

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney )  
General of the State of Illinois, )

Complainant, )

-vs- )

EDWARD PRUIM, an individual, and )  
ROBERT PRUIM, an individual, )

Respondents. )

PCB No. 04-207  
PCB No. 97-193  
(Consolidated)  
(Enforcement)

PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney )  
General of the State of Illinois, )

Complainant, )

-vs- )

COMMUNITY LANDFILL COMPANY, INC., )

Respondent. )

to: Mr. Mark La Rose, La Rose & Bosco  
200 N. La Salle Street, #2810  
Chicago, IL 60601

Mr. Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph, #2001  
Chicago, IL 60601

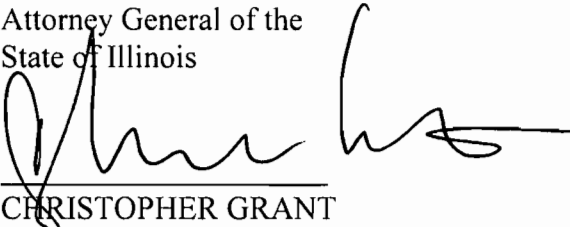
Ms. Clarissa Cutler, Attorney at Law  
155 N. Michigan, Suite 375  
Chicago, IL 60601

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that we have today, December 23, 2008, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Appeal of Hearing Officer Ruling, a copy of which is attached and herewith served upon you.

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN  
Attorney General of the  
State of Illinois

BY:

A handwritten signature in black ink, appearing to read 'Christopher Grant', written over a horizontal line.

CHRISTOPHER GRANT  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, IL 60602  
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney )  
General of the State of Illinois, )  
 )  
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-vs- )

EDWARD PRUIM, an individual, and )  
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PCB No. 04-207  
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PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney )  
General of the State of Illinois, )  
 )  
Complainant, )

-vs- )

Community Landfill Company, Inc. )  
 )  
Respondent. )

**COMPLAINANT'S APPEAL OF HEARING OFFICER RULING**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and pursuant to 35 Ill. Adm. Code 101.502(b), respectfully requests that the Board reverse an evidentiary ruling made by the Hearing Officer at the hearing held in this matter on December 2-4, 2008, and allow excluded evidence in to the record. In support thereof, Complainant states, as follows:

**I. EVIDENTIARY RULING**

Complainant seeks reversal of Hearing Officer Bradley P. Halloran's granting of Respondent's Motion in Limine No. 1, thereby barring introduction of Complainant's proposed Exhibit 27 into evidence<sup>1</sup>. The Hearing Officer excluded proposed Exhibit 27 based on the Illinois Supreme Court's ruling in *People v. Montgomery*, 47 Ill.2d 510 (1971), which prevents the State from using a felony conviction to impeach a witness's credibility after 10 years from the release from confinement<sup>2</sup>.

**II. THE HEARING OFFICER RULING WAS INCORRECT BECAUSE THE STATE IS NOT USING A CRIMINAL CONVICTION FOR IMPEACHMENT**

**a. The Ten Year Exclusionary Rule Does Not Apply**

The Hearing Officer based his ruling on the assumption that the State was trying to use prior felony convictions to impeach witness testimony, i.e. to put forth evidence of prior 'bad acts' by Edward and Robert Pruim to challenge the truthfulness of their testimony in this case. However, the evidence is not being offered for this purpose, but rather as substantive evidence of the Pruim's personal and direct involvement in violations by Community Landfill Company. Use of past crimes evidence for this purpose is allowed under Illinois law.

"Impeachment" is defined, as follows:

*Impeachment of witness. To call in question the veracity of a witness, by means of evidence adduced for such purpose, or the adducing of proof that the witness is unworthy of belief....*

Black's Law Dictionary, Fifth edition

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<sup>1</sup>Complainant's Exhibit 27 was accepted as an offer of proof in Complainant's case in chief and is attached hereto as Exhibit A.

<sup>2</sup>December 2, 2008 transcript of hearing (hereinafter "Tr." , p.4).

In the *Montgomery* case, the Illinois Supreme Court established a ten year limit on the use of a prior felony conviction to impeach a testifying witnesses testimony at trial. In *Montgomery*, a Defendant charged with the illegal sale of drugs testified on the stand in his own trial. To impeach the witnesses testimonial credibility, the State read into the record a certified copy of a 20 year old battery conviction of the Defendant. 47 Ill.2d 510, 512. The Supreme Court ordered a new trial on the drug conviction, and adopted Federal Rule 609, limiting such impeachment to 10 years after release from confinement. 47 Ill. 2d 510, 518-519. However, the court limited its rule to the use of a conviction for impeaching witness testimony, noting:

*"In this case the prior conviction which was put before the jury had no tendency to show identity, motive or plan...[i]t came into this case only because the defendant took the witness stand to testify in his own defense"* 47 Ill. 2d 510, 514.

Therefore, the *Montgomery* opinion only applied to use of past crime evidence for impeaching a witness's testimony, and did not establish a "10 year rule" barring its use for any purpose. The limited nature of the "10 year exclusion rule" has been explained by the Supreme Court in other cases. In *People v. Illgen*, 145 Ill. 2d 353 (1991), the Court stated:

*[prior conviction evidence] "...is admissible, however, where relevant to prove modus operandi, intent, identity, mote or absence of mistake [citation omitted]. In fact, this court has held that evidence of other offenses is admissible if it is relevant for any purpose other than to show the propensity to commit crime [citation omitted].* 145 Ill. 2d 353, 364.

Similarly, in *People v. Williams*, 161 Ill. 2d 1 (1994), the Court noted:

*"Evidence of past crimes which do not relate to testimonial credibility may be admitted if they are relevant for some proper purpose other than impeachment"*. 161 Ill. 2d 1, 38.

**b. The Pruims' Prior Convictions Are Not Offered For Impeachment**

The hearing officer's ruling is in error since Complainant is not using the felony convictions themselves, nor does it submit proposed Exhibit 27 for impeachment of witness

credibility. Rather, proposed Exhibit 27 is offered to show Edward and Robert Pruim's *personal and direct involvement* in the violations alleged in Counts VII-X<sup>3</sup>. (See: *People v. C.J.R. Processing Inc. et al*, 269 Ill.App.3d 1013) (corporate officers may be held liable for violations of the Act when their active participation or personal involvement is shown). The information in Exhibit 27 will allow the Board to determine whether the continued operation of the Landfill after it had reached capacity (resulting in the overheight waste), was based on the knowing, personal decision of Edward and Robert Pruim, individually. (See: *People v. Cyrus Tang et al*, 346 Ill. App. 3d 277) (the primary difficulty in determining personal liability is determining whether the violations were personal acts of acts of the corporation).

There is no dispute that throughout the period of alleged violation, Edward and Robert Pruim were the sole owners and officers of Community Landfill Company. At the December 2-4 hearing in this matter, Plaintiff entered into evidence at least three documents highly relevant to the overheight dumping violations:

Exhibit 14(e), a Solid Waste Landfill Capacity Certification reporting dumping activity from April 1, 1994 through December 31, 1994. The report clearly shows that Parcel B of the Landfill (i.e the Parcel where the overheight was located) was filled to capacity, and even overfilled during 1994. The Report is signed and the information affirmed by Respondent Edward Pruim.

Exhibit 14(f), a Solid Waste Landfill Capacity Certification for dumping at the Landfill during the period January 1, 1995 through December 31, 1995. The report shows that on January 1, 1995, Parcel B had no remaining capacity. However, the report also shows that, despite being overcapacity, the Landfill continued to accept 540,135 cubic yards of waste during 1995. The report is signed and the information affirmed by Respondent Robert Pruim.

Exhibit 26, consisting of landfill dump records of the City of Morris, owner of the Landfill. The records show month-by-month dumping at the Landfill during 1994. By comparison to the information provided by Edward Pruim in Exhibit 12(e), these records corroborate the fact that Parcel B reached capacity in approximately August, 1994.

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<sup>3</sup>The Board has already found Community Landfill Company liable under these counts, which relate to dumping in excess of the Landfill's permitted limitations.

The information in proposed Exhibit 27 shows that, *during the same period when the overheight was being created*, Edward and Robert Pruim were under the threat of incarceration for failure to pay monies due under plea agreements with the United States. On April 18, 1994, before Parcel B reached capacity, the plea agreements of Edward and Robert Pruim were entered, requiring each to pay a fine of \$1,250,000.00 (proposed Exhibit 27, pp. 2-4 and pp. 7-10). On August 9 (which evidence indicates was the approximate period that Parcel B reached capacity yet was not closed), the United States filed its motion to incarcerate Edward Pruim and Robert Pruim for failure to pay the balance of the fine (proposed Exhibit 27, pp. 24-25). Finally, proposed Exhibit 27 shows that on July 12, 1995, or about 11 months after the apparent date that Parcel B exceeded its capacity, the fine was paid (proposed Exhibit 27, pp. 6, 12).

