Dear Securities and Exchange Commission rules comments and Ms. Schapiro,

Here are my preliminary comments regarding the new Whistleblower provisions. I am going to take a look at the rules more closely but unless the issues below are addressed I do not think that any rules are going to work unless some type of protection is afforded for an auditor.

See my email correspondence below.

Thanks,

Robert H. Smith

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From: RSmith [redacted]
Sent: Tuesday, November 02, 2010 4:56 PM
To: 'president@whitehouse.gov'; 'vice_president@whitehouse.gov'; 'fellowsprogram@supremecourt.gov'; 'chairmanoffice@sec.gov'; 'AskDOJ@usdoj.gov'; 'inspector.general@usdoj.gov'; 'Drayne, Karen'; 'Cathy.Flanagan@usdoj.gov'
Cc: 'Bill@billnelson.senate.gov'; 'Shelby, Senator (Shelby)'; 'senator_bingaman@bingaman.senate.gov'; 'senator@dorgan.senate.gov'; 'senator_leahy@leahy.senate.gov'; 'senator_lugar@lugar.senate.gov'; 'John Boehner <AsktheLeader@mail.house.gov>'
Subject: FW: Litigation disclosure plan draws corporate opposition /Accounting standards group again delays controversial rules /Sheri Qualters

Dear Mr. President and Justices,

Here is another potential Citizens issue.

A complete Do loop?

I am out of work for approximately two years.

Can we see the “Big W”?

As per It's a Mad, Mad, Mad, Mad World is a 1963 American comedy film directed by Stanley Kramer.

Are we going to find the “Big W”?

I do not know…….

Pay no attention to the person behind the curtain…….

Thanks,

Robert H. Smith

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Here is the article out of the National Law Journal.

National Law Journal

Accounting standards group again delays controversial rules
Sheri Qualters
October 29, 2010

From: RSmith [redacted]
Sent: Tuesday, November 02, 2010 4:44 PM
To: 'squalters@alm.com'
Subject: Litigation disclosure plan draws corporate opposition /Accounting standards group again delays controversial rules /Sheri Qualters

Dear Ms. Qualters,

There are inherent issues that have to be addressed with the fundamentals of accounting with regard to any new proposed FASB’s. A lot of the rules that are going to be issued under the new legislation might be undermined by a “don’t ask, don’t tell” mentality. Yes the new loss and contingency disclosures would be a move into the right direction so that an investor would be aware of any potential litigation that might impact their stock value in a timely manner. You have to take a look at some of the current

rulings that are coming out of the Courts. Some of the rulings are limiting the ability for an investor to recover money from a third party (Stoneridge) (NY lawsuit/Professional Liability / see below). If the Fraud or loss is perpetrated at a third party and there is no legal recourse to recover/clawback the money then any new accounting rules that are being proposed at the corporate level might not be transparent if the Fraud or loss is a result of a third party.

Take a look at the Qui-tam Statutes and Public Utility Holding Act. These two federal laws were put into place to prevent Fraud at the third party level. With a Qui-Tam it was for recoveries of monies from third party downstream service providers. With the Public Utility Act it was to protect ratepayers from the use of regulated monies to non-regulated entities (quasi third parties).

If you take a look at the banking crisis there were inherent problems with non-disclosure of Off-Balance Sheet accounting. A lot of these issues could have been discovered by a simple cash flow analysis. This cash flow analysis would have to be at the segmented entity level in order to determine what the true impacts of any of the Off-Balance Sheet accounting. If you take a look at the $50 billion dollar issue with the "repo" 105 transactions at a bank a simple cash flow audit on a segmented entity basis would have brought the transparency needed in order to identify a potential problem.

