

EXHIBIT 7

Case No. 11 Civ 5843 (JPO)

DECLARATION OF JAY WARD BROWN IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS
DEFENDANTS' COUNTERCLAIM

(*People v. Gilman*, Indictment No. 4800-05, Hr'g Tr. 36-37, Apr. 17, 2008
[NYDOI/Gilman-00115])

0001

1 SUPREME COURT NEW YORK COUNTY
 2 TRIAL TERM PART 31
 3 -----X
 4 THE PEOPLE OF THE STATE OF NEW YORK
 5 INDICTMENT #
 6 4800-05
 7
 8 AGAINST : CHARGE
 9 :
 10 WILLIAM GILMAN, [REDACTED] : GDL
 11 :
 12 Defendants :
 13 -----X
 14 Sentence
 15
 16 100 Centre Street
 17 New York, New York
 18 10013
 19 April 17, 2008

20
 21 B E F O R E:
 22
 23 HONORABLE JAMES YATES,
 24 JUSTICE OF THE SUPREME COURT
 25
 26 APPEARANCES: (Same as previously noted)
 27
 28 -----X
 29 THE CLERK: Number seven, William
 30 Gilman and [REDACTED]
 31 THE COURT: Okay, you have
 32 appearances?
 33 Before we move to sentencing, the
 34 first issue is the 330 motion. Anything
 35 either of you want to say or you want to

1 law. Previously, when we discussed it 11
 2 months ago or whatever, I think I denied it
 3 and I think the only ground I gave was I
 4 accepted the People's argument that brokers
 5 were not included.

6 But, in looking back at it after
 7 that, there is another thing that troubled
 8 me. That is it looked to be there are only
 9 civil remedies. In other words, the
 10 superintendent of insurance promulgated
 11 regulations for unlawful combinations, and
 12 the superintendent has the authority to
 13 impose fines.

14 It cannot be, and I don't think it
 15 was the Legislative intent that preempted
 16 the Penal Law. The penal consequences
 17 written into the Donnelly Act.

18 So, even if there was a temporary
 19 overlap, the superintendent could have
 20 imposed a fine.

21 I don't see how that in any way
 22 preempted the Donnelly Act during the period
 23 of time charge in the indictment.

24 So unless I'm wrong and I missed
 25 something, it is only the civil penalties.

1 just rest on the papers?
 2 MR. DEVEREAUX: We will rest on
 3 the papers.
 4 MR. CLEARY: The same with us.
 5 MS. SAS: We also rest on the
 6 papers.
 7 THE COURT: There are several
 8 points you raised in the 330, if I can find
 9 them.
 10 One, is that the horizontal
 11 conspiracy was not proven.
 12 I think under the caselaw,
 13 notwithstanding the finding of the New
 14 Jersey civil case where there was a
 15 conscious awareness of a larger arrangement
 16 and participation in it, that is sufficient
 17 for circumstantial evidence for the
 18 horizontal conspiracy.
 19 I think that is pretty much what I
 20 said during summations when you objected, so
 21 I'll abide by that ruling. The
 22 circumstantial inference can be drawn, so
 23 I'll deny that aspect.
 24 On the insurance -- the question
 25 whether it is superseded by the insurance

1 right?
 2 MS. SAS: I believe so, your
 3 Honor.
 4 MS. NOCHLIN: I don't want --
 5 there might --
 6 THE COURT: That is all I saw.
 7 MS. NOCHLIN: There might be an A
 8 misdemeanor, I don't want to speak without
 9 having another look at it.

10 THE COURT: It is true somewhere
 11 in the law any violation or regulation is a
 12 misdemeanor or something like that, but I
 13 don't read just because they gave the
 14 superintendent of insurance temporary
 15 authority to levy fines without going to
 16 court, I don't think that was meant to
 17 supersede the Donnelly act, so I denied it.

18 If I can find the other point.
 19 Oh, on the intent count. I think the
 20 intent, I think we talked about this ad
 21 nauseam. That was in a per se prosecution,
 22 the intent is to advance the acts, so I
 23 don't think it is inconsistent with my
 24 finding there was no intent or the People
 25 failed to prove beyond a reasonable doubt an

1 wrongdoing.

2 And in fact, your Honor has

3 already sentenced one cooperating defendant

4 in this case, [REDACTED], who is an

5 underwriter at Zurich. He pled guilty to

6 attempting to violate the Dornelly act, an A

7 misdemeanor, and your Honor sentenced

8 [REDACTED] to three years probation.

9 Surely these defendants McMenney

10 and Gilman who were integral to enforcing

11 the conspiracy, who held very high positions

12 within Excess Casualty, who directed others

13 to participate, who refused to accept any

14 responsibility, and who were convicted of a

15 felony after a full and fair trial deserve a

16 greater penalty than a low level underwriter

17 who was acting at the behest of his

18 supervisors.

19 This Court should also incarcerate

20 defendants because their conduct had such a

21 serious impact on individual victim clients

22 and on the integrity of the market.

23 Incarceration will demonstrate to

24 the public that insurance brokers are

25 required to act in accordance with the

1 principles of a free market just as

2 individuals in any other market securities

3 or commodities market are and will deter

4 others considering similar illegal conduct.

5 Absent a judicially imposed

6 sanction proportionate to the seriousness of

7 this anti-competitive behavior, white collar

8 criminals may rationalize punishment of

9 criminal behavior simply as a cost of doing

10 business or even worse, see it as normal

11 business conduct.

12 Clearly, this has been a difficult

13 time for the defendants's families, and we

14 are sympathetic to their situation.

