

Supreme Court Protects Whistleblowing Employees of Mutual Fund Adviser

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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.

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