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White Collar Roundup, July 2010

Six Things You Want To Know About Dodd-Frank

Sweeping financial reform arrived on July 15, 2010 when President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. For six quick-and-dirty enforcement-related takeaways of the 848 page bill, click here.

But I Didn't *Know*. Really.

Convictions resting on a conscious-avoidance-of-knowledge theory might be harder to come by. The Second Circuit has held that the jury charge must include precise language to convey to the jury that conscious avoidance is only possible if the defendant had a "high probability" of knowing a fact, unless the defendant "actually believed" that the fact was untrue.

Win Some, Lose Some

The SEC won a victory when a district judge in the Southern District of New York held that it had jurisdiction to enforce insider-trading laws for mischief with credit default swaps. Unfortunately, the victory came with a hefty price for the SEC as the court ruled against the agency after a bench trial. For an analysis of the ruling, click here.

This for, Well, Not Necessarily That

Bribery under 18 U.S.C. ? 666 requires corruption, but nothing more. The Eleventh Circuit held that public officials can be convicted on federal bribery charges even without a *quid pro quo* arrangement as long as the bribes were made "corruptly."

What We've Got Here Is a Failure To Cooperate

Failed cooperation attempts cannot hamstring defendants quite as much at trial, according to the Second Circuit. In a recent opinion, the court limited the government's ability to argue that a defendant "opened the door" to allow the admission of statements made under the protection of a proffer agreement.

To Waive, or Not To Waive: It's the Company's Privilege

Company consultants fall within the ambit of the company's privilege, and the company can waive the privilege on the consultant's behalf, the Ninth Circuit held. The crucial factor for the court was that the consultant worked as a "functional employee" of the company, bringing him within its?and not his?attorney-client privilege.

No Fiduciary Necessary

The First Circuit (with a cameo by Justice Souter) rejected a defendant's attempt to apply *Skilling* to limit honest-services fraud convictions only to those who owe the public a fiduciary duty. The court rejected this claim out of hand, noting that Skilling made no such distinction between fiduciaries and non-fiduciaries involved in bribery schemes.

(Ethical) Culture Club

Companies with strong ethical cultures that are both promoted through policies and procedures and emphasized by employee actions tend to have low misconduct rates, according to a recent report by the Ethics Resource Center.