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A New Legal Chapter for a 90's Flameout

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SURROUNDED by dozens of wealthy financiers gathered more than 1,000 feet above Wall Street, Gary Winnick held center stage one fall evening in 1998. His new corporation, Global Crossing Ltd., had recently gone public, and the stock was on a meteoric rise that would briefly make him a multibillionaire. Sitting in rapt attention at a celebratory dinner at Windows on the World, the restaurant atop the World Trade Center, the audience listened as Mr. Winnick, a jowly, hard-driving former bond salesman, promoted his company's potential with all the zeal of a televangelist.

Global's fiber-optic cables, Mr. Winnick promised, would help start a telecommunications revolution, allowing data to zip around the planet in the blink of an eye. "He kept saying how Global Crossing was going to change the world," recalled Richard Klugman, a telecom analyst who witnessed the performance that night and who, along with many others, bought the story.

In October 2002, almost four years to the day after that dinner, Mr. Winnick sat before a Congressional investigative committee, trying to explain why Global imploded and how he managed to salvage at least \$735 million out of the wreckage for himself.

"Yes, I made a lot of money," Mr. Winnick told members of Congress. "But when I went into this venture, building a cable across the Atlantic, I had no contemplation that this thing would turn out to be what it was. I'm both proud and saddened by it."

Along with Kenneth L. Lay of [Enron](#), L. Dennis Kozlowski of [Tyco International](#) and Bernard J. Ebbers of [WorldCom](#), Mr. Winnick has emerged as a symbol of the financial shenanigans behind the 1990's bull market. Unlike the others, however, Mr. Winnick, Global's founder and chairman, has already been cleared of criminal charges. The Justice Department quietly dropped a criminal fraud investigation of him on Christmas Eve of 2002, relieving him of the prospect of prison time. But he still faces two civil suits - others have been settled - and a continuing Securities and Exchange Commission investigation.

Of all the lawsuits, one filed against Mr. Winnick last October in federal court in Manhattan holds special significance. [J. P. Morgan Chase](#) and other leading banks are seeking \$1.7 billion in damages from Mr. Winnick and other Global Crossing executives, contending that the group engaged in a

"massive scam" to "artificially inflate" the company's performance to secure desperately needed loans. Mr. Winnick, whose lawyers dispute the accusations, declined to be interviewed for this article.

Among other things, the suit refocuses attention on exactly what Mr. Winnick knew about his company's finances during times when it was borrowing heavily and he was selling hundreds of millions of dollars in stock. It also outlines a troubling series of meetings he held with Mr. Lay and other Enron executives just months before their company crumpled.

In late June, the judge in the case, Gerard E. Lynch, ruled that the banks' accusations had enough merit for the case to move forward, meaning that Mr. Winnick might find himself on the witness stand again.

"I am prepared to look at this case as, with all respect to the people involved, a bunch of crooks getting sued by a bunch of bankers who are too dumb to stop throwing money down the toilet," Judge Lynch said in an earlier court hearing, before adding that there was credibility to the notion that Global may have defrauded the banks.

But the full account of Global's rise and fall is more shaded than Judge Lynch's comments suggest, and speaks not only to Mr. Winnick's tenure there but also to the business milieu that shaped him as a financier.

His detractors say Global's downfall involved arcane accounting gimmicks that eluded federal prosecutors, allowing Mr. Winnick to avoid punishment. His supporters, who point to his extensive philanthropy as evidence of his generosity, say he is a shrewd deal maker who merely exploited an opportunity. Still others offer an even more trenchant, if unsettling, observation: Gary Winnick is us.

"Some people say, 'The guy made a lot of money,' " said Ronald I. Silverman, a Los Angeles lawyer who is a close friend of Mr. Winnick's. "I say, 'Welcome to America.' "

FOR most of his 56 years, Gary Winnick's life followed a storybook plot: a kid from humble circumstances vaults, like a Horatio Alger character, into the upper tiers of American business and wealth. He has kept company with presidents, joined Britain's queen mother for her birthday, toured art collections with David Rockefeller and paid \$65 million in cash for a sprawling Bel Air estate. He also stood in the epicenter of two seismic financial events - working first as an apprentice to Michael Milken during the junk-bond revolution of the 1980's and then riding the telecom tsunami of the 1990's.

