

Section 2

GOVERNMENT PRESENTS OTHER FALSE AND MISREPRESENTED EVIDENCE REGARDING CREDIT WRITE-OFFS

Misrepresented evidence regarding credit write-offs

In addition to the false Exhibit 119, the government does not present a verification of the amount of credit as to any basic accounting analysis as to the origin of the component debits or credits to the origin of the insurance company's supporting document.

The term credit write-off is never explained or proof presented that the amounts were owed under any valid document analysis. The PSR was presented net numbers furnished by a government accountant who did not testify or provide any basic analysis.

McNichols testifies that there were thousands of transactions moved to suspense accounts in an attempt to reconcile general ledger numbers with subsidiary detail and the government's own Exhibit 78, clearly states that the computer conversion created an unbalanced and duplicate accounts receivable, debits and credits.

The proven misrepresented allegations regarding the credit write-offs, which results in a major portion of Segal's sentencing incarceration and restitution ordered amounts.

The incomplete and inaccurate credit write-off evidence as to Exhibit 119 results in \$542 ,000 of a total sentencing loss of \$1,150,000.

The PSR was told and accepted that whenever the government found an NNIB credit write-off, it was assumed it was a valid credit that had been written off. This assumption was entirely unwarranted. Most of the credit write-offs included in Ms. Colson's initial analysis may have consisted of \$566,000 in write-offs that three other NNIB executives approved on December 30, 1999. [Ref: Tr. at 2636]. The practice at NNIB was to place doubtful receivables and credits in a "suspense account" so that NNIB employees could research whether these receivables and credits were valid. A number of NNIB employees were assigned to this task. [Ref: Tr. at 2691-92]

Two additional level increase of the guidelines is solely supported by 10 credit write-off allegations submitted by Prosecutors to PSR. The district court refused to allow credible evidence to be presented at the sentencing hearing, including affidavits as to the invalid credit write-off allegations submitted to the PSR. The court ordered a \$542,000 dollar restitution.

AUSA Misrepresents and misinterprets Illinois insurance regulations

AUSA Misrepresents and misinterprets Illinois regulations, which is proven to be misleading on the face of the published regulation.

Contrary to the government's misrepresented interpretation, the Illinois statute and regulations impose a specific statutory and regulatory duty on only one very precise category of "credits" -- that being "return premiums."

What is a "return premium credit" and where does it come from? A return premium credit is the result of an insurance carrier issuing an endorsement to a policy of insurance to reduce the policy premium. The credit does not actually "exist" until the carrier formally issues the policy endorsement.

There are any number of reasons why a "credit" shown on the books of Near North might not even represent actual money owed to a client such as: Invoices voided in error when money has been applied; Misapplied cash; Credits not yet verified by the carriers; computer system errors, especially those associated with the failed conversion from the Harte accounting software to the Sagitta accounting software.

AUSA Misrepresents and misinterprets Illinois insurance regulations

At trial, the government did not introduce into evidence even a single "policy endorsement" issued by a carrier that corresponded to a credit write off.

There was no proof whatsoever that the "credits" that were written off at Near North were not appropriate accounting adjustments to correct errors in the billing system and for other legitimate accounting purposes.

The carrier endorsements were completely absent from the government's evidence and the government knew of such as they had the books two years prior to trial.

In addition, the government presents no working papers as to accounting analysis of alleged premium credit write offs relying on false 119.

AUSA Continues to misrepresent the language of the Illinois regulations

The government knowingly misrepresents the face of the Illinois statute and regulations that credits within the meaning of §§ 3113.60(a), was a term-of-art that applied exclusively to a particular category of "credits" not in the generally-understood sense of the word.

The arrest warrant affidavit fraudulently concealed the full text of the relevant regulation, which alternatively allows the credit to be applied to the customer's bill. This false position is not corrected throughout trial.

Equally concerning, is the governments' misrepresentation as to the full and complete statute language in both the indictment and trial. Ill. 215 ILCS 513 all(e) is deliberately misrepresented by deleting the last sentence of paragraph "A":

"If the return premium is to be credited to the insured's account, the credit must be shown and applied to the next billing statement sent to the insured"

This blatant misrepresentation of the regulation on its face generated a mass misrepresentation and taint that NNIB and Segal were unlawful as to the accounting and return premium credits. It should be noted that the Fanco forensic auditors included in their affidavit at sentencing proof that excessive of \$24M in credits were returned and adjusted during the time of offense. *[Ref: Affidavit, Andrew R. Lotts, Exhibit E, June 7, 2005]*

Forensic Accounting shows more than \$24M in credits were returned and adjusted during the time of offense.

