

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 08 CR 82-1
) Judge Charles P. Kocoras
)
DANIEL J. BEALKO)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant DANIEL J. BEALKO, and his attorney, DOUGLAS MCNABB, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A) and Rule 11(c)(1)(B), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts 1 - 2); interstate transportation of funds obtained by fraud, in violation of Title 18, United States Code, Section 2314 (Counts 3 - 4); and income tax evasion, in violation of Title 26, United States Code, Section 7201 (Counts 5 - 6).

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Counts One and Five of the indictment. Count One charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343. Count Five charges defendant with income tax evasion, in violation of Title 26, United States Code, Section 7201. In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Five of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline §1B1.3, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

a. With respect to Counts One of the indictment: Beginning in approximately mid-1998, and continuing until approximately December 2003, at Northfield and Wilmette, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant DANIEL J. BEALKO devised and participated in a commercial bribery scheme with co-defendant Anthony Demetrius Brown (Brown) to defraud GM and to obtain money by means of materially false and fraudulent pretenses, representations, and promises.

Background

General Motors Corporation (“GM”), headquartered in Detroit, Michigan, produced and sold automobiles in various locations throughout the world. In order to produce its automobiles, GM purchased sizeable quantities of bulk aluminum through various means. In order to minimize its exposure to significant fluctuations in the price of bulk aluminum, GM engaged in various hedging strategies, such as trading in the aluminum commodities futures market and purchasing bulk aluminum at favorable prices for future use by GM. Devising and implementing these hedging strategies was largely the responsibility of GM’s Global Commodity Manager for Lightweight Metals (GCM).

Between approximately 1996 and December 2003, defendant BEALKO was GM’s GCM. Among his various responsibilities, between approximately 2001 and late 2003, GM entrusted BEALKO with the discretionary authority to devise and implement a plan for GM to divest an extensive physical hedge of bulk aluminum. As the GCM, defendant BEALKO owed a fiduciary duty to provide honest services and undivided loyalty to GM in the performance of his duties.

Co-defendant Brown was the owner of Fuci Metals USA (Fuci) and Commodities Management Exchange (CMX), both located in Northfield, Illinois. The principal business of Fuci was buying and selling bulk metal for profit. The principal business of CMX was development and deployment of an internet-based commodities exchange, CMXchange.com, for the auctioning of bulk metal. In addition, co-defendant Brown had an interest in a number of sports and entertainment-related businesses, which

were principally based in Las Vegas, Nevada, such as CMX Sports & Entertainment, and CMX Productions. Co-defendant Brown maintained personal bank accounts and bank accounts for Fuci and CMX-related businesses at Bank One, Wilmette, Illinois.

The Commercial Bribery Scheme

In or around 1998, defendant BEALKO met co-defendant Brown through a commodities trader who had worked with BEALKO on commodities deals at one time. Fuci had previously done business with GM involving the sale of scrap metal by Fuci to GM, and defendant BEALKO was aware that Brown wanted to grow Fuci's business with GM beyond selling scrap metal to the company. BEALKO told Brown that doing business with Fuci would garner GM "minority business credits," which was important for a company such as GM that did substantial business with the federal government. Defendant BEALKO also told Brown that he had not been adequately compensated by GM in light of the substantial sums he had made for the company managing its aluminum positions. Additionally, defendant BEALKO complained that GM's medical insurance was not sufficiently covering the costs of medical care required by a close family member of defendant. Defendant BEALKO told Brown that he would cause GM to sell excess aluminum to Fuci provided that Brown paid sums of money ("kickbacks") to BEALKO for each instance in which GM sold metal to Fuci. Defendant BEALKO told co-defendant Brown that if he did not pay the money to BEALKO, GM would not conduct this business with Fuci.

Co-defendant Brown agreed to pay kickbacks to defendant BEALKO in exchange for the business GM conducted with Fuci. In summary, GM sold excess bulk aluminum

to Fuci on 60 to 90-day credit terms, and Fuci then sold the aluminum to third parties for a small profit, repaying GM the purchase price at the end of each credit window. A substantial portion of the aluminum transactions were conducted by Fuci on CMXchange.com, the internet-based commodities exchange developed by Brown. Defendant BEALKO and co-defendant Brown concealed from GM their agreement to steer GM business to Fuci in exchange for monetary payments from Brown to defendant BEALKO. Defendant BEALKO told co-defendant Brown that Brown could not reveal the secret payments to BEALKO to anyone at GM, and Brown did not do so while the kickback scheme was on-going. At various times between approximately mid-1998 through approximately December 2003, co-defendant Brown made kickback payments to co-defendant BEALKO in amounts totaling approximately \$6,500,000.

