
Macquarie Infrastructure Corp. v. Moab Partners, L.P., No. 22-1165

Today, the Supreme Court unanimously held that “pure omissions” from a disclosure, without more, cannot support a claim under SEC Rule 10b-5(b) that a company omitted material facts in connection with a securities transaction.

Background: Securities and Exchange Commission (SEC) Rule 10b-5(b) makes it unlawful to omit material facts in connection with buying or selling securities when that omission renders “statements made” misleading. 17 C.F.R. § 240.10b-5(b). A separate SEC regulation, Item 303 of SEC Regulation S-K, requires companies to periodically file disclosures that describe “any trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.” *Id.* § 229.303(b)(2)(ii).

This case concerned Item 303 disclosures made by Macquarie Infrastructure Corporation concerning a subsidiary that stores bulk liquid commodities. One of the stored commodities was a fuel oil that typically has a sulfur content of 3%. In 2016, the United Nations’ International Maritime Organization adopted a rule that, effective in 2020, capped the sulfur content of fuel oil used in shipping at 0.5%. Macquarie did not discuss the rule in its Item 303 disclosures. In 2018, Macquarie’s stock dropped 41% after it announced that the fuel oil market had declined and so had its subsidiary’s storage contracts.

An investor filed suit, alleging that Macquarie violated Rule 10b-5(b) by failing to disclose the potential adverse effects of the United Nations rule on its fuel-oil-storage business. The Second Circuit agreed with the investor that Macquarie had a duty under Rule 10b-5(b) to disclose the rule.

Issue: Whether a company’s failure to disclose required information under Item 303 can support a private action under Section 10(b) of the Securities Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5(b) if the company does not make an otherwise-misleading statement.

Court’s Holding: In a unanimous opinion authored by Justice Sotomayor, the Supreme Court held that “pure omissions” from an Item 303 disclosure, standing alone, are not actionable under Rule 10b-5(b). The Court examined the text of Rule 10b-5(b) and concluded that it requires the disclosure of information necessary to ensure that a company’s statements are complete and are not misleading half-truths. The Court therefore reasoned that a company’s failure to disclose information required by Item 303 can support a Rule 10b-5(b) claim only if the omission renders an affirmative statement misleading. Because Macquarie made no affirmative statements about the United Nations rule or its potential impact on the subsidiary’s business, the Court held that Macquarie’s failure to discuss these topics in its Item 303 disclosures could not support a Rule 10b-5(b) claim.

The Court rejected the investor’s argument that this interpretation of Rule 10b-5(b) would provide blanket immunity to companies that omit required information from their SEC filings. The Court noted that while private plaintiffs cannot bring Rule 10b-5(b) claims on this basis, the SEC has authority to institute enforcement actions based on violations of its disclosure requirements, including those governing Item 303 disclosures.

Read the opinion [here](#).