

Syllabus

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SUPREME COURT OF THE UNITED STATES

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**OMNICARE, INC., ET AL. v. LABORERS DISTRICT
COUNCIL CONSTRUCTION INDUSTRY PENSION
FUND ET AL.**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 13–435. Argued November 3, 2014—Decided March 24, 2015

The Securities Act of 1933 requires that a company wishing to issue securities must first file a registration statement containing specified information about the issuing company and the securities offered. See 15 U. S. C. §§77g, 77aa. The registration statement may also include other representations of fact or opinion. To protect investors and promote compliance with these disclosure requirements, §11 of the Act creates two ways to hold issuers liable for a registration statement’s contents: A purchaser of securities may sue an issuer if the registration statement either “contain[s] an untrue statement of a material fact” or “omit[s] to state a material fact . . . necessary to make the statements therein not misleading.” §77k(a). In either case, the buyer need not prove that the issuer acted with any intent to deceive or defraud. *Herman & MacLean v. Huddleston*, 459 U. S. 375, 381–382.

Petitioner Omnicare, a pharmacy services company, filed a registration statement in connection with a public offering of common stock. In addition to the required disclosures, the registration statement contained two statements expressing the company’s opinion that it was in compliance with federal and state laws. After the Federal Government filed suit against Omnicare for allegedly receiving kickbacks from pharmaceutical manufacturers, respondents, pension funds that purchased Omnicare stock (hereinafter Funds), sued Omnicare under §11. They claimed that Omnicare’s legal-compliance statements constituted “untrue statement[s] of . . . material fact” and that Omnicare “omitted to state [material] facts necessary” to make those statements not misleading.

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The District Court granted Omnicare’s motion to dismiss. Because the Funds had not alleged that Omnicare’s officers knew they were violating the law, the court found that the Funds had failed to state a §11 claim. The Sixth Circuit reversed. Acknowledging that the statements at issue expressed opinions, the court held that no showing of subjective disbelief was required. In the court’s view, the Funds’ allegations that Omnicare’s legal-compliance opinions were objectively false sufficed to support their claim.

Held:

1. A statement of opinion does not constitute an “untrue statement of . . . fact” simply because the stated opinion ultimately proves incorrect. The Sixth Circuit’s contrary holding wrongly conflates facts and opinions. A statement of fact expresses certainty about a thing, whereas a statement of opinion conveys only an uncertain view as to that thing. Section 11 incorporates that distinction in its first clause by exposing issuers to liability only for “untrue statement[s] of . . . fact.” §77k(a) (emphasis added). Because a statement of opinion admits the possibility of error, such a statement remains true—and thus is not an “untrue statement of . . . fact”—even if the opinion turns out to have been wrong.

But opinion statements are not wholly immune from liability under §11’s first clause. Every such statement explicitly affirms one fact: that the speaker actually holds the stated belief. A statement of opinion thus qualifies as an “untrue statement of . . . fact” if *that fact* is untrue—*i.e.*, if the opinion expressed was not sincerely held. In addition, opinion statements can give rise to false-statement liability under §11 if they contain embedded statements of untrue facts. Here, however, Omnicare’s sincerity is not contested and the statements at issue are pure opinion statements. The Funds thus cannot establish liability under §11’s first clause. Pp. 6–10.

2. If a registration statement omits material facts about the issuer’s inquiry into, or knowledge concerning, a statement of opinion, and if those facts conflict with what a reasonable investor, reading the statement fairly and in context, would take from the statement itself, then §11’s omissions clause creates liability. Pp. 10–20.

(a) For purposes of §11’s omissions clause, whether a statement is “misleading” is an objective inquiry that depends on a reasonable investor’s perspective. Cf. *TSC Industries, Inc. v. Northway, Inc.*, 426 U. S. 438, 445. Omnicare goes too far by claiming that no reasonable person, in any context, can understand a statement of opinion to convey anything more than the speaker’s own mindset. A reasonable investor may, depending on the circumstances, understand an opinion statement to convey facts about the speaker’s basis for holding that view. Specifically, an issuer’s statement of opinion may fairly imply

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facts about the inquiry the issuer conducted or the knowledge it had. And if the real facts are otherwise, but not provided, the opinion statement will mislead by omission.

An opinion statement, however, is not misleading simply because the issuer knows, but fails to disclose, some fact cutting the other way. A reasonable investor does not expect that every fact known to an issuer supports its opinion statement. Moreover, whether an omission makes an expression of opinion misleading always depends on context. Reasonable investors understand opinion statements in light of the surrounding text, and §11 creates liability only for the omission of material facts that cannot be squared with a fair reading of the registration statement as a whole. Omnicare's arguments to the contrary are unavailing. Pp. 10–19.

(b) Because neither court below considered the Funds' omissions theory under the right standard, this case is remanded for a determination of whether the Funds have stated a viable omissions claim. On remand, the court must review the Funds' complaint to determine whether it adequately alleges that Omnicare omitted from the registration statement some specific fact that would have been material to a reasonable investor. If so, the court must decide whether the alleged omission rendered Omnicare's opinion statements misleading in context. Pp. 19–20.

719 F. 3d 498, vacated and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment. THOMAS, J., filed an opinion concurring in the judgment.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 13–435

OMNICARE, INC., ET AL., PETITIONERS *v.* LABORERS
DISTRICT COUNCIL CONSTRUCTION INDUSTRY
PENSION FUND ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[March 24, 2015]

JUSTICE KAGAN delivered the opinion of the Court.

Before a company may sell securities in interstate commerce, it must file a registration statement with the Securities and Exchange Commission (SEC). If that document either “contain[s] an untrue statement of a material fact” or “omit[s] to state a material fact . . . necessary to make the statements therein not misleading,” a purchaser of the stock may sue for damages. 15 U. S. C. §77k(a). This case requires us to decide how each of those phrases applies to statements of opinion.

I

The Securities Act of 1933, 48 Stat. 74, 15 U. S. C. §77a *et seq.*, protects investors by ensuring that companies issuing securities (known as “issuers”) make a “full and fair disclosure of information” relevant to a public offering. *Pinter v. Dahl*, 486 U. S. 622, 646 (1988). The linchpin of the Act is its registration requirement. With limited exceptions not relevant here, an issuer may offer securities to the public only after filing a registration statement. See §§77d, 77e. That statement must contain specified

information about both the company itself and the security for sale. See §§77g, 77aa. Beyond those required disclosures, the issuer may include additional representations of either fact or opinion.

Section 11 of the Act promotes compliance with these disclosure provisions by giving purchasers a right of action against an issuer or designated individuals (directors, partners, underwriters, and so forth) for material misstatements or omissions in registration statements. As relevant here, that section provides:

“In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security . . . [may] sue.” §77k(a).

Section 11 thus creates two ways to hold issuers liable for the contents of a registration statement—one focusing on what the statement says and the other on what it leaves out. Either way, the buyer need not prove (as he must to establish certain other securities offenses) that the defendant acted with any intent to deceive or defraud. *Herman & MacLean v. Huddleston*, 459 U. S. 375, 381–382 (1983).

This case arises out of a registration statement that petitioner Omnicare filed in connection with a public offering of common stock. Omnicare is the nation’s largest provider of pharmacy services for residents of nursing homes. Its registration statement contained (along with all mandated disclosures) analysis of the effects of various federal and state laws on its business model, including its acceptance of rebates from pharmaceutical manufacturers. See, e.g., App. 88–107, 132–140, 154–166. Of significance here, two sentences in the registration statement expressed Omnicare’s view of its compliance with legal

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