Based on the evidence already in the record, the information contained in proposed Exhibit 27 will allow the Board to conclude that Edward Pruim and Robert Pruim knew that Parcel B was overfilled, but continued operations to generate revenue to pay a fine from a case unrelated to Community Landfill Company<sup>4</sup>, payments which allowed them to avoid incarceration. If the Board so concludes, it should note that continued operation of CLC in violation of its permits were personal acts of Edward Pruim and Robert Pruim, for reasons unrelated to CLC. Under the standard set in the *C.J.R.* and *Tang* cases, these violations were personal, not company violations.

### **III. THE EVIDENCE IS HIGHLY RELEVANT**

The Board should find that proposed Exhibit 27 is not offered for use as impeachment of witness testimony, but as substantive evidence showing the personal and direct involvement in the violations alleged in Counts 7-10. The Board should also find that this information is highly

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<sup>4</sup>Community Landfill Company was not a defendant in the federal action.

relevant to this eleven-year old case. Moreover, it is NOT the fact of a prior criminal conviction that is asserted, it is the fact of the unpaid debt to the United States that makes this information relevant.

The State has included only records relevant to this case in proposed Exhibit 27. It has not included the Criminal Complaint, nor all of the criminal allegations made by the United States. Moreover, the Court records are clearly public documents, and both Edward and Robert Pruim agreed in writing to disclosure of the information, specifically:

*“Defendant understands that the information in this case and this Plea Agreement are matters of public record and may be disclosed to any party”.* (Proposed Exhibit 27, pp.38, 56)

Under the circumstances, it would be unjust to prevent the Board from considering this highly relevant information in making its determination on the personal liability of Edward and Robert Pruim for the violations alleged in Counts VII-X.

#### **IV. CONCLUSION**

The Hearing Officer's ruling on Respondents' Motion in Limine No. 1 must be reversed and the Board should consider proposed Exhibit 27 in its deliberations. The information is highly relevant to the issue of the personal liability of Edward and Robert Pruim. There is no basis under Illinois law for excluding the evidence since Complainant is not using the fact of the underlying convictions for any purpose, and is not using the documents from the criminal case to impeach the testimony of Edward and/or Robert Pruim. Illinois Supreme Court decisions clearly allow for the use of this evidence for the purpose for which it is offered: to show the personal and direct involvement of the Pruiims in the violations of Community Landfill company.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board reverse the Hearing Officer ruling on Respondents' Motion in Limine No.

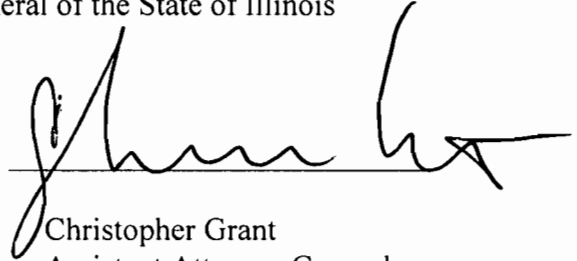


I, enter Complainant's proposed Exhibit 27 into evidence, and grant such other relief as the Board deems appropriate and just.

RESPECTFULLY SUBMITTED,

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN, Attorney  
General of the State of Illinois

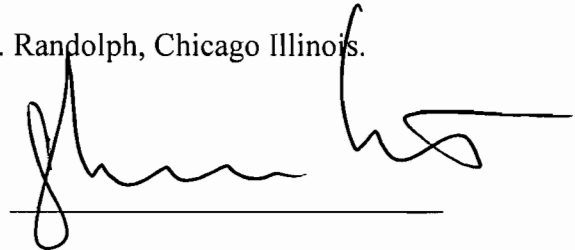
BY:

A handwritten signature in black ink, appearing to read "Christopher Grant", written over a horizontal line.

Christopher Grant  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington, #1800  
Chicago, Illinois 60601  
(312) 814-5388

**CERTIFICATE OF SERVICE**

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 23d day of December, 2008, the foregoing Appeal of Hearing Officer Ruling, and Notice of Filing, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.

A handwritten signature in black ink, appearing to read 'Christopher Grant', is written over a horizontal line. The signature is stylized and cursive.

CHRISTOPHER GRANT

# United States District Court

Northern District of Illinois, Eastern Division

UNITED STATES OF AMERICA

V.

Edward H. Pruim

(Name of Defendant)

## JUDGMENT IN A CRIMINAL CASE (For Offenses Committed On or After November 1, 1987)

Case Number: 93 CR 682-1

Jeffrey Steinbeck  
Defendant's Attorney

### THE DEFENDANT:

- pleaded guilty to count(s) one through five
- was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. 1341	Mail Fraud	12/88	1 through 5

A TRUE COPY-ATTEST  
 H. STUART CUMMINGS, CLERK  
 By Patricia Baum  
 DEPUTY CLERK  
 U. S. DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS  
 DATE: APR 25 1994

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_ and is discharged as to such count(s).
- Count(s) all remaining -(is)(are) dismissed on the motion of the United States.
- It is ordered that the defendant shall pay a special assessment of \$ 250.00, for count(s) 1, 2, 3, 4 and 5, which shall be due  immediately  as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 340-36-4776

Defendant's Date of Birth: 11/21/43

Defendant's Mailing Address:  
10639 Misty Hill Road  
Orland Park, Il. 60462

Defendant's Residence Address:  
Same As Above

April 18, 1994

Date of Imposition of Sentence

John A. Nordberg  
Signature of Judicial Officer

Judge John A. Nordberg

Name & Title of Judicial Officer

April 19, 1994

Date

Defendant: Edward Pruim  
Case Number: 93 CR 682-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 21 months

Defendant's cost of imprisonment is waived.

*Samuel J. ...*

The court makes the following recommendations to the Bureau of Prisons:  
Federal Prison Camp in Oxford, Wisconsin because of defendant's lack of previous record and so that he can be close to family and friends.

The defendant is remanded to the custody of the United States marshal.  
 The defendant shall surrender to the United States marshal for this district.

at \_\_\_\_\_ a.m. / p.m. on \_\_\_\_\_  
 as notified by the United States marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.  
 before 2 p.m. on \_\_\_\_\_  
 as notified by the United States marshal.  
 as notified by the probation office.  
the fifth Tuesday after co-defendant Robert Pruim is released.

RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_, with a certified copy of this judgment.

United States Marshal

By \_\_\_\_\_ Deputy Marshal *ex 27, p. 3*

*F. A. 2*

FINE

The defendant shall pay a fine of \$ 1,250,000.00. The fine includes any costs of incarceration and/or supervision.

This amount is the total of the fines imposed on individual counts, as follows:  
1, 2, 3, 4 and 5

The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

- The interest requirement is waived.
- The interest requirement is modified as follows:

This fine plus any interest required shall be paid:

- in full immediately.
- in full not later than \_\_\_\_\_
- in equal monthly installments over a period of \_\_\_\_\_ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.
- in installments according to the following schedule of payments:

The Clerk of the Court is directed to release \$750,000. and interest earned held in escrow to be applied to fine. An additional \$250,000. is to be paid pursuant to letter agreement dated May 31, 1994. The balance of \$250,000. to be paid over defendant's period of supervised release, as directed by probation office.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

*E+ A-4*

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

OR

The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

*201.7 used for base offense level, rather than 201.1 per plea agreement and language of indictment.*

Guideline Range Determined by the Court:

Total Offense Level: 15/4

Criminal History Category: I

Imprisonment Range: 15 to 21 months

Supervised Release Range: 2 to 3 years

Fine Range: \$ 4,000. to \$ 1,250,000.

Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: \$ N/A

Full restitution is not ordered for the following reason(s):

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

upon motion of the government, as a result of defendant's substantial assistance.

for the following reason(s):

*E+ A-4*

*EX 27, P.5*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RECEIVED

JUL 12 1994

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PRUIM,

Defendant.

H. STUART CUNNINGHAM, CLERK  
UNITED STATES DISTRICT COURT

No 93 CR 0682-1  
JUDGE JOHN A. NORDBERG

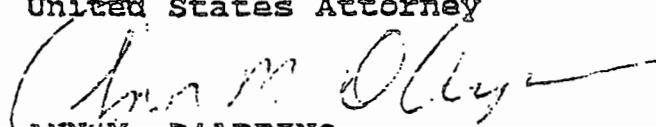
SATISFACTION OF JUDGMENTS

Judgment was entered for the plaintiff and against the defendant in the above-entitled cause in the United States District Court, Northern District of Illinois, Eastern Division, on the 18th day of April of 1994, imposing a fine in the amount of \$1,250,000.00 and an assessment in the amount of \$250.00.

