

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

04 APR 27 PM 3:36

STEPHEN J. WILSON, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

UNITED STATES OF AMERICA)

INFORMATION

v.)

Cause No. 1:04-CR-

33 WCI

Violation: 29 U.S.C. § 501(c)

MICHAEL D. UPDIKE)

THE UNITED STATES ATTORNEY CHARGES:

On or about April 19, 2000 and continuing to on or about November 20, 2000, in the Northern District of Indiana,

MICHAEL D. UPDIKE,

defendant herein, while an officer, that is, Bargaining Committee Chairman, of the Glass Molders Plastics Local Union 285, a labor organization engaged in an industry affecting commerce, did embezzle, steal and unlawfully and willfully abstract and convert to his own use the moneys, funds, and other assets of said labor organization in the approximate amount of \$9,343.32.

All in violation of 29 U.S.C. § 501(c).

Respectfully submitted,

JOSEPH S. VAN BOKKELEN
UNITED STATES ATTORNEY



By: Lovita Morris King
Assistant United States Attorney
E. Ross Adair Federal Bldg. & U.S. Courthouse
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UNITED STATES OF AMERICA)

v.)

MICHAEL D. UPDIKE)

Cause No. 1:04-CR-

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PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, by Joseph S. Van Bokkelen, United States Attorney for the Northern District of Indiana, Lovita Morris King, Assistant United States Attorney, and the defendant, Michael D. Updike, and his attorney, Thomas N. O'Malley, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the Information in this cause with one (1) violation of 29 U.S.C. § 501(c).
2. The defendant has read the charge against him contained in the Information, and that charge has been fully explained to him by his attorney.
3. Defendant fully understands the nature and elements of the crime with which he has been charged.
4. Defendant will enter a voluntary plea of guilty to the charge contained in the Information in this case.
5. Defendant will plead guilty because he is in fact guilty of the charge contained in the Information. In pleading guilty, the defendant acknowledges that:

On or about April 19, 2000 and continuing to on or about November 20, 2000, in the Northern District of Indiana, defendant herein, while an officer, that is, Bargaining Committee Chairman, of the Glass Molders Plastics Local Union 285, a labor organization engaged in an industry affecting commerce, did embezzle, steal and unlawfully and willfully abstract and convert to his own use the moneys, funds, and other assets of said labor organization in the approximate amount of \$9,343.32.

All in violation of 29 U.S.C. § 501(c).

6. The defendant and his attorney and the United States Attorney's Office, Northern District of Indiana, agree to the following for purposes of applying the guidelines promulgated by the United States Sentencing Commission pursuant to 28 U.S.C. § 994:

a. In recognition of the defendant's acceptance of responsibility for his conduct in connection with this offense, the defendant is entitled to a two-level reduction in the offense level under Guideline Section 3E1.1(a).

b. The United States Attorney's Office, Northern District of Indiana, acknowledges that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the United States Attorney's Office of his intention to plead guilty thereby permitting the United States Attorney's Office to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently, so that if the defendant's offense level is 16 or greater prior to the two-level downward adjustment under Guideline Section 3E1.1(a), the United States Attorney's Office will move at sentencing for an additional one-level downward adjustment under Guideline Section 3E1.1(b).

c. The defendant and the United States Attorney's Office, Northern District of Indiana, agree that the United States Attorney's Office's obligation to recommend that the defendant receive the reductions for acceptance of responsibility set forth in paragraphs 6a and 6b above is

contingent on the defendant's continued manifestation of acceptance of responsibility. Should the defendant deny his involvement in this offense, give conflicting statements of his involvement, alter his statement of his involvement, engage in additional criminal conduct including the use of controlled substances, or violate any of the terms and conditions of his release, the government shall not be bound to recommend or move for any reduction in offense level for acceptance of responsibility and the defendant will not have any right to withdraw his plea based upon the government's refusal to recommend any of the reductions in offense level for acceptance of responsibility.

d. The defendant understands that the Court, in light of an investigation by the United States Probation Office, will determine the applicable sentencing guideline range, and that the Court will determine all matters, whether factual or legal, relevant to the application of the sentencing guidelines including, but not limited to, the adjusted offense level, the relevant circumstances in the case, the criminal history points and category, relevant conduct, the grouping of offenses, victim-related adjustments, role in the offense adjustments, career offender status, criminal livelihood and acceptance of responsibility as well as possible departures from the application of the United States Sentencing Guidelines. The validity of this Plea Agreement is not contingent upon the Court's concurrence with the defendant receiving the aforementioned offense level reductions under Guideline Section 3E1.1.

