

LAWRENCE H. SCHOENBACH*
PARTNER, INSTITUTE FOR TAX AND
COMMERCIAL LAW, CH-ZÜRICH

OF COUNSEL

ELLEN BESSIS**
JÜRIG BRAND***
ERICA B. POPKIN
A. JEFFREY WEISS****

*ALSO ADMITTED IN D. PUERTO RICO AND U.S.V.I

**ADMITTED IN FRANCE ONLY

***ADMITTED IN SWITZERLAND ONLY

****ALSO ADMITTED IN U.S.V.I AND ILL.

LAW OFFICES OF
LAWRENCE H. SCHOENBACH, PLLC
A PROFESSIONAL LIMITED LIABILITY COMPANY

THE TRINITY BUILDING
111 BROADWAY, SUITE 1305
NEW YORK, NEW YORK 10006
(212) 346-2400

FACSIMILE (212) 346-4665

SCHOENBACHLAWOFFICE@ATT.NET
WWW.SCHOENBACHLAW.US

108 BOULEVARD DU MONT-PARNASSE
75014, PARIS, FRANCE

TALSTRASSE 82
POSTFACH 4818
8022, ZÜRICH, SWITZERLAND

2111 COMPANY STREET
CHRISTIANSTED, ST. CROIX
U.S. VIRGIN ISLANDS 00820

September 19, 2016

To: Joel Holt, Esquire

From: Lawrence Schoenbach, Esquire

Re: Expert Opinion re: United Corporation (STX);
Mohammad Hamed v. Fathi Yusuf and United Corporation;
St. Croix, U.S. Virgin Islands

OPINION LETTER

You have engaged me to render an expert opinion in the context of the civil litigation currently in the Superior Court of the Virgin Islands, Division of St. Croix, in a matter captioned *Mohammad Hamed v. Fathi Yusuf and United Corporation*, docket number Civil No. SX-12-CV-370 (Brady, J.). Specifically, you have sought the expert opinion of a criminal defense attorney with experience in federal criminal practice and so-called "white collar" business crimes involving tax evasion, money laundering, and/or compliance.

In particular, you have asked me to determine whether it is possible for the books and records of a business entity to be re-constructed after a business entity (here a partnership) has been deeply involved in a money-laundering such as the one presented here.

Further, you have asked me to render an expert opinion as an experienced criminal lawyer who advises individuals and companies on compliance with criminal laws¹ -- particularly white collar and business entity crimes. I have been asked to

¹ Although my primary law practice is in the federal courts in New York City (Southern and Eastern Districts of New York), I am admitted to (and have represented

EXHIBIT
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review a series of documents related to the instant litigation, as well as the related criminal indictment, and to formulate an opinion based upon them.

Documents Reviewed

In connection with this Opinion Letter, I have reviewed the filed documents of record containing Hamed's claims, the defenses, the analysis done by Hamed's CPA regarding 2012-present, various deposition and other testimony (identified within this Opinion Letter) and following documents:

- Memorandum Opinion in response to Plaintiff's Emergency Motion and memorandum to Renew Application for TRO (Brady, J.);
- Opinion Letter of David Jackson, PC;
- "Exhibit 5" consisting of a plea agreement between the United States and the criminal defendants charged in Indictment 2005-14F/B; and a supplemental plea agreement; and a second addendum to the plea agreement;
- "Exhibit 6" consisting of the cover letter of RSM McGladrey, Inc., by Ronald J. Soluri, Sr., Managing Director; Flow Chart, and a Letter of Waleed Hamed, dated July 22, 1998; and
- "Defendant Exhibit C" consisting of a Press Release from the United States Attorney for the Virgin Islands, Indictment 2003-147 (St. Thomas Division) captioned *United States of America and Government of the Virgin Islands v. Fathi Yusef Mohamad Yusef, et. al.*; Defendant's Notice of Filing of Criminal Indictment (Third Superseding Indictment), dated September 8, 2004; a Plea Agreement between the Government and the defendants named in the indictment;
- A PACER search of the ECF docket sheet for Indictment 05-Cr-00015 (RLF)(GWB).
- The various documents referenced herein.

clients in criminal proceedings in) the U.S. Virgin Islands and the federal district court in Puerto Rico. I have also represented clients throughout the country and internationally. A portion of my practice involves advising business clients on regulatory and potential criminal matters and I have done so in the U.S. Virgin Islands and elsewhere. My resume and curriculum vitae are annexed hereto.

