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Court .... Voted on................., 19...
Argued ...., 19... Assigned ...., 19... No. 74-415
Submitted ...., 19... Announced ...., 19...

RONDEAU

vs.

MOSINEE PAPER CORP. RELIST

Conflict bet. 7 & 8th Circuit

Granted

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Rehnquist, J.													
Powell, J.		✓											
Blackmun, J.		✓	[illegible]										
Marshall, J.			✓										
White, J.		✓											
Stewart, J.		✓											
Brennan, J.			✓										
Douglas, J.			✓										
Burger, Ch. J.			✓										

Court CA - 7 .... Voted on ...., 19...

Argued ...., 19... Assigned ...., 19... No. 74-415

Submitted ...., 19... Announced ...., 19...

DISCUSS

FRANCIS A. RONDEAU, Petitioner

vs.

MOSINEE PAPER CORPORATION

10/12/74 Cert. filed.

White & Stewart agreed decision is wrong - but don't think case imp enough to review.

Relisted for White

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Rehnquist, J.													
Powell, J.													
Blackmun, J.													
Marshall, J.													
White, J.													
Stewart, J.													
Brennan, J.													
Douglas, J.													
Burger, Ch. J.													

D 12/13

DISCUSS

This is a private suit by Resp. Co. vs Petr for failing innocently to report to SEC that he had acquired 5% of Resp's stock. DC found that Resp. had shown no injury to itself. But CA7 (2 to 1) reversed & ordered DC to enjoin Petr from voting stock for 5 years. This is an absurd penalty, where there was no showing of prejudice or injury to Resp. Corp. Also there appears to be a conflict.

PRELIMINARY MEMORANDUM

December 6, 1974, Conference
List 1, Sheet 3

Deny. CA7's relief does seem harsh under the circumstances, but the basic doctrine is sound. pc

No. 74-415

RONDEAU

v.

MOSINEE PAPER CO.

Cert to CA7 (Swygert, Perry DJ; Pell dissenting)

Timely

Federal/Civil

1. This is a private suit for violation of the reporting requirements of § 13(d) of the Williams Act, 15 U.S.C. § 78m(d). Section 13(d) requires a person who acquires 5 percent of any equity security registered under the Securities Exchange Act to make prompt public reports of his acquisitions and intentions.

The DC (Doyle) entered summary judgment for Petitioner because Respondent had shown no irreparable injury. CA7 reversed and ordered entry of summary judgment and injunctive relief for Respondent.

2. FACTS. Respondent, a publicly held corporation based in Mosinee, Wisconsin, manufactures paper products and plastics. Petitioner, a Mosinee businessman, decided in early 1971 that Respondent's stock was a good investment. By May 17 he had acquired 5 percent of the oustanding common stock. The DC accepted as undisputed Petitioner's contention that he was unaware that the Williams Act reporting requirements applied to 5 percent ownership. (In Dec. 1970 the triggering provision of the Act had been amended from 10% to 5%). He therefore did not report his acquisitions within the 10 days required by § 13(d), but in July he learned of the 5 percent reporting requirement and immediately put his accountants to work preparing the 13D schedule. He made no further purchase orders in Respondent's stock. The 13D schedule was filed August 25, and subsequently amended. It stated that Petitioner was considering making a tender offer. Both the DC and CA7 rejected Respondent's contention that the 13D schedule contained material factual misstatements.

3. DECISIONS BELOW. Petitioner admitted that he had violated the Williams Act by failing to file the 13D schedule on time. The only issue was the propriety of the relief Respondent requested - an injunction against purchasing more

stock, voting the shares already purchased, or seeking to gain control; damages; and divestiture of an unspecified number of shares. The DC held that Respondent had introduced proof of only one form of injury from Petitioner's delayed filing: "the anxiety of its employees and shareholders about a future change in control of the corporation." The court concluded that this anxiety was the sort that would accompany any potential change in management, but was not the kind of injury that the Williams Act was designed to remedy. The court referred to legislative history indicating that Congress wanted to balance the regulation of incumbent management and those bidding for takeover. Second, the DC noted that Petitioner had made no attempt to conceal his purchases and that brokers and other businessmen were aware of them. Petitioner had not intentionally evaded the reporting requirement; all information had been available since Sept. 29, 1971; and Petitioner had never proceeded with a tender offer.

CA7 accepted the DC's interpretation of the facts but took a broader view of the purpose of § 13(d). It held that the purpose of the reporting requirement is "to alert the marketplace to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control," quoting GAF Corp. v. Milstein, 453 F.2d 709, 717 (2d Cir. 1971). It held that Petitioner's failure to report his acquisition on time allowed him to continue purchasing securities in a market

that had not been adequately warned of his potential power to gain control of Respondent. CA7 found that Respondent had been irreparably injured because its capability to respond to Petitioner's purchases was compromised by his delay in revealing all the facts about his intentions. But, the court added, there is no need to show irreparable injury to the corporation. Injunctive relief would be appropriate solely on the ground that the corporation is the "prime enforcer" of the reporting requirements, acting on behalf of its shareholders and the investing public. Accordingly, CA7 reversed the summary judgment entered for Petitioner and remanded the case with instructions to enter a decree enjoining Petitioner from violating § 13(d) again, and from voting the stock he purchased between the date he should have filed the 13D schedule and the date he actually filed it, to remain in effect for five years. The purpose of the voting restrictions was "to neutralize [Petitioner's] violation of the Act and to deny him the benefit of his wrongdoing."

