

July 30, 2010

## 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.