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THE SUPREME COURT'S RULINGS ON SHAREHOLDERS' BURDENS AND DEFENDANTS' CONSTITUTIONAL RIGHTS

Recent Supreme Court developments requiring specificity in pleading omissions cases and undercutting the utility of the SEC's in-house tribunal process pose an increased burden on private shareholders and regulators seeking to vindicate allegations of securities fraud.

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The Supreme Court's 2023-2024 session has already profoundly impacted how purported violations of the federal securities laws are litigated. Defendants in such cases traditionally see lawsuits brought by either the U.S. Securities and Exchange Commission (the "SEC" or the "Agency") or private shareholders of the affected company. Going forward, both the SEC and plaintiff shareholders will face additional burdens in pursuing their claims.

Resolving a circuit split, the Court's opinion in *Macquarie Infrastructure Corp. v. Moab Partners L.P.*¹ established plaintiffs cannot plead securities fraud based on silence by issuers in disclosures required by certain SEC regulations, but must identify an affirmative misstatement in the contested disclosures. Additionally, the Court's opinion in *SEC v. Jarkesy*² significantly undercuts the utility of SEC's in-house tribunal process. Going forward, the SEC must adjudicate claims seeking civil penalties in the federal courts before an Article III judge.

¹ 601 U.S. 257 (2024).

² 219 L. Ed. 2d 650 (2024).

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Looking forward, both rulings are likely to reshape the securities litigation landscape in significant ways. The pleading burden established by *Macquarie Infrastructure Corp.* may dissuade certain plaintiffs from pursuing claims based solely on purported omissions, potentially leading to a decrease in the overall number of such cases filed. Moreover, the mandate that the SEC pursue civil remedies exclusively through the federal courts, as required by *Jarkesy*, will undoubtedly lead to a shift in how both enforcement actions and the accused's corresponding defense are developed and carried out.

Overall, these developments will require shareholder plaintiffs and regulatory agencies to both reconsider and reshape their enforcement and litigation approaches in light of the Supreme Court decisions.

MACQUARIE INFRASTRUCTURE CORP. V. MOAB PARTNERS L.P

On April 12, 2024, the U.S. Supreme Court issued its opinion in *Macquarie Infrastructure Corp.* The unanimous decision, written by Justice Sotomayor, provides limited and clear direction that plaintiffs may not bring so-called "pure omission" cases under Section 10(b) of the Exchange Act and Rule 10b-5. Rather,

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