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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

The United States of America,	.	Docket #CR-05-00924 (ADS)
Plaintiff,	.	
	.	
V.	.	United States Courthouse
	.	Central Islip, New York
	.	January 17, 2007
James Haney, William Fehr, Jr.,	.	
Frank Schambra, Suffolk	.	
Asphalt Supply, Inc., Sundial	.	
Asphalt Co., Inc., All-County	.	
Paving Corp., Prima Asphalt	.	
Concrete Inc., Pavco Asphalt,	.	
Inc.	.	
	.	
Defendant(s).	.	

TRANSCRIPT OF GUILTY PLEAS
BEFORE THE HONORABLE WILLIAM D. WALL
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For The United States:	James M. Miskiewicz, Esq.
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6	For Mr. Schambra and: Sundial Asphalt Co., Inc.	Kevin James Keating, Esq. Law Office of Kevin J. Keating 666 Old Country Rd. Garden City, NY 11530
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8	For Suffolk Asphalt:	John Carman, Esq. 666 Old Country Rd. Garden City, NY 11530
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11	For All-County Paving: Corp., Prima Asphalt Concrete, Inc., and Pavco Asphalt, Inc.	Steven Pinks, Esq. Pinks, Arbeit, Boyle & Nemeth 140 Fell Court-Ste. 303 Hauppauge, NY 11788
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1 THE CLERK: CR-05-924, United States of America vs.
2 James Haney, William Fehr, Jr., Frank Schambra, Suffolk
3 Asphalt, Sundial Asphalt Company, All-County Paving, Prima
4 Asphalt Concrete, Incorporated, and Pavco Asphalt,
5 Incorporated. Counsel, state your appearances for the record.
6 MR. MISKIEWICZ: Good morning, Your Honor, James
7 Miskiewicz for the United States.
8 THE COURT: Good morning.
9 MS. MONACO: Cynthia Monaco for the United States.
10 MR. LUNGER: Richard Lunger for the Government, Your
11 Honor.
12 THE COURT: Good morning.
13 MR. SCARING: Good morning, Your Honor, Stephen
14 Scaring for Mr. Haney, James Haney.
15 THE COURT: Mr. Scaring.
16 MR. CARMAN: Good morning, Your Honor, John Carman for
17 Suffolk Asphalt.
18 MR. PERINI: And Raymond Perini on behalf of William
19 Fehr, Jr. Good morning, Your Honor.
20 THE COURT: Good morning.
21 MR. KEATING: Kevin Keating for Frank Schambra and
22 Sundial Asphalt. Good morning, Your Honor.
23 THE COURT: Good morning.
24 MR. PINKS: Good morning, Your Honor, Steven Pinks for
25 All-County Paving, Prima Asphalt Concrete, Inc., and Pavco

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1 Asphalt.

2 THE COURT: Okay, good morning. Have a seat everyone,
3 please. Good morning to you all. Okay, just as a matter of
4 procedure here, folks, we are recording this on our -- actually
5 off our PC here on a digital recording system. And
6 unfortunately, the system is very sensitive to the microphones,
7 so you have to speak directly into the mic in order for us to
8 get a decent recording. You're all welcome to remain seated
9 and use the microphones that are before you. If anybody feels
10 compelled to stand, you can use the podium, which is right
11 behind Mr. Scaring.

12 Okay, this matter has been -- or these pleas have been
13 referred to me by Judge Spatt for purposes of plea allocution
14 as to both the individual and corporate Defendants. I guess
15 I'm going to try to do this is a group, which is not easy to
16 do, but does anyone have any objection to my jurisdiction for
17 that purpose?

18 ALL: No, Your Honor.

19 THE COURT: Thank you. Okay, thank you, folks. And
20 does anyone have any objection to my trying to do the plea
21 allocutions simultaneously?

22 ALL: No objection, Your Honor.

23 THE COURT: Okay. All right, we have a series of
24 agreements and documents that we have marked as respective
25 Court exhibits, and they are Plea Agreements as to each of the

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1 individual and corporate Defendants, as well as corporate
2 resolutions from each of the corporate Defendants, indicating
3 that the Board of Directors has approved the plea as to each of
4 those corporate Defendants. So let me, as I said, try to go
5 through this, if I can, simultaneously; again, it's not going
6 to be easy to do, but bear with me if you would.

