the RICO violation was too attenuated to satisfy the proximate causation requirement, many of which are often present in securities cases.[76]

Anza instructs that "the central question [a court] must ask is whether the alleged violation led directly to the plaintiff's injuries."[77] And *Stoneridge* makes clear that *even if* a complaint satisfied the common-law standard of causation, it must *also* meet the more rigorous standard imposed through the reliance element of the private right of action under § 10(b).[78] As the Court explained, the securities laws "should not be interpreted to provide a private cause of action against the entire marketplace in which the issuing company operates."[79]

Preclusion of State Claims

The *Stoneridge* opinion contains the seeds for significant expansion of federal authority in the realm of securities regulation.[80] The court of appeals in *Stoneridge* had suggested that "only misstatements, omissions by one who has a duty to disclose, and manipulative trading practices… are deceptive."[81] The Supreme Court said that "[i]f this conclusion were read to suggest there must be a specific oral or written statement before there could be liability under § 10(b) or Rule 10b-5, it would be erroneous."[82]

The Stoneridge opinion contains the seeds for significant expansion of federal authority in the realm of securities regulation.

The *Stoneridge* Court's conclusion that "[c]onduct itself can be deceptive,"[83] while ultimately unnecessary to the resolution of the case, will likely be seized upon by securities plaintiffs seeking to broaden the scope of actionable activities.[84] It will also be used by federal prosecutors and the SEC–the government had urged this point in its *amicus* brief in *Stoneridge*[85]–in pursuing their broader public enforcement agendas. This is important because, while private plaintiffs may be precluded from pursuing claims involving "deceptive acts… too remote to satisfy the requirement of reliance,"[86] the government takes the position that the reliance requirement does not apply to enforcement actions, and indeed the Supreme Court has approved quite attenuated theories of governmental liability.[87]

The silver lining, from the perspective of securities defendants, is that the *Stoneridge* majority's broad reading of "deceptive acts" should serve to preclude additional *state-law* claims involving such acts. The Securities Litigation Uniform Standards Act of 1998 (SLUSA) precludes state-law class actions alleging the same conduct prohibited by § 10(b), including "any manipulative or deceptive... contrivance."[88] SLUSA's preclusive scope is coterminous with the full scope of § 10(b) as enforceable by the SEC, and is not limited by the constraints imposed on the implied private right of action.[89] Thus, to the extent *Stoneridge* is read to expand the category of conduct subject to public enforcement under § 10(b), it also (through SLUSA) precludes state-law class actions based on that same conduct.[90]

Conclusion

Stoneridge employs a newly rigorous analytical approach to fundamental questions of private securities litigation, in keeping with the modern Supreme Court's general unwillingness to supplant

the Legislature's prerogative in creating and defining causes of action. While its full import will not be known for some time, *Stoneridge* contains a little something for everyone–plaintiffs, defendants, and government enforcers–and is likely to be invoked frequently by participants in securities disputes. While the emphasis on pleading standards and the (potential) expansion of federal authority build on previous trends, what is really new in *Stoneridge* is the Court's conclusion that, by enacting the PSLRA, Congress *both* "ratified" previous judicial acts in developing the private right of action under § 10(b) *and* generally removed from the Judiciary the authority to undertake further such developments. How *that* conclusion will play out in future cases will be very interesting indeed.

Stoneridge employs a newly rigorous analytical approach to fundamental questions of private securities litigation, in keeping with the modern Supreme Court's general unwillingness to supplant the Legislature's prerogative in creating and defining causes of action.

