

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

UNITED STATES OF AMERICA,

Plaintiff

Case No. 1:06-CR-279

vs.

Hon. Richard Alan Enslin

DAVID MARTIN ROEPKE,

Defendant

-----/

**DEFENDANT'S SENTENCING MEMORANDUM
AND OBJECTIONS TO THE GUIDELINE CALCULATIONS**

1. Overview

On November 21, 2006, Mr. Roepke entered a plea to one count of money laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i), 1344, and 2. Mr. Roepke is scheduled to be sentenced on April 19, 2007.

The pre-sentence writer computed the guidelines as follows:

Base Offense Level based on \$530,000 of laundered funds (PSIR, para. 78)	22
Conviction for 18 U.S.C. 1956 (PSIR, para. 79)	2
Sophisticated Means (PSIR, para. 80)	2
Obstruction of Justice (PSIR, para. 83)	2
Total Offense Level (PSIR, para. 84)	28
Criminal History Score (PSIR, para. 91)	I

2. Documents Signed by Mr. Roepke

The pre-sentence writer has taken the position that Mr. Roepke signed two leases. This factual assertion played a role in the pre-sentence writer's decision to deny acceptance (PSIR, para. 85) and in the decision not to treat Mr. Roepke as a minor participant. (PSIR, Addendum, p. 3).

Mr. Roepke has consistently taken the position that he did not sign any of the actual lease agreements with creditors.

In an effort to address this discrepancy, undersigned counsel asked for copies of the documents which Mr. Roepke had signed. FBI agent Roberta Gilligan provided those copies and they are attached to this memorandum for the Court's information.

The two documents provided by the FBI are not leases. Rather, they are internal corporate documents which authorize James Horton to act on behalf of the corporation and to enter into two specific leases. The documents memorialize events that took place at board meetings purportedly held on November 20, 2002. At that time, Mr. Roepke was corporate secretary, and his signature merely affirmed what the board of directors had authorized. There is nothing about the documents which indicate that Mr. Roepke was a corporate director. There is nothing about the documents which indicate that Mr. Roepke had a voice in any decision. Rather, the documents on their face indicate only that Mr. Roepke fulfilled a ministerial task.

For these reasons, the defense respectfully submits that the pre-sentence writer is factually incorrect when she characterizes these documents as actual leases and uses these documents as reasons to make decisions about guideline variables.

3. Objections to Guideline Calculations: Sophisticated Laundering

U.S.S.G. 2S1.1(b)(3) states that 2 levels should be added if “the offense involved sophisticated laundering”. Application Note 5 states that “sophisticated laundering” “means complex or intricate offense conduct pertaining the execution or concealment of the 18 U.S.C. 1956 offense”. An example of sophisticated laundering is the use of fictitious entities or shell corporations to accomplish the laundering. Application Note 5(A)(i) and (ii).

The pre-sentence writer justified this adjustment by reasoning that the “funds that comprise the count of conviction were transferred from the bank account of a shell company Teleservices”. (PSIR, para. 80).

The defense disagrees with this enhancement.

FBI Agent Gilligan’s affidavit provides insight into the facts which support the defendant’s objection. The affidavit was submitted on November 30, 2004 in conjunction with an Application for a Seizure Order. The case number was 1:04-MJ-370, and Magistrate Judge Brenneman was the judicial officer to whom the affidavit was submitted. The affidavit is also available on the Internet.

Specifically, the affidavit states that Teleservices Group maintained a bank account at Silicon Valley Bank of Santa Clara, California. (Aff., para. 51). Mr. Roepke was a signatory on this account, along with Barton Watson, Krista Kotlarz, and James Horton. (Aff., para. 51).

Paragraph 53 identifies the owners and operators of Teleservices as Barton Watson, Krista Watson (Kolartz), and James Horton. Teleservices was a shell corporation used by these three company officials to defraud banks and finance companies. (Aff., para. 54). Mail addressed to Teleservices Group and telephone messages were forwarded to these officials at the

company's Grand Rapids office. (Aff., para. 69).

The agents learned that the persons answering calls for Teleservices Group were given a script which stated "if a caller asks for Jim Horton, tell them no such person is at the company". (Aff. Para. 70).

