

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X		Docket#
UNITED STATES OF AMERICA,	:	10-cr-459(SJ) (RML)
	:	
- versus -	:	U.S. Courthouse
	:	Brooklyn, New York
DENIS ZAGLADKO,	:	
Defendant	:	July 11, 2011
-----X		

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Government:

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1 (Microphones not positioned properly thereby
2 creating inaudible portions in the record.)

3 THE CLERK: Criminal Cause for a Pleading
4 United States v. United States v. Denis Zagladko, docket
5 number 10-cr-459.

6 Please state your appearances for the record.

7 MR. BROWNELL: Daniel Brownell for the
8 government.

9 Good morning, your Honor.

10 THE COURT: Good morning.

11 MR. KATOWITZ: Good morning, your Honor.

12 Philip Katowitz Mr. Zagladko.

13 Good morning, Judge.

14 THE COURT: Good morning.

15 **D E N I S Z A G L A D K O ,**

16 **called as a witness, having been first duly sworn,**
17 **was examined and testified as follows:**

18 THE COURT: Mr. Katowitz, what is your client
19 going to do this morning?

20 MR. KATOWITZ: Your Honor, there will be an
21 application to withdraw any previously entered plea of
22 not guilty and enter a plea of guilty to Count 1 of this
23 indictment pursuant to a plea agreement which was
24 supplied to us I think well before the deadline and I
25 notified Mr. Brownell that we would wish to take

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1 advantage of the plea agreement, so that is what we will
2 be doing here.

3 THE COURT: Okay.

4 MR. KATOWITZ: We will, of course, be prepared
5 to consent to having the matter heard before this court
6 and the necessary document has been executed obviously
7 and the Court has it.

8 THE COURT: I do have it. Are you satisfied
9 that Mr. Zagladko consent is knowing and voluntary?

10 MR. KATOWITZ: Oh, yes, I am, absolutely.

11 THE COURT: Okay.

12 Good morning, sir.

13 THE DEFENDANT: Good morning.

14 THE COURT: I have here a consent form in which
15 you have agreed to have me hear your guilty plea and have
16 a recommendation made to Judge Johnson whether to accept
17 it.

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand what you're doing
20 in signing that agreement?

21 THE DEFENDANT: Yes.

22 THE COURT: And this consent, is it
23 voluntarily?

24 THE DEFENDANT: Yes.

25 THE COURT: Has anybody forced you or

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1 threatened you --

2 THE DEFENDANT: No.

3 THE COURT: -- to make you agree to do this?

4 THE DEFENDANT: No.

5 THE COURT: Do you have any questions about
6 what you're doing?

7 THE DEFENDANT: No.

8 THE COURT: I'm going to advise you that you're
9 under oath. Everything you say today has to be full and
10 truthful, full and complete and truthful statements. If
11 you make any false statements, you could be prosecuted
12 for perjury.

13 Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: If there's anything that I say that
16 you don't understand, feel free to consult with your
17 lawyer privately or fee free to ask me.

18 THE DEFENDANT: Okay.

19 THE COURT: What is your full name?

20 THE DEFENDANT: Denis Zagladko.

21 THE COURT: How old are you?

22 THE DEFENDANT: I am 30 years old.

23 THE COURT: What's the last level of school
24 that you finished?

25 THE DEFENDANT: College, two years -- associate

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1 degree.

2 THE COURT: Was there an interpreter for this
3 proceeding?

4 MR. KATOWITZ: No, an interpreter is not
5 needed. Mr. Zagladko and I have communicated in English
6 since the first day I was on this matter in June of last
7 year.

8 THE COURT: All right. So you're satisfied --

9 MR. KATOWITZ: I saw on the probation
10 department referral form that it says interpreter but
11 that's not correct.

12 THE COURT: That was a mistake. His English
13 sounds perfect.

14 MR. KATOWITZ: It is.

15 THE COURT: Yes.

16 THE DEFENDANT: Thank you.

17 THE COURT: You have no difficulty speaking
18 English or understanding.

19 THE DEFENDANT: No, I understand.

20 THE COURT: And you've been able to communicate
21 with your lawyer in English?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you now or have you recently
24 been under the care of a doctor or a psychiatrist?

