

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

Criminal Action No.  
03-CR-436 (FJS)

PAUL H. KORNAK,

PLEA (AND COOPERATION)  
AGREEMENT

Defendant.

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GLENN T. SUDDABY, United States Attorney for the Northern District of New York (by Grant C. Jaquith, Supervisory Assistant U.S. Attorney, appearing) and PAUL H. KORNAK (with E. Stewart Jones, Esq., appearing) hereby enter into the following Plea Agreement regarding the disposition of certain criminal charges against the Defendant:

1. In return for the consideration described below, PAUL H. KORNAK agrees as follows:

a. The Defendant will withdraw his previous pleas of "Not Guilty" and enter pleas of "Guilty" to Counts 1, 15, and 48 of Indictment 03-CR-436. Count 1 charges the defendant with making and using a materially false statement, in violation of 18 U.S.C. § 1001(a)(3); Count 15 charges the defendant with mail fraud, in violation of 18 U.S.C. §§ 1341 and 1346; and Count 48 charges the defendant with criminally negligent homicide, in violation of 18 U.S.C. § 3 and New York Penal Law § 125.10.

b. The Defendant consents to the entry of an order directing him to pay restitution to the victims of his criminal conduct, whether or not the losses suffered by those victims resulted from the offense of conviction, including restitution to the following victims up to the following amounts (with the actual amounts to be determined by the court):

- i. Aventis Pharmaceuticals, Inc.: \$ 488,907.58
- ii. ILEX Oncology, Inc.: \$ 14,017.47
- iii. Department of Veterans Affairs: \$ 133,850.00

c. The Defendant will cooperate with the United States in the investigation and prosecution of others, as more fully set forth below.

2. **Potential Penalties.** PAUL H. KORNAK understands that his guilty pleas to Counts 1, 15, and 48 will subject him to the following potential penalties:

a. **Maximum term of imprisonment:** Count 1 – 5 years (18 U.S.C. § 1001); Count 15 – 20 years (18 U.S.C. § 1341); and Count 48 – 4 years (18 U.S.C. § 3 & New York Penal Law § 125.10).

b. **Supervised Release:** For each count, in addition to imposing any other penalty, the sentencing Court may require the Defendant to serve a term of supervised release of up to 3 years, to begin at the expiration of any term of imprisonment imposed upon him. (18 U.S.C. § 3583(b)) Should the Defendant be placed on a term of supervised release and subsequently violate any of the terms and conditions of that release before the expiration of such term, he may be sentenced to up to 2 years imprisonment in addition to any prison term previously imposed upon him and in addition to the statutory maximum term of imprisonment set forth above. (18 U.S.C. §

3583(e)). Under some circumstances, the Court may also extend the term of supervised release, and it may modify, reduce, or enlarge the conditions of such release.

c. Maximum fine: Count 1 – \$250,000 (18 U.S.C. § 3571(b)); Count 15 – In its discretion, the Court may impose an alternative fine of the greater of \$250,000 or twice the pecuniary gain to the Defendant or loss to victims resulting from the offense. [18 U.S.C. § 3571(b) & (d)/18 U.S.C. § 1341]; and Count 48 – \$250,000 (18 U.S.C. § 3571(b)).

d. Mandatory Restitution: Pursuant to the Mandatory Victim Restitution Act, the sentencing Court must order that the Defendant pay restitution to victims. (18 U.S.C. § 3663A).

e. Special Assessment: The Defendant will be required to pay an assessment of a total of \$300, which is due and payable at the time of sentencing. (18 U.S.C. § 3013) The Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$300, payable to the U.S. District Court at the time of his sentencing.

f. Interest and penalties: Interest and penalties may accrue, as a matter of law, on any unpaid financial obligation imposed as part of the Defendant’s sentence, from as early as the date of sentencing.

g. Collateral Consequences: Conviction of a felony under this Agreement may result in the loss of certain civil rights, including, but not limited to, the right to vote or the right to possess firearms.

3. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the Defendant agrees fully to disclose all assets in which he has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. The Defendant will promptly submit a completed

financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The Defendant promises that his financial statement and disclosures will be complete, accurate and truthful.

4. PAUL H. KORNAK agrees to cooperate with the United States as follows:

a. The Defendant will truthfully disclose all information with respect to the activities of the Defendant and others concerning all matters about which the U.S. Attorney's Office and law enforcement agencies designated by this Office may inquire of him.

b. The Defendant will cooperate fully with the U.S. Attorney's Office and the designated law enforcement agencies, in any manner requested, in any criminal investigation.

c. The Defendant will testify truthfully before the grand jury and/or at any trial or other proceeding with respect to any matters about which he may be questioned.

d. The Defendant will not reveal his cooperation or any information with respect to any related investigation or prosecution to anyone, without the prior consent of the U.S. Attorney's Office.

e. The Defendant will at all times give complete, truthful, and accurate information and testimony. The Defendant will neither attempt to protect any person who has been involved in criminal activity, nor will he falsely implicate anyone in criminal activity.

f. The Defendant consents to adjournments of sentencing pending the completion of his cooperation, as determined to be necessary by the U.S. Attorney's Office.

g. The Defendant will not commit any further crime whatsoever, nor will he violate any condition of release or supervision imposed by the Court.

5. **Elements of the Offense.** PAUL H. KORNAK understands that the legal elements of the offenses stated in Counts 1, 15, and 48, are as follows:

a. Count 1: The Defendant (1) knowingly and willfully; (2) made or used a false writing or document; (3) in relation to a matter within the jurisdiction of a department or agency of the United States; (4) with knowledge that it contained a materially false, fictitious, or fraudulent statement or entry. A statement is material if it has a natural tendency to influence, or is capable of influencing, a decision by the department or agency.

b. Count 15: (1) The defendant knowingly and willfully participated in a scheme or artifice to defraud; (2) another of money, property, or the intangible right to honest services; (3) furthered by the use of interstate mail. False pretenses or representations must have been material, and the defendant must have acted with intent to defraud.

c. Count 48: (1) At a place within the special maritime and territorial jurisdiction of the United States; (2) with criminal negligence; (3) the defendant caused the death of another. "Criminal negligence" is the failure of the Defendant to perceive a substantial and justifiable risk that death will occur or that such a circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

d. The Defendant admits each of the foregoing elements.

e. The parties incorporate herein by reference the sentencing factors and issues set forth in the stipulations [in paragraph 9] below. The Defendant agrees that the sentencing Court may make factual findings with respect to any and all sentencing factors and issues, including those referenced in the United States Sentencing Guidelines (without regard to whether they are ultimately

deemed to be “elements” of the offenses of conviction), whether or not such factors or issues have been admitted by the Defendant or stipulated by the parties. In making those findings, the Court may consider any reliable evidence, including hearsay. The Defendant consents to the determination of his sentence based upon such judicial factfinding and knowingly and voluntarily waives any right to have any such sentencing factors or issues charged in the Indictment or presented to and determined by a jury.

6. **Factual Basis for the Plea.** PAUL H. KORNAK admits the following facts, which establish his guilt of the offenses charged in Counts 1, 15, and 48:

a. Beginning in February of 1999, KORNAK was employed by Albany Research Institute, Inc., at the Stratton Veterans Affairs Medical Center, Albany, New York, initially as a Research Assistant and then as Study Director of VA Cooperative Studies. Beginning in October of 2000, KORNAK was employed by the Department of Veterans Affairs (at the Stratton Veterans Affairs Medical Center) as a Program Specialist, with duties which included coordination of research protocols. KORNAK was responsible for liaison planning, organizing, coordinating, implementing, directing, integrating, controlling, and evaluating all research elements in the oncology research program, which included VA Cooperative Studies and pharmaceutical protocols, as well as data management, adherence to system standards, and compliance with research requirements. KORNAK owed a duty of honest service to the Stratton VA Medical Center, and its patients, the Department of Veterans Affairs, and the citizens of the United States, which included a duty to use and report accurate data.