Mr. Winnick was born in 1947, the youngest of Blanche and Arnold Winnick's three children. He was raised in Roslyn, one of the working-class suburbs that sprang up on Long Island after World War II, and where his father owned a food supply business. The Winnicks were a boisterous, argumentative, close family, and when Arnold died of a heart attack when Gary was 18, newly enrolled at C. W. Post College, the teenager was devastated, people close to him said.

After his father's death, Mr. Winnick did what he could to help support his widowed mother and put

himself through school. He worked at a ski shop, was a soda jerk at a Howard Johnson's restaurant and helped manage a golf club. While Vietnam War protests spilled across college campuses, Mr. Winnick stuck to his business and economic studies at C. W. Post. After he graduated in 1969, he worked as a furniture salesman and married his wife, Karen. The Winnicks are said to enjoy a solid, loving marriage; their three sons are all in their 20's.

Mr. Winnick ventured to Wall Street in the early 70's, landing a job at Burnham & Company, then a second-rate brokerage firm populated by in-your-face traders and investment bankers down on their luck, hitting the telephones to stir up deals. It would later be known as Drexel Burnham Lambert. Drexel made Mr. Winnick a salesman on its bond desk.

Michael Milken ran an obscure part of Drexel's business, trading high-yield bonds. Such bonds, deemed so risky and rated so poorly by credit agencies that they were called "junk," had once been a financial backwater. In Mr. Milken's hands, junk bonds financed the dreams of cable, cellular and media entrepreneurs shunned by more conservative Wall Street firms and became the currency of choice for corporate raiders.

Whatever jobs he held before, Mr. Winnick found his *métier* through Mr. Milken. The pair clashed over compensation, according to people who witnessed their relationship, but both worked long hours and reveled in work that placed a premium on split-second trades and sales.

When Mr. Milken moved his growing junk-bond operation to Los Angeles, he invited Mr. Winnick to follow him. From an X-shaped trading desk in Beverly Hills, Mr. Milken emerged as the most powerful, most innovative and most feared American financier since J. P. Morgan. Mr. Winnick shared in the spoils, telling acquaintances he eventually made as much as \$2 million a month at Drexel.

By the time Mr. Winnick left Drexel, in 1985, Mr. Milken was already paying the price of hubris. In 1990, he was sentenced to 10 years in prison for securities fraud and forced to pay more than \$1 billion in fines. The perception that Mr. Winnick had cooperated with prosecutors made him a pariah to some Milken loyalists.

"Milken and some of his close people felt Gary had taken the side of the government and there was some ill will about it from time to time," said Terry Christensen, Mr. Winnick's longtime lawyer.

After leaving Drexel, Mr. Winnick started his own investment firm, Pacific Capital. He engineered several low-profile deals, investing in furniture, mattress, satellite television and health care enterprises, and dabbled in real estate. All of that changed in late 1996, when one of his Pacific Capital bankers told him about the possibility of lacing the Atlantic seabed with fiber-optic cables that could rush electronic information over the Internet and across continents.

For the telecommunications business as a whole, 1996 was a watershed year. Local telephone markets and cable television rates were deregulated, opening both businesses to new competition. Experts

predicted a broad shift in which amalgams of cable, telephone and Internet companies would offer new forms of communications, commerce and entertainment. Though broadly hailed as revolutionary, this new world was not, alas, just around the corner.

Nonetheless, Wall Street turned on the spigot, and trillions of dollars flowed toward old and new telecom companies poised to exploit the opportunities. The better your story, the more money you got. Gary Winnick, with an intimate understanding of how to sell to the Street, had a very good story.

Early in 1997, he met Mr. Silverman, his lawyer friend, for lunch at a Chinese restaurant in Los Angeles. Mr. Winnick, while often animated, was particularly hyped up that day.

"I've gotten a premonition," Mr. Silverman recalled Mr. Winnick telling him. "Something big is about to happen."

"What are you talking about?" Mr. Silverman asked, amused.

"I don't know," Mr. Winnick replied. "But it's going to be big."

