

Corporate Law—Primary-Violator Liability Under 10(b) Applies to Outside Business Partners in Suits Brought by Shareholders—*Simpson v. AOL Time Warner, Inc.*, 452 F.3d 1040 (9th Cir. 2006)

Section 10(b) of the Securities Exchange Act of 1934 makes it illegal for a person “to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device”¹ In 1994, the Supreme Court held that a secondary party is only civilly liable under section 10(b) if the party is a primary violator and not merely an aider and abettor.² In *Simpson v. AOL Time Warner, Inc.*,³ the Ninth Circuit Court of Appeals considered whether an outside business associate can be liable as a primary violator under section 10(b) as interpreted in *Central Bank*.⁴ The Ninth Circuit concluded that an outside business associate can be liable as a primary violator if all the elements of section 10(b) are fulfilled.⁵

Plaintiff shareholders of Homestore.com (Homestore), through lead plaintiff California State Teachers’ Retirement System (Teachers), brought a putative class action lawsuit against the company and twenty-seven other defendants alleging securities fraud under section 10(b).⁶ Teachers claimed, among other things, that defendants AOL Time Warner, Inc., Cendant Corporation, Richard Smith, L90, David Colburn, and Eric Keller (Outside Actors) engaged in fraudulent business transactions with Homestore by enabling the company to illegally inflate revenues.⁷ As a result of the scheme, Teachers claimed financial loss due to a decrease in stock value.⁸

1. 15 U.S.C. § 78j(b) (2000) (stating elements of primary liability).

2. *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 191 (1994) (holding section 10(b) extends civil liability only to primary violators).

3. 452 F.3d 1040 (9th Cir. 2006).

4. *See id.* at 1046 (discussing court’s method to determine whether defendants’ actions constituted primary violations under 10(b)).

5. *See id.* at 1047 (ruling any outside partner can commit primary violation under section 10(b)).

6. *In re Homestore.com, Inc. Sec. Litig.*, 252 F. Supp. 2d 1018, 1020 (C.D. Cal. 2003), *aff’d*, 452 F.3d 1040 (9th Cir. 2006) (stating procedural facts of case). The District Court for the Central District of California stated that Teachers was the lead plaintiff. *Id.* at 1021. Teachers also based its claims on 17 C.F.R. § 240.10b-5 (2006), which implements section 10(b). *Id.* at 1027.

7. *In re Homestore.com, Inc. Sec. Litig.*, 252 F. Supp. 2d 1018, 1020, 1022 (C.D. Cal. 2003), *aff’d*, 452 F.3d 1040 (9th Cir. 2006) (listing plaintiffs’ allegations). The district court classified the defendants into four categories: Homestore executives referred to as insiders, business partners, third party vendors, and Pricewaterhouse Coopers—Homestore’s auditor. *Id.* at 1021. Naming the Outside Actors “business partner defendants,” the court noted that they facilitated the fraud through business transactions and not by actually making or authoring statements to shareholders like the “insiders” and Pricewaterhouse Coopers. *See id.* at 1021-23.

8. *In re Homestore.com, Inc. Sec. Litig.*, 252 F. Supp. 2d 1018, 1020 (C.D. Cal. 2003), *aff’d*, 452 F.3d 1040 (9th Cir. 2006) (explaining plaintiff stockholders claimed losses resulting from fraud). Teachers sued to recoup losses due to stock devaluation after Homestore’s need for restatements of revenue became public due

Relying on *Central Bank*, the district court granted the Outside Actors' motions to dismiss, concluding that outside business partners could never be primary violators under section 10(b).⁹ Teachers appealed to the Ninth Circuit Court of Appeals seeking to reverse the district court's dismissal of the Outside Actors' motions.¹⁰ By reasoning that any person or entity is able to fulfill all of the section 10(b) elements, the Ninth Circuit held that outside business partners can be primary violators.¹¹ The Ninth Circuit thus affirmed the district court's decision and granted Teachers the chance to seek leave in order to take advantage of the appellate ruling.¹²

Prior to *Central Bank*, a private party could bring a cause of action against an actor who aided and abetted securities fraud under section 10(b).¹³ In *Central Bank*, the Supreme Court held that a private party could not bring a civil action for aiding and abetting because such an action does not comport with the reliance element of section 10(b).¹⁴ The Supreme Court, however, ruled that secondary actors can still be liable as primary violators, although it did not offer an adequate primary-liability test for lower courts to apply.¹⁵

to the fraud. *Id.*

9. *In re Homestore.com, Inc. Sec. Litig.*, 252 F. Supp. 2d 1018, 1030, 1038 (C.D. Cal. 2003), *aff'd*, 452 F.3d 1040 (9th Cir. 2006) (holding *Central Bank* prohibited primary-violator liability for third-party firms conducting business with fraudulent company).

