



Management and Defense of Employee Whistleblower Claims

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MARNI CENTOR: Hello everyone. The Association of Corporate Counsel and SmartPros Legal & Ethics welcome you to today's webcast, Management and Defense of Employee Whistleblower Claims.

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Our presentation today will be moderated by Megan Belcher, vice president and chief employment counsel for ConAgra Foods, Inc. And now, I'll turn it over to Megan.

MEGAN BELCHER: Thank you, Marni. I would like to introduce David Jimenez. David is a partner with Jackson Lewis at its Hartford, Connecticut office. David is the co-chair of the firm's corporate governance specialty committee, and in his practice, he advises clients on and litigates a broad range of labor and employment-related matters. Prior to joining Jackson Lewis, David was vice president and assistant general counsel and acted as the senior employment counsel over domestic and international employment in immigration-related matters. David is going to be working and providing our presentation today.

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MEGAN BELCHER: David, do you want to go ahead and get us started?

DAVID JIMENEZ: Sure, thank you, Megan, and thank you, Marni, for the introduction. Good afternoon and thank you for joining us. It is my pleasure to be presenting, along with Megan, today's topic, "Management and Defense of Employee Whistleblower Claims." I'll be presenting today and using the PowerPoint presentation that hopefully you're able to view.

Before we move forward, I just want to make sure that I state clearly that today's presentation is not intended to be legal advice, but rather it's for information purposes only. Obviously, any particular matters that you're concerned about within your organization, you should consult with the appropriate legal counselor and receive information that's particular to your situation.

Now, let's see if we can move forward here on my PowerPoint. We're going to be talking about whistleblower law and the developments that we have seen developing over the last six to eight years, in particular the Sarbanes-Oxley law. We're going to talk about the very beginning of Sarbanes-Oxley in 2002, and we're going to talk about how companies typically go about implementing a whistleblower program. Then we will turn to litigation and what are some of the rules of the road, if you will, for litigating a whistleblower complaint before OSHA, and at certain times before either a federal district court or a circuit court of appeals.

We will also, towards the end of the presentation, talk about the American Recovery and Reinvestment Act of 2009, otherwise known as the stimulus bill passed by the Obama administration. The reason we'll talk a little bit about that is because it too provides for its own whistleblower provisions, which we believe will become more and more significant as we go

forward and more organizations receive covered funds, which is the important ingredient for having to comply with the whistleblower provisions of the ARRA Act.

Let's begin at the beginning and go back in time to 2002 when the legislation that we know to be Sarbanes-Oxley was first passed. You might remember that *Time* magazine declared as Persons of the Year in 2002 Sherron Watkins, Cynthia Cooper, and Coleen Rowley. These were three very famous whistleblowers, in particular Sherron Watkins of the Enron scandal. It was in that timeframe that President Bush signed legislation in July of 2002 that is formally entitled the American Competitiveness and Corporate Accountability Act of 2002, but we also refer to that as the Sarbanes-Oxley Act.

Essentially, this act was aimed at rebuilding investor confidence. As you might recall, at that time, because of the number of corporate scandals and the widespread financial misrepresentation that came about, there was a great concern about the need to rebuild this investor confidence, and Sarbanes-Oxley was the response. It provided for financial controls. It provided for added disclosures by public companies. It imposed specific certification requirements on CEOs and CFOs. It also provided specific provisions for board of director independence. And perhaps most famously, the act provides specific whistleblower requirements for public companies to develop within the organization and to manage on an ongoing basis.

This is part of the series of requirements that apply to the audit committee. Specifically, Sarbanes-Oxley required for the audit committee of the board of directors to implement procedures that would allow for the anonymous complaints by employees, or others, known as stakeholders, to bring forward concerns within the organization and specifically concerns about fraud that might affect shareholders. Once an employee brings forward these kinds of concerns, Sarbanes-Oxley deems that conduct to be protected activity and provides added protection for that employee—protection from retaliation. So the key point there being that an internal complaint satisfies the requirement of protected activity and in turn imbues that employee with protection from retaliation. We're going to talk in a little more detail later on about those protections, but essentially that's the way the framework operates.

