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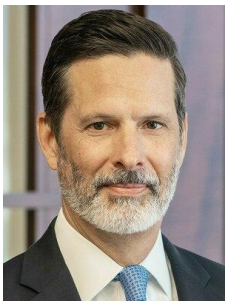
9th Circ. Ruling Clarifies Auditor Liability For IPO Errors

By **Warren Rissier, Kevin Papay and Michael Hacker** (December 16, 2025, 3:52 PM EST)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The U.S. Court of Appeals for the Ninth Circuit on Nov. 10 affirmed the dismissal of a securities claim against an auditor, holding it was not strictly liable for alleged misstatements in its client's initial public offering.

The case, Hunt v. PricewaterhouseCoopers LLP, was the Ninth Circuit's first occasion to consider the application of the U.S. Supreme Court's 2015 decision in Omnicare Inc. v. Laborers District Council Construction Industry Pension Fund to claims against an auditor under Section 11 of the Securities Act.

The Ninth Circuit held that Omnicare squarely applies to audit opinions, and reaffirmed the delineation of duties between an auditor and its client and, relatedly, the distinction in the Securities Act between those who "prepare" financial statements and those who "certify" financial statements.

The decision provides a clear and helpful precedent for auditors defending claims arising out of their clients' public stock offerings.

Background

After Bloom Energy Corp. issued revisions to its 2016 and 2017 financial statements, and a restatement of its 2018 and 2019 financial statements, Bloom stockholders amended an existing securities class action to add claims under Section 11 against PwC, the accounting firm that audited Bloom's 2016 and 2017 financial statements. Bloom is a renewable energy company that sells fuel-cell servers that convert natural gas or biogas into electricity.

The case centers on the accounting for managed services agreements, or MSAs, that Bloom used in connection with sale-leaseback arrangements of these energy servers. Under these MSAs, Bloom first sold the energy server to a bank, then leased it back from the bank and then subleased the energy server to a customer. At the time of the lease to the customer, Bloom also entered into another contract with the customer to service the energy server.

Under the relevant accounting standards, Bloom could account for these sale-leaseback arrangements as either operating leases or capital leases. The proper accounting depended on Bloom's judgment

about the useful economic life of the energy servers, as compared to the lease term. In its fiscal year 2016 and 2017 financial statements, Bloom accounted for MSAs as operating leases.

The distinction between operating leases and capital leases affected Bloom's recognition relating to the MSAs. Under an operating lease, an energy server would not be recognized as an asset. Instead, lease payments to the bank would be recorded as an expense, and payments from the customer would be recorded as revenue. In contrast, a capital lease would be recorded on Bloom's balance sheet by recognizing the energy server as an asset with a corresponding liability to the bank.

Bloom engaged PwC to audit its 2016 and 2017 financial statements, and express an opinion as to whether those financial statements presented fairly, in all material respects, Bloom's financial position.

After conducting its audits, PwC did not object to Bloom classifying the MSAs as operating leases under the generally accepted accounting principles, stating, "[i]n our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of [Bloom] as of December 31, 2017 and December 31, 2016." When Bloom prepared its registration statement in connection with its 2018 IPO, it included PwC's audit opinion.

After Bloom completed its IPO, however, it reevaluated its MSAs and determined that they should be treated as capital leases — loans from the bank rather than sales — and not operating leases. To reflect these classifications, Bloom revised its 2016 and 2017 financial statements, and restated its 2018 and 2019 financial statements. Bloom's stock price fell the day after it announced the revisions and restatements.

Decision

In their complaint, the plaintiffs alleged that PwC was liable under Section 11 for purportedly actionable statements and omissions in Bloom's registration statement regarding its accounting for MSAs, because the audit opinion did not identify that Bloom should have classified the MSAs as capital leases instead of operating leases.[1]

PwC moved to dismiss, and the U.S. District Court for the Northern District of California in May 2024 granted the motion. Rather than amend their complaint, the plaintiffs appealed to the Ninth Circuit.

On appeal, the plaintiffs did not challenge the district court's dismissal of their claim that the audit opinion itself was false or misleading apart from its certification of the financial statements. Put differently, the plaintiffs did not deny that Bloom prepared its own financial statements or that the accounting firm neither prepared the statements nor repeated those statements in its opinion. Rather, the plaintiffs argued that PwC should be strictly liable under Section 11(a)(4) of the Securities Act for the misstatements in Bloom's financial statements.[2]

The Ninth Circuit resoundingly rejected the plaintiffs' argument. The court reiterated that Section 11 includes a due diligence defense, which requires that "accountants … exercise due diligence in investigating the materials provided to them using the accepted practices of their profession."[3]

Accordingly, Section 11 imposes a negligence standard for an accountant's liability,[4] and in order for plaintiffs to prevail on a Section 11 claim, they must establish that an accounting firm did not have a "reasonable ground to believe" and did not believe, "at the time such part of the registration statement became effective, that the statements therein were true."[5] The Ninth Circuit added that, in enacting

the Securities Act, there is nothing to indicate that Congress intended for accountants to be subject to strict liability.[6]

The Ninth Circuit next addressed the applicability of the Supreme Court's 2015 Omnicare decision, in which the justices excluded statements of opinion from liability under Section 11 of the Securities Act.[7]

Specifically, the justices held in Omnicare that a statement of opinion may give rise to liability under Section 11 as a misrepresentation of fact only if (1) the speaker does not actually hold the opinion; (2) the opinion contains an embedded misrepresentation of fact; or (3) an omission makes the opinion statement at issue misleading.[8] Hunt was the first time the Ninth Circuit had an occasion to consider the applicability of the Omnicare decision to auditors.

