



FOR IMMEDIATE RELEASE

March 24, 2015

Media Contact: Alex Booze | [abooze@wlf.org](mailto:abooze@wlf.org) | 202-588-0302

## In WLF Victory, Court Cuts Back on Securities Fraud Claims Based on Untrue Statements of Opinion

*(Omnicare, Inc. v. Laborers District Council)*

**“The decision will likely induce management to share opinions more openly on the status of their companies. Such opinions provide shareholders with valuable information about companies’ business and financial condition.”**

**—Richard Samp, Chief Counsel, Washington Legal Foundation**

**WASHINGTON, DC**—The U.S. Supreme Court today overturned an appeals court decision that had authorized imposition of securities fraud liability on corporations that express erroneous, but genuinely believed statements of opinion in their registration statements. The Court held in *Omnicare, Inc. v. Laborers District Council* that a pure opinion statement in a registration, such as that a corporation believes it is operating in compliance with all federal laws, cannot create liability for the company and its officers as “an untrue statement of a material fact” unless they did not believe the statement when making it.

The 9-0 decision was a victory for Washington Legal Foundation (WLF), which filed a brief urging the Court to reject liability under federal securities law for statements of opinion merely because they are later proven wrong. However, the Court left the door ajar for plaintiffs’ lawyers by remanding the case to decide whether Laborers District Council stated a viable claim that Omnicare “omit[ted] to state a material fact ... necessary to make the statements [in the registration] not misleading.”

In the omissions context, the Court held that a statement of opinion can sometimes imply to a reasonable shareholder that the speaker has taken steps to verify the accuracy of the opinion stated. The Court held that a company and corporate officials can be held liable for omission of a material fact if the fact(s) omitted would contradict the factual implications a reasonable shareholder would draw from the statement of opinion.

The case involved § 11 of the Securities Act of 1933, which provides a private remedy for a purchaser of securities for a false registration statement filed with the SEC. WLF filed its brief with the substantial *pro bono* assistance of Douglas Greene and Claire Davis, shareholders, and Kristin Beneski, attorney, with Lane Powell PC.

In response to the decision, WLF issued the following statement by Chief Counsel Richard Samp: “The decision will likely induce management to share opinions more openly on the status of their companies. Such opinions provide shareholders with valuable information about the companies’ business and financial condition. While frivolous securities fraud litigation will not disappear, plaintiffs’ lawyers will now encounter more difficulty surviving motions to dismiss.”

*WLF is a public interest law firm and policy center that regularly litigates in support of civil justice reform, to ensure that unwarranted lawsuits do not drive up costs for all consumers.*