

SFGate.com**Judge Denies Some Motions in Black Case**

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(04-09) 17:14 PDT CHICAGO, (AP) --

Defense attorneys at Conrad Black's fraud trial tried to show Monday that the fallen media mogul's co-defendants hadn't misled Hollinger International shareholders about their use of company funds.

One attempt to show that controversial "non-compete" payments central to the case were legal prompted a mistrial request, which was swiftly rejected.

Judge Amy St. Eve denied the motion by Gus Newman, a lawyer for former Black associate John Boulton, as well as a request that the former Hollinger chief financial officer be tried separately from Black.

Newman argued that questions from the lawyer of another co-defendant — former vice president Peter Atkinson — would result in testimony prejudicial to his client. St. Eve agreed to limit testimony to statements that Atkinson made to the Hollinger International audit committee.

The judge had earlier rejected a bid by Black's three co-defendants for separate trials, promising to give "appropriate" instructions to the jury to avoid "spillover guilt."

The men are accused of plundering millions of dollars from Hollinger International through the sale of hundreds of community newspapers in North America.

Black and two of the co-defendants are accused of pocketing payments from the buyers in exchange for promises not to compete with the papers in areas where they circulated. While such payments are common in the business world, prosecutors say the money belonged to shareholders.

Atkinson's lawyer, Michael Schachter, was trying to show Monday that his client had no intent to hide information about the non-compete payments.

Schachter suggested non-compete payments related to the sale of Canadian big-city daily newspapers to CanWest Global Communications Corp. in 2000 had been disclosed three times: in a 2001 quarterly report, in a special report related to the deal and in annual reports.

"Not only did the auditors state that all such payments had been approved by an independent audit committee of Hollinger International in 2002, (but) they did it in 2003 as well," Schachter said during his cross-examination of former Hollinger International comptroller Fred Creasey.

Creasey said he had gone to Atkinson because he couldn't find approvals for the non-compete

payments, and Atkinson said "he believed they were approved by David (Radler)."

Radler is Hollinger International's former president. He has pleaded guilty in return for a lenient jail sentence of 29 months and an agreement to testify against Black.

Creasey also agreed with Schachter's assertion that Atkinson never asked him "to hide or conceal anything" and that Atkinson suggested the two men bring any findings to the audit committee.

"Everyone had always been told the audit committee approved this (the payments)," Atkinson wrote in a 2003 e-mail read in court.

"If that is in error, do we know why that error occurred and why the error was not picked up by KPMG?" KPMG was the company's auditor. "We have to be confident about the facts and we have to make very full disclosure."

Before court adjourned Monday, prosecutor Julie Ruder suggested to Creasey that there was no paper trail to explain non-compete payment approvals for certain transactions.

Creasey said he asked another co-defendant — former Hollinger lawyer Mark Kipnis — for documents detailing the basis of the non-compete agreements for one of the deals, but he didn't receive documentation showing the audit committee had approved the payments.

The non-compete payments were vetted by KPMG and attorneys from Toronto-based law firm Torys LLP. The jury on Tuesday is expected to see a video deposition by a Torys lawyer who advised Hollinger during the CanWest transaction.

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