Dummy invoices for Teleservices were created at the direction of James Horton, Barton Watson, and Krista Watson. (Aff., para. 71). The invoices were sent to Horton and the Watsons for final review and approval. (Aff., para. 71).

Another insider named Jonathan Mast created the Teleservices' web site. (Aff., para. 72).

James Horton instructed employees to produce letter head for Teleservices. (Aff., para. 74). Jonathan Mast answered calls on behalf of Teleservices using an alias. (Aff., paras. 74 and 75). James Horton had instructed Jonathan Mast to use the name "Dan Roland" when answering calls meant for Teleservices. (Aff., para. 75).

In sum, the defendant did not set up the shell corporation, and he did not operate it. While he was a signatory on the bank account, he was not the one in charge of manipulating the money which went into or out of that bank account.

In contrast to the combined efforts of the Watsons, Mr. Horton, and Mr. Mast relative to Teleservices, Mr. Roepke's actions were extremely simple. Mr. Horton ordered him to transfer money from the Teleservices accounts to a variety of people. (PSIR, para. 54). Mr. Roepke followed those orders, and the money for which he is being held responsible was transferred. (PSIR, paras. 39-42). There was no attempt to conceal the transfer. The bank account at Silicon Bank was real. The funds in that account were real. There was nothing sham about them.

In support of this argument, the defense requested copies of the wire transfer documents

signed by Mr. Roepke. Copies of the documents provided by FBI agent Gilligan are attached as an exhibit to this memorandum. The documents make it clear that they are standard forms used by Silicon Valley Bank. The information on the forms is not confidential or proprietary. Rather, all that is filled in are: 1) name of the beneficiary of the transfer; 2) information about the account to which the transfer is to be made; 3) information about the account at Silicon Valley Bank from which the transfer is to be made; and 4) signature. The defense submits that the documents themselves make it clear that sophisticated means were not used to accomplish the transfer.

Moreover, Application Note 5 makes it clear that the sophisticated means examples refer to efforts to conceal the money laundering. While Mr. Horton, Mr. Watson, Ms. Watson, and Mr. Mast made such efforts, Mr. Roepke made absolutely no effort to conceal what were basically clerical acts. The openness of Mr. Roepke's actions is made clear by the timing. Specifically, the transfers were made on a Friday and the seizure orders were signed on the following Monday. All of the transfers that Mr. Roepke made were recovered, in large part because of that openness. For these reasons, Mr. Roepke submits that the facts of his case are not the type of facts envisioned by Application Note 5.

Mr. Roepke is thus respectfully asking this Court to sustain his objection and to conclude that his actions did not constitute "sophisticated means".

4. Objections to Guideline Scoring: Mitigating Role

Mr. Roepke requested a 2 level reduction on the grounds that he was a minor participant, pursuant to U.S.S.G. 3B1.2(b).

The pre-sentence writer rejected that request for the following reasons:

- a. The pre-sentence writer cited three Sixth Circuit cases for the proposition that a

defendant should not be considered a minor participant in a conspiracy when that defendant is only held responsible for the quantities for which that defendant is personally responsible.

United States v. Campbell, 279 F.3d 392 (6th Cir. 2002); *United States v. Wilson*, 94 Fed.Appx. 294 (6th Cir. 2004); *United States v. Salas*, 455 F.3d 637 (6th Cir. 2006);

b. The pre-sentence writer states that Mr. Ropke was not charged with a conspiracy and that he is only being held responsible for his personal acts of money laundering; and

c. The pre-sentence writer also states that Mr. Roepke signed documents on behalf of various of the companies.¹

(PSIR, addendum, p. 3).

The cases cited by the pre-sentence writer were all drug cases. In *Salas*, the defendant was convicted for possessing 500 grams or more of cocaine. The defendant was stopped for a traffic violation and a search of the vehicle led to the discovery of 2,886 grams of cocaine and over \$20,000 in currency. The district court denied a reduction for minor role “because Salas was held responsible only for the drugs and cash found in his possession”. 455 F.3d at 640.

