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September 12, 2008

By Facsimile and First Class Mail

Senator Arlen Specter
711 Hart Building
Washington , D.C. 20510

RE: The Elimination of Sarbanes-Oxley Whistleblower Protections by the Department of Labor

Dear Senator Specter:

As you may already be aware, I am a Pittsburgh, Pennsylvania attorney representing Timothy P. Flynn in a whistleblower proceeding filed before the Department of Labor (OSHA). Mr. Flynn claims whistleblower protection stemming from his testimony in connection with investigations of UBS and the sale of Auction Rate Securities. UBS has settled with regulators and paid $19 billion in restitution and $150 million in fines. Mr. Flynn's case, however, is not the direct focus of this letter.

I note, at the outset, that on April 23, 2004, in Pittsburgh, Pennsylvania, President George W. Bush remarked that: "We uncovered corporate crimes that cost people jobs and their savings. So we passed strong corporate reforms and made it abundantly clear that we will not tolerate the dishonesty in the boardrooms of America."

Despite such comments, events publicly disclosed by the *Wall Street Journal* by Jennifer Levitz in the last several weeks, not only about Mr. Flynn's case but others as well, have revealed what appears to be an orchestrated effort by the Executive Branch to subvert the whistleblower protections contained in the Sarbanes-Oxley Act of 2002 (Pub.L. 107-204, 116 Stat. 745, enacted 2002-07-30). I have attached copies of Ms. Levitz' articles for your review.

On or about September 9, 2008, Senators Patrick Leahy and Charles E. Grassley jointly authored a letter, as members of the Committee on the Judiciary, of which you are a member, protesting the Department of Labor's interpretation that subsidiaries of publicly traded companies are not automatically covered by the whistleblower protections of Sarbanes-Oxley (Section 806). As Senators Leahy and Grassley wrote: "Congress enacted SOX as a direct response to the fraud perpetrated by Enron Corporation . . . through the misuse and abuse of its shell corporations and subsidiaries. Consequently, it is unreasonable to argue that subsidiary

corporations would not be covered by whistleblower protection provisions of SOX." The Senators also requested that "the Department of Labor temporarily suspend using an interpretation of this provision that exempts employees of subsidiary corporations from the SOX whistleblower protections until we have received your response and supporting documentation." I have attached a copy of the letter for your review.

A brief history of underlying events should assist with regard to any investigation that may occur into the Department of Labor's narrow interpretation of the Sarbanes-Oxley whistleblower protection and, further, the Executive branch's efforts to undermine Section 806.

In late 2000, the law firm of Gibson, Dunn & Crutcher assumed the role of nation co-chair of Lawyers for Bush/Cheney. The Gibson firm handled Supreme Court proceedings with regard to the voting election controversy. At the time, Eugene Scalia, Esquire, was employed at the Gibson firm.

In January, 2002, President George W. Bush, appointed Eugene Scalia, Esquire, to the position of Solicitor of Labor. President Bush appointed Scalia, the son of Supreme Court Justice, Antonin Scalia, in a recess appointment following a Senate refusal to approve the nomination.

Several United States Senators, including Senator Edward M. Kennedy and Former Senator Paul Wellstone, have noted that the Solicitor of Labor is not simply the Department of Labor's attorney, but also the lawyer for workers throughout the country.

At the time of his appointment, Senators Wellstone and Kennedy both questioned the appointment. Senator Wellstone offered harsh remarks condemning the appointment and is quoted as saying: "Mr. Scalia's professional record of antipathy toward the laws and principles that it would be his job to carry out make this a mismatch. He has been opposed throughout his career to what I see as the very mission of the Solicitor of Labor, who is not just the Department of Labor's lawyer, but is really the lawyer for workers throughout the entire country."

On July 30, 2002, Congress enacted the Sarbanes-Oxley Act, including its whistleblower protection provision (Section 806). Within hours of its enactment, President Bush issued a "Signing Statement" providing for a narrow interpretation of the Act, including Section 806.

