

## **09-1156 MATRIXX INITIATIVES V. SIRACUSANO**

DECISION BELOW: 585 F.3d 1167

LOWER COURT CASE NUMBER: 06-15677

### **QUESTION PRESENTED:**

Respondents filed suit under § 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5, alleging that petitioners committed securities fraud by failing to disclose "adverse event" reports--i.e., reports by users of a drug that they experienced an adverse event after using the drug. The First, Second, and Third Circuits have held that drug companies have no duty to disclose adverse event reports until the reports provide statistically significant evidence that the adverse events may be caused by, and are not simply randomly associated with, a drug's use. Expressly disagreeing with those decisions, the Ninth Circuit below rejected a statistical significance standard and allowed the case to proceed despite the lack of any allegation that the undisclosed adverse event reports were statistically significant. The question presented is:

Whether a plaintiff can state a claim under § 10(b) of the Securities Exchange Act and SEC Rule 10b-5 based on a pharmaceutical company's nondisclosure of adverse event reports even though the reports are not alleged to be statistically significant.

CERT. GRANTED 6/14/2010