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Q&A with Jordan Thomas, Outgoing SEC Enforcement Lawyer and Labaton Sucharow's New Whistleblower Practice Chief

Lots of plaintiffs firms are forecasting new business thanks to the whistleblower provisions of the Dodd-Frank Act. But Labaton managed to nab one of the SEC lawyers who helped draft the law.

By Jan Wolfe

It's no secret that the so-called "whistleblowers' bounty" provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act has already unleashed a flood of tipsters ready to dish dirt on their employers to the Securities and Exchange Commission. Under Dodd-Frank and SEC rules issued last November, whistleblowers can receive from 10 to 30 percent of any government recovery in excess of $1 million.

It's also no surprise that plaintiffs firms have been courting potential whistleblower clients. And in a sign of how much potential the plaintiffs bar sees in the new law, the firms are courting new lawyers too. On Tuesday Labaton Sucharow announced that it had hired Jordan Thomas, an assistant director and assistant chief litigation counsel in the SEC's Division of Enforcement, to launch a new "whistleblower protection practice" at the firm. According to Labaton's press release detailing the hire, Thomas "played a leadership role in the development and implementation of the SEC's Whistleblower Program" and helped draft the Dodd-Frank legislation.

On Tuesday we asked Thomas about his decision to leave the SEC and his expectations for his new practice. Here's what he had to say:

Litigation Daily: What made you decide to make the switch to Labaton Sucharow?

Thomas: While at the Commission, I had seen firsthand the courage of whistleblowers and the impact they can have. The whistleblower provisions will have a dramatic impact on the enforcement of the federal securities laws, not unlike the impact the revised False Claims Act has had in enforcement of fraud against the government, and I'd like to be part of that change.

LD: Because you were one of the writers of Dodd-Frank, is there any kind of special cooling off period before you can work on cases involving the SEC's enforcement of the Act?

JT: Dodd-Frank has not addressed this, but the Commission has ethical rules regarding what folks can do once they leave the Commission. I'm prohibited from working on matters that I was directly involved with. On future matters, I'm required to go to the Commission and essentially ask for permission to work on the matter in advance of accepting a representation.

LD: What will be the focus of your new practice?

JT: At the SEC, I was involved in both the whistleblower initiative that resulted from Dodd-Frank and the independently established cooperationprogram. These two programs can intersect. Some individuals have no potential liability are going to be typical whistleblowers. As you go alongthe spectrum, some whistleblowers have knowledge about potential violations of the securities law but they also face potential liability of their own. Because of my involvement with both programs, my practice can advise individuals on whether there has been a violation of securities law and also on their own potential liability.

LD: Under Dodd-Frank, tipsters can collect between 10 and 30 percent of any government recovery in excess of $1 million. How can they maximize that recovery?

JT: The starting point is to have a strong understanding of the securities law. The second thing I would tell people is the need to develop theirsubmissions. The commission receives tens of thousands of submissions every year. Obviously they can't give the same attention to all of those.

LD: Business leaders have argued that whistleblowers should be required to report their allegations internally before going to the SEC. The finalversion of the bill does not include such a requirement, although it does make "participation in internal compliance systems" a criterion which mayincrease a reward. What's your take on the role of internal compliance efforts?

JT: Many public companies have attempted to establish effective legal departments and compliance departments and to self-report violations. But inmy experience, self-reporting is the exception rather than the rule. Too many organizations fail to establish effective compliance programs or report known violations. . . .Congress and the Commission struck the right balance. Requiring whistleblowers to report internally would significantly deter whistleblowers from making submissions for fear, real or imagined, of retaliation. This concern was supported by past surveys showing that a large percentage of employees believe they would be retaliated against if they came forward.

(Editor's note: As always, our Q&A with Thomas was edited for clarity and style.)