On appeal, the Sixth Circuit affirmed. The Court began its analysis by holding that a “defendant who is accountable under section 1B1.3 only for the conduct in which he is personally involved and who performs a limited function in concerted criminal activity **is not precluded from consideration for mitigating role adjustment**, citing U.S.S.G. 3B1.2, cmt., n. 3(A). 455 F.3d at 643 (emphasis added). Since the mitigating role adjustment favors the defendant, it is the defendant who has the burden of proving minor role by a preponderance of

¹ Two of these documents were alleged fraudulent leases. The defense disagrees with this factual assertion and addresses that issue *infra*.

the evidence.

The Sixth Circuit affirmed because the defendant did not establish that he played a relatively minor role with regard to the acts for which he was held responsible. The defendant knew how much cash and drugs he was transporting and expected to be paid for his actions. There was also no doubt that the defendant knew that his actions were illegal. The Court also concluded that the defendant had played an indispensable role in transporting the drugs between Kentucky and Florida. The Court noted that the defendant had rented a car and had attempted to mask the smell of the cocaine. All of these factors justified denial of a minor role adjustment.

The other two cases cited by the pre-sentence writer also make it clear that they were decided on the particular facts of those cases and that a sentencing court is authorized to grant the mitigating role adjustment if the defendant can establish that he is both less culpable than most participants and substantially less culpable than the average participant. *E.g., United States v. Lloyd*, 10 F.3d 1197, 1220 (6th Cir. 1993).

The defense is respectfully asking this Court to grant a 2 level reduction for mitigating role. Specifically.

A. At the threshold, a wire transfer is not itself inherently illegal. What makes it illegal in the instant case is the fact that the money in the Silicon Bank account was obtained by defrauding a bank and a finance company. (PSIR, para. 33). The monies in the account had been deposited 12 days and 2 days respectively before the FBI raid. (PSIR, para. 33). There is no evidence that Mr. Roepke played any role in the underlying transactions which led to almost \$8 million dollars being deposited into the Silicon Valley Bank account. There is no evidence that Mr. Roepke had specific knowledge, based on his participation in the underlying transactions,

that this \$8 million dollars was obtained by fraud.

There is certainly evidence that Mr. Roepke suspected that there were problems at Cyberco and that these suspicions were confirmed by the FBI raid on November 17, 2004.² It is these suspicions and his participation in the fund transfers that make him guilty.

However, as to the source of the money transferred in November of 2004, Mr. Roepke played a minor role as to Mr. Horton and the other 5th floor insiders who were personally responsible for orchestrating the lease deals and for causing the money to be deposited into the account.³

B. The offense of conviction is a \$265,000 wire transfer to Cyberco's account at Huntington National Bank. (PSIR, para. 32). This transfer was made because Mr. Horton told Mr. Roepke to transfer the money. The defense submits that as to Mr. Horton, the other direct participant in the transaction, Mr. Roepke played a minor role. In this regard, it is important to note that Mr. Horton admitted that Mr. Roepke only knew as much as Mr. Horton wanted him to know. (PSIR, para. 66). The defense submits that this admission supports a conclusion that Mr. Roepke played a subservient role and did what he was told; and

C. The transfers made after the FBI raid were also made at the direction of Mr. Horton.

² As the FBI affidavit makes clear, there were other employees at Cyberco who were suspicious about the company's activities. (E.g., Aff., paras. 64-77). When approached, these individuals shared their suspicions with the agents. Similarly, Mr. Roepke spoke candidly with the agents when asked to do so.

³ Paragraph 92 of the affidavit describes the 5th floor of the corporate headquarters as the location of the executive suites. These suites were extravagantly furnished. The agents were able to document more than \$2 million dollars that was spent on remodeling. As the facts of the case make clear, the 5th floor was occupied by Mr. Horton, Mr. Watson, Ms. Watson and other insiders. Mr. Roepke's office, by contrast, was on the 4th floor.

(PSIR, paras. 35, 39-42 and 54). Mr. Horton himself requested a number of other transfers, including a \$1,000,000 transfer to a Hong Kong, China bank that was never recovered. (PSIR,, paras. 36-38). These transfers were much larger than the transfers requested by Mr. Roepke, indicating Mr. Horton's greater role in the money laundering activity. (PSIR, paras. 35-42).

