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Inside the Courts

An Update From Skadden Securities Litigators

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Supreme Court Clarifies Scope of Sarbanes-Oxley Whistleblower Protections to Include Employees at Private Firms That Contract With Publicly Traded Companies

Today, in a 6-3 decision, the U.S. Supreme Court held in *Lawson v. FMR LLC* that the Sarbanes-Oxley Act's whistleblower protections apply to employees of a public company's private contractors and subcontractors. Justice Ginsburg delivered the opinion of the Court, Justice Scalia (joined by Justice Thomas) concurred in part and in the judgment, and Justice Sotomayor dissented (joined by Justices Alito and Kennedy).

The question presented was whether Section 1514A of the Sarbanes-Oxley Act, which protects employees of public companies from retaliation for reporting potential misconduct, extends to employees of a private company that works as a contractor for a public company. The employees seeking protection under Sarbanes-Oxley were employed by a private investment advisor to a family of public mutual funds. The employees alleged retaliation after they raised concerns related to the company's cost-accounting methodologies and SEC disclosures.

The district court denied the company's motion to dismiss after determining that the Act applied not only to employees of public companies, but also to employees of private companies that are contractors to a public company. The U.S. Court of Appeals for the First Circuit reversed, holding that the Act prohibits retaliation by public companies and their contractors against employees of a public company, but does not prohibit retaliation *against* employees of a nonpublic company by a public company or its contractors.

The Supreme Court reversed the decision of the First Circuit, holding that the plain language of the Act "shelters employees of private contractors and subcontractors, just as it shelters employees of the public company served by the contractors and subcontractors." The Court rejected the investment advisor's argument that the provision's language concerning a "contractor, subcontractor, or agent" of a public company applied narrowly and only to contractors hired specifically to retaliate against whistleblowers, reasoning that hiring such a contractor could not insulate a company that chose who to fire and finding "no indication" that such contractors are a "real-world problem." In addition, the statute's language and enforcement mechanisms indicate that Congress expected the retaliator to be the purported whistleblower's employer, rather than a contractor hired specifically to avoid the statute's provisions.

The court reasoned that its textual interpretation aligned with Congress' objectives of avoiding "another Enron debacle." Congress recognized that certain of Enron's contractors had retaliated against employees that objected to Enron's practices. Without the provision's protections, contractor's employees "would be vulnerable to retaliation by their employers for blowing the whistle on a scheme to defraud the public company's investors, even a scheme engineered entirely by the contractor."