If the whistleblower perceives that he or she is being retaliated against, they're entitled to file a complaint with the Department of Labor, specifically with OSHA. OSHA will investigate [and] will issue preliminary findings. If the findings are not agreed to by the respondent corporation, the respondent can file for an appeal with an administrative law judge. The administrative law judge's decisions become final unless they too are objected to and appealed to the Administrative Review Board within the Department of Labor.

If, during this process, while the complaint is winding its way through OSHA and the Department of Labor, if more than 180 days passes, then the complainant can proceed to federal court and seek an entire relitigation of the complaint before a district court level. That, in a nutshell, is what the Sarbanes-Oxley Act contains in relation to whistleblower litigants.

In addition to the Sarbanes-Oxley Act, it's very relevant, very important to understand that the Department of Labor in August of 2004 issued regulations which further interpret the act and provide additional clarity, primarily around the procedural mechanism for administering these complaints. The Department of Labor was quite clear that it was not their intent to provide

substantive interpretation of Sarbanes-Oxley as much as it was the intent to provide procedural guidance about how these complaints would be administered.

Turning to this next slide here, a few interesting details about these regulations. One of the things we see here is that to some extent, especially if you have been litigating complaints before other agencies, there is a bit of less advocacy by OSHA in these kinds of proceedings. Specifically, if these findings—the preliminary findings—are appealed to the administrative law judge and essentially there is a trial before the ALJ, the Department of Labor will not have a representative there supporting or defending the complainant employee. The complainant will have to secure their own counsel for that.

Additionally, as with many administrative hearings, there is limited discovery when you are before an administrative law judge. The administrative law judge will control the discovery and the timeline because of the great regard for that 180 day time period before which a decision should be issued. But for reasons I'll discuss later, in actuality we see that in many cases that 180 days comes and goes, and so there's some complexity there about what happens next. Be that as it may, just know that a trial before the administrative law judge in many respects resembles a normal trial—bench trial—but it is expedited. There is limited discovery and the rules of evidence are quite a bit relaxed in comparison to what we have in federal court.

A number of key developments that we've seen over the last six to eight years in the case law: We've seen many cases interpret what exactly constitutes protected activity. You may recall my mention of fraud against shareholders. There has been litigation as to whether protected activity is the reporting of any potentially criminal matter or does it have to specifically be fraud against shareholders or violations of law that relate to shareholders. More and more, it seems to be that protected activity has been interpreted narrowly and it seems to be focused on fraud that would be most relevant to shareholders. Otherwise, a complaint which has not been deemed to be protected activity and the claim for retaliation would fail.

There have been developments around which organizations—what kind of companies—are subject to Sarbanes-Oxley. In particular, where you have wholly owned subsidiaries of public organizations, that has led to a number of case law developments as to whether Sarbanes-Oxley extends to those kinds of entities, which, at first blush, they are not a publicly traded company; they're only a subsidiary to a publicly traded company. We'll talk in a while in more detail about that, but that's an area of some development.

That is sort of the background of Sarbanes-Oxley [SOX]. What we want to do now is take a turn here and talk about the internal mechanism for handling these whistleblower reports. In my view, this is where you begin to build a defense to SOX whistleblower complaints. It's by building the right framework for managing your internal complaints. Otherwise, if you don't manage the internal complaints that come in, you are going to be at a significant disadvantage in defending the litigation down the road.

Many organizations, I will say, viewed Sarbanes-Oxley as an expensive burden, while on the other hand, some organizations view it as an opportunity. In fact, in many respects, if that framework for managing whistleblower complaints is put together appropriately and managed in a productive way, it does really serve as an early warning device to the organization. What I

mean by that is, to the extent that employees have awareness of your code of conduct and have a concern that there's been a breach of the code, and are sufficiently trusting in the organization to bring that forward and report it by way of the whistleblower hotline, that information is helpful to an organization [and] allows the organization to take swift corrective action. And hopefully, in doing that, it will put the organization in a much better situation, even if it finds itself in litigation down the road with that same whistleblower.

