U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

Issue Date: 01 August 2006

CASE NO.: 2006-SOX-00003[1]

In the Matter of:

THOMAS M. BECK,
Complainant,

v.

CITIGROUP, INC., CITIGROUP GLOBAL MARKETS HOLDINGS, INC., CITIGROUP GLOBAL MARKETS, INC., and CITIGROUP GLOBAL MARKETS DEUTSCHLAND AG & CO. KGaA,
Respondents.

RECOMMENDED DECISION AND ORDER OF DISMISSAL

This proceeding arises out of a complaint filed under the whistleblower protection provisions of the Sarbanes-Oxley Act, codified at 18 U.S.C. §1514A (hereafter "the Act")[2] by Complainant Thomas M. Beck ("Complainant") against Respondents Citigroup, Inc., Citigroup Global Markets Holdings, Inc., and Citigroup Global Markets Deutschland AG & Co. KGaA (collectively referenced as "Respondents" or "Citigroup.") For the reasons set forth below, I find that this case should be dismissed for lack of jurisdiction.

PROCEDURAL BACKGROUND

In his June 2, 2005 verified complaint (as amended by his October 13, 2005 amended complaint), Complainant asserted that his employment was terminated because he engaged in protected activities cognizable under the Act. However, in a determination letter of September 8, 2005, the Occupational Safety and Health Administration (OSHA), New York, NY (on behalf of the Secretary of Labor) determined that it lacked jurisdiction under the Act because Complainant, an investment banker who was employed by Citigroup Global Markets Deutschland AG & Co. KGaA, was located in Germany when the alleged adverse action took place, and OSHA stated that adverse employment actions occurring outside the United States are

[1] An initial notice included an incorrect docket number. That notice was reissued subsequently to correct the docket number so as to reflect that the case was docketed in fiscal year 2006, not 2005. The correct docket number is "2006-SOX-00003."

[2] The whistleblower protection provisions appear at section 806 of the Sarbanes-Oxley Act, in title VIII, entitled the "Corporate and Criminal Fraud Accountability Act of 2002" (Sarbanes-Oxley Act of 2002, title VIII, §806, Public Law 107-204, 116 Stat. 745, 802-04 (2002)). Implementing regulations appear at 29 C.F.R. Part 1980.

not covered by the whistleblower protection provisions in the Act. Under cover letter of October 7, 2005, filed by facsimile, Complainant, through counsel, filed objections to the Secretary's Findings and Preliminary Order and requested a full hearing on the merits of the claim. Thereafter, on October 18, 2005, Complainant filed his amended complaint.

On October 20, 2005, I issued a Notice of Assignment and Order stating that a preliminary issue concerning jurisdiction must initially be resolved, and the parties were directed to state their positions on the preliminary issue within thirty (30) days. Specifically, the issue to be addressed was whether this tribunal has jurisdiction under the Sarbanes-Oxley Act because the actions complained of took place outside of the United States. The parties were also directed to indicate whether a formal hearing would be required for resolution of the preliminary issue. On November 18, 2005, both parties submitted Statements of Position. Complainant asserted that this tribunal has jurisdiction under the Act and demanded a hearing while Respondent took the position that there was no jurisdiction under the Act and no hearing was necessary. Thereafter, the parties discussed supplemental authority, and specifically the decision by the Court of Appeals for the First Circuit in *Carnero v. Boston Scientific Corp.,* 433 F.3d 1 (1st Cir. 2006), *cert. denied* No. 05-1397, – U.S. – (June 26, 2006).

FACTUAL ALLEGATIONS

As stated above, Complainant filed the initial complaint with OSHA on June 2, 2005 alleging violations of the Sarbanes-Oxley Act and that complaint was amended on October 18, 2005. For the purposes of this decision, the factual allegations made in the amended complaint will be deemed to be true; however, the legal assumptions and conclusions that are replete in the Amended Complaint will not be accepted.

