



## Consequences for Attorneys, Others in High-Stakes Cases

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High-stakes criminal and civil litigation can sometimes have major consequences not only for the defendant, but also for others involved such as defense counsel.

On March 23, 2011, Joseph Nacchio – the former Qwest CEO now serving a 70-month prison sentence for insider trading – filed suit against the lawyers who represented him in criminal and civil SEC proceedings, alleging overbilling and professional negligence. Nacchio was convicted of insider trading in 2007 based on the assertion that he sold stock in the company without disclosing material information.

In the complaint, filed in New Jersey Superior Court, Nacchio alleges that his attorneys billed him for more than \$25 million, a sum that included costs for attorney underwear, staff breakfasts, and hotel room movies during the six-week criminal trial in Denver. Nacchio alleges that the billing was excessive. His lead attorney was former federal judge Herbert Stern of Stern & Kilcullen LLC in Roseland, New Jersey.

Beyond that, Nacchio also alleges that his attorneys committed professional malpractice. Among other things, Nacchio asserts that, because of the lawyers' failure to comply with rules regarding expert witnesses, the trial court barred his use of a critical expert witness who would have testified that the undisclosed information in question, when released to the public, was not responsible for the drop in the price of his company's stock.



On appeal, Nacchio had asserted that the trial judge improperly excluded “the heart of [his] defense.” The U.S. Court of Appeals for the 10th Circuit declined to reverse Nacchio’s conviction on those grounds, but a dissenting opinion specifically characterized Nacchio’s lawyers’ performance as inexplicable and as “below the level expected of competent counsel.”

Is this a case of attorneys who failed to represent a high-profile client in accordance with the standards demanded by ethics rules? Or is it merely an instance of a criminal defendant who was unhappy with the result of his trial? Of course, the complaint only represents allegations, not proven facts. But Nacchio’s lawsuit against his erstwhile attorneys is another reminder that lawyers whose clients do not get the results they want may turn on their lawyers, and that lawyers who do not give their clients competent representation may find that they too can pay a price.

*Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

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