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## Southern District of New York Endorses Extension of Dodd-Frank's Retaliation Protections to Internal Whistleblowers

In *Murray v. UBS Securities, LLC*,<sup>1</sup> a federal judge in the Southern District of New York recently held that Dodd-Frank's whistleblower protections can extend to employees who do not qualify as statutory "whistleblowers." Although federal appellate courts have yet to weigh in, the *Murray* decision reflects a growing judicial consensus in federal district courts that a company's internal whistleblowers may be protected from retaliation even if they never report their concerns to the U.S. Securities and Exchange Commission (SEC).

The Dodd-Frank Wall Street Reform and Consumer Protection Act created a series of new incentives for "whistleblowers" — defined as individuals who provide "information relating to a violation of the securities laws to the [SEC]."<sup>2</sup> Among these incentives is a broad anti-retaliation provision that prohibits employers from discharging, demoting, suspending, threatening, harassing, or otherwise discriminating against a "whistleblower" for assisting or sharing information with the SEC — or for "making disclosures that are required or protected" under the securities laws.<sup>3</sup>

The plaintiff in *Murray* had worked as a senior strategist for a securities firm, where his duties included preparing reports about mortgage-backed securities for current and potential clients. The plaintiff claimed that he had been fired after complaining to his supervisors about allegedly being pressured to produce false and misleading research reports, in what he believed to be a violation of SEC regulations.<sup>4</sup>

In support of his claim for unlawful retaliation, the plaintiff invoked Dodd-Frank's protection for "whistleblowers" who make "disclosures that are required or protected" under the securities laws.<sup>5</sup> In response, the defendant filed a motion to dismiss, arguing that because the plaintiff had not made a report to the SEC, he did not qualify as a protected "whistleblower" covered by Dodd-Frank.<sup>6</sup>

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<sup>1</sup> No. 12 Civ. 5914 (JMF), 2013 WL 2190084, 2013 U.S. Dist. LEXIS 71945 (S.D.N.Y. May 21, 2013).

<sup>2</sup> 15 U.S.C. § 78u-6(a)(6).

<sup>3</sup> *Id.* § 78u-6(h)(1)(A), (A)(iii).

<sup>4</sup> 2013 WL 2190084, at \*1-2, 2013 U.S. Dist. LEXIS 71945, at \*3-5.

<sup>5</sup> 15 U.S.C. § 78u-6(h)(1)(A)(iii). The plaintiff claimed that his internal complaints were protected by the Sarbanes-Oxley Act of 2002, which protects employees who disclose information about potential violations of the securities laws to a supervisor. See 18 U.S.C. § 1514A(a)(1)(C).

<sup>6</sup> 2013 WL 2190084, at \*3, 2013 U.S. Dist. LEXIS 71945, at \*7-8.

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In resolving this conflict, the court first noted that “four other district court judges have confronted this exact issue, and each one has endorsed Plaintiff’s reading of the statute.”<sup>7</sup> Having made this observation, the court determined that the tension between the statutory “whistleblower” definition and the broader provision regarding “disclosures that are required or protected” under the securities laws rendered the statute ambiguous.<sup>8</sup>

Unlike previous courts that had addressed the issue, the *Murray* court also considered the effect of the following interpretation that the SEC had issued in connection with its June 2011 rules implementing the whistleblower provisions: “[T]he statutory anti-retaliation protections apply to three different categories of whistleblowers, and the third category includes individuals who report to persons or governmental authorities other than the Commission.”<sup>9</sup> In light of the conclusion that the statute itself was ambiguous, the court gave *Chevron* deference<sup>10</sup> to the SEC’s interpretation — and refused to dismiss the plaintiff’s complaint.

*Murray* represents yet another case in which a federal district court has declined to limit the scope of Dodd-Frank’s whistleblower protections to employees who actually report their concerns to the SEC. Given Dodd-Frank’s generous provisions for reinstatement, attorney’s fees, and double back pay with interest for prevailing plaintiffs<sup>11</sup> — and its lengthy statute of limitations<sup>12</sup> — employers should exercise caution in disciplining employees who have previously complained to their supervisors about potential violations of the securities laws.



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<sup>7</sup> 2013 WL 2190084, at \*3, 2013 U.S. Dist. LEXIS 71945, at \*8.

<sup>8</sup> 2013 WL 2190084, at \*4, 2013 U.S. Dist. LEXIS 71945, at \*13.

<sup>9</sup> Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34304 (June 13, 2011), *quoted in Murray*, 2013 WL 2190084, at \*4, 2013 U.S. Dist. LEXIS 71945, at \*9.

<sup>10</sup> See generally *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

<sup>11</sup> See 15 U.S.C. § 78u-6(h)(1)(C).

<sup>12</sup> See *id.* § 78u-6 (h)(1)(B)(iii).