A lot of times companies do not want to talk about segmented cash flow impacts since this would clearly give an investor the most appropriate information that would be needed to determine the exposure to a contingency loss issue at the company. The current Cash Flow requirement at the corporate level is to prepare a consolidated cash flow statement. Elimination entries sometimes do not provide the appropriate transparency. If the NY case is being set based upon that it is "in the public's interest to maximize diligence and thwart malfeasance on the part of the gatekeeper professionals" and under the new financial regulation an auditor does not have the coverage for whistleblower protection. Then name an auditor that would want to jeopardize their job by blowing the whistle? By nature of keeping the disclosures to a minimum and by the current rulings at both the Supreme Court and State Level this would put auditors between a "rock and a hard place". This will create a "don't ask, don't tell" mentality. Take a look at the Great Depression in the 30's, Enron issues, banking crisis, and other accounting Fraud cases. You will notice that no matter what type of FASB or accounting requirements that have been instituted that the issues resurface again for similar reasons. The auditor will not be afforded the proper protection in order to have the autonomy to provide the best transparent opinion. With the Citizens ruling this might have also created an atmosphere in which companies are paying lobbying money in order to have the most input/direction into the FASB or accounting rule making. I am not against the business aspects as long as the accounting information is being fully disclosed in a fashion that investors, taxpayers and ratepayers are not impacted by non-transparent reporting. If the new disclosure rules provide more transparent disclosure then this would be a move in the right direction. If an accounting professional is willing to take the hit (lose their job) with the possibility of not being able to work again then it would work. If not, then by nature of the current legal rulings and by nature of not affording an auditor protection under the new financial regulatory reform act this will create a "don't ask, don't tell" mentality and put an auditor between a "rock and a hard place".

If you remember it used to be the "big 8". Now it is the "big ?".

This is just a thought with any of the new proposed rules that are coming out as a result of the financial regulatory reform act.

If you have any question please do not hesitate to email me at [redacted].

Thanks,

Robert H. Smith

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This is the NY Law Journal Article by Mr. Stashenko.

'Simplistic' Principles

Judge Carmen Beauchamp Ciparick's dissent argued that the majority's ruling ignores "complex assumptions and public policy that compel different conclusions."

She said it was "in the public's best interest to maximize diligence and thwart malfeasance on the part of gatekeeper professionals."

From: RSmith [redacted]
Sent: Monday, November 01, 2010 2:41 PM
To: 'hardgrove@sidley.com'; 'jeff.litvak@fticonsulting.com'
Subject: Live webcast: Using Law and Accounting to Pierce the Corporate Veil/ 12/2/2010

Dear Mr. Hardgrove and Mr. Litvak,

I was looking forward to the Web Cast by Securities Docket on 10/28/2010. The web cast has been rescheduled for 12/2/2010. This will be an interesting web cast since these issues have existed for a long time.

Again, I am looking forward to this web cast.

Thanks,

Robert H. Smith

Oct. 28 Webcast: Using Law and Accounting to Pierce the Corporate Veil

October 6, 2010, 6:17 pm

Despite the historical reluctance of courts to hold a director or active shareholder liable for actions that are legally the responsibility of the corporation, corporate "veil-piercing" continues to be a highly-litigated issue in corporate law. Quite often such cases arise when a corporation facing legal liability transfers its assets and business to another corporation with the same management and shareholders. In short, the corporate form loses its substance, but instead becomes a vehicle by which to skirt responsibility.

While no bright-line test exists for the court in deciding such whether or not the corporate structure has been abused, courts often analyze accounting issues in deciding these cases. This can make the use of an expert witness highly desirable and possibly necessary.

Please join **James Hardgrove**, partner at Sidley Austin, and **Jeff Litvak** of FTI's Forensic and Litigation Consulting practice as they discuss a matter in which they collaborated to help a client successfully pierce the corporate veil. The panel will discuss the roles and interconnection of law and accounting in "alter ego" cases, and will describe the framework of the expert report that that was used to successfully pierce the corporate veil in court. To attend this webcast scheduled for Thursday, October 28, at 1 pm Eastern, please sign up below.

