
Second Circuit Lowers the Bar for Materiality in Exchange Act Claims Against Auditors Under Section 10(b) and Rule 10b-5

Date: 12/10/24

On October 31, 2024, a Second Circuit panel amended its August 2023 decision in *New England Carpenters Guaranteed Annuity & Pension Funds v. DeCarlo* after granting a motion for rehearing and held that misstatements in an audit opinion may be sufficiently material to investors and thus potentially actionable under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5.

The Second Circuit had previously affirmed the dismissal of such claims against an external auditor because its audit certification—which incorrectly certified a company’s accounting practices as compliant with Public Company Accounting Oversight Board (PCAOB) standards—merely reflected standardized language. On rehearing, however, the Second Circuit reversed course, concluding that misstatements in an audit opinion may be material to investors, even if they merely reflect standardized language. *DeCarlo* has the potential to significantly broaden securities fraud liability for external auditors in the Second Circuit, and more broadly.

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