The following day, on July 31, 2002, Senators Patrick Leahy and Charles E. Grassley, jointly authored a letter to President Bush to "express our shared concern about interpretive statements made by the White House staff only hours after you signed the Act into law." The letter concluded by noting that the Administration's interpretation "embodies a flawed interpretation of the clearly worded statute and threatens to create unnecessary confusion and to discourage whistleblowers . . . ."

Shortly thereafter and despite the prior written statements of both Senators Leahy and Grassley, on September 14, 2002, the Labor Department, through Solicitor Scalia, filed a brief implementing President Bush's attempts to narrowly construe whistleblower rights. Not only did the brief provide a narrow interpretation of whistleblower protections for environmental whistleblowers, but also for Sarbanes-Oxley whistleblowers.

In November, 2002, Solicitor Scalia's recess appointment expired. President Bush then appointed him Acting Solicitor of Labor. Controversy regarding the Executive branch's attempts to subvert the whistleblower protection contained in Sarbanes-Oxley continued. Although Senators Leahy and Grassley had written to the Administration, Senator Leahy noted on the Congressional record that they were being "stonewalled."

Rather than face a Senate confirmation hearing, Scalia announced his resignation on January 6, 2003 and ultimately resigned on January 17, 2003. Eugene Scalia, Esquire, returned to his former firm where he remains today defending corporations accused of violating whistleblowers' rights.

On January 24, 2003, Acting Solictor Howard Radzely authored a letter to Senators Leahy and Grassley renouncing the Administration's attempts to narrowly construe whistleblower protections. Although authoring the letter, Acting Solicitor Radzely did not withdraw the Department of Labor's brief filed in September, 2002.

In or about the same time frame, President Bush nominated Mr. Radzely for the position of Solicitor. Mr. Radzely was a former deputy to Eugene Scalia, Esquire and, further, was attorney Scalia's father's law clerk on the Supreme Court. Mr. Radzely was also a former defense attorney, representing employers.

Perhaps not surprisingly, on July 25, 2003, an opposition letter to Radzely's appointment was provided by the Government Accountability Project and the Public Employees for Environmental Responsibility. The opposition letter pointed out Mr. Radzely's hostility towards whistleblowers and stated, in part: "[t]he thrust of the Solicitor efforts has been to seek to deny relief to employee whistleblowers who have won recommended judgments following evidentiary hearings before administrative law judges." The letter also provided that "[t]he consistent pattern that runs through Mr. Radzely's brief career, and the labor practitioners he has chosen to practice with, is an advocacy for reduced legal protections."

On July 29, 2003, the first session on Mr. Radzely's appointment to Solicitor of the Department of Labor was held. At least two senators, including Senator Edward M. Kennedy and Senator Tom Harkin reminded Mr. Radzely that the Solicitor is not only the Department's lawyer, but the worker's lawyer.

Attorney Radzely, during his own testimony, acknowledged as such, stating: "the Department of Labor Solicitor's Office has a long and proud tradition of protecting America's workers . . . ."

Attorney Radzely was ultimately confirmed. Although Solicitor Radzely had previously announced a retreat from Solicitor Scalia's narrow interpretation of Section 806, it would not be long before he began to implement the policy of narrowing Section 806.

In or about late 2003-early 2004, President Bush appointed Special Counsel Scott J. Bloch. Attorney Bloch's role was to, presumably, oversee Federal Employee whistleblower claims. Rather than do so, in February, 2005, his office was accused of improperly dismissing hundreds of whistleblower cases that had been pending when Bloch took over. An OSC official has been quoted as saying that "Bloch has contempt for whistleblowers."

Two months after the accusations pertaining to Special Counsel Bloch, on or about April 6, 2005, Solicitor Radzely filed an Amicus Curiae brief in the case of *Ede v. Swatch Group and Swatch Group USA*, ARB No. 05-053. Therein, Solicitor Radzely argued that whistleblower provisions of Sarbanes-Oxley do not apply to employees who work exclusively overseas and are subjected to adverse action overseas. Further, in so arguing a "narrow" interpretation of the Act, despite acknowledging that the Act contained no such limitation, Solicitor Radzely argued that Section 806 was an employment law provision, not a securities law provision. Although this argument might have appeared, at the time, to have been inconsequential, it would be the platform for a later attack on Section 806.

