

Whistleblowers Protected Even If Their Concerns Prove Unfounded

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On September 29, 2016 the U.S. Securities and Exchange Commission (“SEC”) announced it had settled its second case for whistleblower retaliation. Of great significance, in this proceeding the SEC concluded that terminating a whistleblower (or presumably retaliating in some other way) violates the Securities Exchange Act (“Exchange Act”), even if the matter complained about or reported ultimately is determined to be legal and appropriate.

The case involved the issuer International Game Technology (“IGT”) and arose out of concerns an IGT divisional director raised over an accounting model IGT utilized to account for its used parts business. Ultimately after an internal investigation, IGT concluded that its financial statements were not distorted as a result of the used parts accounting model. The SEC apparently accepted IGT’s conclusion, as no further action was taken by the SEC on the accounting model question. Subsequent to the completion of the internal investigation, IGT terminated the whistleblower.

Among other things, in the Order IGT agreed to a \$500,000 civil penalty. The SEC’s Order in the matter also made clear that in any Related Action by a third party the civil penalties the SEC imposed should not reduce or be offset against any award of relief that might be granted.

All companies subject to the Exchange Act should review their whistleblower policies and procedures. They should be sure that all supervisors and executive management of the company are aware that whistleblower terminations are illegal, even if the concerns reported by the whistleblower prove to have been unfounded.

In addition, companies would be well advised to involve legal counsel in their considerations before taking any action respecting whistleblowers as the Exchange Act’s scope of what is retaliatory is quite broad.

The SEC’s Order respecting this matter can be found [here](#).

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