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Sarbanes–Oxley (SOX) Claim Dismissed: Rejection of IP Assignment Clause Not Protected Activity

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The U.S. District Court for the Northern District of Illinois recently granted a Rule 12(b)(6) motion to dismiss a **SOX whistleblower retaliation claim**, concluding that the plaintiff did not engage in protected activity. **,** No. 14-cv-216 (N.D. Ill. Aug. 1, 2014). This is a useful decision for employers faced with SOX whistleblower claims alleging attenuated connections to fraud on shareholders.

Plaintiff initiated a variety of federal and state lawsuits, administrative agency proceedings, and arbitrations against his former employer, SVOX (Company) in connection with an intellectual property assignment clause contained in a proposed employment agreement. Plaintiff refused to sign the employment agreement, alleging that the clause constituted a “misappropriation scheme” by the Company to defraud employees and misappropriate their intellectual property in violation of federal and state law. As a result of his refusal to sign the agreement, his employment ended in October 2009, and Plaintiff claimed that this violated Section 806 of SOX.

The district court granted the Company's motion to dismiss because Plaintiff did not engage in protected activity. Plaintiff argued that he raised concerns about a scheme by the Company to **misappropriate trade secrets from various entities,** including publicly traded companies, and that such a scheme could ultimately injure shareholders of those companies. However, the court determined that (i) his belief that such activity constituted mail or wire fraud was not objectively reasonable, and (ii) that Plaintiff failed to sufficiently allege such a scheme in his complaint. The court rejected the Company's other proposed bases for dismissal, including untimeliness, lack of jurisdiction, and the fact that Plaintiff's employer was not publicly traded during his employment (although it became publicly traded after his termination).

This is a welcome decision for employers faced with cases with expansive accounts of alleged protected activity. Indeed, it is apparent that the court was unwilling to accept what appeared to be a highly attenuated link between apparently ill-defined conduct and asserted potential injuries to shareholders. However, though discussed in , the court's analysis of when an entity is covered by SOX may come as somewhat of a surprise to employers seeking to pursue such a defense.

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