Judge Pell dissented, arguing that Petitioner's "technical" and unintentional violation of § 13(d) did not justify such a "harsh injunctive penalty." His reasons largely echoed those of the DC.

4. CONTENTIONS. (1) Petitioner says CA7's decision is in conflict with an unreported opinion of CA8, Tri-State Motor Transit Co. v. National City Lines, No. 73-867 (Apr. 4, 1974). Tri-State, reproduced in an appendix to Respondent's brief in

opposition, affirmed a district court's refusal to grant injunctive relief because the violation of § 13(d) was neither deliberate, covert, nor conspiratorial. Respondent points out, as did Judge Pell, that Tri-State is unreported under CA8's local rule depriving certain per curiam opinions of precedential value.

(2) Petitioner contends that CA7's decision creates for § 13(d), which contains no remedy, a "lower threshold for imposition of penalties than exists in similar areas of securities law." It claims that, in general, even the SEC must show reasonable expectation of future violations as a prerequisite for an injunction. Respondent says the continued viability of this rule is subject to question, citing SEC v. Great American Indus., Inc., 407 F.2d 453 (2d Cir.) cert. denied, 395 U.S. 920 (1969), in which CA2 granted the SEC an injunction against repetition of allegedly inadvertent reporting errors. Aside from this argument, Respondent says it is appropriate to consider the public interest when balancing the equities between parties to a proceeding. Instead of allowing injunctive relief only if the plaintiff itself can show specific irreparable harm, relief should be granted on a showing of harm to the public because private actions are a "necessary supplement" to the SEC's limited enforcement resources.

(3) Petitioner argues that by ordering injunctive relief without a showing of irreparable harm, CA7 has ignored

longstanding rules governing the grant of injunctive relief. Petitioner says the decision "probably" conflicts with this Court's decisions on the availability of injunctions, citing Beacon Theatres v. Westover, 359 U.S. 500 (1959), and Pennsylvania v. Wheeling & Belmont Bridge Co., 54 U.S. (13 How.) 518 (1851). Respondent says that these cases did not involve the "private attorney general" aspect of suits to enjoin violations of statutes written to protect the public.

5. DISCUSSION. Several recent securities cases have taken account of public injury in deciding whether to grant private injunctive relief. E.g., Ronson Corp. v. Liquifin Aktiengesellschaft, 483 F.2d 846, 849 (3d Cir. 1973) (§ 14(e)); Gulf & Western Industries, Inc. v. Great Atlantic & Pacific Tea Co., 476 F.2d 687 (2d Cir. 1973) (§ 14(e)); Sisak v. Wings & Wheels Express, Inc., 1971 CCH Fed. Sec. L. Rep. ¶ 92,991, at 90,670 (S.D.N.Y. 1970) (§ 13(d)) (Frankel). The principle also has foundation in at least one of this Court's decisions. Virginian Ry. Co. v. Railway Employees System Federation No. 40, 300 U.S. 515, 552 (1973). It seems especially appropriate in the enforcement of a statute designed to protect investors rather than to affect the balance of advantage between incumbent management and outside insurgents.

Is this purpose of Wms Act ?

Neither the parties nor the courts below have questioned the existence of an implied right of action in favor of the issuer under § 13(d). CA2 has held there is such an implied right of action, by analogy to J.I. Case Co. v. Borak, 377

U.S. 426 (1964), since § 13(d) requires the purchaser to send his report to the issuer as well as to the SEC and each exchange where the stock is traded. This is a sensible application of J.I. Case.

There is a response.

11/18/74	Clark	Opns in petn appx; DC opn also reported at 354 F. Supp. 686

BENCH MEMO

TO: Mr. Justice Powell DATE: April 14, 1975

FROM: ~~Lewis F. Powell, Jr.~~ Penny

No. 74-417 Rondeau v. Mosinee Paper Corp.

I recommend reversing the Court of Appeals' judgment requiring an injunction "sterilizing" the stock Rondeau bought during the period in which he was delinquent in filing a 13(d) report. In light of the reasons it offers for requiring this decree, the court effectively has held that every delinquency in filing a 13(d) report requires such "sterilization". I cannot see how such a per se rule is appropriate.

Section 13(d) of the Securities Exchange Act carries no special penalty or enforcement provision. The general penalty statute for the Exchange Act applies; it allows the SEC to seek a fine up to $10,000 and imprisonment up to 2 years for any violation. 15 U.S.C. § 78ff. In addition, the SEC can bring an action for injunctive relief. 15 U.S.C. § 78u(e). It does make sense to allow the issuer a private right of action to enforce the reporting requirement, since the issuer's transfer records will provide the first indication that someone has acquired 5% ownership, and quick action is necessary to vindicate the statutory purpose. The issue in this case is what relief is appropriate in such an action.