In March 1997, about a month after that lunch, Mr. Winnick opened Global Crossing's doors. He had scant operating experience in telecommunications - he got up to speed on the fiber-optics market by, among other things, watching a video - and had never actually run a business. But he put \$20 million into the venture and made himself chairman. Then he raised more money and hired contractors to build an optics web linking the United States, Britain, the Netherlands and Germany. A little over a year later, the company's United States-to-Britain link was operating and, with the telecom and Internet booms in full throttle, customers lined up.

Fiber optics were cheaper for companies to use than old-fashioned copper wires, and Global leased space on its network to big telecom companies and others that wanted to resell the service. It was a relatively predictable business, and at first demand was strong. To ramp things up, Mr. Winnick needed to convince investors not only that Global could keep laying cable beneath oceans, but also that demand would stay robust and prices strong.

"Gary sold Global like you'd sell bonds, and it became bigger than he'd ever imagined," said one longtime associate of Mr. Winnick. "All of those people who had disowned him after Drexel for 10 years suddenly started coming around again."

In a three-year whirlwind, Mr. Winnick tapped the stock and bond markets for \$20 billion, all on the prospect that Global would keep growing and securing new customers. Global went public in August 1998, its shares leaping from \$9.50 to \$13.40 the first day of trading. Less than two years later, with the stock at a peak of about \$64, the market valued Global at \$47 billion - more than [PepsiCo](#), more than CBS, more than [McDonald's](#).

None of Global's financials justified this. It lost \$20 million on sales of just \$424 million in 1998, and it would never earn a penny in profits after that. In fact, losses would balloon. In 2000 alone, Global lost \$1.4 billion, a staggering amount for any start-up, no matter how bright its future.

Nonetheless, Mr. Winnick's \$20 million initial stake in Global was, at its height, worth more than \$6 billion. He had become a billionaire faster than anyone in American history - faster than Bill Gates, faster than John D. Rockefeller - and his picture landed on the cover of Forbes magazine, with a headline that read "Getting Rich at the Speed of Light."

While earnings weren't growing, Global's aspirations were. It planned to lay fiber beneath the Pacific, dominate the Internet and enter the local phone business. Mr. Winnick used Global's inflated stock value to buy other companies. He made a failed run at US West and then snapped up Frontier, a sleepy but profitable phone company in Rochester. Frontier, the nation's fifth-largest long-distance carrier, was staffed by old-economy workers, the kind who climbed telephone poles in winter to replace wires.

MR. WINNICK'S team also gave large donations to Republicans and Democrats, hired well-connected lobbyists in Washington and secured Wall Street's loyalty, including that of Jack Grubman, a Salomon Smith Barney analyst who played carnival barker for the telecom joyride of the 1990's. Mr. Grubman, whose firm reaped hefty fees for underwriting Global's stock and for advising it on acquisitions, lavishly praised Global in his investor reports.

Almost as quickly as it began, it was over. The Internet bubble burst and dozens of telecom companies collapsed. Global Crossing watched customers abandon its 100,000-mile fiber-optics network. Hemorrhaging cash and facing withering prices and \$12 billion in debt it couldn't repay, Global filed for Chapter 11 bankruptcy protection in early 2002. The company recently emerged from bankruptcy as a shadow of its former self. About 12,000 people, including many from Frontier, lost their jobs and their pensions.

Frontier "was a perfect old telephone company for 100 years and the stock was all widows and orphans," said Representative Louise M. Slaughter, a Democrat whose district includes Rochester. "Then the sharpies came to town and in almost no time left lots of people destitute, people who had spent their entire lives at the phone company."

Mr. Winnick placed \$25 million of his own money in an escrow account to reimburse Frontier workers whose pensions vanished. His contribution was a fraction of the \$300 million lost by the company's employees but was an unusual gesture nonetheless. "You can say he didn't put much money in vis-à-vis how much he made at Global Crossing, but what other C.E.O. has put any money into a company that collapsed?" said Norman Brownstein, a lawyer close to Mr. Winnick who served briefly on Global's board.

