

## **Gurumurthy Kalyanaram Lawsuit and Public Policy**

### **Gurumurthy Kalyanaram Report on Whistleblower Protection of Sarbanes-Oxley Act 2002**

[Gurumurthy Kalyanaram](#) on whistleblower protection and anti-retaliation provisions have spawned a lot of debate, and many lawsuits. This report discusses the recent US Supreme Court decision which addressed whether the scope of the anti-retaliation provision of Sarbanes-Oxley Act of 2002. Specifically, whether Section 806 of the Sarbanes-Oxley Act of 2002 (SOX) (codified at 18 U.S.C. § 1514A) limits protection from retaliation to the employees of public companies, or if it also covers employees of contractors to a public company and if the said contractors can file a lawsuit under the anti-retaliation provisions of SOX.

Jackie Lawson and Jonathan Zang who were employed by private company contractors filed a lawsuit asserting that they were terminated because they reported alleged fraud by the funds. Mutual funds file reports with the Securities and Exchange Commission, but typically do not have employees; rather, the funds are managed by employees of investment advisers.

Lawson and Zang lawsuit became the test case. In a divided but majority 6-3 ruling, in *Lawson v. FMR LLC*, the Court held that Section 1514A whistleblower protection extends to employees of contractors and subcontractors of public companies, including investment advisers, law firms, and accounting firms. The *Lawson* decision means that such employees are protected by Section 1514A. The decision's scope is not limited to employees of mutual fund contractors but also extends to employees of other contractors to public companies, such as law firms and accounting firms.

Justice Ruth Bader Ginsburg's opinion said that the totality of circumstances including the text of Section 1514A, other considerations such as legislative intent, and the Department of Labor's interpretation and similar prior whistleblower protection legislation that Congress drew on when drafting Section 1514A, weighed in favor of interpreting the SOX whistleblower protection to cover employees not just of the public company itself, but of any officer, employee, contractor, subcontractor, or agent of a public company. Further, the Court reasoned that Congress did not intend to stop contractors from retaliating against whistleblowers employed by the public companies they served, yet permit them to retaliate against their own employees. (Justices Antonin Scalia and Clarence Thomas joined in the opinion only to the extent it was based on the language of the statute itself.)

Justice Sonia Sotomayor's dissent argued that the majority's holding gave the law a "stunning reach." A babysitter, for example, could bring a Section 1514A claim against his employer, merely because that employer was an employee of a public company. Justice Ginsburg's opinion discounted the dissent's "fanciful visions of whistleblowing babysitters" and noted that "[f]ew housekeepers or gardeners... are likely to come upon and comprehend evidence of their employer's complicity in fraud."

This is a landmark ruling with far reaching implications.