On July 25, 2006, in comments addressing Presidential Signing Statements, Senator Leahy once again noted on the Congressional Record, that President Bush had "used his signing statement in an attempt to narrow a provision protecting corporate whistleblowers in a way that would have afforded them little protection." Senator Leahy further noted that the President's "narrow interpretation was at odds with the plain language of the statute . . . ."

Despite the record yet again being made clear by one of the authors of Section 806, approximately one month later, on or about September 1, 2006, Solicitor Radzely filed an Amicus Curiae brief in the case of *Ambrose v. U.S. Foodservice, Inc. and Royal Ahold*, ARB Case No. 06-096. Therein, Solicitor Radzely, seizing upon his earlier interpretation of Section 806 as an employment law, argued that the "integrated employer" test should be utilized to determine whether Section 806 protections are afforded to employees working at subsidiaries of publicly traded companies. Despite prior announcements by Senators Leahy and Grassley that Section 806 was broadly written, Solicitor Radzely argued that there was "no legal basis to conclude that subsidiaries of publicly traded companies are automatically covered under Section 806."

The Solicitor also argued that, once the "integrated employer" test was applied in the case, that the Claimant should be denied recovery because the subsidiary that he worked for was not "integrated" with its publicly traded parent.

The SEC, fortunately, was not so limited. Indeed, the SEC had sued Royal Ahold on October 13, 2004, for the over $700 million of inflated earnings emanating from Royal Ahold's subsidiary, U.S. Foodservice, Inc. Thus, while the SEC had the ability to reach the massive accounting fraud emanating from a subsidiary (and ultimately reach a settlement), the whistleblower reporting the over $700 million fraud was left without protection, a position supported by the Department of Labor.

Thereafter, President Bush "promoted" Attorney Radzely and, effective January 24, 2007, Mr. Radzely became the Acting Deputy Secretary of Labor. On September 4, 2007, President Bush nominated Gregory F. Jacob to be Solicitor of Labor. On December 19, 2007, Messrs. Radzely and Jacob were both confirmed by the U.S. Senate.

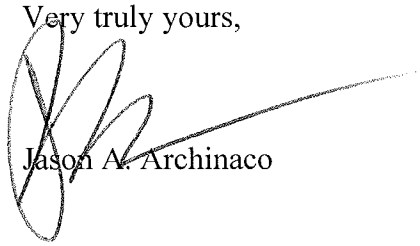
Shortly after his confirmation, the new Solicitor picked up where his predecessors had left off. In the case of *Johnson v. Seimens Building Technologies, Inc. and Siemens AG*, ARB Case No. 08-032, Solicitor Jacob filed an Amicus Curiae brief, once again urging application of the "integrated employer" test – and once again advocating against the Claimant whistleblower and urging that her case be dismissed.

The end result of the policy implemented illustrated above, as noted in Jennifer Levitz' *Wall Street Journal* Article "Whistleblowers Are Left Dangling," is that the government has ruled in favor of whistleblowers only 17 times out of 1,273 complaints filed since 2002. Further, another 841 cases have been dismissed.

My father, a corporate executive of thirty-eight years, has often told me, "just state the facts because it is hard to argue with the facts."

The facts dictate that you join Senators Leahy and Grassley in their protest of these matters of significant public importance. I will be happy to participate in any public hearings involving these matters should I be invited and to provide you with any supporting materials you or your staff should request.

Very truly yours,

By: 

Jason A. Archinaco

JAA:cwp

Attachments

cc: Senator Patrick Leahy
Senator Charles E. Grassley

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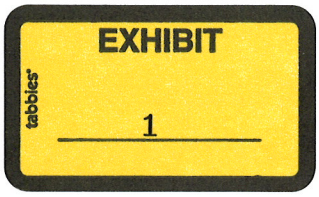
August 31, 2008 11:01 p.m. EDT



Labor Asks Whistleblower to Show Why Act Covers UBS Subsidiary

By JENNIFER LEVITZ
August 31, 2008 11:01 p.m.

The Department of Labor is asking a whistleblower in the auction-rate securities meltdown to show that a **UBS** AG subsidiary, the company he complained about, is covered under the federal whistleblower statute, according to the plaintiff's attorney.

