UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 05 CR 408
vs.	)	Judge John F. Grady
	)	
P. NICHOLAS HURTGEN	)	

PLEA AGREEMENT

1. This Plea Agreement ("Agreement") between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant P. NICHOLAS HURTGEN, and his attorney, RONALD S. SAFER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The second superseding indictment in this case charges defendant with aiding and abetting mail fraud, in violation of Title 18, United States Code, Sections 1341, 1346 and 2 (Counts 1, 3, 6) , aiding and abetting wire fraud, in violation of Title 18, United States Code, Sections 1343, 1346 and 2 (Counts 2, 4, 5), and with attempted extortion, in violation of Title 18, United States Code, Sections 1951 and 2.

3. Defendant has read the charges against him contained in the second superseding 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.

Charge to Which Defendant is Pleading Guilty

5. By this Agreement, defendant agrees to enter a voluntary plea of guilty to Count 5 of the second superseding indictment. Count 5 charges defendant with aiding and abetting a scheme to defraud the Illinois Health Facilities Planning Board and the State of Illinois of the honest services of Planning Board member Stuart Levine in connection with applications by Edward Hospital, which was part of Edward Health Services Corporation (collectively "Edward Hospital"), to build a hospital and medical office building.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 5 of the second superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Beginning no later than in or about December 2003 and continuing through at least in or about June 2004, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant agreed to and did aid and abet Stuart Levine and Jacob Kiferbaum in carrying out a scheme to defraud the Illinois Health Facilities Planning Board ("Planning Board") and the State of Illinois of the honest services of Planning Board member Levine. Defendant assisted Levine and Kiferbaum in the abuse of Levine's position and authority as a Planning Board member in connection with applications for Certificates of Need ("CONs") for Edward Hospital to build a hospital and medical office building in Plainfield, Illinois. Defendant assisted the abuse of Levine's official position by telling representatives of Edward Hospital that the Planning Board would approve the CONs for its Plainfield hospital and medical

office building projects if Edward Hospital retained Kiferbaum's business, Kiferbaum Construction Company ("Kiferbaum Construction") to build those facilities, and that the Planning Board would deny Edward Hospital's CON applications if it did not hire Kiferbaum Construction to build the facilities. At the time he made these statements, defendant knew that his insistence on the use of Kiferbaum Construction was not related to any objective criteria for Planning Board approval of the CONs for the Plainfield hospital and medical office building.

Defendant also agreed with Levine to communicate Levine's promises concerning the CONs to representatives of Edward Hospital, and to communicate their responses to Levine, knowing that from on or about December 9, 2003, Illinois law ("the *ex parte* rules") prohibited Levine from communicating with the representatives of applicants with CONs pending before the Planning Board. Additionally, in order to demonstrate to Edward Hospital's CEO that defendant was in fact communicating on behalf of Levine and that his representations regarding Levine's conditions for Planning Board approval were genuine, defendant agreed to and attended a sham encounter in which defendant and Levine purported to "accidentally" meet the CEO and Kiferbaum at a restaurant, which meeting was designed to provide the CEO with the opportunity to observe defendant and Levine together, and for Levine to praise Kiferbaum to the CEO. By assisting in Levine's abuse of his official position, believing from his communications with Levine that Edward Hospital's decision to hire Kiferbaum Construction would result in Planning Board approval for the Plainfield

hospital and medical office building, and that the related construction financing was to be done by Bear Stearns, defendant sought to obtain financial gain for Kiferbaum Construction.

More specifically, in or about December 2003, Levine, Kiferbaum, and defendant agreed that Levine would assist Edward Hospital in obtaining CONs to build the Plainfield hospital and medical center if Edward Hospital gave the construction work for the projects to Kiferbaum Construction. Defendant agreed that he would introduce Kiferbaum to the CEO of Edward Hospital. Thereafter, in or about mid-December 2003, defendant called the CEO of Edward Hospital and said that Edward Hospital should give the construction contract to Kiferbaum Construction if Edward Hospital wanted to get Planning Board support for its CONs. At that time, defendant knew that on December 17, 2003, the Planning Board was scheduled to review Edward Hospital's application to build a new medical office building, and defendant told the CEO that Edward Hospital should give the construction work to Kiferbaum and the CEO should postpone having that application reviewed so that Edward Hospital would have time to hire Kiferbaum Construction. Defendant told the CEO that if Edward Hospital went forward at the December Planning Board meeting with its CON application for the medical office building, the application would be denied.