In sum, the defense respectfully submits that he has shown that he was both less culpable than most participants and substantially less culpable than the average participant. *E.g., United States v. Lloyd*, 10 F.3d 1197, 1220 (6th Cir. 1993). This showing applies not only to the massive frauds perpetrated by the Cyberco insiders but to the specific money laundering transactions in which Mr. Roepke participated.

5. Objections to the PSIR: Obstruction of Justice

U.S.S.G. 3C1.1 authorizes a 2 level aggravator if a defendant willfully obstructs justice.

Obstruction includes acts taken during the investigative stage of the case.

The pre-sentence writer's rationale for this adjustment is set forth in paragraph 83 of the PSIR:

After becoming aware of the investigation, Mr. Roepke transferred some of the illegal fraud proceeds to a personal account to hide them from investigators.

Paragraph 41 of the PSIR states:

On or about November 19, 2004, Mr. Roepke requested a wire transfer from the Teleservices bank account to his personal bank account at Macatawa Bank. On November 22, 2004, U.S. Magistrate Judge Hugh W. Brenneman, Jr. Signed a seizure warrant for these funds, which were subsequently seized.

A number of wire transfers were requested after the raid. As set forth in paragraphs 34-42, Mr. Horton requested that \$3,200,000 be transferred to various locations. Of that amount, only \$2,200,000 was recovered. (PSIR, para. 38). Mr. Roepke requested 6 transfers totaling

\$265,000 after the raid (PSIR, paras. 35, 39-42). All of the monies that he requested to be transferred were recovered. *Id.* One of the transfers was in the amount of \$25,000 and was deposited in his personal bank account. *Id.*

The defense does not dispute the fact that the \$25,000 wire transfer was made. The defense does dispute that the purpose of the transfer was to conceal funds from investigators.

As the applicable wire transfer form attached to this Memorandum makes clear, the transfer was a straight-forward request made on standard forms used by Silicon National Bank. There was no attempt to conceal Mr. Roepke's identity. The form includes his own name, his own address, and information about his own bank account. The form includes Mr. Roepke's contact telephone number.

This transfer stands in marked contrast to the \$1,000,000 which Mr. Horton transferred outside of the United States. (PSIR, para. 38). By transferring the money to a foreign bank, Mr. Horton made it much more difficult to locate, trace, and/or seize the money. Mr. Roepke's transfer was completely and honestly set forth in the wire transfer request form.

Very importantly, Mr. Roepke made no effort to spend or conceal the money prior to its seizure.

The defense also respectfully asks this Court to consider that the money was transferred because Mr. Horton told him to make the transfer. (PSIR, para. 54).

In addition, the defense respectfully asks this Court to consider that Mr. Roepke was completely cooperative with the investigators. Mr. Roepke's willingness to cooperate supports a conclusion that the money transfer, however ill-advised, was not made for the purpose of interfering with the investigation.

Another factor is that Mr. Roepke was not an insider. He did not know the full scope of what the insiders were doing. As Mr. Horton admitted, Mr. Roepke only knew what Mr. Horton wanted him to know. Thus, it is very likely that Mr. Roepke did not understand that following Mr. Horton's directions could potentially impede an investigation, the scope of which Mr. Roepke clearly didn't know.

FBI agent Gilligan's affidavit is supportive of this conclusion. Specifically, in its 54 pages, Mr. Roepke's name barely appears. The scheme was clearly controlled and operated by the insiders, primarily the Watsons and Mr. Horton.

For these reasons, the defense respectfully submits that Mr. Roepke did not obstruct justice when the \$25,000 wire transfer was made (or when the other 5 wire transfers were made after the raid).

The defense has located two cases which deal with scenarios where money was transferred after the defendant learned of the investigation. However, the defense submits that those cases are distinguishable and are therefore not reasons to overrule the defense's obstruction objection.

In *United States v. Shetty*, 130 F.3d 1324 (9th Cir. 1997) the defendant was convicted of subscribing to three false tax returns. The defendant had directed his wife to transfer \$280,000 to a Swiss bank account which she successfully accomplished. This transfer took place less than three weeks after the defendant learned that he was being criminally investigated. The defendant was assessed for obstruction of justice. He appealed, but the Ninth Circuit affirmed.