At the direction of defendant BEALKO, the kickback payments to BEALKO were made by co-defendant Brown in a manner that concealed the relationship between Fuci and co-defendant BEALKO. For example, defendant Brown made kickback payments to co-defendant BEALKO in the form of bank checks issued by Bank One. In summary, Brown used funds from bank accounts that he maintained at Bank One, such as those used by Fuci, to purchase bank checks made payable to co-defendant BEALKO. Brown then caused these bank checks to be transmitted from Illinois to BEALKO in Michigan.

In addition, Brown wire transferred funds from accounts that he maintained at Bank One to foreign bank accounts designated for receipt of funds by BEALKO. For example, during 2002 and 2003, BEALKO directed Brown to make kickback payments

in the form of wire transfers to an account maintained at UBS AG, Zurich, Switzerland, in amounts totaling approximately \$3,460,000. At the direction of defendant BEALKO, co-defendant Brown caused those wire transfers to be directed to the attention of "Roland Tobler." In addition, at defendant BEALKO's direction on various occasions, Brown caused funds to be wire transferred to an account at Stanford International Bank for the benefit of an account in the name of "NF Metals." BEALKO's directions to Brown on the amount and manner of kickback payments were made orally and through written instruction. For example, in some instances, defendant BEALKO provided Brown with spreadsheets which showed the amount of money Brown owed BEALKO as a result of particular aluminum sales to Fuci.

In or about February 2003, defendant BEALKO and co-defendant Brown met with representatives from a commodities brokerage then known as Carr Futures to discuss a brokerage account, previously established and held in the name of Fuci at Carr Futures. Subsequently, defendant BEALKO used the Fuci account at Carr Futures to trade aluminum futures and options on aluminum futures contracts. Defendant BEALKO pledged assets of GM as security against any losses suffered by Carr Futures in the Fuci brokerage account. In order to provide security for the Fuci account at Carr Futures, BEALKO and Brown caused negotiable warrants for GM-owned aluminum to be delivered to New York and put on deposit with Carr Futures. Additionally, co-defendant Brown executed a power-of-attorney for the Fuci account at Carr Futures in favor of defendant BEALKO, thereby giving BEALKO full authority to manage and conduct transactions in the account. Defendant BEALKO conducted

and managed substantially all of the trading activity in the Fuci account at Carr Futures. For example, defendant BEALKO used the Fuci account to make delivery to third-party buyers of bulk aluminum that had been sold by GM to Fuci. In most instances, BEALKO had negotiated the terms of the sale of such aluminum from Fuci to the third-party buyers. With regard to options trading, BEALKO conducted all such transactions, and profits earned by BEALKO were paid into the Fuci account at Carr Futures and subsequently transferred to accounts maintained by Brown at Bank One.

On or about November 17, 2003, in the Northern District of Illinois, Eastern Division, for the purpose of executing the charged scheme, defendant Brown knowingly caused to be transmitted in interstate and foreign commerce from Illinois to Switzerland, certain writings, signs, signals, and sounds, namely a wire transfer of approximately \$300,000 from a Fuci account at Bank One, Illinois, to an account at UBS AG, Zurich, Switzerland, to the attention of "Roland Tobler."

b. With respect to Count Five of the indictment, as previously described above, at various times between approximately mid-1998 through approximately December 2003, co-defendant Brown made kickback payments to co-defendant BEALKO in amounts totaling approximately \$6,500,000. In receiving these funds from co-defendant Brown, defendant BEALKO willfully attempted to evade and defeat the income tax due and owing by him to the United States of America through a variety of measures.

For example, with respect to the calendar year 2002, defendant DANIEL J. BEALKO had a taxable income of, at least, \$1,347,000. Upon said taxable income, defendant DANIEL J. BEALKO owed to the United States of America income tax of, at least, approximately \$490,000. By reason of this income, defendant DANIEL J. BEALKO was required by law, following the close of the calendar year 2002, and on or before April 15, 2003, to make an income tax return to the Internal Revenue Service and to pay the income tax due and owing thereon.

