

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No.: 08-387 (RHK/AJB)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	GOVERNMENT'S POSITION
	)	REGARDING SENTENCING
JAMES CARL WEHMHOFF,	)	
	)	
Defendant.	)	

The United States, by and through its attorneys, B. Todd Jones, United States Attorney for the District of Minnesota, and Joseph T. Dixon III, John R. Marti, and Timothy C. Rank, Assistant United States Attorneys, hereby submits this Position Regarding Sentencing.

For most of his 37-year career, defendant James Carl Wehmhoff distinguished himself as an accountant who practiced with professionalism and integrity. Prior to coming to work for Tom Petters in 2004, there was nothing in Mr. Wehmhoff's background to indicate that he would willingly participate in illegal or unethical conduct. And yet, as Mr. Wehmhoff stated at his change of plea hearing, "When I got to PGW, I lost my way." The evidence in the case showed that, based both on his personal loyalty to Tom Petters, as well as Petters' unique ability to corrupt the people around him through money and flattery, Mr. Wehmhoff ended up assisting Petters in evading tens of millions of dollars in taxes.

Significantly, however, Mr. Wehmhoff did not participate in the massive Ponzi scheme for which Petters and his coconspirators Deanna Coleman, Robert White, Larry Reynolds and Michael Catain have been convicted. Nor did he appear to be aware of any aspect of the fraud scheme until near the end, when Petters attempted to enlist him to help stall outside auditors which some of Petters' investors were attempting to bring in to review the books and records of PCI. Mr. Wehmhoff's crime was assisting Tom Petters with his brazen evasion of the tax laws. His crime was a significant tax crime, but Mr. Wehmhoff was not a part of Petters' billion-dollar investment fraud scheme.

While he did not participate in the PCI fraud scheme, Mr. Wehmhoff was, from the beginning, helpful to the government in understanding the way the fraud was perpetrated. His assistance began on September 24, 2008, the day the search warrants were executed, when he was interviewed by law enforcement agents at PGW headquarters as the search was being conducted. Shortly thereafter, he agreed to plead guilty to the charges in this case. And, although he had no cooperation agreement with the government, he met with investigators multiple times over the next several months to discuss the way PCI and PGW operated and to explain some of the more convoluted financial transactions whereby Petters' collection of money-losing companies was funded by PCI. He met with investigators whenever they requested and he answered every

question asked of him. Mr. Wehmhoff's assistance to law enforcement over the course of the investigation was extremely helpful.

Mr. Wehmhoff also testified at Tom Petters' trial. Prior to trial he met with prosecutors to help them prepare for his testimony at trial. His testimony was critical in illuminating the history and financial structure of Petters' companies, in describing the direct involvement Petters had with all his companies, and in detailing the tens of millions of dollars Petters pulled out of PCI for his personal use. Perhaps the most powerful aspect of Mr. Wehmhoff's testimony, however, was that he gave an inside look into the culture of corruption created by Tom Petters, explaining the incremental way in which Mr. Wehmhoff and others were tainted by their association with him. As one example, Mr. Wehmhoff testified about a telling exchange between himself and PGW's General Counsel, David Baer, in the Spring of 2008 in which Mr. Baer asked Mr. Wehmhoff about Petters's statements about "bad paper" on the books of PCI:

Q. By this time has Mr. Petters been saying bad paper for a few months?

A. Bad paper, yes. And so David Baer asked if I knew what that meant; and, again, I went through the scenario of the various things it could mean. And then I think David Baer indicated that maybe we don't want to know what it means, the bad paper.

Q. Did he say that to you?

A. Yes.

Q. Did you want to know? What was your response?

A. I believe my response was, "No, we do not want to know."

Q. Mr. Wehmhoff, at this point in time David Baer is the general counsel of PGW, right?

A. Yes.

Q. And you're the head of the tax department?

A. Yes.

Q. Executive vice president in charge of tax, treasury and finance?

A. Yes.

Q. And the substance of this conversation is you just both just don't want to know?

A. Yes, that's correct.

Trial Tr., Volume X at 1788-89. Mr. Wehmhoff's testimony at Tom Petters' trial was truthful and helpful to the jury.

Finally, Mr. Wehmhoff has provided significant cooperation to the receiver in this case. Mr. Wehmhoff stipulated to the appointment of a receiver under 18 U.S.C. § 1345. He has met several times with the receiver's lawyers and investigators and has assisted them with identifying assets and unraveling some of the complex financial transactions involving Petters' companies. Moreover, much of Mr. Wehmhoff's assets have been seized by the receiver and he has indicated that he will agree to a forfeiture of those assets so they can be used to compensate Petters' victims.

I. Jim Wehmhoff's role in Petters' tax fraud

Mr. Wehmhoff was Tom Petters' personal and business tax accountant for many years prior to coming to work for Petters in the Spring of 2004. Prior to coming to work for PGW, Mr. Wehmhoff had prepared tax returns for Petters personally as well as for most of Petters' businesses, including PCI. Because Petters owned 100 percent of PCI, the profits and losses flowed through to Petters personal returns.

