



High Court Announces New Standard for Opinion Statements

Mar 27, 2015

Reading Time : **1 min**

By: Garrett A. DeVries, John Goodgame, Bruce S. Mendelsohn, Pratik A. Shah, Rosa A. Testani

Background

The *Omnicare* case involved a pharmacy operator that was alleged to be giving improper kickbacks to nursing homes that used its services. Plaintiffs sued Omnicare, arguing that two statements of opinion included in Omnicare's registration statement were false and thus actionable under Section 11 of the Securities Act of 1933. These statements were:

- "We believe our contract arrangements with other healthcare providers, our pharmaceutical suppliers and our pharmacy practices are in compliance with applicable federal and state laws," and
- "We believe that our contracts with pharmaceutical manufacturers are legally and economically valid arrangements that bring value to the healthcare system and the patients that we serve."

Defendants responded that the complaint fails because defendants subjectively believed that their opinion statements were true at the time, so even if such statements were wrong in hindsight, they could not be held liable. The 6th Circuit sided with plaintiffs and held that if an opinion is proven to be false—even in hindsight—it is actionable under Section 11. The 6th Circuit's opinion stood in direct contradiction with the 2nd, 3rd and 9th Circuits and set the stage for determination of under what circumstances opinions could be actionable under Section 11.

[Click here](#) to read the full alert.

Categories

Capital Markets

Corporate Governance

SCOTUS

Compliance

© 2025 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin Gump network operates worldwide, please see our Legal Notices page.