The purpose of the 13(d) reporting requirement seems relatively clear from legislative history. It was not intended to protect incumbent management from takeover bids, but to protect the marketplace. Any rapid aggregation of securities can affect the market price, [illegible], and any threatened change in the control of a corporation affects the value of its stock as an investment. The reporting requirement was designed to alert the marketplace to a rapid aggregation of stock that carries with it a potential for control. It protects stockholders by giving them information that may affect a decision to sell, hold, or purchase stock. It also alerts the corporation and its incumbent management to the potential for a takeover bid or proxy fight, but this effect seems to have been a byproduct of the protection for investors.

Seen in this light, § 13(d) does not support the gloss the Court of Appeals put on it. The CA thought that permanent injunctive relief was necessary for two reasons: (1) the corporation had been harmed because it was delayed in making a response to Rondeau's purchases, and (2) Rondeau must be deprived of the benefit of his wrongdoing, i.e., the utility of the stock he purchased between the filing deadline and the date he actually filed the report. The first reason would support a temporary injunction, designed to postpone a takeover bid and give the corporation and the investors all the

information they need before the outsider proceeds with his purchasing and possible takeover. But I see no relation between the harm from delay and an injunction that sterilizes the stock for five years. The second reason--depriving Rondeau of the fruits of his wrongdoing--seems to assume that acquiring more stock during the period of delinquency was illegal. As I read 13(d), there is no prohibition on acquiring stock while in violation of the reporting requirements. Again, prohibiting further acquisitions could be an appropriate feature of a temporary injunction, because it would keep the outsider from buying stock at low prices when the prices would be higher if his plans were known. But I cannot see how the sterilization decree would remedy any harm done to shareholders during that period of time. Its effect will be to reduce the number of shares required to control the corporation. This effect is slight in this case, where only 3% of the stock is involved, but in other cases a sterilization decree could effect a substantial change in the number of shares required to elect a slate of officers or approve a merger. Such an effect would benefit incumbent management, and it may or may not benefit shareholders generally. That is not to say that a sterilization decree could never be appropriate, but it does suggest that one should not be granted as a matter of course. The standard relief should probably be a temporary injunction, combined with a general injunction against future

yes

violations. Perhaps there should also be an action for damages on behalf of shareholders who sold at an artifically low price because of the delayed disclosure, but that issue is not presented here.

Respondent urges the Court to remand for a full trial in the event it cannot affirm the CA's order for entry of full injunctive relief. That argument is foreclosed by this Court's practice on cross-petitions. In the absence of a cross-petition, the respondent can present any ground (raised below) in support of the CA's judgment, but it may not urge modification of the judgment. The CA reversed the summary judgment entered in petitioner's favor, and ordered entry of summary judgment in respondent's favor. To hold that there was a dispute of material fact requiring a trial would necessitate reversing that judgment. Respondent therefore cannot attack the propriety of summary judgment or the accuracy of the DC's statement that the crucial facts were free of material dispute.

P.C.

ss

74-415 RONDEAU v. MOSINEE PAPER CORP. Aruged 4/15/75

(CA 7 - Williams Act Case. Sec 13 D requires report to SEC of acquisition of 5% of stock.
13 D prescribes no remedy for failure to file, but courts have implied private right to sue.
Violation was found by DC to have been unintentional.
Wms Act is a "notice" statute for benefit of parties in Tender offer situations. It doesn't proscribe conduct that is unlawful - it merely requires notice of acquisition.
Denying voting rights of 3% of stock, strengthens mgt. hand ~~in~~ in retaining control
Suits by mgt. (like this) is a standard tactic to frustrate tender offers.
No irreparable injury shown - no basis for equitable relief.

Beckwith (for Petr) (Effective argument)
J Doyle's (DC) findings (statements of fact) were accepted by CA 7 & are not disputed here. (But Resp. disputes this)
No shares were purchased in "street name" - shares were purchased openly in Rondeau's name.
No tender offer
Shareholders of Resp. cannot ~~[illegible]~~ benefit in any way from this suit.
Whatever Rondeau's motive, it became immaterial with passage of time.

Beckwith (cont)

Remedy should be tailored to the offense - & to avoid tipping balance bet. mgt. & tender offeror.

The injunction against voting shares is not clear whether it would follow the shares & bind a purchaser - injunction order is ambiguous.

Hammond (for Resp)

~~P~~ Persons who bought or sold shares during period may not have bought or sold had they known of Pet's purchases

Argues that "irreparably injury" is not required for equitable relief here

The Chief Justice Reverse	Douglas, J. 7 to 1
no irreparable injury — abuse of equitable power.	Not present.
Brennan, J. Affirm	Stewart, J. Reverse
(Gave no reasons)	This is our first Williams Act case. DC was right. Agrees with C.J. — no irreparable injury. CA7 decision was designed to perpetuate mgt. no harm to corp. — altho there may be harm to parties who bought or sold stock.

