IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MARTIN T. SIGILLITO, Defendant.	No. 11-CR-168-LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, including the defendant, the documents and other things received as exhibits and the facts that have been stipulated—that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness, including the defendant, who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard testimony from certain witnesses who stated that they participated in one of the crimes charged against the defendant. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by any desire to please the government or to strike a good bargain with the government about their own situation is for you to determine.

You have heard evidence that certain witnesses have pleaded guilty to a crime which arose out of the same events for which the defendant is on trial here. You must not consider these witnesses' guilty pleas as any evidence of this defendant's guilt. You may consider these witnesses' guilty pleas only for the purposes of determining how much, if at all, to rely upon these witnesses' testimony and to show the witnesses' acknowledgment of participation in the offense.

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INSTRUCTION NO. 7 (Cont'd)

You have heard evidence that certain witnesses have made plea agreements with the government. These witnesses' testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the plea agreement is for you to determine.

You have heard evidence that certain witnesses hope to receive a reduced sentence on criminal charges pending against these witnesses in return for the witnesses' cooperation with the government in this case. If the prosecutor handling a witness's case believes the witness provided substantial assistance, that prosecutor can file in the court in which the charges are pending against the witness a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it. You may give the testimony of these witnesses such weight as you think it deserves. Whether or not the testimony of the witnesses may have been influenced by the witnesses' hopes of receiving a reduced sentence is for you to decide.

INSTRUCTION NO. 8

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must, therefore, treat those facts as having been proved.

INSTRUCTION NO. 9

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and exhibits should be returned into open court, along with your verdicts, in the same condition as they were received by you.

INSTRUCTION NO. 10

You have heard testimony that the defendant made a statement to law enforcement. It is for you to decide:

First, whether the defendant made the statement, and

Second, if so, how much weight you should give to it.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 11

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert witness testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NO. 12

You will remember that certain summaries and charts were admitted in evidence. You may use those summaries and charts as evidence, even though the underlying documents and records may not be here.

INSTRUCTION NO. 13

At the beginning of the trial I told you that the defendant was accused of twenty-two counts. Counts 14 and 15 of the Indictment, which charged the defendant with mail fraud, have been disposed of since the trial began. Those counts are no longer before you and you should not guess or concern yourselves with the reason for this disposition. You are not to consider this fact when deciding if the government has proved, beyond a reasonable doubt, the counts which remain.

INSTRUCTION NO. 14

The Indictment in this case charges the defendant with four different types of crimes:

Under each of Counts 1 through 9, the Indictment charges that the defendant committed the crime of wire fraud.

Under each of Counts 10 through 13, the Indictment charges that the defendant committed the crime of mail fraud.

Under Count 16, the Indictment charges that the defendant committed the crime of conspiracy to commit wire or mail fraud.

Under each of Counts 17 through 22, the Indictment charges that the defendant committed the crime of conducting an unlawful monetary transaction, or money laundering.

The defendant has pleaded not guilty to each of these charges. As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crime charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

INSTRUCTION NO. 15

The crime of wire fraud, as charged in Counts 1 through 9 of the Indictment, has three elements, which are:

One, the defendant voluntarily and intentionally devised or made up a scheme to defraud another out of money, property or property rights, or participated in such a scheme to defraud with knowledge of its fraudulent nature, by means of material false representations or promises, which scheme is described as follows: the defendant induced persons to lend money in the British Lending Program, or BLP, through false representations;

Two, the defendant did so with the intent to defraud; and

Three, the defendant used, or caused to be used, interstate wire facilities in furtherance of, or in an attempt to carry out, some essential step in the scheme, specifically:

Count 1: A wire transfer of $99,450.00 from [redacted] account at Cole Taylor Bank in Illinois to the defendant's attorney trust account at St. Louis Bank, which transfer was routed through the Federal Reserve Bank in New Jersey by means of the Fedwire system, on or about November 16, 2006;

Count 2: A wire transfer of $15,596,593.00 from [redacted] account at Jefferson Bank of St. Louis to the defendant's attorney trust account at St. Louis Bank, which transfer was routed through the Federal Reserve Bank in New Jersey by means of the Fedwire system, on or about January 5, 2007;

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INSTRUCTION NO. 15 (Cont'd)