The labor department, which enforces the whistleblower provision under the Sarbanes-Oxley Act, asked an attorney for Timothy Flynn, a former senior vice president at UBS Financial Services, to submit a brief showing why the subsidiary is covered under the act. The 2002 act, created in the wake of the Enron scandal, is designed to protect employees who complain about alleged wrongdoing at publicly traded companies. The Zurich based UBS AG is a publicly traded company.

In an brief sent this week to the labor department, Jason Archinaco, Mr. Flynn's attorney, wrote that he had recently been asked by labor officials handling Mr. Flynn's complaint to address "whether or not UBS Financial Service Inc. is 'integrated' with UBS AG such that the subsidiary company, UBS Financial Services, is covered by the Sarbanes-Oxley Act."

Mr. Archinaco wrote that UBS had not raised the "lack of integration" defense. He wrote that the department "should conduct a full investigation" into the request, and whether UBS had "successfully obtained" other dismissals by "claiming they are not 'integrated.' "

"Simply put, if the whistleblower works at a subsidiary, he works at part of the publicly traded company. The whole company is subject to securities laws," he wrote. He added that UBS has "publicly admitted and repeatedly boasted" about its "integrated business model" and synergies of its various units. A spokeswoman for UBS was not immediately available tonight. Labor department spokeswoman Sharon Worthy said the department "can't confirm or deny any whistleblower case."

In recent months, many retail investors have been unable to cash out of auction-rate securities, debt instruments that some brokers compared to safe, easy-to-sell money-market funds. New York, Massachusetts and other states have been conducting a widespread investigation of the market.

In May, in a settlement with the Massachusetts attorney general, UBS Financial Services agreed to return $37 million to the financially-troubled Massachusetts Turnpike Authority and 17 municipalities that invested in auction-rate securities. UBS did not admit any wrongdoing in the settlement.

In June, Mr. Flynn filed a federal whistle-blower complaint with the labor department against UBS Financial Services. He alleged that he had told Massachusetts regulators that UBS had not told its own financial advisors of the liquidity problems in the auction-rate marketplace and that after cooperating with the investigation, UBS Financial Services retaliated against him. He alleged that the company locked him out of his office, barred its staff from talking to him, and ultimately suspended him. UBS has previously denied that it retaliated against Mr. Flynn. In Mr. Archinaco's brief filed this week, he alleges that "mislead its brokers into believing that ARS were cash equivalents when UBS knew they were not."

Write to Jennifer Levitz at jennifer.levitz@wsj.com[1]

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September 2, 2008

U.S. Asks if Sarbanes Covers UBS Arm

By JENNIFER LEVITZ
September 2, 2008; Page C5

The Labor Department is asking a former executive of UBS Financial Services who filed a complaint raising questions about the auction-rate-securities meltdown to show that his **UBS** AG subsidiary is covered under the U.S. whistleblower statute, according to the plaintiff's attorney.

In June, Timothy Flynn, a former senior vice president at UBS Financial Services, filed a complaint with the Labor Department. He alleged that he had told Massachusetts regulators that financial advisers hadn't been informed of the liquidity problems in the auction-rate marketplace and that after cooperating with the investigation, UBS Financial Services retaliated against him.

He alleged that the company locked him out of his office, barred its staff from talking to him and ultimately suspended him. UBS has denied that it retaliated against Mr. Flynn.

The Labor Department, which enforces the whistleblower provision under the Sarbanes-Oxley Act, asked an attorney for Mr. Flynn to submit a brief showing why the subsidiary is covered. The 2002 act, created in the wake of the Enron scandal, is designed to protect employees who complain about alleged wrongdoing at publicly traded companies. Zurich-based UBS AG is publicly traded.

In a brief sent last week to the Labor Department, Jason Archinaco, Mr. Flynn's attorney, wrote that he had been asked by officials to address "whether or not UBS Financial Service Inc. is 'integrated' with UBS AG such that the subsidiary company, UBS Financial Services, is covered by the Sarbanes-Oxley Act." A spokeswoman for UBS wasn't available.

A Labor Department spokeswoman said the department "can't confirm or deny any whistleblower case."

