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White Collar Roundup, August 2010

The Subpoenas Are Coming! The Subpoenas Are Coming!

Inspectors general may soon have broader investigative power. Congress is considering enacting the Inspector General Authority Improvement Act of 2010, which would give inspectors general the authority to subpoena nonfederally employed witnesses under some circumstances.

A Sentence by Any Other Judge Would Be as Short (or Long)

The DOJ asked the U.S. Sentencing Commission to investigate the propensity of judges to ignore the sentencing guidelines, especially in the white-collar crime area. It noted, for example, that some defendants involved in a $500 million fraud received less than four years' incarceration while others involved in a $40 million fraud received a 25-year sentence.

The Wire (Fraud)

The wire-fraud statute requires the government to prove only that the use of the wires was "reasonably foreseeable," according to the Tenth Circuit. Therefore, any transaction that *might* involve the use of the Internet would fall within the statute's purview.

When the Hedge Fails

Hedge-fund managers can become fiduciaries of their investors, opening them up to prosecution under the antifraud provisions of the federal Investment Advisers Act, 15 U.S.C. ? 80b-6. Normally, the fiduciary duty runs to the fund, but the?Sixth Circuit has held that, in some circumstances, the manager's fiduciary duty can run directly to the investors.

Money in Motion

Money-laundering convictions may be harder to come by, thanks to a?Sixth Circuit holding that under 18 U.S.C ? 1956(a)(2)(B)(i), the government must prove that the "animating purpose" of the transaction was to conceal the fraudulent nature or source of the funds.

To Catch a Thief . . . Ten Years Later

No actual loss to a financial institution is required to?double?the otherwise applicable?five-year statute of limitations for criminal prosecution for mail and wire fraud, according to the Tenth Circuit. A "new or increased risk of loss" to the financial institution because of the scheme is sufficient to invoke the ten-year statute of limitations applicable to a fraudulent scheme that "affects" a financial institution.

A DPA Ain't Immunity

Criminal defendants can introduce evidence that they rejected an offer of immunity to show consciousness of innocence, but not evidence that they rejected an offer of a deferred-prosecution agreement, says one court of appeals.

Splitting Hairs Too Finely

A grand-jury witness can't be too cute when answering the government's questions. The?Ninth Circuit?held that a witness can't be convicted of perjury for giving a?misleading but "literally true" answer. But if the jury could reasonably conclude that the witness and the government had the same basic understanding during the line of questioning, such that the "literal truth" is just an after-the-fact lawyerly contrivance, a perjury conviction will stand.