10. 452 F.3d at 1042 (discussing plaintiffs' allegations against Outside Actors).

11. *See id.* at 1049 (articulating court's disagreement with defendants' argument). The Ninth Circuit held that primary-violator liability is not limited only to insiders who actually draft documents or make misstatements to the public. *Id.* at 1049. Instead, outside firms who employ deceptive devices or make misstatements "directly or indirectly" may be primary violators under section 10(b). *Id.* at 1055 (remanding case to district court). The Ninth Circuit affirmed the district court's dismissal but remanded the case. *Id.* In remanding the case, the Ninth Circuit suggested that Teachers should have the opportunity to amend its complaint in order to take advantage of the broader applicability of primary-violator liability. *Id.*

12. *See supra* note 11 (citing Ninth Circuit's final ruling).

13. *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 169 (1994) (confirming federal courts have allowed civil actions for aiding and abetting under 10(b)); *see also* Cecil C. Kuhne III, *Expanding the Scope of Securities Fraud?: The Shifting Sands of Central Bank*, 52 *DRAKE L. REV.* 25, 31 (2003) (noting Supreme Court based its reasoning in *Central Bank* on reliance element of 10(b)); Robert A. Prentice, *Locating that "Indistinct" and "Virtually Nonexistent" Line Between Primary and Secondary Liability Under Section 10(b)*, 75 *N.C. L. REV.* 691, 698-702 (1997) (outlining differences between 10(b) claims before and after *Central Bank*); Joel W. Sternman & Garrett L. Gray, *Life after Central Bank—Should Securities Professionals Really Sleep Better at Night?*, 1015 *PRAC. L. INST.* 419, 423 (1997) (stating no private aiding and abetting cause of action under 10(b) after *Central Bank*).

14. *See Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 180 (1994) (explaining defendant liable absent plaintiff's reliance on fraudulent statement under aiding and abetting theory); *see also* Erik F. Gerding, *The Next Epidemic: Bubbles and the Growth and Decay of Securities Regulation*, 38 *CONN. L. REV.* 393, 415 (2006) (stating Supreme Court abolished most civil causes of action based on 10(b) aiding and abetting); Peter M. Saporoff & Breton Leone-Quick, *The Future of Secondary Actor Liability Under Section 10(b)*, SJ084 ALI-ABA 723, 726 (2004) [hereinafter Saporoff, *Future of Secondary Liability*] (demonstrating plaintiff cannot rely on misstatements of defendant removed from transaction).

15. *See Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 191 (1994) (holding courts can still find secondary actors liable as primary violators under section 10(b)); *see also* Saporoff, *Future of Secondary Actor Liability*, *supra* note 14, at 726-27 (observing little Supreme Court guidance regarding how to test for primary liability of secondary actors).

After *Central Bank*, lower courts initially developed two distinct tests for secondary-actor primary liability: the bright-line test and the substantial participation test.¹⁶ The bright-line test, which the Eleventh and Second Circuits used, imposed primary liability when a secondary actor made a misstatement that was disseminated to the public.¹⁷ The Ninth Circuit's more liberal substantial participation test required that a secondary actor be closely involved in the creation of a misstatement.¹⁸ Recently, in response to Enron and other corporate scandals, the scheme test has emerged as the most liberal test.¹⁹ The scheme test comes closest to imposing primary liability for what the *Central Bank* Court defined as "aiding and abetting."²⁰

Under the scheme test, courts differ on who or what constitutes a primary violator.²¹ The United States District Court for the District of Massachusetts has twice denied dismissal to secondary actors who financed sham businesses

