

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 09 CR 105
) Judge Charles R. Norgle
)
vs.)
)
CHRISTOPHER G. KELLY)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant CHRISTOPHER G. KELLY, and his attorney, MICHAEL MONICO, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C), 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 mail fraud, in violation of Title 18, United States Code, Section 1341 (Counts 1-11); and money laundering, in violation of Title 18, United States Code, Sections 1957(a) and 2 (Counts 12-17).

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.

Charge to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Counts One and Fourteen of the indictment. Count One charges the defendant with devising and intending to devise, and participating in, a scheme and artifice to defraud American Airlines and United Airlines of money and property, including confidential information and also American Airlines' and United Airlines' right to control the disposition of their property through the awarding of contracts for roofing construction services, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, in violation of Title 18, United States Code, Section 1341. Count Fourteen charges the defendant with knowingly engaging in a monetary transaction affecting interstate commerce, in criminally derived property of a value greater than \$10,000, which was derived from specified unlawful activity, namely mail fraud, in violation of Title 18, United States Code, Sections 1957(a) and 2. 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 Fourteen 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 Count One of the indictment: Beginning no later than in or about September 1998, and continuing through at least in or about May 2006, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant Christopher G. Kelly, together with BCI Commercial Roofing, Inc. ("BCI Roofing"), Co-Schemer A, and Company A, and others known and unknown to the grand jury, devised and intended to devise, and participated in, a scheme and artifice to defraud American Airlines and United Air Lines of money and property, including confidential information and also American Airlines' and United Air Line's right to control the disposition of their property through the awarding of contracts for roofing construction services, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, which scheme is further described below, in violation of Title 18, United States Code, 1341.

More specifically, during the course of the scheme, the defendant was the president and owner of BCI Roofing. BCI Roofing was in the business of providing commercial roofing services. Co-Schemer A was the president and owner of Company A. Company A was in the business of providing consulting services to various entities relating to the construction, repair, and replacement of roofs. American Airlines was a commercial airline company and maintained facilities at, among other places, O'Hare International Airport ("O'Hare") in Chicago, Illinois, and from time to time contracted with vendors to obtain services relating to the roofs of its buildings at O'Hare. United Air Lines, Inc. ("United") was a commercial airline company and maintained facilities at, among other places, O'Hare

in Chicago, Illinois, and from time to time contracted with vendors to obtain services relating to the roofs of its buildings at O'Hare.

In or about September 1998, and in or about April 2001, American Airlines and Company A executed consulting agreements that provided that Company A would serve as a consultant for American Airlines in connection with certain roofing projects. Each consulting agreement noted that any information Company A received concerning American Airlines "is proprietary and confidential to American and [Company A] shall keep such information strictly confidential and shall not disclose it to any third party or use it directly or indirectly for any purpose except the performance of [the consulting agreement]."

In or about May 2004, United and Company A executed a Master Agreement for Architectural/Roofing Consulting Services ("Master Agreement"). The Master Agreement provided that Company A would serve as a consultant for United in connection with certain roofing projects to be designated by the parties. Pursuant to the Master Agreement, Company A's duties with respect to each project included, among other things: (i) planning and designing the work to be performed, and submitting to United estimates of the construction cost and budget for the different design packages or phases of the project; (ii) assisting United in: (a) determining how construction work relating to the project should be apportioned for purposes of soliciting bids from contractors; (b) preparing "bid packages" consisting of documents to be provided to potential bidders; and (c) preparing budgets for

each bid package; (iii) assisting United in obtaining competitive bids for each bid package; and (iv) monitoring the work performed by the successful bidders.

The Master Agreement prohibited Company A from disclosing any confidential information pertaining to United or to the site of any project. The Master Agreement defined “Confidential Information” as “any data or information pertaining to United or any United Site, including the Project Site, regardless of format or medium and including any copies thereof, other than information (A) in the public domain or approved by United for release to the public; (B) rightfully disclosed to [Company A] by a third party without any restriction on the further dissemination of such information; (C) possessed by [Company A] independently of United and without resort to or reliance on any proprietary, confidential, restricted or protected information; or (D) information whose disclosure is required by court order or other express legal directive or requirement.” The Master Agreement also prohibited Company A from “undertaking other employment, having any financial or other interest or accepting any contribution or value,” if “it would reasonably appear” that doing so “could compromise [Company A’s] professional judgment or prevent [Company A] from serving and furthering the interests of United.”

