

13-435 OMNICARE, INC. V. LABORERS DIST. COUNCIL

DECISION BELOW: 719 F.3d 498

LOWER COURT CASE NUMBER: 12-5287

QUESTION PRESENTED:

Section 11 of the Securities Act of 1933, 15 U.S.C. § 77k, provides a private remedy for a purchaser of securities issued under a registration statement filed with the Securities and Exchange Commission if the registration statement "contained an untrue statement of material fact or omitted to state a material fact required to be stated therein or necessary to make the statement therein not misleading." Against that statutory backdrop, this case presents the following question:

For purposes of a Section 11 claim, may a plaintiff plead that a statement of opinion was "untrue" merely by alleging that the opinion itself was objectively wrong, as the Sixth Circuit has concluded, or must the plaintiff also allege that the statement was subjectively false—requiring allegations that the speaker's actual opinion was different from the one expressed—as the Second, Third, and Ninth Circuits have held?

CERT. GRANTED 3/3/2014