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The Securities Litigation Trends That Will Matter Most In 2025

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In 2024, we saw a number of high-profile and important securities rulings. It was a year of twists and turns, marked by decisions the U.S. Supreme Court issued and, just as importantly, did not issue.

In April, the Supreme Court **issued** its highly anticipated decision in Macquarie Infrastructure Corp. v. Moab Partners LP, holding that pure omissions cannot support private claims under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, even where such an omission is an alleged violation of Item 303 of Regulation S-K.

2024 ended with an unusual, if not unprecedented, sequence of events. In November and December, the Supreme Court dismissed writs of certiorari that it had granted in **two high-profile** securities fraud class actions only months before — Facebook v. Amalgamated Bank and Nvidia Corp. v. E. Ohman J:Or Fonder AB — thereby forgoing the opportunity to clarify pleading standards for claims challenging corporate disclosure statements. Why the Supreme Court did so and what that portends for future securities cases at the Supreme Court remain intensely debated topics within the securities bar.

2025 promises many more significant developments in the law as courts continue to grapple with new cases and legal theories.

We can expect to see a decision from the U.S. Court of Appeals for the Sixth Circuit in In re: FirstEnergy Corp. Securities Litigation, which **should address** the interplay between the Supreme Court's decision in Macquarie and Affiliated Ute's presumption of reliance in omissions cases.

We also should see courts grapple with the Supreme Court's **ruling** in U.S. Securities and Exchange Commission v. Jarkesy, which held that when the SEC seeks civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial.

Additionally, there will likely be a continuation of cases — **like** Sjunde AP-Fonden v. The Goldman Sachs Group Inc. — applying the mismatch framework set forth by the Supreme Court in its 2021 **decision** in Arkansas Teacher Retirement System v. Goldman Sachs Group Inc.

In light of these cases and trends, 2025 is shaping up to be a significant year for securities litigation, as plaintiffs and defendants alike navigate shifting standards for omission theories of liability, class certification, risk disclosure claims and more. This article highlights the hot cases and trends in securities litigation that will matter most in 2025.

The End of Liability for Pure Omissions

As we predicted **last year**, cases alleging omissions, as opposed to misrepresentations, were front and center in 2024.

The most notable of which was the Supreme Court's April 12 decision in Macquarie v. Moab.[1] In a unanimous decision, the court vacated a U.S. Court of Appeals for the Second Circuit **decision** and ruled in favor of Macquarie Infrastructure Corp., holding that pure omissions — that is, silence in the face of an alleged duty to speak — cannot support private claims under Section 10(b) and Rule 10b-5 thereunder, even where such an omission could give rise to a violation of Item 303 of SEC Regulation S-K.[2]

The decision reverses a significant trend in securities class action practice where class action plaintiffs premised Rule 10b-5 claims on alleged violations of Items 303 and Item 105.

That undoubtedly was a victory for the securities defense bar. However, it is one that may ultimately prove narrow in scope.

Indeed, the Supreme Court was clear that the ruling does not apply to claims brought under Section 11 of the Securities Act. And just as importantly, as for Rule 10b-5 claims, we expect securities plaintiffs to restyle pure omission claims as ones for half-truths, which remain viable, citing language in public company disclosures, including generic and nonspecific statements.

One case to keep a close eye on with respect to its application of Macquarie is In re: FirstEnergy Corp. Securities Litigation, which is currently pending before the Sixth Circuit on a Rule 23(f) petition following the U.S. District Court for the Southern District of Ohio's 2023 **order** certifying the class.

In FirstEnergy, the plaintiffs filed a class action against FirstEnergy, an Ohio-based electrical utility company, alleging that FirstEnergy violated Section 10(b) by making statements that were false or misleading because they failed to disclose its executives' alleged bribery of Ohio public officials in connection with H.B. 6, which passed both the Ohio Senate and House in 2019.

In March 2023, the district court certified the class. In doing so, the district court treated half-truths — that is, incomplete affirmative statements that are alleged to have been misleading by virtue of the information omitted by then-Ohio House Speaker Larry Householder — as pure omissions for purposes of certifying an investor class. The court then applied the easier-to-establish, yet harder-to-rebut, presumption of reliance set forth by the U.S. Supreme Court in 1972 in the Affiliated Ute v. U.S. decision, which ordinarily governs cases based on pure omissions, to those half-truths.

After the Sixth Circuit granted FirstEnergy's Rule 23(f) petition, the Supreme Court decided Macquarie. Accordingly, the parties filed letters addressing Macquarie's application to the case.

The defendants argued that Macquarie clearly distinguished half-truths from pure omissions, thereby confirming that half-truths are not omissions for purposes of the Affiliated Ute presumption. Conversely, the plaintiffs argued that Affiliated Ute could still apply to half-truths because Macquarie did not expressly preclude it.

The Sixth Circuit's decision will likely be the first decision to apply Macquarie in the context of the Affiliated Ute presumption. If the Sixth Circuit affirms the district court's ruling, it could have significant consequences on future securities fraud class actions, including by giving plaintiffs a clear and simple path to class certification, so long as they are able to plead that the defendants told half-truths.