A few days later, on December 17, 2003, and notwithstanding defendant's communication of Levine's promise, Edward Hospital went forward with its application for a CON for the Plainfield medical office building. Levine voted against approval of that application and the Planning Board issued an intent-to-deny with respect to the application.

Following the December 17 Planning Board meeting and vote, Levine, Kiferbaum, and defendant engaged in a series of communications with each other and with representatives of Edward Hospital regarding the possibility that Edward Hospital would hire Kiferbaum Construction as a means of obtaining its CONs for the hospital and medical office building. Defendant, Levine, and Kiferbaum knew that Levine could not communicate with representatives from Edward Hospital about their pending applications because any such communications outside of the Planning Board's official proceedings were prohibited by the *ex parte* rules. Defendant, Kiferbaum, and Levine therefore agreed that Kiferbaum and defendant would communicate with Edward Hospital representatives in place of and on behalf of Levine and to convey Levine's promises to Edward Hospital. Defendant and Kiferbaum also communicated to Levine the responses of the Edward Hospital representatives to the efforts to require Edward Hospital to hire Kiferbaum Construction as a condition to approval of its CONs.

In a conversation with the CEO of Edward Hospital on or about December 22, 2003, shortly after the Planning Board's rejection of the CON for the medical office building, defendant told the CEO that he knew he could get the Planning Board to approve the CONs for the hospital and medical office building if Edward Hospital hired Kiferbaum Construction. Defendant told the CEO that in return for his assistance in working with Levine and Kiferbaum to secure the CONs for Edward Hospital, all defendant asked was that Edward Hospital use Bear Stearns to handle financing for the projects. Defendant told the

CEO that he wanted her to meet Kiferbaum to discuss the projects, and defendant arranged a meeting for the following day.

The next day, December 23, 2003, defendant introduced Kiferbaum to the CEO at a restaurant in an attempt to persuade her to hire Kiferbaum Construction to build the pending projects. Unbeknownst to defendant and Kiferbaum, the Edward Hospital CEO was cooperating with the FBI and recorded the conversation. During this meeting, among other matters, defendant told the CEO that hiring Kiferbaum would take care of all of Edward Hospital's issues with the Planning Board, that Edward Hospital would be "safe" with defendant and Kiferbaum, and that Edward Hospital did not need anyone other than Kiferbaum and defendant to get the projects approved at the Planning Board's next meeting in February 2004. In addition, defendant reminded the CEO that defendant had correctly told her that the Planning Board would deny Edward Hospital's application for the medical office building CON if Edward Hospital proceeded without hiring Kiferbaum, and that Levine had wanted Edward Hospital to defer the Planning Board's vote on its application for the medical office building.

On January 8, 2004, defendant again met with Edward Hospital's CEO and, additionally, an Edward Hospital employee who was the project administrator for the Plainfield hospital and medical office building, and who, like the CEO, was cooperating with the FBI. During this meeting, among other matters, defendant told the CEO that he and Levine were close, that Levine was using defendant to talk to the CEO, that Levine wanted defendant to take care of this with the CEO, and that Levine had told defendant that without

Kiferbaum, the CON would not be approved. Defendant also told the CEO that Levine could not talk to her directly because of the *ex parte* rules and that Levine did not want to put himself at risk. Defendant told the CEO that Levine and Kiferbaum were friends and that Levine had a close relationship with Illinois Governor Blagojevich. Defendant told the CEO that she did not want to know why Levine and Governor Blagojevich wanted Kiferbaum to get the Edward Hospital construction projects, but advised her that the support for Kiferbaum by Governor Blagojevich and those surrounding him was "all about money" for political campaigns. Defendant told the CEO that Mercy Hospital was going to use Kiferbaum Construction and that Mercy Hospital's CON would be approved by the Planning Board.