Complainant Thomas Beck, a German national, was employed in Germany by Citigroup Global Markets Deutschland AG & Co. KGaA, a subsidiary of Citigroup, Inc., from February 1, 2004 until his discharge on March 9, 2005. *Amended Complaint* ¶ 2, 15, 16, 17. Complainant was an investment banker working in Respondents' global merger and acquisitions business. *Id.* Although his office was in Frankfurt, Germany, his employment also required travel to the United States, work with clients in the United States, and almost daily contact with Citigroup Inc.'s New York headquarters. *Id.* ¶ 16. His paychecks came from Citigroup Global Markets Deutschland AG & Co. KGaA but his compensation was determined via a global review process managed by Citigroup, Inc. out of New York and his compensation included Citigroup Inc. stock options. *Id.* ¶ 18. Dr. Paul Lerbinger, Managing Director of Citigroup, Inc. and its Head of German Investment Banking, supervised Complainant's work product and work environment. *Id.* ¶ 24. However, Complainant also reported to the Head of European Mergers & Acquisitions ("M&A"), a position in Citigroup's London offices that was initially held by Thomas King and then by Peter Tague, both of whom were U.S. citizens and also held other positions within Respondents' organizations. *Id.* ¶ 23. In addition, Complainant reported to other managers, at least one of whom was based in New York, on a project basis. *Id.* ¶ 25. Approximately 60% of Citigroup's German M&A business came from outside Germany. *Id.* ¶ 27. Moreover, Complainant asserts that Citigroup Global Markets Holdings, Inc., Citigroup Global Markets, Inc., and Citigroup Global Markets Deutschland AG & Co. KGaA are owned and controlled by, and are mere instrumentalities and alter egos of, Citigroup, Inc. *Id.* ¶ 5, 6, 7, 8.

Complainant alleges that, beginning on or about February 1, 2005, he provided information regarding conduct which he reasonably believed constituted a violation of the Act to persons with supervisory authority over him, including Dr. Lerbinger and Mr. Tague. *Id.* ¶ 28. These alleged violations included (1) misrepresentations of projected revenues of Citigroup, Inc.'s German investment banking business; (2) misrepresentations by certain senior employees of their credentials and employment histories; (3) misrepresentations concerning the value of a German company to a client based in the United States who was considering it as a potential acquisition; and (4) fraudulent attempts to obtain investment banking business and mislead investors by inflating Citigroup, Inc.'s market position. *Id.* ¶ 27. Complainant asserts that because of and in retaliation for engaging in this protected activity, he was abruptly terminated on March 9, 2005, the day before he was scheduled to meet with Mr. King, who was then the Head of European Investment Banking, to inform him about the above allegations. *Id.* ¶ 31. Complainant asserts that the decision to discharge him was made or approved and ratified by officials of Citigroup, Inc. located in New York. *Id.* ¶ 32.

LEGAL BACKGROUND

Section 806 of the Act, *Protection for Employees of Publicly Traded Companies Who Provide Evidence of Fraud*, amended title 18 of the United States Code by adding a new section 1514A, *Civil action to protect against retaliation in fraud cases.* Subsection (a) of the new section provided whistleblower protection for employees of publicly traded companies and provided that no such company or its officers, employees, contractors, subcontractors, or agents "may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment" because the employee engaged in certain lawful acts:

> (1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341 [*fraud and swindles*], 1342 [*fraud by wire, radio, or television*], 1344 [*bank fraud*], or 1348 [*securities fraud*], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—
>
> (A) a Federal regulatory or law enforcement agency;
>
> (B) any Member of Congress or any committee of Congress; or
>
> (C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
>
> (2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1342, 1344, or 1348, any rule or

> regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

Paragraph (b) specifies how an enforcement action may be brought by such an aggrieved employee and paragraph (c) provides for remedies.

DISCUSSION

The issue presented in this case is whether Complainant, a foreign national who was employed by a German division of Citigroup and worked exclusively in Germany, is afforded the protection of the whistleblower provisions of Section 806 of the Sarbanes-Oxley Act.

Complainant asserted jurisdiction on two bases. First, Complainant asserted that there was no need to explore the issue of SOX's extra territorial application because the decision to terminate Complainant was made by Citigroup's New York officials and there was a substantial nexus to the United States, in that Complainant's work was "intensely connected with United States clients"; his work was controlled by U.S.-based officials of Citigroup, Inc.; the misconduct complained of occurred in the United States or related to U.S. clients; and the protected disclosures were made to officials of Citigroup in New York, among others. Second, Complainant asserted that even if the complaint were deemed to present a question of extraterritoriality, jurisdiction was established because Congress intended the whistleblower provisions in SOX to apply to reports of misconduct from the overseas employees of publicly held companies. and the various tests courts used to determine the extraterritorial reach of U.S. laws were satisfied here.

