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EMBEZZLEMENT

Former controller accused of embezzling \$3 million, causing plant to close

The former controller of a Kansas City, Mo., sheet metal plant is facing charges of bank fraud, wire fraud and money laundering for allegedly embezzling nearly \$3 million from her employer and driving the company into bankruptcy.

United States v. Brooner, No. 4:14-cr-00173, indictment unsealed (W.D. Mo., W. Div. July 1, 2014).

A grand jury indictment unsealed July 1 in the U.S. District Court for the Western District of Missouri accuses Irene M. Brooner, a certified public accountant, of using her position at Galvmet Inc. to falsify bank records while making hundreds of unauthorized transfers from company accounts to her own checking and savings accounts over a 10-year period.

Galvmet Inc., a sheet metal fabrication facility and steel service center, opened in 2001 and closed last February, according to a U.S. Department of Justice statement. The company made

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REUTERS/STR New

The defendant allegedly scammed her employer, a sheet metal fabrication facility that opened in 2001 and closed last February. In this photo, workers guide a sheet of metal into place on a construction site.

COMMENTARY

UK issues sentencing guideline for individuals convicted of white-collar offenses

Cadwalader, Wickersham & Taft attorneys Bret Campbell, Adam Lurie, Joseph Moreno and Karen Woody discuss the United Kingdom's new sentencing guideline for individuals in fraud, bribery and money laundering cases and how it sets a framework for use during plea negotiations and at sentencing.

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UK issues sentencing guideline for individuals convicted of white-collar offenses

By **Bret Campbell, Esq., Adam Lurie, Esq., Joseph Moreno, Esq., and Karen Woody, Esq.,**
Cadwalader, Wickersham & Taft

In May the Sentencing Council for England and Wales issued a new guideline applicable to individuals convicted of fraud, bribery and money laundering offenses.¹ Effective for sentences imposed on or after Oct. 1, 2014 (regardless of the date of the underlying offense), it represents the latest effort to ensure a consistent approach to the sentencing of white-collar offenses in courts in England and Wales, as well as the first

doing so “would be contrary to the interests of justice.”³ In this respect, the new guideline is comparable to the U.S. sentencing guidelines, which are “effectively advisory” for U.S. federal courts.⁴

The new guideline specifies offenses and category ranges for each offense. Offense ranges are defined as “the range of sentences appropriate for each type of offen[se].”⁵ As with the U.S. sentencing guidelines,

DETERMINATION OF OFFENSE CATEGORY

First, the new guideline directs courts to consider culpability and harm in determining the offense category. The level of culpability is calculated “by weighing up all the factors of the case to determine the defendant’s role and the extent to which the offending was planned and the sophistication with which it was carried out.”⁹

There are three categories of culpability: high, medium and lesser. These categories are based upon the defendant’s motivation and role in the offense. Factors indicative of high culpability are largely similar to those relevant in fraud, bribery and money laundering cases. They include leadership in a group offense; exertion of influence or pressure to induce the participation of others; abuse of power, trust or responsibility; significant planning or sophistication of offense; activity occurring over a sustained period of time; a large number of victims; motivation of significant gain; and deliberate targeting of the victim on the basis of vulnerability.

Lesser culpability is more likely to be assigned to those who were coerced, intimidated or exploited into involvement; were not motivated by personal gain; were peripherally involved; did very little planning; or had limited awareness or understanding of the offense. Courts are advised to balance the various factors to determine the defendant’s culpability if the case does not fall cleanly into one of the three categories.

In typical fraud cases, harm encompasses both “the actual, intended or risked loss” and the “level of harm caused to the victim(s) or others.”¹⁰ Courts are instructed to consider loss, which is divided into categories based on monetary value. Next, courts are to consider the level of harm caused, or victim impact, to determine whether the crime should be “moved up to the corresponding point in the next category or further up the range of the initial category.”¹¹ There are three categories of victim impact: high, medium and lesser.

The Sentencing Council for England and Wales’ new guideline is applicable to individuals convicted of fraud, bribery and money laundering offenses.

published guideline for sentencing in money laundering cases. Similar to the guideline published earlier this year for corporate offenses,² the new guideline provides practitioners with a baseline against which to argue during plea negotiations and at sentencing for individual defendants.

APPLICABILITY OF THE NEW GUIDELINE

The new guideline is not mandatory, and courts are not required to adhere to it if

categories (or degrees) within each offense are predicated on the seriousness of the crime. The offense range is accordingly divided into category ranges, which are “sentences appropriate for each level of seriousness.”⁶ Each category includes a “starting point” that “define[s] the position within a category range from which to start calculating the provisional sentence.”⁷ In this way, and similar to the guideline for corporate offenses, the new guideline sets forth a multi-step approach to sentencing.⁸



(From L-R) **Bret Campbell** is a partner in the white-collar defense and investigations group in the Washington office of **Cadwalader, Wickersham & Taft**. He represents clients in a broad range of complex criminal, regulatory and civil litigation matters involving international corruption and the Foreign Corrupt Practices Act, as well as securities, health care, accounting and commercial fraud. **Adam Lurie**, a partner in the firm’s litigation department, is an accomplished trial lawyer, advocate and counselor whose practice focuses on significant and diverse civil litigation, as well as white-collar and regulatory cases. Former federal prosecutor **Joseph Moreno** is a special counsel in Cadwalader’s white-collar defense and investigations group. He has extensive trial and appellate experience handling complex white-collar matters in federal court. Moreno is licensed as an attorney in New York and the District of Columbia, and as a solicitor in England and Wales. **Karen Woody** is a senior associate in the white-collar defense and investigations group of Cadwalader’s Washington office. Her practice focuses on issues related to the Foreign Corrupt Practices Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commodities Exchange Act, insider-trading laws, export controls, economic sanctions programs, anti-money laundering laws, and related regulations.