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The Facts

In 2003 a grand jury sitting in St. Thomas, U.S. Virgin Islands voted a 76-count indictment against United Corporation (“United”) and various related individuals, including, among others, Fathi Yusuf and members of his and Mohammad Hamed’s families. The indictment charged, *inter alia*, numerous counts of mail fraud, money laundering, enterprise corruption (pursuant to Virgin Islands Law), and tax evasion.

Although all of the individual defendants were charged in the criminal indictment, only the corporate defendant, United Corporation (“United” or the “Company”), was convicted of a crime (Count 60 -- tax evasion).² For purposes of this Opinion Letter, it is the Company’s guilty plea and conviction, as well as its admissions during the course of the plea of guilty, that allow me to reach the conclusions herein.

United is a corporate entity wholly owned by Fathi Yusuf and family. He is an officer of the Company and his son, Mike (Maher) Yusuf, is the President. It is my understanding, based upon the findings of fact by Judge Brady in his Memorandum Opinion that Mohammad Hamed, although a partner in the Plaza Extra supermarkets in St. Croix and St. Thomas, was *not* a shareholder or officer of United.³ Critical to my analysis is that United admitted at the time of entry of the corporate plea that it under-reported gross receipts by utilizing the money laundering scheme outlined in the 3rd superseding indictment. Specifically, in admitting guilt to Count 60 of the indictment, United admitted that:

On or about September 19, 2002, United willfully aided, assisted, procured, counseled, advised, or caused the preparation and presentation of a materially false corporate income tax return on Form 1120S for the year 2001 and filed such return with the Virgin Islands Bureau of Internal Revenue (“VIBIR”). Specifically, United Reported gross receipts or sales on line 1c as \$69,579,412,

² By agreement between the parties and the Government, United was allowed to plead guilty to one count of tax evasion in full satisfaction of the indictment. The case against the remaining defendants was dismissed with prejudice.

³ “Yusuf’s management and control of the “office” was such that Hamed was completely removed from the financial aspects of the business.” See Memorandum Opinion (Brady, J), dated April 25, 2014, at ¶ 19.

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knowing that the true amount was approximately \$79,305,980.

By pleading guilty United acknowledged that it underreported its 2001 gross receipts by nearly \$10 million. More importantly, for purposes of making an accurate, and legal accounting of the true gross receipts of the company from in the years prior to 2001, one must understand the nature of that tax evasion during the relevant time period.

According to the indictment, from “at least as early as in or about January 1996 and continuing through at least in or about September, 2002, defendant[] . . . UNITED defrauded the Virgin Islands of money in the form of tax revenue, specifically territorial gross receipts taxes by failing to report at least \$60 million in Plaza Extra sales on gross receipts tax returns and corporate income tax returns. See Indictment, at ¶10. The fraudulent scheme to report gross receipts was, according to the indictment, *inter alia*, for United and certain of its officers/employees:

to withhold from deposit substantial amounts of cash received from sales, typically bills in denominations of \$100, \$50, and \$20. Instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a dedicated safe in a cash room. From 1996 through 2001, tens of millions of dollars in cash was withheld from deposits in this manner and as such, was not reported as gross receipts on tax returns filed by UNITED.

Indictment, at ¶12.

