



Ex-Hollinger Lawyer Says Her Firm Gave Bad Advice (Update2)

By Andrew Harris and Joe Schneider

April 18 (Bloomberg) -- A Hollinger International Inc. attorney testified she told two executives on trial for fraud with former Chairman Conrad Black that her firm gave the company bad advice about disclosing payments at the heart of the case.

“There's a problem here,” Beth DeMerchant, a former attorney at the Toronto law firm Torys, told Peter Atkinson, a former Hollinger vice president, and ex-finance chief John Boulton in an April 2001 meeting at Hollinger's Toronto offices, according to her testimony today.

DeMerchant said she told Atkinson and Boulton that another lawyer in her Toronto firm was wrong when he said the payments didn't need to be disclosed. “I said I was sorry,” she testified.

DeMerchant's account, recorded in Toronto and played for jurors in Chicago federal court today, buttressed claims by defense attorneys that Atkinson sought accurate legal advice about whether Hollinger needed to publicly disclose payments he and other executives received.

In testimony yesterday, a lawyer with another firm said Atkinson sought his advice on the payments and was told they must be reported.

Black, 62, Atkinson, 60, and Boulton, 63, are accused of stealing \$60 million from the company, as they engineered the sale of more than \$3 billion in assets from 1998 to 2001. Defense lawyers say Hollinger's board approved the payments.

Atkinson and Boulton each got \$1.3 million (C\$2 million), and Black and former Hollinger President F. David Radler received almost \$12 million (C\$18.4 million) in proceeds from the 2000 sale of \$2.1 billion in assets to Winnipeg-based CanWest Global Communications Inc. The deal made CanWest Canada's largest media company.

Abandoned Markets

CanWest paid the money in exchange for the defendants' agreement not to compete in the newspaper markets Hollinger was abandoning.

Jurors at the trial got a glimpse of the high-stakes negotiations accompanying mergers and acquisitions and how Hollinger executives worked to gain the biggest benefit from every detail.

Black, Radler and the others opted for noncompete payments because they're not taxable and reduced their taxable bonuses, correspondence between them and the law firms showed.

“David (Radler) has consistently suggested C\$19 million for you and C\$19 million for him,” Atkinson wrote Black in an Aug. 9, 2000, fax shown the jury, regarding the noncompete payments. “Jack (Boulton) and I suggest C\$2 million for each of us.”

Payments Boosted

That was only days after the Hollinger executives decided to boost the noncompete payments to C\$80 million, from C\$57 million.

William “Bud” Rogers, a partner at New York's Cravath, Swaine & Moore, and DeMerchant both testified they didn't know how the numbers were determined.

While telling CanWest Ravelston Corp., Black's holding company, that it would get C\$30 million as a noncompete payment, Atkinson told Hollinger's board in a memo the money would be paid to Ravelston as a fee for the early termination of a management services contract.

``That might create problems," Torys lawyer Darren Sukonick wrote in a memo.

As a result, Sukonick agreed to draft a contract making Ravelston the disbursing agent for the noncompete payments so CanWest wouldn't find out how the money was distributed.

Hollinger was once the world's third-largest publisher of English-language newspapers. Its papers included the U.K.'s Daily Telegraph, the Jerusalem Post and Canada's National Post. Those were sold, leaving the Chicago Sun-Times as its largest publication. The Chicago-based company changed its name to Sun- Times Media Group Inc.

\$60 Million in Payments

Black, Atkinson, Boulton and Radler were indicted in 2005. Prosecutors say the men illegally profited by signing noncompete agreements that netted them \$60 million that should have gone to the company.

Black is charged with fraud, racketeering, money laundering and obstruction of justice. The racketeering and fraud counts carry maximum sentences of 20 years in prison.

Radler, 64, pleaded guilty to one count of fraud and is scheduled to appear as a witness for the government.

Mark Kipnis, 59, Hollinger's former general counsel, is charged with helping the other defendants get the noncompete payments.

The case is U.S. v. Black, 05cr727, U.S. District Court, Northern District of Illinois (Chicago).

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