

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 18-CR-

SCOTT HESS,

Defendant.

PLEA AGREEMENT

1. The United States of America, by its attorneys, Matthew D. Krueger, United States Attorney for the Eastern District of Wisconsin, and Rebecca Taibleson, Assistant United States Attorney, and the defendant, Scott Hess, individually and by attorney Paul Bucher, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, enter into the following plea agreement:

CHARGES

2. The defendant has been charged in a two-count information, which alleges violations of Title 18, United States Code, Section 1343.

3. The defendant has read and fully understands the charges contained in the information. He fully understands the nature and elements of the crime with which he has been charged, and those charges and the terms and conditions of the plea agreement have been fully explained to him by his attorney.

4. The defendant voluntarily agrees to waive prosecution by indictment in open court.

5. The defendant voluntarily agrees to plead guilty to the following counts set forth in full as follows:

THE UNITED STATES ATTORNEY CHARGES:

Relevant Entities and Individuals

At all times material to this Information:

1. *Company A was a business with operations in Milwaukee, Wisconsin.*
2. *Defendant SCOTT HESS was employed by Company A in Milwaukee, Wisconsin, as an attorney.*
3. *Defendant CRAIG HILBORN was an attorney employed at Law Firm A, located in Birmingham, Michigan.*

The Scheme to Defraud

4. *Beginning in about April of 2000, and continuing through about October of 2015, in the State and Eastern District of Wisconsin and elsewhere,*

SCOTT HESS and CRAIG HILBORN

devised and executed a scheme to defraud Company A and to obtain money by means of material false and fraudulent pretenses and representations.

5. *As part of that scheme, HESS created fraudulent invoices for legal work purportedly completed by Law Firm A. HESS then approved those invoices on behalf of Company A and caused Company A to pay Law Firm A the invoiced amounts. In reality, Law Firm A did not perform any meaningful legal work for Company A.*
6. *As a result of the scheme, between April of 2000 and October of 2015, HESS and HILBORN caused Company A to pay Law Firm A over \$4,000,000 based on the fraudulent invoices prepared and submitted by HESS. Company A made those*

payments by check or electronic bank transfer.

7. As part of the scheme, HESS and HILBORN agreed that when HILBORN received a payment from Company A, he would remit approximately two-thirds of the amount received to HESS. HILBORN followed that agreement, and mailed HESS checks for approximately two-thirds of the money HILBORN had received from Company A.

Counts One and Two

THE UNITED STATES ATTORNEY FURTHER CHARGES:

8. The allegations in paragraphs 1-7 are hereby realleged and incorporated by reference.
9. On or about the dates indicated below, in the Eastern District of Wisconsin and elsewhere,

SCOTT HESS and CRAIG HILBORN,

for the purpose of executing the scheme to defraud described above, caused writings, signs, and signals to be transmitted by means of interstate wire communication, as described in the chart below:

Count	Date	Description of Wire
1	November 21, 2014	The electronic transfer of \$80,252.96 from Company A's Wells Fargo Bank account, based in Milwaukee, WI, to Law Firm A's Chase Bank account, based in Birmingham, MI, by means of interstate wire communication.
2	June 12, 2015	The electronic transfer of \$67,151.86 from Company A's Wells Fargo Bank account, based in Milwaukee, WI, to Law Firm A's Chase Bank account, based in Birmingham, MI, by means of interstate wire communication.

All in violation of Title 18, United States Code, Section 1343.

6. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offenses described in paragraph 5. The parties acknowledge and understand that if this case were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt. The defendant admits that these facts are true and correct and establish his guilt beyond a reasonable doubt:

- a. Scott Hess and Craig Hilborn went to law school together in the 1980s at Michigan State University. By 2000, Hilborn had taken over Law Firm A, a small personal injury and products liability firm in Birmingham, MI. Hess, meanwhile, was employed as an in-house tax attorney at Company A in Milwaukee, WI.
- b. Hess and Hilborn stayed in touch over the years, and Hess complained to Hilborn that he was overworked at Company A. Sometime in the year 2000, Hess proposed the following plan to Hilborn: Law Firm A would “bill” Company A for legal work actually done by Hess; Hess would cause Company A to pay those invoices to Law Firm A; and Hess and Hilborn would then split the payments received from Company A. Hilborn agreed, although he knew that his firm would not, and indeed could not, perform the type of legal services for which he would be “billing” Company A. Hess and Hilborn agreed that Hess would receive 2/3 of the money and Hilborn 1/3.
- c. Beginning in mid-2000, and continuing until mid-2015, Hess and Hilborn executed their scheme. Hess would prepare invoices purporting to document work performed by Law Firm A for Company A. The descriptions of the invoiced legal work were based on work performed by Hess or by other outside counsel, and the work primarily consisted of tax consulting (billed hourly) and unclaimed property refund collection services (billed on a commission basis). Hess often copied and pasted the same entries across multiple invoices, “billing” Company A repeatedly for the same legal work (none of which was ever performed by Law Firm A). For example, the same unclaimed property appeared on more than one invoice.
- d. In his capacity as Company A’s in-house counsel, Hess would approve the invoices for payment by Company A. Company A would then pay Law Firm A the invoiced amount. Until late 2014, Company A made those payments via check; during late 2014 and 2015, Company A made those payments via electronic bank transfers. Upon receiving payment from Company A, Hilborn would write Hess a check for approximately 2/3 the amount received from Company A, and Hilborn would mail that check to Hess’s home in Menominee Falls, WI. Hilborn kept a log of his payments to Hess, which he documented as “referral fees.” Hess generally deposited Hilborn’s checks into his personal bank

account. Hess used the money to invest in the stock market, and also purchased tens of thousands of dollars of guns.

- e. Between mid-2000 and mid-2015, Hess, Hilborn, and Law Firm A “invoiced” Company A for a total of \$4,715,180.48. Based on those invoices, Company A paid Law Firm A at least \$4,482,394.88. During the same period, Hilborn paid Hess approximately 2/3 of the amount received from Company A.
- f. Counts 1 and 2 of the Information reflect typical executions of Hess’s and Hilborn’s scheme. The details surrounding those Counts are as follows:
 - i. Count 1: Hess prepared, and caused to be paid by Company A, an invoice for legal services dated September 18, 2014. The invoice billed Company A for \$80,252.96 in commission fees based on the recovery of unclaimed property by Law Firm A. On November 21, 2014, Company A electronically transferred \$80,252.96 from its Wells Fargo Bank account (based in Milwaukee, WI) to Law Firm A’s Chase Bank account (based in Birmingham, MD). On the same day, Hilborn wrote a check to Hess for \$53,501.33 (which is 66.67% of the amount paid by Company A). Hess received that check and deposited it into his personal bank account on December 1, 2014.
 - ii. Count 2: Hess prepared, and caused to be paid by Company A, an invoice for legal services dated May 20, 2015. The invoice billed Company A for \$67,151.86 in commission fees based on the recovery of unclaimed property by Law Firm A. On June 12, 2015, Company A electronically transferred \$67,151.86 from its Wells Fargo Bank account (based in Milwaukee, WI) to Law Firm A’s Chase Bank account (based in Birmingham, MI). On June 14, 2015, Hilborn wrote a check to Hess for \$44,767.33 (which is 66.67% of the amount paid by Company A). Hess received that check and deposited it into his personal bank account on June 18, 2015.
- g. Company A discovered the fraud in late 2015 and conducted an internal investigation. During that investigation, both Hess and Hilborn admitted to the basic conduct described above. After he was discovered, Hess also made voluntary restitution payments to Company A totaling \$2,308,030.23.
- h. Hess also conducted a similar fraudulent scam to benefit his former girlfriend, Elizabeth Bart. Between 2006 and 2015, Hess submitted invoices to Company A in which Bart claimed to have performed hourly administrative work for Company A, and Hess approved payment on those invoices. In fact, Hess himself prepared those invoices, and Bart did not perform all the work that was documented therein.

This information is provided for the purpose of setting forth a factual basis for the plea of guilty. It is not a full recitation of the defendant's knowledge of, or participation in, these offenses.

