SUPREME COURT OF THE UNITED STATES

No. 90–727

ROBERT G. HOLMES, JR., PETITIONER *v.* SECURITIES INVESTOR PROTECTION CORPORATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March 24, 1992]

JUSTICE SCALIA, concurring in the judgment.

I agree with JUSTICE O'CONNOR that in deciding this case we ought to reach rather than avoid the question on which we granted certiorari. I also agree with her on the answer to that question: that the purchaser-seller rule does not apply in civil RICO cases alleging as predicate acts violations of Securities and Exchange Commission Rule 10b-5, 17 CFR §240.10b-5 (1991). My reasons for that conclusion, however, are somewhat different from hers.

The ultimate question here is statutory standing: whether the so-called *nexus* (mandatory legalese for ``connection'') between the harm of which this plaintiff complains and the defendant's so-called predicate acts is of the sort that will support an action under civil RICO. See *Sedima S. P. R. L.* v. *Imrex Co., Inc.*, 473 U.S. 479, 497 (1985). One of the usual elements of statutory standing is proximate causality. It is required in RICO not so much because RICO has language similar to that of the Clayton Act, which in turn has language similar to that of the Sherman Act, which, by the time the Clayton Act had been passed, had been interpreted to include a proximate-cause requirement; but rather, I think, because it has always been the practice of common-law courts (and probably of all courts, under all legal systems) to require as a condition of recovery, unless the legislature specifically prescribes otherwise, that the injury have been proximately caused by the offending conduct. Life is too short to pursue every human act

to its most remote consequences; ``for want of a nail, a kingdom was lost'' is a commentary on fate, not the statement of a major cause of action against a blacksmith. See *Associated General Contractors of Cal., Inc.* v. *Carpenters*, 459 U.S. 519, 536 (1983).

Yet another element of statutory standing is compliance with what I shall call the ``zone of interests'' test, which seeks to determine whether, apart from the directness of the injury, the plaintiff is within the class of persons sought to be benefitted by the provision at issue.[1] Judicial inference of a zone-of-interests requirement, like judicial inference of a proximate-cause requirement, is a background practice against which Congress legislates. See *Block* v. *Community Nutrition Institute*, 467 U.S. 340, 345–348 (1984). Sometimes considerable limitations upon the zone of interests are set forth explicitly in the statute itself—but rarely, if ever, are those limitations so complete that they are deemed to preclude the judicial inference of others. If, for example, a securities fraud statute specifically conferred a cause of action upon ``all purchasers, sellers, or owners of stock injured by securities fraud,'' I doubt whether a stockholder who suffered a heart attack upon reading a false earnings report could recover his medical expenses. So also here. The phrase ``any person injured in his business or property by reason of'' the unlawful activities makes clear that the zone of interests does not extend *beyond* those injured in that respect—but does not necessarily mean that it includes *all* those injured in that respect. Just as the phrase does not exclude normal judicial inference of proximate cause, so also it does not exclude normal judicial inference of zone of interests.

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[1]My terminology may not be entirely orthodox. It may be that proximate causality is *itself* an element of the zone of interests test as that phrase has ordinarily been used, see, *e.g.*, *Wyoming* v. *Oklahoma*, 502 U.S. ___, slip op., at 12 (SCALIA, J., dissenting), but that usage would leave us bereft of terminology to connote those aspects of the ``violation-injury connection'' aspect of standing that are distinct from proximate causality.

It seems to me obvious that the proximate-cause test and the zone-of-interests test that will be applied to the various causes of action created by 18 U. S. C. §1964 are not uniform, but vary according to the nature of the criminal offenses upon which those causes of action are based. The degree of proximate causality required to recover damages caused by predicate acts of sports bribery, for example, see 18 U. S. C. §224, will be quite different from the degree required for damages caused by predicate acts of transporting stolen property, see 18 U. S. C. §2314–2315. And so also with the applicable zone-of-interests test: It will vary with the underlying violation. (Where the predicate acts consist of different criminal offenses, presumably the plaintiff would have to be within the degree of proximate causality and within the zone of interests as to all of them.)

It also seems to me obvious that unless some reason for making a distinction exists, the background zone-of-interests test applied to one cause of action for harm caused by violation of a particular criminal provision should be the same as the test applied to another cause of action for harm caused by violation of the same provision. It is principally in this respect that I differ from JUSTICE O'CONNOR's analysis, *ante*, at 4 (opinion concurring in part and concurring in judgment). If, for example, one statute gives persons injured by a particular criminal violation a cause of action for damages, and another statute gives them a cause of action for equitable relief, the persons coming within the zone of interests of those two statutes would be identical. Hence the relevance to this case of our decision in *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723 (1975). The predicate acts of securities fraud alleged here are violations of Rule 10b-5; and we held in *Blue Chip Stamps* that the zone of interests for civil damages attributable to violation of that provision

does not include persons who are not purchasers or sellers. As I have described above, just as RICO's statutory phrase ``injured in his business or property by reason of'' does not extend the rule of proximate causation otherwise applied to congressionally created causes of action, so also it should not extend the otherwise applicable rule of zone of interests.

What prevents that proposition from being determinative here, however, is the fact that *Blue Chip Stamps* did not involve application of the background zone-of-interests rule to a congressionally created Rule 10b-5 action, but rather specification of the contours of a Rule 10b-5 action ``implied'' (*i.e.*, created) by the Court itself—a practice we have since happily abandoned, see, *e.g.*, *Touche Ross & Co.* v. *Redington*, 442 U.S. 560, 568–571, 575–576 (1979). The policies that we identified in *Blue Chip Stamps, supra*, as supporting the purchaser-seller limitation (namely, the difficulty of assessing the truth of others' claims, see *id.*, at 743–747, and the high threat of ``strike'' or nuisance suits in securities litigation, see *id.*, at 740–741) are perhaps among the factors properly taken into account in determining the zone of interests covered by a statute, but they are surely not alone enough to restrict standing to purchasers or sellers under a text that contains no hint of such a limitation. I think, in other words, that the limitation we approved in *Blue Chip Stamps* was essentially a legislative judgment rather than an interpretive one. Cf. *Franklin* v. *Gwinnett County Public Schools*, 503 U.S. ___, slip op., at 2 (1992) (SCALIA, J., concurring in judgment). It goes beyond the customary leeway that the zone-of-interests test leaves to courts in the construction of statutory texts.

In my view, therefore, the Court of Appeals correctly rejected the assertion that SIPC had no standing because it was not a purchaser or seller of the securities in question. A proximate-cause requirement also applied, however, and I agree with

the Court that that was not met. For these reasons, I concur in the judgment.