

# EXHIBIT C

Case No. 11 Civ 5843 (JPO)

DECLARATION OF KATHARINE LARSEN IN SUPPORT OF  
DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

(*People v. Gilman*, Indictment No. 4800-05, Hr'g Tr. 8-16, Apr. 17, 2008  
[NYDOI/Gilman-00095-98])

0001

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

18  
 19 B E F O R E:  
 20  
 21 HONORABLE JAMES YATES,  
 22 JUSTICE OF THE SUPREME COURT  
 23  
 24 APPEARANCES: (Same as previously noted)  
 25  
 26 -----  
 27 THE CLERK: Number seven, William  
 28 Gilman and [REDACTED]  
 29 THE COURT: Okay, you have  
 30 appearances?  
 31 Before we move to sentencing, the  
 32 first issue is the 330 motion. Anything  
 33 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 superceded 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 supercede 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 intent to defraud.  
2 I don't think that is inconsistent  
3 with the intent finding in the Donnelly Act  
4 conspiracy, so I deny that.

5 Over to the last thing. Was that  
6 it, or did I miss something?

7 MR. DEVEREAUX: Per se standard,  
8 your Honor.

9 THE COURT: Oh yeah. Okay, that  
10 goes back to the larger arrangement  
11 argument.

12 Basically, their theory was that  
13 the broker worked together to establish a  
14 horizontal barrier with insurance companies  
15 acting together, and I think that is a  
16 horizontal. Anyway, I'm denying the DOJ  
17 unless there is anything else you want to  
18 say, which means we move on to sentence.

19 Before we start on the sentence,  
20 you had some specific objections to the  
21 contents of the reports themselves, right?

22 MR. CLEARY: Right. We had  
23 another question about the report. The copy  
24 of the report we received did not have a  
25 recommendation to the Court, and I'm

1 the other day and wanted -- you asked if you  
2 could speak to the sentencing for both  
3 simultaneously, is that what you said?

4 MS. SAS: I spoke with Mr. Kaplan  
5 this morning. If I can do it as a combined  
6 statement since much of what I need to say  
7 applies to each defendant.

8 THE COURT: Okay, go ahead.

9 MS. SAS: Thank you, your Honor.  
10 Defendant Gilman and defendant McHenry  
11 stand before your Honor today to be  
12 punished. And it is simply to punish these  
13 two particular defendants for the particular  
14 crime that they committed.

15 And in order to adequately punish  
16 defendant Gilman and defendant McHenry  
17 based on the scope and extent of their  
18 wrongdoing, their positions at Marsh Global  
19 Broking Excess Casualty, and the impact that  
20 their conduct had, and because of the  
21 necessity to deter others from  
22 anti-competitive behavior as well as the  
23 obligation to restore public confidence in  
24 the market, the People recommend that  
25 defendant Gilman and defendant McHenry each

1 wondering if probation has made a  
2 recommendation, and if we can get access to  
3 that.

4 THE COURT: I did not receive  
5 anything beyond this report. I think it  
6 just ends with guarded. What does it say,  
7 questionable? Excuse me, the final line in  
8 the report by the supervising probation  
9 officer is that these factors would tend to  
10 make the defendant's adjustment to the  
11 community questionable. That is all it  
12 said. I don't have anything additional.

13 MS. SAS: I also was curious about  
14 that, so I did speak with the supervising  
15 probation officer. I believe the last name  
16 is Patterson, and she told me this is what  
17 is call a modified pre-sentence  
18 investigation where they do not make a  
19 recommendation, and she said they typically  
20 do that after a conviction after trial.

21 THE COURT: Okay. Was there  
22 something else?

23 MR. CLEARY: That was it.

24 THE COURT: Okay, so who wants to  
25 go first? The People go first. You called

1 be sentenced to one and one third years to  
2 four years incarceration.

3 And in addition, the People urge  
4 the Court to impose the maximum fine under  
5 the Donnelly act which is one hundred  
6 thousand dollars for each defendant.