In response to defendant's representations and promises concerning Levine, Kiferbaum, and the need to hire Kiferbaum Construction, the CEO requested some proof, and defendant said that he might be able to arrange for the CEO to have what would falsely appear to be an accidental encounter with defendant and Levine, which would demonstrate that defendant was in fact speaking on behalf of Levine.

Thereafter, from January 17, 2003 through February 2, 2004, defendant participated in a series of telephone conversations with the Edward Hospital project administrator and CEO regarding the compensation that Kiferbaum would require for his involvement in the project. Defendant reiterated that it was necessary for Edward Hospital to reach an agreement with Kiferbaum in order to get the deal done.

Several months later, on April 13, defendant told Edward Hospital's CEO that he understood Edward Hospital still sought some demonstration from Levine or defendant

which would allow the CEO to see that defendant and Levine knew each other and were talking to each other regarding the Edward Hospital CONs as defendant was representing. Defendant said he would talk to Levine about that and would call about arranging something that weekend. The following day, April 14, defendant, who was in Colorado, telephoned Edward Hospital's CEO in Illinois and said that he had a long talk with Levine that morning, and Levine did not have a problem with running into the CEO and saying hello. Defendant said that Levine wanted to make sure that everything was on track, and that Levine thought Edward Hospital's medical office building should be approved at the next Planning Board meeting. Thus, on April 14, defendant used an interstate wire in furtherance of the scheme.

Two days later, on April 16, Kiferbaum talked with the Edward Hospital CEO about setting up a meeting that would demonstrate that Kiferbaum and Levine knew each other. A short time later, defendant and Kiferbaum each left a voicemail message for the CEO, confirming that there would be a meeting that Sunday, April 18.

Early on April 18, Levine and Kiferbaum talked about the meeting that they were going to have that morning with the CEO and defendant. Levine said he would talk to Kiferbaum and the CEO at the restaurant and instructed Kiferbaum to tell the CEO that because of the ethics law prohibiting *ex parte* communications relating to pending projects, the CEO should not ask anything direct about her particular project. A short while later, Levine and defendant went to the meeting as planned, in order to prove to the CEO that Levine, defendant, and Kiferbaum were working together, and that their promises were real. Levine and defendant walked over to a table where Kiferbaum and the CEO were sitting.

Levine said that he was the Chairman of the Board of the Chicago Medical School and that Kiferbaum had done a project for them. Levine said that Kiferbaum was a person upon whom one can rely, and he is a person whose word can be depended on.

The following week, on April 21, the Planning Board held a Board meeting at which Edward Hospital's application for a permit to build the Plainfield hospital was considered. Edward Hospital had not hired Kiferbaum by that time, and Levine voted against Edward Hospital's application to build a new hospital, and the Planning Board issued a notice of its intent to deny the application. As defendant previously had told Edward Hospital's CEO it would do, the Planning Board approved Mercy Hospital's application for the Crystal Lake hospital at that meeting. Levine voted in favor of the Mercy Hospital CON.

Several weeks later, on May 13, 2004, defendant spoke to the project administrator for Edward Hospital about the next Planning Board meeting, which was scheduled for June 2004. The project administrator said that Edward Hospital was reassessing its situation. Defendant said that if Edward Hospital was willing to listen, and to think about some things, he would find out what, if anything, needed to be done. Defendant subsequently communicated with Levine about Edward Hospital's CON. However, before the June Planning Board meeting occurred, Levine, Kiferbaum, and defendant were interviewed by the FBI, and defendant then ceased any additional efforts with Levine to obtain the CON for Edward Hospital.

7. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for defendant's plea of guilty, and are not intended to be a

complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crimes and related conduct.

Maximum Statutory Penalties

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense 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 the judge also may impose a term of supervised release of not more than three years.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed $100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

9. 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.

