

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT  
EASTERN DISTRICT-WI  
FILED

'05 DEC -2 110 :55

UNITED STATES OF AMERICA,

Plaintiff,

SUPREMA BILSKY  
CLERK

v.

Case No. 05-CR-227

CHARLES YELLEN,

Defendant.

**PLEA AGREEMENT**

1. The United States of America, by its attorneys, Steven M. Biskupic, United States Attorney for the Eastern District of Wisconsin, and Gail J. Hoffman, Assistant United States Attorney, and the defendant, Charles Yellen, individually and by attorney Marion Bachrach, 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 five counts of a nineteen-count indictment which alleges violations of Title 18, United States Code, Sections 1341 and 2.

3. The defendant has read and fully understands the charges contained in the indictment and fully understands the nature and elements of the crimes 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 plead guilty to the following count set forth in full as follows:

***THE GRAND JURY CHARGES:***

1. *From approximately December 1997, through on or about November 2003, in the State and Eastern District of Wisconsin and elsewhere,*

**CHARLES YELLEN,**

*knowingly devised and executed a scheme to defraud Allen-Edmonds Shoe Corporation (hereinafter "Allen-Edmonds"), a scheme which included materially false and fraudulent pretenses and representations.*

*Background*

2. *Allen-Edmonds, a Wisconsin based corporation, manufactured high-end shoes that were distributed nationally and internationally, including Elefanten, its subsidiary, that manufactured high-end children's shoes.*

3. *Allen-Edmonds sold shoes to certain persons in their capacity as shoe dealers, including Lawrence Reese d/b/a Van's Shoes and Oakwood and Green, Milwaukee, Wisconsin; Simuel Burrell d/b/a Burrell's Professional Shoe Service, Orlando, Florida; and Joseph Scorsone d/b/a Joseph's Shoes, Philadelphia, Pennsylvania.*

4. *During the scheme to defraud, Jill McBrayer was employed as a credit manager at Allen-Edmonds. Her responsibilities, in part, included debt collections, management of account records and customer contact regarding accounts receivable.*

5. *During the course of her employment, McBrayer hired Principal Credit Corporation (hereinafter "PCC"), a collection agency located in New York, to collect Allen-Edmonds' unpaid debts. PCC is controlled by Charles Yellen and Joseph Lalota, Jr.*

**SCHEME ONE**

6. *As part of a scheme to defraud Allen-Edmonds, McBrayer, Yellen and Lalota agreed that McBrayer would refer accounts to PCC that had already been paid. After this referral by McBrayer, Yellen and Lalota submitted materially false invoices to Allen-Edmonds seeking payment for collecting debts that already been paid before PCC received the account. After receiving the false invoices, McBrayer knowingly issued payments to PCC ostensibly consistent with Allen-Edmonds' regular course of business. These checks were sent from Allen-Edmonds to PCC through the United States mail.*

7. *In return, Yellen and Lalota paid McBrayer a percentage of the collection fee. Yellen and Lalota mailed company checks or money orders to McBrayer, who deposited them in her personal bank account.*

**COUNT ONE**

1. *Paragraphs two through seven above are realleged as if fully restated herein.*
2. *On or about the following dates, in the State and Eastern District of Wisconsin and elsewhere,*

**CHARLES YELLEN,**

*the defendant, for the purpose of executing the above-described scheme to defraud, did knowingly cause the following payments to be delivered by the United States mail according to the directions thereon, from Port Washington, Wisconsin, to PCC in New York, New York, in envelopes containing checks payable to PCC as indicated below:*

<i>Count</i>	<i>Date</i>	<i>Amount</i>
<i>1</i>	<i>10/11/00</i>	<i>\$7,026.18</i>

*All in violation of Title 18, United States Code, Sections 1341 and 2.*

5. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offense described in paragraph 4. 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 to these facts and that these facts establish his guilt beyond a reasonable doubt: From on or about 1997 until November 2003, Charles Yellen participated in a scheme to defraud Allen-Edmonds Shoe Corporation (hereinafter Allen-Edmonds) by submitting materially false and fraudulent invoices for payment. Jill McBrayer approved these false and fraudulent invoices, and in return McBrayer received kickbacks from defendants Yellen and Lalota.