7 And as I just said, much of what I  
8 have to say today applies to both  
9 defendants.

10 But, I do want to start by  
11 discussing each of their roles, and --

12 THE COURT: Before you do that,  
13 they claim that the Penal Law provision with  
14 a five thousand dollar maximum fine  
15 supersedes the Donnelly act's one hundred  
16 thousand, is that a lawful request?

17 MS. SAS: Well, your Honor, we do  
18 think it is a lawful request given the  
19 salary and compensation each defendant made  
20 during their time they worked in Excess  
21 Casualty, which certainly was linked to the  
22 money they generated through the PSA's and  
23 their conspiracy.

24 THE COURT: But, the question is  
25 this. The Penal Law says the maximum fine

1 on the B felony is five thousand or double  
2 the gain. The Donnelly act says it is up to  
3 one hundred thousand dollars.

4 When you asked for a hundred  
5 thousand dollars they objected and said it  
6 has to be five thousand or else I have to  
7 have a hearing and make a finding about the  
8 gain.

9 I'm asking you whether you agree  
10 with their position or you don't?

11 MS. SAS: Judge, we would disagree  
12 with that and say the Donnelly Act, the  
13 general business law and what it provides  
14 for specifically to anti-competitive  
15 barriers is what should apply.

16 THE COURT: I think I agree with  
17 you on that. I'll listen to Mr. Cleary  
18 later on, but I think that is right. Go  
19 ahead.

20 MS. SAS: Now, I don't want to  
21 rehash all the facts here after 10 months of  
22 testimony and your Honor has our sentencing  
23 memoranda, but I do want to highlight a few  
24 things.

25 The first thing I must address is

1 how offensive Mr. Gilman's memo was. I take  
2 complete umbrage at his accusation that I  
3 fabricated facts.

4 I have been nothing but  
5 appropriate and professional during all  
6 these proceedings, and have faithfully  
7 represented the People of the State of New  
8 York in this case. And obviously, we have  
9 different views of the facts certainly, but  
10 it is absolutely outrageous to accuse me of  
11 lying.

12 Everything that was written in the  
13 sentencing memoranda was based on the facts  
14 of this case.

15 Now, each defendant's high rank in  
16 Excess Casualty Global Broking and their  
17 intergral roles in the conspiracy warrant  
18 incarceration.

19 Defendant Gilman was at one time  
20 the head of Excess Casualty, the head of the  
21 unit within Global Broking, and later he was  
22 named the executive director of marketing.  
23 He was a managing director, and one of the  
24 most senior people in the Excess Casualty  
25 Unit.

1 Even after he was named executive  
2 director of marketing, the defendant  
3 remained a powerful authority figure to the  
4 brokers and underwriters.

5 The defendant's role in the  
6 conspiracy is clear. In his own words,  
7 defendant declared he was the creator of the  
8 modern day PSA, and this was the mechanism  
9 which the conspiracy came to life and which  
10 brought millions of dollars to Marsh at the  
11 expense of its clients, and that is why we  
12 focus on the PSA's.

13 We know they are not illegal. We  
14 went forward on that theory, but they are  
15 the motivation here.

16 In addition to creating the PSA,  
17 Gilman convinced insurance carriers to  
18 participate in this scheme because he had  
19 established a system where in return for PSA  
20 payments, the market brokers protected  
21 insurance carriers's premiums and their  
22 books of business from competition, and thus  
23 from the pressures of the free market.

24 This protection also guaranteed  
25 the steady flow of money to Excess Casualty,

1 because the higher the premium, the more PSA  
2 revenue Excess Casualty receives.

3 Gilman systematically participated  
4 in and enforced this conspiracy and assuring  
5 the restraint of trade would continue so  
6 that he and his co-conspirators can reap the  
7 benefits.

8 What makes this conduct  
9 particularly deserving of incarceration is  
10 it was not a single act, but rather an  
11 ongoing repeated violation of the law.

