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Goldman Stuck With a Defense Tab, and Awaiting a Payback

By PETER LATTMAN

For Goldman Sachs, the insider trading case against a former board member, Rajat K. Gupta, which ended in a conviction on Friday, was distracting and discomforting.

At least until now, it has also been very expensive.

Goldman Sachs has paid for the bulk of Mr. Gupta's legal defense, which has cost nearly $30 million, according to two people with direct knowledge of the case who requested anonymity because they were not authorized to discuss it publicly. Procter & Gamble, on whose board Mr. Gupta also served, has picked up the balance of the bill.

A jury found Mr. Gupta guilty of leaking Goldman's private boardroom discussions to the former hedge fund titan Raj Rajaratnam. He was acquitted on a count related to divulging secrets about P.& G.

Mr. Gupta, whose sentencing is scheduled for Oct. 18, plans to appeal.

To say that Goldman Sachs has paid Mr. Gupta's legal bills grudgingly would be an understatement. Not only did Mr. Gupta abuse his role as a Goldman director, the jury determined, but Mr. Gupta's lawyers assailed the bank throughout the trial. They depicted Goldman as a cesspool of tipsters feeding Mr. Rajaratnam inside information. A defense lawyer called Lloyd C. Blankfein, Goldman's chief executive, who was forced to testify for three days, "cold and callous."

But with Friday's guilty verdict, Goldman has moved a step closer to getting paid back. Under a deal reached well before the trial, Mr. Gupta agreed that if he was found guilty of insider trading, he would reimburse the bank for the legal fees advanced to him. The bank, however, must continue to pay Mr. Gupta's bills until a final resolution of Mr. Gupta's appeal, a process that could take a couple of years and will surely escalate the costs of his defense.

Goldman has been advancing Mr. Gupta money to pay his lawyers' bills because the bank's bylaws require it to pay the legal fees of its top officers and directors for conduct that occurred while acting on behalf of the company. And Delaware - where Goldman is incorporated - has generous laws regarding indemnifying executives to protect them from incurring personal liability for their work while doing their jobs.

But indemnification rights are not unlimited. If the company has advanced legal fees to an executive and it is later determined that he violated certain criminal laws or acted in bad faith, the corporation can try to recoup the money that it previously advanced.

"The law protects directors and executives for their conduct while working for their companies - but only up to a point," said Kevin M. LaCroix, a lawyer specializing in management liability issues. "I'd expect many companies to take the position that they don't have to indemnify someone convicted of insider trading."

Companies and their former executives accused of crimes often wage battle over the payment of legal bills. In March, a federal judge ruled that Joseph F. Skowron, a former star hedge fund manager at Morgan Stanley who pleaded guilty to insider trading, owed the bank the roughly $4 million in legal fees it had advanced to him.

Hollinger International and its former chairman, the media tycoon Conrad M. Black, fought for years over who should cover his unsuccessful legal defense against accusations that he looted the newspaper company. In 2006, CA, formerly Computer Associates, sued Sanjay Kumar, its former chief executive, for repayment of $15 million that it advanced his lawyers after Mr. Kumar pleaded guilty to securities fraud.

While Mr. Gupta's $30 million legal bill is large, it is not outsize compared with other white-collar criminal prosecutions. The costs of defending these complex cases can be immense, requiring teams of lawyers to sort through reams of trading data and other documents to build a defense. Jeffrey K. Skilling, the former chief executive of Enron, spent about $70 million through his trial, with his years of appeals adding to that cost.

Mr. Gupta's lawyer fees are not only the result his monthlong trial, but also of a two-and-a-half-year legal odyssey that led to the charges against him, including a pitched battle with the Securities and Exchange Commission in a related civil case. Since the beginning, he has been represented by Gary P. Naftalis and a team of lawyers at Kramer Levin Naftalis & Frankel in New York.

Often, white-collar criminal defendants lack the resources to pay for their own defense. But Mr. Gupta, whose family's net worth in 2008 was pegged at $130 million during the trial, presumably has the wherewithal to pay Goldman back.

Mr. Gupta, as well as Goldman and P.& G., could have tried to recoup the legal expenses under a directors' and officers' liability insurance policy. But legal experts say that, in all likelihood, an insurer would deny those claims postconviction, arguing that it did not have to reimburse either Mr. Gupta or the companies for conduct that fell outside the scope of his director's duties.

Procter & Gamble advanced the money for only about a quarter of the cost of Mr. Gupta's legal bills because of its smaller role in the government's case. Mr. Gupta was charged with leaking one tip about P.&G. and four tips about Goldman. Procter & Gamble could have more difficulty getting paid back by Mr. Gupta because he was acquitted on the P.&G. tip. But it could counter that the jury convicted Mr. Gupta on a conspiracy charge that included conduct at P.&G.

Procter & Gamble was a bit player in the case compared to Goldman, which was attacked by Mr. Gupta's lawyers throughout the trial. The argument that Mr. Rajaratnam had multiple inside sources at the bank was among Mr. Gupta's main defenses.

The "cold and callous" remark about Mr. Blankfein came from a defense lawyer who said that Mr. Blankfein didn't remember laying off about 3,000 people during the financial crisis. A spokesman for the bank accused the lawyer of distorting Mr. Blankfein's testimony.