Adelphia Bargain Emerged After 'Brutal' Marathon Talks

By Michael Bobelian
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AFTER MONTHS of "brutal" negotiations involving hundreds of millions of dollars, John and Timothy Rigas, the father-and-son duo who controlled the cable giant Adelphia, are to be sentenced Monday for conspiring to use the company as their personal piggybank.

A Manhattan federal court jury found the Rigases guilty of 18 counts of fraud-related offenses in July 2004. However, their sentencing was postponed numerous times, taking a back seat to ongoing talks among dozens of attorneys for the Rigases, Adelphia, and two government agencies, the Department of Justice and the Securities and Exchange Commission.

Those marathon negotiations, which one participant described as "a brutal process," finally led to a four-way $715 million settlement on April 25, which was approved by three federal judges in May.

A review of court documents and settlement agreements and interviews with participants--most of whom would not be quoted by name --discloses that the issues were so complex and the relationships of the parties became so strained that negotiations nearly collapsed this spring.

The bankrupt Adelphia insisted on taking back all of the assets that the Rigases had allegedly taken from the company even if that left the Rigases with no way to pay for their defense.

Government lawyers were equally determined. On several occasions before the parties finalized a deal, prosecutors threatened to indict Adelphia if it did not capitulate, according to a lawyer familiar with the negotiations. In all likelihood, that would have led to the company's demise, scuttling its plan to sell its cable systems to Time-Warner.

The last group, the Rigases, including family members not involved in criminal proceedings, fought to preserve as many of their assets as possible while shielding themselves from further liability in related lawsuits.

Unlike other recent corporate scandals, the issues could not be handled piecemeal. Instead, all of the ongoing disputes converged, requiring the SEC and U.S. Attorney for the Southern District, David Kelley, Adelphia, and the Rigases to negotiate a global resolution. This convergence was necessary because the parties were scrambling for the same bounty, a host of cable companies and unrelated properties owned by the Rigases. Moreover, many of these holdings were intertwined with Adelphia, which John Rigas founded in 1952 and grew as a family business before taking the company public in 1986.

Adelphia, the nation's sixth largest cable operator, filed for bankruptcy in June 2002, soon after the investing public learned that the company had guaranteed more than $2 billion in loans made to the Rigas family. The revelation triggered a host of lawsuits from class actions plaintiffs while creditors pressed their rights in the bankruptcy reorganization proceedings taking place before Southern District Bankruptcy Judge Robert Gerber.

The SEC launched a civil complaint against both the Rigases and Adelphia in July 2002.

The U.S. Attorney's Office for the Southern District also joined the fray, filing criminal charges against the Rigases, John, Timothy and his younger brother, Michael, who was also an executive at the company, in September 2002. The government spared the company from an indictment, but it kept alive the threat of criminal action throughout the negotiations, according to Judge Gerber's decision approving the settlement.

Throughout 2003, financial discussions among the parties proceeded at a snail's pace while they concentrated their efforts on the upcoming Rigas criminal trial.

The Rigases brought in Peter Fleming Jr., of Curtis, Mallet-Prevost, Colt and Mosle to represent John Rigas at the trial. Timothy Rigas hired Paul Grand of Morvillo, Abramowitz, Grand, Iason, & Silberberg; Michael Rigas hired Andrew Levander of Swidler Berlin Shereff Friedman. (Mr. Levander has since moved to Dechert.)

After a four-month trial before Southern District Judge Leonard Sand, a jury found John and Timothy Rigas guilty of 18 counts of bank fraud and conspiracy to commit securities fraud and related charges. Michael Rigas was found not guilty of conspiracy and wire fraud. The jury could not decide on other charges against Michael Rigas, and the government has vowed to retry him. Former Adelphia treasurer Michael Mulcahey, who was represented by Buffalo attorney Mark Mahoney of Harrington & Mahoney, was acquitted of all charges.

Under normal circumstances, the Rigases would have been sentenced by the end of 2004, Adelphia would have likely settled the SEC charges, and the bankruptcy court would be administering claims from creditors.

But there was nothing normal about these circumstances because the government and Adelphia soon were vying for the same assets.

In the fall of 2004, prosecutors began forfeiture proceedings seeking to seize hundreds of millions in assets held by the Rigases.

In bankruptcy court, Adelphia claimed that the Rigases purchased those assets through the fraud committed against the company. In particular, Adelphia, which was represented by Boies, Schiller & Flexner, wanted 11 cable entities it operated on behalf of the Rigases, according to bankruptcy filings.

Meanwhile, the Rigases contested both these claims for what they considered legitimate family holdings.

