

D13TWEGP Plea
1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

2
3 UNITED STATES OF AMERICA,
3
4 v.
4
5 WEGELIN & COMPANY,
5
6 Defendant.
6

12 CR 02 (JSR)

7 -----x

New York, N.Y.
January 3, 2013
10:40 a.m.

9
10 Before:

11 HON. JED S. RAKOFF,
11
12 District Judge
12

13 APPEARANCES

14 PREET BHARARA
15 United States Attorney for the
15 Southern District of New York
16 DAVID B. MASSEY
16 DANIEL W. LEVY
17 JASON H. COWLEY
17 Assistant United States Attorneys
18

18 GOODWIN PROCTOR
19 Attorneys for Defendant
19 RICHARD STRASSBERG
20 JOHN MOUSTAKAS
20 KONRAD HUMMLER
21 STEPHEN WELTI
21

22 ALSO PRESENT: LAURA MERCANDETTI, IRS Special Agent
22 PAUL ROONEY, IRS Special Agent
23
24
25

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1 (In open court)

2 DEPUTY CLERK: January 3, 2013, 12 CR 02, defendant
3 number four, the will the parties please identify themselves
4 for the record.5 MR. MASSEY: Good morning, your Honor, David Massey
6 for the government. With me at counsel table are AUSAs Daniel
7 Levy, Jason Cowley, and IRS Supervisor Special Agent Laura
8 Mercandetti, and IRS Special Agent Paul Rooney.9 MR. STRASSBERG: And your Honor, Richard Strassberg
10 and John Moustakas from Goodman Proctor, and we have Mr. Otto
11 Bruderer from Wegelin Bank here as well.12 MR. MASSEY: Your Honor, I have notices of appearance,
13 which I could hand up now if it's convenient.14 THE COURT: OK. So it's my understanding that the
15 defendant Wegelin wishes to enter a guilty plea to Count One of
16 the indictment, is that right?

17 MR. STRASSBERG: That is correct, your Honor.

18 THE COURT: All right. So who is going to be acting
19 for purposes of the allocution as the representative and
20 Wegelin?

21 MR. STRASSBERG: That would be Mr. Bruderer.

22 THE COURT: Good morning.

23 So why don't we place him under oath.

24 (Defendant sworn)

25 THE COURT: So please state your full name for the
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1 record.

2 THE DEFENDANT: Otto Bruderer.

3 THE COURT: Why don't you come up to the microphone.

4 THE DEFENDANT: Otto Bruderer, O-T-T-O

5 B-R-U-D-E-R-E-R.

6 THE COURT: Mr. Bruderer, do you read, write, speak
7 and understand English?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: And are you authorized to appear for and
10 bind Wegelin & Company with respect to these proceedings here
11 today?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Now my understanding is that you and
14 Wegelin wish to enter a plea of guilty to Count One, isn't that
15 right?

16 THE DEFENDANT: Yes, that's right, your Honor.

17 THE COURT: So do you and Wegelin understand that you
18 have a right, if you wish, to plead not guilty and go to trial
19 on the charge against you?

20 THE DEFENDANT: Yes, we understand, your Honor.

21 THE COURT: And do you understand and does Wegelin
22 understand that if there were a trial, Wegelin would be
23 presumed innocent, and the government would have to prove its
24 guilt beyond a reasonable doubt before it could be convicted of
25 any crime?

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1 THE DEFENDANT: Yes, your Honor, we understand.

2 THE COURT: And does Wegelin also understand that they
3 would have the right to be represented throughout these
4 proceedings, including at the trial, by counsel, and that if
5 they could not afford counsel, one would be appointed to
6 represent them free of charge?

7 THE DEFENDANT: We understand, your Honor.

8 THE COURT: Does Wegelin also understand that at the
9 trial Wegelin would have the right to see and hear all the
10 witnesses and other evidence against it, and they could
11 cross-examine the government's witnesses, object to the
12 government's evidence, and could call witnesses and produce
13 evidence on their own behalf if they so desired and could have
14 subpoenas issued to compel the attendance of witnesses and
15 documents and other evidence on their behalf? Do they
16 understand all that?

