

Section 2

INTRODUCTION AND PURPOSE

Introduction and Purpose

- The attached supporting materials more fully develop the various points raised herein, together with citations to the trial record and exhibits to provide the support necessary to establish the legitimacy of Segal's position of innocence and violation of due process.
- Under "ordinary" circumstances, this matter would be expected to be resolved in the courts. However, the extreme high-profile nature of Segal's prosecution, and the prosecutor's sensitivity to the government's ongoing misrepresentation of Illinois law and specious accounting exhibits, has so clouded the purported facts and circumstances of this case as to compromise the viability of litigation in the courts.
- The case that was originally presented to the trial jury is not the same case as was recently affirmed by the Seventh Circuit. The layers of confusion created by the prosecution's misrepresentation of the Illinois insurance regulatory requirements, originally argued as "honest services" fraud and now projected back into a pecuniary fraud, has obscured the fact Segal is actually innocent of the charges of which he stands convicted. The piecemeal consideration of issues by the courts have obscured the fact that there was no crime committed here.
- When there has been a complete miscarriage of justice, as is the case when an innocent man stands convicted of a non-crime, it is important that actual innocence take precedence over procedural and bureaucratic minutia.

Background

- Mike Segal built the 5th largest insurance brokerage in the US , Near North Insurance Brokerage (NNIB), employing more than 950 people with offices in 7 states and the United Kingdom.
- NNIB was a legitimate business which was transmogrified by prosecutors into a RICO enterprise by misrepresenting the true nature of the Illinois insurance regulatory environment.
- In 2000, Near North placed 1.1 billion in premiums through its insurance company partners. Its leading markets included AIG, Fireman's Fund, Chubb, Hartford, St. Paul and Zurich.
- NNIB had a strong and diversified customer base, market niches and an impressive client list including leading Fortune 100 companies such as BP Amoco, Disney, Exxon Mobil, General Electric, McDonald's, Sears, and Sony.
- Segal's prosecution resulted in the destruction not just of NNIB, but of 15 other companies in Segal's ownership portfolio.
- Using known false and misleading evidence, Federal Prosecutors created the only victims in the case: the people who made up NNIB and its sister companies.
- Like Arthur Andersen, which was destroyed in the Enron case, only to achieve a hollow victory years later on appeal, prosecutors used a high-profile trial using known false evidence and an insinuation of political taint to get a result that deprived Segal of his liberty and property and upended thousands of lives.
- By fraudulently concealing selected provisions of the Illinois Insurance Code from both the grand and petit jury, prosecutors created the false impression that Illinois insurance brokers were required to segregate customer premium payments into a "trust account," congruent to a real estate escrow account or a lawyer's trust account --when in fact, Illinois law provides that the "special fiduciary" account into which an Illinois insurance broker deposits premiums is a commingled, fungible account, that is not subject to the accounting procedures and requirements of a true "trust" account.

Overview of Prosecution's unlawful prosecution

- Starting with the false premise that an Illinois insurance broker's premium account (PFTA) is a "trust" account, prosecutors improperly alleged that non-premium withdrawals from the account created a "cumulative" deficit --when in fact, the constant, permitted inflow and outflow of brokerage funds from this commingled account made the concept of a "cumulative" deficit totally inapplicable to a PFTA.
- **Rather than use the cash-on-cash accounting methodology specified by the Illinois insurance regulations to determine the adequacy of Segal's PFTA account, the government substituted a series of "estimates" based on projected future receipts and disbursements (i.e. receivables and payables), which were neither reconciled, aged, or verified as required by Generally Accepted Accounting Principles.**
- The government argued that Segal's "scheme to defraud" was NOT to not provide customers with their insurance. Neither, the government argued, was the scheme to NOT pay the insurance carriers. In fact, as the district court found, there was no economic loss as a result of Segal's "crime" -- all the customers got the insurance they bargained for and every insurance company was paid on time and in full.

