

ENDNOTES

1. *United States v. Milton*, Case No. 3:06-cr-00137, Docket Entry 1216 (D. Conn. Jan. 30, 2009) (Judgment); *United States v. Milton*, No. 3:06-cr-00137, Docket Entry 1164 (D. Conn. Oct. 31, 2008) (Ruling on Loss Calculation, Victim Enhancement, and Restitution).
2. *United States v. Ferguson*, Case No. 3:06-cr-00137, Docket Entry 1199 (D. Conn. Dec. 31, 2008) (Judgment); *United States v. Ferguson*, No. 3:06-cr-00137, Docket Entry 1164 (D. Conn. Oct. 31, 2008) (Ruling on Loss Calculation, Victim Enhancement, and Restitution).
3. *United States v. Correll*, Case No. 1:07-cr-00365, Docket Entry 36 (N.D. Ga. June 9, 2009) (Order Granting Motion for Reduction of Sentence).
4. *United States v. Cole*, 2008 WL 5204441, at *2-3, 9 (N.D. Ohio, Dec. 11, 2008).
5. Neither the Defendant's nor the Government's sentencing memorandum indicated what the Probation Office had found the advisory guideline range to be. Undersigned counsel contacted Marcia Shein, counsel for Mr. Ledee. Ms Shein reported that the PSR had indicated a total offense level of 51, criminal history category II, and an advisory range of life imprisonment. Ms. Shein also reported that the sentencing court disagreed with some of the PSR's calculation and found a lower guideline range of approximately 20 years. The parties had, however, entered a C agreement, which capped the sentence at 7.5 years. Although this cap was substantially lower than the advisory guideline range, the sentencing court nevertheless varied even further to impose a sentence of just 70 months. *See United States v. Ledee*, Case Nos. 1:04-cr-0623-BBM and 1:05-cr-0015-BBM, Docket Entry 154 (N.D. Ga. May 8, 2007) (Judgment and Commitment).
6. *United States v. Whittier*, Case No. 1:07-cr-0087, Docket Entry 12 (S.D.N.Y. Oct. 18, 2007) (Judgment). *See also, United States v. Whittier*, 1:07-cr-0087, Docket Entry 14 (S.D.N.Y. Nov. 6, 2007) (Transcript of Sentencing Hearing).
7. *United States v. Humphreys*, Case No. 1:02-cr-01559, Docket Entry 17 (S.D.N.Y. Nov. 14, 2007) (Judgment). *See also United States v. Humphreys*, Case No. 1:02-cr-01559, Docket Entry 19 (S.D.N.Y. Dec. 3, 2007) (Government's Sentencing Memorandum).
8. *United States v. Orlansky*, Case No. 1:03-cr-20951, Docket Entry 1196 (S.D. Fla. Nov. 16, 2007) (Judgment). *See also, United States v. Orlansky*, Case no. 1:03-cr-20951, Docket Entry 1054 (S.D. Fla. July 17, 2007) (Defendant's Sentencing Memorandum).
9. *United States v. Adelson*, 441 F. Supp.2d 506, 514 (S.D.N.Y. 2006), *aff'd* 2008 WL 5155341

(2d Cir. Dec. 9, 2008). *See also United States v. Adelson*, Case No. 1:05-cr-00325, Docket Entry 86 (S.D.N.Y. June 6, 2006) (Judgment).

10. The district court initially imposed a sentence of 292 months (a sentence within the then-mandatory guideline range) after finding an actual loss amount of \$105 million. *United States v. Olis*, 429 F.3d 540, 542 (5th Cir. 2005). On appeal, the Fifth Circuit vacated the sentence, finding that the district court's "loss calculation did not take into account the impact of extrinsic factors on Dynegey's stock price decline." *Id.* at 548-49. On remand, the district court concluded that the actual loss to shareholders could not be reasonably calculated. *United States v. Olis*, 2006 WL 2716048, at * 10 (S.D. Tex. Sept. 22, 2006). The court, therefore, relied on the intended loss figure of \$79 million. *Id.* The new loss amount changed the guidelines range to 151-181 months. *Id.* The court then went on to grant a variance below this advisory range to arrive at a final sentence of just 72 months. *Id.* at 11-13.

11. *United States v. Forbes*, Case No. 3:02-cr-00264, Docket Entry 2634 (D. Conn. Jan. 15, 2007) (Government's Sentencing Memorandum). *See also United States v. Forbes*, Case No. 3:02-cr-00264, Docket Entry 2641 (D. Conn. Jan. 23, 2007) (Judgment).

12. *United States v. Shelton*, Case No. 3:02-cr-00264, Docket Entry 1604 (D. Conn. July 13, 2005) (Government's Sentencing Memorandum). *See also United States v. Shelton*, Case No. 3:02-cr-00264, Docket Entry 1635 (D. Conn. Aug. 4, 2005) (Judgment).

13. *See United States v. Ebbers*, 458 F.3d 110 (2d Cir. 2006). Ebbers' sentence has been widely viewed as "one of the most severe given to a first-time offender for a crime that did not involve violence or trafficking in illegal narcotics." *See* Peter J. Henning, *White Collar Crime Sentences After Booker: Was the Sentencing of Bernie Ebbers Too Harsh I*, 37 MCGEORGE L. REV. 757 (2006).