Administrative Proceedings Post-Jarkesy

On June 27, the U.S. Supreme Court issued its highly anticipated decision in SEC v. Jarkesy.[3] The issue before the court was whether the Seventh Amendment, which guarantees the right to a jury trial, permits the SEC to compel defendants to defend themselves before the agency rather than before a jury in federal court.

The case landed in federal court following an appeal from an SEC order, which affirmed an administrative law judge's imposition of civil penalties against a hedge fund manager and his firm after finding that they had committed securities fraud by, among other things, lying to investors about the valuation of the funds' assets and the identity of the funds' broker and auditor.

During the SEC's in-house proceedings, the defendants made various constitutional arguments, including that being subjected to the SEC's in-house proceedings violated their Seventh Amendment right to trial, all of which the commission rejected. On appeal, the U.S. Court of Appeals for the Fifth Circuit **agreed** with the defendants in 2022, holding, among other things, that the SEC's in-house adjudication of the defendants' case violated their Seventh Amendment right to a jury trial.[4]

The U.S. Supreme Court granted the SEC's petition for a writ of certiorari in June 2023. In a 6-3 decision, the court affirmed the Fifth Circuit's ruling on Seventh Amendment grounds, holding that the defendants were entitled to a jury trial in an Article III court whenever the SEC seeks civil penalties in an enforcement action.

In so holding, the court effectively limited the type of proceedings the SEC can bring in-house, thereby significantly constraining the SEC's powers. The decision has also left many to wonder whether other federal regulatory agencies that pursue civil penalties through in-house proceedings can continue to do so.

Pleading Standards Relating to Corporate Disclosure Statements

The Supreme Court closed out 2024 by dismissing two cases that would have clarified how the heightened pleading standards under Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act apply in two recurring circumstances.

As a result, two class actions are allowed to proceed against Facebook and Nvidia, leaving unresolved circuit splits on risk disclosure obligations and pleading scienter under the PSLRA through allegations sourced to putative experts.

Facebook v. Amalgamated Bank

In November, the Supreme Court passed up the opportunity to clarify whether falsity allegations are sufficient to survive a motion to dismiss where they are based on forward-looking risk disclosures of risks that had already materialized in the past — even where that past event presents no known risk of ongoing or future business harm.

In October 2023, the Ninth Circuit **issued** a split opinion holding that shareholders adequately pled that risk statements relating to the risk of improper access to Facebook users' data were materially false and misleading because of the high-profile Cambridge Analytica scandal.[5]

The decision reversed the U.S. District Court for the Northern District of California, which held that Facebook's risk disclosure statements relating to the Cambridge Analytica data breach were inactionable because the risk disclosures warned of the potential for reputational and business harm based on unauthorized data access, and the plaintiffs failed to plead that Facebook had actually suffered such harm at the time the risk disclosure was issued.[6]

The Ninth Circuit criticized the district court's approach for "overlook[ing] the reality of what Facebook knew," ruling instead that "a company may make a materially misleading statement when it 'speaks entirely of as-yet-unrealized risks' when the risks have 'already come to fruition,'" even when the "magnitude of the ensuing harm [is] unknown."[7]

Nvidia v. E. Ohman J:Or Fonder

In December, the U.S. Supreme Court similarly dismissed Nvidia's case regarding (1) the standard to plead scienter for PSLRA claims when relying on internal company documents, and (2) whether an expert opinion may serve as a proxy for facts under the PSLRA.

In March 2021, the Northern District of California **dismissed** a complaint alleging that Nvidia and its officers misled investors by failing to disclose the extent to which revenues in its gaming segment were derived from sales to crypto miners rather than to gamers.

The plaintiffs attributed several allegations to statements by anonymous former employees, internal company documents (but not facts about their contents), and expert analysis.[8] The district court held that the plaintiffs failed to "adequately tie the specific contents of any of these data sources to particular statements."[9]

In August 2023, the Ninth Circuit **reversed in part**, ruling that former employee statements and internal company documents were sufficient to plead scienter. The Ninth Circuit similarly ruled that the expert analysis met the PSLRA's standard for pleading falsity with particularity because it was reliable, particularized and corroborated by other evidence, i.e., former employee statements and market events.[10]

Class Certification Issues

Class certification will likely remain an important battleground for defendants facing securities class actions in 2025, particularly with respect to damages models and price impact defenses.

In August, the Ninth Circuit clarified when an expert's damages model may be used to demonstrate predominance for purposes of class certification.

In Lytle v. Nutramax Labs Inc., the Ninth Circuit amended an **April ruling** that an unexecuted damages model — even if unpersuasive, unlikely to succeed or not presented in an admissible form — could suffice to show that damages are susceptible to common proof where that "model will be able to reliably calculate damages in a manner common to the class at trial."[11] The court further clarified that the reliability of a model at the class certification stage does not turn on whether that model will actually reveal damages, but rather on whether the output of that model would theoretically be common to the class.[12]

The Ninth Circuit's decision in Lytle lowers the threshold for sufficiently showing that damages are susceptible to common proof for purposes of class certification. As such, we will likely see defendants struggle to defeat class certification based on attacks against damages models, even ones that appear inchoate or underdeveloped, so long as the model could conceivably determine damages on a classwide basis. We also anticipate that other federal circuits may take a more restrictive approach than the Ninth Circuit adopted in Lytle.