16. See, e.g., *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1205 (11th Cir. 2001); *Wright v. Ernst & Young LLP*, 152 F.3d 169, 175 (2d Cir. 1998); *In re Kendall Square Research Corp. Sec. Litig.*, 868 F. Supp. 26, 28 (D. Mass. 1994) (explaining bright-line test requires defendant make actual statement or misrepresentation); see also *In re Software Toolworks, Inc.*, 50 F.3d 615, 628 n.3 (9th Cir. 1994) (extending liability to those who substantially participate); *In re ZZZZ Best Sec. Litig.*, 864 F. Supp. 960, 971-72 (C.D. Cal. 1994) (asserting substantial participation test does not require actual statement, only substantial participation in fraud); Rodney D. Chrisman, Note, "Bright Line," "Substantial Participation," or Something Else: Who Is a Primary Violator Under Rule 10B-5?, 89 KY. L.J. 201, 207-21 (2000-01) (outlining elements of bright-line and substantial participation tests).

17. See, e.g., *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1205 (11th Cir. 2001); *Wright v. Ernst & Young LLP*, 152 F.3d 169, 175 (2d Cir. 1998); *In re Kendall Square Research Corp. Sec. Litig.*, 868 F. Supp. 26, 28 (D. Mass. 1994) (explaining application of bright-line test); Chrisman, *supra* note 16, at 207-12 (explaining bright-line test).

18. See *In re Software Toolworks, Inc.*, 50 F.3d 615, 628 n.3 (9th Cir. 1994) (noting substantial participation can constitute primary liability); Chrisman, *supra* note 16, at 212-21 (detailing Ninth Circuit precedent for substantial-participation test).

19. See *In re Enron Corp. Sec. Derivative & ERISA Litig.*, 235 F. Supp. 2d 549, 587-91 (S.D. Tex. 2002) (adopting Securities and Exchange Commission's brief proposing indirect fraudulent actor liability under 10(b)); *infra* notes 22-24 and accompanying text (discussing jurisdictional differences under scheme test). *But see In re Charter Commc'ns, Inc. Sec. Litig.*, 443 F.3d 987, 992 (8th Cir. 2006) (holding legitimately transacting with corporation with knowledge corporation will use transaction fraudulently not 10(b) violation); Peter M. Saporoff & Breton Leone-Quick, *The Debate over Secondary Actor Liability Is Now Before the Circuit Courts*, SL085 ALI-ABA 997, 1005 (2006) (discussing reliance issue in *Enron*). Saporoff notes that the reliance element is met when the public invests based on fraudulent indirect acts that increase stock prices. *Supra* Saporoff & Breton.

20. See Scott Siamas, Comment, *Primary Securities Fraud Liability for Secondary Actors: Revisiting Central Bank of Denver in the Wake of Enron, WorldCom, and Arthur Andersen*, 37 U.C. DAVIS L. REV. 895, 921 (2004) (discussing expansion of 10(b) liability by classifying creators of misleading transactions as primary violators); see also Matthew L. Mustokoff, "Scheme" Liability Under Rule 10b-5: The New Battleground in Securities Fraud Litigation, 53 FED. LAW. 20, 22 (2006) (commenting Massachusetts federal court includes element of aiding and abetting analysis when finding primary liability). Compare *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 176 (1994) (defining aiders and abettors as those contributing to but not actually committing fraud), with *In re Enron Corp. Sec. Derivative & ERISA Litig.*, 235 F. Supp. 2d 549, 589 (S.D. Tex. 2002) (expanding primary liability to actors who fraudulently and indirectly affect shareholders' investments).

21. See *infra* notes 22-24 and accompanying text (outlining different fact-specific case law among jurisdictions).

and formed false agreements to effectuate securities fraud.²² The District Court for the Southern District of New York (S.D. New York) found banks that “substantially assisted fraud with culpable knowledge” were not liable, while ruling that auditors who designed a fraudulent accounting scheme were primary violators.²³ The Eighth Circuit did not find primary-violator liability when a corporation transacted with a business that used the deal to make misstatements to its shareholders.²⁴ The Eighth Circuit instead requires that secondary actors must make a misstatement or be closely tied to the accounting fraud in order to assume primary liability.²⁵