Reverse

~~Reverse~~ Reverse

But doesn't agree with DC. Some penalty should have been imposed. CA 7 ~~[illegible]~~ clearly wrong but would not affirm DC.

Blackmun, J. Re

Powell, J. Reverse

See my ~~[illegible]~~ argument notes.

No injury to Corp. Would be different if purchasers or sellers of shares were parties.

Rehnquist, J. Reverse

Suggests that SEC could act, & probably would agree to reinstate order of D.C.

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice

Circulated: JUN 4 1975

Recirculated: ________

Reviewed 6/4 L.F.P.

Join may suggest one addition to C.J.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-415

Francis A. Rondeau, Petitioner, v. Mosinee Paper Corporation. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to determine whether a showing of irreparable harm is necessary for a private litigant to obtain injunctive relief in a suit under § 13 (d) of the Williams Act, 15 U. S. C. § 78m (d). The Court of Appeals held that it was not. We reverse.

I

Respondent Mosinee Paper Corporation is a Wisconsin company engaged in the manufacture and sale of paper, paper products, and plastics. Its principal place of business is located in Mosinee, Wisconsin, and its only class of equity security is common stock which is registered under § 12 of the Securities Exchange Act of 1934, 15 U. S. C. § 78l. At all times relevant to this litigation there were slightly more than 800,000 shares of such stock outstanding.

In April 1971 petitioner Francis A. Rondeau, a Mosinee businessman, began making large purchases of respondent's common stock in the over-the-counter market. Some of the purchases were in his own name; others were in the name of businesses and a foundation

known to be controlled by him. By May 17, 1971, petitioner had acquired 40,413 shares of respondent's stock, which constituted more than 5% of those outstanding. He was therefore required to comply with the disclosure provisions of the Williams Act,[1] by filing a Schedule 13D

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[1] The Williams Act, which amended the Securities Exchange Act of 1934, provides in relevant part:

. . . . .

"(d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in Section 12 (g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1904, is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—

"(A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;

"(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in Section 3 (a)(6) of this title, if the person filing such statement so requests, the name of the bank, shall not be made available to the public;

"(C) if the purpose of the purchasers or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such

with respondent and the Securities and Exchange Commission within 10 days. That form would have disclosed, among other things, the number of shares beneficially owned by petitioner, the source of the funds used to purchase them, and petitioner's purpose in making the purchases.

Petitioner did not file a Schedule 13D but continued to purchase substantial blocks of respondent's stock; by July 30, 1971, he had acquired more than 60,000 shares. On that date the chairman of respondent's board of directors informed him by letter that his activity had "given rise to numerous rumors" and "seems to have created some problems under the Federal Securities Laws . . . ." Upon receiving the letter petitioner immediately stopped placing orders for respondent's stock and consulted his attorney. On August 25, 1971, he filed a Schedule 13D which, in addition to the other

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issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

"(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and

"(E) information as to any contracts arrangements or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof." 82 Stat. 454, 456; 15 U. S. C. § 78m(d).

The Commission requires the purpose of the transaction to be disclosed in every Schedule 13D, regardless of an intention to acquire control and make major changes in its structure. See 17 CFR § 240, 13d-1, -101 (1974).

required disclosures, described the "Purpose of Transaction" as follows:

> "Francis A. Rondeau determined during early part of 1971 that the common stock of Issuer [respondent] was undervalued in the over-the-counter market and represented a good investment vehicle for future income and appreciation. Francis A. Rondeau and his associates presently propose to seek to acquire additional common stock of the Issuer in order to obtain effective control of the Issuer, but such investments as originally determined were and are not necessarily made with this objective in mind. Consideration is currently being given to making a public cash tender offer to the shareholders of the Issuer at a price which will reflect current quoted prices for such stock with some premium added."

Petitioner also stated that, in the event that he did obtain control of respondent, he would consider making changes in management "in an effort to provide a Board of Directors which is more representative of all of the shareholders, particularly those outside of present management . . . ." One month later petitioner amended the form to reflect more accurately the allocation of shares between himself and his companies.

On August 27 respondent sent a letter to its shareholders informing them of the disclosures in petitioner's Schedule 13D.[2] The letter stated that by his "tardy filing" petitioner had "withheld the information to which you [the shareholders] were entitled for more than two months, in violation of federal law." In addition, while

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[2] Respondent simultaneously issued a press release containing the same information. Almost immediately the price of its stock jumped to $19-$21 per share. A few days later it dropped back to the prevailing price of $12.50-$14.00 per share, where it remained.

agreeing that "recent market prices have not reflected the real value of your Mosinee stock," respondent's management could "see little in Mr. Rondeau's background that would qualify him to offer any meaningful guidance to a Company in the highly technical and competitive paper industry."