25 THE DEFENDANT: No.

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1 THE COURT: In the past 24 hours, have you
2 taken any medicine or pills?

3 THE DEFENDANT: No.

4 THE COURT: Drunk any alcoholic beverages?

5 THE DEFENDANT: Yes.

6 THE COURT: What?

7 THE DEFENDANT: Just, you know, Sunday beer,
8 stuff like that.

9 THE COURT: Okay. Do you feel any effects from
10 the alcohol?

11 THE DEFENDANT: Oh, no, no. I'm fine.

12 THE COURT: All right. And have you taken any
13 narcotic drugs?

14 THE DEFENDANT: No.

15 THE COURT: Have you ever been hospitalized or
16 treated for drug addiction, alcoholism or a mental or
17 emotional problem?

18 THE DEFENDANT: No, no.

19 THE COURT: Is your mind clear now?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand why you're here
22 and what's happening here today?

23 THE DEFENDANT: Yes, I understand fully.

24 THE COURT: Mr. Katowitz, have you discussed
25 this matter fully with your client?

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1 MR. KATOWITZ: Yes, I have, Judge.

2 THE COURT: Does he understand the rights that
3 he would be waiving by pleading guilty?

4 MR. KATOWITZ: Yes, I believe he does.

5 THE COURT: Is he capable of understanding the
6 nature of these proceedings?

7 MR. KATOWITZ: Yes.

8 THE COURT: Do you have any doubt as to his
9 competence to plead at this time?

10 MR. KATOWITZ: No, none whatsoever.

11 THE COURT: Have you advised him of the
12 possible sentence, fine and other penalties that can be
13 imposed?

14 MR. KATOWITZ: Yes, I have, Judge. That is
15 contained in the plea agreement which I supplied to Mr.
16 Zagladko a number of weeks ago well before the deadline
17 for this matter. So the answer is yes, I have, sir.

18 THE COURT: Have you explained to him how the
19 sentencing works, the effect of the sentencing
20 guidelines, and other considerations?

21 MR. KATOWITZ: Yes, I have. I have explained
22 the operation of the sentencing guidelines. I have
23 explained the worst case scenario, I believe. I've also
24 -- I haven't made promises, but I have indicated to Mr.
25 Zagladko the role of the attorney, what I will do after

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1 receiving the presentence report. It is most likely that
2 I am going to move for a downward departure on a number
3 of grounds but I cannot promise and did not promise Mr.
4 Zagladko any particular sentence or result.

5 THE COURT: All right. And does he understand
6 that there's no guarantee at this time what his sentence
7 will be?

8 MR. KATOWITZ: He does.

9 THE COURT: Did you hear what your lawyer said?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you agree with everything that
12 he said?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you discussed your case with
15 him fully?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you satisfied to have him
18 represent you?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Have you seen the indictment?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand all the charges?

23 THE DEFENDANT: I believe so.

24 THE COURT: Would you mind just basically
25 explaining the charges against the defendant?

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1 MR. BROWNELL: Sure, your Honor. This was a
2 healthcare fraud scheme and a money laundering scheme.
3 The defendant, I realize is only pleading to the
4 healthcare fraud that was involved in submitting
5 fraudulent claims to no-fault insurance companies. That
6 the claims were fraudulent mainly in that they listed
7 durable medical equipment at highly inflated costs and
8 then supported those claims by submitting fraudulent
9 wholesale DME invoices also with checks from the retail
10 companies to the wholesale companies that provided those
11 invoices.

12 And this particular defendant was, along with
13 his co-conspirators, and this defendant played a much
14 lesser role than many of his co-conspirators, but he
15 actually opened one of the retail companies, Vespa, and
16 then worked in the office for I would say probably about
17 a year and a half in which he filed, along with other
18 people, these insurance claims under Vespa and some of
19 the other retail companies they were using for this
20 purpose.

