



Qwest Founder Anschutz Says Nacchio Was Distraught (Update2)

By Joel Rosenblatt

April 5 (Bloomberg) -- Lawyers for Joseph Nacchio, the former chief executive of Qwest Communications International Inc., sought to use testimony of company founder Philip Anschutz to bolster their case that Nacchio was too distraught over his son's attempted suicide to have engaged in insider trading.

Anschutz, a billionaire and owner of the National Hockey League's Los Angeles Kings, testified today in a Denver federal court that Nacchio considered quitting in early 2001 because his son had tried to kill himself.

"He came to my office and closed the door, I could tell he was agitated," Anschutz told jurors, describing a private January 2001 meeting with Nacchio. "Joe launched into the fact that his son -- that there had been a suicide attempt. He was quite agitated by it. He broke down in tears," Anschutz said.

By questioning Anschutz about the suicide attempt, defense lawyers sought to demonstrate that Nacchio wasn't thinking about profiting from alleged insider trading in early 2001, and was instead of a state of mind to leave the company.

Anschutz was one of two witnesses called to testify in defense of Nacchio, who is accused of selling \$101 million in Qwest shares in the first five months of 2001 before the stock price plunged, based on non-public information the company would miss revenue targets.

Nacchio's lawyers today told U.S. District Judge Edward Nottingham in Denver that they will likely conclude their defense next week, almost two weeks earlier than scheduled.

Cross Examination

Under cross-examination by prosecutors, Anschutz said Nacchio, as chief executive officer, was responsible for setting company budgets and providing earnings estimates to Wall Street, and that Nacchio had the authority to do that without approval from Qwest's board of directors.

Financial analysts yesterday told jurors that Nacchio hid Qwest's dependence on one-time sales and international swaps of network capacity to meet revenue targets. Prosecutors argue Nacchio used accounting tricks to satisfy analysts' expectations and prop up Qwest's stock price as he sold his shares.

Anschutz said the suicide attempt didn't cause Nacchio to leave Qwest, and that a few months earlier, in September or October of 2001, the company negotiated a new employment contract giving Nacchio stock options for five million Qwest shares, a bonus and a bigger salary.

Restatement

Qwest restated financial results in 2003 to remove \$2.5 billion in revenue booked in 2000 and 2001, mainly from the one-time sales and swaps of fiber-optic network capacity. In June 2002, Anschutz told Nacchio that directors had ousted him. The same day, Qwest announced Nacchio's successor would be Richard Notebaert, who had been recruited by Anschutz.

Anschutz, the largest Qwest shareholder, left its board a year ago to focus on his other investments. He has committed to selling almost all his stock in the company by 2010.

Nottingham today ordered Nacchio's lead lawyer, Herbert Stern, to notify prosecutors by 5 p.m. April 7 if Nacchio will take the stand in his own defense. Stern told the judge he decided against presenting classified information to support his argument that Nacchio's top-secret clearance gave him knowledge about government contracts that would boost Qwest's revenue.

Stern declined to say how narrowly he will tailor those arguments, leaving prosecutors unsure if lawyers for government agencies will have to appear next week. Nottingham sent the jury home early so the two sides could resolve the matter.

Nacchio faces a maximum sentence of 10 years in prison and a \$1 million fine on each of 42 counts against him if convicted.

Judge Nottingham rejected Nacchio's lawyers' motions for a mistrial based on arguments the government used improper evidence in its two weeks of arguments that biased the jury.

Qwest shares rose 15 cents to \$9.13 in New York Stock Exchange composite trading. They have risen 9.1 percent this year, giving the company a market value of \$17 billion.

The case is USA v. Nacchio, 05-cr-545, U.S. District Court, District of Colorado (Denver).

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