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US law 'fails to protect' corporate whistleblowers

By Joanna Chung in New York

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The US federal law protecting corporate whistleblowers is failing to shield employees in the way that was intended, according to a non-profit group that is lobbying legislators for tougher rules.

The 2002 Sarbanes-Oxley Act, which contained new pro-whistleblower provisions when it was passed in the wake of the Enron and WorldCom scandals, "has helped few whistleblowers actually achieve justice", according to the Government Accountability Project, an advocacy group that provides legal advice to whistleblowers.

"Access to jury trials has proved elusive, and other institutions... have engaged in systematic, hostile activism against the congressional mandate," it said in a report yesterday.

Many cases against defendant companies have been dismissed on the grounds that employees who worked for a corporate subsidiary are not necessarily covered by the whistleblower provision, according to Richard Moberly, a University of Nebraska law professor. "The provision is supposed to be interpreted broadly but it is being interpreted very narrowly," he says.

Tom Devine, legal director of the GAP, said this could have the effect of letting some foreign companies operating in the US "off the hook". "For any whistleblowers who want to challenge misconduct of foreign companies, the law is not even a paper tiger unless the specific retaliation can be traced to a parent corporation," he said.

According to data from the Department of Labor, it has ruled in favour of whistleblowers 17 times in the 1,273 complaints filed from 2002 to the start of this month. Meanwhile, 841 cases were dismissed, 162 were withdrawn and 107 are pending. The data did not specify reasons for dismissals.

The claims come as the department, which enforces the law, prepares to rule on a complaint brought by a former UBS employee. Timothy Flynn claimed he was suspended in June as a financial adviser for the Swiss bank for co-operating with a Massachusetts investigation of UBS's sales of auction-rate securities.

His attorney, Jason Archinaco, said that the department wanted him to show that the UBS subsidiary that employed Mr Flynn was covered under the Sarbanes- Oxley provision. He has submitted the brief and is awaiting a ruling.

"UBS did not raise the defence, and the agency's request to have us address that issue appears to be highly unusual," he said.

UBS declined to comment on the issue raised by the Department of Labor. But it said: "UBS has taken no improper actions against Mr Flynn. He made the decision to resign of his own volition. UBS denies the allegations in his claim and plans to defend itself vigorously."

The department said: "In our view, employees of a subsidiary of a publicly traded company are covered under Sarbox if the subsidiary and the publicly traded parent company are 'integrated employers', as that term has been applied in labour and employment cases."