Write to Jennifer Levitz at jennifer.levitz@wsj.com[1]

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September 4, 2008

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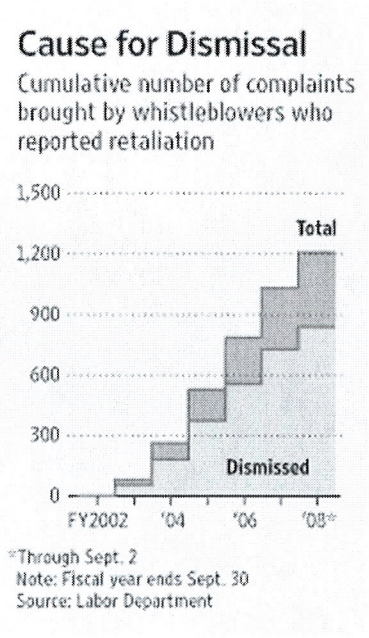
3

Whistleblowers Are Left Dangling

Technicality Leads Labor Department To Dismiss Cases

By JENNIFER LEVITZ
September 4, 2008; Page A3

The Department of Labor, charged with enforcing the federal law protecting corporate whistleblowers at publicly traded companies, has been dismissing complaints on the technicality that workers at corporate subsidiaries aren't covered.



The government has ruled in favor of whistleblowers 17 times out of 1,273 complaints filed since 2002, according to department records. Another 841 cases have been dismissed. Many of the dismissals were made on the grounds that employees worked for a corporate subsidiary, says Richard Moberly, a University of Nebraska law professor. He studies issues involving workers who face retaliation from employers for reporting wrongdoing, and based his findings on department data. The rest of the cases are either pending, withdrawn or were settled.

Sen. Patrick Leahy, a Vermont Democrat who helped craft the whistleblower provision -- part of the Sarbanes-Oxley corporate governance act -- says the law was meant to cover workers in corporate subsidiaries. "Otherwise, a company that wants to do something shady, could just do it in their subsidiary," he said.

Sharon Worthy, a Labor Department spokeswoman, said the agency "believes that there is no legal basis for the argument that subsidiaries of covered corporations are automatically covered" under the Sarbanes-Oxley whistleblower provision. "The plain language of the statute only applies to publicly traded corporations," she said in a statement.

The agency declined to provide the exact number of cases dismissed because employees worked for a subsidiary. Ms Worthy said only 17 employees have won favorable findings because many cases are settled before adjudication. Records show 187 cases have been settled to date.

The dismissed cases include three whistleblower complaints against the German manufacturing conglomerate Siemens AG and two against London media giant WPP Group PLC. The Labor Department rejected all five cases because the employees worked for subsidiaries, agency records show. Both companies declined to comment.

Another pending case involves **UBS** AG, the Swiss bank. The plaintiff, Timothy Flynn, alleged that in June he was suspended from his job as a UBS financial adviser for cooperating with a Massachusetts investigation of the bank's sales of auction-rate securities. Mr. Flynn's attorney, Jason Archinaco, says the Labor Department has asked him to show that the UBS unit that employed his client is covered under the act.

UBS declined to comment.

The Sarbanes-Oxley act, passed by Congress in 2002 in response to the Enron Corp. and Worldcom Inc. scandals, included the first federal protection for corporate whistleblowers. Before, there was only a patchwork of state laws protecting them from retaliation. Under the act, remedies can include back pay, reinstatement and attorney's fees.

The Labor Department's division of Occupational Safety and Health Administration enforces the whistleblowers' provision. It prohibits publicly-traded companies or "any other officer, employee, contractor, subcontractor, or agent of such company" from retaliating against employees who provide information or assist in investigations related to alleged fraud. According to Sen. Leahy, the provision was written to be "interpreted as broadly as possible."

In a whistleblower case still pending at the Labor Department, Carri Johnson, a Minnesota woman, alleges she received a poor performance review and was fired from her job as a manager at Siemens Building Technologies Inc. in 2004 after reporting suspected fraud.

Financial figures for Siemens Building, based in Buffalo, Ill., are included in Siemens AG's consolidated financial statements, which describe the unit as one of the company's "operation groups."