21 THE COURT: Any questions about the charges?

22 THE DEFENDANT: No, I understand.

23 THE COURT: Now according to what your lawyers
24 says in the plea agreement, you will be pleading guilty
25 to Count 1 in indictment -- page 4 of the indictment is

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1 billed as a healthcare fraud conspiracy.

2 A conspiracy is an agreement between two or
3 more people to do something illegal and so you're charged
4 and you will (indiscernible) considering pleading guilty
5 to conspiracy to commit healthcare fraud.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Now you don't have to plead guilty
9 if you don't want to. You have a right to plead not
10 guilty.

11 Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: And if you continue to plead not
14 guilty, you would have a right under the Constitution and
15 laws of this country to a speedy trial, public trial by
16 jury with the help of your lawyer on the charges
17 contained in the indictment.

18 Do you understand?

19 THE DEFENDANT: I understand.

20 THE COURT: And if you do go to trial and you
21 cannot afford to retain an attorney, the Court will
22 insure that you have court-appointed counsel throughout
23 all stages of the prosecution to advise you and represent
24 you both during the prosecution and the (inaudible).

25 Do you understand?

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1 THE DEFENDANT: I understand.

2 THE COURT: That will be at no cost to you.

3 At your trial, you would be presumed innocent.

4 That means you don't have to present any evidence at all.

5 The government has to prove your guilty by competent

6 evidence that's admissible in court.

7 Do you understand what that means?

8 THE DEFENDANT: Yes.

9 THE COURT: And you don't have to prove you're
10 innocent.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: If the government cannot prove your
14 guilt beyond a reasonable doubt, then the jury would have
15 the duty to find you not guilty even if you did
16 everything the government accused you of.

17 Do you understand?

18 THE DEFENDANT: Yes.

19 THE COURT: Any questions about anything so
20 far?

21 THE DEFENDANT: No.

22 THE COURT: Now if you go to trial, the
23 government will have to bring its witnesses and evidence
24 to court. They will testify in your presence. Your
25 lawyer would have a right to cross-examine the witnesses,

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1 to object to the government's evidence and to present
2 evidence in your defense.

3 Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: Also, you have the right to compel
6 witnesses who you wish to appear in court to actually
7 appear at the trial.

8 Do you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: Now at your trial, you have a
11 choice; if you wish, you can testify in your defense but
12 if you prefer, you have a Fifth Amendment privilege which
13 protects you from being required to testify and not be
14 compelled to incriminate yourself. So no one could force
15 you to testify if you didn't want to.

16 Do you understand?

17 THE DEFENDANT: I understand.

18 THE COURT: So if you do decide to go to trial,
19 but decide not to testify, the Court will instruct the
20 jurors that they can't hold that against you and assume
21 that you're guilty just because you didn't testify in
22 your own defense. You just exercised your constitutional
23 right.

24 Do you understand?

25 THE DEFENDANT: Okay. Yes.

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1 THE COURT: Now if you do plead guilty, and the
2 Court accepts your guilty plea, you will be giving up all
3 the rights I just explained. You'll give up your right
4 to a trial, the right to remain silent, the right to
5 confront the witnesses, et cetera.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: There will be no trial of any kind.
9 No right to appeal from the judgment of guilty. The
10 Court will simply enter a judgment that you're guilty
11 based on what you say here today.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: And if you do plead guilty, you'll
15 be giving up your right to remain silent because I'm
16 going to ask you what you did and you're going to explain
17 to me, acknowledge your guilt and in doing that, you give
18 up your right to remain silent and not to incriminate
19 yourself.

20 Do you understand?

21 THE DEFENDANT: Yes, I understand.

22 THE COURT: So are you willing to give up your
23 right to a trial, the right to remain silent and the
24 other rights I just explained?

25 THE DEFENDANT: Yes.

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1 THE COURT: Now, I have a copy here of the plea
2 agreement here. On the last page, which is dated July
3 11, 2011, there's a signature above your name by the
4 signature line.