Once United skimmed these extraordinary amounts of cash from its gross receipts, it engaged in “various efforts to disguise and conceal the illegal scheme and its proceeds . . . by, [among several methods,] purchas[ing] cashier's checks, traveler's checks, and money orders with unreported cash, typically from different bank branches and made payable to individuals and entities other than the defendants, in order to disguise the cash as legitimate-appearing financial instruments.” See Indictment, at ¶15. Much of the illegally underreported income was then sent to various banks and/or other entities off shore.

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I accept the allegations made in the indictment to which United pled guilty, at a minimum as to United and its officers, because the standard of proof for a grand jury indictment is probable cause to believe a crime was committed (i.e. more likely than not) and the defendant committed the crime. It is the same standard of proof in a civil case. The indictment alleged that from 1996-2001 United was involved in the same scheme to skim from its \$300 million gross revenues cash receipts of approximately \$60 million. I have no reason to disbelieve this allegation as a factual premise, at least for purposes of this Opinion Letter because United has acknowledged by its guilty plea its complicity in the scheme to underreport its income and thus partnership funds.

The scheme to skim funds from the stores (i.e. removal of funds from sales receipts before those funds are accounted for and taxes paid on them) is a classic white collar/business crime in which the purpose is to hide those funds from the governmental taxing authorities to avoid taxation, both regarding the receipt and disbursement. Most of such tax avoidance schemes require the removal of funds before accounting and/or the alteration of accounting records to reflect less cash received by the company than ultimately reported. The method used here, removal of funds prior to their being reported as sales, can be accomplished by several means, some of which were used here, to wit: those acting on behalf of the Company took cash out of sales before the Company could properly account for them. Another example of the fraudulent scheme involved cashing checks for third parties and then keeping and transacting the checks elsewhere. Cash was distributed without records or controls or those records were destroyed.

The most fundamental feature of such a scheme is that the actual accounting records of the entity do not, and in fact cannot, accurately reflect the amount of cash taken in. No proper accounting can be determined from the Company's financial records because the gross receipts have been intentionally misapplied and documented. The very purpose of this sort of scheme is to render any accounting inaccurate. Moreover, any remaining records would have to be suspect because a criminal -- with criminal intent and a criminal purpose -- would have created them. Further, because of the admitted lack of internal controls at United during the pre-

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2001 time period, there could be no legal or properly accurate way by which one could ascertain the correct amount of cash actually received or disbursed by the company.⁴

It is critical that the parties have both admitted that many records of transaction that should have gone into any accurate accounting were not kept or mutually and intentionally destroyed. For example, in his deposition, Mike Yusuf, President of United Corporation (and Fathi Yusuf's oldest son) testified that he and some of the Hamed brothers, upon hearing that the FBI was about to raid them in 2001, intentionally destroyed "a whole heap of" records (including those that would show where millions in cash partnership funds really went -- two months before the FBI raid and subsequent criminal charges).⁵ As such, there could be no way to verify

⁴ I note that the plea agreement, at page 9, ¶ 5, requires the company to "develop and submit to the Court an effective compliance and ethics program consistent with § 8B2.1 (Effective Compliance and Ethics Program) of the United States Sentencing Guidelines." No such compliance program was in place in 2001 or for the years prior to that date.

⁵ At the April 3, 2014 deposition Mike Yusuf testified, at pages 62-65, as follows (emphasis supplied):

Q. Okay. And to the best of your knowledge, all of those receipts still exist today from 1986 on?

A. No.

Q. Okay. Why don't you tell me about that?

A. About what?

Q. Why -- why some of them don't exist?

A. Should I explain -- that would explain the 1.6 that we have here on the letter.

Q. I'll get there, I swear. I just want to -- right now, I just want to know, **I asked you if I could go around and collect all these receipts, add them up and find out how much the Hameds took out, and how much the Yusufs.** You said yes. And I said, So I should be able to do that from the -- from back till now, and you said, no, there's a problem. You said some might be in the possession of a third party.