The government would further be able to prove that for about fifteen years until November of 2003 Jill McBrayer was employed as a credit manager for Allen-Edmonds. During the latter years of her tenure, her responsibilities, in part included: debit collections, posting transactions to account records; and, daily contact with Allen-Edmonds customers who encountered problems with their payable accounts. McBrayer was also given responsibility for booking orders which allowed her access to the Allen-Edmonds inventory. During the course of her employment with Allen-Edmonds, Jill McBrayer received kickbacks from the defendant as detailed below:

#### **Scheme One**

Through the course of her work, Jill McBrayer met defendants Charles Yellen and Joseph Lalota, Jr. who owned and operated a company called Principal Credit Corporation (hereinafter "PCC") a collection agency based out of New York. At some point in time an agreement was

reached where Yellen and Lalota would pay McBrayer a “finders’ fee,” or, in other words, a kickback, if McBrayer referred to them accounts that had already been collected. PCC received about 30% of the collection amount for these accounts and McBrayer received some amount from PCC in return.

A review of the records obtained during the course of the investigation revealed that from 1997 through 2003 Principal Credit received approximately \$505,984 from Allen-Edmonds. According to an analysis by Allen-Edmonds, this sum was paid to PCC for work the collection agency did not perform. A further review of Allen-Edmonds’ records revealed an absence of any documentation to support legitimate collection work. As a result of this scheme, it is the government’s position that this sum represents payment by Allen-Edmonds for collection work that was not performed. To this end, checks were mailed to PCC triggered by the fraudulent invoices provided by PCC that Jill McBrayer approved. Count One represents a payment mailed to PCC based upon the materially false and fraudulent invoices provided by PCC to Allen-Edmonds. McBrayer received about 53 checks totaling \$47,069.42 from PCC. An examination of McBrayer’s personal account revealed that these checks were deposited into her account.

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 this offense.

#### **PENALTIES**

6. The parties understand and agree that the offense to which the defendant will enter a plea of guilty carries the following maximum term of imprisonment and fine: 20 years and \$250,000. This count also carries a mandatory special assessment of \$100.00, and a maximum of five 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 paragraph 25 of this agreement.

**DISMISSAL OF REMAINING COUNTS**

7. The government agrees to move to dismiss the remaining counts of the indictment, as to this defendant, at the time of sentencing.

**ELEMENTS**

8. The parties understand and agree that in order to sustain the charge of mail fraud as set forth in Count One, the government must prove each of the following propositions beyond a reasonable doubt:

First, that the defendant knowingly devised or participated in the scheme to defraud, as described in the indictment;

Second, that the defendant did so knowingly and with the intent to defraud;

Third, that the scheme involved material misrepresentations or the concealment of material facts; and,

Fourth, that for the purpose of carrying out the scheme or attempting to do so, the defendant used or caused the use of the United States Mails in the manner charged in the particular count.

**SENTENCING PROVISIONS**

9. 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.

10. 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.

11. The parties acknowledge and agree that they have discussed all of the sentencing guidelines provisions which they believe to be applicable to the offense set forth in paragraph 4. The defendant acknowledges and agrees that his attorney in turn has discussed the applicable sentencing guidelines provisions with him to the defendant's satisfaction.

12. 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 defendant's criminal history.

**Sentencing Guidelines Calculations**

13. The parties acknowledge, understand, and agree that the sentencing guidelines calculations included in this agreement represent the positions of the parties on the appropriate sentence range under the sentencing guidelines. 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**

14. The parties acknowledge, understand, and agree that pursuant to 2002 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 offense to which defendant is pleading guilty.

**Base Offense Level**

15. The parties agree to recommend to the sentencing court that the applicable base offense level for the offense charged in Count One is 6 under 2002 Sentencing Guidelines Manual § 2B1.1(a).

