



KD Alert: NOT WHISTLING DIXIE - TEXAS COURT SAYS WHISTLEBLOWER STATUTE DOES NOT REACH OVERSEAS

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On June 28, 2012, the United States District Court for the Southern District of Texas dismissed a lawsuit filed by a former General Electric Co. employee holding that the Dodd-Frank Wall Street Reform and Consumer Protection Act's (the "Dodd-Frank Act") anti-retaliation provision did not apply to a U.S. employee's foreign whistleblower activity. The Court in Asadi v. G.E. Energy (USA), LLC, 2012 U.S. Dist. Lexis 89746 (S.D. Tex. June 28, 2012) held that reporting a potential Foreign Corrupt Practices Act ("FCPA") violation while abroad was not protected under the Dodd-Frank Act's anti-retaliation provision.

Khaled Asadi, a dual citizen of Iraq and the United States, was a U.S.-based employee of G.E. Energy (USA), LLC ("GE") working in GE's Jordan office. The Complaint alleges that while still in Jordan, Mr. Asadi was fired after he complained to his GE supervisor and a GE ombudsman of a potential FCPA violation committed by GE while negotiating with an Iraqi official. The Complaint further alleges Mr. Asadi's termination was in retaliation for his disclosures of the potential FCPA violation and, therefore, his termination was prohibited under the anti-retaliation provision of the Dodd-Frank Act.

Significantly, in reaching its decision that the Dodd-Frank Act does not extend to protect foreign whistleblowing activity, the Court relied on the U.S. Supreme Court's decision in Morrison v. National Australia Bank, Ltd., 130 S. Ct. 2869 (2010). In Morrison, the Supreme Court held that "[w]hen a statute gives no clear indication of an extraterritorial application, it has none[.]" but a court may also consult the "context" of the language to determine any extraterritorial reach. Morrison, 130 S. Ct. at 2878. Guided by Morrison, the Texas District Court applied the presumption against extraterritorial application of the Dodd-Frank Act's anti-retaliation provision. Indeed, even after considering the context of the language of the provision, the court dismissed the Complaint reasoning that there the Act's anti-retaliation provision did not extend to or protect whistleblower activity that occurred beyond the U.S. Borders.

Notably, the Asadi decision held that the facts alleged in the Complaint did not fit within the Dodd-Frank Act's anti-retaliation provision so it did not address whether the FCPA extends the territorial reach of the anti-retaliation provision. Thus, since the Asadi case was the first to limit the Dodd-Frank Act's anti-retaliation provision to U.S. based whistleblowing activity, it will likely guide arguments as other jurisdictions address similar issues. Accordingly, KDG is closely monitoring this case for appellate activity and related developments.

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