The fine and assessment having been paid, Clerk of the United States District Court is hereby authorized and empowered to satisfy said judgments of record and the lien of said judgments recorded as document number 94-646442 on July 22, 1994 in the County of Cook is hereby released.

JAMES B. BURNS  
United States Attorney

BY:



ANN M. D'ARPINO  
Assistant U.S. Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-5075

NOTE

For the protection of the owner, this Release/Satisfaction should be filed with the Recorder of Deeds or the Registrar of Titles in whose office the lien was filed.

AD/mw

07/11/95  
#8911678

Ex B

Ex 27, p. 6

DOCKETED

# United States District Court

APR 25 1994

Northern District of Illinois, Eastern Division

UNITED STATES OF AMERICA

V.

## JUDGMENT IN A CRIMINAL CASE (For Offenses Committed On or After November 1, 1987)

Robert J. Pruim  
(Name of Defendant)

Case Number: 93 CR 682-2

Charles Sklarsky  
Defendant's Attorney

APR 25 1994

### THE DEFENDANT:

- pleaded guilty to count(s) One through Five
- was found guilty on count(s) APR 26 1994 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
8 U.S.C. 1341	Mail Fraud	12/88	1 through 5

Sent for Microfilming  
APR 25 1994  
Filmed on \_\_\_\_\_

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_ and is discharged as to such count(s).
- Count(s) all remaining (is)(are) dismissed on the motion of the United States.
- It is ordered that the defendant shall pay a special assessment of \$ 250.00, for count(s) 1, 2, 3, 4 and 5, which shall be due  immediately  as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 319-38-9244

Defendant's Date of Birth: 8/5/46

Defendant's Mailing Address:

19-11 Westview Drive

Palos Heights, IL 60463

Defendant's Residence Address:

Same as Above

April 18, 1994

Date of Imposition of Sentence

Signature of Judicial Officer

Judge John A. Norberg

Name & Title of Judicial Officer

April 19, 1994

Date

Ex 27, p. 7



Defendant: Robert Pruijn  
Case Number: 93 CR 682-2

Judgment - Page 2 of 5

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 15 months

Defendant's cost of imprisonment is waived.

The court makes the following recommendations to the Bureau of Prisons:  
Federal Prison Camp in Oxford, Wisconsin because of defendant's lack of previous record and so that he can be close to family and friends.

- The defendant is remanded to the custody of the United States marshal.
- The defendant shall surrender to the United States marshal for this district.
  - at \_\_\_\_\_ a.m.
  - at \_\_\_\_\_ p.m. on \_\_\_\_\_
  - as notified by the United States marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.
  - before 2 p.m. on 21 Jun 94
  - as notified by the United States marshal
  - as notified by the probation office.

RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Execution delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_

with a certified copy of this judgment

United States Marshal

By \_\_\_\_\_

Deputy Marshal

EX 27. PB

Defendant: Robert Pruiam  
Case Number: 93 CR 682-2

Judgment - Page 3 of 5

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 years

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
- The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.
- The defendant shall not possess a firearm or destructive device.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any person engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit the probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband possessed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement, verbal or written, or a special agreement with a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall fulfill other duties or tasks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirements.

Ex 27, p.9

Defendant: Robert Pruin  
Case Number: 93 CR 682-2

Judgment—Page \_\_\_\_\_ of \_\_\_\_\_

**FINE**

The defendant shall pay a fine of \$ 1,250,000.00. The fine includes any costs of incarceration and/or supervision.

This amount is the total of the fines imposed on individual counts, as follows:

1, 2, 3, 4 and 5

The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

- The interest requirement is waived.
- The interest requirement is modified as follows:

This fine plus any interest required shall be paid:

- in full immediately.
- in full not later than \_\_\_\_\_.
- in equal monthly installments over a period of \_\_\_\_\_ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.
- in installments according to the following schedule of payments:

The Clerk of the Court is directed to release \$750,000. and interest earned held in escrow to be applied to fine. An additional \$250,000. is to be paid pursuant to letter agreement dated May 31, 1994. The balance of \$250,000. to be paid over defendant's period of supervised release, as directed by probation office.

If the fine is not paid, the court may sentence the defendant for any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Ex 27, p. 10

Defendant: Robert Prui  
Case Number: 93 CR 682-2

Judgment - Page 5 of 5

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

OR

The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

*By 2C1.7 used for base offense level rather than 2C1.1 per plea agreement and language of indictment*

Guideline Range Determined by the Court:

Total Offense Level: 15 14

Criminal History Category: I

Imprisonment Range: 15 to 21 months

Supervised Release Range: 2 to 3 years

Fine Range: \$4,000. to \$1,250,000.

Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: \$ N/A

Full restitution is not ordered for the following reason(s):

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range:

upon motion of the government, as a result of defendant's substantial assistance

for the following reason(s):

*Ex 27, p. 11*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FILED

JUL 12 1995

H. Stuart Cunningham, Clerk  
United States District Court

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT J. PRUIM,

Defendant.

No 93 CR 0682-2  
JUDGE JOHN A. NORDBERG

SATISFACTION OF JUDGMENTS

Judgment was entered for the plaintiff and against the defendant in the above-entitled cause in the United States District Court, Northern District of Illinois, Eastern Division, on the 18th day of April of 1994, imposing a fine in the amount of \$1,250,000.00 and an assessment in the amount of \$250.00.

The fine and assessment having been paid, Clerk of the United States District Court is hereby authorized and empowered to satisfy said judgments of record and the lien of said judgments recorded as document number 94-643704 on July 22, 1994 in the County of Cook is hereby released.

A TRUE COPY-ATTEST  
H. STUART CUNNINGHAM, CLERK  
*H. Stuart Cunningham*  
CLERK  
U. S. DISTRICT COURT NORTHERN  
DISTRICT OF ILLINOIS  
DATE: JUL 12 1995

JAMES B. BURNS  
United States Attorney

BY: *Ann M. D'Arpino*  
ANN M. D'ARPINO  
Assistant U.S. Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-5075

NOTE

For the protection of the owner, this Release/Satisfaction should be filed with the Recorder of Deeds or the Registrar of Titles in whose office the lien was filed.

AD/mw

07/11/95  
#8911678



IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

SEP 2 1994  
STUART S. ...  
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ROBERT J. PRUIM, )  
 )  
Defendant. )

Case No. 93 CR 682-2  
Honorable John A. Nordberg

NOTICE OF FILING

DOCKETED  
SEP 6 - 1994

TO: Jackie Stern  
Assistant U.S. Attorney  
219 South Dearborn Street  
Suite 1200  
Chicago, IL 60604

PLEASE TAKE NOTICE that on September 2, 1994, counsel for Robert J. Pruum filed with the Clerk of the U.S. District Court for the Northern District of Illinois, Eastern Division, at 219 S. Dearborn, Chicago, Illinois, Robert J. Pruum's Response to Government's Motion For Sentencing on Failure to Pay a Fine, a copy of which is attached and is hereby served upon you.

Respectfully submitted,

By: Robert R. Stauffer  
One of the attorneys  
for Robert J. Pruum

Charles B. Sklarsky  
Robert R. Stauffer  
JENNER & BLOCK  
One IBM Plaza  
Chicago, IL 60611  
(312) 222-9350

57

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

FILED  
SEP 2 1994  
R. STUART  
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ROBERT J. PRUIM,  
  
Defendant.

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Case No. 93 CR 682-2  
Honorable John A. Nordberg

INDEXED  
SEP 6 - 1994

ROBERT J. PRUIM'S RESPONSE TO GOVERNMENT'S MOTION  
FOR SENTENCING ON FAILURE TO PAY A FINE

In response to the Government's Motion for Sentencing on Failure to Pay a Fine, defendant ROBERT J. PRUIM, by his counsel, joins in the response of Edward H. Pruim, filed on September 1, 1994.

Respectfully submitted,

By: Robert R. Stauffer  
One of the attorneys  
for Robert J. Pruim

Charles B. Sklarsky  
Robert R. Stauffer  
JENNER & BLOCK  
One IBM Plaza  
Chicago, IL 60611

RS40903.RES

EX 27, p. 14

CERTIFICATE OF SERVICE

I, Robert R. Stauffer, an attorney, certify that I served the foregoing Notice of Filing and the document to which it refers upon counsel of record by causing true and correct copies of same to be delivered, by telecopy and U.S. mail to:

Jackie Stern  
Assistant U.S. Attorney  
219 South Dearborn Street  
Suite 1200  
Chicago, IL 60604

on this 2nd day of September, 1994, before the hour of 5:00 p.m.