Overview of Prosecution's unlawful prosecution

- The prosecution alleged that the absence of economic loss was only possible because, after allowing the "trust deficit" (an impossible concept) to accumulate over a period of decades (another impossible concept given that insurance companies cancel flat if premiums are not paid within 30-45 days) to \$30+ million, that Segal "put the money back" by taking out loans.
- However, examination of the prosecution's "evidence" demonstrates that the 90 days following the date of the government's allegation of a \$30+ million "trust deficit", some \$47,000,000.00 spontaneously appeared, out of nowhere, to create a \$7.7M surplus in the PFTA. The loans, which the prosecution alleged as responsible for repaying Segal's "theft", were not funded by the lenders until 45 days following the date of the \$7.7M surplus.
- In June, 2010, a unanimous Supreme Court, found that 18 U.S.C. 1346, which was the ruled court judgment of conviction for Segal and NNIB, as applied to its decisions in Skilling, Black and Weyerauch, was overbroad, **which invalidated Segal's original conviction.**
- Segal's appellate counsel, Professor Albert Alschuler on direct appeal was recognized multiple times in the Supreme Court opinion as to the same arguments raised in Segal's Seventh Circuit filing. Segal's direct appeal did not directly challenge the prosecution's misrepresentations of the record evidence as to the regulatory and accounting evidence.
- These issues would have done nothing to reverse Segal's "honest service" conviction, for as the Supreme Court mandate reflected, 1346 Dishonest Services was too ill-defined and required a national standard, which would apply to the prosecution's Segal prosecution as to a highly nebulous, insurance state-law-created, fiduciary duty. As a result, a series of record-supported false accounting facts have been ensconced as historical truth.
- Now that the "honest services" theories have been invalidated by the Supreme Court, the prosecution has resurrected its record supported incomplete and inaccurate pecuniary fraud theories to sustain Segal's conviction post-Skilling. But ultimately, there was no crime.

Overview of Prosecution's unlawful prosecution

- 1341 Mail/wire fraud has as its gravamen the element of "material falsehood."
- The sole material falsehood argued by the government, the filing of false Illinois insurance producer license renewal applications, was ruled by the district court to have no potential influence on any state regulator, in granting Segal a judgment of acquittal on the false-statement charges associated with the filing of the license applications.
- A statement that is not "materially false" cannot be the "material falsehood" required to establish federal mail/wire fraud. The government's admission that it was Segal's intent to continue to provide his customers with insurance and to pay the carriers precludes the conclusion that Segal "aimed" to deprive his customers or carriers of money or property--in other words, there was none of the "fraudulent intent" required for mail/wire fraud.
- Without both "material falsehood" and "fraudulent intent" there can be no federal mail/wire fraud. What is left is the insinuation that Segal committed the offense of "unlawful conversion"--which is not a federal offense.
- Furthermore, because the Illinois PFTA is not a "trust" account containing "other people's money," there was no money to "convert." The money in the account belonged to Near North Insurance Brokerage -- which had a fiduciary duty to pay the insurance carriers for its customers' insurance policies upon demand. NNIB fulfilled the fiduciary duty.

Key points

In court rulings and testimonial record, the court found:

- No economic loss to NNIB clients
- No fraudulent intent by Segal or NNIB
- No evidence of material misrepresentation to regulatory bodies or influence
- Every Prosecution witness testified that they had no knowledge of any misrepresentation or non-disclosure

The known falsity of the prosecution's case is demonstrated in part by:

- The testimony of the prosecution's witnesses whose testimony was often in conflict with the prosecution's own exhibits
- The testimony and affidavits of Forensic Accountant Andrew Lotts who reconstructed accounting from NNIB's system according to GAAP and Illinois Statutory methods--including the production of GAAP-specified 'working papers' and backup documentation—that showed the prosecution's accounting to be spurious and false.
- The plain language of the Illinois Statute and regulations governing Near North and Segal's behavior, which were materially different than the requirements imposed on Near North and Segal by various prosecution witnesses who opined about what the regulations 'should' be.

The known falsity of the prosecution's case is demonstrated in part by:

- The prosecutors knew--or should have known had they performed any due diligence --that their accounting evidence was false.
- Flaws that pervade all prosecution accounting exhibits in the absence of working papers and backup documentation, which are required of GAAP
- Accounting is an area requiring technical expertise and subject to GAAP and peer review. The prosecution's evidence and testimony was presented by lay people in contrast to the evidentiary requirements of Fed. R. Evid. Rule 701.
- The only certified expert to offer evidence was Forensic Accountant Andrew Lotts via affidavits at trial testimony at Forfeiture Hearing
- Lotts' testimony and record affidavits with supporting papers showed the prosecution's accounting to be flawed and incorrect some instances impossible and repeated patterns not corrected.