The Ninth Circuit relied on Application note 4(d) (then 3(d)) to U.S.S.G. 3C1.1 which states that obstruction of justice includes directing another person to conceal evidence.

The record indicated that the defendant learned that he was being audited via a letter dated June 20, 1990. On June 29, and July 2, 1990, a total of \$280,000 was withdrawn from savings accounts. Four cashier's checks totaling \$280,000 were made payable to the defendant's wife. The checks were not negotiated and became stale in September 1991. The defendant caused the four checks to be exchanged for a single check dated in September of 1991. The defendant learned of the criminal investigation on December 3, 1991. The cashier's check was voided on December 23, 1991, and on December 24, 1991, the proceeds of the check were wired to an account in Switzerland. The record also showed that the accounts were in his wife's name, that the wife did not work and therefore had no income, and that the source of the \$280,000 was income from the defendant's medical practice.

The Court concluded that the facts demonstrated that the defendant intended to conceal the money from the government. The timing of the checks demonstrated planning to conceal. The transfer of the money to a foreign bank was also an important component of the Court's decision to affirm the enhancement.

By contrast, in the instant case, the wires that Mr. Roepke requested after the raid were made at the direction of Mr. Horton. There was no attempt to conceal Mr. Roepke's relationship to the money. There was no transfer of the money outside of the United States.

Shetty did not hold that all transfers made after knowledge of an investigation are obstruction. Rather, it held that the specific facts of this case demonstrated an intent to conceal.

In sum, *Shetty* would support an obstruction adjustment as to Mr. Horton and the money transferred to Hong Kong. The defense submits that the case would not support the adjustment as to Mr. Roepke.

In *United States v. Brown*, 922 F.2d 1377 (7th Cir. 1991), the defendants were convicted of conspiracy to distribute marijuana, money laundering, tax evasion, and conspiracy to impede an IRS investigation. The evidence showed that when one of the defendants learned of the investigation, he gave approximately \$35,000 in cash and securities accumulated from his drug dealing to one of his co-defendants for safekeeping. The Seventh Circuit affirmed the enhancement, reasoning that the attempt to conceal cash and securities, knowing that the \$35,000 was drug money, constituted obstruction.

The factual distinction between *Brown* and the instant case is the fact that the defendant in *Brown* took steps to conceal the money so that the money would not be discovered by the authorities. By contrast in the instant case, there is no evidence that Mr. Roepke concealed his actions. The wire transfer instruction was in his own name. The information on the form was complete and correct. The money was transferred at the request of Mr. Horton. Mr. Roepke took absolutely no steps to conceal the whereabouts of the money, to spend the money, or to otherwise transfer the money from the bank account to which it had been originally transferred.

In sum and for all of the reasons stated, the defense is respectfully asking this Court to conclude that Mr. Roepke's act of transferring \$25,000 to his own account did not rise to the level of obstruction of justice.

6. Objections to the PSIR–Acceptance of Responsibility.

The pre-sentence writer did not recommend that Mr. Roepke receive acceptance of responsibility. (PSIR, para. 85). The primary reason was the obstruction of justice enhancement and the conclusion that Mr. Roepke's acceptance was not extraordinary.

At the threshold, if this Court sustains Mr. Roepke's obstruction adjustment, the defense

submits that his conduct would qualify him for a 3 level acceptance credit. Mr. Roepke willingly spoke with investigators (PSIR, paras. 43-54; 69-70) on two separate occasions. Mr. Roepke was honest with the investigators. He entered a plea to a felony information. He accepted responsibility during the pre-sentence interview. He is sorry for his actions and his remorse is genuine.

Even if this Court overrules Mr. Roepke's obstruction objection, the defense submits that Mr. Roepke's conduct after November 19, 2004 is the type of conduct which constitutes an extraordinary circumstance.

United States v. Gregory 315 F.3d 637 (6th Cir. 2003) illustrates the analysis. In *Gregory*, the defendant and his sister were convicted for possessing contraband in a prison and providing contraband in a prison respectively. The Sixth Circuit began by noting that when determining whether a case was extraordinary, "we must look at the relationship between his obstructive conduct and his acceptance of responsibility". 315 F.3d at 640. The Court stated that appropriate considerations include "the defendant's truthful admission of the offense conduct, the defendant's voluntary assistance to authorities in resolving the offense, and the timeliness of the defendant's conduct in affirmatively accepting responsibility for his actions". 315 F.3d at 640.