Without hesitation, the Ninth Circuit extended the holding in Omnicare to accountants, and noted that doing so is consistent with Section 11's due diligence defense.[9] The Ninth Circuit held that

accountants may be liable for statements of fact if they did not act with due diligence; however, accountants will not be liable for statements of opinion, even if they reflect a subjective belief that admits there is a possibility of error, as long as the statement of opinion was sincerely held.[10]

After reiterating that an auditor can only be liable for misstatements or omissions in financial statements that it prepares or certifies, the Ninth Circuit concluded that PwC was not a preparer of the financial statements at issue, nor could it be under applicable accounting rules.[11]

Finally, the Ninth Circuit clarified that an "accountant's certification of financial statements is nothing more than an opinion," and held that, in this case, the accounting firm could not be liable for its audit opinion because that opinion "did not make any material misstatements of fact or omissions but rather was merely a statement of opinion based upon the subjective judgment of the MSA classification."[12]

The Ninth Circuit ultimately affirmed the district court's ruling dismissing the complaint against PwC.

Takeaways

The Ninth Circuit's decision in Hunt provides clarity regarding the legal standard for claims against auditors in connection with a company's IPO. Its ruling confirms that in the Ninth Circuit, audit opinions are statements of opinion for the purposes of Omnicare. This is consistent with the U.S. Court of Appeals for the Second Circuit, which has likewise so held.[13]

No other circuits appear to have reviewed this precise question, although before the Supreme Court's decision in Omnicare, the U.S. Court of Appeals for the Tenth Circuit recognized in its 2006 decision in Deephaven Private Placement Trading Ltd. v. Grant Thornton & Co. that "[t]he opinion paragraph, as the term suggests, is stated as an opinion of [the auditor] rather than a statement of absolute fact or a guarantee."[14] Further, following the Supreme Court's decision in Omnicare, some predicted that audit opinions would be treated as opinions under its holding.[15]

The decision in Hunt recognizes the distinctive roles of a company's outside auditor, and makes clear that auditors do not act as guarantors of the accuracy of a company's financial statements.

The Ninth Circuit quoted extensively from the accounting standards relevant to the role of management

and the role of an auditor. The Ninth Circuit further noted that "the division of responsibility is based on practical realities," and that the "limits placed on accountants to assess a company's financial statements preclude its ability to ensure that there are no misstatements."[16]

As a result, Section 11 does not "make accountants guarantors of every statement made by the issuer; to make such a holding would turn the whole accounting world upside down" and make audits prohibitively expensive.[17]

The Ninth Circuit also held there was an alternative basis for its application of Omnicare in the fact that the financial statement line items at issue were based on Bloom's "subjective judgments (not statements of fact) concerning the actual useful life of the Energy Server."[18] Bloom's determination of whether the accounting standards mandated that Bloom treat the MSAs as capital leases or operating leases involved significant accounting judgments, which rendered those determinations opinions, not facts.[19]

According to the Ninth Circuit, "numbers can sometimes be facts and other times be opinions."[20] As a result, in this instance, Omnicare doubly applied because the accounting firm's audit report was an opinion on top of the company management's opinion.

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[1] Hunt v. PricewaterhouseCoopers LLP (PwC), No. 24-3568, 2025 WL 3137726, at *6 (9th Cir. Nov. 10, 2025).

[2] Id. at *5.

[3] Id. at *6.

[4] Id. (citations and quotations omitted).

[5] Id. at *8 (citing 15 U.S.C. § 77k(b)(3)(A)).

[6] Id. at *7 (citing In re: Lehman Bros. Mortg. Backed Sec. Litig., 650 F.3d 167, 181 (2d Cir. 2011)).

[7] Id. (citing and quoting Omnicare Inc. v. Laborers Dist. Council Const. Indus. Pension Fund, 575 U.S. 175, 183 (2015)).

[8] Omnicare, 575 U.S. at 182-83.

[9] Hunt, 2025 WL 3137726, at *7.

[10] Id. at *7.

[11] Id. at *8.

[12] Id. at *9-*10

[13] Querub v. Hong Kong, 649 F. App'x 55, 58 (2d Cir. 2016); Special Situations Fund III QP, L.P. v. Deloitte Touche Tohmatsu CPA, Ltd., 645 F. App'x 72, 76 (2d Cir. 2016).

[14] Deephaven Priv. Placement Trading, Ltd. v. Grant Thornton & Co., 454 F.3d 1168, 1175 (10th Cir. 2006).

[15] See Linda Griggs, Christian Mixter, and Warren Rissier, A Matter of Opinion: Parsing the Independent Auditor's Report in the Context of Omnicare, BloombergBNA (Jan. 29, 2016). https://www.morganlewis.com/-/media/files/publication/outside-publication/article/bna-a-matter-of-opinion-29jan16.pdf.

[16] Hunt, 2025 WL 3137726, at *9.

[17] Id. (citing SEC v. Arthur Young & Co., 590 F.2d 785, 788 (9th Cir. 1979)).

[18] Id. at *10.

[19] Id.

[20] Id. at *11.