Some of the key aspects of this framework for managing the whistleblower hotline process: It begins with setting clear standards, and we often refer to that as the code of conduct; making sure that the code of conduct is robust; that it's clearly written; that's it written in layperson's language rather than attorney legalese; making sure that we regularly speak about the code to our employees through redundant forums and in redundant places; having the senior management team refer to the code [and] refer to the whistleblower hotline mechanism; and making sure that that tone at the top is clearly set and emphasized by all the leadership. It is critically important.

Monitoring these calls that come in through the hotline becomes very important. You want to make sure that you have personnel that are trained on handling the intake protocols; doing, if you will, the triage of the calls, being able to decipher which calls are significant [and] which calls are less material, and the ability to assign those calls to the appropriate resources so that the complaint can be appropriately managed through closure. We find that that complaint management process is very critical and often given short shrift by some organizations.

There are many companies obviously that will outsource all of this activity, but we highly recommend a very close monitoring and a close association with that outsourced vendor that is receiving those calls. We also recommend that the calls be regularly audited in terms of the category, the frequency, the severity of the calls, what's being done about the matter, and how are the cases being closed out. That kind of regular monitoring and that kind of attention to, if you will, customer service, we think will help the company identify weaknesses within the organization that should be addressed. It might also identify ways to improve efficiencies, so active deliberate management of this intake process, we think, is critically important.

Obviously, managers need to be trained on issues of retaliation. Once an employee makes that complaint through the hotline and there is an investigation, especially if that complaint relates to fraud against shareholders, we now know that that individual has engaged in protected activity and will be protected from retaliation in the future. We recommend to our clients that those employees that have made those calls and engaged in protected activity, that in one form or another, the institution make a note of that and place some kind of protective structure around that employee, for lack of a better word—a protective structure—so that at least for the next six to 12 months, if there is any employment action that is detrimental, you want to make sure that that action is reviewed by individuals at a higher level or outside of the immediate supervisory chain.

The reason for that will become more evident later when I'm talking about the litigation, but what we find are: Some organizations that do a good job of having the whistleblower hotline and do a good job of taking action on the matters that are reported, but then we forget about these employees that have engaged in protected activity, and later on down the road—three months, six months, nine months, 12 months—the supervisor decides to do something detrimental to that

employee. Maybe it's a pay action. Maybe it's declining a bonus or maybe, even more drastically, it's the termination of the employee as part of a reduction in force or a performance management issue. Whatever it is, if that supervisor is not aware of the historical complaint made by that employee, it could be that the left doesn't know what the right is doing, and we end up terminating an employee who will be able to surprise us with a whistleblower claim alleging retaliation in connection with the historical complaint.

So, for the protection of the manager and the protection of the company, I recommend that employees who make these complaints, where the complaints are material and where they relate to fraud against shareholders, that we take note of that within the organization and that, to the extent any action is taken relative to that employee for the next year, that there is sufficient review. That's not to say the employee is protected for life. In fact, I would suggest that this will be empowering to the manager to know that their actions will be reviewed by other individuals and validated to be, hopefully, unrelated to the prior complaint made by that employee.

Moving on here, one of the key aspects of Sarbanes-Oxley is that it relates to the U.S. Sentencing Commission Guidelines for organizational compliance. These may or may not be familiar to you. They have not gotten as much publicity as the Sarbanes-Oxley Act has. But one key aspect of organizational compliance that the law enforcement community points to is the ability of organizations to not only take corrective action and the ability to protect against retaliation, but also to make sure that we are continuously improving, and where there is a need to, that we are self-reporting to law enforcement when there is a potential for fraud. Very important and perhaps one of the more significant marks of a culture of compliance is an organization that voluntarily reports to law enforcement.

