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## SEC Whistleblower Prodded On Misconduct At Fraud Trial

By **Pete Brush**

Law360, New York (January 13, 2017, 7:18 PM EST) -- U.S. Securities and Exchange Commission whistleblower Jason Thorell sparred Friday over the extent of his wrongdoing at Visium Asset Management LP with the counsel for Stefan Lumiere, a former portfolio manager at the hedge fund being tried on criminal charges of scheming to overvalue a \$480 million debt fund.

Thorell's time on the stand before U.S. District Judge Jed S. Rakoff over **parts of two days** marked a rare instance where an SEC whistleblower has testified in a criminal trial. Thorell said Thursday that he enticed Lumiere to speak in a wiretapped conversation with the suggestion that the defendant could also become a whistleblower.

Lumiere is accused of defrauding investors in Visium's credit opportunities fund by making the vehicle appear more profitable than it actually was, in part by using "friendly" brokers to overvalue corporate debt.

The defendant's counsel, Eric Creizman of Creizman LLC, repeatedly pressed Thorell during Friday's cross-examination to discuss the extent of his lawbreaking at Visium.

"I knew it was wrong," Thorell conceded at one juncture, saying later, "Yes, I had a role, if that answers your question."

Thorell first went to the SEC in September 2013. He later agreed to cooperate with criminal prosecutors and the FBI. In June 2014, he signed an agreement to depart the hedge fund that included a \$175,000 severance payment. His departure came months after he secretly recorded Lumiere, who left Visium in April 2014.

"You won't have to spend a second in jail, but you participated in this mismarking scheme, correct?" Creizman asked Thorell, referencing his immunity agreement.

"Essentially," Thorell said. "As long as I do not lie."

The lengthy cross-examination, which began mid-morning Friday, was designed to impeach Thorell's credibility.

The back-and-forth had begun to irk Judge Rakoff by lunchtime, when he warned Creizman against "repetitive" questions.

By mid-afternoon, with both Creizman and Thorell still squabbling over the extent of the witness's wrongdoing, both drew a sharp warning from the **sometimes vociferous** judge and a direction to stick to a question-and-answer format appropriate for trial.

"If you want to terminate this case and go to a bar, I will allow you to do that," Judge Rakoff said. "I've about had it with the imposition on this fine jury from two people who cannot follow the rules."

Creizman cut off his cross-examination about a half-hour after that.

It emerged in court Friday that Thorell's SEC whistleblower counsel is Jordan Thomas of Labaton Sucharow LLP, who declined an email request for comment.

Before the cross-examination, prosecutors played a recording of Thorell and Lumiere from January of 2014 in which the defendant conceded that he directed Thorell to communicate with a broker about "mismarked" fund pricing information via cell phone.

But in that conversation Lumiere said he was doing so at the direction of his former boss, Christopher Plaford, who has admitted guilt.

"Yeah – Chris, Chris told me to make these phone calls on a cell phone too," Lumiere told Thorell according to the wiretap.

Thorell also remarked upon a **lax compliance culture** at Visium. Thorell testified that, when he brought concerns about valuation to fund founder Jacob Gottlieb and one of this key deputies in June 2013, he was largely ignored.

The trial was expected to last through next week.

Visium, which once had \$8 billion under management, is now winding down.

The government is represented by Assistant U.S. Attorneys Ian McGinley, Damian Williams and Joshua A. Naftalis.

Lumiere is represented by Eric Creizman of Creizman LLC.

The case is U.S. v. Lumiere, case number 16-cr-00483, in the U.S. District Court for the Southern District of New York.

--Editing by Jill Coffey.