Count 3: A wire transfer of $134,205.00 from [redacted] account at Cole Taylor Bank in Illinois to the defendant's attorney trust account at St. Louis Bank, which transfer was routed through the Federal Reserve Bank in New Jersey by means of the Fedwire system, on or about September 20, 2007;

Count 4: A wire transfer of $43,066.00 from [redacted] account at Cole Taylor Bank in Illinois to the defendant's attorney trust account at St. Louis Bank, which transfer was routed through the Federal Reserve Bank in New Jersey by means of the Fedwire system, on or about March 13, 2008;

Count 5: A wire transfer of $500,000.00 from [redacted] at U.S. Bank of Missouri to the defendant's attorney trust account at St. Louis Bank, which transfer was routed through the Federal Reserve Bank in New Jersey by means of the Fedwire system, on or about April 11, 2008;

Count 6: A wire transfer of $1,000,000.00 from [redacted] at Bank of Nova Scotia in New York to the defendant's attorney trust account at St. Louis Bank, which transfer was routed through the Federal Reserve Bank in New Jersey by means of the Fedwire system, on or about May 15, 2008;

Count 7: A wire transfer of $500,000.00 from [redacted] account at U.S. Bank in Minneapolis, Minnesota, to the defendant's attorney trust account at St. Louis Bank, which transfer was routed through the Federal Reserve Bank in New Jersey by means of the Fedwire system, on or about August 27, 2008;

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INSTRUCTION NO. 15 (Cont'd)

Count 8: A wire transfer of $500,000.00 from [redacted] account at U.S. Bank in Minneapolis, Minnesota, to the defendant's attorney trust account at St. Louis Bank, which transfer was routed through the Federal Reserve Bank in New Jersey by means of the Fedwire system, on or about April 9, 2009;

Count 9: A wire transfer of $300,000.00 from [redacted] account at J.P. Morgan Chase to the defendant's attorney trust account at St. Louis Bank, which transfer was routed through the Federal Reserve Bank in New Jersey by means of the Fedwire system, on or about January 26, 2010.

If the government proves all of these elements beyond a reasonable doubt as to the count under consideration by you, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the count under consideration by you.

INSTRUCTION NO. 16

For the government to prove wire fraud, it is not necessary that the use of interstate wire facilities by the participants themselves be contemplated or that the defendant do any actual sending of material by interstate wire facility or specifically intend that an interstate wire facility be used. It is sufficient if an interstate wire facility was in fact used to carry out the scheme and the use of an interstate wire facility by someone was reasonably foreseeable.

Each separate use of an interstate wire facility in furtherance of the scheme to defraud constitutes a separate offense.

The wire fraud counts of the Indictment charge that the defendant, along with others, devised or participated in a scheme. The government need not prove, however, that the defendant met with others to formulate the scheme charged, or that there was a formal agreement, in order for the participants to be held jointly responsible for the operation of the scheme and the use of interstate wire facilities for the purpose of accomplishing the scheme. It is sufficient if only one person conceives the scheme and another person knowingly, voluntarily and intentionally joins in and participates in some way in the operation of the scheme in order for such other person to be held jointly responsible.

It is not necessary that the government prove all of the details alleged in the Indictment concerning the precise nature and purpose of the scheme, that the material sent by interstate wire facility was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone or that the use of an interstate wire facility was intended as the specific or exclusive means of accomplishing the alleged fraud.

Interstate wire communications which are designed to lull victims into a false sense of security, postpone inquiries or complaints or make the transaction less suspect are communications in furtherance of the scheme.

INSTRUCTION NO. 17

The crime of mail fraud, as charged in Counts 10 through 13 of the Indictment, has three elements, which are:

One, the defendant voluntarily and intentionally devised or made up a scheme to defraud another out of money, property or property rights, or participated in such a scheme to defraud with knowledge of its fraudulent nature, by means of material false representations or promises, which scheme is described as follows: the defendant induced persons to lend money in the BLP through false representations;

Two, the defendant did so with the intent to defraud; and

Three, the defendant used, or caused to be used, the mail in furtherance of, or in an attempt to carry out, some essential step in the scheme, specifically the defendant knowingly caused to be sent by mail:

Count 10: An envelope from Enterprise Bank and Trust, 150 North Meramec Avenue, Clayton, Missouri, to [redacted], containing a monthly statement of investments that included loans to Distinctive Properties in the United Kingdom, on or about November 30, 2008;

Count 11: An envelope from Enterprise Bank and Trust, 150 North Meramec Avenue, Clayton, Missouri, to [redacted] containing a monthly statement of investments that included loans to Distinctive Properties in the United Kingdom, on or about July 31, 2008;

Count 12: An envelope from Enterprise Bank and Trust, 150 North Meramec Avenue, Clayton, Missouri, to [redacted], containing a monthly statement of investments that included loans to Distinctive Properties in the United Kingdom, on or about July 31, 2008;

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INSTRUCTION NO. 17 (Cont'd)

Count 13: An envelope from Enterprise Bank and Trust, 150 North Meramec Avenue, Clayton, Missouri, to [redacted], containing a monthly statement of investments that included loans to Distinctive Properties in the United Kingdom, on or about August 30, 2010.

If the government proves all of these elements beyond a reasonable doubt as to the count under consideration by you, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the count under consideration by you.

INSTRUCTION NO. 18

For the government to prove mail fraud, it is not necessary that the use of the mail by the participants themselves be contemplated or that the defendant do any actual mailing or specifically intend that the mail be used. It is sufficient if the mail was in fact used to carry out the scheme and the use of the mail by someone was reasonably foreseeable.

Each separate use of the mail in furtherance of the scheme to defraud constitutes a separate offense.

The mail fraud counts of the Indictment charge that the defendant, along with others, devised or participated in a scheme. The government need not prove, however, that the defendant met with others to formulate the scheme charged, or that there was a formal agreement, in order for the participants to be held jointly responsible for the operation of the scheme and the use of the mail for the purpose of accomplishing the scheme. It is sufficient if only one person conceives the scheme and another person knowingly, voluntarily and intentionally joins in and participates in some way in the operation of the scheme in order for such other person to be held jointly responsible.

It is not necessary that the government prove all of the details alleged in the Indictment concerning the precise nature and purpose of the scheme, that the material mailed was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone or that the use of the mail was intended as the specific or exclusive means of accomplishing the alleged fraud.

Mailings which are designed to lull victims into a false sense of security, postpone inquiries or complaints or make the transaction less suspect are communications in furtherance of the scheme.

INSTRUCTION NO. 19

You are further instructed that, regarding the crimes charged in Counts 1 through 13 of the Indictment, the following definitions apply:

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money, property or property rights by employing material falsehoods, concealing material facts or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

You may find that the defendant acted "knowingly" if you find beyond a reasonable doubt that the defendant believed there was a high probability that he was misrepresenting a material fact or facts and that he took deliberate actions to avoid learning of such material fact or facts. Knowledge may be inferred if the defendant deliberately closed his eyes to what would otherwise have been obvious to him. A willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the material fact or facts. You may not find the defendant acted "knowingly" if you find he was merely reckless, negligent, careless or mistaken as to a material fact or facts.

A statement or representation is "false" when it is untrue when made or effectively conceals or omits a material fact.

A representation or promise is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not to engage in a particular transaction. However, whether a representation or promise is "material" does not depend on whether the person was actually deceived.

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INSTRUCTION NO. 19 (Cont'd)

To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property or property rights to another or bringing about some financial gain to oneself or another to the detriment of a third party. With respect to false statements, the defendant must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

INSTRUCTION NO. 20

The evidence and arguments in this case have made reference to the scheme alleged by the government as being or operating as a "Ponzi scheme." A "Ponzi scheme" is generally defined as a fraudulent investment scheme in which money contributed by later investors generates artificially high returns for the original investors, whose example attracts even larger investments. In a typical "Ponzi scheme," money from the new investors is used directly to repay or pay interest to earlier investors, usually without any operation or revenue-producing activity other than the continual raising of new funds.

A scheme may still be fraudulent even if it is not a "Ponzi scheme." As I instructed you earlier, the phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money, property or property rights by employing material falsehoods, concealing material facts or omitting material facts, regardless of whether it involves the repayment of old investors with new investors' money. Thus, even if you do not believe that the defendant participated in a "Ponzi scheme," you must still determine whether he participated in a scheme or artifice to defraud.