To the contrary, Respondents argued that Complainant was a foreign national employed overseas whose employment does not fall within the coverage of the Act and that the complaint should be dismissed for lack of jurisdiction. Initially, Respondents argued that the Act had no applicability extraterritorially to an employee who was employed overseas under any circumstances. However, they have also argued that the facts in the instant case do not give rise to jurisdiction under the Act based upon the analysis applied to other statutory schemes.

Thereafter, the parties discussed the decision by the Court of Appeals for the First Circuit in *Carnero v. Boston Scientific Corp.,* 433 F.3d 1 (1st Cir. 2006), *cert. denied* No. 05-1397, – U.S. – (June 26, 2006). Complainant argues that the rationale set forth in *Carnero* supports a finding of jurisdiction while Respondent argues that the factual similarities between the instant case and *Carnero* mandate dismissal.

For the reasons set forth below, I find that, while there may be certain extraterritorial situations which give rise to jurisdiction under the Act, the factual situation in the instant case is not one of them. Dismissal is therefore mandated.

Section 806 does not include a separate definition of the term "employee." The pertinent regulation defines "employee" broadly:

> *Employee* means an individual presently or formerly working for a company . . . or an individual whose employment could be affected by a company[.]

29 C.F.R. §1980.101 (emphasis added).

While not addressing the extraterritorial applicability of the Act, the legislative history reflects a concern about employees engaging in whistleblowing activities in the United States. For example, Senator Leahy stated, in relevant part:

> Corporate employees who report fraud are subject to the patchwork and vagaries of current state laws, even though most publicly traded companies do business nationwide. Thus, a whistleblowing employee in one state may be far more vulnerable to retaliation than a fellow employee in another state who takes the same actions. U.S. laws need to encourage and protect those who report fraudulent activity that can damage innocent investors in publicly traded companies. The Act does not supplant or replace state law, but sets a *national* floor for employee protections in the context of publicly traded companies.

148 Cong. Rec. S7419-20 (daily ed. July 26, 2002) (statement of Sen. Leahy) (emphasis added).

The regulation itself provides no guidance on this issue; however, the scope of the definition was raised during the comment period of rulemaking. Two comments by members of the private sector were submitted and stated the following:

> [1] Siemens commented that the regulatory definition of "company" should exclude foreign issuers to the extent that it relates to foreign national employees who do not work in United States facilities of the foreign issuers. In support, Siemens noted that many foreign industrialized nations already have laws that protect whistleblowers, that United States labor laws already apply to Siemens's affiliated United States companies, and that labor law forms part of the national sovereignty of a foreign country.
>
> [2] Similarly, HRPA commented that the rule should be revised so as not to apply to employees employed outside of the United States by United States corporations or their subsidiaries; nor should it apply to foreign corporations that have no United States employee. HRPA suggested that applying the rule in these situations would divert the Department's resources and therefore undermine its fundamental mission.

69 Fed. Reg. No. 163, p. 52105 (Aug. 24, 2004). In response, OSHA stated that the purpose of this rule is to provide procedures for the handling of Sarbanes-Oxley discrimination complaints; this rule is not intended to provide statutory interpretations. *Id.* Because the regulatory definition of "company" simply applies the language used in the statute, OSHA did not believe any changes to the definition are necessary. *Id.* Based upon OSHA's response, I find that the regulations are intentionally silent on this issue.

Congress explicitly provided extraterritorial jurisdiction under certain sections of the Sarbanes-Oxley Act while excluding such language from §806. Specifically, Section 1107 provides "extraterritorial federal jurisdiction" over violations of the criminal whistleblower provision section. 18 U.S.C. §1513(e). Additionally, Section 106 provides that any "foreign public accounting firm" that prepares an audit report for an "issuer" is "subject to the jurisdiction of the courts of the United States" for enforcement of any request for the firm's work papers. 15 U.S.C. §7216(b)(1)(B). When Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion and exclusion. *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 452 (2002), *citing Russello v. United States,* 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (C.A.5 1972)).