Where there is a “[s]erious detrimental effect on the victim” or the victim is “particularly vulnerable (due to factors including but not limited to age, financial circumstances, mental capacity)” the court is likely to find a high impact.¹²

Possessing, making or supplying articles (such as electronic computer programs or data, or machines used to manufacture counterfeit bank notes) for use in fraud, revenue fraud and benefit fraud all result in the application of slightly modified harm considerations. In a case that includes possessing, making or supplying articles for use in a fraud, harm is calculated by looking to a “greater versus lesser harms” chart and “weighing up all the factors of the case to determine the harm that would be caused if the article(s) were used to commit a substantive offence.”¹³ For revenue fraud and benefit fraud, harm is determined by considering a list of categories based on monetary value.¹⁴

In money laundering cases, harm consists of both the value of the money laundered and “the level of harm associated with the underlying offence.”¹⁵ The value of the money laundered, which is to be considered first, is broken down into categories. The level of harm is then considered “to determine whether [the harm] warrants upward adjustment of the starting point within the range, or in appropriate cases, outside the range.”¹⁶

In bribery cases, both *actual* harm and *risk* of harm are considered.¹⁷ Harm encompasses the impact of the offense and the actual or intended gain of the defendant. Offenses are divided into categories based on their *actual* harm. Crimes that have, among other impacts, a serious detrimental effect on individuals, the environment, government, business or public services fall into the most serious grouping (Category 1). Risk of harm involves “consideration of both the likelihood of harm occurring and the extent of it if it does.”¹⁸ It uses the same category breakdown as actual harm, but it is considered less serious. Therefore, the guideline advises “mov[ing] to the next category of harm down.”¹⁹

FACTORS AFFECTING SENTENCING

After determining the offense category, courts are to determine a sentence within a defined range, taking into account aggravating and mitigating factors. Aggravating factors include previous convictions, attempts to conceal evidence and failure to comply with court orders.²⁰ Mitigating factors include remorse,

good character, and the mental and physical condition of the defendant.²¹

If applicable, courts are also to consider whether the defendant assisted the investigator or prosecutor with the case or any other case pursuant to a written agreement, as well as any other laws that may serve to reduce the sentence by virtue of the defendant’s cooperation with or assistance to law enforcement.

The guideline also states that courts should consider Section 144 of the Criminal Justice Act 2003²² and the 2007 Reduction in Sentence for a Guilty Plea: Definitive Guideline²³ to assess whether reduction is appropriate. Section 144 provides that, in determining the sentence of a defendant who has pleaded guilty, courts should consider the stage in the proceedings at which the defendant expressed an intent to plead guilty and the circumstances under which the plea occurred. Courts should also consider whether it is appropriate to give credit for time spent on bail, pursuant to Section 240A of the Criminal Justice Act 2003.²⁴

Where the defendant is being sentenced for multiple offenses or is already serving a sentence, courts must examine “whether the total sentence is just and proportionate” based on an overall assessment of the defendant’s criminal conduct. Finally, courts must “give reasons for, and explain the effect of, the sentence” pursuant to Section 174 of the Criminal Justice Act 2003.²⁵

CONCLUSION

The new guideline provides a legal framework for practitioners to use during sentencing and plea negotiations.

While many of these factors (such as aggravating and mitigating factors) will be familiar to any lawyer that has advocated for a client at sentencing, the new guideline provides an enhanced framework from which counsel can develop arguments. For example, rather than simply arguing for leniency on the basis of the defendant’s good character or the lack of effect on the alleged victim, counsel can now frame these arguments within the “lesser” culpability and victim impact categories. Similarly, when negotiating agreements with prosecutors, defense counsel can tie the new guideline’s categories and offense ranges to the potential sentence that would result from a guilty plea.

Notwithstanding the enhanced legal framework established by the new guideline, courts retain broad discretion in issuing sentences. For example, imprisonment for a bribery conviction with the highest level of

culpability could range from six months to eight years, depending on the category of harm. Accordingly, practitioners will continue to face significant challenges in advising their clients regarding the likely outcome of a judicial sentencing.

The new guideline may also make it more difficult to advocate for a sentence that is well below the new guideline’s range. Practitioners will need to marshal compelling arguments supporting a downward departure, as the new guideline gives courts ample justification to issue sentences within the stated ranges. **WJ**

NOTES

¹ SENTENCING COUNCIL FOR ENGLAND AND WALES, FRAUD, BRIBERY AND MONEY LAUNDERING OFFENCES DEFINITIVE GUIDELINE, (May 2014), available at http://sentencingcouncil.judiciary.gov.uk/docs/Fraud_bribery_and_money_laundering_offences_-_Definitive_guideline.pdf.

² See Bret Campbell, Adam Lurie, Joseph Moreno & Karen Woody, *UK Guidelines Emphasize Importance of Robust Programs*, BLOOMBERG BNA (Mar. 17, 2014), available at <http://www.cadwalader.com/uploads/books/798c01d07d290dee281e92b606de65db.pdf>.

³ Section 125(1), Coroners and Justice Act (2009).

⁴ See Campbell *et al.*, *supra* note 2; *United States v. Booker*, 543 U.S. 220 (2005) (rendering the sentencing guidelines “effectively advisory” rather than mandatory).

⁵ Guideline, *supra* note 1, at 4.

⁶ *Id.*

⁷ *Id.*

⁸ See Campbell *et al.*, *supra* note 2.