b. On or about August 15, 2000, in applying to the Department of Veterans Affairs, a department of the United States (in the executive branch of the government), KORNAK

submitted a false Form 306, "Declaration for Federal Employment," in that he answered "No" to question 8, to wit: "During the last 10 years, have you been convicted, been imprisoned, been on probation, or been on parole?", whereas KORNAK then well knew that in United States District Court for the Middle District of Pennsylvania, case number 1:CR-92-278, on or about December 16, 1992, he had been convicted of mail fraud, in violation of 18 U.S.C. § 1341, and, on or about April 23, 1993, placed on probation for a term of 3 years, which probation continued until on or about November 8, 1995.

c. Stratton VA Medical Center participated in VA Cooperative Study # 410, the Iron (Fe) and Atherosclerosis Study (AST), known as FeAST. The FeAST study was a clinical trial (research project) testing a new procedure for controlling atherosclerosis, also known as hardening of the arteries, by reducing iron in the body through blood drawing.

d. Stratton VA Medical Center also was a participating site in two cancer treatment studies sponsored by Aventis Pharmaceuticals, Inc., a company engaged in developing, testing, and marketing pharmaceutical products, including docetaxel, also known by the brand name of taxotere. Aventis sponsored a study with protocol number RP 56976-V-325, sometimes referred to as Tax 325, a randomized study of docetaxel in combination with cisplatin (CDDP) or docetaxel in combination with 5-flourouracil (5-FU) and CDDP compared to the combination of CDDP and 5-FU in patients with metastatic or locally recurrent gastric cancer previously untreated with chemotherapy for advanced disease. The study population for Tax 325 was patients with metastatic or locally recurrent gastric cancer previously untreated with chemotherapy for advanced disease. The inclusion criteria for Aventis' Tax 325 study protocol included requirements that each patient had

levels of creatinine, total bilirubin, AST (SGOT), and alkaline phosphatase within specified levels, and set a minimum calculated creatinine clearance of 60 ml/mn.

e. Aventis also sponsored a study with protocol number RP56976V-327, sometimes referred to as Tax 327, a randomized trial comparing docetaxel administered either weekly or every three weeks in combination with prednisone versus mitoxantrone in combination with prednisone for metastatic hormone refractory prostate cancer.

f. Stratton VA Medical Center also was a participating site in a study co-sponsored by ILEX Oncology, Inc., and the National Cancer Institute (NCI), Division of Cancer Prevention (DCP), to compare the use of difluoromethylornithine (DFMO) to the use of a placebo in treating low grade superficial bladder cancer according to the time to the first recurrence of a bladder tumor and toxicities.

g. KORNAK was the site coordinator at the Stratton VA Medical Center for the FeAST, Tax 325, Tax 327, and DFMO studies. Each study provided for payments being made to participating sites based upon the enrollment, participation, and evaluation of qualified patients, and such payments were made in connection with the studies at the Stratton VA Medical Center.

h. From about May 14, 1999 - July 10, 2002, in connection with conducting and coordinating clinical trials and studies at the Stratton VA Medical Center, including the FeAST study, Tax 327, Tax 325, and the DFMO study, KORNAK participated in a scheme and artifice to defraud the sponsors of the clinical trials and studies, including the Cooperative Studies Program of the Office of Research and Development of the Veterans Health Administration of the United States Department of Veterans Affairs, Aventis Pharmaceuticals, Inc., and ILEX Oncology, Inc.; to deprive the Albany Research Institute, Inc., Stratton VA Medical Center, United States Department of



Veterans Affairs, and citizens of the United States of their right to his honest services; and, to obtain money and property from the sponsors, Albany Research Institute, Stratton VA Medical Center, and Department of Veterans Affairs by means of false and fraudulent pretenses, representations, and promises, in that he would and repeatedly did submit false documentation regarding patients and study subjects and enroll and cause to be enrolled persons as study subjects who did not qualify under the particular study protocol.

