
Emulex Corp. v. Varjabedian, No. 18-459

In a one-line per curiam order issued this morning, a unanimous Supreme Court declined to resolve a dispute, argued before the Court last Monday, over whether Section 14(e) of the Securities and Exchange Act of 1934 provides an implied private right of action based on negligent misstatements or omissions in connection with a tender offer.

Background: Emulex shareholders filed a putative class action alleging that Emulex and other defendants violated Section 14(e) by omitting material information in recommending that shareholders accept a tender offer. In relevant part, Section 14(e) makes it “unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.” The district court dismissed the claim based on the plaintiffs’ failure to adequately plead that the defendants acted with scienter. But the Ninth Circuit reversed, holding that Section 14(e) supports an implied private right of action based on negligence—intentional misconduct is not required.

Issue: Whether Section 14(e) of the Securities and Exchange Act of 1934 provides a basis for an implied private right of action and, if so, whether defendants may violate that right negligently, or whether scienter is required.

Court’s Holding: In a unanimous, per curiam order, the Court dismissed the case as improvidently granted, meaning that the Ninth Circuit’s judgment stands.