17 THE DEFENDANT: Yes, we do understand all that, your
18 Honor.

19 THE COURT: And do they also understand that even if
20 they were convicted, they would have the right to appeal their
21 conviction?

22 THE DEFENDANT: Yes, we understand.

23 THE COURT: And finally, do you and Wegelin understand
24 that if a guilty plea is entered, Wegelin would be giving up
25 each and every one of the rights we just discussed? Do you

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1 understand that?

2 THE DEFENDANT: We understand that, your Honor.

3 THE COURT: Now the indictment in this case previously
4 filed as S1 12 Criminal 02 is a modest statement of 58 pages.
5 Would you like to have that indictment read here in open court
6 or do you waive the public reading?

7 MR. STRASSBERG: Your Honor, we waive the reading.

8 THE COURT: You have gone over -- and this is
9 addressed to both of you, really -- this indictment with all
10 the relevant people at Wegelin?

11 MR. STRASSBERG: Your Honor, yes, we have.

12 THE DEFENDANT: Yes.

13 THE COURT: And let me ask the representative of
14 Wegelin, you and Wegelin understand the charges against you,
15 right?

16 THE DEFENDANT: We are familiar with the allegation.
17 We understand it, your Honor.

18 THE COURT: All right. So now the maximum sentence
19 that Wegelin faces if they plead guilty -- let me ask the
20 government what they deem that to be.

21 MR. MASSEY: Your Honor, we deem that be as follows,
22 assuming Mr. Bruderer allocutes this morning to a loss amount
23 of \$20,000,001, the statutory maximum fine would be
24 \$40,000,002.

25 THE COURT: I saw that in your letter agreement, but
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1 of course it would be -- it's twice the gross gain or twice the
2 gross loss, whatever that's determined to be, if it's more than
3 what, 500,000, I think?

4 MR. MASSEY: Yes. In order to trigger the -- under
5 Southern Union, to trigger the maximum fine to be above
6 500,000, it's double whatever the defendant allocutes to or
7 what the jury find beyond a reasonable doubt.

8 THE COURT: All I'm interested in is the statutory
9 maximum.

10 MR. MASSEY: Well, right now it's 500,000.

11 THE COURT: No, it's --

12 MR. MASSEY: It's twice the gross gain or loss.

13 THE COURT: Thank you.

14 MR. MASSEY: Which cannot be more than 500,000 at this
15 point.

16 THE COURT: And what other statutory penalties does
17 the defendant face?

18 MR. MASSEY: The statutory maximum penalties also
19 include a \$100 special assessment, statutory probation maximum
20 of five years, and I believe that's all.

21 THE COURT: So does Wegelin understand that if they
22 plead guilty they could face punishments up to those maximum
23 amounts, that is to say five years probation, a \$100 mandatory
24 special assessment, and most importantly, a fine that would be
25 twice the gross gain or twice the gross loss resulting from

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1 this offense if that figure was more than \$500,000?

2 THE DEFENDANT: Yes, we do, your Honor.

3 THE COURT: Very good. Now the government and the
4 defendant have entered into a proposed letter agreement. Does
5 counsel have a signed copy of that?

6 MR. MASSEY: Yes, your Honor.

7 THE COURT: We will mark this original as Court
8 Exhibit 1 to today's proceeding. And it takes the form of a
9 letter dated December 3rd, 2012 from the government to defense
10 counsel, and it appears, Mr. Bruderer, that you signed it
11 earlier today. Is that right?

12 THE DEFENDANT: That's correct, your Honor.

13 THE COURT: And you were authorized to do so on behalf
14 of Wegelin?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: Now this letter agreement is binding
17 between you and the government, but it is not binding on me.
18 It's not binding on the Court. Do you understand that?

