

23-980 FACEBOOK, INC. V. AMALGAMATED BANK

DECISION BELOW: 87 F.4th 934

LOWER COURT CASE NUMBER: 22-15077

QUESTION PRESENTED:

This petition presents two important questions that have divided the federal courts of appeals.

First, the circuits have split three ways concerning what public companies must disclose in the "risk factors" section of their 10-K filings. The Sixth Circuit holds that companies need not disclose past instances when a risk has materialized. The First, Second, Third, Fifth, Tenth, and D.C. Circuits hold that companies must disclose that a risk materialized in the past if the company knows that event will harm the business. The Ninth Circuit here adopted a third, outlier position requiring companies to disclose that a risk materialized in the past even if there is no known threat of business harm.

Second, the circuits disagree on the proper pleading standard for the loss causation element of a private securities-fraud claim. The Fourth Circuit holds that loss causation allegations must satisfy Federal Rule 9(b)'s heightened pleading standard for fraud, while the Fifth and Sixth Circuits apply the ordinary Rule 8 standard. The Ninth Circuit here initially applied Rule 8, then substituted citations of Rule 9(b) without changing its analysis.

The questions presented are:

1. Are risk disclosures false or misleading when they do not disclose that a risk has materialized in the past, even if that past event presents no known risk of ongoing or future business harm?
2. Does Federal Rule 8 or Rule 9(b) supply the proper pleading standard for loss causation in a private securities-fraud action?

CERT. GRANTED 6/10/2024