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Whistleblowers

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This presentation is presented by the authors in their personal capacities, and the views expressed are not necessarily reflect the official position of their employers.

Big Whistleblower ~~Lawsuit~~ Recoveries

- **$2.5 million jury award against City of Abilene**
  - *Carter v. City of Abilene* (December 2019)
- **$3.9 million jury award against City of Denton**
  - *Grim and Maynard v. City of Denton* (February 2020, appeal argued February 16, 2022)
- **$564 million to SEC whistleblowers**
  - Given to 108 individuals in FY 2021.
- **$200 million award to CFTC whistleblower**
  - Given to anonymous Deutsche Bank employee

Roadmap

- 2022 Whistleblower updates
- Basic overview of federal & state whistleblower laws
- National Defense Authorization Act
- Texas Whistleblower Act
- Discuss ethical issues related to attorney whistleblowers

Fifth Circuit Update: Who can be a Sarbanes-Oxley whistleblower?

- In *Moody v. American National Insurance Co.*, No. 20-cv-40462 (5th Cir. Jan. 29, 2021), the Fifth Circuit affirmed a dismissal of a case where a whistleblower worked for a contractor of the Defendant
- Plaintiff was the president of an insurance group who Defendant retaliated against following the Plaintiff filing a shareholder derivative suit
- Fifth Circuit said that SOX only covers "actions an employer takes against its own employees" and, therefore, "the whistleblower entitled to protection must be an employee of the retaliator"

False Claims Act (FCA) Update

- Does the FCA prohibit post-employment retaliation?
  - 10th Cir: NO
    - *Potts v. Center for Excellence in Higher Education, Inc.*, 908 F.3d 610 (10th Cir. 2018).
  - 6th Cir: YES
    - *United States ex rel. Felten v. William Beaumont Hosp.*, 993 F.3d 428 (6th Cir. 2021).
  - SCOTUS?
    - Cert Denied. *United States ex rel. Felten v. William Beaumont Hosp.*, 993 F.3d 428 (6th Cir. 2021), *cert. denied*, No. 21-443 (U.S. Jan. 24, 2022).
  - 5th Circuit: No word

DOL Coronavirus Texas Update

- July 15, 2021
  - DOL sues North Texas dental practice, owners for retaliation against employees who reported coronavirus concerns
- October 13, 2021
  - DOL sues Austin luxury car dealer that retaliated against employee who raised concerns of coronavirus hazards
- November 17, 2021
  - DOL sues a global truck manufacturer who fired worker concerned about coronavirus safety at Texas facility

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