Key points

Accounting conclusions are only as good as the numbers and methodology employed

- None of the prosecution's witnesses admitted to using the Illinois statutorily defined methods for PFTA use reconciliation and admitted as such in their own prepared exhibits employed statutorily defined methods.
- Each prosecution witness used his or her own non-cash, non-reconciled 'estimate' methodology, which contained variances of millions of dollars depending on the method used.
- Prosecutors knew or should have known their accounting evidence was flawed. But they did not employ Government accountants to review the evidence and ignored basic standard evidentiary requirements for working papers and analysis of verification, reconciliation and aging.
- Prosecutors simply adopted and embellished at face value the evidence offered by a group of ex-employees while working at NNIB and now working for competitor AON, who had been rebuffed in their attempt to takeover NNIB.
- Prosecutors should have accepted this evidence with extreme skepticism...instead they vouched for the veracity of the evidence at every opportunity as a means to their self-aggrandizing pursuit of NNIB and Segal.

Key Points

Court ruled no economic loss, no fraudulent intent and no materiality in prosecutor's allegations

Presiding Trial Judge, Ruben Castillo,:

- Rules no rational jury or no evidence could have found defendant made a false statement in connection with financial report presented to Illinois Department of Insurance
- No testimony established Segal's license renewal application had any potential influence on any state official
- Prosecutors ignore this ruling in appellate direct appeal and Skilling remand filings
- there was no loss
- no false statements nor regulator influence
- no mention of a risk of loss
- Ruled Segal's conviction was 1436, not 1341

Presentencing officer states no evidence of intent to defraud.

- District court specifically adopts report and becomes law of the case
- Lack of evidence concerning defendant's intent to defraud is ignored by prosecutors in the Skilling remand

District Court finds no loss.

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10 And I believe that given Mr. Segal's misconduct
11 with the premium fund trust account, which for a lot of
12 different reasons did not result in a loss to his clients, I
13 believe that looking at the sentencing guidelines and the
14 economic reality of what occurred here, that this is an

[Ref: Order and Opinion page 9, Judge Ruben Castillo.]

742 Pursuant to §2B1.1, Application Note 3A, loss is the greater of the actual or intended
743 loss. Pursuant to Application Note 3(A)(ii), intended loss means the pecuniary harm
744 that was intended to result from the offense, and includes intended pecuniary harm
745 that would have been impossible or unlikely to occur. There is no evidence the
746 defendant intended to defraud either the insurance clients or the insurance companies

[Ref: Presentencing Officers Report, 745-747.]

MEMORANDUM ORDER AND OPINION

were financial reports or documents, we conclude that no rational jury could have found that
Defendants made a false statement "in connection with any financial reports or documents
presented" to the Illinois Department of Insurance. Furthermore, no testimony established that
the license renewal applications had any potential influence on any state official. Accordingly,
the jury's guilty verdict with respect to counts sixteen through twenty-two is not supported by the
evidence. We therefore grant Defendants' motion for a judgment of acquittal with respect to
these counts.

[Ref: Line 10-12, page 15, District Court sentencing Transcript]

Key Points

No loss, no lies, no influence...what is the basis for the excessive sentencing and forfeiture penalties?

District Court concludes that no evidence supported any misrepresentation or non-disclosure.

All prosecutor's witnesses trial transcripts show prosecution's own witnesses testifying that there was no misrepresentation or non-disclosure.

- No misrepresentation, no non-disclosure of any known transactions
- Never told to alter any books or records of NNIB

Federal District Court Opinion, page 9, December 13, 2004.

"Given the complete absence of evidence...we conclude that no rational jury could have found that defendants made a false statement in connection with any financial reports or document presented to the Illinois Department of Insurance. Accordingly the jury's guilty verdict with respect to these counts is not supported by the evidence."

Trial transcript, page 1719-21, 1723-25, 1729, 1757, 2466, 821-23, 846-47, 866, 937, 2408-09, 2271-72, 2774, 2674, 2673, 2197, 3201, 3403, 3381, 3402, 3389, 3643, 3645, 1258, 2176, 4870-71, 1850-55.

"Every government witness testified there was no conduct as to Segal or NNIB misrepresentations or nondisclosures as to any transaction. All accounting assignments were voluntary and full disclosure to carriers and clients. The government presented no victims and all government witnesses testified that all insurers were always paid on time for 40 years.

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