7. Defendant understands that the charge contained in the Information to which he will plead guilty carries the following maximum penalties:

Imprisonment for not more than five (5) years, a fine of not more than \$250,000.00, or both such fine and imprisonment, and a supervised release term of at least two (2) years but not more than three (3) years, and full restitution to the victim(s) of the offense.

8. The defendant understands that in accord with federal law, 18 U.S.C. § 3013, upon entry of judgment of conviction, the defendant will be assessed \$100.00 on each count to which he has pled, in addition to any other penalty imposed. This \$100.00 is due and payable immediately.

9. Defendant understands that by pleading guilty he waives certain rights, including the following:

a. If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, the defendant may waive a jury trial in writing with the approval of the Court and the consent of the government.

b. If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. 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 so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt, and that it was to consider each count of the Information separately.

c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

d. At a trial whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront

those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

e. At a 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 in his own behalf.

10. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Those rights have been explained to him, as well as the consequences of his waiver of those rights.

11. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charge against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

12. Defendant will enter a plea of guilty to the charge contained in the Information with the understanding that:

a. At the time of sentencing, the government shall recommend that the defendant be sentenced at the low end of the applicable guideline range, said range to be determined by the Court and if under the applicable sentencing guideline range the defendant is eligible for probation, or a split sentence, the government will not oppose the defendant's request for the same.

b. The government's agreement to recommend the low-end of the applicable sentencing guideline range and a reduction for acceptance of responsibility are non-binding

recommendations pursuant to Rule 11(c)(1)(B), the Court is not bound by these recommendations, and THE DEFENDANT HAS NO RIGHT TO WITHDRAW HIS GUILTY PLEA if the Court decides not to accept either or both of these recommendations.

c. The defendant agrees to repay restitution for the total amount of the loss relative to his conduct, which loss includes the count of conviction and all relevant conduct as well, in an amount to be determined at or before the time of sentencing.

d. Defendant is aware that his sentence will be determined in accordance with the United States Sentencing Guidelines and any applicable statutorily required sentencing provisions. Defendant is also aware that a sentence imposed under the Guidelines does not provide for parole. Defendant agrees that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for his offense as set forth above in paragraph 7 of this Plea Agreement. With that understanding, defendant expressly waives his right to appeal his sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742. Defendant also agrees not to contest his sentence or the manner in which it was determined in any post-conviction proceeding, including, but not limited to, a proceeding under 28 U.S.C. § 2255.

e. The defendant agrees to waive his right to a grand jury Indictment and further agrees to be charged on the basis of an Information.

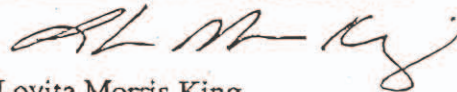
f. Defendant agrees to waive all rights, whether asserted directly or through a representative, to request or receive from the United States any further records, reports, or documents pertaining to the investigation or prosecution of this matter. This waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy act of 1974.

13. Defendant and his attorney acknowledge that no threats, promises or representations have been made, nor agreements reached, other than those set forth in this agreement, to cause defendant to plead guilty. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the agreement rendering it null and void. Defendant further agrees this Plea Agreement shall be filed and become a part of the record in this case.


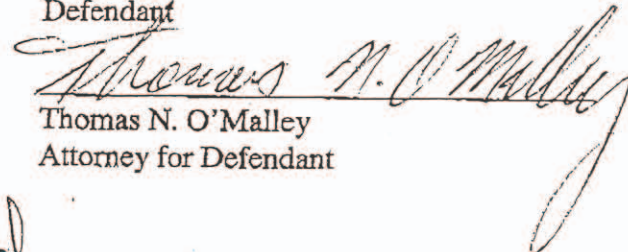
14. Should the judge refuse to accept the defendant's plea of guilty, this agreement shall be null and void and neither party will be bound thereto.

Respectfully submitted,

JOSEPH S. VAN BOKKELEN
UNITED STATES ATTORNEY



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Assistant United States Attorney
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Michael D. Updike
Defendant
Thomas N. O'Malley
Attorney for Defendant

Approved by:


David H. Miller

Assistant United States Attorney

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NOTICE OF PENALTIES

Comes now, the United States of America by its attorney, Lovita Morris King, Assistant United States Attorney, and files its Notice of Penalties in this case, and states:

The defendant is charged by way of a single count Information with a violation of 29 U.S.C. § 501(c).

If convicted, the defendant faces imprisonment for not more than five (5) years, a fine of not more than \$250,000.00, or both such fine and imprisonment, a supervised release term of at least two (2) years but not more than three (3) years, full restitution to the victim(s) of the offense, and a \$100.00 special assessment.

Respectfully submitted,

JOSEPH S. VAN BOKKELEN
UNITED STATES ATTORNEY



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Assistant United States Attorney
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