

(9/16/09)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA :

CASE NO. 3:08-CR-097

v. :

DOUGLAS J. ZIMMERMAN, :

PLEA AGREEMENT

Defendant.

Defendant **DOUGLAS J. ZIMMERMAN** (hereinafter referred to as “defendant”), individually and through his attorneys, James T. Ambrose, Esq., and James P. Fleisher, Esq. and by and through the United States Attorney’s Office for the Southern District of Ohio, by and through the undersigned Assistant United States Attorney from the Southern District of Ohio (hereinafter referred to as “USAO”), (collectively referred to as, “the parties”), hereby agree as follows:

1. **DOUGLAS J. ZIMMERMAN**, will enter a plea of guilty to Counts 3 and 9 of the First Superseding Indictment (hereinafter referred to as “FSSI”) which was filed on February 10, 2009. Count 3 charges the defendant with conversion of property pledged to the Commodity Credit Corporation in violation of 15 U.S.C. § 714 m(c). Count 9 charges the defendant with making a false claim against the United States in violation of 18 U.S.C. §§ 287 and 2. Once said guilty pleas are entered and not withdrawn, the USAO agrees to move to dismiss the balance of the seventeen counts contained in the FSSI, and additionally, not to file any additional charges against the defendant **DOUGLAS J. ZIMMERMAN** for any similar crimes that may have occurred in the Southern District of Ohio, during the time frame set forth in the FSSI that arise out of the facts set forth in the attached Statement of Facts that the USAO is presently aware of. The maximum statutory penalty that defendant **DOUGLAS J. ZIMMERMAN** is subject to pursuant to his plea of guilty to Count 3 is: 5 years imprisonment, a \$10,000 fine, 3 years of supervised release, and a

mandatory \$100 special assessment payable to the Clerk of Court as required by 18 U. S. C. § 3013. The maximum statutory penalty that defendant **DOUGLAS J. ZIMMERMAN** is subject to pursuant to his plea of guilty to Count 9 is: 5 years imprisonment, a \$250,000 fine, 3 years of supervised release, and a mandatory \$100 special assessment payable to the Clerk of Court as required by 18 U. S. C. § 3013.

2. The parties agree pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) to recommend to the Court that the defendant receive a sentencing range of incarceration of between 3 months to 18 months as part of his sentence. The parties stipulate that an appropriate amount of restitution in this case should be ^{up to \$} \$44,810. The parties further stipulate that no fine should be imposed in this case, however acknowledge that a \$200 special assessment will be imposed in this case (\$100 for each count to which the defendant pleads guilty). The parties further understand and agree that the Court is bound by these recommendations upon its acceptance of this plea agreement. The defendant understands that: (1) the Court may accept this plea agreement, reject it, or defer a decision until the Court has reviewed the pre-sentence investigation report, (2) if the Court accepts this plea agreement, a term of incarceration of between 3 months to 18 months will be included in the judgment of conviction, (3) if the Court rejects this plea agreement, the defendant will have an opportunity to withdraw his plea, and (4) if the Court rejects this plea agreement and the defendant's plea in this case is not withdrawn, the Court may dispose of this case less favorably toward the defendant than this plea agreement contemplates, including imposing any sentence up to the statutory maximum set forth for the offenses to which the defendant pleads guilty.

3. The defendant further understands that notwithstanding the foregoing agreed term of incarceration, the United States Probation Office (“Probation Department”) will conduct a presentence investigation and recommend to the Court an advisory United States Guidelines (“U.S.S.G.” or “Sentencing Guidelines”) range. For purposes of calculating this advisory sentencing guideline range, the defendant further understands that the U. S. Probation Department’s recommendations are not binding upon the Court. The parties agree and stipulate that pursuant to United States Sentencing Guidelines (U.S.S.G.) § 2B1.1, the base offense level attributable to the defendant for Count 1 is an offense level of six (6). The parties further agree and stipulate that pursuant to U.S.S.G. § 2B1.1(b)(1)(E), the intended loss caused by the defendant was \$82,000. The parties further agree and stipulate that pursuant to U.S.S.G. § 2B1.1(b)(4), and the defendant was not considered a person in the business of receiving and selling stolen property. The parties further agree and stipulate that pursuant to U.S.S.G. § 2B1.1(b)(9)(C), the offense committed by the defendant did not involve the use of sophisticated means. Both parties reserve the right to argue and offer supporting evidence regarding additional specific offense characteristics, adjustments and departures, as well as the right to offer evidence and argument relating to the factors of sentencing as set forth in 18 U.S.C. § 3553(a). Defendant understands that the U. S. Probation Office’s recommendations do not bind the Court.

4. If the defendant fully complies with all of his obligations as set forth under this agreement, the USAO agrees, at the time of sentencing, to recommend a two-level reduction in the applicable advisory sentencing guideline offense level, pursuant to U.S.S.G. § 3E1.1(a) for acceptance of responsibility, and to further recommend, and move for an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b) for timely notification of intent to plead guilty, if available under that section. The defendant understands that the Court is not bound to accept the recommendations contained in this paragraph. If the Court ultimately does not accept the recommendations contained in this paragraph, the defendant understands that he will not be allowed to withdraw his guilty plea.

5. The defendant is aware that the Sentencing Guidelines are no longer mandatory in determining his sentence. However, the defendant also understands that said Sentencing Guidelines will be given due consideration by the Court, in conjunction with all other sentencing factors set forth in 18 U.S.C. § 3553(a), to determine the appropriate sentence. The defendant has thoroughly reviewed with his attorneys how the Sentencing Guidelines might apply to this case. The defendant understands and acknowledges that the matter of sentencing is reserved solely to the District Court.