INSTRUCTION NO. 21

The crime of conspiracy to commit wire or mail fraud as charged in Count 16 of the Indictment, has four elements, which are:

One, between in or about 1999 and continuing until April 28, 2011, two or more persons reached an agreement or came to an understanding: (1) to commit the offense of wire fraud; or (2) to commit the offense of mail fraud;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding; and

Four, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more of the following acts for the purpose of carrying out or carrying forward the agreement or understanding:

a. On or about January 8, 2007, James Scott Brown sent the defendant an e-mail concerning Brown's response to an inquiry from [redacted] of the United Kingdom law firm of Howard, Kennedy regarding the source of funds to pay a settlement of a claim by [redacted];

b. On or about June 4, 2007, the defendant sent Derek J. Smith by fax a letter falsely assuring Smith that the BLP was not fraudulent and that BLP problems had been solved;

c. *This letter not used*;

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INSTRUCTION NO. 21 (Cont'd)

d. On or about May 27, 2009, the defendant sent an e-mail to [redacted] concerning repayment of [redacted] loans and forwarded an e-mail, dated May 22, 2009, from Brown on behalf of the British American Group;

e. On or about June 1, 2009, the defendant sent an e-mail to [redacted] forwarding an e-mail from Brown to the defendant;

f. On or about October 9, 2009, the defendant caused Smith to send a letter by mail to [redacted] claiming that Smith and his companies were "third-party beneficiaries";

g. On or about November 6, 2009, the defendant caused [redacted] to e-mail a letter to Smith for Smith to sign and fax back to [redacted] so that she could fax it to [redacted] at Enterprise Bank and Trust falsely explaining delays in payments to lender [redacted];

h. On or about December 31, 2009, the defendant sent an e-mail to [redacted] explaining why the defendant could not provide [redacted] with Smith's financial information;

i. *This letter not used*;

j. On or about May 9, 2010, the defendant, Brown and Smith engaged in a string e-mail;

k. On or about May 13, 2010, the defendant and Smith met at the Chesterfield Mayfair hotel in London, England, to discuss Smith's response to an inquiry from an attorney for [redacted]

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INSTRUCTION NO. 21 (Cont'd)

l. On or about May 14, 2010, the defendant and Smith engaged in an e-mail conversation concerning Smith's response to an inquiry from an attorney for [redacted]

m. On or about May 14, 2010, the defendant and Brown engaged in an e-mail conversation;

n. On or about May 16, 2010, the defendant sent an e-mail to Smith;

o. On or about June 3, 2010, the defendant, directly and indirectly, caused Smith to send an e-mail to several BLP lenders lulling them into believing that BLP loans were secure and not the result of fraud;

p. On or about June 25, 2010, the defendant used the e-mail server of hnjlaw.com to cause [redacted] and [redacted] to send an e-mail from the defendant to several BLP lenders falsely advising them, in part, that the defendant, as a BLP lender himself, had "many of the same questions that [they had]" concerning BLP loans.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of Count 16. Otherwise, you must find the defendant not guilty of Count 16.

INSTRUCTION NO. 22

To prove a conspiracy, the government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the Indictment. You do not have to find that all of the persons charged were members of the conspiracy.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

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INSTRUCTION NO. 22 (Cont'd)

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 16 of the Indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

To assist you in determining whether there was an agreement or understanding to commit wire or mail fraud, you are advised that the elements of wire and mail fraud are set forth in Instruction Numbers 15 and 17. Keep in mind, however, that Count 16 charges a conspiracy to commit wire or mail fraud and does not require the government to prove that the offenses of wire or mail fraud were actually committed.

INSTRUCTION NO. 23

It is not necessary that the act done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself.

It is not necessary that the defendant have personally committed the act, known about it or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

It is not necessary that the government prove, beyond a reasonable doubt, that more than one act was done in furtherance of the conspiracy. It is sufficient if the government proves beyond a reasonable doubt one such act; but in that event, in order to return a verdict of guilty, you must unanimously agree upon which act was done.

It is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

The Indictment charges a conspiracy to commit two separate crimes, namely, wire fraud and mail fraud. It is not necessary for the government to prove a conspiracy to commit both of those crimes. It would be sufficient if the government proves, beyond a reasonable doubt, a conspiracy to commit *one* of those crimes. In that event, to return a verdict of guilty, you must unanimously agree *which* of the two crimes was the subject of the conspiracy. If you are unable to unanimously agree, you cannot find the defendant guilty of conspiracy.