Throughout calendar year 2002, continuing to on or about April 15, 2003, in the Northern District of Illinois, and elsewhere, defendant BEALKO well knowing all of the foregoing facts, did willfully attempt to evade and defeat the income tax due and owing by him to the United States of America for the 2002 calendar year by committing the following affirmative acts of evasion:

- a. causing Anthony Demetrius Brown to wire transfer kickback payments from Illinois to an account maintained at UBS AG, Zurich, Switzerland, to the attention of “Roland Tobler”;
- b. causing Anthony Demetrius Brown to transmit from Illinois kickback payments in the form of official bank checks, rather than checks payable to BEALKO issued directly from the bank accounts of Fuci or Brown;
- c. causing Anthony Demetrius Brown to transmit from Illinois large kickback payments that had been split into multiple checks so that defendant BEALKO could make smaller deposits of such funds into separate bank accounts;

d. filing a Federal income tax return which falsely reported his taxable income as approximately \$66,063; and

e. failing to pay approximately \$479,098 to the Internal Revenue Service, the additional tax due and owing on his true taxable income.

In total, between approximately mid-1998 through approximately December 2003, defendant willfully under-reported his true taxable income by amounts totaling approximately \$6,500,000, resulting in a tax loss to the Federal government of approximately \$1,820,000.

Maximum Statutory Penalties

7. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count One carries a maximum sentence of 20 years' imprisonment. Count One also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count One the judge also may impose a term of supervised release of not more than three years.

b. Count Five carries a maximum sentence of 5 years' imprisonment. Count Five also carries a maximum fine of \$250,000. Defendant further understands that the Court must order costs of prosecution, estimated not to exceed \$500. Defendant further understands that with respect to Count Five, the judge also may impose a term of supervised release of not more than three years.

c. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

d. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty or restitution imposed.

e. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 25 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$500,000, or twice the gross gain or gross loss resulting from the offenses of conviction, whichever is greater, mandatory costs of prosecution, a period of supervised release, and special assessments totaling \$200, in addition to any restitution ordered by the Court.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2008 Guidelines Manual.

b. **Offense Level Calculations.**

Count One

i. The base offense level for the charge in Count One of the indictment is 8, pursuant to Guideline § 2B4.1(a).

ii. Because the value of the bribes paid (approximately \$6,500,000) exceeded \$2,500,000, but did not exceed \$7,000,000, an eighteen-level increase in the offense level is appropriate pursuant to Guideline § 2B4.1(b)(1)(B) and § 2B1.1(b)(1)(J).

iii. Because the defendant abused a position of private trust in a manner that significantly facilitated the commission and concealment of the offense, a two-level increase in the offense level is appropriate pursuant to Guideline § 3B1.3.

iv. Based on the foregoing, the adjusted offense level for the offense charged in Count One of the indictment is level 28.

Count Five

v. Because the tax loss (approximately \$1,800,000) was more than \$1,000,000 but less than \$2,500,000, the base offense level for the charge in Count Five of the indictment is 22, pursuant to Guideline § 2T1.1(a)(1) and § 2T4.1(J).

vi. Because the defendant failed to report a source of income exceeding \$10,000 in any year from criminal activity, a two-level increase in the offense level is appropriate pursuant to Guideline § 2T1.1(b)(1).

vii. Because the offense involved sophisticated means, namely use of offshore financial accounts, a two-level increase in the offense level is appropriate pursuant to Guideline § 2T1.1(b)(2).

viii. Based upon the foregoing, the adjusted offense level for the offense charged in Count Five of the indictment is level 26.

Multiple Counts

ix. Counts One and Five are not grouped as Closely Related Counts pursuant to Guideline § 3D1.1 and § 3D1.2.

x. Pursuant to Guideline § 3D1.4(a), one Unit is assigned to Count One (offense level 28), and one Unit is assigned to Count Five (offense level 26) because the offense level for Count Five is 1 to 4 levels less serious than the offense level for Count One.

xi. Because the number of Units for the combined offenses is two, a two-level increase is applied to the offense level for Count One, resulting in a combined offense level of 30 for Count One and Count Five.

xii. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline §3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to

satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

xiii. In accord with Guideline §3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline §3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 27, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 70 to 87 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature and based on facts known to the parties as of the time of this Plea Agreement. Defendant understands that the

Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that while none of the Guideline calculations set forth above are binding on the Court or the Probation Office, the parties have agreed pursuant to Fed.R.Crim.P. 11(c)(1)(B) that certain components of those calculations – specifically, those set forth above in subparagraphs (i) through (xiii) of this paragraph – are binding on the parties, and it shall be a breach of this Plea Agreement for either party to present or advocate a position inconsistent with the agreed calculations set forth in the identified subparagraphs.