Six days later respondent initiated this suit in the United States District Court for the Western District of Wisconsin. Its complaint named petitioner, his companies, and two banks which had financed some of petitioner's purchases as defendants and alleged that they were engaged in a scheme to defraud respondent and its shareholders in violation of the securities laws. It alleged further that shareholders who had "sold shares without the information which defendants were required to disclose lacked information material to their decision to sell or hold," and that respondent "was unable to communicate such information to its shareholders, and to take such actions as their interest required." Respondent prayed for an injunction prohibiting petitioner and his codefendants from voting or pledging their stock and from acquiring additional shares, requiring them to divest themselves of stock which they already owned, and for damages. A motion for a preliminary injunction was filed with the complaint but later withdrawn.

After three months of pretrial proceedings petitioner moved for summary judgment. He readily conceded that he had violated the Williams Act, but contended that the violation was due to a lack of familiarity with the securities laws and that neither respondent nor its shareholders had been harmed. The District Court agreed. It found no material issues of fact to exist regarding petitioner's lack of willfulness in failing to timely file a Schedule 13D, concluding that he discovered his

obligation to do so on July 30, 1971,[3] and that there was no basis in the record for disputing his claim that he first considered the possibility of obtaining control of respondent some time after that date. The District Court therefore held that petitioner and his codefendants "did not engage in intentional covert, and conspiratorial conduct in failing to timely file the 13D Schedule."[4]

Similarly, although accepting respondent's contention that its management and shareholders suffered anxiety as a result of petitioner's activities and that this anxiety was exacerbated by his failure to disclose his intentions until August 1971, the District Court concluded that similar anxiety "could be expected to accompany any change in management," and was "a predictable consequence of shareholder democracy." It fell far short of the irreparable harm necessary to support an injunction and no other harm was revealed by the record; as amended, petitioner's Schedule 13D disclosed all of the information to which respondent was entitled, and he had not proceeded with a tender offer. Moreover, in the view of the District Court even if a showing of irreparable harm were not required in all cases under the securities laws, petitioner's lack of bad faith and the absence

[3] The District Court pointed out that prior to December 10, 1970, a Schedule 13D was not required until a person's holdings exceeded 10% of a corporation's outstanding equity securities, see Pub. L. No. 91-567, 84 Stat. 1497, and credited petitioner's testimony that he believed the 10% requirement was still in effect at the time he made his purchases. Indeed, the chairman of respondent's board of directors was not familiar with the Williams Act's filing requirement until shortly before he sent the July 30, 1971 letter.

[4] The District Court also concluded that respondent's management was not unaware of petitioner's activities with respect to its stock. It found that by July 1971, there was considerable "street talk" among brokers, bankers, and businessmen regarding his purchases and that the chairman of respondent's board had been monitoring them.

of damage to respondent made this "a particularly inappropriate occasion to fashion equitable relief . . . ." Thus, although petitioner had committed a technical violation of the Williams Act, the District Court held that respondent was entitled to no relief and entered summary judgment against it.[5]

The Court of Appeals reversed with one judge dissenting. The majority stated that it was "giving effect" to the District Court's findings regarding the circumstances of petitioner's violation of the Williams Act,[6] but concluded that those findings showed harm to respondent because "it was delayed in its efforts to make any necessary response to" petitioner's potential to take control of the company. In any event, the majority was of the view that respondent "need not show irreparable harm as a prerequisite to obtaining permanent injunctive relief in view of the fact that as issuer of the securities it is in the best position to assure that the filing requirements of the Williams Act are being timely and fully complied with and to obtain speedy and forceful remedial action when necessary." 500 F. 2d 1011, 1016–1017. The Court of Appeals remanded the case to the District Court with instructions that it enjoin petitioner and his codefendants from further violations of the Williams Act and from voting the shares purchased between the due date of the Schedule 13D and the date of its filing for a period of five years. It considered "such an injunctive decree appropriate to neutralize [petitioner's] violation of the Act and to deny him the benefit of his wrongdoing." 500 F. 2d, at 1017.

[5] The District Court also dismissed respondent's claims that petitioner had violated other provisions of the Securities Laws. Review of these rulings was not sought in the Court of Appeals, and they are not now before us.

[6] The Court of Appeals also agreed with the District Court that the disclosures in petitioner's amended Schedule 13D were adequate.

We granted certiorari to resolve an apparent conflict among the courts of appeals and because of the importance of the question presented to private actions under the Federal Securities Laws. We disagree with the Court of Appeals' conclusion that the traditional standards for extraordinary equitable relief do not apply in these circumstances, and reverse.

II

As in the District Court and the Court of Appeals, it is conceded here that petitioner's delay in filing the Schedule 13D constituted a violation of the Williams Act. The narrow issue before us is whether this record supports the grant of injunctive relief, a remedy whose basis "in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Beacon Theatres, Inc.* v. *Westover*, 359 U. S. 500, 506-507 (1959).

