

Winston Team Wipes Out Pure Omission Liability With Unanimous Supreme Court Ruling

APRIL 15, 2024

A Winston team won a unanimous ruling in the U.S. Supreme Court late last week in an important case under the federal securities laws. The ruling holds that silence does not equal fraud, even if SEC regulations require the issuer to speak.

Item 303 of SEC Regulation S-K requires management to describe “known trends or uncertainties that have had or that are reasonably likely to have” a material impact. This requires judgments that are often easy to second-guess, particularly after a company experiences a loss.

Client Macquarie Infrastructure Corporation saw its stock drop after making a series of announcements—including about a sudden decline in its business of storing No. 6 oil. Moab Partners quickly filed a securities fraud class action, claiming that the company’s SEC filings violated Item 303 because they didn’t mention a forthcoming environmental regulation that was arguably impacting demand. The district court dismissed the case, but the Second Circuit revived it. The Winston team persuaded the Supreme Court to take the case to resolve a circuit split about whether a Rule 10b-5 claim can rest on a pure omission.

After oral argument, the Supreme Court ruled unanimously in Macquarie Infrastructure Corporation’s favor. It held that Rule 10b-5 covers an omission only if it produces a half-truth—that is, if the omitted fact is necessary to make affirmative statements “not misleading.”

This case is part of a longstanding collaboration between Winston’s appellate and securities practices. Linda Coberly led the briefing and argued the case, alongside partners John Schreiber and Kerry Donovan, counsel Lauren Gailey, and partner emeritus Dick Reinthaler. The team also featured associates Allie Kushner, Michelle Tuma, Alex Ingoglia, Daniel Aronsohn, Jeremy Chu, and Matthew Snider.

This win has been covered in many media outlets, including the following:

- “Supreme Court Finds Macquarie Infrastructure Not Liable to Investors for Omitting Regulatory Risk,” [*The Wall Street Journal*](#)
- “High Court Sides With Business on SEC Liability Requirement,” [*Bloomberg Law*](#)
- “Corporate silence on impactful trends not securities fraud, US Supreme Court rules,” [*Reuters*](#)

- “In Win for Securities Industry, Justices Curb Investor Suits Over ‘Pure Omissions,’” [*The National Law Journal*](#)
- “Justices Limit Shareholder Suits Over Corporate Disclosures,” [Law360](#)
- “Supreme Court Decides Macquarie Infrastructure Corp. v. Moab Partners, L.P.,” [JD Supra](#)
- “Supreme Court Underscores Limited Applicability of Rule 10b-5(b) Omissions Claims,” [*The National Law Review*](#)
- “Law360’s Legal Lions Of The Week,” [Law360](#)

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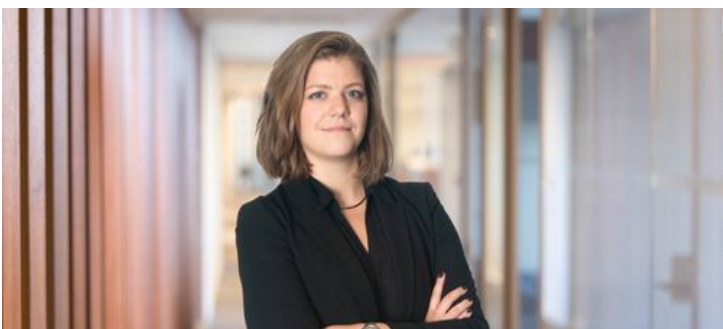
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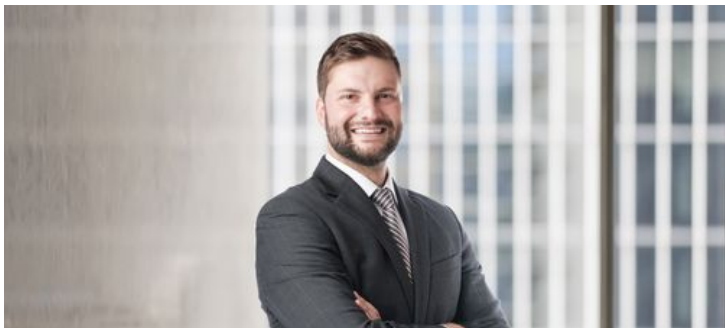
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