From: [redacted]
Sent: Thursday, October 28, 2010 4:59 PM
To: 'Jim Cox'; 'bill@blbglaw.com'; 'dfrederick@khhte.com'
Cc: 'bcarton@securitiesdocket.com'

Subject: RE: Archived Version and Materials for Oct. 26 Webcast: The Supreme Court and Securities Litigation

Dear Mr. Cox,

You are correct with what you say but some of the cases are being heard at the State level. These might be reversed at the Supreme Court level but not every trial is being heard at this level.

The Stoneridge ruling is a borderline ruling therefore this case might have been decided differently if other facts were presented at the hearings.

Do you think the new legislation is going to help?

Thanks,

Robert H. Smith

From: Jim Cox [redacted]
Sent: Thursday, October 28, 2010 4:47 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Archived Version and Materials for Oct. 26 Webcast: The Supreme Court and Securities Litigation

if decisions in the Supreme Court are not "due process" then I do not know what, short of divine intervention would be. Jim Cox

>>> [redacted] > 10/28/2010 10:02 AM >>>

Dear Mr. Cox, Mr. Fredericks and Mr. Frederick,

I listened to "The Supreme Court and Securities Litigation" web cast. I would have sent an email right after the web cast but I had to step out for a while.

The web cast was informative.

Please take a look at the reality of this type of litigation. With these borderline rulings I think the rulings should be tested as it relates to the 14th Amendment of our Constitution.

What do you think?

Thanks,

Robert H. Smith

From: RSmith [redacted]
Sent: Wednesday, October 27, 2010 12:18 PM
To: 'president@whitehouse.gov'; 'vice_president@whitehouse.gov'; 'fellowsprogram@supremecourt.gov'; 'chairmanoffice@sec.gov'; 'AskDOJ@usdoj.gov'; 'inspector.general@usdoj.gov'; 'Drayne, Karen'; 'Cathy.Flanagan@usdoj.gov'
Cc: 'Bill@billnelson.senate.gov'; 'Shelby, Senator (Shelby)'; 'senator_bingaman@bingaman.senate.gov'; 'senator@dorgan.senate.gov'; 'senator_leahy@leahy.senate.gov'; 'senator_lugar@lugar.senate.gov'
Subject: FW: Third-Party Liability Ruled Out in N.Y. Suits for Corporate Misdeeds/ Joel Stashenko / New York Law Journal October 22, 2010

Dear Mr. President and Justices,

Sorry for the typo(s).

Thanks,

Robert H. Smith

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From: RSmith [redacted]
Sent: Wednesday, October 27, 2010 10:11 AM
To: 'president@whitehouse.gov'; 'vice_president@whitehouse.gov'; 'fellowsprogram@supremecourt.gov'; 'chairmanoffice@sec.gov'; 'AskDOJ@usdoj.gov'; 'inspector.general@usdoj.gov'; 'Drayne, Karen'; 'Cathy.Flanagan@usdoj.gov'
Cc: 'Bill@billnelson.senate.gov'; 'Shelby, Senator (Shelby)'; 'senator_bingaman@bingaman.senate.gov'; 'senator@dorgan.senate.gov'; 'senator_leahy@leahy.senate.gov'; 'senator_lugar@lugar.senate.gov'
Subject: FW: Third-Party Liability Ruled Out in N.Y. Suits for Corporate Misdeeds/ Joel Stashenko / New York Law Journal October 22, 2010

Dear Mr. President and Justices,

We have to be careful here!

