

Banking and Finance Law Daily Wrap Up, CRIMES AND OFFENSES—U.S.: Federal statute doesn't criminalize statements that are 'misleading' but not 'false', (Mar. 21, 2025)

Banking and Finance Law Daily Wrap Up

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By [Thomas G. Wolfe, J.D.](#)

The High Court vacated the Seventh Circuit's judgment and remanded the case in which a borrower was charged and convicted of "knowingly making any false statement or report" to the FDIC in violation of 18 U.S.C. § 1014.

In reviewing 18 U.S.C. § 1014, a federal criminal statute that prohibits making "a false statement or report" to the Federal Deposit Insurance Corporation, financial institutions, and other specified entities, the U.S. Supreme Court unanimously decided that Section 1014 only criminalizes statements that are "false." Noting that some misleading statements may be "true" on their face, the High Court determined that, under Section 1014, "it is not enough that a statement is misleading;" the statement must also be "false." In the underlying case, P. Thompson was charged and convicted of violating 18 U.S.C. § 1014 in connection with statements he made to the FDIC and a loan servicer pertaining to a debt he owed to a failed bank. When disputing the FDIC's invoice for \$269,000, Thompson had stated that he had borrowed \$110,000, but he did not mention the amounts he owed under two other bank loans. Parting ways with the U.S. Court of Appeals for the Seventh Circuit and the federal trial court, which both had interpreted the statutory term "false statement" in 18 U.S.C. § 1014 to include statements that are misleading but not literally false, the Supreme Court vacated the judgment and remanded the case (*Thompson v. United States of America*, No. 23-1095 (U.S. Mar. 21, 2025)).

Justice Samuel Alito and Justice Ketanji Brown Jackson each penned concurring opinions, focusing their views on the contours surrounding disposition of the case on remand.

Backdrop. Both the federal district court and the U.S. Court of Appeals for the Seventh Circuit interpreted the statutory term "false statement" in 18 U.S.C. § 1014 to include statements that are misleading but not literally false. Both courts also acknowledged a division among the circuits on the issue (see [Banking and Finance Law Daily](#), April 11, 2024). Along these lines, the Seventh Circuit sided with the Fifth, Eighth, and Tenth Circuits to interpret the statutory term "false statement" in § 1014 to include statements that are misleading but not literally false. In contrast, the First, Sixth, and Eleventh Circuits previously interpreted the same statute to criminalize only the making of literally false statements.

As observed by the U.S. Supreme Court, the pertinent criminal statute (18 U.S.C. § 1014) prohibits knowingly making "any false statement or report ... for the purpose of influencing in any way the action of ... the Federal Deposit Insurance Corporation ... upon any ... loan." Thompson was convicted on two counts under 18 U.S.C. § 1014: (1) stating that he had borrowed \$110,000 from the failed bank in question; and (2) disputing owing \$269,000 when he knew otherwise.

Thompson acknowledged that the first statement was misleading because it omitted important contextual information—that he had subsequently borrowed an additional \$20,000 and \$89,000 from the failed bank. However, he contended that the second statement was not even misleading; it was simply true. Neither statement was "false," he argued (see [Banking and Finance Law Daily](#), Oct. 7, 2024).

Now, after having digested the briefs filed in the case (see [Banking and Finance Law Daily](#), Jan. 6, 2025), and having heard oral argument (see [Banking and Finance Law Daily](#), Jan. 15, 2025), the Supreme Court has rendered its unanimous decision.

Court's analysis. Writing the Court's opinion, Chief Justice John Roberts framed the issue and ruling about the criminal statute, 18 U.S.C. § 1014: "[T]he question before us is whether such a statute also criminalizes statements that are misleading but not false. The answer to that question must be no," he wrote.

Noting that Section 1014 does not include any statutory language using the term "misleading," the Court concluded that Section 1014 "does not criminalize statements that are misleading but not false." Similarly, Section 1014 "does not criminalize statements that are misleading but true." In other words, under 18 U.S.C. § 1014, "it is not enough that a statement is misleading. It must be 'false'" as well, the Court explained. Rejecting the U.S. Government's argument that "false" and "misleading" have "long been considered synonyms," the Court stated that the "only relevant question under the text of §1014 is whether the statement—even if misleading, deceitful, or some other adjective—is also 'false'."

In addition, the Court pointed out the subtle distinctions to be made for many other federal statutes, including criminal ones, that "prohibit both 'false' and 'misleading' statements." Along these lines, interpreting "false" in §1014 to include "misleading" would "make the inclusion of "misleading" in those statutes "superfluous," the Court stressed.

After discussing caselaw supporting its reading of §1014, the Court noted that the U.S. Government had also argued that the High Court should "affirm on the alternative basis that Thompson's statements were false." However, the Court pointed out that "neither the District Court nor the Seventh Circuit answered that question," and "we are a court of review, not of first view." At the same time, the Court recognized that "at least some context is relevant" to "whether Thompson's statements were false [under §1014]." Consequently, the Court remanded the matter to the Seventh Circuit "to determine whether a reasonable jury could find that Thompson's statements were false."

Concurring opinions. While agreeing with the Court's overall opinion, Justice Alito wrote a concurring opinion, maintaining that "the question that the Seventh Circuit must address on remand is narrow." While the Seventh Circuit had affirmed Thompson's "conviction on the ground that his statements were 'misleading,' the trial judge gave no such instruction to the jury," Alito noted. Also, Thompson "did not object to the judge's §1014 instructions below" and did not challenge them before the Supreme Court. Stating that Thompson's acquittal is instead based on an assertion of "insufficient evidence," Alito commented that the "applicable test on remand is whether, viewing the evidence in the light most favorable to the Government, any rational finder of fact could conclude beyond a reasonable doubt that petitioner's statements were false."

In her own concurring opinion, Justice Jackson acknowledged that "18 U. S. C. §1014 criminalizes only false statements" but wrote separately "to note that the pre-verdict instructions the District Court provided to the jury in this case did not say otherwise." From Jackson's perspective, "while the lower courts may have misunderstood the scope of §1014, the jury was properly instructed that it could find Thompson guilty only if the prosecution proved beyond a reasonable doubt that Thompson "made the charged false statement[s]." Further, the jury "was not advised that §1014 'criminalizes misleading representations,' ... as was mistakenly required by the Seventh Circuit precedent the Court rejects today," she wrote.

According to Jackson, "there is little for the Seventh Circuit to do on remand but affirm the District Court's judgment upholding the jury's guilty verdict. Whether Thompson's statements were, in fact, false is a question for the jury—and here, one the jury has already answered." Consequently, the Seventh Circuit "can properly assess whether any reasonable jury could have found that Thompson's statements satisfied §1014's falsity element." Based on the record, "I think that legal issue is not subject to reasonable debate," she added.

The case is [No. 23-1095](#).

Judge: Roberts, J.

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