INSTRUCTION NO. 24

If you have found beyond a reasonable doubt that a conspiracy existed and that the defendant was a member, then you may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

INSTRUCTION NO. 25

Each member of a conspiracy is responsible for crimes committed by other members of the conspiracy, if the government proves each of the following elements beyond a reasonable doubt:

One, any one member of the conspiracy committed the crime of wire fraud or mail fraud;

Two, that same person was a member of the conspiracy at the time the wire fraud or mail fraud was committed;

Three, that same person committed the crime of wire fraud or mail fraud in furtherance of the conspiracy;

Four, the wire fraud or mail fraud was within the scope of the conspiracy, or was reasonably foreseeable as a necessary or natural consequence of the conspiracy; and

Five, the defendant was a member of the conspiracy at the time of the wire fraud or mail fraud.

INSTRUCTION NO. 26

The crime of engaging in a monetary transaction in property derived from wire fraud or mail fraud, as charged in Counts 17 through 22 of the Indictment, has five elements, which are:

One, the defendant knowingly engaged, caused or attempted to engage in a monetary transaction, that is:

Count 17: The withdrawal of $347,089.67 from the defendant's St. Louis Bank personal money market account ending in number 6385 to fund cashier's check number 103512 payable to Commonwealth Title to purchase a country home in Marthasville, Missouri, on or about March 3, 2008;

Count 18: Check number 1039 in the amount of $31,000 payable to Boone Valley Golf Club, Inc., drawn on the defendant's St. Louis Bank personal money market account ending in number 6385 to be applied towards the defendant's initiation fee and membership stock at said club, on or about June 15, 2009;

Count 19: St. Louis Bank cashier's check number 12505 in the amount of $250,000 payable to Cranmar Associates, LLC, funded by the defendant with a St. Louis Bank certificate of deposit, as part of a total investment of $500,000 in a residential real estate project at Lake of the Ozarks, Missouri, on or about January 15, 2009;

Count 20: Southwest Bank check number 1027 in the amount of $22,545.68 payable to Diners Club drawn on the defendant's personal money market account ending in number 3930, on or about April 14, 2008;

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INSTRUCTION NO. 26 (Cont'd)

Count 21: Southwest Bank check number 1210 in the amount of $16,960 payable to W.C. Motor Company drawn on the defendant's personal checking account ending in number 3919 for the purchase of a 2006 Volvo S40 vehicle, on or about January 15, 2009;

Count 22: Southwest Bank check number 1031 in the amount of $33,820 payable to New York Life Insurance Company drawn on the defendant's personal checking account ending in number 3930 for the annual premium on the defendant's whole life insurance policy, on or about May 23, 2008;

Two, the monetary transaction under consideration by you was in property of a value greater than $10,000 derived from wire fraud or mail fraud, as wire fraud is defined in Instruction Numbers 15, 16 and 19, and as mail fraud is defined in Instruction Numbers 17, 18, and 19.

Three, at the time the defendant conducted the monetary transaction under consideration by you, the defendant knew the monetary transaction involved proceeds of a criminal offense;

Four, the monetary transaction under consideration by you took place in the Eastern Division of the Eastern District of Missouri; and

Five, the monetary transaction under consideration by you in some way or degree affected interstate commerce.

If the government proves all of these elements beyond a reasonable doubt as to the count under consideration by you, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the count under consideration by you.

INSTRUCTION NO. 27

You are further instructed that, regarding the crimes charged in Counts 17 through 22 of the Indictment, the following definitions apply:

The term "proceeds" means any property, or any interest in property, that someone acquires or retains as a result of the commission of a specified unlawful activity, in this case, wire fraud or mail fraud. "Proceeds" can be any kind of property, not just money. The government is not required to trace the property it alleges to be proceeds of the wire fraud or mail fraud to a particular underlying offense. It is sufficient if the government proves that the property was the proceeds of wire fraud or mail fraud generally. The government need not prove that all of the property involved in the transaction was the proceeds of wire fraud or mail fraud. It is sufficient if the government proves that at least part of the property represents such proceeds.