I think there are many benefits to that. Like anything else, there are pros and cons, but I think one of the key aspects of it is that by self-reporting, an organization to some extent separates itself from the fraudulent conduct and brings it to the attention of law enforcement, so that whatever additional investigation is necessary will occur. It is true that there is a judgment call there, but we highly recommend self-reporting and continuous improvement.

Those are, in my view, the key aspects of the whistleblower hotline process, beginning with clearly identified standards to a reporting mechanism that is obvious to employees and that is appropriately staffed with the right resources that are doing intake, managers that are trained to know about the prohibition on retaliation, the taking of corrective action, and then the reporting to law enforcement when there is notice of potentially illegal activity within an organization. I would submit that, to the extent we get this right, the litigation that might ensue in the future will be much more manageable for the organization.

With that, let me turn now to litigating whistleblower complaints.

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Turning now from the internal framework for managing the whistleblower complaints that we receive, turning to litigating whistleblower complaints. As I mentioned at the outset, the employee that alleges whistleblower status and alleges that they have been retaliated against is

entitled under the act to file a complaint with the Department of Labor, specifically with OSHA. Once that complaint gets filed, it really does trigger a quick timeline of events. Let me first begin by saying that the SOX complainant, if you will, has 90 days from the date of the retaliatory action to file their complaint. Typically, it is a letter. It has to be in writing, and it has to identify the particular acts or omissions by the employer that are retaliatory. And once it's filed with OSHA, the respondent company is put on notice and told what the allegations are.

The complaint may be redacted or summarized to the extent that there is an effort to protect some of the witnesses by OSHA—by the OSHA investigator. But in any event, the respondent company is put on notice and has 20 days to answer. Typically, the answer will be a compilation of statements in the form of a letter supported with affidavit testimony and documents, all of which seek to prove a couple of things: either that the company is not covered by Sarbanes-Oxley or that the individual's initial complaint is not protected activity or that the alleged retaliation—the detrimental employment action—in fact is not retaliation, but rather it is action the employer would have taken no matter what the protected activity was about.

It is, in my view, a high burden on the employer to be able to disprove this retaliation. What we see here is that the OSHA investigator at this stage is acting as somewhat of gatekeeper. They have, on one hand, a letter from the employee with the allegations. Then they receive a response within 20 days from the company. The OSHA investigator is deciding whether it passes muster, if you will, and whether they should proceed with conducting additional investigation on their own.

In any event, assuming that the matter gets through the gatekeeper review, the investigator will complete their investigation and then inform the parties of their preliminary findings. And either party then has the option of objecting to the findings and seeking appeal of them to the administrative law judge. If there is no objection, then those findings become final and become the final decision of the Department of Labor. On the other hand, if there is an appeal to the administrative law judge, the findings will be held pending review by the ALJ.

This brings up the issue of an order of reinstatement. If the OSHA investigative findings require that the terminated employee be reinstated, there has been litigation as to whether that order of reinstatement by the OSHA investigator, whether it's enforceable by a district court or not. There is case law to the effect that because at that stage—at that early stage—all we have is an OSHA investigator making these findings and this preliminary order, the case law suggests that a district court would not have jurisdiction to enforce that order of reinstatement. On the other hand, if the order of reinstatement comes later in the proceedings, after there has been additional litigation before the ALJ, then the case law suggests that that order of reinstatement would be enforceable by way of a district court proceeding, if it becomes necessary, between the litigants.

Once the administrative law judge issues his or her findings, once again those findings become final unless there is a notice by [the] other party that they have an objection to the ALJ's decision and they want to seek further review with the Administrative Review Board. That appeal can be done, however if that appeal is sought, the litigants have to identify the specific findings, conclusions, or the order to which they take exception, and whether the Administrative Review Board takes it is discretionary to the ARB. But if, in fact, the ARB accepts the appeal, in that case the ALJ's orders once again are stayed pending a final determination by the ARB.

