

Ninth Circuit Issues SOX Opinion—Approves Compensation Clawback Even for Executives Not Engaged in Misconduct

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Today, the Ninth Circuit issued an opinion in [*SEC v. Jensen*](#). The court held that Rule 13a-14 of the Securities Exchange Act confirms that the SEC has a cause of action against CEOs and CFOs who sign false or misleading certifications. (Op. at 5, 24.) Importantly, the court also held that Section 304 of the Sarbanes-Oxley Act (“SOX 304”) allows the SEC “to seek disgorgement from CEOs and CFOs *even if the triggering restatement did not result from misconduct on the part of those officers.*” (Op. at 28 (emphasis added).) Although the SEC has taken this position in prior settlements, the Ninth Circuit is the first Court of Appeals to endorse the SEC’s interpretation.

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