  
\_\_\_\_\_  
Robert R. Stauffer



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FILED

SEP 01 1994

H. Stuart Cunningham, Clerk  
United States District Court

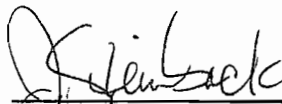
UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
EDWARD PRUIM, )  
 )  
Defendant. )

No. 93 CR 682-1  
Honorable John A. Nordberg

NOTICE OF FILING

TO: Jacqueline Stern  
Assistant U.S. Attorney  
219 South Dearborn, 12th Floor  
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on the 1st day of September, 1994, we caused to be filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, DEFENDANT EDWARD PRUIM'S RESPONSE TO MOTION FOR SENTENCING OF FAILURE TO PAY BALANCE OF A FINE, a copy of which is attached hereto and thereby made a part hereof.

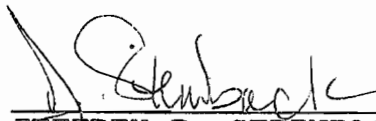


GENSON, STEINBACK, GILLESPIE & MARTIN

GENSON, STEINBACK, GILLESPIE & MARTIN  
53 West Jackson, Suite 1420  
Chicago, Illinois 60604  
(312) 726-9015

CERTIFICATE OF SERVICE

I, JEFFREY B. STEINBACK, certify that I have delivered a copy of the foregoing Notice and Response to the above addressed on September 1, 1994.



JEFFREY B. STEINBACK

DOCKETED  
SEP 02 1994

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EX 27, P. 16

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FILED  
SEP 01 1994

H. Stuart Cunningham, Clerk  
United States District Court

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
EDWARD PRUIM, )  
 )  
Defendant. )

No. 93 CR 682-1  
Honorable John A. Nordberg

DEFENDANT EDWARD PRUIM'S RESPONSE TO MOTION  
FOR SENTENCING OF FAILURE TO PAY BALANCE OF A FINE

Now Comes Defendant Edward Pruum, by and through his counsel, Jeffrey Steinback, of the law firm of Genson, Steinback, Gillespie & Martin, and in response to the government's motion for sentencing for failure to pay balance of a fine, states as follows:

The government has filed a very brief motion, accompanied by two (2) identical letter agreements executed by both Edward and Robert Pruum, seeking an additional period of incarceration for each of them. At the outset, it must be noted that, in fact, there is an outstanding balance which was due on May 31, 1994 by both Edward and Robert in the amount of \$250,000 and it is further acknowledged that the government has a right to pursue additional time for the "willful failure to pay the agreed fine . . .". However, the law does not mandate that this Honorable Court necessarily impose a greater prison sentence. Moreover, under all the circumstances surrounding this case, an additional prison sentence is not warranted.

The statute in question, defining criminal default, is 18 U.S.C. § 3615. It reads as follows:

RECORDED  
SEP 02 1994

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EX 27, P. 17

Whoever, having been sentenced to pay a fine, willfully fails to pay the fine, shall be fined not more than twice the amount of the unpaid balance of the fine or \$10,000, whichever is greater, imprisoned not more than one year, or both.

Because the parties have agreed that an untimely payment would be deemed "willful" for the purposes of the letter agreement (page 2, subparagraph 3), the focus of the inquiry is not whether the Pruims are in criminal default, but what, if any further punishment ought to be imposed. To this end, there is a seemingly endless stream of good-faith efforts on the part of both Edward and Robert to make good on their obligations.

We begin by underscoring the fact that both Edward and Robert have already placed \$750,000 each into an escrow account for the benefit of the government. It is thus not as if the government has never received anything from these individuals towards their obligation. Quite to the contrary, there has been over \$1.5 million paid to date.

Secondly, as is clear from the financial statements, which have long since been tendered to the government, neither Edward nor Robert presently have the funds necessary to fulfill their financial obligation to pay the balance of the agreed fine at this time.

At the same time, for over the past two (2) years, both Edward and Robert have undertaken a continual Herculean effort, dating back to before October of 1992, to dispose of any and all available assets to try to meet their legal obligations here. For example,

in October of 1992, the Pruims began to negotiate a merger arrangement with Continental Waste, Inc. (CWI) for the purchase of the Pruims' business, XL Disposal Corp., Inc. (XL), including negotiations to sign an agreement which would preserve XL's assets in the event of a potential RICO action. At the same time, the Pruims arrived at a tentative plea agreement with the government which would protect XL's assets from the prospect of any such RICO action. The tentative value placed on XL at that time was approximately \$33 million. Preliminary terms of that merger were agreed to, with CWI moving into offices to begin managing XL's business. Negotiations with the United States Attorney's office continued. This was in February, 1993. However, a snag emerged when CWI was advised by the Purchasing Department for the City of Chicago that no contracts for disposal of waste would be issued unless the threat of forfeiture and the Pruims were removed from XL. The net effect was that the value of XL was reduced to \$21 million. This occurred in April of 1993.

Thereafter, in May of 1993, a venture capital group, First Analysis joined with CWI in an effort to reduce the proposed purchase price. When their contract began to unwind, American National Bank, under the merger agreement, called XL's credit due and all receipts were assigned for satisfying the loan.

Then, in June of 1993, Waste Management (WMI) and the Pruims began negotiating, with WMI offering \$19 million to the Pruims to purchase XL. One (1) week later, however, WMI withdrew its offer.

Later, that same month, a new company, Browning Ferris, agreed to a \$17 million purchase price, predicated entirely on the condition that the Pruims could guarantee that their company no longer faced the threat of a RICO prosecution. Regrettably, negotiations with Browning Ferris likewise ceased. With the mounting pressures, both Edward and Robert Pruim agreed to appear before a federal grand jury, confessing under oath their misconduct in order to satisfy the government and thereby gain additional time to attempt to sell their company. The proceeds of any such sale were always earmarked for the payment of fines.

Throughout August of 1993, the Pruims continued to negotiate with two (2) other companies to sell XL assets with which to satisfy their obligations to the Government. By September of 1993, lacking cash flow, loosing bank relationships and being continually pursued by secured lenders, the Pruims were faced with the sale of the company to USA Waste for \$8 million, representing a devaluation of over \$25 million from the original CWI offer, less than one (1) year earlier. In the wake of the investigation, openly disclosed by the Pruims to potential purchasers, the net received by Pruims was reduced to \$1.2 million, with a back end payment to be made in November of 1994. With this money, both Edward and Robert executed plea agreements with the government, placing 1.5 million in escrow as partial payment of their fines.

Still experiencing massive financial pressure, the Pruims stopped making payments on a \$2.2 million loan they have with Greyhound Financial Company (GFC) on waste processing equipment

located in South Bend, Indiana. The Pruims scrambled to try to liquidate other companies and assets, GFC made a demand on overdue payments and threatened a lawsuit in January of 1994. In an effort to stem the tide of the lawsuit, the Pruims initiated negotiations with a company called Environmental Services of America (ENSA) to purchase XL's South Bend facility as well as a facility in Scott City, Missouri.

In February of 1994, an agreement was reached with ENSA, whereby ENSA agreed to assume the debt for the two (2) industrial fuel plants, with a closing date set for October 1st. However, ENSA had no interest in the processing equipment financed by GFC.

With due dates rapidly approaching, the Pruims continued to negotiate frantically with GFC to forebear from suing. At the same time, the Pruims attempted to prompt USA Waste to prepay monies due in November of 1994 at a discounted price or otherwise exercise an option to purchase the remainder of XL's assets at a discount. This prepayment of monies would have generated sufficient assets to satisfy the immediate obligations of both Edward and Robert. Unfortunately, in a letter dated March 4, 1994, USA Waste refused both requests.

To add insult to injury, GFC filed its suit against the Pruims to obtain the entirety of payments on its \$2.2 million loan. The Pruims were forced to consult bankruptcy attorneys concerning options under Chapter 11.

In May of 1994, not wishing to go bankrupt, the Pruims initiated negotiations with the City of Harvey to attempt to

purchase twenty-six (26) acres of vacant land. A parcel of this land has local siting approval for hazardous waste activity. The acquisition of this land could generate funds sufficient to meet the Pruims' obligations to pay their fines. At the same time, the Pruims continued to negotiate with GFC to avoid being forced into bankruptcy.

In June of 1994, the Pruims were able to execute a contract with the City of Harvey to purchase the above parcel of land with a closing of July 19, 1994. In July, the City of Harvey requested and obtained an extension of its closing date to August 31, 1994. Significantly a forbearance agreement was reached with GFC, whereby GFC agreed to forebear from pursuing enforcement of its judgment against the Pruims in exchange for the Pruims assignment of their beneficial interest of certain properties and an agreement to pay the total amount due by June of 1995. Most importantly, GFC agreed to allow monies due to the government to be paid out first from a liquidation sale. Additionally, Robert Pruim began the service of his sentence of imprisonment at F.P.C. Duluth.


