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EXECUTIVES ON TRIAL**Kozlowski, Swartz Are Found Guilty in Tyco Fraud Retrial****Former Executives Face Lengthy Prison Sentences**

By MARK MAREMONT

Staff Reporter of THE WALL STREET JOURNAL

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Former [Tyco International](#) Ltd. Chief Executive L. Dennis Kozlowski was convicted Friday of masterminding a scheme to loot the giant conglomerate of tens of millions of dollars, giving the government one of the biggest victories yet in its crackdown on corporate fraud.

After 11 days of deliberations following a retrial that lasted nearly five months, a New York state jury found Mr. Kozlowski, 58 years old, and Mark H. Swartz, Tyco's 44-year-old former finance chief, each guilty on 22 of 23 counts, including grand larceny, conspiracy, securities fraud and falsifying business records.

**L. Dennis Kozlowski**

The defendants showed no obvious emotion when the verdicts were read, although Mr. Swartz looked at his wife.

By statute they face as long as 25 years in New York state's relatively harsh prisons, but legal experts said they were likely to be sentenced to considerably shorter terms. An attorney for Mr. Kozlowski said he was "very disappointed" in the guilty verdicts against his client but planned an appeal. The attorney said he is confident in an appeal.

The conviction of Mr. Kozlowski, one of the most prominent executives of the 1990s, comes as a relief for prosecutors, who after a string of successes have had a mixed record in recent corporate trials.

Last week, former Bank of America Corp. broker Theodore Sihpol was found not guilty of improperly trading mutual funds. And jurors so far have been unable to reach a verdict in what seemed to be one of the strongest cases yet for prosecutors -- the fraud and conspiracy trial of former HealthSouth Corp. Chief Executive Richard Scrushy, who is accused of masterminding a \$2.7 billion accounting fraud at the Birmingham, Ala.-based medical concern.

Giant 'Bonuses'
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An accountant by training, Mr. Kozlowski helped build Tyco into a huge conglomerate with more than \$36 billion in annual revenue, and became one of the highest-paid corporate executives in history.

But prosecutors said he stole millions more in a series of giant "bonuses" that weren't approved by the company's board. At one point, he and Mr. Swartz secretly wiped a total of \$37.5 million from loans they owed Tyco, and later claimed they didn't notice when the huge payment didn't show up on their tax forms.



Mark Swartz

Despite a mountain of evidence, the case was more difficult for prosecutors than it initially appeared. Defense attorneys skillfully pointed out that board minutes were sketchy and that the defendants made little effort to hide the payments from numerous employees and Tyco's outside auditor. At the heart of the defense argument – a contention that the former Tyco executives didn't try to cover up their actions, and thus lacked the "criminal intent" needed to convict.

Both Mr. Kozlowski and Mr. Swartz took the stand in their own defense in the retrial, testifying that the payments were just part of their regular bonuses and were orally approved by a now-deceased director.

The first Tyco trial ended with a mistrial last year after two weeks of jury deliberations, when a juror who had been in favor of acquittal received a letter she perceived as threatening. The juror's name had been published by several media outlets, including The Wall Street Journal, after she appeared to make an "OK" hand signal to the defense team. Some jurors said afterward they were 11-1 in favor of conviction on many counts, and had hoped to convince the lone holdout, who later denied making any signals.

During deliberations in the second trial, jurors asked to see dozens of exhibits and listened to hours of testimony read back. They completed listening to a readback of more testimony Friday morning, then delivered the verdicts soon after lunch.

Each defendant was acquitted of one count of falsifying business records.

The prosecutors, from Manhattan District Attorney Robert Morgenthau's office, were widely criticized in the first trial for putting on a disjointed case that focused too heavily on Mr. Kozlowski's lifestyle and lavish spending.

More Focused Case

In the retrial, the DA's office put on a more focused case. They cut the number of government witnesses in half, to 24, and eliminated much of the emphasis on Mr. Kozlowski's lifestyle and lavish spending habits. Jurors in the second trial saw only a five-minute snippet of the infamous Sardinia video, which chronicled a \$2 million, Roman-themed party thrown for Mr. Kozlowski's wife on the Italian island, partly paid for by Tyco.

The prosecution's case centered on several huge "bonuses" Tyco paid to Messrs. Kozlowski and Swartz from 1999 to 2001, totaling more than \$120 million. To bolster its claim that the sums were stolen, the government called to the witness stand a parade of ex-Tyco directors who all testified that they never approved the payments.

That testimony was backed up by minutes of board meetings, which didn't reflect a single mention that

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directors had approved the disputed payments.

"There is not a single piece of paper from the compensation committee showing they were authorized to take that money," Assistant District Attorney Owen Heimer said as part of the prosecution's closing arguments.

What's more, the sums were never disclosed to shareholders, as required, in annual proxy statements. The payments were in addition to tens of millions of dollars in regular pay for the two Tyco executives.

The strongest prosecution evidence involved a 1999 transaction in which Mr. Kozlowski had \$25 million wiped from the amounts he owed Tyco under a loan program, and Mr. Swartz had an additional \$12.5 million of loans forgiven. Among other things, the sums didn't show up on either executive's W-2 tax form for the year, which prosecutors cited as evidence that the defendants were trying to hide the alleged theft.

Missing Amounts on W-2s

Both defendants testified that the failure to include the amounts on the W-2 was a mistake they didn't catch at the time, but to a largely blue-collar jury the notion that somebody wouldn't notice mega-millions missing from their tax returns must have strained credulity.

Defense attorney tried to sidestep this avalanche of damaging evidence by exploiting a key weakness in the prosecution's case: The relative lack of "criminal intent," including paucity of evidence that the defendants intended to hide any of the alleged thefts. "Criminals act in criminal ways," one of Mr. Kozlowski's attorneys told jurors in closing arguments. "When a person doesn't act like a criminal, there's a pretty good chance they're not a criminal."

Unlike in some other high-profile trials, no former Tyco employees got on the stand to admit that they helped the defendants commit fraud. To the contrary, at least a half-dozen former Tyco employees testified that they were aware of the disputed bonuses, but had never been asked to conceal anything. Tyco's main outside auditor also testified he was aware of all of the disputed bonuses except the 1999 payments.

--Chad Bray of Dow Jones Newswires contributed to this article.

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