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TWO HOLLINGER EXECUTIVES, RAVELSTON COMPANY ACCUSED OF SELF-DEALING IN U.S. - CANADA CORPORATE FRAUD INDICTMENT

Shareholders in U.S. and Canada allegedly cheated in sales of U.S. community newspapers; Radler cooperating in investigation

CHICAGO **– F. David Radler**, the former publisher of the *Chicago Sun-Times*; **Mark S. Kipnis**, the top in-house lawyer for Hollinger International; and **The Ravelston Corporation Limited**, a privately-held Canadian company that controlled Hollinger's global publishing empire, were indicted today on federal fraud charges for allegedly fraudulently diverting from the U.S.-based Hollinger newspaper holding company more than $32 million through a complex series of self-dealing transactions. A seven-count indictment returned today by a federal grand jury in Chicago alleges that the individual and corporate defendants cheated public shareholders in the U.S. and Canada, as well as Canadian tax authorities of tax revenue, announced Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois. The defendants allegedly engaged in a series of secret transactions, in connection with selling various newspaper publishing groups in the United States, that were designed to enrich certain corporate officers by funneling payments disguised as non-competition fees to a company they controlled, as well as to themselves individually, at the expense of Hollinger's public shareholders and corporate assets.

The transactions involved Hollinger International, Inc. ("International"), a U.S. holding company based in Chicago that is publicly traded on the New York Stock Exchange, and Hollinger Inc. ("Inc."), a Canadian holding company based in Toronto that is publicly traded on the Toronto Stock Exchange. Through various operating subsidiaries, International owned and published newspapers around the world, including the *Chicago Sun-Times, The Daily Telegraph* in London, and the *Jerusalem Post* in Israel, and numerous community newspapers in the United States and Canada. Inc.'s primary asset was its controlling interest in International. Although Inc. held less than a majority of International's equity, it controlled a majority of International's stock voting power through heavily-weighted Class B common stock that had 10-1 voting preference over the Class A common stock held by International's public shareholders.

The defendants are:

F. David Radler, **63**, **of Vancouver, B.C.**, a Canadian citizen and former publisher of the *Chicago Sun-Times*. Radler, through FDR Ltd., owned approximately 14.2 percent of co-defendant Ravelston Corporation Limited ("Ravelston"), of which he was president. Radler was also the Deputy Chairman of the Board of Directors, the President and the Chief Operating Officer of both International and Inc. At International, Radler's principal duties were managing the newspaper operations of the company in the United States and parts of Canada. On those occasions when International or its subsidiaries bought or sold newspapers, Radler often was involved in negotiating the business terms of those transactions;

Mark S. Kipnis, **58**, **of Northbrook, IL**, an attorney specializing in transactional law since 1974, was Vice President, Corporate Counsel, effectively International's top in-house counsel; and

The Ravelston Corporation Limited, a Canadian company based in Toronto and which is now in Canadian bankruptcy proceedings. Ravelston was a privately-held company with 98.5 percent of its equity owned by officers and directors of International and Inc. Ravelston's controlling shareholder, who controlled its affairs, was also the Chairman and Chief Executive Officer of International and Inc. Ravelston's principal asset was its controlling interest in Inc., which it held directly and through various subsidiaries, and which at all relevant times exceeded 70 percent of Inc.'s equity. Thus, Ravelston was a controlling shareholder of International through its controlling interest in Inc.

All three defendants were charged with five counts of mail fraud and two counts of wire fraud. All three will be arraigned in U.S. District Court at a later date.

Radler, through his attorney, authorized the government to disclose that he is cooperating with the investigation and expects to enter a plea of guilty at a later date.

Mr. Fitzgerald, a member of the President's Corporate Fraud Task Force, announced the charges together with Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation; Kenneth T. Laag, Inspector-in-Charge of the U.S. Postal Inspection Service in Chicago; and Byram W. Tichenor, Special Agent-in-Charge of the Internal Revenue Service Criminal Investigation Division in Chicago. The Corporate Fraud Task Force was created by President Bush in July 2002 to oversee and direct federal law enforcement actions against fraud and corruption at American corporations.

"The investing public has a right to expect that officers and directors of publicly traded companies are managing, not stealing, the shareholder's money," Mr. Fitzgerald said. "And they have a right to expect that payments to insiders are being reviewed, not hidden from their view. Sadly, today's indictment charges that the insiders at Hollinger — whose job it was to safeguard the shareholders — made it their job to steal and conceal."

Special Agent in Charge Grant added, "To put in simply, the charges announced today are an example of corporate officers conspiring to defraud their shareholders by outright theft."

The indictment alleges that Ravelston and its agents, including Radler and others, repeatedly abused their authority as managers of International to fraudulently benefit themselves at the expense of International and its public shareholders. On multiple occasions, Ravelston's agents fraudulently caused themselves and Inc. to become recipients of millions of dollars of non-competition fees -

which were moneys paid by companies purchasing newspapers from International ostensibly to ensure that the sellers did not subsequently operate a rival newspaper – that should have and otherwise would have been paid to, and remained an asset of International. Ravelston and its agents failed to disclose these so-called "related party transactions" – or business deals involving company insiders – to International's Audit Committee consisting of three independent directors, which enabled Ravelston and its agents to conceal the scheme, continue as International's managers, and execute future thefts.

