



yet another case counters 6th circ.'s omnicare reasoning

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On Aug. 1, 2014, the Tenth Circuit issued its decision in *MHC Mutual Conversion Fund LP v. Sandler O'Neill & Partners LP*, addressing whether opinions contained in securities offering documents can be actionable under Section 11 of the Securities Act of 1933.^[1] The Tenth Circuit joined the Second, Third and Ninth Circuits in deciding that an opinion about future events is not false or misleading under Section 11 simply because the opinion later turns out to be wrong. Rather, the opinion can only be deemed false if the speaker did not subjectively believe the opinion when it was expressed or — possibly — if the speaker lacked a reasonable basis for the statement. In reaching this conclusion, the Tenth Circuit expressly rejected the Sixth Circuit's holding in *Omnicare*,^[2] which the U.S. Supreme Court will review in the upcoming term.

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