Keep in mind that during this whole process, that clock is ticking with respect to the 180-day timeframe between the filing of the complaint and the final determination by the DOL, whether it's through preliminary findings, the ALJ or the ARB. That 180-day rule requires that there be a final determination by the DOL. As you can tell from this escalation procedure that I've been mentioning, at each stage there is a determination which becomes final unless there is an appeal to the next level, from preliminary to ALJ to the Administrative Review Board.

If that 180-day period expires and there is no final decision, the whistleblower complainant can then file their case before the U.S. District Court. There is a very recent decision, *Stone v. Instrument Lab Company*, out of the Fourth Circuit, where the claimant went through that entire process and appealed the ALJ's findings to the Administrative Review Board. The ARB accepted the appeal, but had not gotten around to issuing its final determination. During that pendency of the appeal, the employee filed a brand new cause of action with the district court on the same issues, and the employer argued that he was precluded from filing this action because the matter had been litigated, and essentially fully litigated, before the administrative law judge, and the fact that it was on appeal did not open the door for a *de novo* review before the U.S. District Court. The Fourth Circuit found in favor of the employee, and held that the 180 days had passed and there had not been a final determination by the DOL, so, "Employer, yes, you do have to relitigate on a *de novo* basis before the district court."

In fact, in that decision, the Fourth Circuit found that the Sarbanes-Oxley statute was very clear and unambiguous. The court recognized that this could lead to redundant litigation; this could lead to a lot of work at the administrative level; and by virtue of the fact that that 180 days comes and goes, the employer finds itself again litigating in federal district court. But the Fourth Circuit did not feel that it was the court's purview to do anything about that somewhat absurd result.

There are comments in the DOL's regulations that have suggested that once there was an ALJ hearing, those decisions by an ALJ following a great deal of litigation of the issues at hand, that that those findings by an ALJ would have preclusive effects. The Fourth Circuit rejected those comments by the Department of Labor and said, "If the 180 days passes and there is no DOL final determination, indeed the complainant has a second bite at the apple before the district court case. If that doesn't sound right—if that doesn't feel right—then Congress will have to address it." That is, I think, critically important for employers to keep in mind as they identify not only their exposure on a particular case, but also as they consider the expense of defending the matter and the potential for having to litigate in two forums.

We've talked a great deal about the procedural mechanism of working a complaint through OSHA, the Department of Labor, and the court, but let's talk now on some of the issues that we see that as coming up on the cases that we've seen in the last couple of years, and that I would suggest early on organizations give a great deal of attention to as they develop their defense. As you assess these whistleblower complaints, we look to see whether the company is in fact a covered entity. Is it a company that's publicly traded, with securities that are registered under the Securities Act of 1934? To the extent that the company is a wholly owned private subsidiary of a public company, we'll want to take a look to see how much independence there is between the subsidiary and the public parent organization.

What we're seeing in the case law right now is that there tends to a slant in favor of the private subsidiary organizations unless there's a lot of connectivity between the two organizations. Another key aspect here, obviously, is the statute of limitations issue. One of the things we want to take a look at early on is: When did the employee become aware of the employment action at issue and did they file their complaint on a timely basis? There has been some litigation on that issue as to whether it is the day of termination versus the day the employee becomes aware that they are going to be terminated, so [that's] something to watch very carefully. Make sure that the statute of limitations is appropriately calculated.

You also want to take a look at what exactly was communicated by the employee. There have been a number of very interesting cases as to whether the kind of complaint asserted is in fact protected activity. Any allegation of illegal activity is not going to pass muster. It is pretty clear now, after a number of key decisions have come to conclusion, that the fraud that we're most concerned about relates to the original concept of Sarbanes-Oxley, which is to protect the investing community. And so, when an employee alleges that they are a whistleblower, the complaint that they asserted has to, on its face, reflect a concern about fraud against shareholders. It's important that it be the original complaint that reflects fraud against shareholders, not the complaint filed with OSHA after the fact, where the theory is developed by the whistleblower. It has to be the original complaint that's filed by the whistleblower.

MEGAN BELCHER: David, do you see that there is a trend either in ALJ decisions or in the federal courts toward narrowing that or broadening that, or do you think it's dependant on who you draw?

