

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED

FEB 10 1999

THOMAS J. MURPHY, Clerk

UNITED STATES OF AMERICA : CASE NO. CR-3-99-08
V. :
THOMAS K. QUALEY :

PLEA AGREEMENT

1. In compliance with Rule 11(e)(2) of the Federal Rules of Criminal Procedure, the parties acknowledge the following agreement between the United States of America, by and through the United States Attorney's Office for the Southern District of Ohio and the Fraud Section, Criminal Division, U. S. Department of Justice, and the defendant, **THOMAS K. QUALEY** and the defendant's attorney, Roger J. Makley, Esq. Pursuant to plea negotiations herein, the Department of Justice and the defendant, **THOMAS K. QUALEY**, have mutually examined the relative merits of the above case and have agreed to resolve the case according to the terms and conditions contained in this Plea Agreement.

I. NEGOTIATED PLEA

2. The defendant, **THOMAS K. QUALEY**, will waive formal indictment and enter a plea of guilty to a two count information charging, in Count One, a violation of 18 U.S.C. § 371, conspiracy to violate 15 U.S.C. § 78dd-2; and in Count Two, a violation of 15 U.S.C. § 78dd-2, both violations of the Foreign

Corrupt Practices Act. The defendant admits that he is guilty of these offenses and agrees to so advise the Court. The U.S. Attorney's Office for the Southern District of Ohio and the Department of Justice agree not to charge the defendant with any other crimes that arise out of the same facts as contained in the attached Statement of Facts.

II. PENALTY

3. The defendant understands and agrees that the statutory maximum sentence for the counts to which he is pleading guilty are as follows:

For the violations of 18 U.S.C. § 371 and 15 U.S.C. § 78dd-2, a term of imprisonment not more than five years, followed by a term of supervised release of not more than three years; a fine of not more than \$250,000 or not more than two times the gross pecuniary gain realized by the defendant from the offense, whichever is greater; and, pursuant to 18 U.S.C. § 3013(a)(2)(A), the defendant is obligated to pay a special assessment of \$100.00 for each violation alleged in Counts 1 and 2.

4. The defendant understands that the length of a prison term, if any, and the amount of a fine and restitution, if any, are matters within the sound discretion of the Court. The defendant understands that his sentence will be decided by the

Court and that neither the government nor his attorney can predict what his sentence will be.

III. RESTITUTION

5. Pursuant to 18 U.S.C. § 3663 (a)(3), the defendant agrees to pay complete restitution for all damage, if any, that resulted from his violations of the statutes listed in Section I herein. The restitution amount will be determined by the Court with the assistance of the Probation Office, and it is not limited solely to the damage encompassed in Counts 1 & 2 of the Information.

IV. COOPERATION

A. The Defendant's Obligations

6. The defendant agrees to disclose completely and truthfully all information regarding his activities and that of others in the scheme outlined in the Information.

B. The Government's Obligations

7. In exchange for the defendant's plea of guilty and agreement to cooperate as set forth above, the United States agrees not to prosecute the defendant for any violations of federal law in connection with the same facts giving rise to this plea, other than as set forth in section I, above. This agreement to forego further prosecution extends to criminal charges arising out of any violations of the Internal Revenue Code for tax years 1993-1996 that could be brought by the

Internal Revenue Service, U.S. Department of the Treasury, or the Tax Division of the U.S. Department of Justice, that relate to the same facts giving rise to this plea. This agreement does not limit in any way the right or ability of the United States to investigate or prosecute crimes which are not related to International Material Solutions Corporation (IMS) or any of its subsidiaries.

V. THE COURT NOT BOUND BY PLEA AGREEMENT

8. In determining the factual basis for the sentence, the Court will consider this agreement, together with the results of the presentence investigation and any other relevant information, subject to the limitations in Sentencing Guideline §1B1.8(a). The defendant understands that the Court is not bound to follow the recommendations of the United States. If the Court declines to sentence the defendant as recommended by the United States, the defendant cannot, for that reason alone, withdraw his guilty plea.

9. The defendant understands that neither his lawyer, the United States, nor the Court can make a binding prediction of, or promise him, the guideline range or sentence that ultimately will apply to his case. The defendant agrees that no one has made such a binding prediction or promise.

10. The defendant understands that a sentencing guideline range for this case will be determined by the Court pursuant to the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and 28 U.S.C. §§ 991-998. He further understands that

the Court will impose a sentence within that range unless the Court finds that there is a basis for departure because aggravating or mitigating circumstances exist which were not adequately taken into consideration when the Guidelines were formulated and which should result in a sentence different from the Guideline range.

11. The defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was part of a pattern of criminal conduct from which he derived a substantial portion of his income.