j. On March 20, 2001, for the purpose of executing the aforesaid scheme and artifice to defraud, deprive, and obtain money and property, KORNAK deposited and caused to be deposited with a private and commercial interstate carrier, that is, Federal Express, for delivery to Aventis, at its address in Bridgewater, New Jersey, a Case Report Form (CRF) for study subject number C2352, initials CMS. KORNAK had willfully made and used, and cause to be made and used, false documents concerning study subject number C2352, initials CMS, concerning the participation of CMS in the Tax 325 study, knowing the documents to contain a materially false entries, that is, a laboratory report printed Feb 16, 2001, a "Blood Chemistry/Hematology/Calculated Creatinine Clearance/Coagulation" Form, and a patient registration form, each of which reflected the result of a test for creatinine in a sample drawn 02/15/2001 as 1.0 mg/dL, whereas in truth and fact, as the defendant then well knew, the sample was not drawn on February 15, 2001, and the actual result was 1.1 mg/dL. KORNAK also deleted information from a radiology display report based on computerized tomography of the thorax undergone by study subject number C2352 in the Tax 325 Study, with subject initials CMS, on February 13, 2001, and from the past medical/surgical history in an outpatient progress record, dated 01/16/2001, pertaining to study subject number C2352 in the Tax 325 Study, with subject initials CMS. KORNAK then well knew that the date of the

sample, creatinine result, and deleted information concerning the radiology display report and past history of CMS were very important to the determination of whether CMS was eligible to participate in the Tax 325 study.

k. From May 25, 2001 - June 11, 2001, KORNAK was involved in the treatment of James J. DiGeorgio, at the Stratton VA Medical Center, Albany, New York, a place within the special maritime and territorial jurisdiction of the United States, and did, with criminal negligence, cause the death of Mr. DiGeorgio, in that KORNAK failed to perceive a substantial and unjustifiable risk that death would occur when he knowingly and willfully made and used, and caused to be made and used, documents falsely stating and representing the results of blood chemistry analysis of a sample provided by Mr. DiGeorgio on May 25, 2001, which false documents purported that Mr. DiGeorgio met the inclusion and exclusion criteria for participation in Tax 325 when the actual results did not meet the inclusion and exclusion criteria and showed impaired kidney and liver function, and Mr. DiGeorgio thus was administered the chemotherapeutic drugs docetaxel, cisplatin, and 5-FU in connection with Tax 325 on or about May 31, 2001, and died as a result thereof on or about June 11, 2001, which failure of the defendant to perceive constituted a gross deviation from the standard of care that a reasonable person would observe in the situation.

l. KORNAK's participation in the scheme to defraud resulted in losses to Aventis Pharmaceuticals, Inc., ILEX Oncology, Inc., and the Department of Veterans Affairs, alleged to amount to the following: Aventis Pharmaceuticals, Inc. -- \$ 488,907.58; ILEX Oncology, Inc. -- \$ 14,017.47; and the Department of Veterans Affairs -- \$ 133,850.00.

7. The Defendant agrees that the statements made by him in signing this Agreement, including the factual admissions set forth above [in paragraph 6], shall be admissible and useable

against the Defendant by the United States in any subsequent criminal or civil proceeding, even if he fails to enter a guilty plea pursuant to this Agreement, or if such a guilty plea is later vacated or withdrawn. The Defendant waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent these rules are inconsistent with this paragraph or with paragraph 10b below.