The Court of Appeals' conclusion that respondent suffered "harm" sufficient to require sterilization of petitioner's stock need not long detain us. The purpose of the Williams Act is to insure that public shareholders who are confronted by a cash tender offer for their stock will not be required to respond without adequate information regarding the qualifications and intentions of the offering party.[7] By requiring disclosure of information

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[7] The Senate Report describes the dilemma facing such a shareholder as follows:

"He has many alternatives. He can tender all of his shares immediately and hope they all are purchased. However, if the offer is for less than all the outstanding shares, perhaps only a part of them will be taken. In these instances, he will remain a shareholder in the company, under a new management which he has helped to install without knowing whether it will be good or bad for the company.

"The shareholder, as another alternative, may wait to see if a better offer develops, but if he tenders late, he runs the risk that none of his shares will be taken. He may also sell his shares in the

to the target corporation as well as the Securities and Exchange Commission, Congress intended to do no more than give incumbent management an opportunity to express and explain its position. The Congress expressly disclaimed an intention to provide a weapon for management to discourage takeover bids or prevent large accumulations of stock which would create the potential for such attempts. Indeed, the Act's draftsmen commented upon the "extreme care" which was taken "to avoid tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid." S. Rep. No. 550, 90th Cong., 1st Sess., p. 3 (1967); H. R. Rep. No. 1711, 90th Cong., 2d Sess., p. 4 (1968). See also *Electronic Specialty Co.* v. *International Controls Corp.*, 409 F. 2d 937, 947 (CA2 1969).

The short of the matter is that none of the evils to which the Williams Act was directed has occurred or is threatened in this case. Petitioner has not attempted to obtain control of respondent, either by a cash tender offer or any other device. Moreover, he has now filed a proper Schedule 13D, and there has been no suggestion that he will fail to comply with the Act's requirement of reporting any material changes in the information contained therein. 15 U. S. C. § 78m (d)(2); 17 CFR § 240.13d-2 (1974). On this record there is no likelihood that respondent's shareholders will be disadvantaged should petitioner make a tender offer, or that respondent will be unable to adequately place its case before them should a contest for control develop. Thus, the usual

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market and hope for the best. Without knowledge of who the bidder is and what he plans to do, the shareholder cannot reach an informed decision." S. Rep. No. 550, 90th Cong., 1st Sess., p. 2 (1967).

However, the Report also recognized "that takeover bids should not be discouraged because they serve a useful purpose in providing a check on entrenched but inefficient management. *Id.*, at 3.

basis for injunctive relief, "that there exists some cognizable danger of recurrent violation," is not present here. *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 633 (1953). See also *Vicksburg Waterworks Co.* v. *Vicksburg*, 185 U. S. 65, 82 (1902).

Nor are we impressed by respondent's argument that an injunction is necessary to protect the interests of its shareholders who either sold their stock to petitioner at predisclosure prices or would not have invested had they known that a takeover bid was imminent. Brief for Respondent, at 13, 20–21. As observed, the principal object of the Williams Act is to solve the dilemma of shareholders desiring to respond to a cash tender offer, and it is not at all clear that the type of "harm" identified by respondent is redressable under its provisions. In any event, those persons who allegedly sold at an unfairly depressed price have an adequate remedy by way of an action for damages, thus negating the basis for equitable relief.[8] See *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 595 (1952) (opinion of Frankfurter, J.). Similarly, the fact that the second group of shareholders for whom respondent expresses concern have retained the benefits of their stock and the lack of an imminent contest for control make the possibility of damage to them remote at best. See *Truly* v. *Wanzer*, 5 How. 141, 142–143 (1847).

We turn, therefore, to the Court of Appeals' conclusion that respondent's claim was not to be judged according to traditional equitable principles, and that the bare fact that petitioner violated the Williams Act justified

[8] The Court was advised by respondent that such a suit is now pending in the District Court and class action certification has been sought. Although we intimate no views regarding the merits of that case, that course provides a potential sanction for petitioner's violation of the Williams Act which is not insignificant.

entry of an injunction against him. This position would seem to be foreclosed by *Hecht Co.* v. *Bowles,* 321 U. S. 321 (1944). There, the administrator of the Emergency Price Control Act of 1942 brought suit to redress violations of that statute. The fact of the violations was admitted, but the District Court declined to enter an injunction because they were inadvertent and the defendant had taken immediate steps to rectify them. This Court held that such an exercise of equitable discretion was proper despite § 205 (a) of the Act, which provided that an injunction or other order "shall be granted" upon a showing of violation, obesrving:

> "We are dealing with the requirements of equity practice with a background of several hundred years of history. . . . *The historic injunctive process was designed to deter, not to punish.* The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. We do not believe that such a major departure from that long tradition as is here proposed should be lightly implied." 321 U. S., at 329–330. (Emphasis added).

