

# *City of Riviera Beach General Employees Retirement System et al. v Macquarie Infrastructure Corporation et al.*

**COURT:** United States District Court for the Southern District of New York  
**CASE NUMBER:** 1:18-cv-03608-VSB  
**CLASS PERIOD:** 02/22/2016 - 02/21/2018  
**CASE LEADERS:** Salvatore J. Graziano, Jesse L. Jensen  
**CASE TEAM:** Timothy G. Fleming

This is a securities class action lawsuit on behalf of a class of persons and entities who purchased or acquired Macquarie Infrastructure Corporation (“Macquarie” or the “Company”) securities between February 22, 2016 and February 21, 2018, inclusive (the “Class Period”), against Macquarie, certain of the Company’s senior executives, Macquarie’s manager (“Macquarie Management”), and Barclays as underwriter of a secondary offering conducted in November 2016 (collectively, “Defendants”).

This matter arises from Defendants’ misrepresentations and material omissions concerning Macquarie’s International-Matex Tank Terminals (“IMTT”) business and the sustainability of the Company’s dividend to shareholders. IMTT, which provides bulk liquid storage and handling services at 12 marine terminals in the United States and Canada, is Macquarie’s most important business segment. Throughout the Class Period, the Company emphasized IMTT’s “very strong” performance and “high” utilization rates at multiple investor conferences. Significantly, the Company only disclosed to investors the categories of commodities serviced by IMTT (such as chemicals, biofuels, vegetable and animal oils, crude and asphalt, and refined petroleum products), but did not disclose to investors the specific products stored at IMTT’s facilities. This made it impossible for investors to independently determine how industrywide changes in commodities demand and usage might impact IMTT’s liquid fuel storage business.

In particular, the Company concealed from investors IMTT’s dependence on heavy residual oils, and specifically No. 6 fuel oil, a heavy, viscous oil at the bottom of the distillation stream that had been in decline for years prior to the start of the Class Period due to environmental concerns and more competitive alternatives. The decline in the usage of heavy residual oil products, including No. 6 fuel oil, presented a material risk to the Company, which Defendants concealed from investors. In addition to the risk of losing business and falling IMTT utilization rates, such widespread changes in the use of No. 6 fuel oil required Macquarie to repurpose its storage tanks to accommodate other commodities. However, the Company downplayed its exposure to fluctuations in the use of petroleum products, assuring investors that IMTT had “no commodity exposure directly” because it “simply provides access to storage capacity.”

On February 21, 2018, after the close of trading, Macquarie surprised the market by announcing disappointing fourth quarter earnings of \$0.43 per share, well short of analysts’ estimate of \$0.51 per share, and that the Company would be slashing its dividend by 31%. Macquarie blamed its poor performance on the declining use of heavy residual oil products, in particular, declining demand and prices for No. 6 fuel oil. In response to this news, Macquarie’s stock price fell from \$63.62 per share on February 21, 2018, to \$37.41 per share on February 22, 2018.

As a result of Defendants' wrongful acts and omissions, and the resulting decline in the market value of Macquarie's stock, Plaintiff and other Class members have suffered significant losses and damages.

On January 30, 2019, the Court appointed our client Moab Capital Partners, L.P., as Lead Plaintiff, and set a deadline of March 1, 2019 for filing the consolidated amended class action complaint. To preserve the timeliness of certain claims under the Securities Act, Lead Plaintiff filed the consolidated amended class action complaint earlier, on February 20, 2019. On April 22, 2019, Defendants moved to dismiss, with Macquarie and the individual defendants filing one motion, Macquarie Management filing another, and Barclays filing a joinder to Macquarie's motion. On June 21, Lead Plaintiff submitted an omnibus opposition in response to both motions to dismiss. On July 22, 2019, Defendants filed their reply brief. Defendants also filed that day a request for oral argument, which the Court promptly denied, stating that it would determine if oral argument was needed after reviewing the briefing. On September 7, 2021, the District Court issued a decision granting Defendants' motion to dismiss and dismissing the complaint with prejudice. On October 7, 2021, Lead Plaintiff timely filed a notice of appeal with the Second Circuit Court of Appeals.

On December 17, 2021, Lead Plaintiff filed our opening brief with the Second Circuit. Defendants filed their brief in response on February 4, 2022, and Lead Plaintiff filed a reply brief on February 25, 2022. Oral argument took place on November 9, 2022.

On December 20, 2022, the Second Circuit Court of Appeals vacated the judgement of the district court dismissing our complaint. On January 3, 2023, Defendants moved for en banc review of the Second Circuit's opinion, which was denied on January 27, 2023. On April 6, 2023 Defendants filed renewed motions to dismiss the complaint, with Macquarie and the individual defendants filing one motion, Macquarie Management filing another, and Barclays filing a joinder to Macquarie's motion. Lead Plaintiff filed an opposition to the renewed motion to dismiss on May 8, 2023. Defendants filed a reply in further support of the motion to dismiss on May 23, 2023.

In relation to this case, on May 30, 2023, Defendants Macquarie and Macquarie Management filed a petition for a writ of certiorari with the Supreme Court of the United States. On August 11, 2023, Lead Plaintiff filed its opposition to Defendants' petition for a writ of certiorari and on August 28, 2023, Defendants filed their Reply. On September 29, 2023, the Supreme Court granted Defendants' petition for a writ of certiorari.

Defendants' filed their opening brief on November 13, 2023 and Lead Plaintiff filed an opposition brief on December 13, 2023. Defendants filed their reply brief on January 5, 2024. Oral argument before the Supreme Court occurred on January 16, 2024.

## Case Documents

- February 20, 2019 - Consolidated Class Action Complaint for Violations of the Federal Securities Laws
- April 23, 2018 - Complaint for Violations of the Federal Securities Laws