



Going for Two in a Row

SEC Faces New Insider-Trading Test **GLOBAL FINANCE C3**



The Obus insider-trading case represents a new test for SEC Chairman Mary Jo White and her agency.

Insider-Trading Case Involving GE Capital Tip Heads for Trial

By JOE PALAZZOLO

Fresh off a major courtroom victory, the Securities and Exchange Commission will test its insider-trading theories in another long-running case that is set for trial on Monday.

Regulators allege Nelson J. Obus, a principal at New York-based hedge fund **Wynnefield Capital Inc.**, traded on an inside tip about an acquisition he received from one of his analysts. The analyst had allegedly received the tip from a college friend at **General Electric Capital Corp.**, which was exploring acting as a lender in the deal. The GE Capital executive, **Bradley Strickland**, and Mr. Obus's analyst, **Peter F. Black**, are also on trial.

The SEC sued Mr. Obus in 2006. A federal trial judge threw out the case, but the Second U.S. Circuit Court of Appeals reinstated the case in 2012, holding that regulators had advanced "genuine issues of material fact as to each defendant's liability."

The trial in federal district court in Manhattan follows the SEC's win earlier this month against entrepreneur **Sam Wylie** and the estate of his deceased brother, **Charles**, who were found liable on civil fraud charges of using a complex web of offshore trusts to hide stock sales and reap \$550 million in profits.

The Obus case represents the latest test for SEC Chairman

Mary Jo White, who has pledged to toughen enforcement and take more difficult cases to trial.

The lawsuit centers on Allied Capital's 2001 acquisition of **SunSource**, a maker of nuts and bolts in which Mr. Obus's fund owned stock. According to the SEC, Mr. Obus improved his position in the company when he learned of the acquisition, earning \$1.3 million when SunSource's stock price surged on news of the deal.

In court papers, the defendants, all of whom have denied exchanging or receiving information about the acquisition, have pointed out several peculiarities in that theory. Mr. Obus, for example, waited two weeks to make a trade after allegedly receiving the tip. When Mr. Obus finally did buy a block of SunSource stock, he negotiated a discount and then he sold off some of the shares before the deal closed—unusual behavior for someone who knew the stock was a sure winner, lawyers for the defendants say.

The SEC has offered no evidence that Mr. Strickland benefited from the trade, though there is no dispute that he and Mr. Black discussed SunSource. The SEC says Mr. Strickland revealed the acquisition in that discussion, while Mr. Strickland has said he contacted his college friend in the course of conducting due diligence on SunSource but spoke only in vague terms

about GE Capital's business with the nuts-and-bolts company.

A GE Capital internal investigation concluded that Mr. Strickland disclosed information outside of the company about SunSource but he didn't discuss the acquisition, according to court documents.

"We contend that the SEC's investigation has been a misguided witch hunt without any witches, and that honest businessmen have been wrongly pursued for years," said **Roland Ripelle**, a lawyer for Mr. Strickland.

"This case will focus on 13-year-old evidence. Mr. Obus has waited a long time to tell his story," said **Joel M. Cohen**, Mr. Obus's lawyer.

Mr. Black's lawyer didn't respond to request for comment.

The defendants likely will have to surmount testimony by two SEC witnesses, including the chief executive of SunSource, that Mr. Obus told them he had been tipped off about SunSource.

Maurice Andrien, the CEO, told the SEC he spoke with Mr. Obus on the phone before the deal and the hedge-fund manager said "a little birdie told me that you guys are planning to sell the company to a financial buyer," according to court documents.

Mr. Obus also allegedly discussed the tip with **Daniel Russell**, Allied's finance chief, according to court documents.

BUSINESS & FINANCE

SEC Loses Inside-Trade Case

By CHRISTOPHER M. MATTHEWS

A federal jury cleared Nelson J. Obus, manager of a New York-based hedge fund, and two others of insider trading, a defeat for the Securities and Exchange Commission's toughened approach to enforcement.

The verdict, which comes after just over a day of deliberations and a two-week trial in U.S. District Court in Manhattan, is also a setback for SEC Chairman Mary Jo White, who has pledged to take more difficult cases to trial. The civil case involving Mr. Obus was filed by the SEC in 2006.

After the verdict was read, Mr. Obus embraced his lawyer, Joel Cohen, slapping him on the back.

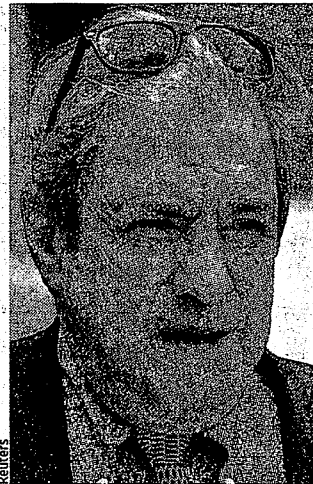
"Obviously, I'm gratified that the jury saw through the SEC's 12-year campaign of regulatory overreach and recognized that we have told the truth," Mr. Obus said in a statement. "But this isn't only about me. This is about systematic regulatory overreach without accountability."

Regulators had alleged Mr. Obus, principal at Wynnefield Capital Inc., traded on an inside tip about an acquisition he received from one of his analysts.

The analyst had allegedly received the tip from a college friend at General Electric Capital Corp., which was exploring acting as a lender in the deal. The GE Capital executive, Bradley Strickland, and Mr. Obus's analyst, Peter F. Black, also were on trial. Messrs. Black and Strickland also were found not liable. All of the defendants denied exchanging or receiving inside information about the acquisition.

Mr. Obus, who testified during the trial, had said that his trading was based on years of legitimate research. The SEC's case centered on Allied Capital's 2001 acquisition of SunSource, a maker of nuts and bolts in which Mr. Obus's fund owned stock.

There always are risks in taking such cases to trial, said Eugene I. Goldman, former senior counsel in the SEC's Division of Enforcement. "The wild card in these jury cases is how the jury



Nelson J. Obus was cleared of insider trading by a jury.

will assess the credibility of a defendant," said Mr. Goldman, who is now a partner at McDermott Will & Emery LLP. "[Mr. Obus] did take the stand, he denied the allegations, and he came with his own reasoning for the trading."

SEC spokesman John Nester said, "Although we are disap-

pointed, we respect the jury's verdict."

The SEC's case largely hinged on two witnesses, including the former chief executive of SunSource, who had said in depositions and during the trial that Mr. Obus told them he had been tipped off about SunSource.

Defense attorneys had argued that those witnesses' testimony was unreliable, especially because events took place more than a decade ago, and that they were pressured by the SEC to testify against the defendants.

A federal judge threw out the case that was filed in 2006, but the Second U.S. Circuit Court of Appeals reinstated the case in 2012, holding that regulators had advanced "genuine issues of material fact as to each defendant's liability."

The trial followed the SEC's win earlier this month against entrepreneur Sam Wyly and the estate of his deceased brother, Charles, who were found liable on civil-fraud charges of using a web of offshore trusts to hide stock sales and reap \$550 million in profits.