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White Collar Roundup, March 2011

Healthcare Fraud: It's a "Loss" Cause.

The Fifth Circuit recently clarified how courts should calculate the loss amount under the U.S. Sentencing Guidelines for Medicaid (and Medicare) fraud. Joining the Fourth Circuit, the court said that "the amount fraudulently billed to Medicare/Medicaid is 'prima facie evidence of the amount of loss.'" The parties may provide evidence in an effort to increase or decrease that amount.

It's a Conspiracy!

With the possibility that prosecutors may more frequently use RICO to prosecute white-collar crime (for a news article on the subject, click here), a recent Second Circuit opinion on RICO conspiracy is worth mentioning. Interpreting Supreme Court precedent, the court held that the government need not prove the existence of an enterprise to obtain a conviction for RICO conspiracy. The court ruled that for RICO conspiracy, it's the agreement-and the agreement alone-that counts.

Avoiding the Public Eye.

In the Internet age, public access to the courtroom stretches far beyond those in attendance. The only option to keep things in court from ending up on the Internet may be to seal the courtroom or the proceedings. For anyone in the position of wanting to take that tack, click here for the Federal Judicial Center's pocket guide on the subject.

Identity Theft Rules the Roost.

The Federal Trade Commission reported that consumers complain more about identity theft than about any other unfair practices. Also in the top ten were debt collection, Internet services, and other advance-fee schemes.

Is the Collective-Knowledge Doctrine Losing Steam?

It appears that the rules for determining a corporation's state of mind may be loosening. Several courts, including the D.C. Circuit late last year, have rejected the First Circuit's twenty-four-year-old Bank of New England opinion, endorsing the collective-knowledge doctrine.

Sore Loser.

Convicted of insider trading, former Qwest CEO Joseph Nacchio is not taking his conviction sitting down. After unsuccessful appeals in the Tenth Circuit and a cert denial by the Supreme Court, Nacchio recently filed a malpractice suit in New Jersey Superior Court against the lawyers who represented him in his criminal matter.

Lawyers on the Stand.

Just who corporate counsel represents, and when the attorney-client privilege applies, can be a hotly contested issue. In a non-precedential opinion, the Third Circuit recently affirmed the conviction of a former CEO, rejecting a claim that the district court improperly allowed company's counsel to testify against the CEO at trial.