19 THE DEFENDANT: We understand, your Honor.

20 THE COURT: For example, this letter agreement
21 contains various amounts that are said to be the proposed
22 stipulations as to restitution, as to forfeiture, also contains
23 a proposed guideline range. I may agree with that or I may
24 disagree with that. I may think that the penalty should be
25 higher or should be lower, and regardless of where I come out,

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1 if Wegelin pleads guilty, they will be bound by my sentence.
2 Does Wegelin understand that?

3 THE DEFENDANT: We understand, your Honor.

4 THE COURT: Now I did have a question or two about
5 this before we continue with the defendant, a question for the
6 government. It says in paragraph 3 on page 1 that Wegelin
7 agrees to pay restitution to the United States in the amount of
8 \$20,000,001. Wegelin admits that the restitution amount
9 represents the gross pecuniary loss to the United States as a
10 result of the conduct charged in the superseding indictment and
11 admitted by Wegelin in the allocution.

12 You're not saying, are you, that that is in fact the
13 exact amount of the gross pecuniary loss to the United States,
14 are you?

15 MR. MASSEY: Your Honor, we're saying it's a
16 reasonable estimate. It's a negotiated agreement between the
17 victim and the defendant as to what the restitution award
18 should be, and it's a reasonable approximation of the total
19 pecuniary loss to the government.

20 THE COURT: Well, it looks like it was based on
21 obtaining a particular offense level under the guidelines.

22 MR. MASSEY: Well, your Honor, it definitely clearly
23 is keyed to the guidelines.

24 THE COURT: For example, you would not be satisfied if
25 it was \$19,999,999.99.

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1 MR. MASSEY: It would fall short, it has to be
2 \$20,000,000.01.

3 THE COURT: So I understand how you got there, I'm
4 just unclear what the basis is for your asserting that this is
5 an estimate of the actual loss.

6 MR. MASSEY: Well, our basis -- we have numerous
7 grounds to make that a reasonable basis for the loss. The
8 government has access to certain data from the voluntary
9 disclosure program, which is a program in which U.S. taxpayers
10 who had offshore bank accounts have come into the government
11 and paid what they owe. And so we have data about many of
12 those taxpayers. Many of them have accounts at Wegelin.
13 Wegelin has data itself because it has access to the account
14 statements of U.S. taxpayers with accounts there, so it could
15 calculate the amounts of taxes due and owing for the
16 non-compliant U.S. taxpayers.

17 There are other data points out there, such as there's
18 another agreement, there's a deferred prosecution agreement
19 between the United States and UBS which provides certain
20 information that essentially works as a sort of confirming data
21 point for what we and the defense believe is a reasonable
22 estimate of the loss to the government.

23 THE COURT: So in connection with sentencing, I have
24 an obligation to make an independent determination of what the
25 loss was. Yes?

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1 MR. MASSEY: Yes, of course, your Honor.

2 THE COURT: I will need to have some of that data.

3 MR. MASSEY: Your Honor, we can provide whatever data
4 the Court wishes to have for purposes of sentencing. For
5 purposes of today, Wegelin is prepared to agree that that's the
6 loss amount.

7 THE COURT: It also says that -- this is on page 2,
8 "Wegelin agrees, pursuant to Title 18, United States Code,
9 Section 981, that it will forfeit \$15,821,000 to the United
10 States, representing the gross fees paid to Wegelin from
11 approximately 2002 through 2010 by U.S. taxpayers with
12 undeclared accounts at Wegelin."

13 How is that figure determined?

14 MR. MASSEY: That figure was determined through
15 discussions with Wegelin. Wegelin looked at its own data on
16 the gross proceeds paid by U.S. taxpayers to it for the
17 non-compliant business. It gave us the sum total. It broke it
18 out in various ways, but it provided that data to us. And we
19 don't have access to many of the records that we would need to
20 confirm it, but we believe it's reasonable based on a number of
21 data points that we have.

22 THE COURT: So did you request the data that would
23 confirm it?

24 MR. MASSEY: We requested that Wegelin provide the
25 data.

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1 THE COURT: What is Wegelin's position on that?