⁹ Guideline, *supra* note 1, at 6, 36, 42.

¹⁰ *Id.* at 7.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 14.

¹⁴ *Id.* at 20, 28.

¹⁵ *Id.* at 36.

¹⁶ *Id.*

¹⁷ *Id.* at 42.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 10, 16, 24, 32, 38, 44.

²¹ *Id.* at 11, 17, 25, 33, 39, 45.

²² Section 144 Criminal Justice Act 2003, available at <http://www.legislation.gov.uk/ukpga/2003/44/contents>.

²³ Reduction in Sentence for a Guilty Plea: Definitive Guideline (July 2007), available at http://sentencingcouncil.judiciary.gov.uk/docs/Reduction_in_Sentence_for_a_Guilty_Plea_-_Revised_2007.pdf. The guilty plea guideline provides further explanation of Section 144’s application.

²⁴ Guideline, *supra* note 1, at 11, 17, 25, 33, 39, 45.

²⁵ *Id.*

Former debtor loses appeal of bankruptcy fraud conviction

A Kansas man who was sentenced to a decade in jail after being convicted of bankruptcy fraud has failed to convince a federal appeals court that he should get a new trial because of his attorney's alleged ineffectiveness.

United States v. Moser, No. 13-3321, 2014 WL 2978498 (10th Cir. July 3, 2014).

The 10th U.S. Circuit Court of Appeals held that James Moser could not show, in light of the evidence against him, that he was prejudiced by any alleged deficient representation.

THE BANKRUPTCY CASES

Moser operated Hallmark Arabian Farms in Olathe, Kan., which offered riding lessons and cared for boarded horses, according to the 10th Circuit's opinion and the underlying criminal indictment. The business was located on property owned by Jeffrey Miller and leased to HAF.

The business eventually fell behind on its rent payments in July 2004, and Miller took action to evict HAF early the following year.

About a month later, Moser filed a Chapter 7 petition. In a statement of financial affairs, he listed an October 2004 transfer to Miller of gold and silver coins and collectible stamps valued at \$125,000, the opinion said.

While the bankruptcy case was proceeding, Moser signed a written acknowledgment, indicating that all the property he had delivered to Miller as security had been returned to him, the opinion said. He did not disclose this information to the bankruptcy trustee, according to court records.

Moser received a bankruptcy discharge in May 2006.

Less than a year later, he filed a Chapter 13 petition. He did not mention the coins or stamps in his original statement of financial affairs, the opinion said.

When questioned at a hearing by the Chapter 13 trustee, Moser said he had received only some of the coins back from Miller, according to the opinion.

Moser subsequently amended his financial affairs statement to include a transfer to Miller in 2004 of coins and stamps valued at \$10,000.

BANKRUPTCY FRAUD

A federal jury in Topeka, Kan., found Moser guilty of bankruptcy fraud in connection with both the Chapter 7 and 13 cases. He was sentenced to 121 months in jail. *United States v. Moser*, No. 09-40086, *defendant sentenced* (D. Kan. Nov. 3, 2010).

In a prior appeal of his conviction, the 10th Circuit in 2011 found the evidence at the bankruptcy fraud trial suggested that Moser had not transferred the coins and stamps to Miller, but offered them as collateral. *United States v. Moser*, 453 F. App'x 762 (10th Cir. 2011).

After the panel affirmed his convictions, Moser filed a motion to vacate or amend his sentence under 11 U.S.C. § 2255 in U.S. District Court for the District of Kansas. He said his trial counsel failed to sufficiently argue that the coins and stamps were business assets and that he had no duty to report them.

The District Court denied the petition, and Moser again turned to the 10th Circuit.

The appeals court rejected his plea.

The panel said Moser's counsel did argue at trial that the assets belonged to the farm. It also held, however, that even had trial counsel's representation been deficient, Moser could not demonstrate that he suffered any prejudice.

In his Chapter 7 petition, the debtor listed a transfer of \$125,000 in collectible coins and stamps. In his Chapter 13 petition a year later, he said they were worth \$10,000.

While a transfer indicates that the debtor no longer has control of the property, a pledge as collateral indicates that the debtor still owns the property subject to a lien or security interest, according to the 2011 opinion.

The panel cited the acknowledgement Moser had signed in 2005, agreeing that all property previously delivered to Miller had been returned.

Moser also did not disclose to the Chapter 13 trustee that all of the coins and stamps had been returned, according to the opinion.

The evidence showed that Moser acknowledged the return of all the property he had given to Miller, which previously had been valued at \$125,000, but only valued it at \$10,000 in his Chapter 13 case, the opinion said.

The 10th Circuit said Moser's prior admission, including testimony during the Chapter 13 case, that he pledged the stamps and coins as collateral meant he retained some interest in them.

The panel, therefore, denied him a certificate of appealability, a prerequisite to appealing from the dismissal of a Section 2255 action, and dismissed his appeal. **WJ**

Related Court Documents:

2014 order: 2014 WL 2978498

2011 opinion: 453 F. App'x 762

See Document Section A (P. 19) for the 2014 order and Document Section B (P. 22) for the 2011 order.

Former HIV/AIDS clinic owner pleads guilty in \$31 million Medicare scam

The former operator of several HIV/AIDS clinics in New York City has pleaded guilty for his role in bilking Medicare of at least \$31 million through unnecessary or undelivered therapies while evading more than \$3.4 million in income tax payments.

United States v. Huachillo, No. 1:13-cr-00995, plea entered (S.D.N.Y. July 1, 2014).