A. Right.

Q. When I have those from the third party, will I then be able to get that number?

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the completeness of such records. Because the very nature of the crime, particularly money laundering/tax evasion, is to hide such incoming and outgoing funds from legitimate accounting it is impossible to determine and account for any portion of that amount each partner has or owes to the other. Since many such transactions were not recorded or destroyed, any remaining "records" can never be legitimately credited or debited against the unknown amounts.

Fathi Yusuf was (and remains) the majority owner of United Corporation. United was the corporate entity used by him, and others, to accomplish the tax

A. To physically check every receipt by receipt?

Q. Through all the --

A. **There's -- there's some receipt was destroyed by Waleed Hamed, and some receipts were destroyed by me.**

Q. Okay. Tell me about that.

A. Sure. In 2000 -- that's, I'm -- to explain to you, that's where the 1.6, I'm going to explain.

* * *

A. 2001, that's the -- the year that we had the raid.

Q. Okay. What -- approximately what date [was the FBI raid]?

A. October 23rd of 2001.

Q. Okay.

A. Okay. Sometime I would say a month and a half to two months before that, Waleed got a call from Waheed saying that something is going on. Some kind of agency is coming to spot check us, look at us. . . **We didn't know. So between among us, we decided to destroy some of the receipts, because they were all in cash. We pulled out a good bit of receipts from the safes in Plaza East. Mufeed was present with me. He had a whole, a heap of receipts for the Hameds only. It could be from either one of the Hameds, once it's the Hamed.** And receipts from the Yusuf, which basically was just me, not, you know, nobody else. Mufeed, I guess you call it, tallied, and, you know, put a tape on what they withdraw, and I put a tally, a tape, on what I withdraw. And I gave him my receipts to double-check my work, he gave me his receipt to double-check his work. Once everything dropped to the penny, we were fine, **I said, Listen. I'm destroying my receipts. You know what I owe you guys.** I owe you guys 1.3 million, and at that time, they had pulled in receipts about 2.9 million. Wally wanted to take a look at it, **and as far as I know, Wally got rid of the receipts.** So 1.3 million from 2.9 million, this is where you get the 1.6 million. (Emphasis supplied.)

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evasion in 2001 to which United admitted its guilt.⁶ Moreover, Mr. Yusef has repeatedly stated that he was in charge of the businesses⁷ and was certainly in charge

⁶ This is not to say that others were not involved. Corporations can only act through its individual agents. The Government charged activities in aid of the scheme by several of the Yusuf and Hamed sons and others. Who directed, as opposed to carried out, the acts is not a particularly relevant factor in this matter. The relevant fact is that United has admitted, by its guilty plea, that funds from Plaza Extra were never accounted for as gross receipts of the company (nor is there any documentation reflecting how these unreported funds were divided, if at all, among the recipients). The example of Mike Yusuf's testimony as to both family's cooperation in pre-FBI-raid destruction of millions of dollars in records underlines why no proper evaluation of the accounting or partnership value prior to 2001 is possible.

⁷ Support for this statement can be found in several places. For example, at the outset of this case, Mohammad Hamed testified at the January 25, 2013 *Preliminary Injunction* hearing that the agreement in the partnership was that Mr. Yusuf would be in control of the front office functions and he (Hamed) was in charge of the warehouse/store operations. Similarly, at the same hearing, Wally Hamed agreed, on cross-examination:

A: That was the duty of Fathi Yusuf, he was responsible for the office.
Q: Because Fathi Yusuf was in charge, correct?
A: No, he was responsible for the office.

Tr. 100.

Further, in Yusuf's March 4, 2013 *Proposed Findings of Fact and Conclusions of Law* submitted to the Court after those hearings, Yusuf specifically asked for a finding that he was in charge of the business' functions which would include accounting and payment of taxes – agreeing with Hamed's statement, to wit:

40. Mohammad Hamed also readily admitted that he never worked in any management capacity at any of the Plaza Extra Stores, **which role was under the exclusive ultimate control of Fathi Yusuf, as Fathi Yusuf "is in charge for everybody"** and everything. (Jan. 25, 2013 Hr'g Tr. At 201 :4 (reflecting Mohammad Hamed's concession, even during his direct testimony, that "Mr. Yusuf he is in charge for everybody"), 201:23 -24, 210:21 -23 (acknowledging again that Fathi Yusuf is in "charge" of "all the three stores]")).

