

Landmark “Willful Blindness” Decision Has Failed to Deliver

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Three years ago, when the U.S. Supreme Court redefined the willful blindness doctrine in a patent case -- *Global-Tech Appliances Inc. v. SEB S.A.*, 131 S. Ct. 2060 (2011) -- the white collar criminal defense bar took note. It expected the decision to help individuals facing criminal charges like mail fraud and wire fraud where knowledge is an essential element of the offense and a defendant's state of mind is central. The willful blindness doctrine is a powerful tool for prosecutors. It has been a cornerstone of many high-profile white collar prosecutions, including the trials of Michael Steinberg, Jeffrey Skilling, Kenneth Lay and Bernard Ebbers.

Under the doctrine -- also known as "conscious avoidance" or the "ostrich" instruction -- the government does not have to prove that a defendant had "actual knowledge" of wrongdoing. Instead, the knowledge element can be satisfied if a defendant "consciously avoided" learning the truth. In *Global-Tech*, the court restricted the substitution of willful blindness for actual knowledge to situations where a defendant "takes *deliberate actions*" to avoid learning of [a] fact," a promising development for white collar defendants. But contrary to expectations, federal courts of appeals have not applied the stringent *Global-Tech* standard in white collar cases.