NOTES

1. *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.,* No. 06-43 (U.S. Jan. 15, 2008), slip op. 1.
2. Because *Stoneridge* came to the Supreme Court on a motion to dismiss, the Court took the facts alleged by the plaintiff to be true. Slip op. 2.
3. *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 191 (1994).
4. 15 U.S.C. § 78t(e).
5. *See* Jess Bravin & Mark K. Anderson, *Justices Rebuff Enron Holders*, Wall St. J. A2 (Jan. 23, 2008).
6. *See* Jonathan C. Dickey, Mark A. Perry & Julian W. Poon, *Stoneridge Investor Partners v. Scientific-Atlanta, Inc.: The Supreme Court Rejects "Scheme" Liability;* Insights (Vol. 22, No. 1) January 2008.
7. *Stoneridge*, slip op. 14.
8. *Stoneridge*, slip op. 9 (Stevens, J., dissenting).
9. *Stoneridge*, slip op. 14.
10. In re Charter Commc'ns, Inc. Sec. Litig., 443 F.3d 987, 989 (8th Cir. 2006).
11. 443 F.3d at 990.
12. *Stoneridge*, slip op. 4.
13. 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5.
14. *Stoneridge*, slip op. 4-5.
15. *See* Tony Mauro, *Court Sides with Big Business in Stoneridge Case*, Legal Times 8 (Jan. 21, 2008). It is instructive to compare the lineups in two other recent decisions construing the private right of action to enforce the federal securities laws. In *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499 (2007), Justice Ginsburg authored the majority opinion; Justices Scalia and Alito concurred only in the judgment; and Justice Stevens was the sole dissenter. And in *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005), Justice Breyer's opinion was unanimous.
16. *Stoneridge*, slip op. 5 (citing *United States v. O'Hagan*, 521 U.S. 642, 651 (1997)).
17. *Stoneridge*, slip op. 6 (citing *Dura*, 544 U.S. at 341-42).
18. *Stoneridge*, slip op. 6.
19. *Stoneridge*, slip op. 7 (citing 15 U.S.C. § 78t(e)).
20. *Stoneridge*, slip op. 7 (emphasis added).
21. *Stoneridge*, slip op. 7.
22. *Stoneridge*, slip op. 7.
23. *Stoneridge*, slip op. 15-16; *see also id.* at 1 (Stevens, J., dissenting) ("The Court seems to assume that [the equipment vendors'] alleged conduct could subject them to liability in an enforcement proceeding initiated by the Government").
24. *Stoneridge*, slip op. 7.
25. *Stoneridge*, slip op. 8.
26. *Affiliated Ute Citizens of Utah v. United States,* 406 U.S. 128, 154 (1972).
27. *Basic Inc. v. Levinson*, 485 U.S. 224, 247 (1988).
28. *Stoneridge*, slip op. 8.
29. *Stoneridge*, slip op. 9.
30. *Stoneridge*, slip op. 9.
31. *Stoneridge*, slip op. 9-10; *see also id.* at 8 (rejecting the plaintiff's theory of reliance as requiring "an indirect chain that we find too remote for liability").
32. *Stoneridge*, slip op. 11.
33. *Stoneridge*, slip op. 12.
34. *Stoneridge*, slip op. 14.
35. *Stoneridge*, slip op. 4 (Stevens, J., dissenting).
36. *Stoneridge*, slip op. 6 (Stevens, J., dissenting).
37. *Stoneridge*, slip op. 10 (Stevens, J., dissenting).
38. *Stoneridge*, slip op. 14 (Stevens, J., dissenting).
39. *J.I. Case Co. v. Borak*, 377 U.S. 426, 432-33 (1964).
40. *Cort v. Ash*, 422 U.S. 66, 78 (1975).