PENALTIES

7. The parties understand and agree that the offenses to which the defendant will enter a plea of guilty carry the following maximum term of imprisonment and fine: 20 years and \$250,000. Each count also carries a mandatory special assessment of \$100 and a maximum of 3 years of supervised release. The parties further recognize that a restitution order may be entered by the court. The parties' acknowledgments, understandings, and agreements with regard to restitution are set forth in paragraphs 29-30 of this agreement.

8. The defendant acknowledges, understands, and agrees that he has discussed the relevant statutes as well as the applicable sentencing guidelines with his attorney.

ELEMENTS

9. The parties understand and agree that in order to sustain the charge of Wire Fraud as set forth in Counts One and Two, the government must prove each of the following propositions beyond a reasonable doubt:

First, that the defendant devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises, or willfully participated in such a scheme with knowledge of its fraudulent nature,

Second, that the defendant acted with the intent to defraud, and

Third, that in advancing, furthering, or carrying out the scheme, the defendant caused the transmission of any writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

SENTENCING PROVISIONS

10. The parties agree to waive the time limits in Fed. R. Crim. P. 32 relating to the presentence report, including that the presentence report be disclosed not less than 35 days

before the sentencing hearing, in favor of a schedule for disclosure, and the filing of any objections, to be established by the court at the change of plea hearing.

11. The parties acknowledge, understand, and agree that any sentence imposed by the court will be pursuant to the Sentencing Reform Act, and that the court will give due regard to the Sentencing Guidelines when sentencing the defendant.

12. The parties acknowledge and agree that they have discussed all of the sentencing guidelines provisions which they believe to be applicable to the offenses set forth in paragraph 5. The defendant acknowledges and agrees that his attorney in turn has discussed the applicable sentencing guidelines provisions with him to the defendant's satisfaction.

13. The parties acknowledge and understand that prior to sentencing the United States Probation Office will conduct its own investigation of the defendant's criminal history. The parties further acknowledge and understand that, at the time the defendant enters a guilty plea, the parties may not have full and complete information regarding the defendant's criminal history. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentencing court's determination of the defendant's criminal history.

Sentencing Guidelines Calculations

14. The defendant acknowledges and understands that the sentencing guidelines recommendations contained in this agreement do not create any right to be sentenced within any particular sentence range, and that the court may impose a reasonable sentence above or below the guideline range. The parties further understand and agree that if the defendant has provided false, incomplete, or inaccurate information that affects the calculations, the government is not bound to make the recommendations contained in this agreement.

Relevant Conduct

15. The parties acknowledge, understand, and agree that pursuant to Sentencing Guidelines Manual § 1B1.3, the sentencing judge may consider relevant conduct in calculating the sentencing guidelines range, even if the relevant conduct is not the subject of the offenses to which the defendant is pleading guilty.

Base Offense Level

16. The parties agree to recommend to the sentencing court that the applicable base offense level for the offense charged in Counts One and Two is 7 under Sentencing Guidelines Manual § 2B1.1(a).

Loss Amount

17. The parties acknowledge and understand that the government will recommend to the sentencing court that an 18-level increase to the offense level is applicable under Sentencing Guidelines Manual § 2B1.1(b), because the loss amount in this case exceeds \$4,000,000.

Abuse of Position of Trust

18. The parties acknowledge and understand that the government will recommend to the sentencing court that a 2-level increase to the offense level is applicable under Sentencing Guidelines Manual § 3B1.3, as the defendant abused his position of private trust at Company A in order to facilitate the commission and concealment of his fraudulent scheme.

Acceptance of Responsibility

19. The government agrees to recommend a two-level decrease for acceptance of responsibility as authorized by Sentencing Guidelines Manual § 3E1.1(a), but only if the defendant exhibits conduct consistent with the acceptance of responsibility. In addition, if the court determines at the time of sentencing that the defendant is entitled to the two-level reduction under § 3E1.1(a), the government agrees to make a motion recommending an additional one-

level decrease as authorized by Sentencing Guidelines Manual § 3E1.1(b) because the defendant timely notified authorities of his intention to enter a plea of guilty.

Sentencing Recommendations

20. Both parties reserve the right to provide the district court and the probation office with any and all information which might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offense as well as any and all matters which might constitute aggravating or mitigating sentencing factors.