Near North Insurance Brokerage. Inc., returned credits to their insured customers in the amount of \$28,492,159.70 for the years 1999-2001. This amount is in reference to 16,547 transactions.

Affidavit, Andrew R. Lotts, Exhibit E, June 7, 2005

Near North Insurance Brokerage, Inc. Credit Invoice Statistics-Total Invoice Line Items Only For the Years 1999, 2000 and 2001		
1/31/1999	\$315,185.06	54
2/28/1999	\$96,827.30	38
3/31/1999	\$834,206.76	100
4/30/1999	\$1,022,998.01	57
5/31/1999	\$260,303.83	51
6/30/1999	\$294,802.84	57
7/31/1999	\$1,416,730.06	89
8/31/1999	\$422,308.62	109
9/30/1999	\$621,836.04	98
10/31/1999	\$513,024.65	78
11/30/1999	\$804,004.31	103
12/31/1999	\$382,873.97	80
Total	\$6,985,101.45	914
1/31/2000	\$761,779.75	99
2/29/2000	\$1,087,252.57	88
3/31/2000	\$514,603.31	129
4/30/2000	\$274,947.58	93
5/31/2000	\$650,709.98	93
6/30/2000	\$358,065.33	90
7/31/2000	\$1,144,873.46	76
8/31/2000	\$1,196,695.78	119
9/30/2000	\$799,765.82	97
10/31/2000	\$1,976,425.78	86
11/30/2000	\$753,988.11	85
12/31/2000	\$650,300.37	78
Total	\$10,169,407.84	1,133
1/31/2001	\$784,829.11	102
2/28/2001	\$812,463.16	79
3/31/2001	\$817,760.89	69
4/30/2001	\$792,946.24	86
5/31/2001	\$1,276,272.31	209
6/30/2001	\$1,089,961.90	162
7/31/2001	\$754,856.32	74
8/31/2001	\$1,242,234.18	103
9/30/2001	\$306,497.54	51
10/31/2001	\$1,589,808.73	108
11/30/2001	\$1,010,670.90	114
12/31/2001	\$859,349.13	108
Total	\$11,337,650.41	1,265
Total	\$28,492,159.70	3,312

Note:
Accounting would issue a check to an insured to cover all policies to which the insured was entitled to monies. Therefore, the number of checks issued is not necessarily reflective to the amount of policies involved.

III. 215 ILCS 513 aII(e)

Government deliberately misrepresents the regulation in arrest warrant and at trial by deleting the last sentence of paragraph a)

Joint Committee on Administrative Rules

ADMINISTRATIVE CODE

TITLE 50: INSURANCE

CHAPTER I: DEPARTMENT OF INSURANCE

SUBCHAPTER ii: INSURANCE PRODUCERS, LIMITED INSURANCE

REPRESENTATIVES AND BUSINESS ENTITIES

PART 3113 PREMIUM FUND TRUST ACCOUNT

SECTION 3113.60 RETURN PREMIUM

Section 3113.60 Return Premium

- a) Return premiums must be paid to the insured or credited to the insured's account within 15 days after receipt from the insurer or other licensee. If the return premium is reflected as a credit on the licensee's billing statement from the insurer or other licensee, the licensee must pay the return premium or credit the insured's account within 15 days subsequent to payment of the statement or the due date of the statement whichever is sooner. If the return premium is to be credited to the insured's account, the credit must be shown and applied to the next billing statement sent to the insured.
- b) If the credit results in a credit balance on the insured's account the credit must be returned within 15 days unless the licensee receives written authorization from the insured to retain the credit balance and other developed credit balances for a period of no more than 12 months from the date of authorization. Such authorization must contain a notification to the insured that he has the right to withdraw the authorization in writing and that the return premium will be refunded within 15 days of the authorization withdrawal. A copy of the authorization must be maintained in the licensee's file and a file must be given to the insured at the time that the authorization is obtained. If authorization is obtained, the licensee must send monthly written notification to the insured which clearly reflects a credit owed to the insured.