8. In exchange for the plea of guilty to Counts 1, 15, and 48 by PAUL H. KORNAK and his continuing compliance with all of the terms of this Plea Agreement, the United States Attorney's Office for the Northern District of New York agrees as follows:

a. At the time of sentencing, it will move to dismiss the remaining charges against the Defendant in Indictment 03-CR-436 for so long as the guilty plea and sentence on Counts 1, 15, and 48 remain in effect.

b. It will bring no further federal criminal charges against the Defendant relating to the conduct, committed before the date of this Agreement, which is described in the Indictment and the Defendant's admissions in paragraph 6, above.

c. If the guilty plea to any of Counts 1, 15, and 48 is later withdrawn or vacated, the charges dismissed or not prosecuted pursuant to subparagraphs 8a and 8b of this Agreement may be reinstated and prosecuted, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the reinstatement of any such charges. The Defendant waives any defense or objection to the reinstatement and prosecution of any such charges that are not time-barred by the applicable statute of limitations as of the date of this Agreement.

d. Any self-incriminating information provided by the Defendant pursuant to his cooperation which was not previously known to the United States will not be used in determining the applicable Sentencing Guidelines range, pursuant to U.S.S.G. § 1B1.8.

e. It reserves the right to recommend a specific sentence.

f. The U.S. Attorney's Office reserves the right to advise the sentencing Court and the Probation Office of any information, in aggravation or mitigation of sentencing, whether or not encompassed within Counts 1, 15, and 48, subject only to the limitations imposed by U.S.S.G. § 1B1.8.

g. At or before the time of sentencing, the U.S. Attorney's Office will advise the Court of the nature and extent of the cooperation and assistance provided by PAUL H. KORNAK pursuant to this Agreement. If the U.S. Attorney's Office determines, in its sole discretion, that the Defendant has provided "substantial assistance" in the investigation or prosecution of other persons who have committed offenses, it may, in its sole discretion, recommend a downward departure pursuant to U.S.S.G. § 5K1.1 and/or 18 U.S.C. § 3553(e). However, the U.S. Attorney's Office has not promised that such a motion will be made.

i. In deciding whether the Defendant has provided "substantial assistance" warranting a motion for a downward departure under § 5K1.1 and/or 18 U.S.C. § 3553(e), the U.S. Attorney's Office may consider any fact that, in its sole discretion, it deems relevant, including facts known to this Office at the time of the execution of this Agreement. However, the decision of the U.S. Attorney's Office with respect to a motion for a downward departure will not be conditioned upon any particular outcome of any criminal investigation or prosecution.

ii. If the sentencing of the Defendant is conducted before he has, in the judgment of the U.S. Attorney's Office, completed his cooperation, the U.S. Attorney's Office may, in its sole discretion, decline to make a motion for a downward departure under § 5K1.1 and/or 18

U.S.C. § 3553(e) and defer its determination as to whether the Defendant has provided “substantial assistance” warranting a motion for a downward departure under Fed. R. Crim. P. 35(b) for up to one year after sentencing.

iii. Should the U.S. Attorney’s Office decide to make a motion for downward departure, its recommendation as to the extent of such a departure is a matter within the sole discretion of the United States Attorney.

iv. Even if a motion for departure is made by the U.S. Attorney’s Office, based upon the Defendant's perceived "substantial assistance," the final decision as to how much, if any, reduction in sentence is warranted because of that assistance, rests solely with the sentencing Court.

9. The U.S. Attorney’s Office and PAUL H. KORNAK agree to stipulate at sentencing to the statements set forth in the subparagraphs below. It is understood, however, that the agreement to stipulate cannot and does not bind the sentencing Court, which may make independent factual findings and reject any or all stipulations presented by the parties. Such a determination that a stipulation is not binding on the Court will not be the basis for the withdrawal of a plea of guilty by the Defendant, and will not release either the U.S. Attorney’s Office or the Defendant from any other portion of this Agreement, including any other stipulations agreed to herein. To the extent the stipulations below do not reflect agreement on any factor or issue potentially affecting the Sentencing Guidelines range applicable to the Defendant, the Defendant and the U.S. Attorney’s Office each expressly reserves the right to advocate if, and how, any such factor or issue applies under the Sentencing Guidelines. The Defendant consents to the determination of his sentence based upon judicial factfinding as to any and all sentencing factors or issues, whether or not they have been

stipulated by the parties, and knowingly and voluntarily waives any right to have any such sentencing factors or issues charged in the Indictment/Information or presented to and determined by a jury.