2 MR. STRASSBERG: I think what Mr. Massey was going to
3 finish to say is they requested that we provide the numbers,
4 which we did provide, your Honor. And that was a calculation
5 of gross receipts, no deductions for costs. It's not a profit
6 number, it's a gross revenue number. And it was deducted by
7 looking at -- it was calculated by looking at all of the
8 revenue and whatever matter was received from the particular
9 accounts at issue during this time period. So that information
10 was provided over to the government frankly some time ago in
11 the context of our ongoing discussions and negotiations with
12 respect to this case.

13 THE COURT: So let me make sure I understand this.
14 This is the amount of money that the taxpayers who were making
15 use of Wegelin's services for avoiding taxes on undeclared
16 accounts paid to Wegelin. Yes?

17 MR. STRASSBERG: We framed it, your Honor, that is
18 this is the gross amount of money that anyone who was a U.S.
19 taxpayers who had an undeclared account paid to Wegelin for any
20 purpose. That could be commissions, it could be advisory fees,
21 it could be things that relate to whatever type of business
22 they actually did with respect to their account.

23 THE COURT: So why would taxpayers want to pay 15,
24 almost 16 million to Wegelin to avoid taxes that were only
25 estimated to be \$20,000,001?

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1 MR. STRASSBERG: Your Honor, those fees were not
2 unique to the U.S. taxpayers. So for any customer, be it
3 Swiss, U.S., they would pay fees to the banks as they would for
4 any bank to do the various transactions. These fees, as we
5 understand it, were actually very competitive. If you wanted
6 to put your account at UBS or put your account at Credit Suisse
7 or put your account at Citibank, you would be paying similar
8 types of costs for your securities transactions, for example,
9 or for your other type of transactions that you asked the bank
10 to do. It's really unrelated to taxes other than these account
11 holders themselves were undeclared. So as part of this
12 agreement, we agreed to pay all of that money without any
13 attempt to do deductions and have it be part of this agreement.

14 THE COURT: Are you saying it should be forfeiture of
15 monies that you think were properly obtained and had no
16 relationship with any unlawful activity?

17 MR. STRASSBERG: We think, your Honor, that the
18 undeclared accounts themselves is the nature of the conduct
19 that is the subject of the charge and will be the subject of
20 the allocution and the plea, so it's not that it's not
21 connected to unlawful activity.

22 THE COURT: Well, what did you understand to be the
23 purpose of these undeclared accounts?

24 MR. STRASSBERG: Well, your Honor, the undeclared
25 accounts allowed the U.S. taxpayers to evade their duty under

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1 U.S. law.

2 THE COURT: So I come back to my question. Why would
3 the taxpayers pay 16 -- almost 16 million to Wegelin if they
4 weren't going to avoid taxes of a much larger amount?

5 MR. STRASSBERG: I think you could think of it this
6 way, your Honor, if they had taken their money and kept it here
7 in a United States bank, done the same type of transactions,
8 they likely would have paid much more than 15 million in
9 commissions and costs to that bank to do those transactions.
10 So those monies would have been paid. It wasn't that those
11 monies would have been avoided by having their accounts in a
12 different institution, if that's helpful to your Honor. So
13 those numbers, while they're here in the plea agreement, we
14 agreed to them as part of our negotiating with the government,
15 they are related to this offense.

16 THE COURT: I hear what you're saying.

17 All right. Now the stipulated guideline range is all
18 set forth in pages 3 and 4 and 5 of the agreement. This would
19 lead to a guideline fine range of 14.7 million to 29.4 million.
20 And I want to make sure that Wegelin understands that none of
21 that is binding on the Court. Do you understand that?

22 THE DEFENDANT: Yes, we understand, your Honor.

23 THE COURT: And more generally, while the Court must
24 have and will consider the guideline range even if the Court
25 agrees with the guideline calculation set forth in this

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1 agreement, which the Court may or may not agree with, but even
2 if it agrees with that, the Court doesn't necessarily have to
3 sentence within the guidelines. I could go higher, I could go
4 lower, and regardless of where I come out, Wegelin would still
5 be bound by my sentence. Do you understand that?