14. In its Sentencing Memorandum, the Government argued for a loss calculation of \$2.2 billion and set forth the two possible Guideline calculations. *United States v. Kumar*, Case No. 1:04-cr-00846, Docket Entry 223 (E.D.N.Y. Nov. 2, 2006). *See also United States v. Kumar*, Case No. 1:04-cr-00846, Docket Entry 284 (E.D.N.Y. Nov. 27, 2006) (Amended Judgment).

15. In its Sentencing Memorandum, the Government argued for a loss calculation of \$2.2 billion and set forth the two possible Guideline calculations. *United States v. Richards*, Case No. 1:04-cr-00846, Docket Entry 223 (E.D.N.Y. Nov. 2, 2006). *See also United States v. Richards*, Case No. 1:04-cr-00846, Docket Entry 283 (E.D.N.Y. Nov. 22, 2006) (Judgment).

16. In his Sentencing Letter, Mr. Gabayzadeh conceded a total offense level of 48 (an offense level that results in an advisory sentence of life imprisonment regardless of criminal history score). *See United States v. Gabayzadeh*, Case No. 2:03-cr-00162, Docket Entry 180 (E.D.N.Y. Aug. 17, 2006). *See also United States v. Gabayzadeh*, Case No. 2:03-cr-00162, Docket Entry 190 (E.D.N.Y. Nov. 23, 2006) (Judgment).

17. Following their conviction and sentencing, John and Timothy Rigas succeeded in obtaining limited relief on appeal. Specifically, the Second Circuit reversed their convictions on one of the counts, and remanded for an entry of acquittal on that count and for resentencing. *United States v. Rigas*, 490 F.3d 208, 239 (2d Cir. 2007). On remand, the District Court concluded that

the elimination of one count of conviction did not change the guideline range (life imprisonment), but did change the aggregate statutory maximum sentence from 215 months to 185 months. *United States v. Rigas*, Case No. 1:02-cr-01236, Docket Entry 428 (S.D.N.Y. June 24, 2008) (Memorandum and Opinion). Though each defendant had already received a substantial variance below the advisory range at the original sentencing, the district court reduced each of the defendants sentences by another three years. *Id.* Accordingly, John Rigas' sentence was reduced from 180 months to 144 months and Timothy Rigas' sentence was reduced from 240 months to 204 months. *Id.*

18. *See* Endnote 17.

19. *United States v. Jacob Jacobowitz*, Case No. 1:04-cr-00558, Docket Entry 141 (E.D.N.Y. July 23, 2007) (Government's Sentencing Memorandum). *See also United States v. Jacobowitz*, Case No. 1:04-cr-00558, Docket Entry 164 (E.D.N.Y. Aug. 8, 2007) (Judgment).

20. *United States v. Herman Jacobowitz*, Case No. 1:04-cr-00558, Docket Entry 141 (E.D.N.Y. July 23, 2007) (Government's Sentencing Memorandum). *See also United States v. Herman Jacobowitz*, Case No. 1:04-cr-00558, Docket Entry 158 (E.D.N.Y. Aug. 7, 2007) (Judgment).

21. *United States v. Aaron Jacobowitz*, Case No. 1:04-cr-00558, Docket Entry 141 (E.D.N.Y. July 23, 2007) (Government's Sentencing Memorandum). *See also United States v. Aaron Jacobowitz*, Case No. 1:04-cr-00558, Docket Entry 161 (E.D.N.Y. Aug. 8, 2007) (Judgment).

22. *United States v. Argo*, Case No. 1:07-cr-00683, Docket Entry 14 (S.D.N.Y. Jan. 23, 2008) (Government's Sentencing Memorandum). *See also United States v. Argo*, Case No. 1:07-cr-00683, Docket Entry 16 (S.D.N.Y. Jan. 29, 2008) (Judgment).

23. *See United States v. Parris*, 573 F. Supp. 2d 744 (E.D.N.Y. 2008).

24. *Id.*

25. *United States v. Kohler*, Case No. 1:07-cr-20446, Docket Entry 65 (S.D. Fla. Sept. 17, 2007) (Defendant's Objections to Presentence Investigation Report). *See also United States v. Kohler*, Case No. 1:07-cr-20446, Docket Entry 84 (S.D. Fla. Oct. 10, 2007) (Amended Judgment).

26. *United States v. Dreier*, Case No. 1:09-cr-085, Docket Entry 84 (S.D.N.Y. July 17, 2009) (Judgment). *See also United States v. Dreier*, Case No. 1:09-cr-085, Docket Entry 76 (S.D.N.Y. July 8, 2009) (Government's Sentencing Memorandum).

27. *United States v. Turkcan*, Case No. 4:08-cr-00428, Docket Entry 52 (E.D. Mo. June 11, 2009) (Judgment). *See also United States v. Turkcan*, Case No. 4:08-cr-00428, Docket Entry 38) (E.D. Mo. April 21, 2009) (Defendant's Sentencing Memorandum).

28. *United States v. Coughlin*, No. 06-20005, 2008 WL 313099, at *1 (W.D. Ark. Feb 1, 2008).

29. *United States v. Tomko*, Case No. 2:04-CR-00108, Docket Entry 33 (W.D.Pa. Oct. 12, 2005) (Judgment), *affirmed after rehearing en banc, United States v. Tomko*, 562 F.3d 558 (3d Cir. 2009).