The record in *Gregory* showed that the defendant had sent a letter to his sister urging her not to cooperate. That was the act that caused the obstruction aggravator to be assessed. However, the Sixth Circuit concluded that his subsequent conduct "effectively undid" his obstruction for purposes of the acceptance credit. The Court noted that within a week after the transfer of contraband, the defendant admitted to accepting and swallowing the three balloons of drugs. The defendant agreed to cooperate, although he didn't want to get his sister into trouble.

The defendant followed through on his commitment and fully cooperated. He pled guilty. His obstructive conduct predated the indictment and the guilty plea.

All of these reasons convinced the Sixth Circuit to conclude that the defendant's conduct was they type of extraordinary conduct envisioned by the guidelines.

Similarly, Mr. Roepke's conduct demonstrates that he has accepted responsibility. Specifically, he talked with the investigators whenever asked to do so. He was completely cooperative with those investigators. He did not resist the seizure of the money transferred to his own account. He admitted the factual basis of his offense behavior. He conducted himself in a blameless manner while awaiting the government's charging decision. During that time, he uncovered a substantial embezzlement and was instrumental in causing the embezzler to be charged and convicted. When the decision was made to charge, he pled to a felony information. His allegedly obstructive conduct occurred prior to his guilty plea.

For all of these reasons, the defense submits that Mr. Roepke's facts are functionally identical to the facts in *Gregory* and that, as a result, his objection to not awarding acceptance should be sustained.

7. Objections–Base Offense Level

The defendant had objected to the base offense level, and that objection was partially resolved in his favor. Paragraph 78 of the pre-sentence investigation report proposes that the offense level be determined by section (a)(2) of U.S.S.G. 2S1.1. This resulted in a base offense level of 22.

The defense submits that the correct section is section (a)(1) of U.S.S.G. 2S1.1. That section states:

The offense level for the underlying offense from which the laundered funds were derived, if (A) the defendant committed the underlying offense (or would be accountable for the underlying offense under subsection a(1)(A) of 1B1.3 (relevant conduct); and (B) the offense level for that offense can be determined.

Subsection (a)(2) is only to be used if the conditions set forth in (a)(1) cannot be satisfied.

The defense submits that the underlying offense is fraud and that U.S.S.G. 2B1.1 would be the proper section to use in computing the base offense level.

The starting point is 2B1.1(a)(1) which states that 7 levels should be assessed if the offense of conviction has a maximum term of imprisonment of 20 years or more. 14 levels are then added if the loss is between \$400,000 and \$1,000,000. The base offense level would thus be 21 rather than 22.

7. Summary

The defendant is respectfully asking this Court to sustain his objections. If this Court agrees, the modified guideline calculation would be:

Base Offense Level	21
Conviction for section 1956	2
Minor Role	-2
Acceptance of Responsibility	-3
Total Offense Level	18
Guideline Range	27-33 months

The government has filed a Motion for Downward Departure based upon U.S.S.G. 5K1.1. The government has recommended a two-level reduction. Once this Motion is made, this Honorable Court can consider the totality of Mr. Roepke's cooperation with the government,

including his two proffers to the agents. This Court would have the authority to conclude that a greater cooperation reduction was warranted on the totality of the facts.

8. Discussion

Mr. Roepke is a 63 year old man who has lived an exemplary life but for his involvement with Cyberco. There are a number of mitigating factors in this case, which this Court could consider when deciding the appropriate sentence.

A. Mr. Roepke was not an insider. Unlike the three principal insiders, Mr. Watson, Ms. Watson, and Mr. Horton, Mr. Roepke did not devise the scheme, implement the scheme, or conceal the scheme from the financial institutions that were victimized.

He was not in the loop of information because Mr. Horton controlled that information and only told Mr. Roepke what Mr. Horton wanted him to know;

B. The scheme allowed the Watson couple to live an extravagant lifestyle. Paragraph 93 of the FBI affidavit describes part of that lifestyle:

The Watson's live in a house valued at around \$1 million. During the execution of the warrant [agents observed] extravagant furnishings, paintings, collectibles and sculptures, a vast wine collection and wine cellar, high end electronics throughout the home, and a 2000 Bentley, a 2003 Ferrari, and a 2004 Rolls Royce housed in the garage. A 2002 BMW X5 was parked in the driveway of the residence.