7 So as to the actually individual and corporate Defendants,
8 before accepting your guilty pleas, there are a number of
9 questions I must ask each of you to assure that it is a valid
10 plea. If you do not understand any of my questions, please say
11 so and I'll be happy to reword the question. And Mr. Talbot,
12 would you please swear each of the individual Defendants? And
13 would the Defendant's please rise.

14 JAMES HANEY, DEFENDANT, SWORN

15 WILLIAM FEHR, JR., DEFENDANT, SWORN

16 FRANK SCHAMBRA, DEFENDANT, SWORN

17 THE CLERK: If you could sit down and pull the mic
18 towards you and state your name for the record into the
19 microphone.

20 THE COURT: Why don't we start with you, Mr. Haney,
21 and we'll work our way across. Thank you.

22 MR. HANEY: James Kenneth Haney.

23 MR. FEHR: William Fehr, Jr.

24 MR. SCHAMBRA: Frank Gerald Schambra.

25 THE COURT: Okay. I'm going to ask each of you do you

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1 understand that having been sworn, your answers to my questions
2 will be subject to penalties of perjury or making a false
3 statement if you do not answer truthfully. Do you understand
4 that, Mr. Haney?

5 MR. HANEY: Yes, I do.

6 THE COURT: Okay.

7 MR. FEHR: I do, Your Honor.

8 MR. SCHAMBRA: Yes --

9 THE COURT: Mr. Schambra? Thank you. Okay, some of
10 these questions we'll have to do individually, and some, as I
11 said, we'll do collectively. So let's start with you, Mr.
12 Haney.

13 DIRECT EXAMINATION

14 BY THE COURT:

15 Q. How old are you, sir?

16 A. Today's my 60th birthday.

17 Q. Today?

18 A. Yes.

19 Q. Happy birthday.

20 A. Thank you.

21 Q. What schooling or education have you completed?

22 A. High school. 12th grade.

23 Q. Okay. And Mr. Fehr, how old are you, sir?

24 A. 50, Your Honor.

25 Q. And what schooling or education have you completed?

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1 A. First year of college.

2 Q. Okay. And Mr. Schambra?

3 A. 74, Your Honor.

4 Q. And what schooling or education have you completed, sir?

5 A. High school.

6 Q. Okay. Have any of you, the three of you, had any problems

7 or difficulties in communicating with your respective counsel.

8 A. No, sir.

9 A. No, Your Honor.

10 A. No, Your Honor.

11 Q. Okay. And are any of you presently or recently been under

12 the care of a physician or psychiatrist? Mr. Haney?

13 A. No.

14 Q. Mr. Fehr?

15 A. No, Your Honor.

16 Q. Mr. Schambra?

17 A. No, Your Honor.

18 Q. In the past 24 hours, have any of you taken any narcotic

19 drugs, medicine or pills or drunk any alcoholic beverages?

20 A. Just the blood pressure pills.

21 Q. Okay.

22 A. No, Your Honor.

23 Q. Mr. Schambra?

24 A. A glass of wine for dinner last night, Your Honor.

25 Q. Okay. The reason I ask that, it sounds like a silly

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1 question, but I want to make sure that you each understand
2 what's going on here today, that your minds are clear, and you
3 understand the significance of this event. Is that true with
4 you, Mr. Haney?

5 A. Yes, Sir.

6 Q. Do you understand what's going on?

7 A. Yes, Sir.

8 Q. And Mr. Fehr?

9 A. Yes, Sir.

10 Q. And Mr. Schambra?

11 A. Yes.

12 Q. Okay.

13 THE COURT: And Counsel, have you each discussed this
14 matter with your respective clients, and are you satisfied that
15 they understand the charges they will be pleading to today?
16 Mr. Scaring?

17 MR. SCARING: Yes, Your Honor, I've discussed it with
18 Mr. Haney.

19 THE COURT: Okay, Mr. Carman?

20 MR. CARMAN: Yes, Your Honor.

21 THE COURT: Mr. Perini?

22 MR. PERINI: Your Honor, he understands and we've gone
23 over it in depth.

24 THE COURT: And Mr. Keating?

25 MR. KEATING: Yes, Your Honor.

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1 THE COURT: Are each of you satisfied, Counsel, that
2 your clients are capable of understanding the nature of these
3 proceedings, and do you have any doubt as to their competence
4 to plead at this time?