6 THE DEFENDANT: We understand, your Honor.

7 THE COURT: Very good. So why don't you tell me, in
8 the accordance with what is a written statement that you wish
9 to read, what it is that makes Wegelin guilty of this offense.

10 THE DEFENDANT: We have prepared a statement I would
11 like to read.

12 From 2002 through 2010, Wegelin provided private
13 banking, wealth management and other related financial services
14 to individuals and entities around --

15 THE COURT: Forgive me for interrupting, why don't you
16 give a copy -- the government should give a copy to the court
17 reporter so he can follow along.

18 MR. STRASSBERG: And your Honor, for ease of your
19 Honor and for the court reporter, we're starting at the third
20 paragraph of the written allocution after the introductory
21 paragraphs, for ease of all parties involved.

22 THE COURT: Yes, we already -- why don't you pick up
23 again from, "At all relevant times."

24 MR. STRASSBERG: Sorry, your Honor, I was talking -- I
25 guess it would be the fourth paragraph, starting with, "From

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1 2002."

2 THE DEFENDANT: From 2002 through 2010, Wegelin
3 provided private banking, wealth management, and other related
4 financial services to individuals and entities around the world
5 who held accounts at Wegelin, including citizens and residents
6 of the United States. Wegelin provided these services
7 principally through client advisers based in its various
8 offices in Switzerland. Wegelin also acted as custodian with
9 respect to accounts that were managed by independent asset
10 managers, including accounts for U.S. taxpayers.

11 From about 2002 through about 2010, Wegelin agreed
12 with certain U.S. taxpayers to evade the U.S. tax obligations
13 of these U.S. taxpayer clients who filed false tax returns with
14 the IRS.

15 In furtherance of its agreement to assist U.S.
16 taxpayers to commit tax evasion in the United States, Wegelin
17 opened and maintained accounts at Wegelin in Switzerland for
18 U.S. taxpayers who did not complete W-9 tax disclosure forms.
19 Wegelin also allowed independent asset managers to open non-W-9
20 accounts for U.S. taxpayers at Wegelin.

21 All at relevant times, Wegelin knew that certain U.S.
22 taxpayers were maintaining non-W-9 accounts at Wegelin in order
23 to evade their U.S. tax obligations in violation of U.S. law,
24 and Wegelin knew of the high probability that other U.S.
25 taxpayers who held non-W-9 accounts at Wegelin also did so for

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1 the same unlawful purpose. Wegelin was aware that U.S.
2 taxpayers had a legal duty to report to the IRS and pay taxes
3 on the basis of all of their income, including income earned in
4 accounts that these U.S. taxpayers maintained at Wegelin.
5 Despite being aware of this legal duty, Wegelin intentionally
6 opened and maintained non-W-9 accounts for these taxpayers with
7 the knowledge that, by doing so, Wegelin was assisting these
8 taxpayers in violating their legal duties. Wegelin was aware
9 that this conduct was wrong.

10 However, Wegelin believed that, as a practical matter,
11 it would not be prosecuted in the United States for this
12 conduct because it had no branches or offices in the United
13 States, and because of its understanding that it acted in
14 accordance with and not in violation of Swiss law, and that
15 such conduct was common in the Swiss banking industry.

16 In the course of the agreement to knowingly and
17 willfully assist U.S. taxpayers in evading their U.S. tax
18 obligations, Wegelin acted through, among others, certain
19 employees who were acting within the scope of their employment
20 and for benefit of Wegelin. Wegelin's conduct allowed Wegelin
21 to increase the number of undeclared U.S. taxpayer accounts and
22 the amount of undeclared U.S. taxpayer assets held at Wegelin,
23 thereby increasing Wegelin's fees and profits.

24 Wegelin admits that its agreement to assist the U.S.
25 taxpayers in evading their U.S. tax obligations in this matter

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1 resulted in a loss to the Internal Revenue Service that was
2 \$20,000,001.