5 Did you sign that plea agreement here today?

6 THE DEFENDANT: Yes.

7 MR. KATOWITZ: Your Honor, I have the original
8 for the Court, my apologies.

9 THE COURT: I have one that pretty much like an
10 original.

11 MR. BROWNELL: Actually, that is the original.
12 You have a copy of the original.

13 THE COURT: This one has a coffee stain on it.

14 MR. BROWNELL: That makes it original, your
15 Honor.

16 MR. KATOWITZ: That makes it original and well
17 used.

18 THE COURT: Okay.

19 MR. KATOWITZ: My apologies, Judge.

20 THE COURT: No, I appreciate (inaudible).

21 So have you had a chance to read this plea
22 agreement carefully?

23 THE DEFENDANT: Yes.

24 THE COURT: Have you discussed it with your
25 lawyer?

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1 THE DEFENDANT: Uh-huh.

2 THE COURT: And do you understand it all?

3 THE DEFENDANT: Yeah.

4 THE COURT: Is there anything you'd like to ask
5 your lawyer about it or ask me about the agreement?

6 THE DEFENDANT: No.

7 THE COURT: Okay.

8 Mr. Katowitz, is this the full extent of any
9 agreements with the government at this time?

10 MR. KATOWITZ: Yes.

11 THE COURT: Mr. Brownell?

12 MR. BROWNELL: Yes, it is, your Honor.

13 THE COURT: Okay. So according to the
14 agreement, as Mr. Katowitz mentioned earlier, you will be
15 pleading guilty to Count 1, healthcare fraud conspiracy.
16 If you do that, you're facing a possibility of from zero
17 to ten years in prison.

18 Do you understand?

19 THE DEFENDANT: Yeah.

20 THE COURT: And if you are sentenced to prison,
21 you could be placed on what's called supervised release
22 for up to three years.

23 Do you understand what supervised release is?

24 THE DEFENDANT: no, I am not sure what that is.

25 THE COURT: All right. You would be released

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1 under conditions by which you'd be supervised after
2 you're released from prison.

3

4 THE DEFENDANT: Oh, okay.

5 THE COURT: And you'd be supervised by a
6 probation officer. And there would be a lot of
7 conditions. If you violate any of those conditions, you
8 could be brought back to court just on the violation and
9 there's a penalty for the violation which is up to two
10 more years in prison without credit for the time you'd
11 been in prison or on supervised release.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: So for example, if you -- a common
15 supervised release condition is that you not commit any
16 crimes, you make (inaudible) employment, notify a
17 probation officer where you are (inaudible). And if you
18 violate any of those terms or any other terms, you could
19 be brought back to court and sentenced to do additional
20 time in prison for it.

21 THE DEFENDANT: Okay. I understand.

22 THE COURT: There is a possible fine of up to
23 \$250,000 or twice the pecuniary gain, whichever is
24 greater.

25 Do you understand what that means? Did you

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1 discuss that with your lawyer at all?

2 THE DEFENDANT: Uhm.

3 THE COURT: Let's go over it again just to make
4 sure.

5 THE DEFENDANT: Yeah.

6 THE COURT: Would you like me to explain how
7 that works?

8 MR. BROWNELL: Judge, in this particular case,
9 given that insurance companies are the victims, the
10 restitution amount would be determined by the amount of
11 fraudulent claims that the various retail companies that
12 the defendant participated in filing fraudulent claims
13 for, the losses that they incurred -- just so the Court
14 knows, there are so many different insurance companies
15 involved because there were at least three different
16 companies, we don't have that figure yet. That's why
17 there's no figure listed in the plea agreement.

18 But anyway, so under this particular section of
19 the Code, the defendant could be as part of his sentence,
20 the Court could issue a restitution order of I believe
21 it's \$250,000 or twice the pecuniary gain would be the
22 amount of money that the various companies made from the
23 losses of the insurance companies.

24 THE COURT: So for example, if it's \$10,000,
25 the gain was just \$10,000 for the fraud, that would be

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1 twice that gain would be \$20,000 which is less than
2 \$250,000 because the maximum fine could be 250. But on
3 the other hand, if fraudulent claims amounted to
4 \$250,000, twice that amount would be \$500,000, which is
5 greater than \$250,000. So the Court (inaudible) impose
6 that as either restitution amount or as a fine.