6. The parties hereby state that the charges to which the defendant is pleading guilty adequately reflect the seriousness of the readily provable actual offense behavior and that the acceptance of the Agreement by the Court will not undermine the statutory purposes of sentencing.

7. The defendant understands that this agreement requires him to abide by each term of this agreement. The defendant also understands that if he makes any statement that is materially false in whole or in part or otherwise fails to comply with any term of this agreement, the USAO has the

right to declare this agreement null and void and to prosecute the defendant to the full extent of the law. If this plea agreement or the defendant's conviction is voided for any reason, the defendant waives any statute of limitations with respect to the USAO prosecuting the defendant for any offense arising from defendant's conduct in this case.

8. This Agreement does not protect the defendant from prosecution for perjury, false statement, obstruction, or any other such charge for conduct after the date of the filing of said Indictment.

9. The defendant agrees to pay \$200.00 in special assessments to the Clerk of the United States District Court for the two counts to which he will plead guilty no later than the date of his sentencing.

10. Defendant further agrees that he is not a prevailing party as defined by the Hyde Amendment, Public Law 105-119, Title VI, Nov. 26, 1997 (set forth as a statutory note under 18 U.S.C. § 3006A) and hereby expressly waives filing any suit or asserting any claim against the USAO, including its agents and employees, under said provision.

11. In the event the defendant does not plead guilty, or seeks to withdraw his guilty plea, or does withdraw his guilty plea, the defendant hereby waives any protection afforded by Section 1B1.8(a) of the Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence.

12. The defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, and in exchange for the concessions made by the USAO in this plea agreement, the defendant hereby waives all rights to appeal the sentence imposed,

any aspect of the sentence imposed, or the manner in which the sentence was imposed (including whether or not the sentence was imposed pursuant to the Sentencing Guidelines and including whether or not the Sentencing Guidelines were correctly applied), unless the sentence exceeds the maximum permitted by statute or those permitted by this agreement if approved by this Court. The defendant also waives the right to challenge the sentence or the manner in which it was determined in any collateral attack, including but not limited to, a motion brought under 28 U.S.C. § 2255 (habeas corpus). If the USAO appeals the defendant's sentence, then the defendant shall be released from the above waiver of appellate and habeas corpus rights.

13. This written Agreement embodies all of the agreements and understandings between the USAO and the defendant. No conversations, discussions, understandings, or other documents extraneous to the Agreement shall be considered part of this Agreement. By signing this Plea Agreement, defendant **DOUGLAS J. ZIMMERMAN** acknowledges that he has discussed its terms with his attorney and understands and accepts those terms. This agreement binds only the USAO and does not bind any other federal, state or local prosecuting authority.

14. Defendant further agrees that he is satisfied with the representation of his attorneys in this matter.

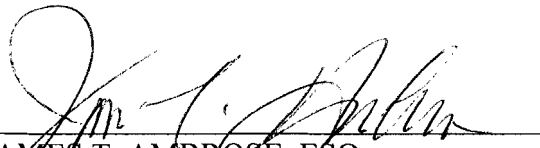
WILLIAM E. HUNT
Acting United States Attorney

Dwight K. Keller
DWIGHT K. KELLER (0074533)
Assistant United States Attorney

Douglas J. Zimmerman
DOUGLAS J. ZIMMERMAN
Defendant

17 SEP 2009
DATE

17 Sep 09
DATE



JAMES T. AMBROSE, ESQ. *sect. 4001115*
Attorney for Defendant

9-17-09
DATE

5/ J.P. Fleisher

JAMES P. FLEISHER, ESQ. *by J.T. Ambrose*
Attorney for Defendant

9-17-09
DATE

STATEMENT OF FACTS
UNITED STATES vs. DOUGLAS J. ZIMMERMAN

FACTS RELEVANT TO COUNT 3
OF THE FIRST SUPERSEDING INDICTMENT

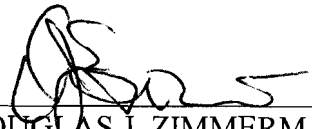
Between on or about December 15, 2003 and March 30, 2004, while in the Southern District of Ohio and elsewhere, the defendant **DOUGLAS J. ZIMMERMAN** did willfully conceal and convert to his own use a certain amount of stored soybeans which had previously been pledged as security and collateral to the Commodity Credit Corporation for a \$49,735 loan secured from the Randolph County, Indiana United States Department of Agriculture, Farm Service Agency (FSA). This action by the defendant was in direct contravention to written FSA loan rules which he agreed to abide by, and prohibited the movement and/or sale of collateralized soybeans from previously approved storage locations without prior FSA authorization.

FACTS RELEVANT TO COUNT 9
OF THE FIRST SUPERSEDING INDICTMENT

On or about January 21, 2005, while in the Southern District of Ohio and elsewhere, the defendant **DOUGLAS J. ZIMMERMAN** did knowingly and intentionally make and present a false, fictitious and fraudulent claim against an agency of the United States, to wit: the Federal Crop Insurance Corporation which is a program administered by the Risk Management Agency of the United States Department of Agriculture. This claim, to wit: Claim No. 1106947, for Randolph County, Indiana Unit # 0101 was specifically submitted by the defendant to the Rural Community Insurance Services which serves as a re-insurance company for the Federal Crop Insurance Corporation. This claim specifically included false information regarding the defendant's actual corn production history for crop year 2004. This false information had the direct effect of fraudulently increasing the amount of the crop insurance indemnity the defendant received in 2005 for his purported 2004 crop year loss.

I, DOUGLAS J. ZIMMERMAN, the defendant herein, acknowledge the truth and accuracy of the above stated facts as they apply to subject case.

9.17.09
DATE



DOUGLAS J. ZIMMERMAN
Defendant.