

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No. 05-cr-00545-EWN

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH P. NACCHIO,

Defendant.

**DEFENDANT'S MOTION FOR A JUDGMENT OF ACQUITTAL PURSUANT
TO FEDERAL RULE OF CRIMINAL PROCEDURE 29**

INTRODUCTION

Defendant Joseph P. Nacchio, by and through undersigned counsel, and pursuant to Fed. R. Crim. P. 29, hereby moves for a judgment of acquittal, and renews his earlier motions for a judgment of acquittal presented to the Court before the case was submitted to the jury.¹ The Court has twice denied the

¹ See 4/4/07 Tr. at 2288:20-2321:1 (Rule 29 motion at close of Government's case); 4/10/07 Tr. at 2844:8-10 (Rule 29 motion after close of all evidence). Mr. Nacchio's oral Rule 29 motion at the close of the Government's case argued that "there is insufficient evidence to find him guilty beyond a reasonable doubt, and the motion for acquittal must be granted as to all 42 counts brought against him." 4/4/07 Tr. at 2290:6-9. The motion went on to argue that Mr. Nacchio did not trade on the basis of the information the Government accused him of trading on and that in any event that information was both public and not material. Mr. Nacchio subsequently made a general Rule 29 motion, which (footnote cont.)

Defendant's motions. *See* 4/4/07 Tr. at 2317:5-2321:1; 4/10/07 Tr. at 2844:10. Although Rule 29 does not require a defendant to renew a motion for acquittal post-trial, this motion is nevertheless submitted to confirm that the Defendant is seeking an acquittal because the evidence presented at trial was insufficient to establish beyond a reasonable doubt any element of any of the offenses alleged in Counts 24 through 42 of the indictment.² *See United States v. Oshobe*, No. 04-3088, 145 Fed. Appx. 243, 253, 2005 WL 1941635 (10th Cir. Aug. 15, 2005) (unpublished); 2A Charles Alan Wright, *Federal Practice & Procedure* § 466 (3d ed. 2000) ("A general motion for a judgment of acquittal is a proper method to challenge the sufficiency of the evidence. . . . Specificity is not required by Rule 29.").

In considering a defendant's motion for a judgment of acquittal pursuant to Rule 29, the Court is to review "the evidence in the light most favorable to the government and then determine whether there is substantial evidence from which a jury might properly find the accused guilty beyond a reasonable doubt." *United States v. Valadez-Gallegos*, 162 F.3d 1256, 1262 (10th Cir. 1998) (internal quotation marks omitted). If a reasonable jury could not have found the essential elements of the crime beyond a reasonable doubt, the Court must grant

encompassed every element of the offense, after the close of all the evidence. 4/10/07 Tr. at 2844:8-10.

² On April 11, 2007, Mr. Nacchio and the Government stipulated that "the mails" or "a national securities exchange" were "used in this instance," such that the jury did not need to be instructed as to the interstate commerce element. Tr. 2943:16-2944:14.

the motion for acquittal. *See United States v. Evans*, 318 F.3d 1011, 1018 (10th Cir. 2003).

COUNTS 24-42

As to Counts 24 through 42 of the indictment, the evidence at trial was legally insufficient to sustain a conviction for insider trading in violation of 15 U.S.C. §§ 78j and 78ff, SEC Rule 10b-5 (17 C.F.R. § 240.10b5) and SEC Rule 10b5-1 (17 C.F.R. § 240.10b5-1). The Government failed to establish any of the requisite elements beyond a reasonable doubt.

CONCLUSION

The evidence at trial was legally insufficient to establish each of the elements of the offense for each of Counts 24 through 42 of the indictment. Accordingly, Mr. Nacchio respectfully requests that the Court set aside the jury's verdict and enter a judgment of acquittal as to these counts.

Respectfully submitted this 4th day of June, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June 2007, a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR A JUDGMENT OF ACQUITTAL PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 29** was served on the following via email:

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