7 Do you understand?

8 THE DEFENDANT: Yeah.

9 THE COURT: So there's a financial consequence
10 to --

11 MR. KATOWITZ: I have explained this to
12 Mr. Zagladko. My apologies here for interrupting. But
13 I've also explained and my learned adversary will agree,
14 Mr. Zagladko was a salaried employee and it was his gain
15 is reflected on W-2 forms, rather remarkable an a venture
16 of this type but he was a salaried employee. This is one
17 of the things that I will be arguing to his Honor,
18 Judge Johnson as a mitigating factor. So I know these
19 figures are staggering to the Court, but as far as this
20 individual's gain is concerned, his salary reflects it.
21 So I did want to add that, notwithstanding anything the
22 Court has said about fine, pecuniary gain, or loss.

23 THE COURT: Right. So that's all potential,
24 that you're going to be arguing that his personal gain
25 was less than that --

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1 MR. KATOWITZ: Absolutely.

2 THE COURT: -- less the gain of the scheme.

3 MR. KATOWITZ: Yes. Absolutely.

4 THE COURT: But he does understand his
5 potential exposure is greater.

6 MR. KATOWITZ: Yes, he does. We've had this
7 agreement for over a month, if I am correct. I mean I
8 had a deadline. Maybe I -- I complied with the deadline
9 is all I know and it was --

10 MR. BROWNELL: Your Honor, I don't -- your
11 Honor is correct in that obviously what the defendant
12 needs to know or what the possibilities are, a lot of
13 what Mr. Katowitz is saying which I happen to agree with,
14 are really more sentencing kinds of concerns but
15 obviously the defendant needs to know the possibilities.

16 THE COURT: You see my job is to tell you the
17 worst, to advise you of what the worst could be that
18 could happen, so that you know in making an informed
19 decision whether you want to plead guilty. It doesn't
20 mean the worst is going to happen to you. For example,
21 when I say the possible term of imprisonment is zero to
22 ten years, that's the minimum and the maximum --

23 THE DEFENDANT: Yes.

24 THE COURT: -- that the statute provides for.
25 You need to know that. You know, obviously you're hoping

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1 you get zero. I don't know if the government's hoping
2 you get ten. I assume the government probably
3 (inaudible) here. But you have to understand, that's the
4 Judge who sentences you who makes the final decision. So
5 no one can guarantee you what your sentence will be or
6 what your fine will be. No one is trying to scare you
7 but you need to know --

8 THE DEFENDANT: I understand.

9 THE COURT: -- that these are the provisions of
10 the law and that the Judge can apply the law the way the
11 Judge thinks is appropriate and, you know, from what
12 hearing from your attorney, your role was relatively
13 minor. You were a salaried employee and he's got to make
14 a strong argument there but I can't say to you that the
15 law doesn't provide for a greater potential fine if
16 Judge Johnson thought that that was appropriate.

17 THE DEFENDANT: Okay. I understand.

18 THE COURT: Do you understand?

19 THE DEFENDANT: Yeah.

20 THE COURT: Do you have any questions at all?

21 THE DEFENDANT: No, no, I understand.

22 THE COURT: And you've gone over this with your
23 lawyer?

24 THE DEFENDANT: Yes, we have.

25 THE COURT: And again, the government is not

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1 asking for the highest penalty but --

2 THE DEFENDANT: No, I understand.

3 THE COURT: -- (indiscernible).

4 THE DEFENDANT: Thank you.

5 THE COURT: Is there anything else I should
6 mention with respect to fines?

7 MR. KATOWITZ: Nothing I can think of, sir.

8 MR. BROWNELL: No, your Honor.

9 MR. KATOWITZ: No.

10 THE COURT: Okay. There's a fee called a
11 special assessment of \$100. And there's also criminal
12 forfeiture which is described later in the plea.

