U.S. Department of Labor

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Issue Date: 01 October 2008

CASE No.: 2007-SOX-00082

In the Matter of:

RANDALL PITTMAN,
Complainant,

vs.

MANATT, PHELPS & PHILLIPS and
PAUL IRVING, its Managing Partner
Respondents, and

LITTLER MENDELSON, LLP, and
TONY SKOGAN, its Managing Partner,
Respondents.

ORDER STAYING LITIGATION

Randall Pittman (Complainant) was employed as a Helpdesk Analyst at the southern California law firm of Manatt, Phelps & Phillips (Manatt). He complained to the Secretary of Labor on September 26, 2006 that Respondent Manatt (and Paul Irving as its managing partner) had taken adverse employment actions against him in violation of § 806 of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A (SOX). Those actions allegedly were retaliation for informing Manatt that he had filed a SOX complaint against one of Manatt's clients, Siemens AG. He also alleged that after the law firm of Littler Mendelson (Littler) was retained to defend Manatt, Littler (and Tony Skogan its managing partner) became responsible for adverse employment actions Manatt took against him.

After investigating on the Secretary of Labor's behalf, OSHA's Regional Administrator found on July 25, 2007 that neither Manatt nor Littler were companies within the meaning of 18 U.S.C. § 1514A, and therefore dismissed the complaint.

The Complainant appears to have made a timely objection to the Findings. In his objection, the Complainant asserted that Siemens AG is a covered entity within the meaning of 18 U.S.C. § 1514A, and that Manatt and Littler were the

contractors or sub-contractors of Siements AG. The Complainant stated that OSHA omitted Siemens AG as a named Respondent in this matter because the Complainant had a prior SOX complaint against Siemens AG that was pending before the Administrative Review Board (ARB). The Complainant denied that Siemens AG was a party to that particular claim and noted that even if it were a party, the ARB could not review the Complainant's new arguments against Siemens AG on appeal.

I issued an order on September 6, 2007, requiring the Complainant to file a motion to join Siemens AG as a party. In that order I informed the Complainant that any motion for joinder should identify why the claim against Siemens AG was (a) timely and (b) not precluded or affected by other claims he may have filed against Siemens AG, including the claim pending at the ARB. On June 5, 2008, I issued an order requiring further briefing on the issue of joining Siemens AG.

In the Complainant's response to the June 5 order, he requested that all of his claims against Siemens AG be bifurcated and consolidated with OALJ case number 2006-SOX-00053 (Pittman I). That case was originally before Judge Karst. The ARB remanded it to the OALJ on May 30, 2008, and it is now before Judge Berlin. The Complainant has another case, OALJ case number 2007-SOX-00015 (Pittman II), which is currently on appeal before the ARB. The Complainant asserted that no claims against Manatt or Littler had previously been litigated in Pittman II, so he sought to continue with his claims against those entities in this matter, 2007-SOX-00082 (Pittman III).

As I stated in my June 5 order, it appears that the issue of whether Siemens AG somehow induced Manatt to terminate the Complainant was already litigated in Pittman II. Judge Torkington issued a decision dismissing the complaint on July 26, 2007. Judge Torkington specifically addressed the matter of the Complainant's termination by Manatt on page 6 of that order. The determinations made in that order are now on appeal before the ARB.

The Complainant himself has asserted that his claims against Manatt and Littler are valid because he believes the two entities were the contractors or sub-contractors of Siemens AG. He has asked that his claims against Siemens AG be consolidated with those at issue in Pittman I. It makes no sense to consolidate the claims against Siemens AG without also consolidating the claims against Manatt and Littler. The parties are inextricably intertwined within the framework of the Complainant's own legal arguments.

Judge Torkington's decision in Pittman II appears to address matters that the ARB required be addressed in the remanded case, Pittman I. When the ARB decides Pittman II, its decision could resolve issues currently pending in Pittman I, the case with which the Complainant seeks to consolidate his claims against

Siemens AG. As previously stated, it is unlikely that the Complainant would be allowed to bifurcate his claims against Siemens AG from those against Manatt and Littler, given that his case rests upon a legal theory that Manatt and Littler are the contractors or sub-contractors of Siemens AG. Furthermore, it appears that the Complainant's claim against Manatt was already litigated to some degree in Pittman II.

To avoid duplication, it appears that the best course of action is to stay litigation in Pittman III until the ARB decides Pittman II. It is not necessary at this point to determine whether Siemens AG should be joined as a party in this matter or whether the Complainant's claims should be wholly consolidated with Pittman I. All litigation in this matter will be stayed until the ARB reaches a determination regarding Judge Torkington's decision in Pittman II.

So Ordered.

A

WILLIAM DORSEY
Administrative Law Judge