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The United States Attorney's Office

Eastern District of New York[\[Back to Press Releases - Main Page\]](#)United States Attorney's Office
Eastern District of New YorkRobert Nardoza
Public Affairs Officer(718) 254-6323
Robert.Nardoza@usdoj.gov**FOR IMMEDIATE RELEASE****May 30, 2006****PRESS RELEASE****NINE FORMER EMPLOYEES AND CONTRACTORS OF NEWSDAY AND HOY PLEAD GUILTY TO SCHEME TO DEFRAUD NEWSPAPER ADVERTISERS*****Scheme Costs Advertisers Millions of Dollars in Inflated Fees***

Nine former employees and contractors of *Newsday* and *Hoy* have pleaded guilty to participating in a fraudulent scheme between 2000 and 2004 to inflate paid circulation data in order to induce advertisers to buy advertising space in both newspapers. *Newsday*, whose headquarters are located in Melville, New York, sells newspapers primarily in Long Island, New York City, and New Jersey. *Hoy* is a Spanish-language newspaper that is distributed throughout the United States. Both *Newsday* and *Hoy* are subsidiaries of the Tribune Company. 

The nine guilty pleas are the result of a continuing investigation into fraudulent circulation-reporting practices at both newspapers. The guilty pleas were accepted by United States Magistrate Judge Kiyoo A. Matsumoto, at the U.S. Courthouse in Brooklyn, New York. The cases are assigned to United States District Judge Jack B. Weinstein. The defendants who pleaded guilty are: LOUIS SITO, a former Vice President of *Newsday* and *Hoy*'s former Publisher; ROBERT BRENNAN, *Newsday*'s former Circulation Director; RICHARD CZARK, *Hoy*'s former Senior Vice-President for Circulation; ED SMITH, *Newsday* and *Hoy*'s former liaison to the Audit Bureau of Circulations ("ABC"); ROBERT GARCIA, a former mid-level circulation manager at *Newsday* and *Hoy*; DOROTHY MCKILLOP, a former mid-level manager at *Newsday* who held various positions related to newspaper circulation; DENNIS SPRINGER, a former mid-level circulation manager at *Newsday*; GUS ACOSTA, who controlled several companies that held contracts to distribute *Hoy*; and JOHN

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FAIELLA, who controlled several companies that held contracts to distribute *Newsday*.

The guilty pleas are the result of an investigation conducted in coordination with the United States Securities and Exchange Commission (“SEC”), and were announced today by **Roslynn R. Mauskopf**, United States Attorney for the Eastern District of New York, **Ron Walker**, Inspector-in-Charge, New York Division, United States Postal Inspection Service, **Michael J. Thomas**, Special Agent-in-Charge, Internal Revenue Service, Criminal Investigation, and **James H. Lawrence**, Commissioner of the Nassau County Police Department. The SEC separately announced today the settlement of its enforcement action against the Tribune Company. In the settled action, the SEC alleged that Tribune violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 by failing to maintain adequate controls, the existence of which would have enabled the parent corporation to have detected the fraudulently inflated paid circulation numbers that its subsidiaries *Newsday* and *Hoy* reported to it and that were thereafter republished in public securities filings and reports to ABC.

THE FRAUDULENT SCHEME

The defendants are each charged with conspiracy to commit mail fraud based on their participation in a series of programs conducted between 2000 and 2004 deliberately designed to report inflated paid circulation data to ABC and through ABC, to advertisers. ABC is a not-for-profit organization whose membership includes newspaper and magazine publishers and their advertisers. ABC conducts annual audits of circulation numbers that publishers certify bi-annually and functions as an industry watchdog to insure the integrity of data that publishers provide to advertisers. Membership in ABC earns publishers credibility with advertisers, who rely on ABC-audited paid circulation data to decide whether to place advertisements in a publication and to negotiate advertising rates. In general, advertisers pay higher advertising rates to publishers whose paid circulation numbers exceed those of its competitors.

As the defendants admitted in their respective guilty pleas, SITO and BRENNAN directed other *Newsday* and *Hoy* employees, including CZARK, SMITH, GARCIA, SPRINGER, and MCKILLOP falsely to inflate paid circulation data that *Newsday* and *Hoy* compiled and reported to ABC. The criminal conspiracy to inflate the paid circulation data included various distributors of the newspapers, such as ACOSTA and FAIELLA. The schemes are summarized below.

Fraudulent Inflation of Circulation at *Newsday*.

From approximately 2000 and continuing through 2004, *Newsday* circulation executives and managers repeatedly manipulated paid circulation numbers to make it appear as if more newspapers were being sold than was in fact the case, then forwarded the inflated data to ABC for dissemination to publishers. For example, SITO directed his subordinates at *Newsday* to overstate the number of individual subscribers who actually paid for delivery of that publication. Similarly, GARCIA deliberately underreported the number of *Newsday* copies that had been returned as unsold, so as to create the false appearance that more copies had been sold than in fact had been sold.

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Newsday circulation executives and managers perpetuated the fraud through the newspaper's distributors. SMITH, *Newsday*'s liaison to ABC, repeatedly coached distributors in advance of ABC audits to lie when answering questions by ABC. Truthful answers to those questions would have revealed that copies of newspapers claimed as paid circulation had never been distributed. Moreover, numerous distributors received payments from *Newsday* that were based on the inflated numbers the distributors had supplied. *Newsday* circulation executives and managers, including BRENNAN, MCKILLOP, SPRINGER, and GARCIA, approved these payments, knowing that they would be falsely booked as if they were legitimate distribution expenses.