5 MR. SCARING: I'm satisfied, Your Honor, and I have no
6 doubt as to his competence to plead; that is on behalf of Mr.
7 Haney.

8 THE COURT: Thank you.

9 MR. CARMAN: Your Honor, Mr. Fehr, Jr. understand and
10 there's no doubt that he's competent to plead.

11 THE COURT: Mr. Keating?

12 MR. KEATING: I'm satisfied, Your Honor, and I have no
13 doubt of Mr. Schambra's understanding of the proceedings.

14 BY THE COURT:

15 Q. Okay, and Mr. Haney and Mr. Fehr and Mr. Schambra, have you
16 each had an opportunity to discuss your case with your
17 respective attorneys, and are you satisfied to have them
18 represent you here today?

19 A. Yes.

20 A. Yes, Your Honor.

21 A. Yes, Your Honor.

22 Q. Thank you. Have you each received a copy of the
23 Superceding Indictment and the Plea Agreement, and have you
24 discussed both with your respective counsel?

25 A. Yes.

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1 A. Yes, Sir.

2 A. Yes, Sir.

3 Q. All right, the first and most important thing you each must
4 understand is that you do not have to plead guilty, even if you
5 are guilty. Under our system of law, the Prosecutor has the
6 burden of proving the guilt of the Defendant beyond a
7 reasonable doubt, and if the Prosecutor is unable to meet his
8 or her burden of proof, the jury has the duty to find the
9 Defendant not guilty, even if he is guilty. Do you each
10 understand?

11 A. Yes.

12 A. Yes, Your Honor.

13 A. Yes, Your Honor.

14 Q. So that it sometimes happens in American Courtrooms a jury
15 has returned a verdict of not guilty, even though everybody in
16 the Courtroom knew that the Defendant was guilty. What the
17 jury was saying in those cases is not that the Defendant was
18 innocent, but rather that the Prosecutor had failed to meet his
19 or her burden of proving that the Defendant was guilty. Do you
20 understand?

21 A. Yes.

22 A. Yes, Your Honor.

23 A. Yes, Your Honor.

24 Q. So that is why I say even if you are guilty, you have a
25 choice; you may plead guilty, as you apparently wish to do, or

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1 you may say to the Government, "Prove it. Meet your burden of
2 proving my guilt beyond a reasonable doubt." And the way you
3 exercise that option is by saying not guilty when I ask you how
4 do you plead. Do you understand?

5 A. Yes, Sir.

6 A. Yes --

7 Q. Do you understand?

8 A. -- Sir.

9 Q. If you persist in your plea of not guilty, under the
10 Constitution and laws of the United States, you're entitled to
11 a speedy and public trial by jury with the assistance of
12 counsel on the charges contained in the Superceding Indictment,
13 do you understand?

14 A. Yes.

15 A. Yes, Sir.

16 A. Yes, Your Honor.

17 Q. At the trial, you would be presumed innocent and the
18 Government would have to overcome that presumption and prove
19 you guilty by competent evidence and beyond a reasonable doubt.
20 You would not have to prove that you were innocent. If the
21 Government were to fail, the jury would have the duty to find
22 you not guilty. Do you understand?

23 A. Yes.

24 A. Yes, Your Honor.

25 A. Yes, Your Honor.

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1 Q. By pleading guilty you're relieving the Government of the
2 burden of proving that you are guilty and you are admitting
3 your guilt. Do you understand?

4 A. Yes.

5 A. Yes, Your Honor.

6 A. Yes, Your Honor.

7 Q. In the course of the trial, the witnesses for the
8 Government would have to come to Court and testify in your
9 presence, and your counsel would have the right to cross
10 examine the witnesses for the Government, to object to evidence
11 offered by the Government, and to offer evidence on your
12 behalf. Do you understand?