13 Is that something I should go into with him or
14 not?

15 MR. KATOWITZ: I don't know what to suggest to
16 the Court. It's in the agreement. We've read it.
17 It's --

18 MR. BROWNELL: Just so the Court is aware, the
19 forfeiture amount, and obviously it's joint and several,
20 there were several co-conspirators that were involved in
21 this particular scheme and that forfeiture amount is
22 derived by the amount of money that the particular retail
23 companies that the defendant worked for, the amount of
24 money that they actually laundered through the wholesale
25 companies that were all a part of this scheme, just so

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1 the Court knows where that money came from.

2 THE COURT: Uh-hum.

3 MR. BROWNELL: As I'll be telling Judge Johnson
4 actually before sentence, it's the government's -- the
5 government anticipates that that money through the main
6 Department of Justice will be made available to the
7 insurance companies because again, under no-fault, the
8 insurance companies were the only "victims" of the
9 particular schemes.

10 THE COURT: Have you talked about forfeiture
11 with your lawyer and discussed the forfeiture provisions?

12 THE DEFENDANT: I'm not sure.

13 THE COURT: Mr. Katowitz, do you want to just
14 either explain on the record or off the record with your
15 client how --

16 MR. KATOWITZ: Let me take a minute and may I
17 explain it to him --

18 THE COURT: Yes, I think so. You want to do it
19 off the record? Should we just --

20 MR. KATOWITZ: With your Honor's permission.

21 THE COURT: Sure. However you want to do it.

22 (Off the record)

23 MR. KATOWITZ: Well the language here, Judge,
24 and I have explained the forfeiture provision in
25 paragraph 5 on page 4, the defendant is acknowledging

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1 that he owns property or money which is subject to
2 forfeiture and is consenting to the entry of a forfeiture
3 money judgment.

4 I've explained joint and several liability,
5 that basically the government can get it from one, for
6 all or any combination. Now the question of what the
7 defendant has is another one indeed. He has virtually
8 nothing. So if the language here is pro forma, then so
9 be it but I am not sure that he has anything subject to
10 forfeiture. A judgment may be entered against him though
11 from what you're -- the amount may be partially
12 satisfied. It's the best way that I can possibly explain
13 it.

14 THE COURT: Do you understand what your lawyer
15 is saying?

16 THE DEFENDANT: Yes.

17 THE COURT: You're sure?

18 THE DEFENDANT: Okay.

19 THE COURT: Because this is for your benefit as
20 well as for the Court's benefit. I want to be sure you
21 understand that provision in this agreement. There is
22 going to be a judgment that's going to be entered or
23 likely. You're consenting to a judgment of \$407,292.50
24 which all the defendants -- I assume all the defendants
25 under --

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1 MR. BROWNELL: Yes.

2 THE COURT: -- this indictment are consenting
3 to. Some of them have more money than others. The
4 government is going to try to -- the government is not
5 entitled to a penny more than that and he's going to try
6 to get that money from anyway it can from anyone who is
7 subject to that judgment. There will be some people who
8 have a lot more money than you do and so I'm sure they'll
9 try to get the government to satisfy that -- those people
10 and I am sure the government won't be looking for too
11 much (inaudible) but you have -- you will be consenting
12 to a judgment, that full judgment will be against you,
13 whether it's being executed against you or not is a
14 question (inaudible) property you have or assets. But
15 that is -- there will be a judgment against you.
16 (inaudible)?

17 MR. BROWNELL: Yes, your Honor.

18 THE COURT: So, you have no questions?

19 THE DEFENDANT: No, thank you.

20 THE COURT: In paragraph 4, you have agreed not
21 to appeal or otherwise challenge your sentence or
22 conviction if you receive a sentence of 41 months or
23 less.

24 THE DEFENDANT: That's correct.

25 THE COURT: Now there is in paragraph 2 a

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1 discussion of the sentencing guidelines and now is
2 probably the time to just take a moment and just explain
3 what sentencing is about. Judge Johnson is the one who
4 is going to sentence you. And each lawyer here is going
5 to make arguments to Judge Johnson what (inaudible)
6 probation sentenced, investigation report which will give
7 Judge Johnson a lot of information, your lawyer will have
8 a right to comment on it. So will the government.