The phrase "knew the monetary transaction involved proceeds of a criminal offense" means that the defendant knew the property involved in the transactions represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony offense under federal law. Thus, the government need not prove that the defendant specifically knew that the funds involved in the monetary transactions represented the proceeds of wire fraud, mail fraud or any other specific offense; rather, the government need only prove that the defendant knew that the funds represented the proceeds of some form, though not necessarily which form, of felony under federal law. I instruct you as a matter of law that wire fraud and mail fraud are felonies under federal law.

(CONTINUED)

INSTRUCTION NO. 27 (Cont'd)

The phrase "interstate commerce" means commerce between any combination of states, territories and possessions of the United States. "Foreign commerce" means commerce between any state, territory or possession of the United States and a foreign country. The term "commerce" includes, among other things, travel, trade, transportation and communication. It is not necessary for the government to show that the defendant actually intended or anticipated an effect on interstate or foreign commerce. All that is necessary is that interstate or foreign commerce was affected as a natural and probable consequence of the defendant's actions. You may find an effect on interstate or foreign commerce if you find beyond a reasonable doubt from the evidence that the transaction involved a withdrawal or transfer of funds from or through a federally insured bank.

The phrase "monetary transaction" means the deposit, withdrawal, transfer or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument by, through or to a financial institution, including any "financial transaction," as that term is defined below.

"Financial transaction" means:

(A) a transaction which in any way or degree affects interstate or foreign commerce involving the movement of funds by wire or other means, involving one or more monetary instruments, or involving the transfer of title to any real property, vehicle, vessel or aircraft; or

(B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.

INSTRUCTION NO. 28

You will note that the Indictment charges that the offenses were committed "on or about" certain dates. The government need not prove with certainty the exact dates or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the dates or period of time alleged in the Indictment.

INSTRUCTION NO. 29

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 30

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NO. 31

One of the issues in this case is whether the defendant acted in good faith. Good faith is a complete defense to the wire fraud and mail fraud charges if such good faith is inconsistent with the intent to defraud, which is an element of the wire fraud and mail fraud charges.

One who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though his opinion is erroneous or his belief is mistaken; and, similarly, evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent.

On the other hand, an honest belief on the part of the defendant that a particular business venture was sound and would ultimately succeed would not, in and of itself, constitute "good faith" as used in these instructions if, in carrying out that venture, the defendant knowingly made false or fraudulent representations to others with the specific intent to deceive them.

Evidence that the defendant acted in good faith may be considered by you, together with all the other evidence, in determining whether or not he acted with intent to defraud.

INSTRUCTION NO. 32

Advice of counsel is not a defense to a crime. It is only a circumstance that may be considered in determining whether the defendant acted in good faith and lacked intent to defraud.

The defendant would not be acting with intent to defraud if, before taking any action with regard to the alleged offense, he consulted in good faith an attorney whom he considered competent, and for the purpose of securing advice on the lawfulness of his possible future conduct made a full and accurate report to that attorney of all material facts of which he had the means of knowledge, and then acted strictly in accordance with the advice given to him by that attorney.

Whether the defendant acted in good faith for the purpose of seeking advice concerning questions about which he was in doubt, and whether he made a full and complete report to that attorney, and whether he acted strictly in accordance with the advice he received, are all questions for you to determine.

Advice of counsel does not under all circumstances confer complete immunity on a defendant. No one can intentionally and knowingly violate the law and excuse himself from the consequences by claiming that he followed advice of counsel.

INSTRUCTION NO. 33

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done "knowingly" if the defendant is aware of the act and did not act through ignorance, mistake or accident. You may consider the evidence of the defendant's acts, words and omissions, along with other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 34

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 35

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because each of your verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

(CONTINUED)

INSTRUCTION NO. 35 (Cont'd)

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each of your verdicts, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts might be—that is entirely for you to decide.

INSTRUCTION NO. 36

Attached to these instructions you will find the Verdict Forms and Interrogatory Form. These are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Form must be the unanimous decisions of the Jury.

You will take the Verdict Forms and Interrogatory Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Form, your foreperson will fill out the Verdict Forms and Interrogatory Form, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms and Interrogatory Form in accord with the evidence and these instructions.

April 12, 2012
Date

Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa