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CORPORATE COMPLIANCE ALERT

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Supreme Court Expands Reach of Whistleblower Protections

In a decision handed down on March 4, 2014, the United States Supreme Court ruled that a provision of the Sarbanes-Oxley Act (the "Act") of 2002 protects not only the "whistleblower" employees of publicly-held companies from retaliatory actions, but also those employed by the contractors and subcontractors of the publicly-held company, including accountants, financial advisors and attorneys. The decision will have far-reaching consequences for tens of thousands of contractor companies that must now contemplate the development of compliance plans and defense strategies in order to minimize risk under the new, broader interpretation of the Act.

In *Lawson v. FMR LLC,* two long-term contractors at a unit of Fidelity Investments complained that they were dismissed after each revealed, in separate occurrences, that the investment firm was inflating its expenses. The former employees sued under the Sarbanes-Oxley Act, but a panel of the U.S. Court of Appeals in Boston ruled before a trial could take place that the Act's protections extended only to actual employees and not to outside advisors or contractors. The U.S. Supreme Court, however, ruled in a 6-3 decision that Congress meant to broadly protect whistleblowers. Justice Ruth Bader Ginsberg, writing for the majority, noted that it made no sense that, "Congress, prompted by the Enron debacle, would exclude from whistle-blower protection countless professionals equipped to bring fraud on investors to a halt." The majority opinion also noted that the ruling is in line with how the U.S. Department of Labor has interpreted the law for almost a decade.

In practical terms, the decision greatly expands the universe of companies that must now learn, and comply with, an array of securities laws. The numerous financial irregularities that potential whistleblowers may invoke when filing a complaint under the act are quite broad, and include both mail and wire fraud. For the many companies that may now find themselves subject to the whistleblower provisions of Sarbanes-Oxley, the proper formation of compliance plans will be paramount to reducing the risk of penalties, fines and potentially criminal sanctions.

Roetzel's white-collar litigation and corporate compliance attorneys are available to assist you with any questions regarding the establishment of a corporate compliance program that complies with the requirements of Sarbanes-Oxley and the Supreme Court's decision in *Lawson v. FMR LLC*. Please contact the following Roetzel attorneys for further information:

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