Supreme Court Protects Whistleblowing Employees of Mutual Fund Adviser

July 08, 2014

Whistleblowing law continues to develop, with a recent U.S. Supreme Court decision holding that, despite ambiguous statutory language, the Sarbanes-Oxley Act of 2002 protects employees of private companies serving as contractors to public companies. In *Lawson v. FMR LLC*, a divided (6-3) Court found that SOX whistleblower protections applied to employees of a privately-held Fidelity investment adviser serving public mutual funds. Two such employees separately reported first to Fidelity—not the SEC—what they believed to be incorrect fund prospectus and shareholder report disclosure, and claimed retaliation by Fidelity. The statutory language referred expressly to public companies, but Justice Ginsburg's majority opinion pointed out that a narrow reading of the language "would leave [SOX] with no application to mutual funds." Subsequent to the conduct at issue in this decision, however, the SEC adopted rules pursuant to the Dodd-Frank Act that may limit the decision's practical significance for whistleblowing about federal securities law violations. These SEC rules, which unambiguously apply to employees of both private and public companies, establish incentives and protections for whistleblowers who provide information regarding securities law violations. Nevertheless, the Supreme Court's decision will have considerable importance going forward because SOX's whistleblower provisions are in many respects broader than those adopted by the SEC under Dodd-Frank. For example, unlike the SEC rules, SOX covers whistleblower communications to federal agencies other than the SEC. Furthermore, as Justice Ginsburg noted, SOX provides protection for whistleblowing related to, among other things, mail, wire, and bank fraud, in addition to certain federal securities law violations. As a result, many cases could arise where SOX provides a whistleblower's only protection.

Authored By

Gary O. Cohen

Related Practices

Securities Litigation and Enforcement

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.