In his Congressional testimony in 2002, Mr. Winnick offered his thoughts on his company's fate. "Global Crossing's bankruptcy, based on the facts known to me, is not a result of fraud but of a catastrophe that

befell an entire industry sector," he said. "I don't offer this as an excuse because it's certainly not an acceptable excuse. It's an explanation."

Others disagree. Susan Kalla, a telecom analyst at Friedman Billings Ramsey, said Mr. Winnick inflated the scope of every deal he struck and overstated what he was able to charge for access to Global's network. "I believe this guy has set American business culture back greatly," she said. "He wasted billions and billions of dollars that could have been spent on far more useful purposes. He's set innovation in the industry back by a decade because he, and others like him, beat investors down so badly.

"This was just about speculation," she said.

Analysts, investors and former employees have all criticized Mr. Winnick for selling large holdings of Global stock. According to the J. P. Morgan suit, he sold \$860 million worth of stock from 1999 to 2001, and the lawsuit contends that most was sold at a time when serious problems at the company were not being publicly disclosed. (Mr. Winnick's representatives contest that figure, saying he sold \$735 million worth of stock.)

Through a spokeswoman, Mr. Winnick said that most of his net worth came from his Global investment, and he denied bailing out of Global, saying that he had sold only 30 percent of his holdings.

His lawyer, Mr. Christensen, said that all Mr. Winnick's stock sales were preplanned or tied to the normal course of business - including a sale of \$123 million of shares in May 2001 that has drawn S.E.C. scrutiny.

In the months before that sale, Global's managers were on tenterhooks about the company's precarious finances, according to documents introduced in various lawsuits. One internal Global e-mail message from a customer service representative to a company vice president in March 2000 said the company was "losing customers left and right" because of "network problems" and "poor service." Three months later, Leo Hindery, the company's chief executive at the time, sent a memo to Mr. Winnick saying that Global's business "niche" was "going to die."

The J. P. Morgan lawsuit raises questions about what Mr. Winnick knew about Global's finances. It says that Mr. Winnick and other Global Crossing executives "personally oversaw and reviewed Global Crossing's financial results" and "were aware of Global Crossing's precarious financial position."

At meetings in April 2001, senior Global executives discussed that revenues were going to fall \$1 billion short of earnings estimates that had already been shared with the public, according to memos uncovered by Congressional investigators. Mr. Winnick did not attend those meetings, but he sold his shares a month later - with, he told Congress, the approval of Global's chief executive.

In early June 2001, about two weeks after Mr. Winnick sold those shares, Global's lawyers closed the

window on all insider stock sales, citing the company's deteriorating finances. Although Mr. Winnick orchestrated most of Global's biggest deals, raised all of the company's initial financing, answered analysts' questions at road shows, kept in daily contact with a string of executives and even supervised landscaping at Global's headquarters in Beverly Hills, he told Congressional investigators that it was not until that point that he learned Global would not hit its numbers. (His lawyer says others at the company did the numbers-crunching.)

Mr. Winnick's explanation drew incredulity in 2002 from Representative Billy Tauzin, a Louisiana Republican and chairman of the Energy and Commerce Committee, which was investigating Global's collapse. "It's a little hard for us to understand how a corporation can function like that, and how you, Mr. Winnick, could be at the head of this corporation and be so out of the loop," he said at the time.

Other Global executives also profited handsomely from a wave of stock sales. As a whole, the company's culture was, one former senior Global executive said, "just a hot-deal shop."

"There was this dichotomy between this small cabal in Beverly Hills and thousands of people in the rest of the country," said the former executive, who requested anonymity. "It was put together by a bunch of flippers who saw an amazing gravy train and nothing else."

Coudert Brothers, a law firm retained by Global to examine its accounting practices after it filed for bankruptcy protection, said in a 2003 report that while Global's accounting practices passed legal muster, its management left something to be desired. "While not necessarily in breach of their obligations as fiduciaries, the company's management, board and outside advisers did not satisfy what we believe are appropriate standards of corporate stewardship and professionalism," the report said.

Mr. Christensen said that Mr. Winnick's role at Global was largely limited to outside fund-raising and deal making and that the bulk of the company's operations, including highly disputed transactions involving communication capacity "swaps" with other companies, were left to others at Global.