It has long been recognized that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States, based upon the assumption that Congress is primarily concerned with domestic conditions. *Foley Bros., Inc. v. Filardo,* 336 U.S. 281 (1949). *See also Smith v. U.S.*, 507 U.S. 197 (1993); *EEOC v. Arabian American Oil Co ("Amarco")*, 499 U.S. 244, 248 (1991). The contrary intent must be demonstrated by "affirmative intention of the Congress clearly expressed" to overcome the presumption against extraterritorial application. *Carnero v. Boston Scientific Corp.,* 433 F.3d 1 (1st Cir. 2006), *cert. denied* No. 05-1397, – U.S. – (June 26, 2006), slip op. at 13-14, citing *Amarco*.

In *Foley*, which involved the applicability of the Eight Hour Law to an American citizen performing work at construction projects in Iraq and Iran, the Supreme Court noted the appropriateness of a presumption against extraterritorial application for labor and employment statutes:

> There is no language in the Eight Hour Law, here in question, that gives any indication of a congressional purpose to extend its coverage beyond places over which the United States has sovereignty or has some measure of legislative control. There is nothing brought to our attention indicating that the United States has been granted by the respective sovereignties any authority, legislative or otherwise, over the labor laws or customs of Iran or Iraq. We were on their territory by their leave, but without the transfer of any property rights to us.
>
> The scheme of the Act itself buttresses our conclusion. No distinction is drawn therein between laborers who are aliens and those who are citizens of the United States. Unless we were to read such a distinction into the statute we should be forced to conclude, under respondent's reasoning, that Congress intended to regulate the working hours of a citizen of Iran who chanced to be employed on a public work of the United States in that foreign land. Such a conclusion would be logically inescapable although labor conditions in Iran were known to be wholly dissimilar to those in the United States and wholly beyond the control of this nation. **An intention so to regulate labor conditions which are the primary concern of a foreign country should not be attributed to Congress in the absence of a clearly expressed purpose.** . . . The absence of any distinction

> between citizen and alien labor indicates to us that the statute was intended to apply only to those places where the labor conditions of both citizen and alien employees are a probable concern of Congress. Such places do not include foreign countries such as Iraq and Iran. [Emphasis added.]

336 U.S. at 285-86.

In its 1991 decision in *Amarco,* the Supreme Court reiterated these principles and found that Title VII did not apply overseas. However, Title VII was later amended to include U.S. citizens employed in foreign countries. *Skekoyan v. Sibley International Corp.,* 409 F.3d 414, 421 (D.C. Cir. 2005), *cert. den.* 126 S.Ct. 1337 (2006).

Turning to the Sarbanes-Oxley Act, Congress recognized that the whistleblower provision in Section 806 should be treated as an employment provision (and not a securities provision) when it authorized the Department of Labor -- not the Securities and Exchange Commission -- to interpret and enforce it. Thus, cases recognizing that federal courts have jurisdiction in securities fraud cases "where illegal activity abroad causes a substantial effect within the United States" (*e.g., Alfadda v. Fenn,* 935 F.2d 475, 478 (2d Cir. 1991)), are inapposite. Although the whistleblower provision undoubtedly has an impact upon securities matters, its essential nature relates to employment issues.