In a Labor Department filing, Siemens Building argued that it wasn't covered under the whistleblower provision. In November, an administrative law judge at the department sided with the company. Ms. Johnson appealed to the Labor Department's administrative review board, where the case is pending.

Gregory Jacob, the agency's chief legal officer, has asked the review board to uphold the November decision, according to filings in the case. In a legal brief, he argued that Ms. Johnson had not shown that the two companies were "significantly interrelated" or that Siemens AG controls employment policies at Siemens Building. He also wrote that the Sarbanes-Oxley law does not "expressly" mention subsidiaries.

In the last two years, the Labor Department has dismissed two other Siemens whistleblower complaints because the plaintiffs worked at subsidiaries, according to agency filings. Nearly all of Siemens AG's approximately 400,000 employees work at its business groups, according to Siemens AG's 2007 SEC filings.

In the last year, department judges have dismissed two whistleblower complaints filed by employees at subsidiaries of WPP Group PLC, saying workers at its subsidiaries aren't protected by Sarbanes-Oxley. In its annual report, WPP describes its various companies as being "centrally integrated."

Joseph Burke, a former production director at Ogilvy & Mather, alleged that the WPP advertising unit decreased his job responsibilities and ultimately fired him in retaliation for his cooperation

with a federal criminal investigation into his employer's billing practices. Mr. Burke had testified in a 2005 federal trial, which led to the sentencing of two former Ogilvy executives to prison for overbilling the government for an antidrug campaign.

According to Labor Department filings, Ogilvy denied that Mr. Burke's dismissal was related to his testimony and said he was part of a "reduction in force." A company executive testified that Mr. Burke was a "terrific worker," according to a summarized transcript of the hearing,

Ogilvy argued that Mr. Burke's complaint should be dismissed because the company isn't subject to the Sarbanes-Oxley whistleblower provision. In May, a Labor Department administrative law judge dismissed Mr. Burke's whistleblower complaint, saying he "has not established, by a preponderance of evidence, that he is an employee of a company covered under" the Sarbanes-Oxley whistleblower provision.

Under Sarbanes-Oxley, whistleblowers eventually can appeal Labor Department's rulings to federal circuit court. But they face "an uphill battle," says Mr. Moberly, the law professor.

Write to Jennifer Levitz at jennifer.levitz@wsj.com[1]

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

September 9, 2008

The Honorable Elaine Chao
Secretary of Labor
United States Department of Labor
200 Constitution Ave, N.W.
Washington, D.C. 20210

Dear Secretary Chao:

We authored the corporate whistleblower provisions of the Corporate and Criminal Fraud Accountability Act, section 806 of the Sarbanes-Oxley Act (SOX). In 2002 and 2003, we corresponded with the Attorney General and the President to express our disagreement with the Administration's overly narrow interpretation of these important whistleblower protections in the corporate accountability legislation.

We are dismayed to learn that the Administration—the Department of Labor in particular—has been using an overly restrictive interpretation of this law to dismiss a majority of the complaints filed by employees of public corporations under this section who assert that they have been fired or treated unfairly because they reported fraud.

The Wall Street Journal reported on September 4 that out of 1,273 complaints filed with the Department of Labor under this whistleblower protection provision since 2002, the government has ruled in favor of the employee only 17 times and has dismissed 841 cases. Many of these cases have apparently been dismissed on the grounds that the employee worked for a corporate subsidiary, because the Department takes the position that subsidiaries are not covered by the statute.

Section 806, now codified as 18 United States Code, Section 1514A, states, "No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company" may discriminate against an employee based on that employee's reporting of fraudulent conduct. We want to point out, as clearly and emphatically as we can, that there is simply no basis to assert, given this broad language, that employees of subsidiaries of the companies identified in the statute were intended to be excluded from its protections.

Moreover, as the authors of this provision, we can clearly state that it was by no means our intention to restrict these important whistleblower protections to a small minority of corporate employees or to give corporations a loophole to retaliate against those who would report corporate fraud by operating through subsidiaries. These protections against abuses were intended as a safety valve, protecting the public, shareholders, and Americans' confidence in the marketplace. Congress enacted SOX as a direct response to the fraud perpetrated by Enron Corporation (now known as Enron Creditors Recovery Corporation)—through the misuse and abuse of its shell corporations and subsidiaries. Consequently, it is unreasonable to argue that subsidiary corporations would not be covered by the whistleblower protection provisions of SOX.

