Bromberg and Lowenfels on Securities Fraud (2d ed.)

What's New in the 2026-2 Update

This December, 2026 update includes coverage of significant new decisions from the Supreme Court and federal circuit courts of appeal.

Coverage of new developments is consolidated in an updated **Chapter 2, Latest Developments in Federal Securities Law**. New developments covered in Chapter 2 include cross-references to the sections of the treatise which provide background information and further discussion of the particular topic.

Highlights include the following:

Supreme Court Holds in *Sripetch v. Sec. & Exch. Comm'n* that Disgorgement May Be Awarded to Investors Without Showing That They Suffered Pecuniary Loss

● Resolving a split between the Second Circuit on the one hand and the First Circuit and the Ninth Circuit on the other hand, the Supreme Court affirmed the judgment of the Ninth Circuit in holding in *Sripetch v. Sec. & Exch. Comm'n,* 146 S.Ct. 1403 (U.S. June 4, 2026) that in SEC enforcement actions, disgorgement may be awarded to investors without a showing of pecuniary loss. The Court analyzed the issue as one of whether the equitable remedy of disgorgement requires a showing of pecuniary harm. § 2:2.

Sales of Fractional Interests in Life Settlements by Unregistered Broker Dealers Violated the Securities Act of 1933

● In *United States Sec. & Exch. Comm'n v. Barry,* 146 F.4th 1242, 1248, Fed. Sec. L. Rep. ¶102,127 (9th Cir. 2025), the Ninth Circuit held in an SEC enforcement action for sales of securities by an unregistered broker dealer that fractional interests in life settlements were "investment contracts" and therefore securities which are subject to the registration requirements of the Securities Act of 1933. The Ninth Circuit agreed with the Fifth Circuit and the Eleventh Circuit that these fractional interests are securities and disagreed with the D.C. Circuit's position that such fractional interests are not securities. § 2:2.

Sixth Circuit Holds that Generalized Statements Do Not Constitute Half-Truths Simply Because the Com-

pany Does Not Disclose Potentially Contrary Information

● In *Newtyn Partners, LP v. All. Data Sys. Corp.,* 165 F.4th 947 (6th Cir. 2026), the Sixth Circuit affirmed the dismissal of a securities fraud class action under Rule 10b–5(b) in which it was alleged that the issuer made misleading misstatements and omissions in presentations to investors and in SEC registration statements. The Court stated that literally true statements that misleadingly omit key context, known as "half-truths," can qualify as misstatements. However, a company can keep quiet about newly-acquired "soft" facts—predictions, matters of opinion, and the like—until they become "virtually as certain as hard facts." § 2:4.

Ninth Circuit Holds That an Independent Accountant Is Not Subject to Strict Liability Under § 11 of the Securities Act of 1933 for Certifying an Issuer's Financial Statements Based on a Reasonable Belief that the Statements Are True

● The Ninth Circuit held in *Hunt v. PricewaterhouseCoopers LLP (PwC),* 159 F.4th 603, Fed. Sec. L. Rep. ¶102,195 (9th Cir. June 11, 2025), cert. denied sub nom. *Hunt v. PricewaterhouseCoopers LLP,* No. 25-1112, 2026 WL 1377050 (U.S. May 18, 2026) that an independent accountant is not strictly liable under § 11 of the Securities Act of 1933 for certifying the information in an issuer's SEC registration statement or financial statements where the independent accountant makes a reasonable investigation and has reasonable ground to believe that the statements are true. The Court concluded that PwC's audit opinion on Bloom Energy's financial statements were protected from Section 11 liability under the Supreme Court's *Omnicare* decision because PwC reasonably believed that the statements were true at the time that the opinion was issued. § 2:4.

Ninth Circuit Holds That Failure to Disclose in a Prospectus that the SEC Had Requested that the Issuer Not Include Projected Returns and the Failure to Disclose the SEC Letter Were Actionable as Material Omissions in a Securities Class Action Under Section 12(a)(2) of the Securities Act of 1933

● In *Pino v. Cardone Cap., LLC,* 139 F.4th 1102, Fed. Sec. L. Rep. ¶102,087 (9th Cir. 2025), the Ninth Circuit held that where a prospectus for the sale of securities did not mention an SEC letter requesting that the projections not be included, the allegations were sufficient to state claims under Section 12(a)(2) of the Securities Act of 1933. Further, the lead Plaintiff's disclaimer of any allegations of fraud did not result in a waiver of claims under Section 12(a)(2) for securities offered or sold using prospectuses or oral communications that contain material misstatements or omissions. The Court stated that the narrow inquiry is whether the specific "statement(s), in the light of the circumstances under which they

were made," were misleading for what they omitted. The Court also stated that the fact that truthful information is available elsewhere does not relieve a defendant from liability for misrepresentations in a given filing or statement." § 2:4.