August 31, 2011

White Collar Roundup - September 2011

Shhhhh! It's a Secret.

In affirming bribery and fraud convictions, the 3d U.S. Circuit Court of Appeals discussed the practice of the U.S. attorney for the District of New Jersey of placing language on grand-jury subpoenas to maintain their confidentiality. That language suggests that disclosure of the subpoena could obstruct justice and requests that no such disclosure occur. Although not finding that these nondisclosure requests constituted prosecutorial misconduct by preventing defendants from access to witnesses, the court noted that the "practice of placing its non-disclosure request on all grand jury subpoenas is 'not a good policy' and discourage[d] that practice in the future."

Immunity, Mandamus, and the All Writs Act (Now, If That Doesn't Whet Your Appetite, What Can?)

The 3d Circuit recently dismissed the government's interlocutory appeal and Petition for Writ of Prohibition or Mandamus it filed in response to the district court's order granting use immunity to a defendant's possible co-conspirator. The court reasoned that the appeal was interlocutory and did not fit within the collateral-order doctrine. And the court refused to issue one of the Extraordinary Writs because an immunity order does not warrant a writ under the All Writs Act.

Take Five

The 9th Circuit made plain that the Fifth Amendment's guarantee against self-incrimination does not extend to shield the recipient of a grand-jury subpoena from having to produce documents the law requires that he keep. The case arose when the grand jury subpoenaed M.H. for his foreign-banking records, which he was required to maintain pursuant to the Bank Secrecy Act. M.H. pleaded the Fifth, was held in contempt of the grand jury, and appealed. The 9th Circuit affirmed the contempt order, holding that the required-records doctrine rendered the Fifth Amendment inapplicable.

Banking on Crime, but Finding None

After an apparently thorough three-year investigation into the failure of Washington Mutual Bank, the DOJ concluded that there was insufficient evidence of wrongdoing, according to this press release.

Mortgage Fraud Still on the Radar

For anyone who had forgotten that a major culprit in the economic crisis of 2008 was mortgage fraud, the U.S. attorneys in the Southern Districts of New York and Florida are here to remind you of that fact. Each recently announced large-scale takedowns of suspected mortgage fraudsters. For those of you scoring at home, the SDNY charged 14 defendants in a $58 million mortgage-fraud scheme and the SDFL charged 27 defendants in a $30 million mortgage-fraud scheme.

September 11 Fraud

On September 7 at 9:00 p.m., CNBC will air a special on September 11 fraud (featuring an interview with the WCR's own Daniel Wenner) in advance of the 10th anniversary of the tragedy. The special highlights three schemes that were perpetrated by fraudsters taking advantage of the terrorist attacks.