March 1, 2012

White Collar Roundup - March 2012

Out of (and Back Into) Africa

The Department of Justice (DOJ) finally cried "uncle" in its long-sought, but repeatedly unsuccessful, prosecutions of military-equipment manufacturers for violating the Foreign Corrupt Practices Act (FCPA) by bribing officials in Gabon. After two unsuccessful trials, the DOJ moved for a dismissal of all indictments with prejudice. In granting the motion, the district judge noted, "This appears to be the end of a long and sad chapter in the annals of white collar criminal history." Meanwhile, the Securities and Exchange Commission (SEC) has issued a subpoena to Halliburton regarding alleged FCPA violations in Angola. For a copy of Halliburton's Form 10-K disclosing the subpoena, click here.

SEC to Congress: Show Me the Money

The SEC wants more money to fight fraud and regulate securities. The White House proposed an 18.55% increase to the SEC's $1.321 billion FY 2013 budget. For the SEC's justification for its raise, click here.

Serious Money in Stopping Healthcare Fraud

The DOJ and the Department of Health and Human Services (HHS) reported recoveries of $4.1 billion from investigations and qui tam actions involving federal healthcare fraud. The report indicates the DOJ began 1,110 new criminal healthcare fraud investigations of 2,561 potential defendants in FY 2011. HHS's Office of Inspector General also excluded 2,262 individuals from continuing to participate in federal healthcare programs.

Obstructing the Wheels of Justice Before They Start Rolling

The obstruction-of-justice provision of the Sarbanes-Oxley Act, 18 U.S.C. 1519, has a pretty far reach, according to the U.S. Court of Appeals for the Sixth Circuit. In the case, the defendant had hacked then-governor and vice-presidential candidate Sarah Palin's e-mail account to engage in chicanery. After posting her password online, the defendant deleted his computer's files to hide his crime. After being convicted for obstruction of justice, he appealed, claiming 1519 is unconstitutionally vague. The Sixth Circuit held the statute is constitutional and applies to the destruction of documents when a federal investigation is foreseeable, even if it has not yet commenced.

Unnecessarily Stopping the Clock Stops It Nonetheless

The government can toll the five-year statute of limitations for prosecuting federal offenses if it properly seeks evidence from foreign governments (even if it does not have to), according to the Second Circuit. That court's opinion addressed the defendant's contention that the government had abused the tolling provisions of 18 U.S.C. 3292, which tolls the statute while the government seeks assistance from a foreign government. The defendant claimed the statute should not have been tolled while the government sought evidence from Hungary that it could have obtained in the United States. The court rejected that argument, holding that as long as the strictures of 3292 are met, the statute of limitations is tolled, even if the evidence could be obtained without seeking a foreign government's help.

Blown Coverage

According, at least, to the First Circuit, the broad language of the Sarbanes-Oxley Act's nonretaliation language in 18 U.S.C. 1514A does not apply to contractors of private firms that advise or manage publicly held mutual funds. Section 1514A prohibits retaliation against whistleblowers of fraud in publicly held companies. In this case, two former employees of a private firm that advised and managed a mutual fund were allegedly fired after reporting fraud. In a split decision, the First Circuit held 1514A did not apply, but invited Congress to amend the statute if it intended the statute to cover such contractors.