

White Collar Defense and Investigations Group Securities Litigation & Enforcement Group

To: Our Clients and Friends

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5th Circuit Limits Whistleblower Status

On July 17, 2013, in *Asadi v. G.E. Energy (USA), LLC*, No. 12-20522, the Fifth Circuit Court of Appeals narrowed the class of persons who can sue as “whistleblowers” under the Dodd-Frank Act. Rejecting district court decisions to the contrary, the Fifth Circuit held that only persons who have actually provided information to the SEC itself may sue as Dodd-Frank whistleblowers. *Asadi*, the first federal circuit court decision on the question, is likely to influence future district and circuit court decisions concerning who may sue under Dodd-Frank’s whistleblower provision.

Congress enacted the Dodd-Frank Act in the wake of the 2008 financial crisis. The Act expressly prohibits retaliation by employers against “whistleblowers,” and provides “whistleblowers” with a private cause of action if they are discharged or discriminated against by their employers in violation of the Act. Some district courts had previously held that Dodd-Frank allowed lawsuits by persons who made disclosures “required or protected” by various federal statutes, regardless of whether the disclosures were actually made to the SEC.¹

The Fifth Circuit, by contrast, held that “the whistleblower-protection provision unambiguously requires individuals to provide information relating to a violation of the securities laws *to the SEC*” to receive protection from retaliation. The Fifth Circuit explained that Dodd-Frank defines the term “whistleblower” as “any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.”

Section 78u-6(h), titled “Protection of whistleblowers,” provides whistleblowers a private right of action against employers who take retaliatory actions against the whistleblower when the

¹ See, e.g., *Kramer v. Trans-Lux Corp.*, No. 3:11CV1424 (SRU), 2012 WL 4444820, at *4 (D.Conn. Sept. 25, 2012); *Nollner v. S. Baptist Convention, Inc.*, 852 F. Supp. 2d 986, 994 n. 9 (M.D. Tenn. 2012); *Egan v. TradingScreen, Inc.*, No. 10 Civ. 8202 (LBS), 2011 WL 1672066, at *4-5 (S.D.N.Y. May 4, 2011).

whistleblower engages in certain protected actions, including making disclosures “required or protected” by specific federal laws.

The Fifth Circuit held that “under Dodd-Frank’s plain language and structure, there is only one category of whistleblowers: individuals who provide information relating to a securities law violation to the SEC.” The Court further clarified that the categories listed in section 78u-6(h) define the protected activity of a whistleblower, but do not “define which individuals qualify as whistleblowers.” By so holding, the Fifth Circuit narrowed the class of persons entitled to bring Dodd-Frank whistleblower claims.

Please contact any member of Bryan Cave’s [White Collar Defense and Investigations Group](#) or [Securities Litigation & Enforcement Group](#) with any questions or if you need assistance.

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