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Following the law and damaging compliance: Impact of the Somers Decision

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In February, the U.S. Supreme Court issued its decision in Digital Realty Trust, Inc. v. Somers. It was a closely watched case in the compliance community. The Supreme Court narrowed the definition of whistleblowers who receive protection under Dodd-Frank to those who report to the Securities and Exchange Commission (SEC) and not those who only report internally.

Although the Supreme Court came to the correct legal decision, this decision may well lead to negative impacts for the compliance profession. The first is the message that it sends to potential whistleblowers: If you do not report to the SEC, you will not receive any legal protections against discrimination or retaliation. One cannot overemphasize the strength of this message. There may be companies out there that say they will not terminate you for standing up, raising your hand about concerns, and internally reporting, but even if they do, you do not have any legal protection against termination or even simple discrimination. Remember, Digital Realty Trust, Inc. (DLR) allegedly fired Paul Somers for raising concerns about suspected securities laws violations.

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