41. *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001).
42. *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723, 737 (1975).
43. *Central Bank*, 511 U.S. at 178.
44. The author filed a brief in *Stoneridge* on behalf of a number of former SEC commissioners and officials, and law and finance professors, urging this point and others that were ultimately adopted by the majority. *See* www.scotusblog.com/movabletype/archives/06-43_amicus_formersec.pdf.
45. 511 U.S. at 178.
46. *Blue Chip Stamps*, 421 U.S. at 729.
47. 15 U.S.C. § 78u-4(b).
48. *Stoneridge*, slip op. 14.
49. *Stoneridge*, slip op. 15.
50. *Stoneridge*, slip op. 15 (emphases added).
51. *Stoneridge*, slip op. 8.
52. 485 U.S. at 242.
53. See, e.g., *Oscar Private Equity Invs. v. Allegiance Telecom, Inc.,* 487 F.3d 261, 264 (5th Cir. 2007).
54. *Blue Chip Stamps*, 421 U.S. at 740.
55. *Virginia Bankshares, Inc. v. Sandberg,* 501 U.S. 1083, 1094-96 (1991).
56. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976).
57. *See* H. Rep. No. 105-803, at 15-16 (1998).
58. *Tellabs*, 127 S. Ct. at 2507 n.3.
59. Stoneridge, slip op. 12 (citing *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.,* 127 S. Ct. 2725 (2007)).
60. *Compare ACA Fin. Guar. Corp. v. Advest, Inc.*, No. 07-1367 (1st Cir. Jan. 10, 2008) ("no"), *with Miller v. Champion Enters., Inc.*, 346 F.3d 660, 692 (6th Cir. 2003) ("yes").
61. See, e.g., *Financial Acquisition Partners, L.P. v. Blackwell,* 440 F.3d 278, 287 (5th Cir. 2006).
62. 127 S. Ct. at 2512.
63. *Stoneridge*, slip op. 12-13 (citing *Blue Chip Stamps*, 421 U.S. at 740-41).
64. Stoneridge, slip op. 13; see also Credit Suisse Sec. (USA) LLC v. Billing, 127 S. Ct. 2383, 2394-95 (2007).
65. *Stoneridge*, slip op. 16.
66. *Stoneridge*, slip op. 16.
67. Although, on remand from the Supreme Court, the Seventh Circuit in *Tellabs* sustained its earlier reversal of the dismissal order. *See* Byron Georgiou, *Tellabs Redux*, Harv. Corp. Gov. Blog (Jan. 28, 2008).
68. *Bell Atl. v. Twombly*, 127 S. Ct. 1955 (2007).
69. 127 S. Ct. at 1967.
70. 127 S. Ct. at 1968 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).
71. 127 S. Ct. at 1969.
72. 127 S. Ct. at 1964-65.
73. 127 S. Ct. at 1966, 1971.
74. *See Tellabs*, 127 S. Ct. at 2508-09.
75. *Anza v. Ideal Steel Supply Corp.*, 126 S. Ct. 1991, 1996 (2006) (internal quotation omitted).
76. First, the direct victim of the purportedly illegal conduct (defrauding the tax authority) was the State of New York, not the plaintiff; second, the facts presented in *Anza* made it difficult to "ascertain the damages caused by some remote action"; third, other intervening events could have resulted in the plaintiff's asserted injury; fourth, if the Court permitted the plaintiff to maintain its claim, the proceedings that would follow would be inherently speculative; and fifth, the facts presented by the plaintiff raised the specter of duplicative recovery, because "the immediate victims" of the alleged violation could "be expected to vindicate the laws by pursuing their own claims." 126 S. Ct. at 1997-98.
77. 126 S. Ct. at 1998.
78. *Stoneridge*, slip op. 11. The Court suggested that this standard requires a "necessary or inevitable" linkage between the deceptive act and the investor's injury. Slip op. 10.
79. *Stoneridge*, slip op. 11.
80. *See* Paul S. Atkins, *Stoneridge and the Rule of Law*, Wall St. J. A14 (Jan 25, 2008)
81. *Stoneridge*, slip op. 7.
82. *Stoneridge*, slip op. 7.
83. *Stoneridge*, slip op. 7.
84. *See* John F. Olson, *A Different View of Stoneridge*, Harv. Corp. Gov. Blog (Jan. 22, 2008).
85. *See* www.scotusblog.com/movabletype/archives/06-43_amicus_us.pdf.
86. *Stoneridge*, slip op. 10.
87. *See, e.g., SEC v. Zandford*, 535 U.S. 813 (2002).
88. 15 U.S.C. § 77p(b).
89. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit,* 547 U.S. 71 (2006).
90. The *Stoneridge* Court's reference to "functioning and effective state-law guarantees" (slip op. 10) is in no way inconsistent with a broad application of SLUSA preclusion: SLUSA itself precludes state-law *class actions*, while preserving a variety of other actions premised on state law. *See* 15 U.S.C. § 77p(d), (e), & (f).