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Second Circuit Affirms Option Backdating Conviction

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The U.S. Court of Appeals for the Second Circuit recently affirmed the conviction of James Treacy, the former Chief Operating Officer and President of Monster Worldwide, Inc., in connection with a conspiracy to backdate stock options. In September 2009, Mr. Treacy was sentenced to 24 months' imprisonment and ordered to pay restitution and forfeiture of over $6 million. Mr. Treacy appealed his sentence arguing, among other things, that (1) the district court abused its discretion in conducting voir dire when it declined to question prospective jurors about their views on corporate America generally, and (2) the district court committed clear error in calculating the forfeiture amount.

Mr. Treacy proposed that the district court ask potential jurors 77 questions, a number of which pertained specifically to the jurors' experiences with, and views of, corporate America. The district court refused to give the jury a written questionnaire or to inquire directly about bias toward corporate executives, instead orally asking each juror about his or her knowledge of stock options generally and experience therewith. On appeal, Mr. Treacy argued that the district court's failure to inquire broadly about juror biases against corporate America, in light of the general animosity in the spring of 2009 towards corporate executives, constituted reversible error. The court was unpersuaded by this argument, noting that a district court may find that warning a jury against an improper bias, which was given by the district court here, may be more effective in some cases than inquiring specifically about that bias.

Mr. Treacy also argued that the district court's forfeiture award was improperly inflated because it was based on the wrong measurement dates for the issuance of the stock options. The Second Circuit rejected Mr. Treacy's argument that the option grant should have been calculated from the date Monster's chief executive made a commitment to grant him the options. The court pointed out that the chief executive, who was a participant in the backdating scheme, did not have the authority to grant the options without the approval of the board's compensation committee. As a result, the date of the chief executive's decision to grant the options was irrelevant, and the court affirmed the district court's decision to use the dates when the options were granted in accordance with Monster's procedures. The court did, however, accept Mr. Treacy's argument that the district court incorrectly decided to assign the same measurement date to all options granted as of a certain date even though the evidence established that the options were granted in rounds. (*U.S. v. Treacy*, 2011 WL 799781 (2d Cir. March 9, 2011))