Thanks,

Robert H. Smith

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From: RSmith [redacted]
Sent: Wednesday, October 27, 2010 10:08 AM
To: 'jstashenko@alm.com'
Subject: Third-Party Liability Ruled Out in N.Y. Suits for Corporate Misdeeds/ Joel Stashenko / New York Law Journal October 22, 2010

Dear Mr. Stashenko,

It is interesting that the ruling was a 4-3 ruling in this case. This was just like Stoneridge (Supreme Court Ruling). What they do not discuss is that this will create a "don't ask, don't tell" mentality. Please see my email correspondence below with regard to these types of situations. There is a problem with this. Did you ever try and contact a "gatekeeper" directly at a company to bring up an issue that might be related to a questionable practice? A lot of the executives will not answer their emails or they will have an administrative person answer their emails. If a person does not follow up to find out if the Executive has seen the email correspondence there is no assurance that an Executive can be held accountable. This ruling contradicts what is in place for Utilities (PUCHA) and Healthcare (Qui-Tam) as it relates to third party miss appropriation of money. According to Public Utility Holding Company Act of 1935 (PUHCA) or Public Utility Holding Company Act of 2005 ("PUHCA 2005") or the Energy Policy Act of 2005 which is governed under FERC (Federal Energy Regulatory Commission) there are protections put into place to prevent third party Fraud by making sure that regulated monies from Utilities are not being used for non-regulated entities. Under Healthcare there are the Qui-Tam Statutes to prevent Fraud of Federal Taxpayer dollars at the third party downstream provider level. These are Federal Acts to protect a taxpayer and/or ratepayer of miss appropriation of money to third parties.

This **ruling would** try to put the responsibility on the Corporate "gatekeepers" by nature of a "don't ask, don't tell" mentality might not work. If you remember with all the prior litigation with these types of issues there were times when Corporate Executives have been asked to take the stand. They usually took the 5th Amendment with regard to answering specific questioning that might expose them to Fraud types of issues.

This is not about Corporate versus the individual but it should be about the reality of the process and practices that are being used to avoid this type of incrimination.

A potential problem with not holding a third party accountable for Fraud would be that the third party might contain the real cash profits that are related to the Fraud. This ruling would limit the litigation against the parent company for liability even though the potential exists that the third party would know about the initial Fraud issue. If the cash has already exchanged hands this might have the appearance of a Ponzi-scheme but with one caveat any plaintiff that wanted to litigate to recover money from a third party would not be able to do so under this ruling.

What is the difference between this type of schema or a Ponzi-Scheme? If you take a look at the Clawback rules for some of the Ponzi-Schemes it talks about taking back money from third party investors who benefited from the Schema. What is the difference if it is a third party investor or a third party vendor?

If the parent company becomes Bankrupt/Insolvent then there would be no recourse under this ruling to recover monies that might have been lost to third parties.

We have to be very careful with this type of ruling since if a "don't ask don't tell mentality exists this ruling would probably open up additional types of schema's that would insulate a parent corporation from this type of litigation. Where would an investor turn for protection. I do not think that allowing this type of behavior to exist is a good idea. Pension plans might be impacted by this type of schema and what recourse would there be for the protection of Pension values if these schemas are not prohibited.

Just because there is existing laws on the books at the State level does not mean that Federal Laws (Constitutional) would not preempt this type of behavior. The problem with some of the State litigation is that this might force litigation at the Federal Level to test the Constitutionality of the State laws that were put into place.

Why else would Stoneridge ruling be a 5-3 ruling? Why else would this ruling be a 4-3 ruling?

These **borderline rulings** would give rise to questioning to the outcomes of these cases as it would related to a person's Constitutional rights. The 14th Amendment indicates that ""All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Based upon the 14th Amendment of the Constitution it indicates that a "State cannot deprive a person of property without due process". With these type of rulings one might come to the conclusion that Federal law would preempt State law in which the possibility exists that a person was being deprived of property without due process by nature of a third party keeping money that did not belong to them by virtue of a Fraud.

The Supremacy Clause as afforded by the United States Constitution, Article VI, Clause 2 "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Based upon this clause a person would be in a position to litigate this type of issue at the Supreme Court level. (Stoneridge).

As you can see for a Utility and Healthcare protections were put into place to provide protection for a third party Fraud issues.

