

**22-1165 MACQUARIE INFRASTRUCTURE, V. MOAB PARTNERS, L.P.**

DECISION BELOW: 2022 WL 17815767

LOWER COURT CASE NUMBER: 21-2524

QUESTION PRESENTED:

Section 10(b) of the Securities Exchange Act of 1934 prohibits deception in connection with the purchase or sale of securities. To that end, SEC Rule 10b-5 declares it unlawful to make an untrue statement or omit a material fact "necessary" to make an affirmative statement "not misleading." 17 C.F.R. § 240.10b-5(b). A violation of this requirement can give rise to a private claim—a judicially implied private right of action that this Court has construed narrowly.

Item 303 of SEC Regulation S-K calls for additional disclosures under a different standard. Item 303 is an administrative rule that requires a company to disclose known trends or uncertainties that are likely to have a material impact on its financial position, regardless of whether the company had made any statements that would otherwise be misleading.

Against this backdrop, this case presents the following question:

Whether the Second Circuit erred in holding—in conflict with the Third, Ninth, and Eleventh Circuits— that a failure to make a disclosure required under Item 303 can support a private claim under Section 10(b), even in the absence of an otherwise-misleading statement.

CERT. GRANTED 9/29/2023