21. Both parties reserve the right to make any recommendation regarding any and all factors pertinent to the determination of the sentencing guideline range; the length of supervised release and the terms and conditions of the release; the defendant's custodial status pending the sentencing; and any other matters not specifically addressed by this agreement.

22. The parties understand and agree that the government will recommend a sentence below the applicable sentencing guideline range for the following reason: Prior to sentencing, the defendant has agreed to make voluntary restitution payments in the total amount of \$2,988,263.25, which represents the defendant's full 2/3 share of the actual losses incurred by Company A.

Court's Determinations at Sentencing

23. The parties acknowledge, understand, and agree that neither the sentencing court nor the United States Probation Office is a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court. The sentencing court will make its own determinations regarding any and all issues relating to the imposition of sentence and may impose any sentence authorized by law up to the maximum penalties set forth in paragraph 7 above. The parties further understand that the sentencing court

will be guided by the sentencing guidelines but will not be bound by the sentencing guidelines and may impose a reasonable sentence above or below the calculated guideline range.

24. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentence imposed by the court.

FINANCIAL MATTERS

25. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable in full upon entry of the judgment of conviction. The defendant further understands that any payment schedule imposed by the sentencing court shall be the minimum the defendant is expected to pay and that the government's collection of any and all court imposed financial obligations is not limited to the payment schedule. The defendant agrees not to request any delay or stay in payment of any and all financial obligations. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the court specifically directs participation or imposes a schedule of payments.

26. The defendant agrees to provide to the Financial Litigation Unit (FLU) of the United States Attorney's Office a complete and sworn financial statement on a form provided by FLU and any documentation required by the form. The defendant further agrees, upon request of FLU whether made before or after sentencing, to promptly: cooperate in the identification of assets in which the defendant has an interest, cooperate in the liquidation of any such assets, and participate in an asset deposition.

Fine

27. The parties acknowledge and understand that the government will recommend to the sentencing court that a fine of no more than \$100,000 be imposed against the defendant.

Special Assessment

28. The defendant agrees to pay the special assessment in the amount of \$200 prior to or at the time of sentencing.

Restitution

29. The defendant agrees to pay restitution in the total amount of \$2,988,263.25 to Company A, care of Daniel T. Flaherty, Godfrey Kahn S.C., 833 E. Michigan Street, Milwaukee, WI 53202-5615. The defendant understands that because restitution for the offenses is mandatory, the amount of restitution shall be imposed by the court regardless of the defendant's financial resources. The defendant agrees to cooperate in efforts to collect the restitution obligation. The defendant understands that imposition or payment of restitution will not restrict or preclude the filing of any civil suit or administrative action.

30. If the defendant has paid restitution in the amount of \$2,988,263.25 prior to his sentencing, the government agrees to recommend to the sentencing court that no further restitution be imposed on the defendant.

DEFENDANT'S WAIVER OF RIGHTS

31. In entering this agreement, the defendant acknowledges and understands that he surrenders any claims he may have raised in any pretrial motion, as well as certain rights which include the following:

- a. If the defendant persisted in a plea of not guilty to the charges against him, he would be entitled to a speedy and public trial by a court or jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government and the judge all must agree that the trial be conducted by the judge without a jury.
- b. If the trial is a jury trial, the jury would be composed of twelve citizens selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it

could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the government establishes guilt by competent evidence to the satisfaction of the jury beyond a reasonable doubt.

- c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.
- d. At such trial, whether by a judge or a jury, the government would be required to present witnesses and other evidence against the defendant. The defendant would be able to confront witnesses upon whose testimony the government is relying to obtain a conviction and he would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence on his own behalf. The defendant would be entitled to compulsory process to call witnesses.
- e. At such 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 on his own behalf.

32. The defendant acknowledges and understands that by pleading guilty he is waiving all the rights set forth above. The defendant further acknowledges the fact that his attorney has explained these rights to him and the consequences of his waiver of these rights. The defendant further acknowledges that as a part of the guilty plea hearing, the court may question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant intends to plead guilty. The defendant further understands that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

33. The defendant acknowledges and understands that he will be adjudicated guilty of the offenses to which he will plead guilty and thereby may be deprived of certain rights, including but not limited to the right to vote, to hold public office, to serve on a jury, to possess firearms, and to be employed by a federally insured financial institution.