3 One or more of the U.S. taxpayers who conspired with
4 Wegelin lived in the Southern District of New York when they
5 did so, and had communications by telephone and fax in
6 furtherance of the conspiracy with Wegelin while they were in
7 Manhattan.

8 THE COURT: So if I understand correctly, what Wegelin
9 is saying is that they knew that the taxpayers who were making
10 use of these services of Wegelin were doing so to evade U.S.
11 taxes. Yes?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And Wegelin, knowing that it was wrong and
14 a violation of U.S. law, nevertheless agreed with the taxpayers
15 to help them commit that crime. Yes?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: All right. Very good.

18 Is there anything else regarding the factual portion
19 of the allocution that the government wishes the Court to
20 inquire on?

21 MR. MASSEY: No, your Honor.

22 THE COURT: Is there anything else regarding any
23 aspect of the allocution that either counsel wishes the Court
24 to inquire about before I ask the defendant to formally enter
25 its plea?

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1 MR. MASSEY: Your Honor, the government would
2 respectfully request that your Honor simply show him the
3 partnership resolution. Your Honor touched on that at the very
4 beginning, but if we could just confirm that is his signature
5 on the partner resolution and he recognizes the signatures of
6 his partners.

7 THE COURT: Yes, this is Exhibit C to the plea
8 agreement, already marked as part of Court Exhibit 1, and do
9 you have a copy of that in front of you?

10 MR. STRASSBERG: We do, your Honor.

11 THE COURT: And are the signatures known to you to be
12 the signatures of the partners of Wegelin?

13 MR. STRASSBERG: That's my signature and the
14 signatures of the partners, your Honor.

15 THE COURT: Very good.

16 Also, one thing I did neglect to mention, do you
17 understand that as part of your agreement with the government,
18 that if the Court does sentence you within the terms of the
19 agreement, Wegelin has given up its right to appeal or
20 otherwise attack the sentence? Do you understand that?

21 THE DEFENDANT: Yes, we do, your Honor.

22 THE COURT: Anything else from either counsel?

23 MR. MASSEY: Your Honor, this may be part of what your
24 Honor is going to get to, but the government respectfully
25 requests that your Honor ask Mr. Bruderer whether he is

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1 satisfied with his counsel's representation, and the plea is
2 knowing and voluntary and the like.

3 THE COURT: Yes, that's where I was going, but is
4 there anything else before we get there?

5 MR. MASSEY: No, your Honor.

6 THE COURT: So Mr. Bruderer, you're represented by
7 Mr. Strassberg in this case. Has he had a full opportunity to
8 discuss this matter not only with you but with the relevant
9 people at Wegelin?

10 MR. STRASSBERG: Yes.

11 THE DEFENDANT: Yes, he did, your Honor.

12 THE COURT: And are you fully satisfied with his
13 representation in this matter?

14 THE DEFENDANT: We are, your Honor.

15 THE COURT: And in making its determination to plead
16 guilty, has Wegelin been given any promises whatsoever beyond
17 those set forth in the plea agreement that we marked as Court
18 Exhibit 1?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: And by the way, has counsel confirmed that
21 is correct, Mr. Strassberg?

22 MR. STRASSBERG: Yes, your Honor.

23 THE COURT: And has anyone else made any kind of
24 promise to Wegelin, anyone outside the government, to induce
25 you to plead guilty in this case?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: Has anyone threatened or coerced Wegelin
3 to plead guilty in this case?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Does the government represent if this case
6 were to go through trial, it could, through competent evidence,
7 prove every essential element of this charge beyond a
8 reasonable doubt?

9 MR. MASSEY: Yes, we do, your Honor.

10 THE COURT: Does defense counsel know of any valid
11 defense that would prevail at trial or any other reason why his
12 client should not enter this plea?

13 MR. STRASSBERG: Your Honor, we know of no reason why
14 the plea should not be entered.

15 THE COURT: All right. Then in light of everything we
16 have now discussed, Mr. Bruderer, how does Wegelin plead to
17 Count One of indictment S1 12 Criminal 02, guilty or not
18 guilty?