a. If the Defendant demonstrates “acceptance of responsibility” for the offenses through the time of sentencing, the U.S. Attorney’s Office will recommend a 2-level downward adjustment pursuant to U.S.S.G. § 3E1.1(a). If the Defendant promptly enters a plea of guilty, thereby permitting the U.S. Attorney’s Office to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently, the U.S. Attorney’s Office will move for an additional downward adjustment of 1 level pursuant to U.S.S.G. § 3E1.1(b)(2).

b. The Defendant’s Criminal History Category cannot be definitively determined prior to the completion of the presentence investigation.

10. Should the U.S. Attorney’s Office determine that the Defendant, after the date of this Plea Agreement, (i) has committed any further crime or violated any condition of release or supervision imposed by the Court (whether or not charged); (ii) has given false, incomplete, or misleading testimony or information; or (iii) has otherwise breached any condition of this Agreement, the U.S. Attorney's Office will have the right, in its sole discretion, to void this Agreement, in whole or in part. In the event of any such breach, the Defendant will not be permitted to withdraw his guilty plea under this Agreement, but will thereafter be subject to prosecution for any federal criminal violation of which the U.S. Attorney’s Office has knowledge, including but not limited to charges that this Office has agreed to dismiss or has agreed not to prosecute in subparagraphs 8a and 8b of this Agreement.

a. The Defendant waives any defense or objection to the commencement of any such prosecution that is not time-barred by the applicable statute of limitations as of the date of this

Agreement, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of any such prosecution.

b. Moreover, in connection with any such prosecution, any information, statement, or testimony provided by the Defendant, and all leads derived therefrom, may be used against him, without limitation.

c. In the event of any such breach by the Defendant, the U.S. Attorney's Office will have the right, in its sole discretion, to do the following, notwithstanding any contrary provision or stipulation in this Plea Agreement:

i. to advocate if, and how, any particular adjustment or specific offense characteristic affects the applicable Sentencing Guidelines range;

ii. to utilize any information, statement, or testimony provided by the Defendant in determining the applicable Sentencing Guidelines range, notwithstanding U.S.S.G. § 1B1.8;

iii. to decline to move for and/or to withdraw a motion for a downward departure under U.S.S.G. § 5K1.1 and/or 18 U.S.C. § 3553(e), even if the Defendant had provided "substantial assistance" to the United States prior to breaching any term of this Agreement;

iv. to recommend a specific sentence of imprisonment within or above the applicable Sentencing Guidelines range determined by the Court.

11. This Agreement is limited to the U.S. Attorney's Office for the Northern District of New York and cannot bind other federal, state or local prosecuting authorities. Furthermore, this Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the Defendant,

including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability.

12. The sentence to be imposed upon PAUL H. KORNAK is within the sole discretion of the sentencing Court, subject to the statutory maximum penalties set forth above and the provisions of the Sentencing Reform Act and the United States Sentencing Guidelines promulgated thereunder. The Defendant knowingly and voluntarily waives any and all constitutional challenges to the application of the United States Sentencing Guidelines and related statutes, including any challenge based on *Blakely v. Washington*, 124 S.Ct. 2531 (2004). The Court is neither a party to, nor bound by this Agreement. The Court may accept or reject this Plea Agreement or defer a decision until it has considered the Presentence Investigation Report prepared by the U.S. Probation Office.

a. If the Court rejects the provisions of this Agreement permitting the Defendant to plead guilty to Counts 1, 15, and 48 in satisfaction of other charges, which provisions were negotiated pursuant to Fed. R. Crim. P. 11(c)(1)(A), the Court will afford the Defendant an opportunity to withdraw his plea of guilty prior to sentencing, pursuant to Fed. R. Crim. P. 11(c)(5) & (d).

b. The Court is not bound by any recommendation, stipulation, or request made by the parties, pursuant to Fed. R. Crim. P. 11(c)(1)(B), as to the appropriate sentence, and the Defendant may not withdraw his plea of guilty if the Court declines to follow any such recommendation, stipulation, or request. The U.S. Attorney's Office reserves the right to support and defend, in connection with any post-sentencing proceedings, any decision the Court may make



with regard to the Defendant's sentence, whether or not such decision is consistent with this Office's recommendations, stipulations, or requests.