15 However, these defendants's circumstances

16 are not unique. All defendants who come

17 before your Honor have families, and these

18 defendants should have thought more about

19 their families and the affects their

20 behavior would have on them before they

21 chose to engage in their criminal conduct.

22 Now, defendant Gilman requests you

23 sentence him to a conditional discharge and

24 community service. And your Honor, that is

25 just plain ridiculous. He's here to be

1 punished, and honestly, I was waiting for

2 the part where he requested his letter of

3 apology.

4 MR. CLEARY: Objection.

5 THE COURT: I'll disregard it.

6 MS. SAS: Now, defendant McMenney

7 requests probation and community service.

8 Neither defendant's request reflects the

9 serious nature of their conduct, nor would

10 it send the right message to the defendant

11 or to the public.

12 Furthermore, in terms of the

13 community service that defendant [REDACTED]

14 requests, it is very questionable how a

15 convicted felon who refuses to accept

16 responsibility for his conduct would make an

17 appropriate mentor to youthful offenders,

18 which is apparently what Cases is hoping to

19 use him for.

20 Now, we don't feel it is

21 appropriate for him to be telling

22 impressionable young people already at risk

23 they should not take responsibility for what

24 they did.

25 Both defendants also request

1 relief from civil disabilities, which we

2 vehemently object to.

3 The Court should not be sending

4 the message to these defendants and to the

5 public after being found guilty of such

6 egregious conduct, they should be able to

7 remain employed in the very industry they

8 conducted their criminal behavior.

9 They gave up their opportunity to

10 remain in the industry when they decided to

11 commit this crime. And your Honor should

12 order they surrender their broker license to

13 the Insurance Department and avoid the state

14 having to expend available resources having

15 a hearing about that.

16 It is frankly also unbelievable

17 someone in the insurance industry currently

18 employs defendant [REDACTED]. But it is more

19 unbelievable his employer asks your Honor to

20 protect McMenney's broker's license.

21 All of the cooperating defendants

22 in this case had to surrender their

23 licenses, and the defendants are living in

24 some sort of alternate universe if they

25 think it is appropriate for the Court to

1 extend itself and protect their license
2 after the conduct they engaged in.

3 These defendants come before your
4 Honor represented by many lawyers from fancy
5 firms. But your Honor, they are no better
6 than any other defendant who comes before
7 you.

8 They do not deserve any better
9 treatment or special consideration than
10 anyone else who comes before you.

11 Some people may argue that white
12 collar crimes are not as deserving of
13 incarceration as street crimes. But that
14 just does not work in our justice system
15 where all criminals should be treated fairly
16 and equally.

17 Most other criminals have only one
18 victim. These defendants had a whole market
19 and over hundreds of clients they victimized
20 over more than five years.

21 Please do not send a message that
22 the label white collar crime equals less
23 punishment and means the conduct is not as
24 serious as other crimes.

25 The defendants are here to be

1 punished, your Honor. This is not just
2 about deterrence. We are not here to go
3 through motions because that is what happens
4 at the end of a trial. We are here because
5 defendant Gilman and defendant [REDACTED] were
6 convicted of a crime and they need to be
7 punished for it.

8 The maximum incarceration of one
9 and one third to four years is the only
10 thing that will adequately punish these
11 defendants and deter such serious criminal
12 conduct. Thank you.

13 THE COURT: Who is going first,
14 Mr. Cleary or Mr. Deversaux?

15 MR. CLEARY: I'll go first, your
16 Honor, thank you.

17 Your Honor, I want to cover four
18 main points during the course of my
19 sentencing argument.

20 First, I want to talk about Bill
21 Gilman the person, and his family, because
22 at the end of this process that is who you
23 are going to be sentencing; a person, and in
24 a very real sense, his family.

25 I want to talk about the offense

1 conduct and the Court's verdict which I
2 believe was grossly mischaracterized in the
3 pre-sentence report, and severely distorted
4 in the People's sentencing memo, and even in
5 their remarks today.

6 Third, I want to address the well
7 recognized goals of the sentencing process
8 and illustrate how they have already been
9 fully served in this case, making a period
10 of imprisonment inappropriate in this case.
11 And then fourth, balancing all these
12 considerations, make my sentencing request
13 to the Court.

14 You are about to sentence an
15 individual who had an entire life, a
16 completely blameless life prior to November
17 1998 when the conspiracy is alleged to have
18 begun. Someone who has led a completely
19 blameless life since September 2004 when the
20 conspiracy ended.

21 And accepting the Court's verdict
22 as I must, except for the very few instances
23 in which the prosecution witnesses have
24 testified that Bill Gilman said something
25 venal, he has led a completely blameless

1 life during the entirety of the indictment
2 period.

3 Who is Bill Gilman? He's a very
4 complex individual. He's a lot of things to
5 a lot of people. But starting with the
6 people to whom he's the most important thing
7 in the world, Bill Gilman is a loving
8 husband and a loving father.

9 He's been married for 40 years to
10 one woman, his charming wife [REDACTED]. She
11 was in court everyday during the course of
12 this trial and is here today with us.

13 With [REDACTED], Bill Gilman raised
14 two beautiful daughters. [REDACTED] who is
15 only 26 when her life was turned upside down
16 as a result of this investigation, and
17 [REDACTED], who was only 28 when this ordeal
18 started for her. Many days they were in
19 court as well during the course of the trial
20 and are with us here today.

21 Over four decades, Bill and
22 [REDACTED] Gilman have created a close, warm
23 nurturing supportive nuclear family.

24 Bill Gilman is devoted to his
25 family, and they are devoted to him.