The returns prepared by Mr. Wehmhoff prior to coming to work for PCI reflected multimillion dollar losses for PCI, which reduced Petters declared income on his personal returns - for example, for the tax years 2001 and 2002, Petters personal return reflected negative gross income and resulted in refunds of \$76,727 in 2001 and \$85,000 in 2002. The information Mr. Wehmhoff used to prepare the returns for Petters personally and for PCI was provided to him by Petters or his employees. After Mr. Wehmhoff began working at PGW, he learned that the tax returns he had filed for PCI and Petters were false, understating Petters' income by millions of dollars.

Over the years that he worked at PGW, Mr. Wehmhoff attempted repeatedly and unsuccessfully to get access to the books and records of PGW to amend the earlier returns and, later, to be able to file PCI returns for the following tax years. Mr. Wehmhoff knew that the returns he prepared and filed on behalf of Tom Petters for

tax years 2003, 2004, and 2005 failed to report tens of millions of dollars that Petters was siphoning out of PCI, but he also knew that Tom Petters did not want to report or pay taxes on this income and he never pushed too hard to get the information necessary to file truthful returns. As a result, Tom Petters evaded approximately \$20 million in federal taxes.

## II. Sentencing Guidelines

The United States agrees with the conclusions set forth in the Presentence Investigation Report ("PSR") with respect to the appropriate guidelines calculations. The PSR correctly concludes that his Total Offense Level should be 27, and the sentencing guidelines call for a sentence of between 70 and 87 months.

## III. Sentencing Considerations

The United States asks that this Court impose a sentence that takes into consideration all aspects of Mr. Wehmhoff and his conduct in this case, all the positive and negative factors, as well as the sentencing guidelines, to arrive at a sentence that reflects an appropriate balance of the factors under 18 U.S.C. § 3553(a). These factors include "the nature and circumstances of the offense and the history and characteristics of the defendant;" "the need for the sentence imposed -- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from

further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;" and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct . . . ." The Court should consider these factors in fashioning a sentence that reflects the extreme seriousness of Mr. Wehmhoff's role in an enormous fraud scheme, and thereby promotes respect for the law, provides just punishment, and affords adequate deterrence.

Of particular note in this case is Mr. Wehmhoff's personal and professional life before coming to PGW, a history that did not hint at the unethical and illegal conduct he engaged in at PGW. His distinguished career and absence of any prior criminal conduct should be considered by the Court in fashioning an appropriate sentence.

Of course, the Court should consider the magnitude of the tax fraud in this case. It was substantial, and given Mr. Wehmhoff's training and ethical obligations as a public accountant, difficult to reconcile. Mr. Wehmhoff's entry into the crime, however, was incremental; he did not set out to commit tax fraud for Tom Petters, but slowly became aware of it, then did nothing to halt it, and eventually was right in the middle of it, preparing and filing returns he knew to be false.

The remorse Mr. Wehmhoff has shown for his involvement in this crime has been striking. It is clear that he is ashamed that he allowed himself to tarnish a distinguished career, that he allowed his integrity to be compromised in exchange for the money and status he obtained at PGW. His remorse was evident in his plea hearing, it has been evident in all of the government's dealings with him, and it was palpable during his testimony at Petters' trial.

Indeed, it is likely that Mr. Wehmhoff's remorse contributed to his guilty plea in this case, a plea he entered with no cooperation agreement with the government. He nevertheless cooperated extensively with law enforcement and the receiver, and he gave truthful and helpful testimony at Tom Petters' trial. This should also be considered by the Court in arriving at Mr. Wehmhoff's sentence.

### III. Conclusion

Like many other people, Mr. Wehmhoff has been tainted by his association with Tom Petters. He committed significant tax crimes, assisting Tom Petters evade tens of millions of dollars in taxes. On the other hand, Mr. Wehmhoff's pre-PGW career was unblemished, his remorse for his crime is genuine, and his cooperation with the



government and testimony has been important. The United States asks the Court to take all of these factors into consideration in arriving at an appropriate sentence.

Dated: August 11, 2010

Respectfully Submitted,

B. TODD JONES  
United States Attorney

/s/ Timothy C. Rank

BY: TIMOTHY C. RANK  
Attorney ID No. 245392  
JOSEPH T. DIXON, III  
JOHN R. MARTI  
Assistant U.S. Attorneys

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**CERTIFICATE OF SERVICE**

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UNITED STATES OF AMERICA,

Plaintiff,

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Case Number: 08-387 (RHK)

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I hereby certify that on August 12, 2010, I served, or caused to be served, the following documents:

GOVERNMENT'S POSITION REGARDING SENTENCING

I certify, further, that I electronically filed the above-listed documents with the Clerk of the Court by using ECF, which constitutes service on the following ECF participants, pursuant to the ECF Procedures for the District of Minnesota:

Andrew M. Luger, Esq.  
David J. Wallace-Jackson, Esq.

I certify, further, that I served, or caused to be served the above-listed documents to non-ECF participants by placing a copy in an envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and delivering by mail to:

B. TODD JONES  
United States Attorney

s/ A. Canessa

BY: A. CANESSA  
Legal Assistant