In *Simpson v. AOL Time Warner, Inc.*, the Ninth Circuit Court of Appeals considered whether primary-violator liability under section 10(b) extends to outside business partners.²⁶ Restating its prior rationale, and that of the Massachusetts District Court, the Ninth Circuit split with the Eighth Circuit and flatly rejected the notion that *Central Bank* prohibits liability for indirect acts of fraud.²⁷ Consequently, the court applied the scheme test.²⁸ In defining primary liability under section 10(b), the court stated that the pertinent question is “what conduct constitutes a manipulative or deceptive act *in the furtherance of* a scheme to defraud . . . ?”²⁹ Relying on precedent from S.D. New York, the Massachusetts District Court, and the United States District Court for the Southern District of Texas (S.D. Texas), the Ninth Circuit reasoned that primary liability does not extend to outside business partners conducting

22. See *Quaak v. Dexia, S.A.*, 357 F. Supp. 2d 330, 342 (D. Mass. 2005) (denying motion to dismiss when bank knew business would use financing to fraudulently increase revenues); *In re Lernout & Hauspie Sec. Litig.*, 236 F. Supp. 2d 161, 173 (D. Mass. 2003) (ruling person who participates in scheme liable even when another party formed reliance nexus); see also Mustokoff, *supra* note 20, at 22 (drawing parallel between *Quaak* court’s primary-liability analysis and aiding and abetting test before *Central Bank*).

23. *In re Parmalat Sec. Litig.*, 376 F. Supp. 2d 472, 505 (S.D.N.Y. 2005) (finding banks merely aiders and abettors after crafting transactions businesses intended to use fraudulently); *In re Global Crossing, Ltd. Sec. Litig.*, 322 F. Supp. 2d 319, 336-37 (S.D.N.Y. 2004) (denying dismissal of auditor when it contrived accounting tactics allowing firm to inflate revenues).

24. *In re Charter Commc’ns, Inc. Sec. Litig.*, 443 F.3d 987, 992-93 (8th Cir. 2006) (holding outside business partners not liable when they knew transaction would allow fraud); see Tracy A. Nichols & Stephen P. Warren, *Gatekeepers Under Fire from Securities Plaintiffs and Regulators: When Doing Your Job Can Amount to “Scheme Liability” Under Rule 10b-5(a) and (c) or Constitute Aiding and Abetting According to the SEC*, 1562 PRAC. L. INST. 611, 620 (2006) (asserting Eighth Circuit’s test almost as restrictive as bright-line test); see also Sarah S. Gold & Richard L. Spinogatti, *Corporate and Securities Litigation Secondary Actor Liability Under Rule 10b-5*, 235 N.Y. L.J. 3 (2006) (discussing Eighth Circuit’s ruling in *Charter Communications*).

25. See *In re Charter Commc’ns, Inc. Sec. Litig.*, 443 F.3d 987, 992 (8th Cir. 2006) (suggesting such actions more than mere aiding and abetting); *supra* note 24 and accompanying text (noting Eighth Circuit’s restrictive interpretation of 10(b)).

26. 452 F.3d at 1043, 1046-47 (stating main issue in case).

27. See *id.* at 1049 (rejecting bright-line test). The court rebuffed defendants’ argument that primary liability only applies to those who directly make an omission or misstatement. *Id.*; see also *supra* note 22 and accompanying text (elaborating on Massachusetts District Court’s treatment of banks and other outside actors).

28. See 452 F.3d at 1048 (explaining scheme test will determine liability); see *supra* notes 20, 22-24 and accompanying text (tracking emergence and development of scheme liability).

29. 452 F.3d at 1048 (emphasis added) (identifying dispositive question before court).

“legitimate” business deals.³⁰ The Ninth Circuit defined routine business transactions as legitimate even where an outside partner knows or intends that another will use the deal to commit fraud.³¹

The Ninth Circuit did, however, categorically overrule the California district court’s decision that outside business partners are immune from primary-violator liability under section 10(b).³² Citing *Central Bank*, the Ninth Circuit reasoned that outside business associates, including inside actors such as lawyers, accountants, and bankers, are capable of satisfying all the elements of section 10(b).³³ The court, however, reasoned that the defendants in *Simpson* were not primary violators under section 10(b) because they only engaged in legitimate business transactions.³⁴ Notwithstanding the disposition of the case, the court held that an outside business partner is a primary violator under section 10(b) if he conducts illegitimate business deals with the knowledge or intent that the business will use the transaction to commit fraud.³⁵

