

Energy Employment Update

Energy Employment Law Group



Another Victory for Energy Employers: The Fifth Circuit Limits SOX Whistleblower Suits to Violations of U.S. Federal Law

A One-Two Punch For Employers

Last July, we alerted you to a [Fifth Circuit decision](#) that limited the whistleblower protections of the Dodd Frank Act of 2010. In that case, the court held that Dodd Frank protects whistleblowers only if they report a securities-law violation directly to the Securities Exchange Commission (“SEC”), as opposed to just making an internal complaint. This month, in *Villanueva v. U.S. Department of Labor*, the Fifth Circuit published a decision curtailing the reach of whistleblower protections under the Sarbanes-Oxley Act (“SOX”). Taken in tandem, these two decisions are welcome news for energy employers because they significantly restrict the reach of whistleblower protections, particularly for employees working outside the U.S., who may be disinclined to make complaints directly to the SEC or who may rely on alleged violations of foreign laws to make their case.

SOX protects employees of publicly-traded companies who engage in certain protected activities such as reporting violations of certain federal laws, such as mail and wire fraud. SOX creates a private cause of action for employees who have been retaliated against for engaging in such protected activities. Last week, in *Villanueva v. U.S. Department of Labor*, the Fifth Circuit ruled that SOX’s whistleblower provision only protects reporting violations of U.S. federal law.

Villanueva’s Complaint to OSHA

Mr. Villanueva was a Colombian national formerly employed by a Colombian subsidiary of Core Laboratories—a company that is publicly traded in the U.S. and, therefore, subject to SOX’s whistleblower provisions. In 2008, Villanueva lodged internal complaints about transactions between his company and other Core Labs affiliates; he believed that these transactions violated Colombian tax law.

Core Laboratories later terminated Villanueva for refusing to certify the company’s tax receipts. Villanueva filed a charge with the Department of Labor (“DOL”), claiming retaliation under SOX’s whistleblower provision. After the DOL dismissed his claim at three separate levels of administrative review, Villanueva appealed to the Fifth Circuit, arguing that SOX’s whistleblower provisions protect employees who report violations of non U.S. law.

The Fifth Circuit Limits SOX Protection to Violations of U.S. Law

The Fifth Circuit held that Villanueva had not engaged in SOX protected activity because his complaints focused on violations of Colombian tax law, instead of U.S. law. The fact that Core Labs executives in Houston had participated in the alleged

Colombian tax scheme was irrelevant, the Court said, because the allegations only involved foreign law. The Fifth Circuit did not address whether SOX could ever be applied extraterritorially, leaving that issue for another day.

The Fifth Circuit's opinion also provides a bit of guidance for future SOX plaintiffs. Villanueva claimed that Core Labs executives used both U.S. mail and domestic email to accomplish the Colombian tax fraud. The Fifth Circuit held that this was insufficient evidence that Villanueva believed he was reporting violations of federal law. But with more careful pleading, Villanueva could have claimed that he believed the executives had committed U.S. mail and wire fraud.

What's the Takeaway for Energy Employers?

Villanueva is another positive development for energy employers. Still, energy employers must remain vigilant in investigating and documenting internal whistleblower complaints—even those involving foreign subsidiaries or alleged violations of foreign law. Even though a SOX whistleblower is not required to report which precise section of a federal statute is being violated, employers should make an effort to have the employee help identify the specific law at issue, and make sure to document his or her answers. If the complaint involves foreign law only, then SOX's whistleblower provisions are probably not implicated.

By: *Clark Smith, Robert J. Carty Jr. and Steve Shardonofsky*

Clark Smith, Robert J. Carty Jr. and Steve Shardonofsky are located in Seyfarth Shaw's Houston office. If you would like further information, please contact the Seyfarth Shaw attorney with whom you work, Clark at clasmith@seyfarth.com, Rob at rcarty@seyfarth.com or Steve at sshardonofsky@seyfarth.com.

www.seyfarth.com

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