After the Court's April 2013 *Preliminary Injunction* was issued in response to that testimony, Yusuf continued his assertion that he alone was in charge of the partnership's management functions -- as was the case in his May 9, 2013, *Motion to Stay* the Preliminary Injunction.

However, the testimony of the Plaintiff was clear when he admitted that he never worked in any **management capacity** at any of the Plaza Extra Stores, **which role was under the exclusive ultimate control of Fathi Yusuf**. . .

Id. at 6.

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of the office functions which would include accounting and payment (or avoidance) of taxes. This would mean that he was "in charge of" and directed what I can state was a sophisticated scheme involving international money laundering and offshore banks -- and the attendant alteration of accounting records.

Conclusion

Because the nature of the tax fraud in this case (i.e. the skimming of gross receipts and cash distributions through various means) involves deception and, by definition, an incomplete set of books and records of the company, it is impossible for the partnership to reconstruct an accurate set of books and records prior to 2001. Although the parties and the Government have agreed to recognize approximately \$10 million in underreported gross income for the 2001 tax year, there is no such agreement for the years prior to 2001. Even if it can be assumed that the \$10 million

Indeed, in a motion filed soon thereafter, in which Yusuf attempted to preclude the Hameds from all accounting information, he stated, with regard to the accounting:

There is no dispute that Defendant Fathi Yusuf has always been the ultimate decision maker.

See May 16, 2013, Defendants' Motion To Clarify Scope Of Preliminary Injunction With Respect To United Corporation's Financial Statements, And Access To United's Financial Systems, at 3.

Finally, because Mr. Yusuf had, apparently, complete control over the accounting and accounting records and would not allow Hamed access, the Court entered an order ending that absolute control. On May 31, 2013 the Court:

ORDERED that Defendant United Corporation shall provide revised financial statements for the three Plaza Extra Supermarket stores only within 30 days of the date of this Order;

ORDERED that said financial statements for the three Plaza Extra Supermarket stores shall be used for internal purposes only, and may not be disseminated to any third parties (excepting legal, accounting and tax advisors of the Parties) without the written consent of the other Party, and

ORDERED that only mutual access of all sensitive financial data, records and financial statements shall be permitted according to a process to be determined by the Parties.

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of underreported income in 2001 is accurate, it cannot be known, within any degree of legal or factual certainty, where or to whom the money went.

The only year for which there is a specific acknowledgment of a defined amount of underreported income is 2001. It is the only year for which there can be any proper, legal accounting. The nearly \$10 million of 2001 gross receipts was secreted and, presumably, given to someone. It is now impossible, by use of United's tax returns or accounting records, to determine where that money went. This is particularly true because the underlying income was cash and because much of the unreported gross receipts were transmitted in various forms internationally.

The only other arguably, detailed and accurate "accounting" related to this period was contemporaneously done by the U.S. Attorney's Office, which I am informed will be attached to Hamed's *Notice of Claims* for the Court's review. Because there is transaction-by-transaction documentary support for this accounting, it shows that Mr. Yusuf took \$4.5 million more than Hamed out of the partnership that, along with interest, would now be due to Mr. Hamed.

Specifically, the FBI and the U.S. Attorney's Office performed a detailed accounting and analysis of funds covertly removed from the partnership from 1996 to 2001. On January 4, 2005, the Government produced a document showing the amount Fathi Yusuf or his family received in cash or transfers from the Partnership -- and the amount Hamed or his family received. See Document Bates numbered HAMD629722-HAMD630014. The document is accompanied by extensive, line-by-line, date-specific supporting records from offshore banks, wire transfers and other means by which funds were removed. Thus, the FBI was able to specifically trace disbursements of over \$47 million between 1996 and 2001. The document was prepared as part of the criminal case 2003-147 and would normally be used by the prosecution to calculate the amount of tax United failed to pay on behalf of the partnership in its criminal settlement, conviction and allocution in that case. The amount of the disparity on the \$47 million skimmed was \$4,646,276.96 overage to Yusuf. This amount, plus interest should be due to Mr. Hamed. The chart below was

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prepared by Hamed's counsel from that document and shows a summary of the results.

