Viacom Sued for Wrongful Dismissal Over Transfer Pricing Arrangement

A former vice president of Viacom Inc. filed a whistleblower lawsuit on January 5, complaining that she was wrongfully dismissed for arguing that the company's planned transfer of rights to *Teenage Mutant Ninja Turtles* (TMNT) to a Dutch affiliate was structured to illegally avoid U.S. taxes.

In her filing with the U.S. District Court in Manhattan (*Williams v. Viacom International Media Networks Inc.*, 1:16-cv-00029), Nataki Williams said she was Viacom's vice president for financial planning and analysis and was in charge of the company's consumer products and international program sales. Williams said in the complaint that while the rights to TMNT are owned by an entity in the Netherlands, ''all of the negotiating and legal work conducted around these contracts was happening in New York,'' where Viacom is headquartered. She said a Dutch-based employee made ''unimportant changes to draft contracts'' and signed the contracts to make it appear that the transactions were being carried out in the Netherlands.

Williams said Viacom also intended to transfer rights to popular cartoon characters *Dora the Explorer* and *SpongeBob SquarePants* to ''the nominal entity'' in the Netherlands.

She said she believed that attributing the income from licensing the TMNT rights to the Dutch entity was inconsistent with U.S. tax law and would, if discovered by the authorities, negatively affect Viacom and its shareholders. Williams said that after expressing her objections to her superiors in January 2013, the company's senior vice president of international tax verbally instructed finance department employees not to put details of the tax avoidance plans into e-mails. Williams said that instruction further supported her belief that the scheme was illegal and fraudulent. She said she continued to protest the transfer but was told to drop her opposition to the plan.

It's not clear whether Viacom ever went through with the transfer of rights to the Netherlands that Williams said was under consideration. A company official declined to comment on the lawsuit. ''Nataki Williams is a former Viacom employee who was terminated in 2014 for fraudulently claiming company benefits to which she was not entitled,'' the company said in a statement. Viacom said the lawsuit is ''completely without merit, and we will vigorously defend against these claims in court.''

Williams, who was unmarried, said she was fired while on maternity leave in 2014 because the company claimed that she had listed her partner, who had the same last name, as her spouse on an employee benefit form. Williams said in the complaint that she detected the error in January 2013 and immediately brought it to the attention of the company's benefits hotline, only to be told that nothing could be done until November, when the open enrollment period commenced for the following year. Williams said the error had no financial consequences for the company because married and unmarried partners were treated equally under the plan in effect at the time.

''Ms. Williams was actually fired in retaliation for her internal whistle blowing of an unlawful tax avoidance scheme that would have saved Viacom millions and that Ms. Williams reasonably believed was fraudulent,'' the complaint says. ''This retaliation was in violation of both SOX [the Sarbanes-Oxley Act] and Dodd-Frank.''

SOX and the Dodd-Frank Act are federal laws that make it illegal for publicly traded companies to retaliate against employees for complaining about corporate wrongdoing.

In her complaint, Williams refers only to tax avoidance, which is not illegal, and never to tax evasion, which is. (The filing does, however, refer at times to ''illegal'' tax avoidance.)

Williams's claims about tax improprieties appear to be related to Viacom's cross-border transfer pricing practices. While transfer pricing tax disputes are common, the IRS rarely asserts that a company's tax treatment in that context is criminal.

Subjective and Objective Criteria

Jason Zuckerman, a Washington-based attorney specializing in whistleblower law, said the absence of tax evasion probably would not weaken Williams's claim. ''Williams's disclosure is likely protected under SOX because this alleged tax avoidance could have caused Viacom to misstate its earnings,'' Zuckerman said. ''And her disclosures could implicate the adequacy of Viacom's internal controls over financial reporting, which would also be a protected disclosure under SOX.''

Zuckerman said that to be eligible for protection under Sarbanes-Oxley, a whistleblower must satisfy both the subjective and objective belief criteria of the law. Subjective belief means that the employee actually believed that the conduct at issue constituted a violation of pertinent law while the objective component requires that a reasonable person would have believed that the reported conduct violated the relevant statute, he said.

''A conclusory and wholly unsubstantiated allegation of tax fraud probably will not amount to protected conduct,'' Zuckerman said. ''But if the employee can

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show that she investigated the matter and that an employee with similar knowledge and experience would reasonably conclude that there was tax fraud, she is likely to meet the reasonable belief standard.''

Williams said another Viacom vice president, Shen-Hsin Hung, was fired after expressing similar opposition to the TMNT transfer plan. ''The fact that Ms. Hung was fired for speaking out against such a plan further cemented Ms. Williams's belief that the tax scheme was illegal,'' Williams said in the complaint.

Zuckerman said Williams's complaint is not the first instance in which a former employee alleged wrongful termination under SOX because of internal complaints about a company's tax practices. In *Vannoy v. Celanese Corp.*, ALJ Case No. 2008-SOX-00064, ARB Case No. 09-118 (ALJ July 24, 2013), an administrative law judge ruled in favor of a whistleblower who was fired after turning over confidential company data to the IRS.

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