**Specific Offense Characteristics**

16. The parties disagree as to the amount of loss attributable to the offense. The parties agree that the loss does not exceed \$505,984.00

**Acceptance of Responsibility**

17. The government agrees to recommend a two-level decrease for acceptance of responsibility as authorized by Sentencing Guidelines Manual § 3E1.1(a) and an additional one-level decrease as authorized by Sentencing Guidelines Manual § 3E1.1(b), but only if the defendant exhibits conduct consistent with the acceptance of responsibility

**Sentencing Recommendations**

18. Both parties reserve the right to apprise the district court and the probation office of 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.

19. Both parties reserve the right to make any recommendation regarding any other matters not specifically addressed by this agreement.

20. The government agrees to recommend a sentence within the applicable sentencing guideline range, as determined by the court

**Court's Determinations at Sentencing**

21. 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 6 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.

22. 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**

23. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable upon entry of the judgment of conviction. The defendant agrees not to request any delay or stay in payment of any and all financial obligations.

**Special Assessment**

24. The defendant agrees to pay the special assessments in the amount of \$100.00 prior to or at the time of sentencing.

**Restitution**

25. The defendant agrees to pay restitution as ordered by the court to Allen-Edmonds. The defendant understands that because restitution for the offense 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. The defendant agrees that at the time of sentencing, the defendant shall pay one-half of the amount of restitution as determined by the court. The parties agree that the court will determine whether restitution should be joint and several with defendant Lalota or whether restitution should be apportioned between these individuals.

**DEFENDANT'S COOPERATION**

26. The defendant, by entering into this agreement, further agrees to fully and completely cooperate with the government in its investigation of this and related matters, and to testify truthfully and completely before the grand jury and at any subsequent trials or proceedings, if asked to do so. The government agrees to advise the sentencing judge of the nature and extent of the defendant's cooperation. The parties acknowledge, understand and agree that if the defendant provides substantial assistance to the government in the investigation or prosecution of others, the government, in its discretion, may recommend a downward departure from: (a) the applicable sentencing guideline range pursuant to Sentencing Guidelines Manual § 5K1.1; (b) any applicable statutory mandatory minimum; or (c) both. The defendant acknowledges and understands that the court will make its own determination regarding the appropriateness and extent to which such cooperation should affect the sentence.

**DEFENDANT'S WAIVER OF RIGHTS**

27. In entering this agreement, the defendant acknowledges and understands that in so doing 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.

28. 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.

29. The defendant acknowledges and understands that he will be adjudicated guilty of each offense 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.

30. 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.

#### **GENERAL MATTERS**

31. 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.

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

33. 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.

34. The defendant understands that pursuant to the Victim and Witness Protection Act and the regulations promulgated under the Act 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.

**EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT**

35. 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**

36. 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.

RECEIVED

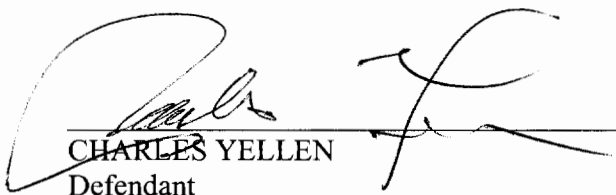
**ACKNOWLEDGMENTS**

05 DEC -2 AM 8:00

U.S. DISTRICT COURT  
E.D. WISCONSIN

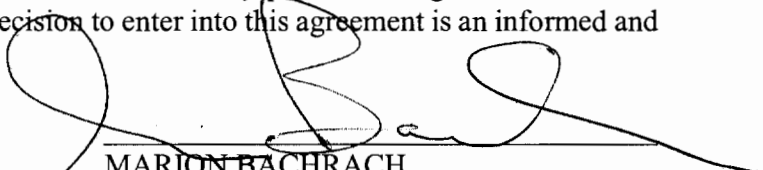
I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions 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: 12/1/05

  
CHARLES YELLEN  
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: 12/1/05

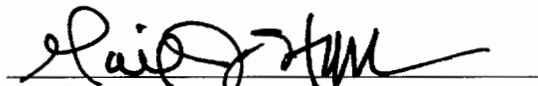
  
MARION BACHRACH  
Attorney for Defendant

For the United States of America:

Date: 12/2/05

  
STEVEN M. BISKUPIC  
United States Attorney

Date: 12/2/05

  
GAIL J. HOFFMAN  
Assistant United States Attorney