During the time period of the scheme, American Airlines and United awarded contracts for roofing construction services to the lowest bid submitted by a responsible contractor.

It was part of the scheme that the defendant and BCI Roofing, together with Co-Schemer A and Company A, fraudulently steered construction contracts for roofing work at American Airlines' and United's O'Hare facilities to BCI Roofing by falsely representing to American Airlines and United the estimated costs of roofing projects to be performed, and manipulating the bidding process for those projects, in return for hidden kickbacks from the defendant and BCI Roofing to Co-Schemer A and Company A.

After learning about roofing projects being undertaken by American Airlines or United at O'Hare, the defendant and Co-Schemer A attempted to obtain the consulting work for Company A by having Co-Schemer A and Company A agree to provide roofing consulting services to American Airlines or United at less cost than other roofing consultants with the understanding that, once Company A obtained the consulting work, Co-Schemer A would fraudulently steer the contracts for roofing construction work on the projects to the defendant and BCI Roofing and, thereafter, the defendant and BCI Roofing would provide hidden kickbacks to Co-Schemer A and Company A.

After Company A obtained roofing consulting work from American Airlines or United on a particular project, Co-Schemer A reviewed the project, determined the nature and extent of the roofing construction work that was required, and secretly met with the defendant to inform the defendant of the nature and extent of the work to be performed.

The defendant, after learning from Co-Schemer A of the nature and extent of the roofing construction work to be done on a particular project, met with Co-Schemer A to

determine a fraudulently-inflated budget number for the project that was in excess of what was actually required for the roofing project, and in excess of what the defendant intended to bid for the project. After the defendant and Co-Schemer A determined the fraudulently-inflated budget number for a particular project, Co-Schemer A provided the fraudulently-inflated budget number to American Airlines or United, and prevailed upon American Airlines or United to approve the fraudulently-inflated budget number, without disclosing to American Airlines or United that Co-Schemer A had met with the defendant to determine the budget number and that this number exceeded the actual costs required to complete the project.

After American Airlines or United approved the fraudulently-inflated budget number, Co-Schemer A produced a project booklet that described the roofing project and could be provided to roofing contractors who were prospective bidders so that they could review the roofing project and determine whether and how much they would bid on the roofing project.

After producing the project booklet for a particular roofing project for American Airlines or United, Co-Schemer A typically held a pre-bid meeting at which potential bidders on the project could review the project booklet and project site, and ask questions about the project. The defendant sent an employee of BCI Roofing to these meetings to create the false impression that the defendant and BCI Roofing were unaware of the details of the projects and were participating in the bidding process in the same manner as other prospective bidders, even though the defendant previously had learned the details of the projects from

Co-Schemer A, and the defendant and Co-Schemer A together had determined the fraudulently-inflated figures to be used as American Airlines's and United's budgets for the projects.

The defendant and Co-Schemer A agreed that Co-Schemer A would disclose the fraudulently-inflated budget figure, which was American Airlines's or United's confidential information, to the potential bidders on the project for the purpose of inducing bidders other than BCI Roofing to submit bids that were at or near the fraudulently-inflated budget figure. The defendant, anticipating that other bidders would submit high bids based on the belief that American Airlines or United was prepared to pay an amount close to the fraudulently-inflated project budget, and knowing that American Airlines and United would award the roofing contract to the lowest bidder, submitted a bid on behalf of BCI Roofing that the defendant believed to be sufficiently under the fraudulently-inflated budget figure that it would be lower than other bids, but would still provide for a profit for BCI Roofing on the project.

Co-Schemer A, knowing that American Airlines and United wanted at least three roofing companies to bid on each roofing project, and to help ensure that the defendant and BCI Roofing obtained certain roofing projects, submitted fictitious bids for certain projects so that it appeared to the airlines that there were three legitimate bidders on a project, when, in fact, as Co-Schemer A well knew, there were not three legitimate bidders for the project. Co-Schemer A also ensured that each fictitious bid was higher than BCI Roofing's bid and, therefore, the fictitious bid would not be the winning bid.

After receiving construction contracts from American Airlines and United for roofing work at O'Hare as a result of the fraudulent and manipulated bidding process described above, the defendant kicked back to Co-Schemer A and Company A a portion of the funds they received through the fraudulently-obtained contracts, which kickbacks totaled at least \$450,000.

The defendant provided the kickbacks to Co-Schemer A and Company A in a variety of methods, including by having Co-Schemer A and Company A falsely invoice the defendant and BCI Roofing for consulting services that were never performed, and by passing money through third parties in order to conceal the true source and nature of the kickback payments and, thereafter, having Co-Schemer A and Company A provide false invoices to the third parties so that it appeared that Co-Schemer A and Company A had completed work for the third parties when, in fact, Co-Schemer A and Company A had done no work for the third parties, and the invoices were meant to further conceal the true source and nature of the kickback payments from the defendant and BCI Roofing to Co-Schemer A and Company A.

In particular, the defendant and Co-Schemer A rigged a variety of contracts in the manner described above, including roofing contracts for: (a) in approximately 1998, American Airlines Hangar #1; (b) in approximately 2001, an American Airlines Air Cargo Building; (c) in approximately Spring 2004, United's Service Center Hangar; and (d) in approximately Fall 2005, United's L-Check Hangar. Through the actions described above,

the defendant and BCI Roofing, together with Co-Schemer A and Company A, fraudulently deceived American Airlines and United into awarding the four roofing construction contracts described above to BCI Roofing totaling approximately \$8.5 million, based on the belief that these contract awards were the result of an honest and competitive bidding process, when, in fact, as the defendant knew, the prices at which those contracts were awarded did not result from an honest and competitive bidding process, and were at amounts that guaranteed profits to BCI Roofing and undisclosed kickbacks to Company A.

For each of the four projects, the defendant provided kickback money to Co-Schemer A. In particular as to the American Airlines Air Cargo Building, Co-Schemer A provided approximately seven fraudulent invoices to the defendant and BCI Roofing. The invoices indicated that Company A completed consulting work for BCI Roofing. In fact, as the defendant well knew, no such work was performed. Rather, the invoices were produced so that it appeared that BCI Roofing had a reason to pay money to Company A. The invoices totaled approximately \$137,000. The defendant and BCI Roofing paid the fraudulent invoices with checks to Company A. The \$137,000 in checks were all kickback payments that the defendant provided to Co-Schemer A because of the rigged process that was able to secure the American Airlines Air Cargo Building project for the defendant and BCI Roofing.

In relation to the United Service Center Hangar contract, the defendant and BCI Roofing provided Co-Schemer A with approximately \$132,000 in kickbacks in exchange for BCI Roofing obtaining the contract. The defendant hid the payment of the kickbacks to Co-

Schemer A by passing the money to Co-Schemer A through third parties. In particular, the defendant, through BCI Roofing, provided \$60,000 to Individual B and Individual B's company, Company C. Thereafter, and at the defendant's direction, Co-Schemer A fraudulently invoiced Company C for \$72,000 in consulting services although Co-Schemer A had never provided consulting services to Company C. Also at the defendant's direction, Individual B provided \$72,000, including the \$60,000 he had received from the defendant, to Co-Schemer A as part of Co-Schemer A's kickback payment in relation to the United Service Center Hangar contract.

In addition, in relation to the United Service Center Hangar contract, at the defendant's direction Co-Schemer A provided a fraudulent \$47,000 invoice to an entity called Irving Park Involvement, LLC and Irving Park Development, LLC. In fact, as the defendant knew, Co-Schemer A and Company A had never done any work for any Irving Park entity. Thereafter, the defendant arranged for a \$47,000 from Rezko Enterprises to be provided to Co-Schemer A as a payment for the fraudulent invoice and as part of the kickback payments on the United Service Center Hangar contract. The defendant also arranged for a \$13,000 check from Company D to be provided to Co-Schemer A as a kickback payment in relation to the United Service Center Hangar contract.

In relation to the United L-Check Hangar project, the defendant arranged the payment of \$187,000 in kickbacks to Co-Schemer A in exchange for BCI Roofing obtaining the United L-Check Hanger contract. The defendant originally arranged a single \$187,000

kickback payment to Co-Schemer A from an entity affiliated with Antoin Rezko. After it was determined, however, that a single \$187,000 was not practical, the \$187,000 kickback payment was broken into approximately six smaller checks totaling \$187,000. For each check, Co-Schemer A fraudulently invoiced an entity affiliated with Antoin Rezko and received a check from that entity.

The defendant admits that the defendant and BCI Roofing made profits of over \$2.5 million from the multiple contracts that were rigged by the defendant and Co-Schemer A.