The J. P. Morgan lawsuit contends, however, that Mr. Winnick, aware of the deteriorating telecom market, helped put together what the lawsuit described as an accounting "scam" designed to secure \$1.7 billion in bank loans in August and September 2001. Even before then, the suit said, Mr. Winnick pressured his sales force to conclude capacity swaps that inflated Global's revenue.

In the summer of 2001, Global and Enron began discussing the possibility of Global paying Enron \$650 million for its fiber-optic network in exchange for Enron promising to pay Global \$650 million to use the network - a swap that would have potentially bolstered both companies' reported revenue without actually costing either company any money. A June 11, 2001, e-mail message that the lawsuit attributes to Mr. Winnick cites a conversation between Mr. Winnick and Jeffrey K. Skilling, then Enron's chief executive, about Global's hopes to complete a swap with Enron.

Mr. Christensen said that Mr. Winnick placed a call to Mr. Skilling about the swap, but that his phone

call was not returned.

Two months later, according to another Global e-mail message cited in the lawsuit, the company's sales force was pressured to complete swaps with a list of high-priority clients. "Winnick wants to make sure we are putting the right amount of energy in the right places," the message said.

In the following months, "Winnick continued to take advantage of his relationship with people at Enron," the lawsuit contends. On Sept. 5, 2001, shortly after Mr. Skilling left Enron and months before the company plunged into bankruptcy, Mr. Winnick met with Enron's chairman, Kenneth L. Lay, in New York. Lodwick M. Cook, then Global's chairman, said in an interview that he had arranged the meeting because he and Mr. Lay were old friends and Mr. Lay wanted to meet Mr. Winnick.

ACCORDING to Mr. Cook and two other people briefed on the meeting, Mr. Winnick and Mr. Lay discussed the \$650 million swap. Mr. Christensen said that the meeting was merely a "meet and greet" between Mr. Winnick and Mr. Lay and that no sales matters were discussed. He noted that the swap never occurred.

Many of Global's accounting and sales practices remain a matter of intense dispute. While the Justice Department came down hard on another telecom start-up, [Qwest Communications](#), indicting four of its former executives on accounting fraud charges, no Global Crossing executives have been prosecuted. "There just wasn't a crime there, and the fact that the Justice Department, bless their hearts, apparently decided to move on helps emphasize the point that people were doing their best at the company," Mr. Christensen said.

Representative James C. Greenwood, a Pennsylvania Republican who oversaw a second Congressional investigation of Global, said that some of the company's accounting practices, such as swapping capacity and booking it as revenue, did cross the line, but that it was difficult to build a criminal case on bookkeeping arcana.

"I personally believe Mr. Winnick knew perfectly well why he engaged in these transactions," Mr. Greenwood said in an interview. "I believe that it was a fraudulent practice and a conscious effort to present a false picture to the financial community.

"I wish they had prosecuted," he added, referring to the Justice Department.

Mr. Christensen disagreed. "The accounting rules at the time were being properly deployed by Global Crossing," he said.

The fact that the S.E.C. is "saying it's problematic now doesn't mean it was problematic then," he added, noting that Global's books were approved by Arthur Andersen, its outside auditor. (Andersen closed shop in 2002 after being found guilty of obstruction of justice relating to accounting work it performed for Enron.)

Those closest to Mr. Winnick say they feel that he has been unfairly vilified for simply having the acumen to be in the right place at the right time. "It bothers me when people use the word greed when talking about him. He's given so much money back," said Rosalie Zalis, an executive at the Pacific Capital Group and director of one of his philanthropies. "Does he like to make money? Sure. But he gives back." She said he had donated about \$60 million to various charities.

Mr. Christensen said Mr. Winnick earned his wealth through gutsy and calculated investments generated by a fertile imagination. "He was and always will be a visionary," Mr. Christensen said. "He doesn't claim to be a philosopher. But he is a business visionary."

To others, however, Mr. Winnick's business contribution at Global remains something of a mystery.

"Did Global Crossing fabricate their business? Did they make it all up?" asked Patrick J. Comack, a telecom analyst at Guzman & Company. "I think regulators are still trying to figure that out."