

White Collar Defense, Investigations and Corporate Compliance

In *Doe v. Heart Solution, PC*, the **United States Court of Appeal for the Third Circuit** considered whether a **plea colloquy** in a prior criminal proceeding related to Medicare fraud **was sufficient to serve as the basis for a finding**, upon a motion for summary judgment, **that corporate entities controlled by the individuals who pled guilty** in the criminal case **could be held civilly liable** for the fraud under the False Claims Act. The court held that because the **plea colloquy did not discuss**, in detail, the **relationship between the guilty individuals and the corporate entities** at issue in the civil suit, it was **improper for the trial court to enter summary judgment** based on the admissions of the plea colloquy alone. (March 14, 2019)

In *State of New Jersey v. Bernardi*, the **Superior Court of New Jersey, Appellate Division**, addressed whether an **Administrative Consent Order (ACO)** between the state and a private party constitutes a **“government contract”** in the context of a charge for second-degree false representations for a government contract. In applying the ordinary usage of the term, the court found that an ACO does constitute a government contract, which is **not limited** to an agreement providing for the procurement of goods and services from vendors. (August 28, 2018)

In *Lagos v. United States*, the **United States Supreme Court** considered whether, pursuant to the **Mandatory Victims Restitution Act of 1996**, a **corporation was entitled to restitution** for costs incurred in conducting a **private investigation** into a business partner’s fraudulent conduct prior to his federal conviction for fraud. The court held that the **Act only mandates restitution for expenses incurred by the victim of a crime in connection with the government’s investigation**; it does not mandate restitution for expenses incurred by a victim who chooses to conduct a private investigation. (May 29, 2018)

In *United States of America v. Randy Poulson*, the **United States Court of Appeals for the Third Circuit** addressed the 2015 Sentencing Guidelines as applied to a perpetrator of a multimillion-dollar Ponzi scheme. The court held that when determining if a **victim of an economic crime suffered a “substantial financial hardship,”** the sentencing court has **considerable discretion** in determining where on the wide range between a minimal loss and a devastating loss a particular victim’s loss might fall, and will in most cases be gauged **relative to each victim**. (September 14, 2017)

In *D’Agostino v. EV3, Inc.*, the **United States Court of Appeals for the First Circuit** held that a former employee of the defendant-medical device

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manufacturer failed to state a viable **qui tam action** under the **False Claims Act** relating to alleged fraudulent representations by the manufacturer to the FDA. The court found that the plaintiff did not allege a **causal link** between the alleged fraudulent representations to the FDA and the payment of claims for reimbursement by the government for the medical devices. (December 23, 2016)

In *Salman v. US*, the **United States Supreme Court** considered whether a “**tippee**” – someone who receives confidential information from an insider and then uses the information to trade – can be held liable under insider trading laws absent evidence that the **insider** received a direct or indirect **personal benefit** from the disclosure. The Court concluded that the insider’s “**gift of confidential information** to a trading relative or friend” alone was sufficient evidence to establish **securities fraud** under Section 10(b) of The Securities Exchange Act of 1934 (15 U.S.C. 78). (December 6, 2016)

In *Re: Ariad Pharmaceuticals, Inc. Securities Litigation*, the **United States Court of Appeals for the First Circuit** addressed whether shareholders raised sufficient allegations to state a claim under **Exchange Act Section 10(b) and Rule 10b-5**. Where the defendant reported to an investment bank report that it was optimistic about its drug’s approval with a favorable label after the FDA had already rejected the company’s proposed label due to inadequate safety disclosures, the court found that this particular statement satisfied the **material misrepresentation and scienter requirements** of a Section 10(b) claim. Further, the court held that the shareholders failed to state **Securities Act Claims** because, under the pleading standards, they failed to plead sufficient facts to plausibly suggest that the shares were purchased as a result of the offering at issue. (November 28, 2016)

In *State of New Jersey v. L.D.*, the **Superior Court of New Jersey, Appellate Division**, addressed whether the defendant, a local government official, **speculated or wagered on official action or information** in violation of N.J. S.A. 2C:30-3 by using information he received to purchase farmland in order to sell the development rights to the property. The court held that “**if no evidence is shown suggesting the identified information was relayed** to the public official **in confidence** or that the information was **not otherwise publicly disclosed**, an essential element of the statute is not satisfied.” (January 28, 2016)

In *Shawnee Tabernacle Church v. Pennsylvania State Ethics Commission*, the **Commonwealth Court of Pennsylvania** addressed whether a **church** was entitled to **intervene** in an **administrative proceeding** against its pastor. Brought under the **Public Official and Employee Ethics Act**, the Commission initiated the proceeding against the church’s pastor in his capacity as CEO of a charter school. The church was the charter school’s landlord. The court held that, because the church was not accused in the Commission’s complaint of violating any laws, it could not intervene in the proceeding against its pastor. (September 24, 2013)

In *Sekhar v. U.S.*, the **United States Supreme Court** addressed whether a lawyer’s recommendation that his employer approve an investment constituted “**property**” under the **Hobbs Act**, which punishes extortion. The Court held that “**property**” must be “**transferrable**,” since a recommendation cannot be transferred, it cannot be the object of extortion under the Hobbs Act. (June 26, 2013)

In *Turner v. City of Boston*, the **Supreme Judicial Court of Massachusetts** addressed whether the **city council of Boston** had the authority to remove a **city councilor** from office following his felony conviction, but before his

sentencing. The court concluded no; removal of **public officers** must be empowered by **statute** and no statute authorized the council's vote. (June 15, 2012)

The **Supreme Court of the United States** granted certiorari in *Martrixx Initiatives v. Siracusano* to address the **disclosure of adverse event reports**. The Court stated the issue presented as follows: "Whether a plaintiff can state a claim under § 10(b) of the **Securities Exchange Act** and SEC Rule 10b-5 based on a pharmaceutical company's nondisclosure of adverse event reports even though the reports are not alleged to be statistically significant." (June 14, 2010)