13 A. Yes.

14 A. Yes.

15 A. Yes, Your Honor.

16 Q. At a trial, while you would have the right to testify if
17 you chose to do so, you could not be required to testify.
18 Under the Constitution of the United States, a Defendant in a
19 criminal case cannot be forced to take the witness stand at his
20 trial and say anything that could be used to show that he is
21 guilty of the crime with which he is charged. If you decide
22 not to testify, the Court would instruct the jury that they
23 could not hold that against you, do you understand?

24 A. Yes.

25 A. Yes, Your Honor.

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1 Q. Mr. Schambra?

2 A. Yes, Your Honor.

3 Q. If you plead guilty, I will have to ask you questions about
4 what you did in order to satisfy myself that you are guilty of
5 the charge to which you seek to plead guilty, and you will have
6 to answer my questions and acknowledge your guilt. Thus, you
7 will be giving up the right that I have just described; that
8 is, the right not to say anything that would show that you were
9 guilty of the crime with which you are charged. Do you
10 understand?

11 A. Yes.

12 A. Yes, Your Honor.

13 A. Yes, Your Honor.

14 Q. If you plead guilty and I recommend that Judge Spatt
15 accepts your plea, you will be giving up your Constitutional
16 right to a trial and the other rights I have just discussed.
17 There will be no further trial of any kind and no right to an
18 appeal. Judge Spatt will simply enter a judgement of guilty on
19 the basis of your guilty plea. Do you understand?

20 A. Yes.

21 A. Yes, Your Honor.

22 A. Yes, Your Honor.

23 Q. Are you each willing to give up your right to a trial and
24 the other rights that I have just discussed?

25 A. Yes.

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1 A. Yes, Your Honor.

2 A. Yes, Your Honor.

3 Q. As I indicated earlier, I have marked as Court exhibits
4 your respective Plea Agreements in this case. Have you each
5 reviewed the Plea Agreement with your respective counsel and do
6 you understand the terms and conditions of the Plea Agreement?

7 A. Yes.

8 A. Yes, I have.

9 A. Yes, Your Honor, I have.

10 Q. And have each of you signed the Plea Agreement on the last
11 page?

12 A. Yes.

13 A. Yes, Sir.

14 A. Yes, Your Honor.

15 Q. Attached as Exhibit A to each of the Plea Agreements is
16 also a preliminary Order of Forfeiture. Have you reviewed that
17 with your respective counsel and do you understand it?

18 A. Yes.

19 A. Yes, Sir.

20 A. Yes.

21 Q. And does that Plea Agreement and the order -- preliminary
22 Order of Forfeiture fully and accurately reflect your
23 understanding of the agreement that you have reached with the
24 Government?

25 A. Yes.

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1 A. Yes, it does, Your Honor.

2 A. Yes, Your Honor.

3 Q. Okay, has anyone made any promises to any of you that has
4 caused you to plead guilty?

5 A. No, Sir.

6 A. No, Sir.

7 A. No, Your Honor.

8 Q. Has anyone made any promises to you as to what your
9 sentence will be?

10 A. No, Sir.

11 A. No, Sir.

12 A. No, Your Honor.

13 Q. Okay, I now want to discuss with you the sentencing scheme
14 that is applicable here. It's my understanding that you each
15 intend to plead guilty to Count 1 and 2 of the Superceding
16 Indictment in this case. And those counts carry the following
17 statutory penalties: a maximum term of imprisonment of 20
18 years; there is no minimum term of imprisonment; a maximum
19 supervised release term of 3 years to follow any term of
20 imprisonment; a fine in the amount of the greater of \$250,000
21 or twice the pecuniary gain derived from the offense, or two
22 times the gross pecuniary loss to persons other than the
23 Defendant resulting from the offense.

24 THE COURT: Is the restitution amount, Mr. Miskiewicz,
25 the same in each of the respective Defendants?

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1 MR. MISKIEWICZ: It is, Your Honor.

2 THE COURT: Okay.

3 BY THE COURT:

4 Q. And that restitution amount is \$326,343.20; a \$100 special
5 assessment; and lastly, possible debarment from qualification
6 for Federal, State, County and Town contracts. Do you each
7 understand that?