Defendants and other of Ravelston's agents also allegedly abused their positions as International's managers by causing International to pay bonuses and then fraudulently mischaracterizing the bonus payments to themselves as non-competition fees in order to defraud Canadian tax authorities. Kipnis, who was responsible for various corporate duties, allegedly aided and abetted the scheme by implementing the directives of Ravelston's agents and by failing to disclose this misconduct to International's Audit Committee. As a result, the defendants and their co-schemers fraudulently diverted more than $32 million from International, and fraudulently deprived International of its right to receive honest services from its controlling shareholders, its officers, its directors, and its attorneys.

Between at least January 1999 and May 2001, the defendants allegedly defrauded International and its shareholders in connection with six separate sales by International and its subsidiaries of community newspapers and a trade publication. These transactions were as follows:

American Trucker, sold for $75 million in May 1998;

Community Newspaper Holdings Inc. (CNHI I), sold for $472 million, Feb. 1, 1999;

Horizon Publications Inc., owned by Radler, Kipnis and other International executives, sold for $43.7 million, March 31, 1999;

Forum Communications Inc., sold for $14 million, Sept. 30, 2000;

PMG Acquisition Corp., sold for $59 million, Oct. 2, 2000; and

Newspaper Holdings Inc. (CNHI II), a subsidiary of CNHI I, sold for $90 million, Nov. 1, 2000.

Radler supervised negotiating the business terms of each of the transactions, and Kipnis participated in the documentation and closing of each deal, according to the indictment. The closing documents for each sale included a non-competition agreement signed by International, promising the purchaser that International would not acquire or establish a newspaper within a certain geographic distance from the publications it sold for a certain period of time after the sale. It was not unusual for newspaper transactions to include such agreements by the seller because purchasers are buying the newspaper's trade name, its subscriber and advertiser bases and often demand the seller's agreement not to operate a rival newspaper. It is also not unusual for commercial and tax purposes for the buyer and seller to allocate a portion of the sales proceeds as compensation for the seller's non-competition agreement. Radler and Kipnis both owed a duty to International to maximize International's share of the proceeds allocated to non-competition agreements. If they or any other controlling shareholder, officer or director of International received a portion of the non-competition proceeds, Radler, Kipnis and any other person owing such a duty was obligated to disclose the information to International's Audit Committee so that independent directors could review the transaction and determine its fairness to International.

The indictment further provides that in 1996, a Canadian tax court held that non-competition fees were not taxable under Canadian tax law, and a higher court upheld this decision in December 1999. One of Ravelston's principals, who was also an officer of both International and

Inc., was extremely knowledgeable about tax law. These court decisions created a potential tax benefit for Canadian taxpayers who legitimately received non-competition payments, and several officers of International, including Radler, were Canadian taxpayers.

According to the indictment, the closing documents for the *American Trucker* sale provided that International would sign a non-competition agreement and that $2 million of the sale proceeds would be paid to International in exchange for its promise not to compete. Radler signed the purchase and non-competition agreements on behalf of International. In January 1999, Ravelston's agents, including Radler, decided that International would pay this $2 million to Inc., essentially stealing it from International's corporate assets. Kipnis helped implement this decision by signing the $2 million check that International issued and sent to Inc. around Feb. 1, 1999. By failing to disclose this related-party payment to International's Audit Committee, Radler, Kipnis and Ravelston allegedly fraudulently deprived International and its shareholders of honest services by all of the International agents who were involved. Ravelston, in turn, benefitted from the alleged theft because it owned a greater percentage of Inc. than it did of International.

Similarly, the indictment alleges the following in connection with each of the other sales:

> CNHI I – $50 million of the sale proceeds was allocated to International for its promise not to compete. In January 1999, Ravelston's agents, including Radler, decided that Inc. would be inserted in the agreement and would receive $12 million of the $50 million. Kipnis helped implement this decision by convincing CNHI to agree to the change and causing $12 million to be wired to Inc. at the closing. In February 1999, Ravelston's agents caused Inc. to use the $14 million that it received from the *American Trucker* and CNHI I sales to make a payment on a debt that Inc.

owed to International. In effect, the indictment alleges that the defendants caused the non-compete moneys which should have become a corporate asset of International to be "round-tripped"; that is, they fraudulently caused International to unknowingly repay itself a significant portion of an overdue debt that Inc. owed to International.

The "Template" - in January 1999, Ravelston's agents, including Radler, decided that Inc. would be inserted as a non-compete promisor and would receive 25 percent of the proceeds allocated to the non-competition agreement from all future sales of International's U.S. community newspapers. This decision, of which Kipnis was aware and helped implement, was known to the co-schemers as the "template." The indictment alleges that the initiation of the template in all future transactions would have the effect of siphoning off 25 percent of any proceeds allocated to International's non-competition agreement regardless of whether the buyer requested or valued Inc.'s agreement not to compete.