Complainant has argued that there is jurisdiction because his complaint relates to "offensive conduct" taken in the United States, particularly based upon the allegation that the decision to terminate him was made by officials of Citigroup, Inc. based in New York, and Complainant has also argued that the statute should be applied extraterritorially because the activities alleged in the complaint had a substantial nexus to the United States and the overseas conduct had a substantial domestic effect (citing *Environmental Defense Fund, Inc. v. Massey,* 986 F.2d 528, 532 (D.C.Cir. 1993), which involved a challenge to the National Science Foundation's plans to incinerate food waste in Antarctica). In so arguing, he has relied upon cases addressing the extraterritorial application of other statutes (*e.g., Torrico v. IBM,* 213 F.Supp.2d 390 (SDNY 2002), involving the applicability of the Americans with Disabilities Act and the New York Human Rights Law to a Chilean national employed in the United States and fired during a period of illness, while on an extended temporary assignment in Chile; and *Shekoyan v. Sibley International Corp.*, 217 F.Supp.2d 59 (D.D.C. 2002), involving the applicability of, inter alia, the whistleblower provisions of the False Claims Act to an Armenian-born U.S.-resident employee of a U.S. corporation temporarily assigned to the Republic of Georgia where "the crux of the inappropriate conduct [alleged under the False Claims Act] occurred within the United States."[3] On the other hand, Respondents have argued that a balancing of contacts test is inapplicable, relying upon authority in other cases (e.g., *Pfeiffer v. W.M. Wrigley Jr. Co.,* 755 F.2d 554 (7th Cir. 1985), relating to the applicability of the Age Discrimination in Employment Act to an American citizen employed in Germany by a German subsidiary of a U.S. corporation, and *McCulloch v. Sociedad Nacional de Marineros de Honduras,* 372 U.S. 10 (1963), relating to the jurisdiction of the NLRB over a Honduran seaman

[3] Both of the cited decisions in *Torrico* and *Shekoyan* were interlocutory and there were later reported decisions. A decision in *Shekoyan v. Sibley International Corp.,* 409 F.3d 414, 421 (D.C. Cir. 2005), *cert. den.* 126 S.Ct. 1337 (2006) affirmed the district court's granting of summary decision in respondent's favor on different grounds.

employed by a foreign subsidiary of a U.S. company on a foreign flag ship).[4] These cases, while of interest, involve different statutes and factual situations and are of limited applicability to the situation before me.

Several decisions by administrative law judges have addressed the applicability of the SOX whistleblower provisions to workers employed overseas and have generally found the Act to be inapplicable to foreign nationals so employed. In *Ede v. Swatch Group,* 2004-SOX-068, 2004-SOX-069 (ALJ, Jan. 14, 2005) (appeal dismissed), Judge Romano found that the Act's whistleblower provisions do not apply to employees who work exclusively overseas and are subjected to adverse action overseas. Administrative Law Judge Teitler reached the same conclusion in *O'Mahony v. Accenture LTD,* 2005-SOX-00072 (ALJ, Jan. 20, 2006), which involved an Irish national employed in France. Similarly, in *Concone v. Capital One Financial Corp.,* 2005-SOX-006 (ALJ, Dec. 3, 2004), Administrative Law Judge Kaplan found that a foreign national (of Italy) whose entire employment by Respondent was outside of the United States (in Italy and Great Britain) was not a covered "employee" under the Act because (1) nothing in the Act suggests that Congress intended for the Act to apply outside of the United States; and (2) the inclusion of specific language applying the §1107 criminal provision extraterritorially coupled with the failure to include similar language in §806 revealed Congress' clear intention not to extend the whistleblower provision extraterritorially. However, in an interlocutory order issued in *Penesso v. LCC International, Inc.*, 2005-SOX-016 (ALJ, March 4, 2005), Administrative Law Judge Tureck found that there were factors in the case before him (including the American citizenship of the employee, his engagement in protected activities at corporate headquarters in the United States, and the decision making on one or more of the alleged retaliatory actions taking place in the United States) that precluded dismissal or summary decision, notwithstanding the complainant's employment in Italy and his complaints about actions taking place in Italy.[5] That case was, however, settled and no final decision was issued.

As the first Federal appellate decision addressing the applicability of the whistleblower provisions of the Act to extraterritorial situations, *Carnero* warrants special consideration. In *Carnero,* 2004 WL 1922132 (D. Mass., Aug. 27, 2004) (unreported), the district court had dismissed the complaint based upon the analysis set forth in *Foley*, 336 U.S. at 286 because nothing in the section 806 or its legislative history suggested that it was intended to apply outside of the United States and "[t]he protection of workers is a particularly local matter." Similarly, the First Circuit found the Act inapplicable to the extraterritorial situation presented, which involved an Argentinean citizen who worked for Argentinean and Brazilian subsidiaries of Boston Scientific Corporation. While finding an employee of a subsidiary to be covered under

[4] In *Pfeiffer*, 755 F.2d at 559, Judge Posner, writing for the Seventh Circuit, remarked that the plaintiff's continuous employment overseas "made his work station foreign and deprived him of the protections of the [age discrimination] Act." The Age Discrimination in Employment Act was subsequently amended to included U.S. citizens employed overseas. 29 U.S.C. § 630(f).