12 He directed his subordinates to  
13 participate. He forced the insurance  
14 carriers to join, and he deliberately  
15 ignored Marsh's general counsel who told him  
16 to stop.

17 Now, defendant [REDACTED] was a  
18 supervisor, the team leader of the AIG LBC  
19 team, and in early 2003 he received a  
20 promotion to placement director.

21 After his promotion, defendant's  
22 supervisory role increased, so he was  
23 responsible for overseeing all of the LBC's  
24 on all of the LBC teams. And he like  
25 defendant Gilman, was a managing director

1 and one of the more senior people in the  
 2 Excess Casualty Unit.  
 3 He was a mentor to many of the  
 4 younger brokers there and yielded great  
 5 influence in the Excess Casualty Unit.  
 6 His role in the conspiracy is  
 7 clear as well. In his supervisory position,  
 8 McNenney directed the allocation of business  
 9 and enforced the bid-rigging and price  
 10 fixings. He controlled the market and  
 11 insisted that his subordinates also maintain  
 12 control, sometimes with yelling and  
 13 bullying.  
 14 AIG underwriters frequently asked  
 15 defendant for instructions on accounts,  
 16 knowing that they could not just compete for  
 17 business, wanting to know from defendant if  
 18 they should quote real quotes or protective  
 19 quotes.  
 20 Like defendant Gilman, [REDACTED] y  
 21 systematically participated and enforced  
 22 this conspiracy, and his conduct too is  
 23 deserving of incarceration because of its  
 24 ongoing repeated violation of the law.  
 25 Defendant McNenney had such a

1 tight hold on the Marsh Global Broking  
 2 Excess Casualty Unit that he sent an e-mail  
 3 to all the LBC's and to Joseph Peizer, who  
 4 at the time was the head of Excess Casualty  
 5 stating quote, we will not vary from any  
 6 gameplan or replace any carriers without my  
 7 explicit agreement.  
 8 I hope I did not leave any room  
 9 for misinterpretation in that last  
 10 statement.  
 11 And as your Honor heard, the  
 12 brokers did not misinterpret the defendant.  
 13 They continued to participate in the  
 14 anti-competitive conspiracy.  
 15 Now, defendant Gilman's control of  
 16 the market was his own insurance policy  
 17 against being fired.  
 18 His criminal behavior generated so  
 19 much money, that he became indispensable to  
 20 Marsh.  
 21 As a result of each of the  
 22 defendant's criminal behavior and that of  
 23 their co-conspirators, Global Broking Excess  
 24 Casualty generated huge revenues, much of it  
 25 pure profit.

1 For instance, in 2002 the PSA  
 2 revenue to Excess Casualty was over 105  
 3 million dollars. And in 2003 it was over  
 4 144 million dollars.  
 5 During the five year period of the  
 6 crime, the conspiracy generated more than  
 7 three hundred million dollars in PSA revenue  
 8 for Excess Casualty alone.  
 9 Gilman repeatedly stated to  
 10 colleagues that he believed nothing could  
 11 happen to him because he made too much money  
 12 for the company.  
 13 Defendant was correct in that  
 14 respect. He was never fired. Defendant's  
 15 belief and immunity from the rules was also  
 16 demonstrated by the repeated complaints  
 17 against him at Marsh about his workplace  
 18 behavior.  
 19 Now, while both defendants argue  
 20 they did not profit from their crime, that  
 21 just is not the case.  
 22 Despite Gilman's bad workplace  
 23 behavior, not only did he maintain his job,  
 24 he was rewarded handsomely for it. In 2002  
 25 his total compensation was 690 thousand

