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Federal Securities Report Letters, 2512, FEDERAL SECURITIES LAW REPORTS

FEDERAL SECURITIES REPORT LETTER HEADLINES, No. 2512, January 17, 2012

THIS WEEK’S HIGHLIGHTS

• Fraud Plaintiff Seeking Rescission Must Demonstrate Economic Loss
• SEC Announces Annual Adjustments to Transaction Fee Rates

OTHER COURT ACTION

• Investors in Madoff feeder funds were not SIPC “Customers”
• GE Made False Statements About Commercial Paper, Ratings and Reserves
• Event Study Deficient: No Tractable Loss Causation Issue Exist
• SEC Failed to Establish Circumstantial Evidence of Insider Trading
• “Smoothing” of Data Could Be Qualitatively Material

Treatise Update Notifications

The Highlights document of the new supplement . . .

Civil False Claims and Qui Tam Actions Update Notification, HIGHLIGHTS

Civil False Claims And Qui Tam Actions
Fourth Edition
By John T. Biehler

The current supplement focuses on judicial interpretations of key requirements for liability under the False Claims Act—particularly, those that address what is required to establish liability and intent. In this latest supplement, we discussed recent circuit court decisions that required the violation of a provision of law in order to establish liability under the implied false certification theory, and that emphasized that the defendant must show that the condition related was material to the government’s decision to pay. The new supplement discusses more recent circuit court decisions that limit the scope of implied false certification theory of liability. Also discussed are decisions that clarify what must be pled and proved to establish liability under the FCA. Because FCA’s liability amendments do not generally apply to the context of false payments, most courts are careful to apply the appropriate statutory provision, even if it means that both the punitive and post-PDA liability provisions are applied in a single case.

Highlights of the 2012 Supplement

• The Sixth Circuit’s decision in Creditors (adopting the implied false certification theory, holding that FCA liability may be based on a violation of the Anti-Kickback Statute, that reporting liability based on regulatory violations that are not prepayment) [Chapter 9, 12, 13, 14]
• The Seventh Circuit’s decision in Lehman Brothers (finding that the purpose of the requirement was to stop a false certification of compliance with a statute, and not to require compliance with the statute) [Chapter 9, 12, 13, 14, 15]
• The Supreme Court’s decision in Precision Paper Products (involving the issuance of a “report” within the meaning of Section 30(h)(2)(B)(ii) of the Act) [Chapter 12, 13, 14, 15, 16]


• Provider Version
• Privatization of Hospitals: Meeting Disruptive Interests
• The Role of Non-Financial Performance Measures in Predicting Hospital Financial Performance: The Case of For Profit System Hospitals
• Cash Holdings of Not-for-Profit Hospitals
• Comparing Fee-For-Service and Capitation-Based Reimbursement in a Medicare Managed Care Plan
• The Profit to Increase the Use of EHR Technology by Hospitals and Physicians in the United States Through the HITECH Act and the Medicare Meaningful Use Program
• Reporting Insured Capital in Health Care Organizations: Sensitivity, Lessons Learned, and Future Research Perspectives

February 2012