[5] Under cover letter of April 24, 2006, Complainant submitted a December 20, 2004 letter relating to the *Penesso* case from Ellen Edmond, a senior attorney at the Office of the Solicitor, as supplemental authority. In that letter, Ms. Edmond requested that the case be remanded to OSHA because OSHA believed that it had erroneously dismissed his complaint. Specifically, Ms. Edmond stated: "Because Mr. Penesso alleges that the adverse [action] taken against him by Respondent LCC International, Inc. occurred in the United States, it is OSHA's position that the presumption against extraterritoriality is not implicated in this case." This letter motion, while consistent with Judge Tureck's decision, is not precedential authority.

the definition of "employee," the First Circuit found insufficient factors to support extraterritorial application of the whistleblower provision. The court noted the factors mentioned above, including the express provision of extraterritorial applicability elsewhere in the Act, the lack of a discussion of its overseas application in the legislative history, and the assignment of enforcement responsibilities to the Department of Labor, a domestic agency. Also, the court noted potential problems that would ensue from extraterritorial application of the whistleblower provisions, and specifically the lack of a mechanism for resolving potential conflicts with foreign labor laws and procedures, as well as the lack of a venue provision relating to where extraterritorial actions should be brought. However, in footnote 17 of its decision, at page 39, the First Circuit cautioned that they were deciding this case on its own facts and left open the possibility that there might be situations in which the Act might be applicable to employees working overseas, such as where an employee based in the United States is retaliated against for whistleblowing while on a temporary assignment overseas.[6] The footnote may relate to situations similar to those in *Torrico* and *Shekoyan,* discussed above, which involved temporary assignments overseas. It does not, however, include the situation now before me.

Complainant argues that the rationale set forth in *Carnero* supports a finding of jurisdiction while Respondent argues that the factual similarities between the instant case and *Carnero* mandate dismissal. Complainant specifically argues that, unlike here, *Carnero* did not involve allegations that the employee reported misconduct in the United States to officials in the United States or that the decision to discharge the employee was made in the United States. To the contrary, Employer argues that the case is on all fours with the instant case and asserts that there were allegations in *Carnero* to the effect that the wrongdoing was reported to the respondents in the United States, that the employee was terminated by senior executives based in the United States, that extensive control over the foreign subsidiary was exercised by the United States parent company, and that the employee traveled frequently to the United States.

Based upon a review of the facts alleged, which I have set forth in some detail above, in the context of the authority cited above, I find that there is no jurisdiction under the Act. Specifically, despite Complainant's allegations of the interrelationship of the various subsidiaries of Citigroup, Inc., it is undisputed that he was a German national employed in Germany by a German subsidiary of Citigroup, Inc. This is not a situation involving an American employee assigned to work overseas, which the First Circuit has suggested might provide an exception to the general rule. I find it to be of no import that, in his capacity as an investment banker, Complainant had multiple contacts with employees of Citigroup or its other subsidiaries based in the United States and London, that he traveled to the United States on business, or that Citigroup, Inc. was involved in overseeing the work of its subsidiaries. Such facts, which are undoubtedly to be expected in a global economy, do not change the essential nature of the employment relationship concerned here, which was a foreign employment relationship, based in Germany. Nor do the allegations of misconduct being reported to parent company officials in the U.S. or the possible participation by U.S.-based company officials in the decision to terminate Complainant change the outcome, as they do not alter the foreign nature of the employment

[6] For unknown reasons, Respondent filed a copy of the *Carnero* decision which omitted the footnotes, including the highly relevant footnote 17. The entire decision is available on the OALJ website, www.oalj.dol.gov, via the case history link for 2004-SOX-018.

relationship. Thus, the whistleblower provisions of the Act do not apply to the situation presented in the instant case. Accordingly,

ORDER

IT IS HEREBY ORDERED, that Complainant's claim against Respondents be, and hereby is, **DISMISSED WITH PREJUDICE** based upon lack of jurisdiction.

A

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. See 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. See 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).