34. The defendant knowingly and voluntarily waives all claims he may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment. The defendant agrees that any delay between the filing of this agreement and the entry of the defendant's guilty plea pursuant to this agreement constitutes excludable time under the Speedy Trial Act.

35. The defendant knowingly and voluntarily waives any claim or objection he may have based on statute of limitations or venue.

Further Civil or Administrative Action

36. The defendant acknowledges, understands, and agrees that the defendant has discussed with his attorney and understands that nothing contained in this agreement, including any attachment, is meant to limit the rights and authority of the United States of America or any other state or local government to take further civil, administrative, or regulatory action against the defendant, including but not limited to any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States government agencies.

GENERAL MATTERS

37. The parties acknowledge, understand, and agree that this agreement does not require the government to take, or not to take, any particular position in any post-conviction motion or appeal.

38. The parties acknowledge, understand, and agree that this plea agreement will be filed and become part of the public record in this case.

39. The parties acknowledge, understand, and agree that the United States Attorney's office is free to notify any local, state, or federal agency of the defendant's conviction.

40. The defendant understands that pursuant to the Victim and Witness Protection Act, the Justice for All Act, and regulations promulgated thereto by the Attorney General of the United States, the victim of a crime may make a statement describing the impact of the offense on the victim and further may make a recommendation regarding the sentence to be imposed. The defendant acknowledges and understands that comments and recommendations by a victim may be different from those of the parties to this agreement.

Further Action by Internal Revenue Service

41. Nothing in this agreement shall be construed so as to limit the Internal Revenue Service in discharging its responsibilities in connection with the collection of any additional tax, interest, and penalties due from the defendant as a result of the defendant's conduct giving rise to the charges alleged in the information.

EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT

42. The defendant acknowledges and understands if he violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to appear for sentencing, this agreement shall become null and void at the discretion of the government. The defendant further acknowledges and understands that the government's agreement to dismiss any charge is conditional upon final resolution of this matter. If this plea agreement is revoked or if the defendant's conviction ultimately is overturned, then the government retains the right to reinstate any and all dismissed charges and to file any and all charges which were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of his breach of this agreement. The defendant understands, however, that the government may elect to proceed with the guilty plea and sentencing. If the defendant and his attorney have signed a proffer letter in connection with this case, then the

defendant further acknowledges and understands that he continues to be subject to the terms of the proffer letter.

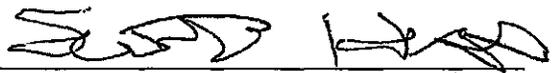
VOLUNTARINESS OF DEFENDANT'S PLEA

43. The defendant acknowledges, understands, and agrees that he will plead guilty freely and voluntarily because he is in fact guilty. The defendant further acknowledges and agrees that no threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty.

ACKNOWLEDGMENTS

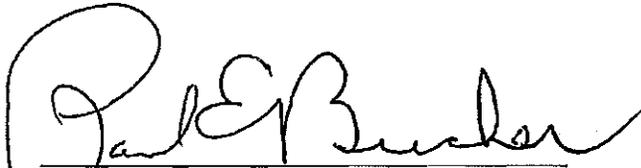
I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement. My attorney has reviewed every part of this agreement with me and has advised me of the implications of the sentencing guidelines. I have discussed all aspects of this case with my attorney and I am satisfied that my attorney has provided effective assistance of counsel.

Date: 03/2/18


SCOTT HESS
Defendant

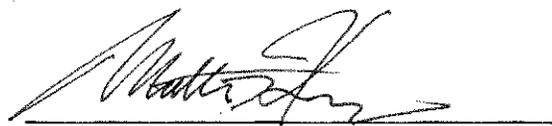
I am the defendant's attorney. I carefully have reviewed every part of this agreement with the defendant. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: 3-2-18

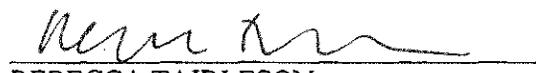

PAUL BUCHER
Attorney for Defendant

For the United States of America:

Date: 3/8/18


MATTHEW D. KRUEGER
United States Attorney

Date: 3/9/18


REBECCA TAIBLESON
Assistant United States Attorney