Paragraph 95 notes that the Rolls Royce cost \$367,932.84 and was paid for by a wire transfer originating from the Teleservices account to an account controlled by Krista Watson in the name of T-Services.

Paragraph 100 notes that the investigators found a certificate of deposit in the Watson couple's name valued at \$610,622.92.

Mr. Roepke did not live beyond his means. He was a salaried employee whose interest was in keeping his job;

C. A considerable amount of time passed between the November 2004 raid and the decision to charge Mr. Roepke in late 2006.

During that time, Mr. Roepke found a job and worked very hard at that job. While working on that job, Mr. Roepke unearthed a substantial embezzlement. Mr. Roepke informed his bosses about the embezzlement and worked diligently to assist in developing information about what had happened. Mr. Roepke's efforts were thus instrumental in the federal indictment, conviction, and sentencing of the embezzler.

Mr. Roepke's admirable conduct gives this Court an unusual opportunity to make an assessment about what kind of person Mr. Roepke really is. As this Court knows, many defendants have appeared before this Court and expressed remorse. This Court is left to wonder whether the expressions are genuine or just the product of an attempt at leniency.

In Mr. Roepke's case, this Court has an almost two-year window during which it can observe the facts surrounding Mr. Roepke's post-offense conduct. The defense respectfully suggests that this two-year window reflects the real David Roepke and respectfully asks this Court to consider those facts when formulating its sentence;

D. Mr. Roepke cooperated with the authorities. He met with them when asked to do so. He gave a truthful statement to the authorities. He admitted what he did. He tried to help in any way that he could. He tried to make amends for his conduct as best he could; and

E. As to the section 3553(a) factors, the defense respectfully submits that those factors weigh in his favor. This memo has discussed the nature and circumstances of Mr. Roepke's

offense behavior. It has also discussed the history and characteristics of Mr. Roepke. The latter considerations weigh heavily in Mr. Roepke's favor. The former considerations demonstrate that while Mr. Roepke committed an offense and must be consequenced, his behavior was far less culpable than that of the insiders.

Section 3553(a)(2)(A) directs this Court to look at the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment. The defense respectfully asks this Court to conclude that while the overall offense was extremely serious, Mr. Roepke's personal role in that offense was minor when compared to the insiders. The defense also respectfully asks this Court to conclude that the specific facts of this case would not preclude leniency to be a component of a just punishment.

Section 3553(a)(2)(B) states that the sentence should afford adequate deterrence to criminal conduct. The defense submits that Mr. Roepke is personally deterred. He had lived a blameless life before Cyberco and he has lived an exemplary life since. There is no reason to believe that Mr. Roepke will ever be in trouble again. As to public deterrence, Cyberco is a high profile case.

One of the two primary schemers committed suicide. Mr. Horton was sentenced to 90 months in prison. Mr. Mast and Barton Watson's mother Geraldine are yet to be sentenced, but they will receive sentences that will send a message to the public.

Krista Kotlarz Watson and Paul Wright have not pled and are scheduled for trial on September 10, 2007. Their trial and the likely outcome will also send a message to the community.

For all of these reasons, the defense respectfully suggests that a lenient response to Mr.

Roepke's circumstances will not send a negative message to the community.

Section 3553(a)(2)(C) directs the Court to impose a sentence which will protect the public from the defendant. The defense submits that Mr. Roepke poses absolutely no threat to the community and that, as a result, this factor does not preclude a lenient disposition.

Mr. Roepke submits that the remaining sections of 3553(a) are not relevant other than if Mr. Roepke can remain employed, he will be better able to pay restitution. Mr. Roepke is 63 and finding good-paying employment from scratch is always difficult when a person is of that age.

Conclusion

For all of the reasons stated, the defense respectfully asks this Court to sustain its guideline objections and to impose as lenient a sentence as this Court deems appropriate.

Respectfully submitted,

Grand Rapids, MI
April 12, 2007

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