(Source: Amended at 14 Ill. Reg. 2088, effective January 19, 1990)

United States District Court Criminal Complaint

Government deliberately misrepresents the regulation in arrest warrant and at trial by deleting the last sentence of paragraph a)

AFFIDAVIT

I, Jane Higgins, having been duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") assigned to the Chicago, IL office. I have been a Special Agent with the FBI for 12 years. I am currently assigned to a division within the FBI that deals primarily with complex white collar crimes and public corruption. In this capacity, my duties and responsibilities have included conducting criminal investigations of individuals and businesses alleged to have violated federal criminal laws including mail fraud, wire fraud, insurance fraud, tax violations, and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

2. The purpose of this affidavit is to provide the facts necessary to support a finding of probable cause to believe that the defendant Michael Segal ("Segal") has engaged in violations of 18 U.S.C. §1033(a)(1) and (b)(1); and 18 U.S.C. §1341.

14. Pursuant to Illinois law, a credit balance on a Customer's account may not be retained for more than 15 days. 215 ILCS 513a11(e). After that fifteen day period, the credit balance must be returned to the customer.

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AO 91 (REV. 5/05) Criminal Complaint

AUGUST VIRGINIA M. KENDALL (312)886-7627

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES OF AMERICA

v.

FILED

JAN 26 2002

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

MICHAEL SEGAL
405 North Sheridan Road
Highland Park, Illinois

CRIMINAL COMPLAINT

02CR0112

MAGISTRATE JUDGE DENLOW

Chicago, Illinois
City and State

Signature of Complainant

Signature of Judicial Officer

5

Government misrepresents customer notification and credit memos

Government presents further false evidence as to misrepresentation of statements and invoices.

The government played a misleading deliberate word game with the jury at trial with respect to Near North's notification to its customers of the existence of customer credits. The government argued at closing:

Tr. 5265:22-23 (closing-government).

[NNIB] never mailed credit information to customers.

That was not the testimony at trial. The government's word game concerned the words "statement" and "invoice." Near North generated both types of documents. McNichols (takeover private government agent) testified:

Tr. 2551: 9-14 (McNichols -direct)

Q. Did you also come to know at that time of a practice of not sending out customer statements that included credits to customers?

A. Yes, I did.

Q. And what did you learn about that?

A. I learned that the statements were not sent to customers.

Government misrepresents customer notification and credit memos

Brower also testified, both on direct examination and on cross examination that notifications of premium credits would be sent to the client when issued by the carrier.

On direct examination, Brower contradicted AUSA Polales' leading questions with respect to notification to customers of credits:

Tr. 3201: 3-12 (Brower direct by Polales)

Q. All right. So I take it that with respect to these aged credits in your experience, much of whether or not the client knew about the credit would depend on the nature of the relationship between the account executive and the customer.

A. Correct.

Q. Because it was not the practice to send out written notification to the clients of the existence of a credit.

A. The initial credit memo would have been sent to the client when it was created or generated.

Q. You think so?

A. I believe that to be the case, yes.

Even McNichols admitted that invoices were sent to customers--specifically including invoices reflecting credits owed to customers by Near North:

Tr.2689:5-14 (McNichols-cross by Cognetti)

Q. And, by the way, when invoices would come out from Near North, there would be invoices sent to the customers reflecting that they owed Near North money or that Near North owed them money, correct?

A. The invoices, yes.

Q. The invoice would reflect that.

A. Right.

The government misrepresents and plays on words. The customers always received a notice whenever there was a change in their policy resulting in either a debit or a credit. While there was a period of time where the generation of accurate statements was problematic--there was never a time when the invoices reflecting either debits or credits were not mailed to the customers. The customers always had written notice of premium credits.

The trial record is clear and complete that all government witnesses testified that they have no knowledge of any specific transaction that is a misrepresentation or nondisclosure.

Both the PSR quoting the prosecutor and district court appear to have on the erroneous assumption that whenever a debit was removed from NNIB books a receivable reflected a valid obligation. No witness, however, denied that many of the credits written off were not in fact owed and were properly purged.

The proper "return" of "credits" to customers was a contentious topic at trial. Losses attributable to the "return" of "credits" constitute close to half of the total amount of loss attributed to Segal at sentencing. The number of incomplete and inaccurate false credit write off accounting constituted victims in excess of 10 which increased sentencing calculation based upon inaccurate findings. More concerning, presently Segal faces a restitution predicated partially on false credit write offs.

Forensic accounting shows the “write-offs” in question are not “returned premium credits” as defined by the law

AUSA submits premium credit write-off facts that are proven forensically inaccurate

The government was in possession of all of Near North's books and records two years before trial, the government shared results of Illinois DOI audit review which included credit write offs and interfered with the results of the examination.

