Proskauer

ARB Potentially Expands SOX Coverage for Private Companies and Broadly Interprets Protected Activity Standard

Proskauer Whistleblower Defense on **August 4, 2026**

The U.S. Department of Labor Administrative Review Board ("ARB") extended the potential reach of SOX whistleblower coverage to private companies whose subsidiaries are partially owned by a publicly traded company. It also confirmed that reports to external auditors and concerns raised through an employee's ordinary job duties may constitute protected activity. *Gloss v. Tata Chemicals North America*, ARB No. 2024-0006 (June 26, 2026).

Background

Tata Chemicals North America ("TCNA"), a private company, employed Complainant as its VP of Finance and Corporate Controller. TCNA indirectly held a 75% ownership stake in a soda ash plant, Tata Chemicals (Soda Ash) Partnership ("TCSAP"). Owens-Illinois, a publicly traded company, indirectly owned the remaining 25% of TCSAP. As a result, both TCNA and Owens-Illinois were capable of indirectly exerting control over TCSAP.

After TCNA reduced Complainant's bonus and terminated his employment, Complainant alleged retaliation under SOX. Complainant asserted that he engaged in protected activity when he, among other things: (i) raised to TCNA's external auditor that TCNA was under investigation for potential misrepresentations in its environmental reporting to a state agency related to TCSAP's activities, and that the investigation could result in significant fines; and (ii) requested copies of reports made by TCNA to that state agency to provide to TCNA's external auditor. An ALJ denied Complainant's SOX claim on the grounds that TCNA was not a covered entity and that Complainant had not engaged in protected activity. Complainant appealed to the ARB.

Rulings on SOX Coverage and Protected Activity

The ARB reversed and remanded for further proceedings.

First, addressing affiliate coverage as an issue of first impression, the ARB held that TCNA was a covered entity under SOX because it was an “affiliate” of Owens-Illinois whose financial information was included in the consolidated financial statements of a publicly traded company. The ARB based its findings on: (i) TCNA’s shared ownership of TCSAP with Owens-Illinois; and (ii) Owens-Illinois’s inclusion of TCSAP’s financial information in the notes to Owens-Illinois’s consolidated financial statements filed with the SEC. More broadly, the ARB held that

- when a publicly traded company holds a 20-50% ownership interest in a private investee and includes the investee’s financial information in its consolidated statements or in the notes to its consolidated financial statements using the equity method of accounting, the company acknowledges it wields significant influence (i.e., control) over the functioning of the investee and that thereby the entity is its ‘affiliate’ under SOX.

Second, the ARB found that reports to an external auditor, and not the employer, of purported fraud may be protected activity because auditors have authority to investigate and help address SOX-related misconduct. Further, the ARB found that Complainant’s concerns and questions related to environmental reporting constituted protected activity under SOX because they implicated allegedly improper financial reporting, accruals, and internal controls that complainant reasonably believed violated an SEC rule or regulation. And the ARB found that Complainant’s concerns were not unprotected merely because they arose from his ordinary job duties.

Implications

Following *Gloss,* a private company may find itself subject to SOX’s coverage based on a public company’s share in its subsidiaries and investments. Employers are apt to find this a surprising expansion of the reach of Section 806 of SOX.

Related Professionals

- **Hayden F. Bashinski**
  Associate
- **Steven J. Pearlman**
  Partner