Thereafter, in August of 1994, the city of Harvey obtained an additional two (2) week extension on the closing of the property. Closing is set for September 15, 1994.

The documents appended to this response are just some of many, reflecting the unending, good-faith efforts on the part of the Pruims to meet their obligation to pay the balance of their fines. It is apparent that by November of this year, just a couple of months away, the Pruims will have available sufficient funds from

their USA Waste contract to satisfy their fine obligations. It is true that they are presently in default; but it is not from want of trying everything within their collective power to meet these obligations.

Most recently, pursuant to a written agreement, Edward Pruium voluntarily signed over an approximate \$110,000 tax refund due him to the government. This substantial sum is a further sign of the continuing efforts that the Pruims have undertaken to meet their obligations under this plea agreement. The Pruims acknowledge that the government has every right to make the present motion. They wish only to place the request for additional time against the backdrop of all they have done and will continue to do to pay their fines. It has been a sincere struggle.

Respectfully submitted,

  
\_\_\_\_\_  
Jeffrey B. Steinback

GENSON, STEINBACK, GILLESPIE & MARTIN  
53 West Jackson, Suite 1420  
Chicago, Illinois 60604  
(312) 726-9015



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 EDWARD H. PRUIM, and )  
 ROBERT J. PRUIM )

No. 93 CR 682  
Judge John A. Nordberg

H. STUART COMMINGERS, CLERK  
UNITED STATES DISTRICT COURT  
MAY 9 1994  
FILED

GOVERNMENT'S MOTION FOR SENTENCING ON FAILURE TO PAY A FINE

Now comes the UNITED STATES OF AMERICA, by and through its attorney, JAMES B. BURNS, United States Attorney for the Northern District of Illinois, and respectfully moves this Court to impose an additional sentence of incarceration on each of the defendants, EDWARD H. PRUIM and ROBERT J. PRUIM, as provided for in the Letter Agreements in this matter, based on the defendants failure to pay the agreed upon fine on the agreed upon date.

Each of the defendants entered into a binding Letter Agreement with the Government, which Agreements were accepted by this Court. Those Agreements provided, and the Court ordered, that each of the defendants would pay a fine of \$250,000 on or before May 31, 1994.

The defendants have not paid that money.

The Letter Agreements each provide that failure to pay those monies "will constitute a willful failure to pay the agreed fine, and the government will have the right to move the Court to impose an additional sentence of incarceration on the defendant pursuant to Title 18, United States Code, Sections 3614 and 3615, if the government elects to do so in its sole discretion."

Because the defendants have failed to pay the fine that was to

45  
EX 27, p. 24

be paid on or before May 31, 1994, namely a total of \$500,000, the government now respectfully requests that this Court impose an additional sentence of incarceration on each of the defendants.

Section 3615 specifically provides that any defendant who has been sentenced to pay a fine and who "willfully fails to pay the fine, shall be...imprisoned not more than one year". As noted above, the defendants' agreed in the the Letter Agreement that failure to pay the agreed upon fine constitutes a willful failure. Therefore, the defendants should be sentenced pursuant to Section 3614, and 3615.

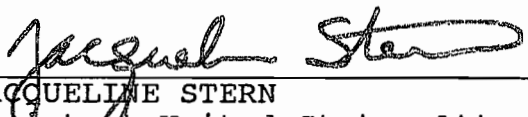
CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court sentence the defendants to an additional period of incarceration.

Respectfully submitted,

JAMES B. BURNS  
UNITED STATES ATTORNEY

By:

  
\_\_\_\_\_  
JACQUELINE STERN  
Assistant United States Attorney  
U.S. Attorney's Office  
219 South Dearborn  
Chicago, IL 60604  
(312) 353-5329

FILED

SEP 24 1993

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 ROBERT J. PRUIM )

No. 93 Cr 682-2

H. STUART CUNNINGHAM, CLERK  
UNITED STATES DISTRICT COURT

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, MICHAEL J. SHEPARD, and the defendant, ROBERT J. PRUIM, and his attorneys, JEFFREY B. STEINBACK and CHARLES B. SKLARSKY, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(e)(1)(C), as more fully set forth in Paragraph 14, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

EX 27, P. 26

14

By this Plea Agreement, MICHAEL J. SHEPARD, United States Attorney for the Northern District of Illinois, and the defendant, ROBERT J. PRUIM, and his attorneys, JEFFREY B. STEINBACK and CHARLES B. SKLARSKY, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the information in this case with five counts of mail fraud, in violation of Title 18, United States Code, Section 1341.

2. Defendant has read the charges against him contained in the information, and those charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Counts One through Five, inclusive, of the information in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One through Five, inclusive, of the information in this case. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

(a)(1) With respect to Count One of the information, beginning in or about December 1988 and continuing until in or about September 1990, at Chicago and Crestwood, and elsewhere, in the Northern District of Illinois, Eastern Division, defendants ROBERT J. PRUIM, Edward H. Pruum, and Thomas O'Connor, devised, intended to devise, and participated in a scheme to defraud the City of Chicago by depriving the City of Chicago of defendant

Thomas O'Connor's honest services by means of false and fraudulent representations, pretenses, and promises.

Defendants ROBERT J. PRUIM and Edward H. Pruim gave and promised to give defendant Thomas O'Connor cash, property, loans, and other things of value, totalling at least \$150,000, in order to influence defendant Thomas O'Connor in the performance of acts related to his employment with the City of Chicago.

Defendant Thomas O'Connor promised to use his position, and did use his position, as an employee of the City of Chicago to aid and assist defendants ROBERT J. PRUIM and Edward H. Pruim and their company XL Disposal in their business dealings with the City of Chicago. Defendant Thomas O'Connor promised to provide, and did provide information gained in his position as General Foreman of Dumps to his co-schemers on matters that he thought would be useful to their business and business dealings with the City of Chicago. In addition, defendant Thomas O'Connor promised to take any action that he could, and did engage in various actions to help out his co-schemers in their business dealings with the City of Chicago.

Throughout the year of 1989, defendants ROBERT J. PRUIM and Edward H. Pruim gave defendant Thomas O'Connor cash bribes in the amount of \$500 on a weekly or bi-weekly basis, resulting in bribe payments of at least \$20,000. In addition, defendant ROBERT J. PRUIM admits that the government's evidence would show that for at least six months during 1988, defendants ROBERT J. PRUIM and Edward H. Pruim gave defendant Thomas O'Connor cash bribes in the amount

of \$500 on a weekly or bi-weekly basis, resulting in bribe payments of at least \$10,000.

During the first six months of 1990, defendants ROBERT J. PRUIM and Edward H. Pruum gave defendant Thomas O'Connor cash bribes in the amount of \$500 every two or three weeks, resulting in payments of at least \$3000. During June, July, and August of 1990, defendants ROBERT J. PRUIM and Edward H. Pruum gave defendant Thomas O'Connor cash bribes, resulting in payments of \$3000. During that time, defendant ROBERT J. PRUIM made four payments, totalling \$2000. In addition, defendant ROBERT J. PRUIM gave defendant Thomas O'Connor \$5000 in cash during September 1990.

On or about December 9, 1988, defendants ROBERT J. PRUIM and Edward H. Pruum purchased a \$30,000 Certificate of Deposit, which they posted as collateral on behalf of defendant Thomas O'Connor, so that he could obtain a \$30,000 personal bank loan. After defendant Thomas O'Connor obtained the \$30,000 loan, he used the money to purchase the house located on Bass Lake in Indiana that he wanted to buy.

Throughout 1989, defendants ROBERT J. PRUIM and Edward H. Pruum gave defendant Thomas O'Connor \$1000 a month in cash, totalling approximately \$12,000, which defendant Thomas O'Connor used to make monthly payments on the \$30,000 loan described above.

On or about April 13, 1989, defendants ROBERT J. PRUIM and Edward H. Pruum gave defendant Thomas O'Connor a check in the amount of \$4,344.

On or about November 30, 1989, defendants ROBERT J. PRUIM and Edward H. Pruum gave defendant Thomas O'Connor a \$3,000 cash bribe. Defendants ROBERT J. PRUIM and Edward H. Pruum gave defendant Thomas O'Connor a check in the amount of \$3500, which was drawn on an account belonging to X L Disposal. Defendant Thomas O'Connor obtained \$3000 cash by depositing the \$3500 check into a bank account maintained in the name of X-L Repair, and receiving \$3000 back from the deposit.

On or about January 23, 1990, defendants ROBERT J. PRUIM and Edward H. Pruum gave defendant Thomas O'Connor a cashier's check for \$19,851.36. Defendant Thomas O'Connor used this money to pay off the balance due on the \$30,000 loan that he had obtained in 1988. After defendant Thomas O'Connor paid off the \$19,851.36 balance on his loan, defendant ROBERT J. PRUIM redeemed the Certificate of Deposit which had been used to secure the loan.