The write offs presented by the government and adopted by the court for loss in restitution under relevant conduct were proven to be in error as to finite accounting evidence requirements.

Andrew Lott of Fanco, furnished affidavits as to forensic accounting basic analysis from the books and records as to credit write offs.

For example, \$2,668.00 allegedly “stolen” from the Blindermans failed to consider that the credit was actually applied to the Blinderman's account.

Another example, the case of St. Chrysostom's Episcopal Church, presented at Page 13 of Segal's 28 U.S.C. §§2255 Motion. The alleged theft of a \$4,793.00 credit from the church, when presented at trial, was such an emotionally-charged allegation that it was immediately picked up by the press and appeared in all the papers.

The government's alleged theft from the St. Chrysostom's Church of a \$4793.00 credit, when presented at trial, was such an emotionally charged allegation that it was immediately picked up by the press and appeared in all the papers, including a page one article and an editorial cartoon.

Post-trial forensic accounting determined that the alleged “stolen” credit was in fact an accounting error. Yes, Near North did owe a credit to the church--**a total of \$44.00**, which resulted from the church having over paid their invoice. While the \$44.00 credit was real, because it was attributable to the church's overpayment of an invoice, it was not a “credit” within the meaning of §§3113.60(a). [Ref: Affidavit, Andrew R. Lotts, pp 8-9, December, 29, 2007]

Credit Write-off for St. Chrysostom's Episcopal Church

Post-trial forensic accounting determined that the alleged "stolen" credit was in fact an accounting error. Yes, Near North did owe a credit to the church--**a total of \$44.00**, which resulted from the church having over paid their invoice.

Other alleged credit write-offs are not owed.

Affidavit, Andrew R. Lotts, pp 8-9, December, 29, 2007

Exhibit EE – Credit Write-Off and Restitution Issues

We have reviewed the affidavits of Donald Haufe and Lori A. Reilly, attached. Given these affidavits, Waste Management denies any credits are owed to them by NNIB, and Ticketmaster, at the present, cannot agree with the U.S. Government's position that they are owed credits.

With respect to St. Chrysostom's Episcopal Church ("church"), our review of that account showed that an invoice was issued to the Church in the amount of \$1,583. The

Church paid \$1,627, resulting in a credit balance of \$44. NNIB accounting then reversed the original invoice three times ($\$1,583 \times 3 = \$4,749$), resulting in a balance of \$4,793 ($\$44 = \$4,749 = 4,793$). Because there was no indication that an actual credit was due, it appears that this \$4,793 credit balance was the result of the accounting error of reversing the original invoice three times. In our professional opinion, the Church is not owed a credit.

With respect to Steve and Susan Blinderman, our review of that account showed that they owed NNIB \$13, 573. Accordingly, the carrier-issued credit to them in the amount of \$2,668 was applied toward their balance. In our professional opinion, the Blindermans are not owed a credit.

In our professional opinion, neither Waste Management, Ticketmaster, St. Chrysostom's Episcopal Church or the Blindermans are owed credits.

Forensic accounting shows the “write-offs” in question are not “returned premium credits” as defined by the law

Segal learns that government contacted Waste Management which represents 80% of the alleged total credit write offs. Waste Management indicated that they did not have an outstanding credit owed by Near North.

AUSA is contacted by defense counsel regarding this. AUSA admits to interview with no written memorialization turn over and states, "Near North would have to prove otherwise".

An Affidavit is filed at the sentencing hearing by Don Haufe, the Director of Risk Management at Waste Management, Inc., for the twenty-five year period from 1974 through 1999 as a witness. In a sworn affidavit, Haufe states:

Affidavit: Donald Haufe, June 6, 2005

"Throughout my entire employment at Waste Management, Near North always provided Waste Management with any \ return premiums or credits that were due Waste Management. I am not aware of a single instance in which Near North withheld or failed to provide a return premium or credit to Waste Management."

Donald Haufe goes on to emphasize that he actively monitored credits that were issues by carriers and that he would have noticed and pursued any discrepancies:

Affidavit: Donald Haufe, June 6, 2005

During my employment with Waste Management, the risk management department pursued the return of any credit regardless of the amount. If, during my employment with Waste Management, a credit in the amount of \$357,000 was actually due Waste Management (as I understand the Government has alleged in this case), it would have come to my attention and the risk management department would have pursued the credit vigorously.

No credit was owed to Waste Management

Donald Haufe's sworn affidavit demonstrates that the government's claim of a credit owed Waste Management was false.

