GIBSON DUNN

Supreme Court Holds That Pure Omissions Cannot Support A Cause Of Action Under Rule 10b-5(b)

Client Alert | April 12, 2024

***Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, No. 22-1165** – Decided April 12, 2024 **On April 12, the Supreme Court unanimously held that a company's failure to disclose information required under SEC regulations—such as Item 303 of Regulation S-K—cannot support a private securities-fraud claim unless the omission makes the company's affirmative statements misleading.**

> *"Pure omissions are not actionable under Rule 10b-5(b)."*
>
> Justice Sotomayor, writing for the Court

Background:

Regulation S-K requires public companies to provide disclosure on certain prescribed topics. Item 303 of the regulation, the "Management's Discussion and Analysis of Financial Condition and Results of Operation" (MD&A), specifically requires companies to disclose "known trends or uncertainties that have had or that are reasonably likely to have" a material impact on net sales, revenue, or income. 17 C.F.R. § 229.303(b)(2)(ii). And Rule 10b-5(b) makes it unlawful for companies "[t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." *Id.* § 240.10b-5(b). Both the SEC and private parties can sue companies for violations of Rule 10b-5(b). Several circuits had held that failure to make a disclosure under Item 303 cannot support a securities fraud claim under Rule 10b-5(b) without an affirmative statement that is made misleading by the omission. But the Second Circuit disagreed, holding that an Item 303 violation alone can give rise to a securities-fraud claim. The Supreme Court granted review to resolve the conflict.

Issue:

Whether a failure to make a disclosure required under Item 303 of Regulation S-K can support a private claim under Rule 10b-5(b) even in the absence of an otherwise misleading statement.

Court's Holding:

No. Rule 10b-5(b) does not prohibit pure omissions, so a failure to disclose information required under Item 303 does not support a private securities-fraud claim under Rule 10b-5(b) without an affirmative statement made misleading by the omission.

What It Means:

- The Court's holding clarifies that Rule 10b-5(b) does not allow private lawsuits based on pure omissions, including omitted information required to be disclosed under SEC regulations like Item 303. Instead, Rule 10b-5(b) permits lawsuits

Related People

Lucas C. Townsend

Bradley J. Hamburger

Brad G. Hubbard

Patrick J. Fuster

Matt Aidan Getz

Robert A. Batista

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

based only on affirmative misrepresentations and “half-truths” that are misleading because they omit critical qualifying information.

- The Court rejected the plaintiff’s and government’s argument that the omission of any information required by Item 303 is necessarily misleading because investors expect companies to disclose all known trends or uncertainties. The Court clarified, however, that “private parties remain free to bring claims based on Item 303 violations that create misleading half-truths.” The Court also contrasted Rule 10b-5(b)’s language with Section 11(a) of the Securities Act of 1933, under which the Court observed that Congress expressly imposed liability for pure omissions.
- The Court’s decision represents an important check on claims under Rule 10b-5(b), reaffirming that the private right of action the Court recognized many decades ago should not be further extended.
- Although the Court framed the question presented in terms of “private” rights of action, the Court’s interpretation of Rule 10b-5(b) does not appear to be limited to that context. Accordingly, the Court’s decision likely means that the SEC itself also will not be able to bring enforcement actions alleging fraud under Rule 10b-5(b) based on a pure omission theory. The Court did make clear, however, that the SEC retains authority to prosecute violations of Item 303 and the SEC’s other regulations that mandate what disclosures must be made in public filings.
- The Court did not opine on any issue other than whether a pure omission is actionable under Rule 10b-5(b). It did not address what would qualify as a statement made misleading by an omission, or whether the other parts of Rule 10b-5—the “scheme liability” provisions of Rules 10b-5(a) and 10b-5(c)—support liability for pure omissions. Those issues will likely be the subject of further litigation.

The Court’s opinion is available here. Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Thomas H. Dupree Jr. +1 202.955.8547 tdupree@gibsondunn.com	Allyson N. Ho +1 214.698.3233 aho@gibsondunn.com	Julian W. Poon +1 213.229.7758 jpoon@gibsondunn.com
Lucas C. Townsend +1 202.887.3731 ltownsend@gibsondunn.com	Bradley J. Hamburger +1 213.229.7658 bhamburger@gibsondunn.com	Brad G. Hubbard +1 214.698.3326 bhubbard@gibsondunn.com

Related Practice: Securities Litigation

Monica K. Loseman +1 303.298.5784 mloseman@gibsondunn.com	Brian M. Lutz +1 415.393.8379 blutz@gibsondunn.com	Craig Varnen +1 213.229.7922 cvarnen@gibsondunn.com
Jason J. Mendro +1 202.887.3726 jmendro@gibsondunn.com	Michael D. Celio +1 650.849.5326 mcelio@gibsondunn.com	

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

Related Practice: Securities Regulation and Corporate Governance

Elizabeth Ising +1 202.955.8287 eising@gibsondunn.com	James J. Moloney +1 949.451.4343 jmoloney@gibsondunn.com	Lori Zyskowski +1 212.351.2309 lzyskowski@gibsondunn.com
Thomas J. Kim +1 202.887.3550 tkim@gibsondunn.com	Brian J. Lane +1 202.887.3646 blane@gibsondunn.com	Ronald O. Mueller +1 202.955.8671 rmueller@gibsondunn.com

This alert was prepared by associates Patrick Fuster, Matt Aidan Getz, and Robert Batista.
© 2024 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

Related Capabilities

Appellate and Constitutional Law

Securities Litigation

Litigation