"Oscar Huachillo has admitted guilt in defrauding Medicare out of tens of millions of dollars, and then literally compounding the felony by evading millions of dollars in taxes on the illegal windfall," U.S. Attorney Preet Bharara said in a July 1 statement. "In the process, his schemes put patients at risk, financially burdened the Medicare program, and cheated honest taxpayers."

Huachillo, 54, of Manhattan, perpetuated the scheme from 2009 to 2012 through multiple health care clinics in New York City that purportedly provided injection and infusion treatments for Medicare-eligible patients suffering from HIV and AIDS, according to a criminal complaint and superseding information filed in the U.S. District Court for the Southern District of New York.

Prosecutors say those patients either did not receive the expensive treatments or received them in extremely diluted doses. Some patients did not even need the drugs, according to court documents, but were nonetheless recruited by Huachillo and others to visit the clinics several times a week.

Huachillo and his co-conspirators then submitted claims to Medicare, often reaping tens of thousands of dollars in reimbursements per patient. Patients were also paid up to \$300 in kickbacks per week and an additional \$50 for each referral they brought in, according to prosecutors.

"Mr. Huachillo engaged in an elaborate scheme that resulted in poor patient care and millions defrauded from federal health care programs," Health and Human Services Office of the Inspector General Special Agent-in-Charge Thomas O'Donnell said in the statement. "We will not tolerate such greed-fueled fraud, which undermines our health care system and the vulnerable individuals it serves."

Huachillo has pleaded guilty to one count of conspiracy to commit health care fraud, which carries a maximum sentence of 10 years in prison, and one count of tax evasion, punishable by up to five years in prison.



REUTERS/Allison Joyce

"[The defendant's] schemes put patients at risk, financially burdened the Medicare program, and cheated honest taxpayers," U.S. Attorney Preet Bharara said.

As part of the plea agreement, he will forfeit more than \$31 million representing the proceeds of the crime, including \$14 million worth of assets seized by law enforcement at the time of his arrest. Huachillo will also pay \$3.4 million in back taxes, according to the statement.

Sentencing has been set for Oct. 15 before U.S. District Judge Katherine Polk Failla.

Co-defendant George Juvier, 56, of Manhattan, has also been charged with conspiracy to commit health care fraud for his alleged role in the scheme. A pretrial conference in Juvier's case has been scheduled for Sept. 10 before U.S. District Judge Kimba M. Wood. *United States v. Juvier*, No. 13-cr-857 (S.D.N.Y.). [WJ](#)

Michigan doctor pleads guilty in \$6 million Medicare fraud case

A Detroit-area physician has pleaded guilty in federal court to one count of conspiracy for his role in a home health care fraud scheme that allegedly bilked Medicare of more than \$6 million.

United States v. Khan et al., No. 2:13-cr-20892, plea entered (E.D. Mich., S. Div. July 1, 2014).

Dr. Walayat Khan, 66, of Ypsilanti, Mich., entered his plea July 1 before U.S. District Judge Paul D. Borman of the Eastern District of Michigan. He faces up to 10 years in prison and a fine up to \$250,000 at sentencing, set for Oct. 7.

According to the plea agreement, Khan and several home health agencies in the Detroit area conspired to defraud Medicare using phony referrals for medically unnecessary or undelivered home health services between January 2009 and November 2013.

Khan received cash kickbacks in exchange for signing off on unnecessary medical certificates for Medicare beneficiaries at agencies, including Advance Home Health

Care Services Inc., owned by Amer Eshan, and Perfect Home Health Care Services LLP, owned by Haroon Ur Rashid and Mohammad Rafiq, according to prosecutors and a superseding indictment filed in the case. The home health agencies then allegedly used these medical documents as the basis to file bogus Medicare claims for reimbursement.

Khan also paid kickbacks to another doctor, Adelina Herrero, in exchange for signing medical documents falsely certifying other Medicare beneficiaries for home health care and used patient recruiters to find additional Medicare beneficiaries that could be directed to the home health agencies, according to the plea agreement.

Court documents indicate Khan would pay one of these recruiters, Cynthia Bell, \$500 for assembling up to 10 such individuals at

a time in her Detroit home for house visits. Khan would distribute medically unnecessary prescriptions for controlled substances to Bell and the recruits during these visits and falsely certify the recruits for home health services at the co-conspirator agencies, according to the plea agreement. He would then bill Medicare for the prescriptions and physician and home health services.

The defendant faces up to 10 years in prison for his role in a \$6 million Medicare fraud scheme.

Another patient recruiter, James Zadorski, allegedly transported Medicare beneficiaries to Khan's practice so he could write them prescriptions for controlled substances, bill for physician services that were never delivered and refer them to the home health care agencies, the plea agreement says.

Prosecutors said the total submitted to Medicare came to more than \$6 million, and Medicare paid out more than \$5.5 million over the course of the scheme, according to the plea agreement. [WJ](#)



Malpractice claim based on plea deal doesn't require proof of innocence

The general requirement that a criminal defendant must prove his innocence before bringing a legal malpractice suit over his conviction does not apply to a claim that his attorney cost him the chance to accept a better plea offer, according to a New Jersey appeals court.

***Cortez v. Gindhart et al.*, No. A-0430-12T1, 2014 WL 2101436 (N.J. Super. Ct. App. Div. May 21, 2014).**

But after articulating that standard, the Superior Court Appellate Division nevertheless affirmed summary judgment for the attorney in the case before it, finding that his former client failed to prove the government would have offered him a better deal than the one he took.

Cortez eventually pleaded guilty in August 2008 to conspiracy to defraud the government and attempted tax evasion. He faced a possible prison sentence of 10 years, but the plea deal called for him to serve three years and to pay nearly \$450,000 in restitution.

