

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 KENNETH RICHARD PAYNE,)
)
 Defendant.)

Cause Nos. IP 00-129-CR T/F
IP 02- CR T/F

IP 02-002 CR T/F

MEMORANDUM OF PLEA AGREEMENT

The United States of America, by counsel, Susan W. Brooks, the United States Attorney for the Southern District of Indiana, by James M. Warden, and Donna R. Eide, Assistant United States Attorneys, and the defendant, KENNETH RICHARD PAYNE, in person and by counsel, Mark Inman, hereby inform the Court that a Plea Agreement has been reached in this cause pursuant to Federal Rule of Criminal Procedure 11(e)(1)(C) and the following are its terms and conditions:

1. KENNETH RICHARD PAYNE agrees to plead guilty to Counts 1 through 5 of the Indictment charging him in all five counts with mail fraud in violation of 18 U.S.C. §1341 and to waive Indictment and plead guilty to a one count Information charging him with money laundering in violation of Title 18, United States Code, Section 1957. Mail fraud is a felony offense which may be punished by a term of imprisonment of up to five (5) years, a fine of not more than \$250,000, and a term of supervised release of not more than three (3) years following any term of imprisonment per count. The elements of this offense are that the defendant knowingly devised or participated in the scheme to defraud or to obtain money or property by means of false pretenses, representations or promises; that the defendant did so knowingly and

with the intent to defraud; and that for the purpose of carrying out the scheme or attempting to do so, the defendant caused the use of the United States Mails in the manner charged. Money laundering is a felony offense which may be punished by a term of imprisonment of up to ten (10) years, a fine of not more than \$250,000, and a term of supervised release of not more than three (3) years following any term of imprisonment. The elements of this offense are that the defendant engaged or attempted to engage in a monetary transaction; that the defendant knew the transaction involved criminally derived property; that the property had a value greater than \$10,000; that the property was derived from mail fraud; and that the transaction occurred in the United States.

2. KENNETH RICHARD PAYNE understands that, should the Court accept this plea agreement, he will be sentenced pursuant to the Sentencing Guidelines established by the United States Sentencing Commission. He understands that the final determination concerning the applicable guideline calculation, criminal history category, and sentencing guideline range will be made by the Court.

KENNETH RICHARD PAYNE understands that this is a plea agreement for a cap for a specific number of months that is entered into pursuant to Federal Rule of Criminal Procedure 11(e)(1)(C). Pursuant to that Rule, the Court accept or reject the agreement. If the Court accepts the agreement, then the Court must impose a term of imprisonment at or below the agreed offense level cap as set forth in paragraph 5. If the Court rejects the agreement, then the Court is required, on the record, to inform the parties of this fact, advise the defendant personally in open court that the Court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea of guilty, and advise the defendant that if he persists in a guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

3. KENNETH RICHARD PAYNE will pay a total of \$600.00 on the date of sentencing or as ordered by the Court to the Clerk, United States District Court, which amount represents the mandatory special assessment fee imposed pursuant to Title 18, United States Code, Section 3013.

4. KENNETH RICHARD PAYNE will provide all requested financial information to the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana for use in the collection of any fines or restitution imposed by the Court.

5. The parties agree that the Court must sentence the defendant to a term of imprisonment no longer than the maximum term available at offense level 37, criminal history category I, that is, 262 months, regardless of how the Court calculates the sentence under the Sentencing Guidelines. The parties further agree that term of supervised release and amount of a fine, if any, are left to the discretion of the Court. The parties are free to present evidence and argument in support of their positions concerning the sentencing guidelines calculation, the term of supervised release, and the fine at the time of sentencing.

6. In return for the pleas of guilty as specified in paragraph 1 above by KENNETH RICHARD PAYNE, the United States Attorney's Office for the Southern District of Indiana agrees to dismiss the remaining counts of the Indictment and to bring no other federal criminal charges against PAYNE with respect to the circumstances surrounding the matters charged in the Indictment and Information, and with respect to the receipt of any money related to the offenses charged.

7. KENNETH RICHARD PAYNE agrees to cooperate with the government, including, but not limited to, providing to any authorized government representative complete, total, and truthful debriefings concerning any and all information regarding the involvement of

KENNETH RICHARD PAYNE and any and all others in the offenses charged in the Indictment and Information and all related activity. The debriefings will concern, but not are not limited to, the operation and activities of Heartland Financial Services, Inc., and all related business operations and entities, and all corporate officers, employees, agents, associates, and clients. The debriefings will be conducted without restriction to the Southern District of Indiana or to any charge presently pending against KENNETH RICHARD PAYNE. The government representatives authorized to debrief KENNETH RICHARD PAYNE include, but are not limited to, representatives of the Securities and Exchange Commission as well as representatives of any federal law enforcement agency and the United States Attorney's Office.