We can also expect to see lower courts continue to grapple with the Supreme Court's mismatch framework announced in its 2021 decision in Arkansas Teacher Retirement System v. Goldman Sachs Group, which held that the generic nature of a misrepresentation often will be important evidence of a lack of price impact.[13]

Although that decision granted defendants additional arguments to rebut price impact at the class certification stage, subsequent experience demonstrates that success is not guaranteed. In fact, Goldman Sachs recently lost a battle over the application of the mismatch framework in Sjunde AP-Fonden v. Goldman Sachs Group, a securities fraud class action that is currently pending before the U.S. District Court for the Southern District of New York.[14]

The case arose out of the highly publicized 1Malaysia Development Berhad, or 1MDB, scandal. Investors alleged that Goldman Sachs, which provided investment banking services to 1MDB, violated Section 10(b) of the Exchange Act and Rule 10b-5 by making false and misleading statements about the nature of Goldman Sachs' involvement with 1MDB and its executives' foreknowledge of any corruption associated with it.

The plaintiff moved to certify the class, invoking the Basic presumption — derived from the Supreme Court's 1988 decision in Basic Inc. v. Levinson — and the inflation maintenance theory.[15] In assessing Goldman Sachs' rebuttal evidence showing a lack of price impact, the magistrate judge performed a "match" analysis and determined that at least two statements matched a corrective disclosure. Accordingly, the magistrate judge recommended that a class be certified.

As of the time of this writing, the district court has not yet adopted the magistrate judge's recommendation. However, if the district court does, the Second Circuit will likely have an opportunity to weigh in on the application of the mismatch framework this year.

Conclusion

In light of these notable cases and trends, 2025 promises to be a significant year for securities litigation. Securities law practitioners and public companies should continue to closely monitor cases currently pending in the federal courts.

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Disclosure: Willkie represents a group of former SEC officials and law professors who filed an amicus brief in support of Goldman Sachs' petition for a writ of certiorari and petition to appeal in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System. Willkie also represents a group of former SEC officials and law professors who filed an amicus brief in support of FirstEnergy's petition for a Rule 23(f) appeal.

[1] No. 22-1165.

[2] Item 303 requires a company's management to disclose "any known 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." 17 CFR § 229.303.

[3] Sec. & Exch. Comm'n v. Jarkesy , 144 S. Ct. 2117 (2024).

[4] Jarkesy v. Sec. & Exch. Comm'n, 34 F.4th 446, 450-51 (5th Cir. 2022).

[5] In re Facebook, Inc. Securities Litig. , 87 F.4th 934 (9th Cir. 2023),cert. granted in part sub nom.Facebook, Inc. v. Amalgamated Bank , 144 S. Ct. 2629 (2024), andcert. dismissed as improvidently granted sub nom.Facebook, Inc. v. Amalgamated Bank, 604 U.S. 4 (2024).

[6] In re Facebook, Inc. Securities Litig. , 87 F.4th at 948.

[7] In re Facebook, Inc. Securities Litig., 87 F.4th at 949-950.

[8] Iron Workers Loc. 580 Jt. Funds v. NVIDIA Corp. , 522 F. Supp. 3d 660 (N.D. Cal. 2021),aff'd in part, rev'd in part and remanded sub nom.E. Ohman J:or Fonder AB v. NVIDIA Corp. , 81 F.4th 918 (9th Cir. 2023).; E. Ohman J:or Fonder AB v. NVIDIA Corp., 81 F.4th 918 (9th Cir. 2023),cert. granted sub nom.NVIDIA Corp. v. Ohman J , 144 S. Ct. 2655 (2024), andcert. dismissed as improvidently granted,No. 23-970, 2024 WL 5058572 (U.S. Dec. 11, 2024).

[9] Iron Workers Loc. 580 Jt. Funds v. NVIDIA Corp. , 522 F. Supp. 3d at 674.

[10] E. Ohman J:or Fonder AB v. NVIDIA Corp., 81 F.4th at 929-33 (2023).

[11] Lytle v. Nutramax Laboratories, Inc. , 114 F.4th 1011, 1019, 1024 (9th Cir. 2024).

[12] Lytle v. Nutramax Laboratories, Inc., 114 F.4th at 1026-27.

[13] Goldman Sachs Grp., Inc. v. Arkansas Tchr. Ret. Sys. , 594 U.S. 113 (2021).

[14] Sjunde AP-Fonden v. Goldman Sachs Grp., Inc. , No. 18-CV-12084, 2024 WL 1497110 (S.D.N.Y. Apr. 5, 2024).

[15] Under the inflation maintenance theory, certain statements are actionable merely because they maintained an already inflated stock price. 594 U.S. at 119-20.