This and the subsequent fraudulent reapportionments of millions of dollars in non-competition payments from International to Inc. was, the indictment charges, a method of significantly benefitting the controlling shareholders in Ravelston, including Radler. Thus, despite having only a minority ownership in International, Ravelston's controlling shareholders were able to maintain voting control over International through Inc.'s ownership of International's "super-voting" Class B Common Stock. The result of International's ownership structure was that every $100 transferred out of International and into Inc. would effectively "cost" Ravelston's controlling shareholders $19, but give them $62 as Inc.'s controlling shareholders, thereby tripling their funds at the direct expense of International's non-controlling shareholders. Similarly, every $100 that was transferred out of International and into Ravelston again would cost Ravelston's controlling shareholders $19, but give them $79. As for funds transferred out of International directly to Ravelston's controlling shareholders, they would receive the full amount of the funds, forgoing their 19 percent equity stake in International. Thus, the controlling shareholders of Ravelston were in a position to exert both their management positions and voting control at International to transfer money to themselves, and away from International's non-controlling and public shareholders, at a very low cost given their minority equity stake in International.

> Horizon – International's sale of Horizon was not an arms-length transaction because Horizon was owned by Radler and other Ravelston agents, who decided that pursuant to the template, Inc. would receive $1.2 million of the $5 million allocated to the non-competition agreement; leaving $3.8 million with International. As alleged in the indictment, the defendants effectively negotiated an agreement with themselves (Inc.), not to compete against themselves (Horizon), resulting in their paying themselves approximately $1.2 million;
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> Forum, Paxton and CNHI II – in the summer of 2000, four of International's officers, including Radler, decided to insert themselves as individual non-compete promisors in the sales, thus receiving a portion of the proceeds personally and defrauding the tax authorities in Canada. Following the template, Kipnis offered both International and Inc. as non-competitors and proposed splitting the non-competition compensation 75 percent to International and 25 percent to Inc., without any request to do so from the buyers. At the closings, Kipnis caused $100,000 and $500,000, respectively, to be wired to Inc.. Although no individual signed any non-competition

agreement, on April 6, 2001, Radler, Kipnis and their co-schemers caused a subsidiary of International to pay a total of $600,000 to themselves and two other International officers;

CNHI II – Following the template, defendants caused Inc. to be fraudulently inserted as a non-compete promisor without any demand from the buyer, and $750,000 of the $3 million allocated to the non-competition agreement was wired to Inc. In addition, four International officers, including Radler and Kipnis, fraudulently implemented a plan to pay individual non-competition fees. Just prior to the closing, the four International officers decided that they would be paid a total of $9.5 million that should otherwise have been paid to International. Kipnis implemented this decision by convincing the buyer to allow the four individuals to be added as promisors to the non-competition agreement. The indictment alleges that it was immaterial to the buyer if the number of promisors was modified since doing so did not increase the purchase price. Kipnis signed the non-competition agreement on behalf of the four individuals, and at the closing attempted to convince the buyer to wire the $9.5 million directly to the four individuals. The buyer refused, in part, because the buyer had never heard of some of the individuals. Kipnis arranged for the $9.5 million to be sent to American Publishing Company, an International subsidiary, and then caused $9.5 million to be transferred to the four International officers.

In another facet of the scheme, in February 2001, the indictment alleges that the four International officers, including Radler and Kipnis, decided that International would pay them bonuses totaling $5.5 million, and then caused International to label the payments as non-competition payments in order to take advantage of the potential tax advantages that genuine non-competition payments received under Canadian tax laws, thus defrauding the Canadian tax authority. Kipnis helped implement this decision by preparing non-competition agreements between American Publishing and each of the four International officers, and then signing the agreements on behalf of American Publishing. In the agreements, which were backdated to Dec. 31, 2000, each of the four International officers promised not to compete with American Publishing for three years after each had left International's employ. These agreements were a contrivance created to facilitate and conceal the fraud on the Canadian tax authorities. American Publishing was the subsidiary through which International had owned its United States community newspapers outside the Chicago area. By the time these agreements were signed, International had sold all of these newspapers but one – a small weekly newspaper in Mammoth Lake, Calif. International was in the process of attempting to sell that newspaper and had no intention of re-entering the community newspaper business in the United States. There was no legitimate justification for these non-competition agreements, according to the indictment.

The government is being represented by Assistant U.S. Attorneys Eric H. Sussman, Thomas Shakeshaft and Robert W. Kent, Jr.

As to the individual defendants, upon conviction each count of the indictment carries a maximum penalty of five years in prison and a $250,000 fine. As an alternative maximum fine, the Court may impose a fine of twice the gross profit to any defendant or twice the loss to any victim, whichever is greater. As to Ravelston, the penalty is a fine of $500,000 for each count of conviction or the alternative fine explained above. The Court, however, would determine the appropriate sentences to be imposed.

The public is reminded that an indictment contains only charges and is not evidence of guilt. The defendants are presumed innocent and are entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

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