In or about January 1990, defendant Edward H. Pruum arranged for another individual to enter into a sham real estate transaction with defendant Thomas O'Connor, in order to make it appear that the Indiana house owned by defendant Thomas O'Connor had been purchased by the other individual, when in fact no such purchase had been made. As part of this sham transaction, title to the property was transferred into the name of the other individual, but defendant Thomas O'Connor maintained possession, custody and control of the Indiana house. The agreed purchase price for the Indiana house was approximately \$58,000. Those monies were paid by defendants ROBERT J. PRUIM and Edward H. Pruum. On or about January 31, 1990,

defendants ROBERT J. PRUIM and Edward H. Pruim gave defendant Thomas O'Connor a cashier's check for \$29,681. On or about February 8, 1990, defendants ROBERT J. PRUIM and Edward H. Pruim, gave defendant Thomas O'Connor a cashier's check for \$29,024.16, so that he could pay off a mortgage in that amount which was outstanding against the Indiana house.

Defendants ROBERT J. PRUIM, Edward H. Pruim, and Thomas O'Connor misrepresented, concealed, and hid, and caused to be misrepresented, concealed, and hidden, acts done in furtherance of the scheme described above and the purposes of those acts.

In or about April 1989, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant ROBERT J. PRUIM, for the purpose of executing the aforesaid scheme, knowingly caused to be placed in an authorized depository for mail matter, to be delivered by the Postal Service according to the directions thereon, an envelope addressed to defendant Thomas O'Connor, at his residence in Chicago, Illinois, containing a letter from Society Bank, Knox, Indiana, relating to the release of a mortgage on a house located on Bass Lake in Indiana which was owned by defendant Thomas O'Connor, in violation of 18 U.S.C. § 1341.

(b) As to Counts Two through Five, defendant ROBERT J. PRUIM reaffirms the facts set forth above, and further admits that for the purpose of executing the aforesaid scheme, he knowingly caused to be placed in an authorized depository for mail matter, to be delivered by the Postal Service according to the directions thereon, the following:



(2) an envelope addressed to defendant Edward H. Pruim, at his residence in Palos Heights, Illinois, containing a monthly statement for his American Express charge card, including a charge for six round trip airplane tickets from Chicago, Illinois to Orlando, Florida in the sum of \$1730, and a charge for a rental car and accommodations at Disney Village Resort in the sum of \$2811;

(3) an envelope addressed to Pruim Development, located in Palos Heights, Illinois, containing a bank statement for a bank account in the name of Pruim Development, together with a cancelled check drawn on that account, in the amount of \$3,000, made payable to cash, signed by the defendant Edward H. Pruim, and endorsed by the defendant Thomas O'Connor;

(4) an envelope addressed to X-L Repair, located in Palos Heights, Illinois, containing a bank statement for a bank account in the name of X-L Repair, which reflected a monetary transaction that occurred on November 30, 1989;

(5) an envelope addressed to X-L Disposal Corp., located in Crestwood, Illinois, containing a bank statement for a bank account in the name of X-L Disposal Corp., together with a cancelled check drawn on that account, in the amount of \$3,500, made payable to the defendant Edward H. Pruim, and signed by the defendant ROBERT J. PRUIM; all in violation of 18 U.S.C. § 1341.

6. For purposes of applying the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

a. Pursuant to Guideline § 2C1.7(a), the base offense level is 10.

b. Pursuant to Guideline §§ 2C1.7(b)(1)(A), 2F1.1(b)(1)(H), and 2C1.1 (Background notes), the base offense level should be increased by 7 levels based on the amount of the bribes paid, since the benefit derived from the bribes and the loss, if any, to the City of Chicago cannot be accurately determined, and the bribe payments were more than \$120,000 but did not exceed \$200,000.

c. Pursuant to Guideline § 3D1.2, Counts One through Five should be grouped together into a single group because all of the Counts involve substantially the same harm; therefore the offense level should not be increased as a result of multiple counts.

d. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline 3E1.1, a two-level reduction in the offense level is appropriate.

e. Defendant has given the government timely notice of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently, within the meaning of Guideline 3 E1.1(b), and has provided certain information to the government

which may provide investigative leads; a 1 point reduction in the offense level is therefore appropriate, provided the court determines the offense level to be 16 or greater prior to the operation of Guideline 3E1.1(a).

f. The offense level therefore is level 14.

g. Based on the facts known to the government, the defendant's criminal history points equal zero and the defendant's criminal history category is I.

h. Based on the calculations set forth above, the parties agree that defendant's criminal history category is I, and the offense level is 14, which results in a guideline range of 15 to 21 months.

i. The defendant and his attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected, or amended by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation

office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, or amendments, and the defendant shall not have a right to withdraw his plea on the basis of such corrections or amendments.

8. Defendant understands the counts to which he will plead guilty carry the following penalties:

(a) Counts One through Five each carry a maximum penalty of 5 years imprisonment, a maximum fine of \$ 250,000, and a term of supervised release of at least 2 and not more than 3 years, as well as any restitution ordered by the Court.

Therefore, the total potential sentence carried under the counts to which defendant will plead guilty is 25 years imprisonment and a \$1,250,000 fine, a term of supervised release, as well as any restitution ordered by the Court.

9. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$50 on each count to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of <sup>250</sup>\$500 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court. *J*

10. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges 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, 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 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 indictment or 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 government 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.

(f) Defendant understands that he has a right to have the charges prosecuted by an indictment returned by a concurrence of twelve or more members of a legally constituted grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

11. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and only may appeal the validity of this plea of guilty or the sentence.

12. Defendant understands that the information in this case and this Plea Agreement are matters of public record and may be disclosed to any party.

13. 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 charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing. Defendant understands that the government has the right to seek defendant's truthful testimony before a grand jury or District Court.

14. This Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(e)(1)(C). That is, the parties have agreed as follows:

(a) The parties have agreed that the sentence imposed by the Court shall include a term of imprisonment of 15 months in the custody of the Bureau of Prisons.

(b) The parties have agreed that the sentence imposed by the Court shall include the payment of a fine of \$1,250,000, with conditions of payment as set forth below. The parties have agreed that an upward departure from the fine guideline range is warranted, and should be imposed, pursuant to Guideline Section 5E1.2, Application Note 4, because a fine within the applicable fine guideline range would not be sufficient to ensure an adequate punitive fine. The parties have agreed that the fine will be paid as follows: Defendant will pay \$1,250,000 in cash to the

government on the date of sentencing. It is agreed that \$750,000 will be placed in an escrow account on or before the date of defendant's arraignment. The escrow account will be maintained by the Clerk of the Court for the Northern District of Illinois, unless the parties agree in writing that the escrow account will be maintained elsewhere. Defendant will pay the remaining \$500,000 into the same escrow account at least three days prior to the date of sentencing.

(c) Other than the agreed term of incarceration, and the agreed fine, the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed term of incarceration and the agreed fine set forth above, the defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(e)(2) and (4). If, however, the Court refuses to impose the agreed term of incarceration or the agreed fine set forth herein, or otherwise refuses to accept the defendant's plea of guilty, the Agreement shall become null and void and neither party will be bound thereto.

15. The parties have agreed that the terms of this Plea Agreement are conditioned upon defendant Edward H. Pruim's entering into a Plea Agreement with the government, and his entry of a plea of guilty being accepted by the Court, and is further conditioned upon defendant Edward H. Pruim's being sentenced upon said Plea Agreement.

16. 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. He further understands



that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

17. In the event that the defendant is sentenced pursuant to the terms of this plea agreement, and provided that there is no subsequent breach of the plea agreement, the United States agrees that it will not seek additional criminal charges, penalties, fines, or forfeitures against the defendant, ROBERT J. PRUIM, or XL Disposal Corporation for the events that occurred during 1987 through and including 1990, which occurred in the Northern District of Illinois and which are described in this plea agreement, namely the payment of bribes to Thomas O'Connor. However, nothing in this Agreement limits the United States in the prosecution of the defendant, ROBERT J. PRUIM or X L Disposal in other districts or for criminal conduct which is not disclosed in this plea agreement.

18. 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.

19. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

20. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: September 24, 1993

J

Michael J. Shepard  
MICHAEL J. SHEPARD  
UNITED STATES ATTORNEY

Robert J. Prum  
ROBERT J. PRUM  
Defendant

Jacqueline Stern  
JACQUELINE STERN  
Assistant United States Attorney

Jeffrey B. Steinback  
JEFFREY B. STEINBACK  
Attorney for Defendant

Steven A. Miller  
STEVEN A. MILLER  
Assistant United States Attorney

Charles B. Sklarsky  
CHARLES B. SKLARSKY  
Attorney for Defendant

Ex 27, P. 41

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**FILED**

UNITED STATES OF AMERICA )

v. )

EDWARD H. PRUIM )

No. 93CK682-1 SEP 24 1995

H. STUART CUNNINGHAM, CLERK  
UNITED STATES DISTRICT COURT

**PLEA AGREEMENT**

This Plea Agreement between the United States Attorney for the Northern District of Illinois, MICHAEL J. SHEPARD, and the defendant, EDWARD H. PRUIM, and his attorneys, JEFFREY B. STEINBACK and CHARLES B. SKLARSKY, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(e)(1)(C), as more fully set forth in Paragraph 14, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, MICHAEL J. SHEPARD, United States Attorney for the Northern District of Illinois, and the defendant,

EX 271 P. 42  
10

EDWARD H. PRUIM, and his attorneys, JEFFREY B. STEINBACK and CHARLES B. SKLARSKY, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the information in this case with five counts of mail fraud, in violation of Title 18, United States Code, Section 1341.

2. Defendant has read the charges against him contained in the information, and those charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Counts One through Five, inclusive, of the information in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One through Five, inclusive, of the information in this case. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

(a)(1) With respect to Count One of the information, beginning in or about December 1988 and continuing until in or about June 1991, at Chicago and Crestwood, and elsewhere, in the Northern District of Illinois, Eastern Division, defendants EDWARD H. PRUIM, Robert J. Pruum, and Thomas O'Connor, devised, intended to devise, and participated in a scheme to defraud the City of Chicago, by depriving the City of Chicago of defendant THOMAS O'CONNOR's honest services by means of false and fraudulent representations, pretenses, and promises.

Defendants EDWARD H. PRUIM and Robert J. Pruim gave and promised to give defendant Thomas O'Connor cash, property, loans, and other things of value, totalling at least \$150,000, in order to influence defendant Thomas O'Connor in the performance of acts related to his employment with the City of Chicago.

Defendant Thomas O'Connor promised to use his position, and did use his position, as an employee of the City of Chicago to aid and assist defendants EDWARD H. PRUIM and Robert J. Pruim and their company XL Disposal in their business dealings with the City of Chicago. Defendant Thomas O'Connor promised to provide, and did provide information gained in his position as General Foreman of Dumps to his co-schemers on matters that he thought would be useful to their business and business dealings with the City of Chicago. In addition, defendant Thomas O'Connor promised to take any action that he could, and did engage in various actions to help out his co-schemers in their business dealings with the City of Chicago.

Throughout the year of 1989, defendants EDWARD H. PRUIM and Robert J. Pruim gave defendant Thomas O'Connor cash bribes in the amount of \$500 on a weekly or bi-weekly basis, resulting in bribe payments of at least \$20,000. In addition, defendant EDWARD H. PRUIM admits that the government's evidence would show that for at least six months during 1988, defendants EDWARD H. PRUIM and Robert J. Pruim gave defendant Thomas O'Connor cash bribes in the amount of \$500 on a weekly or bi-weekly basis, resulting in bribe payments of at least \$10,000. Defendant EDWARD H. PRUIM further admits that

in April 1988, defendant EDWARD H. PRUIM gave defendant Thomas O'Connor approximately \$9000 so that he could purchase a boat.

During the first six months of 1990, defendants EDWARD H. PRUIM and Robert J. Pruim gave defendant Thomas O'Connor cash bribes in the amount of \$500 every two or three weeks, resulting in payments of at least \$3000. During June, July, and August of 1990, defendants EDWARD H. PRUIM and Robert J. Pruim gave defendant Thomas O'Connor cash bribes, resulting in payments of \$3000.

On or about December 9, 1988, defendants EDWARD H. PRUIM and Robert J. Pruim purchased a \$30,000 Certificate of Deposit, which they posted as collateral on behalf of defendant Thomas O'Connor, so that he could obtain a \$30,000 personal bank loan. After defendant Thomas O'Connor obtained the \$30,000 loan, he used the money to purchase the house located on Bass Lake in Indiana that he wanted to buy.

Throughout 1989, defendants EDWARD H. PRUIM and Robert J. Pruim gave defendant Thomas O'Connor \$1000 a month in cash, totalling approximately \$12,000, which defendant Thomas O'Connor used to make monthly payments on the \$30,000 loan described above.

In 1989, defendant EDWARD H. PRUIM helped pay for a trip to Disneyland in Florida for defendant Thomas O'Connor and his family. Defendant EDWARD H. PRUIM paid for six round trip airplane tickets from Chicago, Illinois to Orlando, Florida for defendant Thomas O'Connor and his family. Defendant EDWARD H. PRUIM also paid for a rental car, Disneyland passes, and accommodations at Disney Village Resort. The total cost was approximately \$4100. In

addition, defendant EDWARD H. PRUIM gave defendant Thomas O'Connor a \$3,000 check made out to cash, for use in connection with the trip to Florida.

On or about November 30, 1989, defendants EDWARD H. PRUIM and Robert J. Pruim gave defendant Thomas O'Connor a \$3,000 cash bribe. Defendants EDWARD H. PRUIM and Robert J. Pruim gave defendant Thomas O'Connor a check in the amount of \$3500, which was drawn on an account belonging to X L Disposal. Defendant Thomas O'Connor obtained \$3000 cash by depositing the \$3500 check into a bank account maintained in the name of X-L Repair, and receiving \$3000 back from the deposit. Defendant EDWARD H. PRUIM signed a deposit slip authorizing the split deposit.

On or about January 5, 1990, defendant EDWARD H. PRUIM entered into a sham real estate contract with defendant Thomas O'Connor, in an attempt to make it appear that the house owned by defendant Thomas O'Connor located on Bass Lake in Indiana (hereinafter referred to as the "Indiana house") was under contract to be sold, when in fact, no legitimate agreement to purchase or sell the Indiana house existed.

On or about January 23, 1990, defendants EDWARD H. PRUIM and Robert J. Pruim gave defendant Thomas O'Connor a cashier's check for \$19,851.36. Defendant Thomas O'Connor used this money to pay off the balance due on the \$30,000 loan that he had obtained in 1988. After defendant Thomas O'Connor paid off the \$19,851.36 balance on his loan, defendant Robert J. Pruim redeemed the Certificate of Deposit which had been used to secure the loan.

In or about January 1990, defendant EDWARD H. PRUIM arranged for another individual to enter into a sham real estate transaction with defendant Thomas O'Connor, in order to make it appear that the Indiana house owned by defendant Thomas O'Connor had been purchased by the other individual, when in fact no such purchase had been made. As part of this sham transaction, title to the property was transferred into the name of the other individual, but defendant Thomas O'Connor maintained possession, custody and control of the Indiana house. The agreed purchase price for the Indiana house was approximately \$58,000. Those monies were paid by defendants EDWARD H. PRUIM and Robert J. Pruim. On or about January 31, 1990, defendants EDWARD H. PRUIM and Robert J. Pruim gave defendant Thomas O'Connor a cashier's check for \$29,681. On or about February 8, 1990, defendants EDWARD H. PRUIM and Robert J. Pruim, gave defendant Thomas O'Connor a cashier's check for \$29,024.16, so that he could pay off a mortgage in that amount which was outstanding against the Indiana house.

On August 25, 1990, defendant EDWARD H. PRUIM promised to pay \$30,000 to defendant Thomas O'Connor. Defendant EDWARD H. PRUIM and defendant Thomas O'Connor decided that the Indiana house would be sold, and the proceeds would be split between them. Defendant EDWARD H. PRUIM promised that defendant Thomas O'Connor would receive \$30,000 from the proceeds. Shortly thereafter, defendant EDWARD H. PRUIM suggested postponing the sale of the Indiana house in order to prevent detection of their corrupt activities, but offered to give defendant Thomas O'Connor \$10,000 in cash, as an

Ex 27, p. 47



advance on monies that defendant Thomas O'Connor would receive from the proceeds on the sale of the Indiana house. That \$10,000 was paid as described below:

On September 11, 1990, defendants EDWARD H. PRUIM and Robert J. Pruum gave defendant Thomas O'Connor \$3,000 in cash, as partial payment of the \$10,000. Defendant Robert J. Pruum delivered the cash to defendant Thomas O'Connor's home, at approximately 10 o'clock at night. Defendant EDWARD H. PRUIM arranged for the \$3,000 bribe payment to be made, and subsequently confirmed that defendant Robert J. Pruum had met with defendant Thomas O'Connor as arranged.

On September 12, 1990, defendant EDWARD H. PRUIM stated that he needed another day to get more cash because they had to trickle the money through their accounts.