By ruling that outside business partners can be primary violators under section 10(b), the Ninth Circuit continued its pattern of setting a low threshold for securities-fraud liability compared to other courts.³⁶ The Ninth Circuit looked directly to the Supreme Court for guidance and appropriately reasoned that section 10(b) does not automatically absolve every outside party from liability.³⁷ In defining “in the furtherance of a scheme to defraud,” the court appropriately and logically distinguished mere aiding and abetting from

30. See *id.* at 1049-50 (reasoning regular business deals different than forming sham businesses or contriving fraudulent accounting schemes); *supra* notes 20, 22-23 and accompanying text (explaining Ninth Circuit relied on New York, Massachusetts, and Texas district court precedent).

31. 452 F.3d at 1050 (citing *In re Charter Commc’ns, Inc. Sec. Litig.*, 443 F.3d 987, 992 (8th Cir. 2006) (defining legitimate transactions); *In re Parmalat Sec. Litig.*, 376 F. Supp. 2d 472, 505 (S.D.N.Y. 2005) (holding normal business transactions legitimate despite knowledge or intent business will use them fraudulently).

32. See 452 F.3d at 1047, 1054 (ruling district court imposed inappropriately restrictive test under section 10(b)); *supra* note 10 and accompanying text (citing district court decision which found no primary violations by outside actor).

33. See 452 F.3d at 1047-48 (citing *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 191 (1994)) (concluding courts may find secondary actors liable under section 10(b)).

34. *Id.* at 1052-54 (holding Outside Actors not primary violators under section 10(b)).

35. *Id.* at 1048-50 (outlining court reasoning for expanding primary-violator liability).

36. See *infra* note 41 and accompanying text (contrasting Ninth Circuit holding with Eighth Circuit holding). Compare *In re Software Toolworks, Inc.*, 50 F.3d 615, 628 n.3 (9th Cir. 1994) (articulating substantial participation standard), and *Chrisman*, *supra* note 16, at 212-21 (comparing substantial participation test adopted by Ninth Circuit to bright-line test), with 452 F.3d at 1049 (denying extension of primary liability exclusively to inside actors who make misstatements), and *Nichols*, *supra* note 24, at 621-22 (suggesting liability more easily shown through *Simpson* standard than under Eighth Circuit test).

37. 452 F.3d at 1047 (citing *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 191 (1994)) (highlighting Supreme Court’s inclusion of outside actors under section 10(b) in *Central Bank*); see *Prentice*, *supra* note 13, at 731 (suggesting Supreme Court intended outside actors as primary violators). Based on *Central Bank*, the Ninth Circuit declined to accept the defendant’s argument that imposing scheme liability was analogous to punishing an outside actor for aiding and abetting. 452 F.3d at 1049.

contributing to a scheme through illegitimate transactions.³⁸ Under *Simpson*, a party who facilitates fraud by conducting genuine business activities will go unpunished, removing an onerous duty on the part of businesses to audit every client before transacting.³⁹ Joining the Massachusetts, New York, and Texas federal districts, however, the Ninth Circuit ensured that parties who knowingly contrive dishonest accounting schemes, develop sham entities, and pursue other illegitimate deals will face primary liability.⁴⁰

As a result of its ruling in *Simpson*, the Ninth Circuit split with the Eight Circuit.⁴¹ The Ninth Circuit granted plaintiffs a remedy where an outside partner strays from normal business practices and, without actually making misstatements, serves a corporation in its quest to defraud investors.⁴² This ruling gives a shareholder recourse against culpable third parties without exposing innocent outside business partners to undeserved liability.⁴³

The Ninth Circuit provided a specific line of demarcation separating aiding and abetting and primary-violator liability.⁴⁴ While an outside company that

38. 452 F.3d at 1049-50 (explaining difference between illegitimate and legitimate deals facilitating fraud). The Ninth Circuit ruled that imposing liability on companies conducting lawful business does not comport with the definition of primary liability under section 10(b). *See id.* at 1050. The court recognized that an activity inline with normal business, even if conducted with knowledge that fraud would logically result at a later time, does not create a misrepresentation. *Id.*

39. *See supra* note 38 and accompanying text (interpreting Ninth Circuit's distinction between legitimate and illegitimate business transactions).