VI. LIMITS OF AGREEMENT

12. This agreement is binding only on the Fraud Section of the United States Department of Justice, the United States Attorney for the Southern District of Ohio, and the Tax Division of the United States Department of Justice and the Internal Revenue Service as delineated in paragraph 8 of this agreement. It does not bind any United States Attorney outside the Southern District of Ohio, nor does it bind any state or local prosecuting authority.

VII. TAXES

13. The defendant also agrees to file within 90 days true and correct tax returns, if necessary, for any taxable year affected by the offenses alleged in the information and to pay for all taxes, interest, and penalties for those years within a reasonable time to be agreed upon with the Internal Revenue Service.

14. The defendant also agrees to make all books, records, and documents available to the Internal Revenue Service for use in computing the defendant's taxes, interest, and penalties for any taxable year. This does not waive any right the United States has to prosecute the defendant for violations of the federal tax laws.

VIII. BREACH OF AGREEMENT

15. If the defendant has failed or should fail in any way to fulfill completely any of his obligations under this agreement, then the United States will be released from its commitment to honor all of its obligations to him. Specifically, the United States will be free to:

- A. Prosecute the defendant for perjury, false declaration, false statement and/or obstruction of justice;
- B. Charge him with any offense including all crimes in connection with IMS Inc., that he has committed;
- C. Use against him in all of those prosecutions the information and/or documents that he himself has disclosed during the course of his cooperation including all statements given under the proffer agreement or any other statement the defendant

may make in discussions which are covered under Rule 11(e)(6). The defendant agrees to expressly waive objection to the use of any such statements, testimony or information to which the defendant may otherwise be entitled to object in any federal prosecution, now or at any time in the future;

- D. Recommend to the Court any sentence up to and including the maximum possible sentence;

16. Since the defendant's acceptance of this agreement terminates all plea discussions with the United States, any statements made by the defendant after the date of the defendant's acceptance of this agreement are not governed by Rule 11(e)(6) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence.

17. Whether or not the defendant has violated the terms of this agreement shall be determined by the United States in its sole discretion. At any hearing on the issue of breach, the defendant's disclosures and documents will be admissible, and the United States will be required to establish the breach by a preponderance of the evidence.

IX. NO IMMUNITY FOR PERJURY

18. Nothing in this agreement shall be construed to protect the defendant from prosecution for Perjury, or Making False Declarations or False Statements, in violation of 18 U.S.C. §§ 1621, 1623, or 1001; Obstruction of Justice, in violation of 18 U.S.C. §§ 1503, 1505, 1510, or 1512; or any other offense committed after the date of this agreement. The information and documents that

the defendant discloses to the United States pursuant to this agreement may be used against him in any such prosecution.

19. During his plea, the Court may ask the defendant to answer questions about the offense to which he pleads, and the facts contained in any stipulation which he has made with the United States. If he answers those questions untruthfully, his answers may later be used against him in a prosecution for Perjury or False Statement.

X. WAIVER OF APPEAL

20. The defendant is aware that Title 18, United States Code, Section 3742 gives the defendant a right to appeal the sentence imposed. Acknowledging this, the defendant knowingly waives the right to appeal all matters pertaining to this case and any sentence imposed by the Court. The defendant does, however, retain the right to appeal an upward departure from the Sentencing Guideline Range.

XI. ACKNOWLEDGMENT

21. The undersigned defendant, THOMAS K. QUALEY, acknowledges by his signature below that he has read this Plea Agreement, that he understands the terms and conditions and the factual basis as set forth herein, that he has discussed these matters with his attorney, and that the matters set forth in this Plea Agreement, including those facts which support his plea of guilty, are true and correct.

22. The undersigned defendant, his attorney, and the attorneys for the United States of America acknowledge that this Plea Agreement is the entire agreement negotiated by and agreed to by and between the parties, and that no other promise has been made or implied by either the defendant, his attorney, or the attorneys for the United States of America.

Respectfully submitted,


APPROVED:

SHARON J. ZEALEY
United States Attorney

APPROVED:

Joshua R. Hochberg, Acting Chief
Fraud Section, Criminal Division
United States Department of Justice

DATE: 2/10/99




J. Richard Chema
Assistant United States Attorney

DATE: 2/10/99



For Peter B. Clark, Deputy Chief


DATE: 2/10/99




For David A. Bybee
Trial Attorney

I have read this agreement and have carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. No other promises or inducements have been made to me other than those contained in this agreement. No one has threatened me or forced me in any way to enter into this agreement. I am fully satisfied with the representation I have received from my attorney.

DATE: 1-28-99


THOMAS K. QUALEY
Defendant

DATE: 2/10/99


Roger J. Makley
Counsel for Defendant