DAVID JIMENEZ: I think the trend has been to be quite surgical and be very narrow in terms of what is exactly being complained about, and making sure that it relates to fraud against shareholders. I think that trend is likely to continue as to Sarbanes-Oxley complaints, although it is quite possible that we'll see other legislation with other whistleblower-like aspects that protect other kinds of activity; other types of complaints. But with relation to Sarbanes-Oxley, I think the trend has been to be very narrow and surgical-like in deciphering the nature of the complaint.

MEGAN BELCHER: Thank you.

DAVID JIMENEZ: Yes, good question.

We've talked a little bit already about the preliminary reinstatement order that may be issued by an OSHA investigator and the fact that an early order might not be enforceable. In fact, there's a case where the early order of reinstatement was not followed by the employer, and then when the employee requested that the district court issue an order enforcing that reinstatement, the district court ended up not able to do so. I think that, irrespective of the complexity of these reinstatement orders, I think early on when you're assessing a whistleblower complaint and you've looked at all of these early issues in terms of statute of limitations, scope of coverage, and what have you, the threat of reinstatement should be considered. It is, I think, a very awful situation for an organization to find itself having to return to the workplace an employee that they have terminated.

Going back for just a moment to what we talked about earlier about the framework and the need to build some protection around these employees that make complaints, I think that if the initial protected activity triggers the kind of scrutiny around the employee that I was suggesting earlier, you're going to go a very far way towards being able to avoid the litigation in the first instance. Because clearly, once you make that decision to terminate the employee for whatever valid reasons, finding yourself with an order of reinstatement is going to be very awkward, very difficult to manage, to bring that employee back into the workforce. I think it's something that should be assessed early on in your case litigation. What if we have to bring this individual back? What is that worth to us? What is the exposure of that? It should just be part of your overall case assessment and settlement strategy.

One bullet point that I jumped over that I'll just mention here [is] key documents and witnesses. I think that in putting together a response to the complaint, we want to be very, very disciplined about what is the most important part of our defense, and think from the perspective of the OSHA investigator. Think about that gatekeeper function and making the job as easy as possible for that OSHA investigator to find that that allegation of retaliation just doesn't work and here is why. And if the fact of the matter is that that employee would have been terminated for other reasons, namely a reduction in force or a performance issue, a conduct issue, really building up the case that that is what drove the termination of the employee—it had nothing to do with the protected activity or so-called internal complaint of six months ago, but rather it was driven by business rationale that compelled the termination that the employee has suffered—I think it's very critical to build that case. Now you can only do that if your termination processes generally are well-managed, have a business rationale, and have supporting documentation. Hopefully, you have that, and hopefully you're able to bring that to the fore in the context of a response to an OSHA complaint.

Turning here to the next slide, settlement of SOX whistleblower complaints, there are some issues that we think are important to keep in mind about settling Sarbanes-Oxley complaints. Number one, of course, is that you're a public corporation, and it could be that with respect to settlement of a claim, you may have certain disclosure requirements to the SEC. I'm not a SEC disclosure expert, but what I'll say on that front is that it's important that the organization confer with its securities counsel to decide: Do we have a disclosure obligation if we want to settle this Sarbanes-Oxley complaint? Is it sufficiently material or does it otherwise require disclosure?

Secondly, if you are at the administrative level and your matter is pending, it is generally going to be the case that you'll need approval from either the administrative law judge or the Administrative Review Board in order to settle the matter with the complainant. You might be able to avoid going through that process if the complaint is withdrawn by the employee, in which case you may be able to avoid having to seek approval, but you want to be sensitive to where you are in the process and can then in fact be done.

