

Press Coverage | March 21, 2025

Whistleblower Law Strike-Down Would Force Allies to Get Creative

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Michael S. Lowe

Michael Lowe, a partner with Troutman Pepper Locke, was quoted in the March 21, 2025 *Bloomberg Law* article, "Whistleblower Law Strike-Down Would Force Allies to Get Creative."

If the provisions are stricken, the DOJ could adopt a program similar to the Corporate Whistleblower Awards Pilot Program announced last year, said Michael S. Lowe, representing FCA defendants with Troutman Pepper Locke LLP.

. . .

"An argument could be made," Lowe said, that the attorney general has the authority under 28 U.S.C. § 543, regarding "Special attorneys," to turn FCA whistleblowers' counsel into "inferior officers" to satisfy Article II.

. . .

But, such appointments could raise questions as to the scope of whistleblowers' and their counsels' authority; whether their conduct inside and outside the courtroom could be attributed to the government; and whether they would constitute DOJ employees, Lowe said.

Without new legislation, Lowe said, the existing authority to appoint special assistants under the DOJ isn't a realistic solution. And the Trump administration "is aggressively looking to downsize the federal government, not expand it."

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