1 dollars. And in 2003 he earned 712  
 2 thousand, five hundred dollars. Both years  
 3 in addition he got stock options.  
 4 And as he explained on many  
 5 occasions to many people, he was in it for  
 6 the money.  
 7 Now, the same holds true for  
 8 defendant McNenney. He not only received a  
 9 prestigious promotion based on his  
 10 performance, but he was also rewarded  
 11 monetarily.  
 12 In 2002 [REDACTED] total  
 13 compensation was 426 thousand, 250 dollars.  
 14 And in 2003 he earned 542 thousand, 500  
 15 dollars plus stock options. And their  
 16 monetary gain separately provided the motive  
 17 to continue their criminal conduct.  
 18 THE COURT: You have asked for a  
 19 hundred thousand dollar fine. Do they have  
 20 a hundred thousand dollars now?  
 21 MS. SAS: Your Honor, I don't  
 22 know. I mean I know they each own their  
 23 homes.  
 24 THE COURT: Okay.  
 25 MS. SAS: Now, a former Marsh

1 employee named Barbara Bell wrote a letter  
2 on behalf of defendant Gilman where she  
3 alluded to some mysterious process to  
4 determine the bonuses that Gilman and the  
5 rest of Excess Casualty received.

6 But, as Gilman and others boasted  
7 many times, Excess Casualty made more money  
8 than any other unit at Marsh. Whatever the  
9 process, without the huge sums of money that  
10 defendants helped bring into Excess Casualty  
11 through their criminal efforts, such large  
12 salaries and bonuses would not have been  
13 possible.

14 Each defendant's refusal to accept  
15 responsibility for his criminal conduct  
16 should also be taken into consideration, and  
17 here it is especially relevant.

18 MR. CLEARY: Objection. I don't  
19 know if you want us to state objections now  
20 for things we think are inappropriate  
21 argument or deal with them later.

22 THE COURT: Pleading not guilty  
23 does not mean they didn't accept  
24 responsibility. Wait and let her finish  
25 then you can make the argument.

1 MS. SAS: Here it is relevant when  
2 contrasted with the behavior of 21 other  
3 participants in the conspiracy, the  
4 cooperating defendants in this case admitted  
5 their guilt and took responsibility for  
6 their criminal conduct before your Honor,  
7 and many of them hoped their decision to  
8 accept responsibility will be a benefit to  
9 them.

10 This Court should consider each  
11 defendant's failure to accept responsibility  
12 because many of the cooperating defendants  
13 at some point worked for each defendant and  
14 followed their lead.

15 Many of the cooperating defendants  
16 considered both defendants to be mentors.  
17 They all regarded each defendant as a  
18 powerful authority figure both within Marsh  
19 Global Broking and at the insurance  
20 carriers.

21 Each defendant was in a position  
22 to set an example to direct brokers to  
23 properly perform their duties. And instead,  
24 the defendants compelled them to bid-rig,  
25 price fix, and allocate customers.

1 Many of these brokers felt they  
2 had no choice. They saw how strictly both  
3 defendants enforced the scheme, sometimes  
4 yelling, bullying and humiliating brokers  
5 and underwriter who circumvented the scheme.

6 Gilman and [REDACTED] failure to  
7 accept responsibility for their criminal  
8 conduct when the very people they ordered to  
9 commit the crime have accepted  
10 responsibility should mandate a prison  
11 sentence.

12 The defendants forceful and  
13 sometimes threatening and abusive behavior  
14 towards their subordinates should be taken  
15 into consideration.

16 It is clear from the letters sent  
17 to your Honor on behalf of the defendants,  
18 both Gilman and [REDACTED] had a work  
19 personality and a home personality. Because  
20 the testimony you heard during the trial  
21 certainly showed a different picture than  
22 their friends and family do.

23 And it is not just the testimony  
24 in terms of defendant Gilman. His personnel  
25 file also illustrates how different he was

1 at work than he must have been at home,  
2 Obviously, as I said before,  
3 defense counsel and the People still have  
4 differing views on the evidence that was  
5 presented, and I don't want to go over each  
6 disagreement, but I do want to point out one  
7 particular incident that if your Honor has  
8 any question in your mind about what  
9 happened, I urge you to reread the minutes.

