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Washington Federal Court Refuses to Dismiss SOX Whistleblower Claim Despite Plaintiff Working Abroad

Proskauer Whistleblower Defense on **June 23, 2025**

On March 25, 2025, in *Smith v. Coupang*,[1] the United States District Court for the Western District of Washington denied Coupang, Inc.'s motion to dismiss its former employee's SOX and state law whistleblower claims despite the plaintiff working in South Korea for a South Korean subsidiary of a U.S.-based publicly traded company.

Background

Plaintiff is a U.S. citizen who worked in South Korea for a South Korean subsidiary of Coupang, Inc., Coupang Corp. Smith alleged he, among other things, identified, reported and pushed for disclosure of the company's transactions with Iranian entities to the SEC, and raised the company's inadequate internal and functional accounting controls to his supervisors. Smith asserted that he raised these concerns to supervisors in South Korea and in the United States, with the goal of preventing securities and shareholder fraud. Smith alleged he was subsequently retaliated against when he was placed on administrative leave and had his laptop taken in late 2021, and ultimately was discharged in January 2022. Smith alleged these decisions were made from Washington and/or California. Smith asserted claims for retaliation in violation of Section 806 of SOX, and under various state law theories.

The company moved to dismiss under Rule 12(b)(6) on various grounds, including that Smith's SOX claim was barred by the statute of limitations and doctrine of extraterritoriality, and that Smith did not engage in protected activity.

Court's Reasoning and Decision

The company argued that Smith's SOX claim was untimely because he brought it more than 180 days after the alleged adverse actions. However, since Smith was not given notice of the termination decision until January 2022, the court held that his SOX claim was timely.

Turning to the issue of extraterritoriality, the court stated that the "locus" of the employment relationship must be in the United States (or one of its territories) for a plaintiff to establish a SOX whistleblower claim. The court identified a number of factors to make this determination, including, among others, the citizenship of the employee, the terms and choice of law provision of the employee's employment contract, the location of the employee's supervisors, and the employee's physical location during his employment. Considering those factors, the court found that the locus of Smith's employment relationship was in the United States.

Last, the company argued that Smith did not plausibly assert that he engaged in protected activity because he merely alleged that he reported risks *related to* the six enumerated provisions under 18 U.S.C. § 1514A – not violations of one or more of those provisions. Specifically, the company asserted, and Smith agreed, that Section 806 does not afford protection to an employee who reports the alleged violation of a statute alone, including the statute raised by Smith, which allegedly prohibited the Iranian transactions. Smith, however, asserted that the statute at-issue requires a covered entity to disclose the prohibited transactions in the company's SEC filings, that a disclosing entity must comply with SEC regulations in making these disclosures, and that SEC regulations dictate that such a disclosing entity must accurately disclose that it maintains reliable internal controls and procedures. Smith therefore argued that he reasonably believed the company's obligation to make these disclosures as a result of the Iranian transactions, and its failure to maintain adequate internal controls, violated an SEC regulation. With this in mind, the court, stressing that SOX's anti-retaliation provision protects employees who "reasonably believe" they are reporting a violation of any rule or regulation of the SEC, found that Smith plausibly alleged a "reasonable belief" that he was raising violations of an SEC rule or regulation.

Takeaways

This opinion strays from myriad recent decisions[2] applying the brightline rule declining to permit SOX whistleblower retaliation claims to be brought by employees who live and work outside the United States. From the standpoint of the predictability of SOX's application to such employees, this is a troubling decision. As noted, it may prove to be an outlier and thus have limited impact. Additionally, the *Coupang* court appeared to be willing to accept as protected activity (at the pleadings stage) assertions that were somewhat removed from the six enumerated protected activity provisions in SOX, although it was apparently influenced in this regard by the employee's alleged internal complaints that the company had failed to make necessary disclosures in the company's SEC filings.

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