40. 452 F.3d at 1049-50 (describing out-of-circuit precedent in relation to holding); *see In re Enron Corp. Sec. Derivative & ERISA Litig.*, 235 F. Supp. 2d 549, 587-91 (S.D. Tex. 2002) (outlining S.D. Texas test); *supra* notes 22-23 (summarizing relevant precedent from the Massachusetts district court and S.D. New York); *see also* Mustokoff, *supra* note 20, at 21-24 (identifying similar reasoning of courts in Massachusetts, Texas, and New York).

41. *Compare* 452 F.3d at 1050 (holding section 10(b) liability extends to outside partners conducting illegitimate transaction to defraud), *with In re Charter Commc'ns, Inc. Sec. Litig.*, 443 F.3d 987, 992 (8th Cir. 2006) (holding no primary-violator liability for "defendant who does not make or affirmatively cause . . . fraudulent misstatement . . ."); *see also* Gold & Spinogatti, *supra* note 24, at 3 (explaining Eighth Circuit holding direct involvement in misstatement required for 10(b) liability); Nichols, *supra* note 24, at 619-22 (analyzing differences between Eighth and Ninth Circuit rulings). In *Charter Communications*, the Eight Circuit held that primary liability extends only to actors who directly make misstatements or omissions, leaving outside business partners who conduct illegitimate deals immune from section 10(b). *See supra* note 24 and accompanying text (describing Eighth Circuit holding). The Ninth Circuit agreed with the Eighth Circuit's reasoning that outside partners can still enter into legitimate business transactions free from civil liability, even while knowing that the business will use the deal to commit fraud. 452 F.3d at 1050 (citing *In re Charter Commc'ns, Inc. Sec. Litig.*, 443 F.3d 987, 992 (8th Cir. 2006)) (concurring with portion of Eighth Circuit reasoning in *Charter Communications*). The similarities stopped there, however, as the Ninth Circuit sought to make outside business partners accountable for their dishonest practices. *Compare id.* (noting point of agreement between circuits), *with* Nichols, *supra* note 24, at 621-22 (analyzing Ninth Circuit decision in *Simpson*).

42. *See* Nichols, *supra* note 24, at 619-22 (comparing Eighth and Ninth Circuit analyses). *Compare* 452 F.3d at 1050 (holding section 10(b) liability extends to outside partners), *with In re Charter Commc'ns, Inc. Sec. Litig.*, 443 F.3d 987, 992 (8th Cir. 2006) (holding affirmative misstatement needed for liability).

43. *See supra* note 24 and accompanying text (suggesting actors who knowingly aid company in fraud could escape liability under Eight Circuit's test).

44. *See* 452 F.3d at 1049-50 (comparing business practices constituting aiding and abetting with those worthy of primary-violator liability); *see also* Nichols, *supra* note 24, at 621-22 (setting specific criteria for

sets up a sham business to aid fraud is clearly a primary violator, a vendor that enters into a contract to supply routine services is not.⁴⁵ Courts, nevertheless, will likely encounter transactions in the future that are neither clearly “legitimate” or “illegitimate” under the Ninth Circuit’s definition.⁴⁶ In those cases, the courts will determine both the liability of the parties and the ability of businesses to contract free from the specter of future civil liability.⁴⁷

In *Simpson v. AOL Time Warner, Inc.*, the Ninth Circuit considered whether outside business partners can be liable as primary violators under section 10(b). Overruling the California district court and splitting with the Eighth Circuit, the Ninth Circuit continued to set a low threshold for securities-fraud liability by holding that outside business partners can be liable as primary violators under section 10(b). As a result, firms may face civil liability for securities fraud when, through illegitimate business deals, they make it possible for their business associates to defraud investors.

Donald Gentile

liability in *Simpson*).

45. See *supra* note 44 and accompanying text (noting Ninth Circuit thoroughly defined “primary violator” in *Simpson*).

46. See Saporoff, *Future of Secondary Actor Liability*, *supra* note 14, at 731-32 (noting courts will define primary liability further and more specifically in future cases); see also *supra* note 42 (clarifying Ninth Circuit’s primary-violator standard compared with Eight Circuit’s in *Charter Communications*).

47. See Saporoff, *Future of Secondary Actor Liability*, *supra* note 14, at 731 (mentioning importance of future section 10(b) cases in explaining primary liability).