Among the distributors who benefited substantially from these payments were several companies originally owned by Richard Faiella (the "Faiella Companies"). Control of the Faiella Companies passed upon Richard Faiella's death in 2003 to his brother and co-worker, the defendant JOHN FAIELLA. Beginning in approximately April 2002, *Newsday* circulation executives and managers, including BRENNAN, enlisted the Faiella brothers to engage in a continuing transaction aimed at artificially inflating *Newsday*'s daily paid circulation numbers. Between April 2002 and May 2004, the Faiella Companies accepted daily deliveries of massive quantities of *Newsday* newspapers. The Faiella brothers claimed entitlement to and received compensation from *Newsday* as if all of those newspapers had been delivered to and distributed at various retail locations on Long Island. *Newsday* circulation executives and managers in turn reported to ABC that almost all of the copies received by the Faiella Companies -- up to 30,000 newspapers every weekday and up to 50,000 newspapers every Sunday -- was paid circulation distributed through retail locations. However, only a small fraction of the copies delivered to the Faiella Companies was actually delivered to the outlets. In fact, paid circulation relating to the retail locations never exceeded 7,000 newspapers per weekday, or 10,000 newspapers on Sunday.

In early 2004, the program with the Faiella Companies came under scrutiny by auditors for the Tribune Company and ABC, following public allegations of circulation fraud, including a civil complaint filed by advertisers. In order to allay ABC's concerns about the veracity of numbers previously reported from that program, BRENNAN and SMITH proposed to ABC that *Newsday* arrange for ABC auditors to observe sales at the retail locations to which the Faiella Companies had allegedly been delivering many thousands of newspapers. Unbeknownst to ABC auditors, BRENNAN, SMITH, MCKILLOP, and SPRINGER had recruited numerous bogus customers, including many *Newsday* employees, to buy up copies of the newspaper at the retail locations every day for the several-day period that the auditors had been invited to observe, enabling the fraud scheme to continue.

Fraudulent Inflation of Circulation at Hoy.

The fraudulent conduct at *Hoy* involved many of the same techniques and several of the same participants as at *Newsday*. Beginning in approximately 2000 and continuing through July 2004, under the direction of SITO, circulation managers responsible for *Hoy*, including GARCIA and CZARK, encouraged distributors to inflate the circulation numbers they reported to *Hoy*, and arranged for the distributors to be compensated based on distributions that had never occurred. The inflated circulation

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...to be compensated based on distributions that had never occurred. The inflated circulation numbers for *Hoy* included falsified claims of distribution through home delivery, coin-operated machines, and hawkers. With SITO's approval, and GARCIA's and CZARK's knowledge, the falsified numbers were forwarded to ABC for dissemination to advertisers.

Among the distributors that benefited substantially from these payments for falsified circulation were several companies controlled by GUS ACOSTA (the "Acosta Companies"). The Acosta Companies had contracts to provide hawking services in Chicago and to distribute to other retail outlets *Hoy*'s other markets. Between January 2000 and May 2004, at the direction of SITO, the defendants GARCIA, CZARK, and SMITH regularly received thousands more copies of *Hoy* per day than the Acosta Companies actually distributed, and provided *Hoy* with false "return affidavits" that deliberately understated by thousands of copies per day the number of *Hoy* newspapers that the Acosta Companies had received but failed to distribute.

"Transparency and fairness in the advertising markets require that all who participate in those markets know that deliberate falsification of circulation numbers will not be tolerated," stated United States Attorney **Mauskopf**. "We will investigate and prosecute corporate executives and managers in the newspaper industry who try to cheat advertisers through fraudulent circulation schemes." Ms. **Mauskopf** added that the investigation is continuing.

New York Postal Inspector-in-Charge **Walker** stated, "The defendants in this case bilked advertisers out of millions of dollars. The result, as in most cases of corporate greed, is usually the same – it's the individual consumer who ends up paying the tab. Postal inspectors are dedicated and relentless in their pursuit of criminals engaged in any scheme that attempts to utilize the US Mail. They, along with the IRS agents, Nassau County PD detectives, regulators, and of course, Assistant US Attorneys assigned to this case, are to be applauded for their efforts.

IRS Special Agent-in-Charge **Thomas**, stated, "It is outrageous that the perpetrators of this crime became wealthier at the expense of people who make an honest living. IRS Criminal Investigators devoted their skills to put an end to this crime and help prosecutors see that justice is done."

Nassau County Police Commissioner **Lawrence** stated, "It is important that those who manage a business not lose sight of it's mission for personal gain. *Newsday* is an important part of the Long Island region and it would be regrettable if this affected those who have honestly made *Newsday* a fixture on Long Island."

On the mail fraud and conspiracy to commit mail fraud counts, each defendant faces a maximum sentence of 20 years imprisonment, three years supervised release, and a \$250,000 fine (or twice the gross gain or loss as a result of the offense). In addition, BRENNAN faces a maximum sentence of three years imprisonment, one year of supervised release, and a \$100,000 fine based on his guilty plea to one count of filing a false tax return. BRENNAN, SITO, ACOSTA, and FAIELLA have agreed to pay a total of \$290,000 in forfeiture in connection with their guilty pleas.

The government's cases are being prosecuted by Assistant United States Attorneys Elaine

Banar and Jed Davis.

The Defendants:

LOUIS SITO DOB: 7/9/44

ROBERT BRENNAN DOB: 8/24/54

RICHARD CZARK DOB: 3/4/52

ED SMITH DOB: 9/7/39

ROBERT GARCIA DOB: 11/16/62

DENNIS SPRINGER DOB: 3/28/52

DOROTHY MCKILLOP DOB: 12/1/59

GUS ACOSTA DOB: 8/9/64

JOHN FAIELLA DOB: 3/26/51