He subsequently sued Gindhart in the Camden County Superior Court for breach of fiduciary duty and breach of contract,



The plaintiff's allegation that his attorney failed to engage in any plea negotiations could form the basis for a legal malpractice claim without evidence of exoneration, the panel said.

The underlying criminal case concerned tax-fraud allegations against Eduardo Cortez, who owned and operated an Atlantic City tax-preparation business.

According to the appellate opinion, Cortez retained Joseph G. Gindhart and his law firm in 2004 after the Internal Revenue Service began investigating him, and he was indicted in April 2008 for allegedly aiding and assisting in the filing of fraudulent income tax returns five to seven years earlier.

Gindhart withdrew his representation around the time of the indictment, and Cortez retained new counsel, according to the opinion.

claiming Gindhart had refused to negotiate a plea deal despite his repeated requests.

Cortez acknowledged his guilt but claimed Gindhart's actions had cost him the chance to accept a more favorable plea offer, according to the opinion.

Gindhart won summary judgment in July 2012. The trial court agreed with his argument that exoneration is a necessary prerequisite to a malpractice action against a criminal defense attorney.

In affirming the judgment, the Appellate Division rejected the lower court's reasoning.

"[Cortez's] allegation that Gindhart failed to engage in any plea negotiations despite

his requests could form the basis for a legal malpractice claim without evidence of exoneration if he was able to prove that he suffered an actual injury that was proximately caused by the alleged negligence," the panel said.

But the appeals court upheld the ruling anyway, finding that Cortez had not proven any injury.

"Cortez has provided no evidence that the government was willing to enter into a more favorable plea agreement before Gindhart ceased representing him or that he would have received a more lenient sentence if he had entered a guilty plea earlier," the panel said. **WJ**

Attorneys:

Plaintiff: Matthew B. Weisberg, Pennsauken, N.J.

Defendants: Matthew S. Marrone and Gregory D. Hanscom, Goldberg Segalla LLP, Princeton, N.J.

Related Court Document:

Opinion: 2014 WL 2101436

See Document Section C (P. 28) for the opinion.

Pair charged in alleged \$10 million phony documents contract scam

Two Florida business owners have been charged with using phony documents to support bids they submitted to secure \$10 million in research and development contracts from government agencies.

United States v. Aldissi et al., No. 8:14-cr-00217, indictment unsealed (M.D. Fla. June 4, 2014).

Scientists Mahmoud “Matt” Aldissi, 62, and Anastassia Bogomolova, 51, are facing charges of conspiracy, wire fraud, identity theft and falsification of records, U.S. Attorney A. Lee Bentley III for the Middle District of Florida said in a statement.

technological innovation. Prosecutors say the defendants used the identities and professional credentials of people and other companies without their knowledge or consent to make it appear as though they would be involved in the contract work.

The bids submitted by Fractal Systems and Smart Polymers also included altered emails and letters and false information about costs,

Defendants Mahmoud “Matt” Aldissi and Anastassia Bogomolova allegedly secured \$10 million in government contracts through false statements and identity theft.

The pair, of Pinellas County, Fla., fraudulently obtained contracts from the federal agencies such as the Defense Department, the Department of Energy, NASA and the National Science Foundation, according to a grand jury indictment filed in the U.S. District Court for the Middle District of Florida.

Aldissi incorporated Fractal Systems Inc. in 1998, according to the indictment, and he listed the business as a research and development firm with the Florida Division of Corporations. Bogomolova incorporated Smart Polymers Research Corp. in 2004 and both companies shared the same Belleair Beach, Fla., address, prosecutors say.

Between 2004 and 2014, Aldissi and Bogomolova allegedly submitted bogus proposals to various government agencies for research contracts intended to foster

employees, facilities, subcontractors and consultants to make it appear as though the companies’ research would have technical merit, according to the indictment.

The indictment additionally alleges that Aldissi and Bogomolova falsified time sheets to cover up the alleged conspiracy during a compliance review for an NSF award in 2011.

Prosecutors say Aldissi and Bogomolova also submitted phony invoices for work they had not performed and kept the money for themselves. The government is seeking forfeiture of at least \$10 million, as well as a 2012 BMW sedan and hundreds of thousands of dollars held by the defendants in various trusts, bank accounts and insurance policies.

If convicted on all counts, each defendant faces up to 20 years in federal prison. Both are currently free on bond, according to court records. **WJ**

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Exec gets 4 years in prison over Navy contract bribery scheme

The founder and former president of a Virginia-based telecommunications firm must serve four years in prison for his role in a scheme to bribe Navy officials to obtain more than \$3 million in government contracts for the business.

United States v. Smith, No. 14-CR-33, defendant sentenced (E.D. Va. June 23, 2014).

Roderic J. Smith, 50, also must serve one year of supervised release on completion of the prison term and forfeit \$175,000 to the government, the Justice Department said in a statement.

Judge Henry Coke Morgan Jr. of the U.S. District Court for the Eastern District of Virginia imposed the sentence on Smith, who pleaded guilty to conspiracy charges March 5.

Smith admitted that he and fellow business owners bribed officials from Navy's Military Sealift Command to win telecommunications services contracts, the statement said. Prosecutors have not identified Smith's company, which is located in Chesapeake.

The MSC operates more than 110 ships for the Navy, the Justice Department said.

According to the charges, Smith, together with business partners Dwayne A. Hardman, Adam C. White and Michael P. McPhail, paid \$265,000 in cash bribes to Kenny E. Toy and Scott B. Miserendino Sr.



Hardman \$85,000 to keep him from alerting law enforcement about the contract award scheme, the Justice Department said.

