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Former Westar execs face new trial

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Federal prosecutors will retry David Wittig and another former executive of Westar Energy Inc. on charges related to the duo's alleged conspiracy to defraud the utility of millions of dollars.

During a brief scheduling hearing Monday in Topeka, Assistant U.S. Attorney Rich Hathaway told District Judge Julie Robinson that the government's case would proceed, said Jim Cross, a spokesman for Eric Melgren, U.S. Attorney for Kansas.

"I don't know if it will be accomplished this year or not," Cross said.

Another scheduling hearing has been set for May 7 to determine when the case will go to trial. This will be the third time the two have faced trial; the first ended in a mistrial.

In January, a federal appeals court threw out the convictions of Wittig, former chairman and CEO, and Douglas Lake, former executive vice president, each of whom was convicted of multiple counts alleging conspiracy, circumvention of Westar's internal controls, wire fraud and money laundering. The two were sentenced in April to 18 years and 15 years, respectively, in federal prison.

But the 10th U.S. Circuit Court of Appeals overturned all the convictions, writing in a 42-page unanimous ruling that the government failed to prove that the two didn't report personal use of the company's aircraft to the Securities and Exchange Commission.

The court ruled that the wire fraud and money laundering counts couldn't be retried. However, the conspiracy and circumvention counts, which the court reversed, could be retried, the court ruled. The forfeiture count was reversed and remanded for retrial.

Melgren said in January that prosecutors were evaluating the case and determining whether to retry the remaining charges.

Wittig will face 14 counts of circumventing internal controls and one count of conspiracy, Cross said Monday. Lake will face 13 circumvention counts and one count of conspiracy. If they are convicted, prosecutors will pursue the forfeiture counts, which aim to recapture assets gleaned in connection with the alleged crimes.

Cross said that although the appellate court raised "some points of law" in its reversal, prosecutors probably wouldn't change their case much because they had received convictions on the remaining counts once before.

"A jury did convict on all these counts," Cross said. "I don't think there's any reason to think (prosecutors will) change the case because these counts were part of the indictment last time in which we got convictions on all those counts. There was sufficient information to cause a jury to convict on those counts last time."

Wittig was found guilty of 39 counts, and Lake was convicted of 30 counts.

In its decision to overturn the convictions, the 10th Circuit said the government's entire case hinged on the two failing to report personal use of the company's aircraft to the SEC. But the jury received no instructions about the SEC's reporting requirements, and federal prosecutors did not produce any evidence "that the defendants failed to comply with SEC regulations" requiring such reporting.

"As a result, we must set aside the convictions on every count, most of which cannot be retried," the court wrote.

cgrenz@bizjournals.com | 816-421-5900

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