This ruling on the surface is trying to keep the "gatekeepers" accountable at the corporate level but by nature of a "don't ask, don't tell" mentality this would create a situation in which the possibility exists that the use of the 5th Amendment will constantly be used as a defense for Fraud that might be known by both the "gatekeeper", the third party vendor and the third party professional's. This will put the auditors between a "rock and a hard place".

The Fifth Amendment of the United States Constitution "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases

arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

This is not about putting blame on the Corporation. It is about accountability for actions that might be in violation of a person's due process rights. This includes the protection of life, liberty or property.

Maybe litigation should take place for a Pension Plan or person to litigate this type of issue at the Federal level based upon the 14th Amendment?

Time will tell……..

Thanks,

Robert H. Smith

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Copyrighed material redacted. Author cites Stashenko, Joel. "Third-Party Liability Ruled Out in N.Y. Suits for Corporate Misdeeds." *New York Law Journal*. 22 Oct. 2010. Web. <http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1202473704065>.

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From: [redacted]
Sent: Wednesday, September 29, 2010 10:48 AM
To: president@whitehouse.gov; vice_president@whitehouse.gov; fellowsprogram@supremecourt.gov; chairmanoffice@sec.gov; AskDOJ@usdoj.gov; inspector.general@usdoj.gov; 'Drayne, Karen'; criminal.division@usdoj.gov; Cathy.Flanagan@usdoj.gov

Cc: Bill@billnelson.senate.gov; 'Shelby, Senator (Shelby)'; senator_bingaman@bingaman.senate.gov; senator@dorgan.senate.gov; senator_leahy@leahy.senate.gov; senator_lugar@lugar.senate.gov
Subject: FW: Webcast: The Impact of the Dodd-Frank Whistleblower Provisions

Dear Mr. President and Justices,

I noticed a **typo.** Sorry.

Thanks,

Robert H. Smith

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From: [redacted]
Sent: Friday, September 24, 2010 2:34 PM
To: president@whitehouse.gov; vice_president@whitehouse.gov; fellowsprogram@supremecourt.gov; chairmanoffice@sec.gov; AskDOJ@usdoj.gov; inspector.general@usdoj.gov; 'Drayne, Karen'; criminal.division@usdoj.gov; Cathy.Flanagan@usdoj.gov
Cc: Bill@billnelson.senate.gov; 'Shelby, Senator (Shelby)'; senator_bingaman@bingaman.senate.gov; senator@dorgan.senate.gov; senator_leahy@leahy.senate.gov; senator_lugar@lugar.senate.gov
Subject: FW: Webcast: The Impact of the Dodd-Frank Whistleblower Provisions

Dear Mr. President and Justices,

I have read the current Wall Street Journal Article regarding the repeal of the SEC secrecy exemption. I also saw the Financial **Times** article regarding the AIG litigation against PWC.

I only hope that we are not going down the same road.

Based upon my conversation below it appears that there is no reason why my whited-out/redacted information should not be released. Money and power should not be the driver of due process.

Full transparency and discovery should be afforded in order for a person to receive their full due process rights under the Constitution (14th Amendment Section 1).

This would be the only way that a person would be afforded full due process as afforded under the law.

Hopefully my email correspondence has been helping through this process.

I have been out of work for almost two years and I am waiting to hear from multiple Federal Agencies regarding positions that I have posted for.

What is going on?

Thanks,

Robert H. Smith

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From: [redacted]
Sent: Friday, September 24, 2010 2:23 PM
To: 'Davies, Christopher'
Cc: [redacted]'
Subject: RE: Webcast: The Impact of the Dodd-Frank Whistleblower Provisions

Dear Chris,

I appreciate that you have taken the time to respond. This is a very important issue.

Here are some additional comments regarding the issues with auditors not being covered. Are you aware of the current litigation regarding AIG against PWC. This litigation is talking about AIG recovering

damages for failure to detect Fraud. This is very interesting since if they are not covered and they are legally obligated to detect Fraud then how can an Auditor prevail in this case?