Hardman pleaded guilty to bribery charges in the District Court on Feb. 18 and is awaiting sentencing. McPhail pleaded guilty to bribery charges Feb. 19 and will forfeit \$57,000 to the government. His sentencing is set for Aug. 5.

Telecom firm owner Roderic J. Smith was sentenced to prison and must forfeit \$175,000 in connection with a contract bribery scheme.

Toy worked as a programs manager for the MSC at its Washington headquarters, and Miserendino was an MSC contractor at the same facility, the charges said.

Prosecutors claimed the co-conspirators paid the bribes to win \$3 million worth of telecommunications work from the MSC between November 2004 and November 2009.

In addition to taking part in the bribery conspiracy, Smith admitted he paid

White entered a guilty plea to conspiracy charges April 4 and is awaiting sentencing. Toy pleaded guilty to bribery charges Feb. 12 and admitted to receiving more than \$100,000 in cash during the life of the scheme. He is awaiting sentencing.

Miserendino has pleaded not guilty to conspiracy and bribery charges and will go to trial in September. **WJ**

Related Court Documents:
Criminal information: 2014 WL 3373255
Plea agreement: 2014 WL 3427412

WESTLAW JOURNAL CLASS ACTION



This reporter covers the proliferation of the class action lawsuit in numerous topic areas at the federal, state, and appeals court levels. Topics covered include consumer fraud, securities fraud, products liability, automobiles, asbestos, pharmaceuticals, tobacco, toxic chemicals and hazardous waste, medical devices, aviation, and employment claims. Also covered is legislation, such as the 2005 Class Action Fairness Act and California's Proposition 64, and any new federal and state legislative developments and the effects these have on class action litigation.

National Guard exec admits to rigging 55 contracts for freight hauling

A National Guard official has admitted in Alabama federal court that in exchange for more than \$29,000 in payments from a transportation broker, he awarded a total of 55 contracts to two freight carriers.

United States v. Wooten, No. 14-CR-190, plea entered (N.D. Ala. June 27, 2014).

Timothy Wooten, 50, pleaded guilty to bribery and wire fraud charges before Judge Madeline H. Haikala of the U.S. District Court for the Northern District of Alabama, the Justice Department said in a statement.

Wooten, a traffic management specialist for the National Guard, admitted he circumvented the required use of a computerized procurement system in order to make more than \$321,000 in contract awards to two Alabama firms.

charges said. The freight haulers that won these jobs are identified only as "C.E." and "U.S.T." in court documents.

The Justice Department said the broker paid Wooten more than \$17,000 for the contracts awarded to C.E. and more than \$12,000 for the U.S.T. awards.

The rigged awards allowed the broker to collect more than \$115,000 in commissions from the freight carriers, the charges said.

Wooten and the broker also arranged to conceal the nature of the bribe payments,

The defendant admitted he accepted bribes to bypass approved companies and select different firms for Navy contracts.

In a criminal information filed in the District Court June 11, prosecutors said Wooten worked in the National Guard's U.S. Property and Fiscal Office in South Carolina. His job duties involved awarding contracts to hauling companies for the transportation of personnel and equipment.

In order to arrange needed transportation, Wooten was required to use the National Guard's electronic transportation acquisition system, which generates a list of approved companies, the Justice Department said.

Prosecutors claimed that in exchange for payments from the unidentified freight broker, Wooten agreed to use an override procedure that would allow him to bypass the approved companies in the ETA system and select different firms for contracts.

Wooten used the override procedure and awarded 55 contracts to the broker's clients between October 2011 and January 2012, the

according to prosecutors. The broker hired Wooten's wife and, although she performed very little work, paid the money to her, the charges said.

Prosecutors further alleged that Wooten committed wire fraud because he paid C.E. and U.S.T. for their contract work by making wire transfers of money from a government bank account into the companies' accounts.

As part of his plea agreement, Wooten consented to turn over more than \$29,700 to the government, the Justice Department said.

He also faces a significant prison sentence and fine at his sentencing hearing scheduled for Oct. 15. [WJ](#)

Related Court Documents:

Criminal information: 2014 WL 3108613
Plea agreement: 2014 WL 3108612



WESTLAW JOURNAL **COMPUTER & INTERNET**

This publication, previously known as the Computer and Online Industry Litigation Reporter, follows the lawsuits arising from the use of the Internet for business and recreation, as well as cases involving computer hardware and software. This publication helps you stay abreast of the latest pretrial activities and winning case strategies in this quickly changing area of litigation. Each issue covers cases involving intellectual property, national and international jurisdictional issues, antitrust, Internet regulation, computer crime, and privacy issues, including issues arising from the increasing use of social networking sites like Facebook and MySpace.

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Autoliv to pay \$22 million to settle investor suit over price-fixing

By Michael Nordskog, Senior Content Writer, Westlaw Daily Briefing

Autoliv Inc. has agreed to pay \$22.5 million to end a 2013 class-action lawsuit alleging the Swedish automobile products maker and three current and former executives hurt shareholders by illegally conspiring to fix seat belt prices.

Construction Laborers Pension Trust of Greater St. Louis et al. v. Autoliv Inc. et al., No. 13-cv-2546, stay issued (S.D.N.Y. June 30, 2014).

In a June 30 order, U.S. District Judge J. Paul Oetken of the Southern District of New York stayed all proceedings in the case except settlement-related matters pending approval of the deal.

Autoliv announced in a June 27 press statement that it had reached an “agreement in principle” with the lead plaintiff Construction Laborers Pension Trust of Greater St. Louis. Two other pension funds — Electrical Workers Pension Fund Local 103 IBEW and Monroe County Employees’ Retirement System — are also lead plaintiffs in the suit.