This reasoning applies *a fortiori* to actions involving only "competing private claims," and suggests that the District Court here was entirely correct in insisting that respondent satisfy the traditional prerequisites of extraordinary equitable relief by establishing irreparable harm. Moreover, the District Judge's conclusions that petitioner acted in good faith and that he promptly filed a Schedule 13D when his attention was called to this obli-

gation[9] support the exercise of its sound judicial discretion to deny an application for an injunction, relief which is historically "designed to deter, not to punish" and to permit the court "to mould each decree to the necessities of the particular case." 321 U. S., at 329. As MR. JUSTICE DOUGLAS aptly pointed out in *Hecht Co.*, the "grant of *jurisdiction* to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances." *Ibid.* (emphasis by Court).

Respondent urges, however, that the "public interest" must be taken into account in considering its claim for relief and relies upon the Court of Appeals' conclusion that it is entitled to an injunction because it "is in the best position" to insure that the Williams Act is complied with by purchasers of its stock. This argument misconceives, we think, the nature of the litigation. Although neither the availability of a private suit under the Williams Act nor respondent's standing to bring it has been questioned here, this cause of action is not authorized by the statute or its legislative history. Rather, respondent is asserting a so-called implied private right of action established by cases such as *J. I. Case Co.* v. *Borak*, 377 U. S. 426 (1964). Of course, we have not hesitated to

[9] In its brief on the merits respondent argues that "genuine issues of material fact exist as to the knowledge, motives, purposes and plans in [petitioner's] rapid acquisition of" its stock and that, at the very least, the case should be remanded for trial on these issues. This point was not raised in the petition for certiorari or respondent's opposition thereto, nor was it made the subject of a cross-petition. Because it would alter the judgment of the Court of Appeals, which like that of the District Court had effectively put an end to the litigation, rather than providing an alternative ground for affirming it, we will not consider the argument when raised in this manner. See *Mills* v. *Electric Auto-Lite Co.*, 396 U. S. 375, 381 n. 4 (1970); *Morley Constr. Co.* v. *Maryland Cas. Co.*, 300 U. S. 185, 191-192 (1937). Cf. *Wiener* v. *United States*, 357 U. S. 349, 351 n. * (1958).

recognize the power of federal courts to fashion private remedies for securities laws violations when to do so is consistent with the legislative scheme and necessary for the protection of investors as a supplement to enforcement by the Securities and Exchange Commission. Compare *J. I. Case Co.* v. *Borak, supra,* with *Securities Investor Protection Corp.* v. *Barbour,* — U. S. — (1975). However, it by no means follows that the plaintiff in such an action is relieved of the burden of establishing the traditional prerequisites of relief. Indeed, our cases hold that quite the contrary is true.

In *Deckert* v. *Independence Shares Corp.,* 311 U. S. 282 (1940), this Court was called upon to decide whether the Securities Act of 1933 authorized purchasers of securities to bring an action to rescind an allegedly fraudulent sale. The question was answered affirmatively on the basis of the statute's grant of federal jurisdiction to "enforce any liability or duty" created by it. The Court's reasoning is instructive:

> "The power to *enforce* implies the power to make effective the right of recovery afforded by the Act. And the power to make the right of recovery effective implies the power to utilize any of the procedures or actions normally available to the litigant according to the exigencies of the particular case. If petitioners' bill states a cause of action when tested by the customary rules governing suits of such character, the Securities Act authorizes maintenance of the suit . . . ." 311 U. S., at 288.

In other words, the conclusion that a private litigant could maintain an action for violation of the 1933 Act meant no more than that traditional remedies were available to redress any harm which he may have suffered; it provided no basis for dispensing with the showing required to obtain relief. Significantly, this passage was

relied upon in *Boark* with respect to actions under the Securities Exchange Act of 1934. See 377 U. S., at 433–434.

Any uncertainty regarding the nature of relief available to a person asserting an implied private right of action under the Securities Laws was resolved in *Mills* v. *Electric Auto-Lite Co.*, 396 U. S. 375 (1970). There we held that complaining shareholders had proven their case under § 14 (a) of the 1934 Act by showing that misleading statements in a proxy solicitation were material and that the solicitation itself "was an essential link in the accomplishment of" a merger. We concluded that any stricter standard would frustrate private enforcement of the proxy rules, but Mr Justice Harlan took pains to point out that:

> "Our conclusion that petitioners have established their case by showing that proxies necessary to approval of the merger were obtained by means of a materially misleading solicitation implies nothing about the form of relief to which they may be entitled. . . . In devising retrospective relief for violation of the proxy rules, the federal courts should consider the same factors that would govern the relief granted for any similar illegality or fraud . . . . *In selecting a remedy the lower courts should exercise 'the sound discretion which guides the determinations of courts of equity,' keeping in mind the role of equity as 'the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.'* " 396 U. S., at 386, quoting *Hecht Co.* v. *Bowles*, 321 U. S., at 329. (Emphasis supplied.)

Considering further the remedies which might be ordered, we observed that "the merger should be set aside only if a court of equity concludes, from all the circumstances,

that it would be equitable to do so," and that "damages should be recoverable only to the extent that they can be shown." 396 U. S., at 388, 389.