8 A. Yes.

9 A. Yes, Sir.

10 A. Yes, Your Honor.

11 Q. Also, you should be advised that there are presently in
12 effect sentencing guidelines. Although they are no longer
13 mandatory, they are really rules of law that guide the District
14 Court's discretion in imposing a sentence. The guidelines
15 recommend how high a sentence can be imposed or how low a
16 sentence can be imposed. But until you hear -- Judge Spatt
17 hears from you, your counsel, and the Government, you can not
18 know with certainty what the sentence of the Court will be. Do
19 you each understand that?

20 A. Yes, Sir.

21 A. Yes, Your Honor.

22 A. Yes, Your Honor.

23 Q. Nonetheless, the Government has estimated the guideline
24 range. In this case, it's an adjusted offense level of 11,
25 which carries a range of imprisonment of 8 to 14 months; but

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1 reasonable, after considering the sentencing guideline range --
2 sentencing guidelines range and all the other circumstances I
3 have just discussed with you. Do you each understand that?

4 A. Yes, Sir.

5 A. Yes, Your Honor.

6 A. Yes, Your Honor.

7 Q. Okay, do any of you have any questions you would like to
8 ask me about this charge, your rights, the sentencing scheme,
9 or anything else relating to this matter?

10 A. No, Sir.

11 A. No, Sir.

12 A. No, Your Honor.

13 Q. Are you each ready to plead?

14 A. Yes, Sir.

15 Q. Are you ready to plead?

16 A. Yes.

17 A. Yes, Sir.

18 THE COURT: And Counsel, do you know any reason why
19 your respective clients should not plead guilty? Mr. Scaring?

20 MR. SCARING: No, Your Honor.

21 MR. PERINI: I do not, Your Honor.

22 MR. KEATING: No, Your Honor.

23 THE COURT: And are any of you aware of any legal
24 defenses to the charge they are about to plead to? Mr.
25 Scaring?

1 MR. SCARING: No, Your Honor.
2 THE COURT: Mr. Perini?
3 MR. PERINI: No, Your Honor.
4 THE COURT: Mr. Keating?
5 MR. KEATING: No, Your Honor.
6 BY THE COURT:
7 Q. Okay, Mr. Haney, what is your plea to Count 1 and 2 of the
8 Superceding Indictment?
9 A. Guilty.
10 Q. And Mr. Fehr, what is your plea to Count 1 and 2 of the
11 Superceding Indictment?
12 A. Guilty, Your Honor.
13 Q. And Mr. Schambra, what is your plea to Count 1 and 2 of the
14 Superceding Indictment?
15 A. Guilty, Your Honor.
16 Q. Okay, do you each understand the charge that you're
17 pleading guilty to?
18 A. Yes.
19 A. Yes.
20 Q. Plead guilty to?
21 A. Yes.
22 Q. And are you making this plea of guilty voluntarily and of
23 your own free will?
24 A. Yes.
25 A. I am, Your Honor.

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1 A. Yes, Your Honor.

2 Q. And has anyone threatened or forced you to plead guilty?

3 A. No.

4 A. No, Sir.

5 A. No, Your Honor.

6 Q. And once again, has anyone made any promises to you as to
7 what your sentence will be?

8 A. No.

9 A. No, Sir.

10 A. No, Your Honor.

11 Q. Okay, you've each plead guilty to Count 1 of the
12 Superceding Indictment, which charges a mail fraud conspiracy
13 involving the Suffolk County Department of Public Works and
14 alleges that in or about and between July 2003 and September
15 2005, within the Eastern District, that each of you, together
16 with others, did knowingly and intentionally conspire to devise
17 a scheme and artifice to defraud the Suffolk County Department
18 of Public Works and to obtain money and property from the
19 Suffolk County Department of Public Works by means of
20 materially false and fraudulent pretenses, representations, and
21 promises, and for the purpose of executing such scheme and
22 artifice to place and cause to be placed in post offices and
23 authorized depositories for mail matter, matters and things to
24 be sent and delivered by the United States Postal Service and
25 commercial interstate carriers according to the directions

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1 thereon. Mr. Haney, did you, in fact, do that?