In settling the defendants deny they violated federal securities law as alleged in the complaint, the statement said.

The settlement terms remain subject to negotiation and finalization, Autoliv said, noting it expects to record a \$4.5 million net expense related to the deal for the second quarter of 2014.

The balance of the settlement is to be paid by the company’s insurance carrier, the statement said.

Judge Oetken ordered the parties to submit papers by Aug. 15 supporting preliminary approval of the deal.

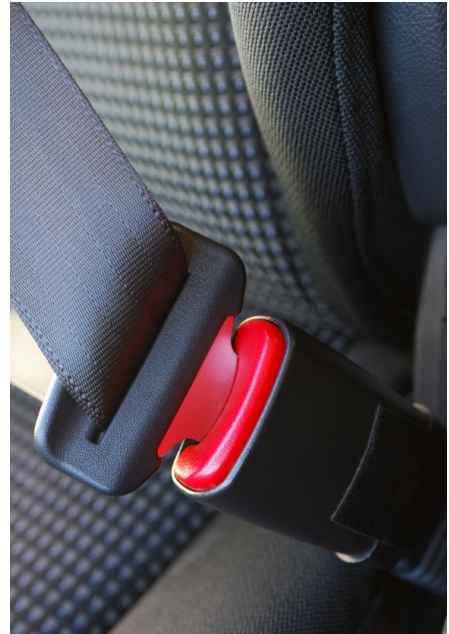
PRICE-FIXING ALLEGATIONS

The suit alleges Stockholm-based Autoliv, CEO Jan Carlson and CFO Mats Wallin defrauded investors by failing to disclose that U.S. and European antitrust authorities were investigating Autoliv for conspiring to fix seat belt prices and that a boost to the company’s bottom line was due to such unlawful activity.

Takayoshi Matsunaga, a former executive with Autoliv’s Japanese subsidiary who is currently serving a one-year sentence for violating Section 1 of the Sherman Act, 15 U.S.C.A. § 1, is also named as a defendant. *United States v. Matsunaga*, No. 13-cr-20523, order entered (E.D. Mich. Sept. 26, 2013).

The suit seeks an unspecified amount of damages for investors who acquired Autoliv shares during a nine-month period ending July 21, 2011.

The Department of Justice’s antitrust investigation alone has led to 21 indictments, 17 convictions or guilty pleas, and fines of \$1.4 billion in the auto parts industry, according to the complaint. Autoliv itself has pleaded guilty to participation in the criminal conspiracy and has paid “hefty” fines, the suit says.



The suit alleges Stockholm-based Autoliv Inc. and some of its top executives failed to disclose that U.S. and European antitrust authorities were investigating the company for conspiring to fix seat belt prices.

The price of Autoliv shares tumbled on news of the antitrust investigations, the suit says.

Autoliv, Carlson and Wallin filed a memo supporting dismissal in December, arguing the suit fails to meet the enhanced pleading requirements of the Private Securities Litigation Reform Act, 15 U.S.C.A. § 78u-4.

Matsunaga filed a separate motion in January, saying he should be dismissed from the action because he had no authority with respect to the financial statements at issue and thus could not be held liable for fraud under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b).

In his stay order Judge Oetken dismissed the December motion as moot, and he ordered the clerk to terminate both motions. **WJ**

4 convicted in \$49 million mortgage-fraud scheme

Four Floridians have been convicted on conspiracy and related charges for their roles in a mortgage-fraud scheme that bilked banks out of more than \$49 million through phony loan applications for a North Carolina real estate development.

United States v. Rabuffo et al., No. 1:14-cr-20008, verdicts returned (S.D. Fla. July 7, 2014).

Domenico “Dom” Rabuffo, of Miami; Mae Rabuffo, of Fort Lauderdale and Williston Park, N.Y.; Raymond E. Olivier, of Land O’Lakes, Fla.; and Curtis Allen Davis, of Tampa, Fla., were each convicted July 7 on charges of conspiracy to commit bank and wire fraud, federal prosecutors in Miami said.

The convictions followed an 11-day trial before U.S. District Judge Kevin M. Moore of the Southern District of Florida. All the defendants except Mae Rabuffo were also found guilty on multiple counts of bank fraud for the scheme, which ran from 2003 to 2008.

The applications included false employment information, inflated income levels and fraudulent statements that the borrowers had paid money deposits and cash due at closing to acquire the lots, prosecutors said.

According to an indictment filed in the case, the conspirators promised to pay the straw buyers \$12,500 for each building lot purchased, \$12,500 for each construction loan taken out, and \$12,500 for each year the loans remained outstanding. In the meantime, the conspirators allegedly promised the straw buyers they would make all the mortgage payments and give them a cut of any profits generated by the eventual sale of the properties.

According to prosecutors, Olivier and Davis recruited the straw borrowers and allowed their private companies to be listed as employers on loan applications. Domenico and Mae Rabuffo allegedly sent the lenders forged documents indicating that the “borrowers” had paid deposits and closing costs that had actually come from the scheme’s proceeds.

Three other defendants — Lazaro J. Perez, of Miami Springs, Fla., and Diane M. Hayduk and Victor M. Vidal, both of Miami — previously pleaded guilty to conspiracy charges for their roles in the scheme.

Vidal was a loan officer at SunTrust Mortgage who facilitated the fraud by sponsoring phony applications, including more than \$33 million worth of construction loans. Perez provided fictitious accountant’s letters to Vidal in support of SunTrust loans. Hayduk assisted in misappropriating loan proceeds and sending bogus information to lenders and closing agents.

