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In WLF Victory, Supreme Court Rejects Second Circuit's Flawed Reading of SEC Rule 10b-5

(Macquarie Infrastructure Corp. v. Moab Partners, LP)

“The Second Circuit’s rule would have forced issuers to bury investors in an avalanche of trivial information just to avoid potential federal-securities-fraud liability. As the unanimous Court held, that is not what Congress intended.”

—Cory Andrews, WLF General Counsel and Vice President of Litigation

WASHINGTON, DC—Today the U.S. Supreme Court rejected the U.S. Court of Appeals for the Second Circuit’s novel interpretation of federal securities law that split with every other circuit that had decided the issue. The high court’s decision was a victory for Washington Legal Foundation, which filed an amicus brief in the case urging reversal. WLF’s brief was prepared with generous pro bono support from Lyle Roberts, George Anhang, and William Marsh of Shearman & Sterling LLP.

Section 10(b) of the Securities Exchange Act of 1934 makes companies liable for misleading statements in their financial filings. Concluding that Item 303 of Regulation S-K creates a privately enforceable duty to disclose, the Second Circuit allowed a shareholder to sue a company for omitting Item 303 information from its financial statement—even though that omission did not render any portion of the filing misleading.

WLF’s amicus brief detailed how the Second Circuit’s reasoning is at odds with the plain meaning of the SEC rule, the common law of fraud-by-omission, and longstanding Supreme Court precedent. A unanimous Court agreed, explaining that “The failure to disclose information required by Item 303 can support a Rule 10b–5(b) claim only if the omission renders affirmative statements made misleading.”

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