8. At the time of sentencing, the government will make known to the Court the nature, extent, and timing of the acceptance of responsibility demonstrated by KENNETH RICHARD PAYNE, as well as the nature, extent and timing of his cooperation with the government and other law enforcement authorities.

9. KENNETH RICHARD PAYNE understands that he will be ordered by the Court to make full restitution in an amount to be determined by the Court.

10. Pursuant to Section 6B1.4 of the Sentencing Guidelines, the parties agree to the stipulation below. The parties understand and agree that this stipulation is binding on the parties but is only a recommendation to the Court and that the Court will determine the Sentencing Guidelines applicable in this case.

A. The parties agree that pursuant to U.S.S.G. § 3D1.1(d) all counts to which the defendant will plead are grouped so that the offense level is determined by the total amount of loss and that the controlling guideline is U.S.S.G. § 2F1.1 (November 2000 version).

B. The parties agree that the following provisions of that section apply:

i.	Base Offense Level (2F1.1(a))	6
ii.	Offense Involved More than Minimal Planning (2F1.1(b)(2))	2
iii.	Offense Committed through Mass-marketing (2F1.1(b)(3))	2
iv.	Offense involved Sophisticated Means (2F1.1(b)(6)(C))	2
v.	Role in the Offense (U.S.S.G. § 3B1.1(a))	4
vi.	Abuse of Position of Trust (U.S.S.G. § 3B1.3)	2
vii.	Obstruction of Justice (U.S.S.G. § 3C1.1)	2

C. The parties dispute the amount of the loss involved in this offense. The defendant contends that the loss is more than 10 million dollars but less than 20 million dollars and that the increase should therefore be 15 levels pursuant to U.S.S.G. § 2F1.1(b)(1)(P). The government contends that the amount of loss is \$27,295,680.76 and that the offense level should therefore be increased by 16 levels pursuant to U.S.S.G. § 2F1.1 (b)(1)(Q).

D. The parties dispute whether the defendant is entitled to an adjustment pursuant to U.S.S.G. § 3E1.1. The defendant contends he is entitled to a three level reduction for acceptance of responsibility. The government contends that the defendant is not entitled to any reduction for acceptance of responsibility.

E. Both parties are free to argue for any other adjustments or departures not inconsistent with the above stipulations and the agreed sentencing cap of 262 months of imprisonment.

F. Both parties reserve the right to present evidence and argument in support of their positions at the time of sentencing.

11. KENNETH RICHARD PAYNE acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this document, to induce KENNETH RICHARD PAYNE to plead guilty. This document is the

complete and only plea agreement between the defendant and the United States Attorney for the Southern District of Indiana and is binding only on the parties to this agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified except in writing, signed by all parties and filed with the Court, or on the record in open court.

January 3, 2002
DATE

03 January 02
DATE

January 3, 2002
DATE

1/3/02
DATE

1/03/02
DATE

1/03/02
DATE

Respectfully submitted,

Susan W. Brooks
UNITED STATES ATTORNEY
SUSAN W. BROOKS

By: James M. Warden
James M. Warden
Assistant United States Attorney

By: Donna R. Eide
Donna R. Eide
Assistant United States Attorney

By: Christina McKee
Christina McKee
Chief, Criminal Division

Kenneth Richard Payne
KENNETH RICHARD PAYNE
Defendant

Mark Inman
Mark Inman
Attorney for Defendant

STATEMENT OF THE DEFENDANT

I have read the entire Plea Agreement and discussed it with my attorney.

I understand all the terms of the Plea Agreement and those terms correctly reflect the results of plea negotiations.

I am fully satisfied with my attorney's representation during all phases of this case.


I am freely and voluntarily pleading guilty in this case.

I am pleading guilty as set forth in this Plea Agreement because I am guilty of the crime(s) to which I am entering my plea(s).

My attorney has informed me, and I understand, that I have the right to appeal any conviction and sentence that I receive, unless I have waived my right to appeal as part of this Plea Agreement. If I have not waived my right to appeal, I understand that I must file a Notice of Appeal within 10 days of the entry of the judgment in this case; I further understand that the Clerk of the Court will prepare and file a Notice of Appeal on my behalf if I ask that to be done. I also understand that the United States has the right to appeal any sentence that I receive under this Plea Agreement.

Finally, my attorney has informed me, and I understand, that if I provide or cause to be provided materially false information to a judge, magistrate-judge, or probation officer, then Section 3C1.1 of the Sentencing Guidelines allows the Court to impose a two (2) level increase in the offense level.

1/03/02
DATE


KENNETH RICHARD PAYNE
Defendant