

## Federal Court Bars Extraterritorial Application of Dodd-Frank's Anti-Retaliation Provision to Whistleblowers Employed Abroad

October 23, 2012

In *Asadi v. G.E. Energy (USA), LLC*,<sup>1</sup> a federal district court in Texas held that Dodd-Frank's anti-retaliation protections for SEC whistleblowers do not apply to employees stationed abroad. Although the *Asadi* holding may not bind other courts, it represents an important step toward defining the scope of Dodd-Frank's broad remedies for whistleblowers.

Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act created a host of new protections and incentives for whistleblowers who bring information about potential violations of the securities laws to the Securities and Exchange Commission. Among the most significant changes was a new cause of action (under § 21F of the Securities Exchange Act of 1934) for employees who suffer retaliation for sharing information with the SEC; initiating, testifying in, or assisting in a related enforcement action; or making certain disclosures required or protected by law.<sup>2</sup> Employees who claim retaliatory discrimination under this provision can sue directly in federal court, and those who prevail are entitled to reinstatement, double back pay, and attorney's fees.

The plaintiff in *Asadi* was a U.S.-based employee of GE Energy who had agreed to "temporarily relocate" to Jordan, where he coordinated with Iraq's governing bodies to secure and manage energy-service contracts.<sup>3</sup> *Asadi* claimed that during the course of his employment overseas, he learned that GE had made allegedly corrupt efforts to hire a woman "closely associated" with an Iraqi energy official.<sup>4</sup> He then reported his concerns to company officials.

Later, *Asadi* said that he received a negative performance review, experienced pressure to step down from his position and was eventually fired. When he sued GE on the theory that he had suffered unlawful retaliation for reporting a breach of the securities laws (specifically, the Foreign Corrupt Practices Act), GE promptly filed a motion to dismiss.

The first step in the court's analysis was sidestepping a difficult question about whether *Asadi*'s conduct in sharing his concerns with company officials, and not the SEC, was covered by Dodd-Frank's new whistleblower provisions. After noting that other courts had struggled with this question,<sup>5</sup> the *Asadi* court

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<sup>1</sup> Civil Action No. 4:12-345, 2012 WL 2522599 (S.D. Tex. June 28, 2012).

<sup>2</sup> 15 U.S.C. § 78u-6(h).

<sup>3</sup> *Asadi*, 2012 WL 2522599, at \*1.

<sup>4</sup> *Id.*

<sup>5</sup> See *id.* at \*3 n.30 (discussing *Nollner v. S. Baptist Convention, Inc.*, Case Nos. 3:12 – CV-00040, 3:12 – CV-00043, 2012 WL 1108923 (M.D. Tenn. Apr. 3, 2012); *Egan v. TradingScreen, Inc.*, No. 10 Civ. 8202 (LBS), 2011 WL 1672066 (S.D.N.Y. May 4, 2011)).

moved on to a separate, but ultimately dispositive, inquiry: “whether Dodd-Frank’s Anti-Retaliation provision applies extraterritorially.”<sup>6</sup>

In the court’s ensuing analysis, it first noted that Dodd-Frank’s whistleblower provisions are silent about their extraterritorial application. Given the long-standing presumption against extraterritoriality—“When a statute gives no clear indication of an extraterritorial application, it has none.”<sup>7</sup>—this legislative silence led the court toward an initial conclusion that the anti-retaliation provision “does not govern conduct outside the United States.”<sup>8</sup>

The court turned next to the provision’s context within the larger framework of the Dodd-Frank Act. Specifically, the court noted that § 929P(b) of the Dodd-Frank Act explicitly confers limited extraterritorial jurisdiction over enforcement actions brought by the SEC or the United States. Yet because § 929P(b) does not apply to whistleblower plaintiffs, the court reasoned that the absence of a similarly specific grant of jurisdiction for retaliation claims “strengthens the conclusion that the Anti-Retaliation Provision does not apply extraterritorially.”<sup>9</sup>

Nor was the court persuaded by Asadi’s argument that he was covered by Dodd-Frank’s anti-retaliation provision because his termination notice contained references to his employment “as an at-will employee, as allowed under U.S. law.”<sup>10</sup> Because most of the events giving rise to Asadi’s lawsuit had occurred in a foreign country, mere references to U.S. employment law were “insufficient to extend the [statute’s] territorial reach.”<sup>11</sup>

Finally, the court bypassed Asadi’s argument that Dodd-Frank’s anti-retaliation provision gains extraterritorial reach by virtue of its incorporation of other laws with supposedly extraterritorial effect, such as the Sarbanes-Oxley Act and the Foreign Corrupt Practices Act. In this regard, the court concluded that Sarbanes-Oxley’s whistleblower provision does not apply extraterritorially and that the other laws cited by Asadi did not cover his claims.

Having completed its analysis, the *Asadi* court issued an unequivocal holding: “Dodd-Frank’s Anti-Retaliation Provision *per se* does not apply extraterritorially.”<sup>12</sup> For companies with an international workforce, *Asadi* thus represents a powerful defense to whistleblower claims for retaliation under Dodd-Frank.

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<sup>6</sup> *Id.* at \*4.

<sup>7</sup> *Morrison v. Nat’l Australia Bank, Ltd.*, 130 S. Ct. 2869, 2878 (2010).

<sup>8</sup> *Asadi*, 2012 WL 2522599, at \*4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at \*5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at \*7.



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