

Supreme Court Limits False Statement Liability Under Rule 10b-5 To Those Who Actually Make Misstatements

June 13, 2011 | Client Update

On June 13, 2011, the U.S. Supreme Court issued an important decision clarifying the scope of liability for “making” false statements under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. While some lower courts previously had held that a person can only be liable for making a statement when it is publicly attributed to him or her at the time of dissemination, other courts had held that a person could be liable for substantially participating in formulating the statement, at least where the person knew or should have known that the representation would be communicated to investors.

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