19 THE DEFENDANT: Guilty, your Honor.

20 THE COURT: And is that plea entered voluntarily and
21 knowingly?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: All right. Anything else from the
24 government?

25 MR. MASSEY: Could I have one second, your Honor?

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1 THE COURT: Yes.

2 The one thing that occurred to me, but I thought it
3 was covered by the plea agreement, is the forfeiture aspect, so
4 I don't know if we need to say anything further in that regard.

5 MR. MASSEY: It is covered by the agreement. It would
6 probably be helpful if your Honor in open court mentioned it,
7 and that it's there in front of your Honor to sign. There's a
8 preliminary stipulated order of forfeiture for the Court to
9 sign in the amount of \$15.8 million and change.

10 THE COURT: Yes. So Mr. Bruderer, you and your
11 counsel have gone over the stipulated preliminary order of
12 forfeiture that's attached as Exhibit B to your agreement?

13 THE DEFENDANT: Yes, we did, your Honor.

14 THE COURT: And you understand that pursuant to that,
15 Wegelin has agreed to transfer \$15,821,000 in United States
16 currency to the Treasury?

17 THE DEFENDANT: Yes, we agreed, your Honor.

18 THE COURT: So I will sign that order, or do you
19 prefer to wait until the date of sentence?

20 MR. MASSEY: We prefer that your Honor sign that order
21 today. We will have a final order. There has to be a 30-day
22 period of notice following today.

23 THE COURT: It is signed. I will give it to my
24 courtroom deputy to docket.

25 MR. MASSEY: Your Honor, just one more small matter.

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1 Mr. Bruderer gave a very thorough allocution which hit all the
2 elements of the offense. The government doesn't believe it's
3 necessary to enumerate the elements of the conspiracy offense,
4 but there is one aspect of this plea that is slightly unusual
5 in that it is a plea of a corporation. So it may make sense
6 for the government or the Court to put on the record the
7 elements.

8 THE COURT: There is some authority to that effect,
9 although since the plea covers all the elements at some length,
10 I didn't think it necessary to have the government repeat them.
11 But I can see you're chomping at the bit, so go ahead.

12 MR. MASSEY: The elements include the following:
13 Wegelin and one or more U.S. taxpayer entered into a conspiracy
14 to violate the United States tax laws. That's the first
15 element. The second is that Wegelin knowingly and voluntarily
16 joined and participated in the conspiracy. The third and the
17 unusual one for this case is that, third, Wegelin did so
18 through managing partners or other employees who were acting
19 within the scope of their employment and acting for the benefit
20 of the partnership, at least in part, and that one or more
21 overt act was committed by Wegelin or a co-conspirator. All of
22 those elements were plainly covered by the allocution of
23 Mr. Bruderer.

24 THE COURT: OK. Anything else?

25 MR. MASSEY: Not from the government, your Honor.

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1 Thank you.

2 THE COURT: Anything from defense counsel?

3 MR. STRASSBERG: Not from defense counsel.

4 THE COURT: Because the defendant has acknowledged its
5 guilt as charged, because it has shown through its
6 representative that it understands its rights, because his plea
7 is entered knowingly and voluntarily and supported by an
8 independent basis in fact containing each of the essential
9 elements of offense, I accept his plea and adjudge it guilty of
10 Count One of the indictment S1 12 Criminal 02.

11 So Mr. Bruderer, the next step in this process is that
12 the probation office will prepare a presentence report to
13 assist me in determining sentence. And in that connection,
14 Wegelin may be asked to provide additional documents,
15 additional information, and I assume that's going to be
16 provided. If there's any problem about that, counsel needs to
17 notify the Court immediately. OK?

18 MR. STRASSBERG: We will do so, your Honor.

19 THE COURT: Very good.

20 After that report is in draft form, before it's in
21 final form, Wegelin and its counsel will have a chance to
22 review it, as will the government, and to offer suggestions,
23 corrections and additions to the probation officer, who will
24 then prepare the report in final to come to me.