9 In the end, it's his decision and he will start
10 by calculating the sentencing guidelines range, what your
11 range is and then he will decide whether to sentence you
12 within the guidelines, above the guidelines or below the
13 guidelines. Your lawyer is going to argue that it below
14 the guidelines (inaudible).

15 There is no guarantee at this point -- that's
16 not symbolic -- there is no guarantee at this point what
17 your guideline range will be or how the judge
18 (inaudible).

19 THE DEFENDANT: Okay. I understand.

20 THE COURT: Okay. And in sentencing you, he's
21 going to look at things like the circumstances of the
22 offense, your background, your role in the offense, you
23 know, what your lawyer's talked about, your respect for
24 the law, what would be fair in this particular situation,
25 (inaudible), deterrence, protecting the public from

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1 further crimes and your need for (inaudible). It's a
2 very individualize decision..

3

4 THE DEFENDANT: Okay.

5 THE COURT: You understand?

6 THE DEFENDANT: Yes.

7 THE COURT: But in the end, there's no
8 guarantee what your sentence will be.

9 THE DEFENDANT: I understand.

10 THE COURT: Now in paragraph 2 there is a
11 calculation of the guidelines, what the guideline range
12 would be. And it's the government's estimate, it's just
13 an estimate, it's not binding on the Court.
14 Judge Johnson doesn't even know about it.

15 Do you understand?

16 THE DEFENDANT: Yes.

17 THE COURT: Would you like the government to go
18 through that estimate or do you understand it?

19 THE DEFENDANT: No, I understand.

20 THE COURT: Okay. Is there anything else that
21 ought to be put on the record from this plea agreement?

22 MR. KATOWITZ: I don't think that anything -- I
23 think the Court has covered it all quite frankly.

24 THE COURT: Okay.

25 MR. BROWNELL: I don't see anything,

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1 your Honor.

2 THE COURT: Anything you'd like me to explain?

3 THE DEFENDANT: No, I'm good. Thank you.

4 THE COURT: We don't have parole in federal
5 court. There is parole in state court. So if you're
6 sentence to prison, there's no early release on parole.

7 Do you understand that?

8 THE DEFENDANT: yes.

9 THE COURT: So, do you have any questions you'd
10 like to ask me or ask your lawyer?

11 THE DEFENDANT: No, I understand everything.

12 THE COURT: And do you also understand that if
13 you are not a citizen you may be deported?

14 THE DEFENDANT: Yes. I'm a citizen though.

15 MR. KATOWITZ: He's a citizen.

16 THE COURT: It's not on here.

17 MR. KATOWITZ: Thank you.

18 THE COURT: Okay. So nothing to ask me,
19 nothing to ask the Court?

20 THE DEFENDANT: I'm good.

21 THE COURT: All right. Are you ready to plead?

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Katowitz, is there any reason
24 why Mr. Zagladko should not plead guilty?

25 MR. KATOWITZ: No, your Honor, I have had the

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1 opportunity to review extensive, extensive discovery.
2 I've made copies of that discovery, the CDs, at the very
3 elast, provided it to Mr. Zagladko and additionlly, the
4 government to further the knowledge in the matter of the
5 role of each conspirator, has provided and did provide a
6 synopsis of the actions of Mr. Zagladko. This was a
7 document which was provided to us. I've had the
8 opportunity to show it to Mr. Zagladko.

9 So based on all of this, I have had the
10 opportunity to discuss this matter with him and there's
11 no legal reason that I know of why he shouldn't plead
12 guilty.

13 THE COURT: All right. So, as to Count 1, the
14 healthcare fraud conspiracy charge, how do you plead;
15 guilty or not guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: Are you pleading guilty
18 voluntarily?

19 THE DEFENDANT: Yes.

20 THE COURT: Has anyone promises other than
21 what's in the plea agreement to make you agree to plead
22 guilty?

23 THE DEFENDANT: No.

24 THE COURT: Has anyone promised you what your
25 sentence will be?

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1 THE DEFENDANT: No.

