

Judge Orders New Trial for Joe Nacchio

Last Edited: Monday, 17 Mar 2008, 9:53 PM MDT
Created: Monday, 17 Mar 2008, 11:53 AM MDT

By CHARLIE BRENNAN, Reporter

DENVER - An appellate court has ordered a new trial for former Qwest CEO Joseph P. Nacchio, saying the trial judge incorrectly excluded expert testimony and classified information important to his defense.

At his trial, a jury concluded Nacchio sold \$52 million worth of stock when he knew Denver-based Qwest Communications International Inc. was at financial risk but didn't tell investors. The jury acquitted Nacchio of 23 counts.



Former Qwest CEO Joe Nacchio was convicted on 19 of 42 counts in his insider trading trial.

Nacchio was sentenced to prison for six years but remained free on bail pending the outcome of his appeal.

Nacchio's conviction last April on 19 counts of insider trading had been considered the largest insider trading prosecution in the nation based on the number of counts, the amount of money involved and the length of the prison term.

In a prepared statement following the ruling, U.S. Attorney for Colorado Troy Eid said "This is a setback, not a defeat. The good news is the Circuit Court said our trial team presented sufficient evidence to convict Mr. Nacchio of insider-trading.

"A divided Court ruled that a lone expert witness for the defendant was improperly excluded. We're considering all our legal options in consultation with the Department of Justice." The case, presuming it is retried, will not be heard by the same judge who heard the case initially, U.S. District Court Judge Edward Nottingham.

Maureen Mahoney, the Washington, D.C.-based defense attorney who argued in support of Nacchio's appeal in December, also issued a prepared statement.

SideBar

[Nacchio Appeal Heard](#)
[Nacchio to Remain Free On Bond](#)
[Joe Nacchio Gets 6 Years for Insider Trading](#)
[Nacchio Faces Prison Term, Ordered to Forfeit \\$52 Million](#)
[Joe Nacchio to Pay \\$52 Million, Serve Prison Time](#)
[Nacchio Negotiating](#)
[Report: Doubts Changed To Support For Nacchio Guilty Verdicts](#)

“We are very grateful for this important victory,” the statement read. “The appellate court found that critical evidence was withheld from the jury and that Mr. Nacchio did not receive a fair trial. If the government decides to retry the case, we expect him to be acquitted. The additional evidence will establish beyond any doubt that Mr. Nacchio did not commit a crime.”

The Tenth Circuit U.S. Court of Appeals stated that "we have concluded that it would be unreasonably difficult to expect this judge to retry this case with a fresh mind," one of three grounds for which the appellate court typically assigns re-tried cases to alternate judges.

Nottingham is facing legal difficulties of his own, which have come to light since the conclusion of the Nacchio case nearly one year ago.

Nottingham, 60, was recently linked in published reports to a high-priced escort service in Denver, and in the wake of those reports, it has been reported that the chief judge of the 10th Circuit is considering a complaint about a judge's conduct. A man who filed the complaint that sparked that report has confirmed Nottingham is judge whose conduct is under review.

At Nacchio's trial, Nottingham ruled that the defense should be excluded from presenting expert testimony from professor Daniel Fischel, siding with prosecution opinions that the defense hadn't sufficiently prove the reliability of Fischel's opinions or demonstrate how he'd arrived at them.

Defense lawyers argued in their motion for a new trial that Fischel's testimony was key to Nacchio's defense, that the corporate law and markets expert could have explained to jurors that Nacchio's Qwest stock sales was an effort to diversify his portfolio and did not affect the stocks' value in a material way. Nottingham had blocked Fischel's testimony without benefit of allowing the defense to argue for it at a pretrial motions hearing.

"The judge concluded that all of these things were 'within the common knowledge of the jury' and that the jury simply didn't need 'this so-called expert witness to testify that diversification is an issue in this case... This misunderstands the nature of economic expertise."

The appellate ruling added, "Armchair economics is not the way to decide complex securities cases. The district court's holding that the testimony was inadmissible under Rule 403 suffers from the same problem. The court's analysis was very brief, and mostly dependent on the conclusions we have already rejected."