25 Independent of that, counsel for both sides are hereby

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1 given leave to submit to the Court any materials in writing
2 bearing on sentence, and I think in this kind of case that
3 would be very helpful. And as the colloquy earlier indicates,
4 what I am most concerned about is whether the \$20,000,001
5 estimate is a fair estimate and what's the basis for saying
6 that. So you're free to address any and all issues, but that's
7 the issue that I particularly want to see addressed. After
8 those submissions are made, we will then have a full hearing
9 here in court, at which time the Court will impose sentence.

10 So let's fix a date for that.

11 MR. STRASSBERG: As your Honor said, we need to set a
12 date that allows for those events to happen. I think from
13 Wegelin's point of view, the faster and more expedited sentence
14 that can be accomplished, we are certainly willing to work
15 within that deadline to make that happen.

16 THE COURT: I'm all for that. The problem -- and I
17 don't know if anyone has checked with the probation office --
18 Congress, in its wisdom, has decided that the judicial process
19 of the United States, being not nearly as important as
20 Congress' vacations and the like, should be starved. We are
21 presently something like 22 probation officers short because we
22 had to last year reduce the judicial budget nationwide by ten
23 percent. Congress has decreed that we will this coming year
24 decrease the judicial budget by another ten percent, leading,
25 for example, as early as yesterday, to long-time employees of

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1 the judiciary being severed and left unemployed. One can only
2 marvel at Congress' wisdom, which has been well known to all
3 Americans for some time now.

4 So to get down to the immediate problem, this is the
5 kind of case that we're going to have to put a senior probation
6 officer on. I just don't know whether they have someone
7 available who can give it expedited treatment. What I am
8 willing to do is put it down now -- the normal sentencing used
9 to be 45 days, then because of the loss of probation officers
10 we had to change it to 60 days. If you want, I will put it
11 down today for 45 days from now and talk with the probation
12 office and see if they can accommodate that. We may have to
13 come back and move it. They may be able to do better. Since
14 the parties are very substantially in agreement and obviously
15 had substantial negotiations, I don't expect there will be any
16 significant disputes, but nevertheless we have to give them as
17 much time as the probation office needs.

18 So that's my suggestion. Any other thoughts?

19 MR. STRASSBERG: Your Honor, that suggestion is very
20 agreeable.

21 DEPUTY CLERK: I want to let you know that the last
22 written statement from probation that I have asks for 120 days
23 for defendants who are not detained. That would bring us to
24 May 6.

25 THE COURT: I think we can do better than that. I

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1 will tell you what, why don't we take a two-minute break and
2 I'll call the head of probation and see what we can do, and
3 we'll resume in two minutes.

4 (Recess taken)

5 THE COURT: All right. Well, after a full and frank
6 discussion with probation, they said that while they are really
7 tremendously short-handed right now, they will make an
8 exception in this case, but they asked for 60 days rather than
9 45. I think that's reasonable.

10 They also ask, and I'm going to make this an order,
11 that all the basic materials that need to be provided to
12 probation be provided to them within the next two weeks. That
13 shouldn't be a problem given all that you have done by way of
14 preparation.

15 So let's see what date that would be for sentence.

16 DEPUTY CLERK: Sentence date on March 4th, that's a
17 Monday, at 4:00.

18 THE COURT: March 4th at 4:00, does that work for
19 everyone?

20 MR. MASSEY: That's fine with the government, your
21 Honor.

22 MR. STRASSBERG: Your Honor, that's fine for the
23 defense as well.

24 THE COURT: Very good. So we'll see you on March 4th.
25 Anything else any counsel needs to raise?

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1 MR. STRASSBERG: Your Honor, what time?
2 THE COURT: 4:00 p.m.
3 MR. STRASSBERG: Thank you.
4 THE COURT: Very good. Thanks a lot.
5 MR. MASSEY: Thank you.
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