Finally, the SEC still had outstanding claims against Adelphia and the Rigases in a case before Southern District Judge P. Kevin Castel. The SEC had extracted hundreds of millions in penalties and disgorgements in other large-scale frauds--$750 million from WorldCom, for instance-- and threatened to seek billions from Adelphia, according to Judge Gerber's opinion approving the settlement.

Even before the Rigas criminal verdict, the SEC had asked for at least $1 billion to settle civil claims, according to Judge Gerber's opinion. Adelphia responded by offering $175 million, according to Adelphia's filings.

Negotiations stalled and did not begin in earnest until after the Rigases were found guilty. At that point, the SEC, now joined by the Department of Justice, insisted on $1 billion, according to Judge Gerber.

Sometime during the fall, Adelphia boosted its legal team by adding Willkie Farr & Gallagher; Covington & Burling and Foley & Lardner. However, Boies Schiller continued to play a leading role in the negotiations for Adelphia. In fact, there were so many lawyers involved in the case that Judge Gerber had to devote the first eight pages of his opinion to a full list of the participating law firms.

Prosecutors told Adelphia that the amount the company was willing to pay would have a direct impact on whether the government would bring an indictment, according to Judge Gerber's opinion.

Adelphia's board returned with a $300 million offer in December, according to Adelphia's filings. Prosecutors called the offer "just this side of insulting," Judge Gerber wrote.

To make matters worse for the company, if the government succeeded in forfeiting the assets held by the Rigases, Adelphia may have lost any chance of recovering those assets for itself, said one lawyer familiar with the negotiations.

In February, Adelphia's board raised its offer to $600 million, according to Adelphia's filing.

The government responded with a counter-offer of $750 million sometime this spring, according to Judge Gerber's opinion. It also called for a global resolution of all claims both the government and Adelphia had against the Rigases. Finally, it agreed to allow the Rigases to keep about $90 million of their assets estimated to total more than a $1 billion.

Negotiations proceeded in fits and starts as the parties inched toward an agreement, said one lawyer involved in the negotiations.

To break the logjam, on Feb. 28, 2005, Adelphia's CEO William Schleyer and a director, Anthony Kronman, met face-to-face with Mr. Kelley hoping their personal involvement could bridge the gap. Mr. Kelley remained unmoved, according to Judge Gerber's opinion. The U.S. attorney told the Adelphia executives that the government was confident it would win the forfeiture litigation.

From February through April, the parties pressed ahead, but negotiations nearly collapsed on several occasions. "There were days during this [time] when we were inches away from the entire thing blowing up," Lawrence McMichael of Philadelphia-based Dilworth Paxson said. Along with lawyers from Brown Raysman Millstein Felder & Steiner, Mr. McMichael represented the Rigases. Other lawyers involved in the settlement talks confirmed his description of events.

Each time that happened, someone acted as the voice of reason and saved the talks, Mr. McMichael said.

Often, that person was Mr. Kelley. Working with his two lieutenants, the trial lawyers from the Rigas criminal case, assistant U.S. attorneys Richard Owens, chief of the fraud unit, and Christopher Clark, Mr. Kelley played a central role as a mediator and negotiator during the settlement talks.

On more than one occasion, lawyers for Adelphia and the Rigas family bivouacked in the U.S. Attorney's Office in downtown Manhattan for round-the-clock talks.

"The discussions became very intense," said Mr. McMichael of the negotiations that started early in the morning and went late into the night, forcing lawyers to sneak in naps and showers before returning to the negotiating table. "But the stakes were so high, we all recognized we had to get it done."

Mr. Kelley and fellow prosecutors shuttled between conference rooms to hash out the details between the adversaries, Adelphia and the Rigases, Mr. McMichael said.

At the same time, Mr. Kelley's office and representatives of the SEC negotiated settlements with Adelphia and the Rigases.

After a last flurry of discussions, each interested party sacrificed a portion of its original position for the deal to come to fruition. "It was a very hard fought settlement," Mr. McMichael said.

Adelphia would receive the cable entities it coveted and extricate itself from a possible indictment while settling civil claims with the SEC. The government established a restitution fund for aggrieved investors and a non-prosecution agreement with Adelphia assuring future cooperation. The Rigases retained some portion of their assets and a degree of immunity from future civil, although not criminal, litigation.

Judges Gerber, Sand, and Castel all approved the settlement over complaints lodged by creditors arguing the restitution fund pushed aside the rights normally accorded to them in bankruptcy proceedings.

W.R. Huff, joining class action litigants who complained that the settlement undermined their claims against the Rigases, asked the U.S. Court of Appeals for the Second Circuit to reject the settlement. That forced a further delay in sentencing, but a two-member appellate panel on June 10 quickly rejected the request. Other motions disputing the settlement terms are pending.