

# Pennsylvania District Court Grants Employer Summary Judgment on SOX Claim

**Proskauer Whistleblower Defense Blog** on May 5, 2021

On March 29, 2021, the U.S. District Court for the Eastern District of Pennsylvania granted a defendant-employer's motion for summary judgment on a SOX whistleblower retaliation claim, holding that the plaintiff lacked an objectively or subjectively reasonable belief that the company violated any law enumerated in Section 806 of SOX. [\*Ngai v. Urban Outfitters, Inc.\*](#), No. 19-cv-1480.

## Background

Plaintiff, a Director of Sourcing and Technical Design, was responsible for ensuring that overseas factories properly executed apparel designs while minimizing production expenses. He was required to ensure that factories were limiting waste and competitively pricing material, labor, and other costs.

Plaintiff claimed that throughout his employment, he reported general allegations of corporate waste and improper conduct by some of the company's outside vendors and manufacturers. Specifically, he complained that outside contractors were being wasteful, overcharging, self-dealing, inflating production costs, creating conflicts of interest within the company's supply chain, and paying kickbacks to executives to secure high volume orders in violation of the company's policies and Code of Conduct. Plaintiff initially voiced his concerns directly to his supervisors, and then in April 2018 hired a lawyer, who sent over 20 letters to the company outlining Plaintiff's concerns. The company terminated Plaintiff's employment in September 2018 and Plaintiff subsequently filed suit alleging, among other claims, that his employment was terminated in retaliation for his complaints.

## Ruling

The Court held that Plaintiff failed to establish that he had a subjectively or objectively reasonable belief that the company engaged in conduct covered by SOX. Plaintiff failed to prove that he had a subjectively reasonable belief of a violation because the record showed that he personally believed he was reporting violations of company policies, as opposed to violations of the federal statutes covered by SOX. The court said that while there is no need to “ring the bell” on each element of a law covered by SOX when making a complaint, a plaintiff needs to show more than a “veiled reference” to unspecified legal violations, especially where, as here, the plaintiff sent over 20 letters memorializing his allegations.

The court also held that Plaintiff failed to show an objectively reasonable belief that he was reporting violations covered by SOX. Relying on the Third Circuit’s decision in *Wiest v. Lynch* (see our post on that case [here](#)), the court held that Plaintiff failed to show that his belief that the company was committing one of the enumerated forms of fraud was objectively reasonable in light of the fact that Plaintiff’s primary job was to increase efficiencies and reduce costs. The court ruled that an objectively reasonable person with Plaintiff’s background and job responsibilities would not believe a failure to root out misconduct by outside vendors constituted bank, wire, or securities fraud, or a violation of SEC rules.

## Implications

This decision underscores the need for a purported SOX whistleblower to hold a belief of a violation of one of the provisions enumerated in SOX that is both subjectively and objectively reasonable.

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