2 THE COURT: So this conspiracy alleges between
3 January 2004 -- this charge alleges in January 2004 and
4 June 2010, you and others did something. What did you
5 do?

6 THE DEFENDANT: No, I worked there from
7 December, November 2008 until July 2010.

8 THE COURT: Okay.

9 THE DEFENDANT: What I did was I had a company
10 under my name and I just basically worked the office,
11 just paperwork, fax, copies, stuff like that, packing
12 supplies into bags, delivering them.

13 THE COURT: Where was your company?

14 THE DEFENDANT: It Brooklyn, Avenue X and East
15 21st Street, I believe.

16 THE COURT: Okay. And so how did your working
17 in this company involve you in healthcare fraud?

18 THE DEFENDANT: Should I read this?

19 (Counsel and client confer)

20 THE DEFENDANT: I filed improper claims with
21 no-fault insurance companies and I had other people I
22 worked with set up and ran the retail durable medical
23 equipment companies to commit this crime. One of the
24 companies, Vespa, was set up under my name which I said
25 before. Yeah.

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1 The other medical equipment companies were used
2 to set up other -- on other people's names. Those
3 companies included MMSA, M-M-S-A, Corporation and Omega
4 Incorporation.

5 Under our scheme, we stole money from the
6 insurance companies by filing claims for medical
7 equipment that contained false information. We used
8 invoices and other records from wholesale medical
9 equipment companies we worked with that listed the price
10 for the equipment at grossly higher rates than we
11 actually paid for them, often ten times their actual
12 cost. By doing this insurance companies -- yeah, by
13 doing this, the insurance companies paid us a lot more
14 money than we were entitled to.

15 THE COURT: Is there --

16 MR. BROWNELL: Were the offices located here in
17 Brooklyn --

18 THE DEFENDANT: Yes, the officers were in
19 Brooklyn.

20 MR. BROWNELL: -- in which you filed the
21 claims.

22 THE DEFENDANT: Filed the claims?

23 MR. BROWNELL: Do you remember where the office
24 for Vespa was located where you worked?

25 THE DEFENDANT: Yes.

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1 MR. BROWNELL: What's the address? Was it here
2 in Brooklyn?

3 THE DEFENDANT: Yeah, it's in Brooklyn. It's
4 Avenue X and 21st Street. I don't remember the exact
5 building number.

6 THE COURT: That's fine. Anything else?

7 MR. BROWNELL: No, your Honor.

8 THE COURT: Mr. Katowitz, anything else?

9 MR. KATOWITZ: Nothing I can think of, sir. No.

10 THE COURT: Mr. Zagladko, I find that you're
11 acting voluntarily, you fully understand your rights,
12 (inaudible), the charges against you, the rights you're
13 giving up by pleading guilty, the possible consequences
14 of a guilty plea, there were some (inaudible) that we
15 went through, the fact that there's no guarantee of what
16 your sentence will be at this point, how sentencing works
17 and you also understand that -- well I also find that
18 there is a factual basis for the plea, so I therefore,
19 recommend that the Court accept your plea of guilty to
20 Count 1.

21 THE DEFENDANT: Okay.

22 THE CLERK: Sentencing is set for November 3,
23 2011 at 9:30 a.m. before Judge Johnson.

24 MR. KATOWITZ: Your Honor, then I will
25 direct --

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1 THE COURT: (Inaudible). I'm sorry, go ahead.

2 MR. KATOWITZ: I'll direct the defendant to go
3 over to the department of probation with the necessary
4 document.

5 THE CLERK: He actually no longer has to go
6 over. He has to call now.

7 MR. KATOWITZ: Oh.

8 THE CLERK: They don't -- we have people that
9 (inaudible).

10 MR. KATOWITZ: My apologies. That's easy.

11 THE COURT: So you understand you have a right
12 to have your lawyer present when you're interviewed by
13 the probation department.

14 THE DEFENDANT: Yes.

15 MR. KATOWITZ: I have requested to be present
16 and I will be present.

17 THE COURT: Okay. Good luck.

18 THE DEFENDANT: Thank you.

19 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 11th day of August, 2011.



Linda Ferrara

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