Agreements Relating to Sentencing

10. The government agrees to recommend that the Court impose a sentence of imprisonment at the low-end of the applicable sentencing guideline range.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Regarding restitution, the parties acknowledge that the total amount of restitution owed to General Motors is approximately \$6,500,000, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution in the amount outstanding at the time of sentencing. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing.

13. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

14. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to this defendant.

Forfeiture

15. The indictment charges that defendant is liable to the United States for approximately \$83,000,000, which funds are subject to forfeiture because those funds were involved in the violations alleged in Counts One through Six. Further, defendant has subjected personal property to forfeiture, namely approximately \$6,500,000, because that property is proceeds of the criminal activity charged in Count One. By entry of a guilty plea to Count One of the indictment, defendant acknowledges that the property identified above is subject to forfeiture.

16. Defendant agrees to the entry of a forfeiture judgment in the amount of \$6,500,000 in that this property is subject to forfeiture. Prior to sentencing, defendant agrees to the entry of a preliminary order of forfeiture relinquishing any right of ownership he has in the above-described funds and further agrees to the seizure of these funds so that these funds may be disposed of according to law. Defendant is unaware of any third party who has an ownership interest in, or claim to, the property subject to forfeiture and will cooperate with the United States during the ancillary stages of any forfeiture proceedings to defeat the claim of a third-party in the event a third party files a claim.

17. Defendant further agrees to execute any documents or take any other steps reasonably necessary to effectuate or assist in the transfer to the United States of his interest in any property or funds which the United States alleges are subject to forfeiture, including funds contained in accounts at financial institutions in any other nation, or funds that have been frozen or otherwise subject to forfeiture in other nations, including but not limited to Liechtenstein (such as approximately \$3,300,000 in account number xx.xx1271, maintained at Bank Pasche), Switzerland, and the Federation of St. Kitts and Nevis. Defendant further agrees to execute any documents or take any other steps reasonably necessary to cause any such funds, or the proceeds from the sale of any such property, to be paid to victims of the scheme to which defendant pleads guilty as agreed herein. Defendant understands that there will be no two-level reduction in the base offense level for acceptance of responsibility if he

refuses to cooperate and assist in the repatriation to the United States of proceeds of the fraud scheme, or any substitute assets that are subject to forfeiture.

18. Defendant understands that the government may satisfy this forfeiture judgment with substitute assets pursuant to 21 U.S.C. § 853(p) as incorporated by 28 U.S.C. § 2461(c). Any attempt on the part of defendant to transfer, convey or otherwise conceal property prior to the satisfaction of this judgment shall be deemed to violate this plea agreement and subject him potentially to further criminal prosecution. If such conveyances are discovered prior to the imposition of sentence, the defendant understands that there will be no two-level reduction in the base offense level for acceptance of responsibility.

19. Defendant further understands that while forfeiture of property is not typically treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose, it is agreed by the parties that any payments made in satisfaction of the forfeiture judgment shall be credited to any outstanding restitution obligation.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

20. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 08 CR 82-1.

21. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or

release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

22. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or penalties from defendant and his spouse. Defendant understands that the amount of tax as calculated by the IRS may exceed the amount of tax due as calculated for the criminal tax case.

Waiver of Rights

23. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear

voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective

assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

24. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

25. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to

Guideline §3E1.1 and enhancement of his sentence for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

26. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

27. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

28. Regarding matters relating to the Internal Revenue Service (IRS), defendant agrees as follows (nothing in this paragraph, however, precludes defendant and his spouse from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS):

a. Defendant agrees to cooperate with the Internal Revenue Service (IRS) in any tax examination or audit of defendant and his spouse which directly or indirectly relates to or arises out of the course of conduct which defendant has acknowledged in this Plea Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records which the IRS may request.

b. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure to the Internal Revenue Service (IRS) of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed.R.Cr.P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the IRS for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant and his spouse.

29. Defendant understands that pursuant to Title 12, United States Code, Section 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the Federal Deposit Insurance Corporation (FDIC) except with the prior written consent of the FDIC and, during the ten years following his conviction, the additional approval of this Court.

Defendant further understands that if he violates this prohibition, he may be punished by imprisonment for up to five years and a fine of up to \$1,000,000.

Conclusion

30. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

31. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

32. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

33. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

34. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

PATRICK J. FITZGERALD
United States Attorney

DANIEL J. BEALKO
Defendant

BRIAN HAYES
Assistant U.S. Attorney

DOUGLAS MCNABB
Attorney for Defendant