US Government Calculation of Additional Income to Fathi Yusuf, Wally Hamed and Willie Hamed from January 4, 2005 Draft Bates Number FY 009991-
(Overage to Fathi Yusuf was \$4.646 Million)


	1996	1997	1998	1999	2000	2001	Total
1996-2001 Additional Income for Fathi Yusuf	\$ 2,939,822.40	\$ 301,230.42	\$ 2,231,582.09	\$ 5,413,214.70	\$ 7,286,897.12	\$ 7,756,376.54	\$ 25,929,123.27
1996-2001 Additional Income for Wally Hamed	\$ 4,868,283.17	\$ 1,696,282.02	\$ 3,619,176.42	\$ 1,981,853.48	\$ 8,647,150.59	\$ 382,618.63	\$ 21,195,364.31
1996-2001 Additional Income for Willie Hamed		\$ 14,700.00	\$ 16,300.00	\$ 25,189.00	\$ 31,293.00		\$ 87,482.00
							\$ -
							\$ -
Overage Obtained by Fathi Yusuf over Hameds	\$ (1,928,460.77)	\$ (1,409,751.60)	\$ (1,403,894.33)	\$ 3,406,172.22	\$ (1,391,546.47)	\$ 7,373,757.91	\$ 4,646,276.96

A copy of my resume and curriculum vitae of professional experience is annexed hereto for your review.

Thank you for your consideration.

Very truly yours,

LAW OFFICES OF
LAWRENCE H. SCHOENBACH, PLLC



By:

Lawrence Schoenbach, Esquire

LHS/sms

LAWRENCE H. SCHOENBACH*
PARTNER, INSTITUTE FOR TAX AND
COMMERCIAL LAW, CH-ZÜRICH

OF COUNSEL
ELLEN BESSIS**
JÜRIG BRAND***
ERICA B. POPKIN
A. JEFFREY WEISS****

*ALSO ADMITTED IN D. PUERTO RICO AND U.S.V.I
**ADMITTED IN FRANCE ONLY
***ADMITTED IN SWITZERLAND ONLY
****ALSO ADMITTED IN U.S.V.I AND ILL.

LAW OFFICES OF
LAWRENCE H. SCHOENBACH, PLLC
A PROFESSIONAL LIMITED LIABILITY COMPANY

THE TRINITY BUILDING
111 BROADWAY, SUITE 701
NEW YORK, NEW YORK 10006
(212) 346-2400

FACSIMILE (212) 374-1506

SCHOENBACHLAWOFFICE@ATT.NET
WWW.SCHOENBACHLAW.US

108 BOULEVARD DU MONT-PARNASSE
75014, PARIS, FRANCE

TALSTRASSE 82
POSTFACH 4818
8022, ZÜRICH, SWITZERLAND

2111 COMPANY STREET
CHRISTIANSTED, ST. CROIX
U.S. VIRGIN ISLANDS 00820

**LAWRENCE H. SCHOENBACH
RESUME AND CURRICULUM VITAE OF
PROFESSIONAL EXPERIENCE**

Employment History

Law Offices of Lawrence H. Schoenbach, PLLC
New York, New York

Private Practice of Law
1983-present

Legal Aid Society
Queens, New York

Public Defender - NYC
1980-1983

Skadden, Arps, Slate, Meagher & Flom
New York, New York

Summer Associate
1979

Kings County District Attorney's Office
Brooklyn, New York

Summer Intern
1978

Private Law Practice – Overview

Since 1983 the Law Offices of Lawrence H. Schoenbach, PLLC and primarily, its principal attorney, Lawrence H. Schoenbach, has had a varied national and international litigation practice concentrating on criminal defense and since 2001, on Corporate Compliance. Mr. Schoenbach is admitted to practice law in New York and the United States Virgin Islands. Although based primarily in New York, the firm has affiliate offices in Paris, Zurich, Puerto Rico and the U.S. Virgin Islands. Mr. Schoenbach is also the New York partner in a Swiss law and business consulting firm.