It is also possible that settling with the whistleblower complainant is not the end of the road for you on these issues. What we're talking about here is that, depending on the nature of the claim, that complaint may trigger parallel litigation, whether it's shareholder litigation or even potentially a False Claims Act, *qui tam* type case, if there's a federal government contract involved. The point being that settlement at this point in time with this employee may resolve the SOX complaint, but the substance of the allegations may trigger other litigants to step forward,

whether it's shareholders who took note or it's regulators who also took note of the allegations. You want to keep that in mind in terms of what exactly you're buying by way of the settlement dollars that you're putting forward.

That brings us to the American Recovery and Reinvestment Act. I think that this is going to be a real interesting sort of reinvigoration, to some extent, of whistleblower litigation. That's not to say that we haven't seen quite a lot of litigation under Sarbanes-Oxley. I know that there has been a good number of cases filed since 2002. I think that the trend has been quite favorable, not only with respect to what protected activity—how it's defined—and what has come out of those case developments, but I think what we've seen is a very disciplined approach to what SOX requires and how exposure might attach to an organization. My sense was, early on, in 2002/2003, organizations really felt that they were going to be held hostage. They really felt that this was going to lead to an explosion where everybody was going to deem themselves to be a whistleblower. I think that retaliation claims have gone up, but I don't believe that SOX has been the opening of the Pandora's box that maybe many individuals felt it might create.

So, let's turn now to the American Recovery and Reinvestment Act. As you know, early in President Obama's administration, early last year [2009], in the wake of our economic crisis, the president signed into law this stimulus bill as an effort to reinvigorate the economy. In essence, what this did is: It freed up or made available federal money for purposes of all kinds of projects, contracts and other opportunities, with the hope that it would help put an end to the massive unemployment rate, which was moving at historically high levels, and to some extent, put America back to work.

The ARRA Act contains within its provisions whistleblower provisions. Rather than being attached to public companies that file securities under the SEC Act, these whistleblower provisions apply to organizations that receive covered funds, so this is irrespective of whether they are public or private. And it relates to complaints by employees, where the employees reasonably believe there is evidence of gross mismanagement of an agency contract, a gross waste of covered funds, a substantial and specific danger to public health or safety related to the implementation or use of those covered funds, an abuse of authority related to the implementation of those covered funds, or a violation of law, rule or regulation related to an agency, contract or grant awarded related to these covered funds.

So, employees who assert these sorts of complaints are free to bring to the attention of the Office of Inspector General of whichever agency has issued the federal dollars. The employee can bring to that Office of Inspector General a complaint of retaliation if they have brought forward these complaints and find that they are being terminated or in some form mistreated. The Office of Inspector General of all of the major agencies will administer these, in many respects, the way in which SOX claims are handled by OSHA.

I did a quick look today at the Department of Defense Office of Inspector General Web site, and they clearly are geared up for whistleblower complaints and they are very actively pursuing contract fraud in relation to defense contracts. We believe that as more and more organizations become federal contractors and recipients of these covered funds, they are going to find themselves vulnerable to these kinds of allegations.

And so, going back once again to the internal framework that I mentioned earlier, whether you're a public company or a private company today, you're engaged in business, you have employees, you're producing goods or selling services, we believe it's critically important that you have a code of conduct, the established standards, the ability for employees to bring forward their complaints, their concerns, the resources available to manage those concerns so that you can take corrective action, and then the ability to self-report. I think that organizations that are focused on the compliance side will be way, way ahead of the game when facing litigation, whether by way of a SOX complaint or an ARRA whistleblower complaint.

I hope that this has given you an overview of some value on what Sarbanes-Oxley complaints look like, as well as the ARRA whistleblower provisions. Megan, I'm going to ask you whether we have any questions at this point and turn it over to you.

MEGAN BELCHER: Yes, a couple of things. One, I would remind everyone that there is an excellent info pack on the management and defense of employee whistleblower claims that is available on the ACC Web site, which was very kindly sponsored by Jackson Lewis, David's firm.

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MEGAN BELCHER: Thank you to David for all of his efforts and for the excellent presentation. Thanks to everyone for participating. Marni, do you want to go ahead and close out the conference?

MARNI CENTOR: We will do that. Thank you, everyone, for attending today, and I hope you all have a great day.