Erica P. John Fund, Inc. v. Halliburton Co., et al., 563 U.S. 804 (2011)

Syllabus Opinion (Roberts)

SYLLABUS
OCTOBER TERM, 2010
ERICA P. JOHN FUND, INC. V. HALLIBURTON CO.

SUPREME COURT OF THE UNITED STATES

ERICA P. JOHN FUND, INC., fka ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC. *v.* HALLIBURTON CO. et al.

certiorari to the united states court of appeals for the fifth circuit

No. 09–1403. Argued April 25, 2011—Decided June 6, 2011

Petitioner Erica P. John Fund, Inc. (EPJ Fund), is the lead plaintiff in a putative securities fraud class action filed against Halliburton Co. and one of its executives (collectively Halliburton). EPJ Fund alleges that Halliburton made various misrepresentations designed to inflate the company's stock price, in violation of §10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b–5. EPJ Fund also contends that Halliburton later made a number of corrective disclosures that caused the stock price to drop and, consequently, investors to lose money. EPJ Fund sought to have its proposed class certified pursuant to Federal Rule of Civil Procedure 23. The District Court found that the suit could proceed as a class action under Rule 23(b)(3), but for one problem: Fifth

the suit could proceed as a class action under Rule 23(b)(3), but for one problem. Fifth Circuit precedent required securities fraud plaintiffs to prove "loss causation"—*i.e.*, that the defendant's deceptive conduct caused the investors' claimed economic loss—in order to obtain class certification. The District Court concluded that EPJ Fund had failed to satisfy that requirement. The Court of Appeals agreed and affirmed the denial of class certification.

Held: Securities fraud plaintiffs need not prove loss causation in order to obtain class certification. Pp. 3–10.

(a) In order to certify a class under Rule 23(b)(3), a court must find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Considering whether "questions of law or fact common to class members predominate" begins, of course, with the elements of the underlying cause of action. The elements of a private securities fraud claim based on violations of §10(b) and Rule 10b–5 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." *Matrixx Initiatives, Inc.* v. *Siracusano*, 563 U. S. ___, ___.

Whether common questions of law or fact predominate in such an action often turns on the element of reliance. The traditional way a plaintiff can demonstrate reliance is by showing that he was aware of a company's statement and engaged in a relevant transaction —*e.g.*, purchasing common stock—based on that specific misrepresentation. The Court recognized in *Basic Inc.* v. *Levinson*, 485 U. S. 224, however, that "[r]equiring proof of individualized reliance from each member of the proposed plaintiff class effectively would" prevent such plaintiffs "from proceeding with a class action, since individual issues" would "overwhelm[ ] the common ones." *Id.*, at 242. The Court in *Basic* sought to alleviate that concern by permitting plaintiffs to invoke a rebuttable presumption of reliance based on what is known as the "fraud-on-the-market" theory. According to that theory, "the market price of shares traded on well-developed markets reflects all publicly available information, and, hence, any material misrepresentations." *Id.*, at 246. Under that doctrine, the Court explained, one can assume an investor relies on public misstatements whenever he "buys or sells stock at the price set by the market." *Id.*, at 247. The Court also made clear that the presumption could be rebutted by appropriate evidence. Pp. 3–5.

(b) It is undisputed that securities fraud plaintiffs must prove certain things in order to invoke *Basic*'s rebuttable presumption of reliance. According to the Court of Appeals, EPJ

invoke *Basic*'s rebuttable presumption of reliance. According to the Court of Appeals, EPJ Fund had to prove the separate element of loss causation in order to trigger the presumption. That requirement is not justified by *Basic* or its logic. This Court has never mentioned loss causation as a precondition for invoking *Basic*'s rebuttable presumption. Loss causation addresses a matter different from whether an investor relied on a misrepresentation, presumptively or otherwise, when buying or selling a stock.

The Court has referred to the element of reliance in a private Rule 10b–5 action as "transaction causation," not loss causation. *Dura Pharmaceuticals, Inc.* v. *Broudo*, 544 U. S. 336, 341–342. Consistent with that description, when considering whether a plaintiff has relied on a misrepresentation, the Court has typically focused on facts surrounding the investor's decision to engage in the transaction. Loss causation, by contrast, requires a plaintiff to show that the misrepresentation caused a subsequent economic loss. That has nothing to do with whether an investor relied on that misrepresentation in the first place, either directly or through the fraud-on-the-market theory. The Court of Appeals' rule contravenes *Basic*'s fundamental premise—that an investor presumptively relies on a misrepresentation so long as it was reflected in the market price at the time of his transaction. Pp. 5–8.

(c) Halliburton concedes that securities fraud plaintiffs should not be required to prove loss causation in order to invoke *Basic*'s presumption of reliance. Halliburton nonetheless defends the judgment below on the ground that the Court of Appeals did not actually require EPJ Fund to prove "loss causation" as the Court has used that term. According to Halliburton, "loss causation" was shorthand for a different analysis. The lower court's actual inquiry, Halliburton insists, was whether EPJ Fund had demonstrated "price impact"—that is, whether the alleged misrepresentations affected the market price in the first place.

The Court does not accept EPJ Fund's interpretation of the Court of Appeals' opinion. Loss causation is a familiar and distinct concept in securities law; it is not price impact. Whatever Halliburton thinks the Court of Appeals meant to say, what it said was loss causation. The Court takes the Court of Appeals at its word. Based on those words, the decision below cannot stand. Pp. 8–9.

597 F. 3d 330, vacated and remanded.

Roberts, C. J., delivered the opinion for a unanimous Court.