For more than 25 years, Mr. Schoenbach has worked as an instructor of trial techniques at the National Institute of Trial Advocacy at the Hofstra University School of Law (Hempstead, New York) and the Cardozo School of Law (New York, New York). Mr. Schoenbach has also appeared regularly as a legal commentator on what was formerly known as Court TV.

Mr. Schoenbach has served as outside Compliance Counsel for a number of companies, most recently a national wholesale distributor of tobacco products. He has

drafted corporate Compliance Manuals, and overseen their implementation and personnel training.

Mr. Schoenbach has tried to verdict well in excess of 100 jury trials primarily in U.S. federal court and has represented clients throughout the United States (Houston, Miami, Tampa, Seattle, Las Vegas, Boston, San Juan, St. Thomas, St. Croix, Newark, Washington, D.C., and Palm Beach) as well as around the world (Hong Kong, Saudi Arabia, Italy, France, Switzerland, Canada, Nigeria, and Pakistan). Most of the firm's representation of its clients involved complex federal criminal matters including, but not limited to, securities and tax investigations, money laundering, and racketeering and violations of the Foreign Corrupt Practices Act ("FCPA").

Mr. Schoenbach has argued before various federal and state Courts of Appeal approximately 40 times. A sample of the more notable trials in U.S. District Court in which Mr. Schoenbach was defense counsel includes:

- The "Pizza Connection" (a 22 defendant indictment in New York charging \$1.5 Billion narcotics conspiracy between the Sicilian and American mafia);
- The trial of the "Westies" (alleged to be New York's Irish mafia);
- The 1988 "Air America" civil forfeiture prosecution in Pennsylvania of reputed former agent of the Central Intelligence Agency;
- The 14 month-long trial in New York of the "DeMeo Crew" of the Gambino Crime family;
- The prosecution of "Phyber Optic," at the time the largest and most comprehensive federal case ever charged against a computer "hacker;"
- The Securities & Exchange Commission civil and criminal investigation and prosecution of the "Crazy Eddie" corporation;
- The attempted assassination conspiracy (in New York) of Egyptian President Hosni Mubarak (a part of the case involving the 1993 bombing of the World Trade Center in New York);
- The political corruption/bribery prosecution in St. Thomas of the former Commissioner of Public Works for the U. S. Virgin Islands; representation also of the Governor of the U.S. Virgin Islands;
- The Swiss and American prosecution of the then-largest ever Securities Fraud, Tax, and Money Laundering investigation involving the two countries (concerning the sale of penny stocks and reverse mergers);
- Representation of the co-lead defendant in the criminal trial in Italy against former Italian Prime Minister Giulio Andreotti; and
- Representation of the widow of Dr. Robert Atkins ("The Atkins Diet) in a multi-district, multi-state civil litigation.

Publications

“Doing Business in America in the New Millennium: Criminal Law Meets Corporate Responsibility.” World Watch, September 2002 (a publication of American Express Tax and Business Services. See article reproduced at: www.schoenbachlaw.com)

Education

Hofstra University School of Law
Hempstead, New York
Juris Doctor, 1980

Honors/Awards: Constitutional Law
Law Fellow: Criminal Law, Property

State University of New York at Albany, School of Criminal Justice
Albany, New York
Master of Arts, 1980

Franklin & Marshall College
Lancaster, Pennsylvania
Bachelor of Arts (English & Government), 1975