The Auditor is put between a "rock and a hard place". If they do not uncover the Fraud then they might be considered legally liable. According to the AIG against PWC, PWC is trying to invoke the legal doctrine of in pari delicto – "in equal fault" where they – to reject claims for frauds allegedly committed by company insiders. If an auditor blows the whistle then they could be fired at will and not have coverage under the current legislation. An auditor would then have to secure council that might be very expensive for them considering that they are unemployed. This does not provide protection to an auditor. This might create a don't ask, don't tell mentality for the industry. This is probably what has been going on for at least a decade.

Your Answer to FOIA is interesting in that if there is a legal proceeding discovery might take precedence over a FOIA exemption. Let's take a situation in which a person goes through an EEOC filing for a Qui-Tam lawsuit indicating that a person might have been fired for uncovering false claims. EEOC would have the obligation through their investigation to ask another Federal Agency for full transparency (discovery) with regard to disclosing any information that might support a person's EEOC filing as to the motive behind the firing. If one Federal Agency (CMS) uses an exemption to white out/redact information that might be needed for a plaintiff to prove their case, then it would make sense for the other Federal Agency (EEOC) to require that CMS to release the white-out /redacted information in order for a person to receive due process from a Constitutionality Stand point. If this does not happen then the person would only have the choice to privately litigate the case which if they are unemployed would cost them money that they did not have at the time. The person is put between a "rock and a hard place". Yes discovery would work if the person could economically afford to bring the case to court. If they are unemployed this might be very difficult and we all know that litigation would take a long time. This is why a person who uses an EEOC filing to protect themselves should be afforded full discovery from another Federal Agency so that a person could receive full due process as afforded by the 14th Amendment Section 1 of the Constitution. Any laws that are put into place should have to conform to protect people by the 14th Amendment. Every Federal agency should make sure full discovery is granted to ensure that a person receives full due process. If this happened then I am sure that through full transparency a person would be able to receive proper due process even though that could not afford to do so due to cost constraints.

Public Utility Holding Act was primarily put into place to protect ratepayers from the use of Utility regulated monies for non-regulated entity purposes. This has similar attributes to a Qui-Tam in which a third party downstream service provider potentially submits a false claim to the insurer for reimbursement. It is a Federal taxpayer dollar (regulated by Qui-Tam) that the insurer receives that was paid to a third party downstream service provider where the false claim might have been created. With a Utility a non-regulated entity is just like a third party in which they would not be able to receive a regulated dollar from a regulated Utility. Both of these industries have protection put into place for recovery of monies from a third party.

An auditor within the banking industry did not uncover some banking industry issues that the Country has just faced (i.e. repo 105 transactions etc.) If what you have indicated is true then they were morally obligated to do so in that anyone looking a cash flow statement would be able to determine if there was exposure for a repo 105 transaction in which the risk has been removed off the primary entities balance sheet. Everyone will argue that the current accounting pronouncements supported some of these

transactions but a typical auditor who knows cash flow would understand this exposure. How come no one uncovered these types of issues? Sounds like a don't ask, don't tell.

This is probably why we have moved from the "big 8" to the "big ?" This is pending the litigation that I have talked about above.

The only way a person who is unemployed can defend themselves would be to file a complaint on their own forcing the release of the whited-out/redacted information from the Federal Agency that is withholding the information. Then they would be able to potential file a complaint against the other Federal Agency for not pursuing the information that might have provided motive for the firing which in the example above would be retaliation.

If there is no due process for a person to litigate inexpensively then a person would always between a "rock and a hard place". The current reform act might create a don't ask, don't tell mentality for the industry which might just be a continuation of what has been going on for the last decade. It seems very simple to let full transparency be the guide to a lot of these issues. If not, then the issues that the Country has faced over the past decade might continue.

A lot of the laws that are being written and put into place probably should be tested to see if the law is fully constitutional before it is put into place. Due process as afforded under the 14th Amendment would probably allow for full discovery and take precedence over FOIA exemptions. Money and Power should not be the driver of due process. This is probably why we have the 14th Amendment in the first place.