Affidavit: Donald Haufe, June 6, 2005.

4. From time to time, Waste Management secured its insurance through insurance brokerages. During my employment with Waste Management, the company worked regularly with Near North Insurance Brokerage, Inc. ("Near North"). Throughout my entire employment at Waste Management, Near North always provided Waste Management with any return premiums or credits that were due Waste Management. I am not aware of a single instance in which Near North withheld or failed to provide a return premium or credit to Waste Management.

5. During my employment with Waste Management, the risk management department pursued the return of any credit regardless of the amount. If, during my employment

with Waste Management, a credit in the amount of \$357,000 was actually due Waste Management (as I understand the Government has alleged in this case), it would have come to my attention and the risk management department would have pursued the credit vigorously.

6. Throughout my employment with Waste Management, Near North and its representatives consistently provided high quality service, and always treated me in a professional and forthright manner.

Dated: June 6, 2005


Donald Haufe

Subscribed and sworn to before me
this 6 day of June, 2005.


Notary Public, State of Illinois



Government continues to misrepresent evidence in sentencing motion and facts submitted to the PSR

The Government's sentencing motion is replete with multiple known incomplete and inaccurate not corrected statements.

More concerning, it is the same pattern of incomplete, inaccurate and false and misleading facts identically used in the government's closing and government's stated facts in the PSR clear non-supported credit write off numbers.

The lack of congruence between what was told and documented by the PSR and the trial record was devastating to Segal.

PSR 2 (292) states:

Although the amount of credit write-offs were not presented at trial, according to the government's version and information obtained from an interview with Ms. Kendall, approximately six witnesses testified at trial to the practice of writing off credits, including Ms. Amaro, Mr. Coleman, and Mr. McNichols.

Amaro and Coleman did not testify as represented by the government's version and to the PSR. Contrary to the government's version, Don Kendeigh did not testify as represented by the government. Segal points out Maria Salazar did not testify. The sole record does not support six witnesses, except for takeover agent McNichols, concerning the practice or writing off credits.

An example includes the prosecution's misrepresentation of Don Kendeigh's testimony:

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Don Kendeigh testified that he knew that Segal was keeping customer credits and that it was a common practice for him to do so. Vance Taylor, the former CFO of Near North California, will testify that once when Segal was in California for a visit to that office in December of 2000 or...

In fact, Kendeigh did not testify that he knew Segal was keeping customer credits and that this was common practice for him to do so:

Tr. 1737, 22-25, Kendeigh cross by Brier

Q: During your three-year tenure at Near North, did you ever once learn that Near North was improperly writing off credits of customers?

A: No.

Government continues to misrepresent evidence in sentencing motion and facts submitted to the PSR

Many of the statements of the PSR regarding Near North's handling of credits are flatly contradicted by the evidence presented at trial.

For instance, according to the PSR, Matt Walsh, a former manager at Near North **who never testified at trial**, stated that "until his resignation on August 16, 2001, it was Near North's practice not to mail out any invoices reflecting credit balances." [Ref: PSR at 9, lines 303-305]

Yet, Angela Amaro, who worked in Near North's accounting department for 15 years, said at trial during cross examination that Near North never had a policy of not generating credit invoices. "It was the account executive's responsibility to make sure that [the] credit invoices that were generated went to Near North's clients and customers." [Ref: Tr. 1831-1832, Amaro - cross by Cole]

In fact, in 1997, Ms. Amaro helped devise a process for streamlining the return of credits to Near North's customers. She distributed this policy via email to everyone in the company [Ref: Tr 1835-1841, Amaro cross by Cole; Defense Exhibit Amaro 1]

The PSR also refers to Mr. Walsh's statement that defendant Segal stopped mailing statements altogether after Near North converted to a new computer system. Once again, this statement was not introduced at trial and the statement is misleading.

Norm Pater, one of the CFOs at Near North during the 1990's, testified at trial that most of Near North's commercial customers paid on invoice, not on statements. [Ref: Tr. 811, Pater - cross by Reidy].

The failure to send customer statements did not suggest fraudulent behavior when customers were being sent invoices reflecting the status of their accounts, including any credit invoices (as Ms. Amaro testified). Mr. Pater himself had proposed that Near North stop sending statements to its customers because customers paid based on invoice, and based on Mr. Pater's experience that other brokerages had stopped sending statements [Ref: Id.; Defense Exhibit Pater 6]