10 And that is regarding defendant  
11 Gilman's conversation with Marsh's general  
12 counsel Barry Furst which can be found  
13 starting at page five thousand 274 of the  
14 transcript. And in 2003, that conversation  
15 with Barry Furst the defendant Gilman  
16 acknowledged that he restrained trade.

17 Now, he argues that this is not  
18 the case, but it is clear from Furst's  
19 testimony, Gilman explained that he did not  
20 like to take business away from AIG because  
21 they were a good carrier and they paid Marsh  
22 a lot of money.

23 He told Furst to prevent AIG from  
24 losing business, he made sure that no other  
25 carrier quoted a price that would be more

1 will go through, and I ask defense be  
 2 afforded an opportunity to address that  
 3 process.  
 4 MR. CLEARY: I join.  
 5 THE COURT: Do I have the  
 6 authority to order a forfeiture of their  
 7 license as part of the Penal Law sentence if  
 8 there is an insurance law procedure?  
 9 I know I have the authority not to  
 10 grant the certificate of relief which I'm  
 11 not doing, but can I order a forfeiture of  
 12 an insurance broker's license as part of the  
 13 penalty? I can make it a condition of  
 14 probation they not practice in that field.  
 15 MS. NOCHLIN: That is correct, you  
 16 can do that, and we would ask that you do do  
 17 that in light of the nature of the crime and  
 18 the license.  
 19 MR. CLEARY: Can I be heard?  
 20 THE COURT: Yes.  
 21 MR. CLEARY: I think that is over  
 22 the top. All these guys know are the  
 23 insurance industry. You are taking away the  
 24 only way they can make a living. That is  
 25 all they have done for their entire adult

1 life.  
 2 THE COURT: Doesn't the  
 3 superintendent of insurance have authority  
 4 to suspend?  
 5 MR. DEVEREAUX: He has a whole  
 6 bunch of things he can do, and --  
 7 THE COURT: The real issue for me  
 8 is do I take it out of the hands of the  
 9 superintendent or do I leave it in the hands  
 10 of the superintendent.  
 11 MS. NOCHLIN: One thing we ask you  
 12 to do either way is make a recommendation on  
 13 the record, number one.  
 14 Number two, there is a procedure  
 15 for the superintendent to follow, that is  
 16 going to be a procedure that takes time and  
 17 a suspension or at least a suspension as a  
 18 condition of probation would put that into  
 19 effect now.  
 20 THE COURT: I have to say one  
 21 thing, by the way, I don't think you are  
 22 authorized to speak.  
 23 MS. NOCHLIN: I am cross  
 24 designated, your Honor.  
 25 THE COURT: All right, okay.

1 MS. NOCHLIN: Thank you for  
 2 pointing it out, but I am not trying to  
 3 perpetrate a fraud.  
 4 MR. DEVEREAUX: The disciplinary  
 5 committee of the Department of Insurance  
 6 handles all sorts of disciplinary matters  
 7 all the time.  
 8 The spectrum they deal with and  
 9 how this falls on that spectrum is something  
 10 they can --  
 11 THE COURT: How does the stay of  
 12 execution of sentence affect the license  
 13 proceeding in the department?  
 14 MR. DEVEREAUX: Not at all, I  
 15 believe they will go ahead if they deem fit.  
 16 THE COURT: I don't know.  
 17 MS. NOCHLIN: We are going to have  
 18 the answer to that at the control date.  
 19 THE COURT: Wednesday the 23rd.  
 20 MS. NOCHLIN: We will have an  
 21 answer.  
 22 THE COURT: I'm taking no action  
 23 one way or another until the 23rd.  
 24  
 25

1 I, Randy Berkowitz, a senior court  
 2 reporter in and for the State of New York,  
 3 do hereby certify that the foregoing  
 4 transcript is true and accurate to the best  
 5 of my knowledge, skill and ability.  
 6  
 7 Randy Berkowitz,  
 8 Senior Court Reporter