I thank you for your time and response.

Thanks,

Robert H. Smith

From: Davies, Christopher [redacted]
Sent: Friday, September 24, 2010 1:07 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Webcast: The Impact of the Dodd-Frank Whistleblower Provisions

See some thoughts below.

Chris

From: [redacted]
Sent: Wednesday, September 22, 2010 3:15 PM
To: Davies, Christopher; [redacted]
Subject: FW: Webcast: The Impact of the Dodd-Frank Whistleblower Provisions

Dear Mr. Davies and Mr. Childers,

Thanks for your response on the webcast. I asked this question as well since this is a very important issue. This one was not answered.

Is there a possibility for a person to still be fired at will and then have to deal with the issue on their own due to lack of money to seek due process and representation?

›› That possibility exists but is mitigated by contingency fee arrangements with plaintiffs' lawyers and by the statute's provision for attorney's fees, assuming a successful suit for retaliation.

There might be another problem with a person trying to receive due process with obtaining full transparency within two Federal Agencies. There are FOIA exemptions which might conflict with another agencies ability to provide due process with a claim.

›› Exceptions to FOIA certainly exist with respect to government inquiries and other matters. FOIA, however, is different than discovery in a legal proceeding. While the agency retains much discretion under FOIA, civil discovery permits agencies less control over productions.

I also heard that auditors are not covered. You have to remember that a lot of the issues as it pertains to auditors would possibly create a "code" in which an auditor might not uncover an issue if they are not protected just like a private party. This might have happened with the banking crisis and I am sure that it is possible to show up with a qui-tam issue.

›› Section 10A of the '34 Act imposes an affirmative legal obligation on auditors to address evidence of potential illegality. That is why they are excepted from the whistleblower provisions (in the SEC portion of the law). You can't reward an auditor for disclosing that which he is legally compelled to address.

Sarbanes Oxley did not resolve the problem back from 2002 to now. Remember the Public Utility Holding Act of 1935 (PUHCA) was created as a result of a similar issue with Utilities after the Great Depression era as well.

›› I'm not sure that SOX was intended to or did affect comprehensive risk apprehension by the market. PUHCA, while broadly intended to address corporate practices, was about a different issue -- concentration of capital.

The auditing industry is currently fighting this for a long time. Remember we went from the "big 8" to the "big ?" Pending the current litigation that is going on.

If the auditors are not protected then how will it be uncovered if a person does not have the access to full transparent information?

We will see.

Thanks for your answers.

Robert H. Smith

From: RSmith [redacted]
Sent: Wednesday, September 22, 2010 3:03 PM
To: 'Bruce Carton <[redacted]>'
Subject: FW: Webcast: The Impact of the Dodd-Frank Whistleblower Provisions

Dear Mr. Carton,

Thanks for asking the question online. Based upon the response Federal Preemption would take precedence over State law.

This will be interesting in that this will require full transparency and full open communication by all agencies.

Thanks,

Robert H. Smith

From: RSmith [redacted]
Sent: Wednesday, September 22, 2010 2:45 PM
To: 'Bruce Carton'
Subject: Webcast: The Impact of the Dodd-Frank Whistleblower Provisions

Dear Mr. Carton,

What about the State "at will laws" as it pertains to retaliatory responses? What about money barriers for an employee to pay an attorney to bring a confidential complaint? Is there a possibility for a person to still be fired at will and then have to deal with the issue on their own due to lack of money to seek due process and representation?

I submitted this question online. Hopefully I hear an answer online during the web cast.

Thanks,

Robert H. Smith

Live at: Sep 22 2010 2:00 pm
Webcast: The Impact of the Dodd-Frank Whistleblower Provisions
Presented by: David Childers, Pres. and CEO of EthicsPoint; Christopher Davies, Partner, WilmerHale
From this channel: Securities Litigation and Enforcement Channel

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