Mills could not be plainer in holding that the questions of liability and relief are separate in private actions under the Securities Laws, and that the latter is to be determined according to traditional principles. Thus, the fact that respondent is pursuing a cause of action which has been generally recognized to serve the public interest provides no basis for concluding that it is relieved of showing irreparable harm and other usual prerequisites for injunctive relief. Accordingly, the judgment of the Court of Appeals is reversed and the case is remanded to it with directions to reinstate the judgment of the District Court.

So ordered.

[c. 1975 JUNE 4]

Memorandum to Justice Powell

From Penny Clark

Re: No. 74-415 Rondeau v. Mosinee Paper Corp.

I have reviewed the opinion, and I see nothing that should prevent or delay your joining it. My only hesitation relates to something the opinion does not say: that it deals generally with the issuance of a permanent injunction following a completed violation of § 13(d), and that the case does not require decision on the availability of a preliminary injunction pending compliance with § 13(d). [That is, if the corporation learned that a shareholder had passed the 5% mark and immediately sued to enjoin further purchases or the launching of a takeover bid until he filed the necessary report.] I am uncertain whether such a situation would be covered by the standard formula of "irreparable injury" but I am convinced that a preliminary injunction of that sort would be the best possible way to enforce § 13(d).

I would not think it important enough to condition your join, but I wonder if we couldn't ask the Chief to add somewhere a footnote to the following effect:

> "Because this case involves only the availability of injunctive relief to remedy a § 13(d) violation following compliance with the reporting requirement, it does not require us to decide whether or under what circumstances a corporation could obtain a decree enjoining a shareholder who is currently in violation of § 13(d) from acquiring further shares, exercising voting rights, or launching a takeover bid, pending compliance with the reporting requirements."

penny

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1975

Re: No. 74-415, Rondeau v. Mosinee Paper Corp.

Dear Chief,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 5, 1975

Re: No. 74-415, Rondeau v. Mosinee Paper Corp.

Dear Chief,

I think the proposed new footnote on page 9 is fine.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1975

Re: No. 74-415 - Rondeau v. Mosinee Paper Corp.

Dear Chief:

Join me, please.

Sincerely,

Byron

The Chief Justice

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 5, 1975

Re: 74-415 - Rondeau v. Mosinee Paper Corp.

MEMORANDUM TO THE CONFERENCE:

A suggestion has been made that a footnote be added to the sentence on page 9 beginning with "Moreover . . . ."

_/
"Because this case involves only the availability of injunctive relief to remedy a § 13(d) violation following compliance with the reporting requirement, it does not require us to decide whether or under what circumstances a corporation could obtain a decree enjoining a shareholder who is currently in violation of § 13(d) from acquiring further shares, exercising voting rights, or launching a takeover bid, pending compliance with the reporting requirements."

This helps put a focus on alternative means of dealing with situations like this and it is acceptable to me. If those joining me have no objection, I am glad to add this.

Regards,

WEB

June 5, 1975

No. 74-415 Rondeau v. Mosinee Paper Corp.

Dear Chief:

Please join me in your opinion for the Court.

It does occur to me that it might be helpful to add a footnote, at some appropriate place, along the following lines:

> "Because this case involves only the availability of injunctive relief to remedy a § 13(d) violation following compliance with the reporting requirement, it does not require us to decide whether or under what circumstances a corporation could obtain a decree enjoining a shareholder who is currently in violation of § 13(d) from acquiring further shares, exercising voting rights, or launching a takeover bid, pending compliance with the reporting requirements."

Although I think such a note might be useful, I leave this entirely to your judgment.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 6, 1975

Re: No. 74-415 - Rondeau v. Mosinee Paper Corp.

Dear Chief:

Please join me in your circulation of June 4 as supplemented with the new footnote proposed for page 9.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1975

Re: 74-415 - Rondeau v. Mosinee Paper Co.

MEMORANDUM TO THE CONFERENCE:

To eliminate what could be read as an internal inconsistency between the statement on page 9 of my draft that "Petitioner has not attempted to obtain control," and the disclosure quoted on page 4, I am adding a footnote keyed to the sentence ending with "attorney," page 3, line 16:

_/ Although some outstanding orders were filed after July 30, 1971, petitioner placed no new orders for respondent's stock after that date.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 11, 1975

Re: Rondeau v. Mosinee Paper Corp., No. 74-415

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,

William O. Douglas

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 11, 1975

Re: No. 74-415 -- Francis A. Rondeau v. Mosinee Paper Corporation

Dear Bill:

Please add to your dissent the following:

"Mr. Justice Marshall also dissents."

Sincerely,

T.M.

T.M.

Mr. Justice Brennan

cc: The Conference

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
4/28/75								
1st draft 6/4/74	Join WJB 6-11-75	Dissent 6-4-75 1st draft 6-5-75	Join CJ 6-4-75	Join CJ 6-5-75	Dissent 6-11-75	Join CJ 6-6-75	Join CJ 6/5/75	Join CJ 6/6/75
		2nd draft 6-12-75						

74-415 Rondeau v. Mosinee Paper