May 31, 2011

White Collar Roundup, June 2011

Jury? I Don't Need No Stinkin' Jury

A former in-house lawyer for GlaxoSmithKline won a Rule 29 judgment of acquittal in her criminal trial. In taking the case from the jury, and thus preventing a government appeal, the judge emphasized that a lawyer "should never fear prosecution because of advice that he or she has given to a client who consults him or her." The court also noted, "Not everybody can win the case. . . . In this case, I conclude that justice wins by acquitting this lawyer of the charges brought against her."

There's a First Time for Everything

The SEC announced its first deferred-prosecution agreement, which was with Tenaris, a steel-pipe manufacturer that had been investigated for violating the Foreign Corrupt Practices Act (FCPA). Pursuant to the agreement, Tenaris will disgorge $5.4 million and shore up its FCPA compliance controls.

The Perils of Consent

The Sixth Circuit held that a suspected marijuana grower's consent to a search of his residence for "other material or records pertaining to narcotics" allowed the police to search a thumb drive connected to his laptop, on which they found child pornography. In affirming the denial of the defendant's motion to suppress, the court reasoned that because marijuana growers often keep spreadsheets and images of their plants on their computers, the search was within the scope of the defendant's consent.

Waiting for Godot

Pressure continues to mount on the DOJ to bring a prosecution of a high-level executive for involvement in the credit crunch. According to this article, some lawmakers have lambasted the DOJ for failing to bring "any prosecutions on the bandits of Wall Street who brought the nation and the world to the brink of financial disaster." Attorney General Eric Holder said the DOJ is continuing to investigate.

You Spin Me Right Round

In a recent report, theProject on Government Oversight (POGO) took the SEC to task for having a"revolving door" that allows former SEC employees to almost immediately represent entities overseen by the Commission and allows former employees at those firms to work at the SEC. The POGO made several recommendations, including a two-year cooling-off period for former SEC employees and the publication of the SEC's searchable record of its employees' recusals. Other agencies face similar scrutiny.

Be Careful What You Ask (the Government) For

The Supreme Court recently held that information received in writing through an FOIA request constitutes a "public disclosure" under the False Claims Act, which could preclude recovery for a whistleblower who received written responses to FOIA requests, in the absence of that person being an "original source" of the information. This provision of the Act - the "public-disclosure bar" - has been used very aggressively in the last 10 years by defendants to dismiss qui tam complaints filed by whistleblowers. But proponents of the Act continue to press for Congress to weaken the provision through amendment. In healthcare-related cases, they have succeeded with section 10104(j)(2) of the Patient Protection and Affordable Care Act, which gives standing to the DOJ to oppose a defendant's dismissal of a False Claims Act complaint based on the public-disclosure bar.

And in Case You've Been Away . . .

A jury in the Southern District of New York convicted Galleon Group founder Raj Rajaratnam of all counts in his insider-trading case. To read more, click here.