On September 14, 1990, defendant EDWARD H. PRUIM gave defendant Thomas O'Connor \$2,000 in cash. Defendant EDWARD H. PRUIM explained that installment payments were being made in order to make it harder to trace the money.

On September 20, 1990, defendant EDWARD H. PRUIM gave defendant Thomas O'Connor \$2,000 in cash.

On September 28, 1990, defendants EDWARD H. PRUIM and Robert J. Pruum gave defendant Thomas O'Connor \$2,000 in cash.

On October 18, 1990, defendant EDWARD H. PRUIM gave defendant Thomas O'Connor \$1,000 in cash as the final payment of the \$10,000 bribe that had been promised to him on September 5, 1990.

On June 18, 1991, defendant EDWARD H. PRUIM told FBI agents that he had never paid bribes to any City of Chicago employee. In addition, defendant EDWARD H. PRUIM falsely claimed that the sale of the Indiana house was a legitimate sale, and that he had loaned money to the purchaser, when in fact defendant EDWARD H. PRUIM knew that the purchaser was not actually buying the house or paying for it.

Defendants EDWARD H. PRUIM, Robert J. Pruum, and Thomas O'Connor misrepresented, concealed, and hid, and caused to be misrepresented, concealed, and hidden, acts done in furtherance of the scheme described above and the purposes of those acts.

In or about April 1989, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant EDWARD H. PRUIM, for the purpose of executing the aforesaid scheme, knowingly caused to be placed in an authorized depository for mail matter, to be delivered by the Postal Service according to the directions thereon, an envelope addressed to defendant Thomas O'Connor, at his residence in Chicago, Illinois, containing a letter from Society Bank, Knox, Indiana, relating to the release of a mortgage on a house located on Bass Lake in Indiana which was owned by defendant Thomas O'Connor, all in violation of 18 U.S.C. § 1341.

(b) As to Counts Two through Five, defendant EDWARD H. PRUIM reaffirms the facts set forth above, and further admits that for the purpose of executing the aforesaid scheme, he knowingly caused to be placed in an authorized depository for mail matter, to be

delivered by the Postal Service according to the directions thereon, the following:

(2) an envelope addressed to defendant EDWARD H. PRUIM, at his residence in Palos Heights, Illinois, containing a monthly statement for his American Express charge card, including a charge for six round trip airplane tickets from Chicago, Illinois to Orlando, Florida in the sum of \$1730, and a charge for a rental car and accommodations at Disney Village Resort in the sum of \$2811;

(3) an envelope addressed to Pruim Development, located in Palos Heights, Illinois, containing a bank statement for a bank account in the name of Pruim Development, together with a cancelled check drawn on that account, in the amount of \$3,000, made payable to cash, signed by the defendant EDWARD H. PRUIM, and endorsed by the defendant Thomas O'Connor;

(4) an envelope addressed to X-L Repair, located in Palos Heights, Illinois, containing a bank statement for a bank account in the name of X-L Repair, which reflected a monetary transaction that occurred on November 30, 1989;

(5) an envelope addressed to X-L Disposal Corp., located in Crestwood, Illinois, containing a bank statement for a bank account in the name of X-L Disposal Corp., together with a cancelled check drawn on that account, in the amount of \$3,500, made payable to the defendant EDWARD H. PRUIM, and signed by the defendant Robert J. Pruim; all in violation of 18 U.S.C. § 1341.

6. For purposes of applying the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28,

United States Code, Section 994, the parties agree on the following points:

a. Pursuant to Guideline § 2C1.7(a), the base offense level is 10.

b. Pursuant to Guideline §§ 2C1.7(b)(1)(A), 2F1.1(b)(1)(H), and 2C1.1 (Background notes), the base offense level should be increased by 7 levels based on the amount of the bribes paid, since the benefit derived from the bribes and the loss, if any, to the City of Chicago cannot be accurately determined, and the bribe payments were more than \$120,000 but did not exceed \$200,000.

c. Pursuant to Guideline § 3D1.2, Counts One through Five should be grouped together into a single group because all of the Counts involve substantially the same harm; therefore the offense level should not be increased as a result of multiple counts.

d. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline 3E1.1, a two-level reduction in the offense level is appropriate.

e. Defendant has given the government timely notice of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to

allocate its resources efficiently, within the meaning of Guideline 3 E1.1(b), and has provided certain information to the government which may provide investigative leads; a 1 point reduction in the offense level is therefore appropriate, provided the court determines the offense level to be 16 or greater prior to the operation of Guideline 3E1.1(a).

f. The offense level therefore is level 14.

g. Based on the facts known to the government, the defendant's criminal history points equal zero and the defendant's criminal history category is I.

h. Based on the calculations set forth above, the parties agree that defendant's criminal history category is I, and the offense level is 14, which results in a guideline range of 15 to 21 months.

i. The defendant and his attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected, or amended by either party prior to

sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, or amendments, and the defendant shall not have a right to withdraw his plea on the basis of such corrections or amendments.

8. Defendant understands the counts to which he will plead guilty carry the following penalties:

(a) Counts One through Five each carry a maximum penalty of 5 years imprisonment, a maximum fine of \$250,000, and a term of supervised release of at least 2 and not more than 3 years, as well as any restitution ordered by the Court.

Therefore, the total potential sentence carried under the counts to which defendant will plead guilty is 25 years imprisonment and a \$1,250,000 fine, a term of supervised release, as well as any restitution ordered by the Court.

9. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$50 on each count to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of <sup>250</sup>~~500~~ at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

10. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges 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, 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 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 indictment or 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 government 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.

(f) Defendant understands that he has a right to have the charges prosecuted by an indictment returned by a concurrence of twelve or more members of a legally constituted grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

11. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and only may appeal the validity of this plea of guilty or the sentence.



12. Defendant understands that the information in this case and this Plea Agreement are matters of public record and may be disclosed to any party.

13. 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 charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing. Defendant understands that the government has the right to seek defendant's truthful testimony before a grand jury or District Court.

14. This Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(e)(1)(C). That is, the parties have agreed as follows:

(a) The parties have agreed that the sentence imposed by the Court shall include a term of imprisonment of 21 months in the custody of the Bureau of Prisons.

(b) The parties have agreed that the sentence imposed by the Court shall include the payment of a fine of \$1,250,000, with conditions of payment as set forth below. The parties have agreed that an upward departure from the fine guideline range is warranted, and should be imposed, pursuant to Guideline Section 5E1.2, Application Note 4, because a fine within the applicable fine guideline range would not be sufficient to ensure an adequate punitive fine. The parties have agreed that the fine will be paid as follows: Defendant will pay \$1,250,000 in cash to the

government on the date of sentencing. It is agreed that \$750,000 will be placed in an escrow account on or before the date of defendant's arraignment. The escrow account will be maintained by the Clerk of the Court for the Northern District of Illinois, unless the parties agree in writing that the escrow account will be maintained elsewhere. Defendant will pay the remaining \$500,000 into the same escrow account at least three days prior to the date of sentencing.

(c) Other than the agreed term of incarceration, and the agreed fine, the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed term of incarceration and the agreed fine set forth above, the defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(e)(2) and (4). If, however, the Court refuses to impose the agreed term of incarceration or the agreed fine set forth herein, or otherwise refuses to accept the defendant's plea of guilty, the Agreement shall become null and void and neither party will be bound thereto.

15. The parties have agreed that the terms of this Plea Agreement are conditioned upon defendant Robert J. Pruum's entering into a Plea Agreement with the government, and his entry of a plea of guilty being accepted by the Court, and is further conditioned upon defendant Robert J. Pruum's being sentenced upon said Plea Agreement.

16. At the time of sentencing, defendant EDWARD H. PRUIM will request that the Court postpone his surrender date for incarceration until after his brother defendant Robert J. Pruum has completed his sentence of incarceration. The government will not

object to the Court's granting the defendant's request for a delayed surrender date, pursuant to § 3143(a), for a reasonable period of time. The government will take no position on what constitutes a reasonable period of time under the circumstances of this case.

17. 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. He further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

18. In the event that the defendant is sentenced pursuant to the terms of this plea agreement, and provided that there is no subsequent breach of the plea agreement, the United States agrees that it will not seek additional criminal charges, penalties,

finer, or forfeitures against the defendant, EDWARD H. PRUIM, or XL Disposal Corporation for the events that occurred during 1987 through and including 1990, which occurred in the Northern District of Illinois and which are described in this plea agreement, namely the payment of bribes to Thomas O'Connor. However, nothing in this Agreement limits the United States in the prosecution of the defendant, EDWARD H. PRUIM or X L Disposal in other districts or for criminal conduct which is not disclosed in this plea agreement.

19. 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.

20. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

21. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE:

September 24, 1993 J

Michael J. Shepard  
MICHAEL J. SHEPARD  
UNITED STATES ATTORNEY

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