In furtherance of the scheme described above, on or about August 9, 2004, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, the defendant, along with co-defendant BCI Roofing, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be delivered by mail according to the directions there on an envelope containing a \$590,400 check from United Airlines, Inc. to BCI Roofing, and addressed to BCI Roofing in Markham, Illinois, in violation of Title 18, United States Code, Section 1341.

b. With respect to Count Fourteen of the indictment: On or about October 25, 2004, in the Northern District of Illinois, Eastern Division, and elsewhere, the defendant and BCI Roofing, knowingly engaged in a monetary transaction affecting interstate commerce, in criminally derived property of a value greater than \$10,000, which was derived from specified unlawful activity, namely mail fraud, in violation of Title 18, United States Code, Section 1341, in that the defendant knowingly provided a BCI Roofing check in the

amount of \$93,000 to Casino A for the payment of a personal gambling debt incurred by the defendant, in violation of Title 18, United States Code, Sections 1957(a) and 2.

More specifically, the defendant obtained substantial criminally-derived profits through the criminal bid rigging and kickback mail fraud scheme in which he participated and which is described in more detail above. After obtaining the profits from the mail fraud scheme, the defendant knowingly took the criminally-derived profits and used them for his personal use through a variety of monetary transactions, each being over \$10,000. In particular, the defendant knowingly participated in the following monetary transactions, affecting interstate commerce, in criminally-derived profits from the mail fraud scheme:

(a) On or about August 6, 2004, the defendant knowingly provided a BCI Roofing check from a federally insured bank in the amount of \$58,000 to Company B for the purchase of personal electronic equipment for the defendant;

(b) On or about September 30, 2004, the defendant knowingly provided a BCI Roofing check from a federally insured bank in the amount of \$150,000, of which \$82,277.64 came from the criminally-derived profits from the mail fraud scheme, to Individual A for the payment of a personal gambling debt incurred by the defendant;

(c) On or about October 25, 2004, the defendant knowingly provided a BCI Roofing check from a federally insured bank in the amount of \$93,000 to Casino A for the payment of a personal gambling debt incurred by the defendant;

(d) On or about December 28, 2004, the defendant knowingly provided a BCI Roofing check from a federally insured bank in the amount of \$700,000, of which \$665,088.58 came from the criminally-derived profits from the mail fraud scheme, to Antoin Rezko to repay a personal loan used to purchase a house for the defendant;

(e) On or about February 10, 2005, the defendant knowingly provided a BCI Roofing check from a federally insured bank in the amount of \$40,000 to the defendant for his personal use; and

(f) On or about February 10, 2006, the defendant knowingly provided a personal check from a federally insured bank in the amount of \$~~140,000~~^{130,000 PDA}, of which \$110,617.91 came from the criminally-derived profits from the mail fraud scheme, to Casino B for the payment of a personal gambling debt incurred by the defendant.

The defendant knew that at the time he was conducting each of the monetary transactions he was using criminally-derived profits for his personal use. In total, the defendant knowingly completed over \$1,000,000 in monetary transactions, affecting interstate commerce, with criminally-derived profits from the defendant's mail fraud scheme.

Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries 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 Fourteen carries a maximum sentence of 10 years' imprisonment. Count Fourteen 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 Fourteen, 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 30 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, 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 parties agree the base offense level for the charge in Count One of the indictment is 7, pursuant to Guideline §2B1.1;

ii. The parties agree that the base offense level should be increased by 18 levels pursuant to Guideline §2B1.1(b)(1)(J), because the gain to the defendant from the mail fraud scheme was greater than \$2,500,000 but less than \$7,000,000.

Count Fourteen

iii. The parties agree that the base offense level for the charge in Count Fourteen of the indictment is 25, pursuant to Guideline §2S1.1(a)(1).

iv. The parties agree that the base offense level should be increased by 1 level pursuant to §2S1.1(b)(2)(A), because the defendant was convicted under 18 U.S.C. § 1957.

Grouping

v. Pursuant to Guideline § 3D1.2(c), Counts One and Fourteen are grouped together in a single group for sentencing purposes because the mail fraud scheme (Count One) embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to the money laundering count (Count Fourteen). Pursuant to Guideline § 3D1.3(a), the offense level applicable to this group is 26;

vi. 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.