10. 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.**

i. The base offense level for the charge in Count Five of the superseding indictment is 7, pursuant to Guideline §2B1.1(a)(1)(B);

ii. Pursuant to Guideline §2B1.1(b)(1)(I), because the loss was more than $1,000,000 but less than $2,500,000, the offense level is increased by 16 levels;

iii. Pursuant to Guideline §3B1.2(b), because defendant was a minor participant in the criminal activity, the offense level is decreased by 2 levels;

iv. 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 that may be imposed in this case, a two-level reduction in the offense level is appropriate.

v. The parties disagree about the applicability of Guideline §3E1.1(b). The government contends that defendant did not timely notify the government of his intention to enter a plea of guilty, such that the government was not able to avoid preparing for trial and the Court was not able to allocate its resources efficiently within the meaning of Guideline §3E1.1(b). Defendant disagrees and contends that defendant timely notified the government of his intention to enter a plea of guilty such that the government was able to avoid preparing for trial and the Court was able to allocate its resources efficiently within the meaning of Guideline §3E1.1(b). Therefore, 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 contends defendant should not receive an additional one-level reduction in the offense level pursuant to Guideline §3E1.1(b); defendant disagrees and contends that he should receive that additional one-level reduction.

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 according to the government is 19, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 30 to 37 months' imprisonment. Defendant disagrees and contends that the anticipated offense level is 18, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 27 to 33 months' imprisonment, in addition to any supervised release and fine 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 (b)(i)-(iv) 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.

Cooperation

11. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil or administrative proceeding. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation.

Agreements Relating to Sentencing

12. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation. If the government determines that defendant has continued to provide full and truthful cooperation as required by this Agreement, then the government shall move the Court, pursuant to Guideline §5Kl.l, to depart from the applicable Guideline range and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court.

13. If the government moves the Court, pursuant to Sentencing Guideline §5K1.1, to depart from the applicable Guideline range, as set forth in the preceding paragraph, this Agreement will be governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C).

That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of the Bureau of Prisons of no more than 22.5 months. The government will recommend that defendant receive a term of imprisonment of 22.5 months and is otherwise free to make whatever sentencing recommendation it deems appropriate. Defendant is free to recommend any sentence. Defendant reserves the right to argue in accordance with Title 18, United States Code, Section 3553(a), that the Guideline range overstates the seriousness of the offense. Other than the agreed term of maximum incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court imposes a term of incarceration of no more than 22.5 months, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d) and (e). If, however, the Court imposes a sentence of imprisonment of more than 22.5 months, thereby rejecting this Agreement, or otherwise refuses to accept defendant's plea of guilty, either party has the right to withdraw from this Agreement.

14. If the government does not move the Court, pursuant to Sentencing Guideline §5K1.1, to depart from the applicable Guideline range, as set forth above, this Agreement will not be governed, in any part, by Federal Rule of Criminal Procedure 11(c)(1)(C), the preceding paragraph of this Agreement will be inoperative, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines without any downward departure for cooperation pursuant to §5K1.1.

Defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Sentencing Guideline §5K1.1.

15. Defendant agrees to pay the special assessment of $100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

16. 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 second superseding indictment.

Presentence Investigation Report/Post-Sentence Supervision

17. 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, including the nature and extent of defendant's cooperation.

18. 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.

19. For the purpose of monitoring defendant's compliance with his obligations to pay a fine 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 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).

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

20. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 05 CR 408.

21. This 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.

Waiver of Rights

22. 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 superseding 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, if the government makes a motion at sentencing for a downward departure pursuant to Sentencing Guideline § 5K1.1, 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 Agreement. In addition, 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.

Other Terms

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

Conclusion

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

25. Defendant understands that his compliance with each part of this 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.

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

27. 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	P. NICHOLAS HURTGEN Defendant
KAARINA SALOVAARA Assistant U.S. Attorney	RONALD S. SAFER Attorney for Defendant
JOSEPH FERGUSON Assistant U.S. Attorney	MATTHEW C. CROWL Attorney for Defendant