13. The Defendant acknowledges that he has read each of the provisions of the entire Plea Agreement with the assistance of counsel and understands its provisions.

a. The Defendant understands his right to assistance of counsel at every stage of the proceeding and has discussed his constitutional and other rights with defense counsel. The Defendant understands that by entering a plea of guilty, he will be giving up his rights (i) to be presumed innocent until proven guilty beyond a reasonable doubt; (ii) to plead not guilty; (iii) to trial by jury; (iv) to confront, cross-examine, and compel the attendance of witnesses at trial; (v) to present evidence in his defense; and (vi) to remain silent and refuse to be a witness against himself by asserting the privilege against self-incrimination.

b. The Defendant has been advised by defense counsel of the nature of the charges to which he is entering a guilty plea. The Defendant has further been advised by defense counsel of the nature and range of the possible sentence and understands that the ultimate sentence will be determined according to the United States Sentencing Guidelines. The Defendant further understands that, under certain limited circumstances, the Court may depart upward or downward from the calculated Sentencing Guidelines range.

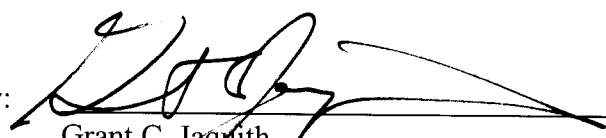
14. **Waiver of Appeal and Collateral Attack.** The Defendant acknowledges that, after consultation with defense counsel, he fully understands the extent of his rights to appeal, and/or to collaterally attack the conviction and sentence in this case. The Defendant waives any and all rights, including those conferred by 18 U.S.C. § 3742 and/or 28 U.S.C. § 2255, to appeal or collaterally attack his conviction and any sentence of imprisonment of 46 months or less, including any related

issues with respect to the establishment of the Sentencing Guidelines range. The Defendant acknowledges that the number of months specified above is not a promise of any particular sentence and is not binding on the Court. The Defendant agrees that, should the sentence imposed exceed 46 months, this would not permit him to withdraw his guilty plea or to appeal or collaterally attack his conviction, but would merely allow the Defendant to appeal or collaterally attack the sentence imposed by the Court, to the extent permitted by 18 U.S.C. § 3742 and/or 28 U.S.C. § 2255.

15. No promises, agreements or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless memorialized in writing and signed by all parties. This Agreement, to become effective, must be signed by all of the parties listed below.

GLENN T. SUDDABY  
United States Attorney  
Northern District of New York

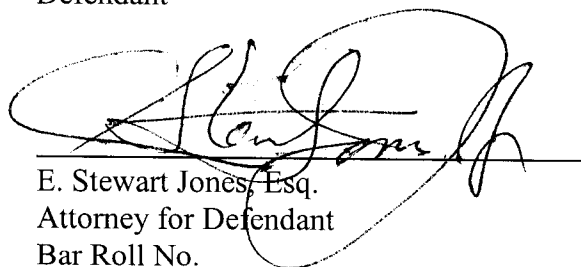
Dated: Jan 18, 2005

By:   
Grant C. Jaquith  
Supervisory Assistant U.S. Attorney  
Bar Roll No. 501396

Dated: 1/18, 2005

  
PAUL H. KORNAK  
Defendant

Dated: 1/18, 2005

  
E. Stewart Jones, Esq.  
Attorney for Defendant  
Bar Roll No.