Whistleblowers are vital in promoting accountability and transparency, but they are extremely vulnerable to retaliation. They need and deserve the protection of the law and vigilant application of the law by federal agencies. Accordingly, we request that you explain the basis for taking the position that the SOX whistleblower protection provisions do not apply to employees of subsidiary corporations given our position that the agency's interpretation contradicts the spirit and goals of the statute as well as the intent of Congress. In addition, we request that the Department of Labor temporarily suspend using an interpretation of this provision that exempts employees of subsidiary corporations from the SOX whistleblower protections until we have received your response and supporting documentation.

We look forward to your reply.

Sincerely,

PATRICK LEAHY
Chairman

CHARLES E. GRASSLEY
United States Senator

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September 10, 2008

EXHIBIT
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5

Senators Protest Whistleblower Policy

By JENNIFER LEVITZ
September 10, 2008; Page A4

Two U.S. senators accused the Department of Labor of violating the "spirit and goals" of a federal law aimed at protecting employees who report corporate wrongdoing, and called on the agency to stop rejecting claims from workers at subsidiary companies.


Charles E. Grassley

In a letter to Secretary of Labor Elaine Chao, Sen. Patrick Leahy, a Vermont Democrat who is chairman of the Judiciary Committee, and Sen. Charles Grassley, an Iowa Republican who also is on the committee, wrote that they were dismayed that the "administration -- the Department of Labor in particular -- has been using overly restrictive interpretation of this law to dismiss a majority of the complaints" filed under the whistleblower-protection provisions of the 2002 Sarbanes-Oxley Act.

Sen. Leahy and Sen. Grassley, who wrote those provisions, said that "there is simply no basis to assert" that employees of the subsidiaries of publicly traded companies aren't covered under the act, as the department has asserted in numerous recent cases.

The letter cited an article in The Wall Street Journal last week that reported on the department's stance. Department records show the government has ruled in favor of corporate whistleblowers 17 times out of 1,273 complaints filed since 2002. An additional 841 cases have been dismissed, the records show, with many of the dismissals made on subsidiary-exclusion grounds. The rest of the cases are either pending, withdrawn, or were settled.

RELATED READING

• Read the letter sent by Sen. Patrick Leahy and Sen. Charles Grassley to Secretary of Labor Elaine Chao.[1]

In a statement, the Labor Department said it would respond fully to the concerns of the senators. But the agency said, "We are confident we are correctly enforcing the statute, and do not believe the text of Sarbanes-Oxley as written supports the broader reading that employees of subsidiaries are automatically covered."

Tom Devine, legal director of the Government Accountability Project, a nonprofit group that promotes whistleblower rights, called the department's stance "dysfunctional," saying: "This one is a no-brainer. There is nothing in the law that allows for that type of loophole."

The senators asked the department to supply documentation and a response supporting the

agency's position -- and until that time, to suspend its interpretation that exempts employees of subsidiaries.


Patrick Leahy

The department's Occupational Safety and Health Administration enforces the whistleblowers' provisions, which prohibit publicly traded companies or "any other officer, employee, contractor, subcontractor, or agent of such company" from retaliating against employees who provide information or assist in investigations related to alleged fraud.

In their letter, the legislators wrote that the whistleblower provision was a direct response to fraud perpetrated by Enron Corp., "through the misuse and abuse of its shell corporations and subsidiaries."

Cases dismissed on the subsidiary-exclusion rule include whistleblower complaints against the German manufacturing conglomerate Siemens AG, London media titan WPP Group PLC; **ING Groep** NV of the Netherlands; Alabama insurer **Torchmark** Corp.; and Florida investment firm **Raymond James Financial** Inc. The companies have declined to comment on the cases.

Another pending case involves **UBS** AG, the Swiss bank. An attorney says the Labor Department has asked him to show that the UBS unit that employed his client is covered under the act. UBS declined to comment.

Write to Jennifer Levitz at jennifer.levitz@wsj.com[2]

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