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 and stipulated below, defendant's criminal history points equal 3 and defendant's criminal history category is II:

i. On or about January 16, 2009, defendant was convicted of tax fraud and structuring in the District Court for the Northern District of Illinois, and on June 22, 2009, sentenced to 37 months imprisonment. Pursuant to Guideline §4A1.1(a), the defendant receives 3 criminal history points for this conviction and sentence.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 24, which, when combined with the anticipated criminal history category of II, results in an anticipated advisory Sentencing Guidelines range of 57 to 71 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 9(b)(i), 9(b)(ii), 9(b)(iii), and 9(b)(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.

g. Defendant understands that with the exception of the Guideline provisions identified above as binding on the parties, the Guideline calculations set forth above are non-binding predictions, upon which neither party is entitled to rely, and are not governed by Fed.R.Crim.P. 11(c)(1)(B). Errors in applying or interpreting any of the Sentencing Guidelines (other than those identified above as binding) may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. 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 57 months, which will be ordered to run consecutively to the defendant's current 37-month sentence in case 07 CR 837. ~~Other than the agreed term of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate.~~ ^{No change} ~~stet~~ ~~man~~ If the Court accepts and imposes the agreed term of incarceration set forth, 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 refuses to impose the agreed term of incarceration set forth herein, thereby rejecting this plea agreement, or otherwise refuses to accept defendant's plea of guilty, either party has the right to withdraw from this plea agreement.

11. Regarding restitution, the parties acknowledge that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant to make full restitution to United Air Lines and American Airlines in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing.

12. 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.

13. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment and Forfeiture Allegation Two as to this defendant.

Forfeiture

14. Forfeiture Allegation One of the indictment charges that defendant is liable to the United States for approximately \$1,631,000, which funds are subject to forfeiture because those funds represent property which constitutes and is derived from proceeds of the charged fraud scheme and represent property involved in the charged money laundering offenses or traceable thereto those offenses. Further, defendant has subjected real property to forfeiture, namely the real property located at 702 Ambiance in Burr Ridge, Illinois, because that property, similar to the funds described above, represents property which constitutes and is derived from proceeds of the fraud scheme and also represents property involved in the money laundering offenses or traceable thereto those offenses. By entry of a guilty plea to Count One of the indictment, defendant acknowledges that the funds and the real property identified above is subject to forfeiture.

15. Defendant agrees to the entry of a forfeiture judgment in the amount of \$450,000, and against the real property identified above, in that this property is subject to forfeiture. The parties agree that the forfeiture of the \$450,000, and the real property identified above, will satisfy Forfeiture Allegation One. Prior to sentencing, defendant agrees to the entry of a preliminary order of forfeiture and judgment relinquishing any right,

title or ownership interest he has in the above-described \$450,000 and the real property and further agrees to the seizure of these funds and the real property so that these funds and this real property may be disposed of according to law. Defendant further agrees to pay to the United States the amount of \$³750,000 by means of a certified check made payable to the United States Marshal Seized Asset Fund prior to the time of sentencing. Defendant agrees to execute any documents necessary to effectuate and transfer of his interest in the aforementioned property and real property to be applied to the forfeiture judgment. To the extent that the funds subject to forfeiture are not available to satisfy the judgment, the defendant is aware that the government is entitled to recovery of the funds owed through substitute assets pursuant to Title 21, United States Code, Section 853(p).

16. Defendant understands that forfeiture of this property shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

17. 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 09 CR 105.

18. 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.

Waiver of Rights

19. 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. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 10 days of the entry of the judgment of conviction.

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

Presentence Investigation Report/Post-Sentence Supervision

20. 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.

21. 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.

22. 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

23. 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.

Conclusion

24. 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.

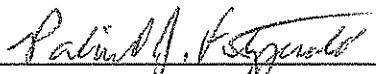
25. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, 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.


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 Plea 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.

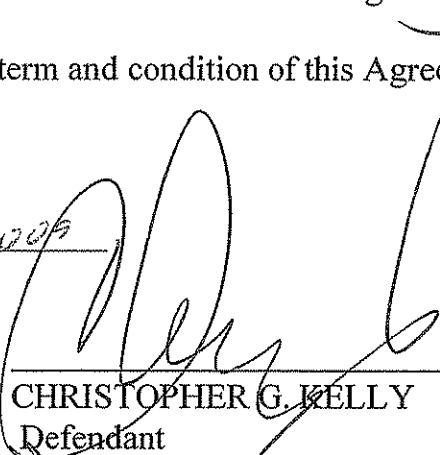
AGREED THIS DATE: September 8, 2009




PATRICK J. FITZGERALD
United States Attorney



REID J. SCHAR
Assistant U.S. Attorney



CHRISTOPHER G. KELLY
Defendant



MICHAEL MONICO
Attorney for Defendant