Vidal and Hayduk are scheduled for sentencing Sept. 4 before Judge Moore. Perez was sentenced July 17 to 30 months in prison.

The other four defendants are scheduled for sentencing Sept. 25. Each faces up to 30 years in a federal prison for each count. [WJ](#)

Seven defendants have pleaded guilty or been convicted in connection with the multimillion-dollar mortgage fraud scheme, which took place at a North Carolina real estate development.

According to prosecutors, Domenico and Mae Rabuffo used shell companies to acquire ownership of the Hampton Springs development in Cashiers, N.C. The Rabuffos and other defendants then allegedly set about recruiting “straw buyers” to file fraudulent loan applications with federally insured lenders including Bank of America, Regions Bank, SunTrust and Wachovia.

The U.S. attorney’s office said the conspirators did in fact pay the straw buyers undisclosed amounts and make monthly mortgage payments for some time before they “ultimately” defaulted on the loans. The scheme allegedly netted the conspirators \$49.6 million, but court documents do not specify the banks’ total losses.

Embezzlement

CONTINUED FROM PAGE 1

\$14 million in annual sales in 2008, the Justice Department says, but by the time it closed its revenues had fallen to just \$10 million a year. Galvmet also shed six to eight of its 26 employees over the same time period, the statement said.

According to prosecutors, Brooner sent roughly 148 unauthorized transfers totaling more than \$1.1 million from Galvmet's account to her personal checking account between 2004 and 2014.

She allegedly sent 133 payments worth more than \$560,000 to her savings account during the same period and manipulated the payroll account on 108 occasions to increase her net pay by \$159,570. All told, prosecutors say, Brooner cost Galvmet at least \$1.8 million.

Prosecutors say Irene M. Brooner embezzled more than \$2.9 million over 10 years, driving a Missouri sheet metal plant into bankruptcy.

She also allegedly falsified payment and balance sheet information concerning the company's continuing line of credit with Missouri Bank & Trust. By failing to record some payments from customers, Brooner made it appear that more customers owed Galvmet money than actually did.

Because accounts receivable are legally enforceable claims, they officially count as assets. By falsifying the customer payments, Brooner thus ensured that Galvmet could continue borrowing from the bank even as she was bleeding the company dry, according to prosecutors. The alleged scam cost the bank \$1.1 million, the indictment says.

Brooner allegedly spent the embezzled funds on mortgage payments, jewelry, a Lexus, travel, electronics and other luxuries, including a remodeled bar in her basement featuring granite countertops and mannequins wearing authentic World War II-era uniforms.

She faces five counts of wire fraud and three counts each of bank fraud and money laundering. The indictment also contains a forfeiture claim against her assets, including the jewelry, home and Lexus, and a money judgment for more than \$2.9 million. **WJ**

NEWS IN BRIEF

TRADER, STUNG BY FBI, PLEADS GUILTY TO INVESTMENT FRAUD

An unlicensed securities trader pleaded guilty July 21 in Los Angeles federal court for his part in an investment fraud conspiracy that was exposed by undercover FBI agents, according to the U.S. Justice Department. Jessie Tolbert, 38, of Bastrop, La., and two co-conspirators placed an investment opportunity ad online in December 2011 that offered high-yield returns. The ad attracted the FBI, whose agents posed as investors. Tolbert and alleged co-conspirators Eriq Brye and Greg Preston reportedly told the undercover agents they could make a \$30 million return on a \$500,000 investment. Federal prosecutors said Tolbert did not operate an investment program and that the high-yield opportunity was a sham. Preston pleaded guilty to investment fraud charges in May 2013 and will be sentenced Dec. 19. Brye remains a fugitive, prosecutors said. Tolbert pleaded guilty to single counts of conspiracy and securities fraud. His sentencing is scheduled for Oct. 20 in the U.S. District Court for the Central District of California.

United States v. Brye et al., No. 2:13-CR-00692, plea entered (C.D. Cal. July 21, 2014).

ALBERTSONS TO PAY \$3.3 MILLION FOR WASTE VIOLATIONS

The Albertsons grocery chain will pay \$3.3 million to settle violations of California hazardous-waste laws, according to a June 24 statement by the Orange County district attorney. The violations include illegal disposal, transportation, storage and mismanagement of hazardous waste at its stores in the state. The statement said the hazardous waste included over-the-counter medications, pharmaceuticals, aerosol products, batteries and pool chemicals. Of the \$3.3 million settlement, \$2.7 million is earmarked for civil penalties, \$300,000 for investigative costs and \$350,000 will be used for supplemental environmental projects. Albertsons will also develop and enforce compliance efforts above the legal requirement at additional cost, the statement said. Regulators alleged the grocery chain violated state laws by routinely disposing of hazardous waste in dumpsters or transporting it to a third-party processor not certified to handle such waste.

FORMER DISTRICT ATTORNEY SUSPENDED FOR SEXTING CRIME VICTIM

A former Wisconsin district attorney has been suspended from the practice of law for four months. The state Supreme Court imposed the discipline on Kenneth R. Kratz, who served as the Calumet County DA from 1992 to 2010, after finding that he had sent inappropriate and unwanted text messages in 2009 to a domestic abuse victim while prosecuting the case against her ex-boyfriend. Kratz attempted in the texts to start a sexual relationship with the crime victim, according to the high court's opinion. The court also found that he had made inappropriate statements to two county social workers. Kratz, who resigned from his post in October 2010, argued unsuccessfully that a public reprimand would be sufficient punishment.

In re Disciplinary Proceedings Against Kratz, No. 2011AP2758-D, 2014 WL 2535181 (Wis. June 6, 2014).

Related Court Document:
Opinion: 2014 WL 2535181

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