2 A. Yes, Sir.

3 Q. Mr. Fehr?

4 A. Yes, Your Honor.

5 Q. Mr. Schambra?

6 A. Yes, Your Honor.

7 Q. You have each, as well, plead guilty to Count 2 of the
8 Superceding Indictment, which is also a mail fraud conspiracy
9 against the Town of Brookhaven. And did you each in or about
10 and between June 2004 and August 2005, as alleged in the
11 Superceding Indictment, within the Eastern District of New
12 York, together with others, did you knowingly and intentionally
13 conspire to devise a scheme and artifice to defraud Brookhaven
14 and to obtain money and property from Brookhaven by means of
15 materially false and fraudulent pretenses, representation and
16 promises, and for the purposes of executing such scheme and
17 artifice to place and cause to be placed in post offices and
18 authorized depositories for mail matter matters and things to
19 be sent and delivered by the United States Postal Service and
20 commercial interstate carriers according to the directions
21 thereon. Did you do that, Mr. Haney?

22 A. Yes, Sir.

23 Q. And Mr. Fehr?

24 A. Yes, Sir.

25 Q. And Mr. Schambra?

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1 A. Yes, Your Honor.

2 Q. Okay, I need each of you now to tell me in your own words
3 what it is that you did to make you guilty of these two
4 charges. Mr. Haney?

5 A. In the period between July 2003 and September 2005 I
6 engaged in discussions with competitors in the asphalt business
7 concerning one or more contracts to be awarded by the Suffolk
8 County Department of Public Works. These discussions were
9 intended to restrict competition for these contracts with fixed
10 prices, thereby misleading the County. These contracts
11 involved the use of the United States mail within the Eastern
12 District of New York. In the period between 2004 and August
13 2005, I engaged in discussions with competitors in the asphalt
14 business concerning one or more contracts to be awarded by the
15 Town of Brookhaven. These discussions were intended to
16 restrict competition for these contracts or to fix prices,
17 thereby misleading the Town. These contracts involved the use
18 of the United States mail within the Eastern District of New
19 York.

20 THE COURT: Is that allocution acceptable to the
21 Government, Mr. Miskiewicz?

22 MR. MISKIEWICZ: I would only just ask that the
23 Defendant -- whether or not the Defendant would agree that the
24 conspirators understood that the mails would be used not merely
25 in terms of the contract, but for the implementation as well as

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1 bidding and the subsequent payment of the contract, just to be
2 as broad as possible.

3 BY THE COURT:

4 Q. Do you understand that, Mr. Haney --

5 A. Yes, Your Honor.

6 Q. -- that your use of the mail was for all purposes,
7 including receiving payment as well as submitting bid
8 documents?

9 A. Yes.

10 Q. Okay. Okay, Mr. Fehr, tell me, sir, in your own word what
11 you did that makes you guilty of this charge -- charges, excuse
12 me.

13 A. In the period between July 2003 and September 2005, I
14 engaged in discussions with competitors in the asphalt business
15 concerning one or more contracts to be awarded by the Suffolk
16 County Department of Public Works. These discussions were
17 intended to restrict competition for these contracts or to fix
18 prices, and as a result, misleading the County. These
19 contracts would involve use of the United States mail. And in
20 the period between June 2004 and August 2005, I engaged in
21 discussions with the competitors in the asphalt business
22 concerning one or more contracts to be awarded by the Town of
23 Brookhaven. These discussions were intended to restrict
24 competition for these contracts or to fix prices, and as a
25 result, misleading the Town of Brookhaven. These contracts

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1 would involve the use of the United States mail also.

2 Q. And I'll ask you the same question. Did you understand at
3 the time that the mails would be used for all purposes
4 regarding the bidding process; that is, submission of bid as
5 well as receiving payment and other documents?

6 A. Yes, Your Honor.

7 THE COURT: Is that plea allocution acceptable to the
8 Government?

9 MR. MISKIEWICZ: Yes, Your Honor.

10 BY THE COURT:

11 Q. Mr. Schambra, tell me please in your own words what it is
12 that you did that makes you guilty of these charges.

13 A. Your Honor, in the period between July 2003 to September
14 2005, I was aware of discussions between asphalt contractors
15 concerning one or more contracts to be awarded by the Suffolk
16 County Department of Public Works. I was aware that these
17 discussions were intended to restrict competition for these
18 contracts or to fix prices, and as a result, defraud the
19 County. And I knew that these contracts would involve the use
20 of the United States mail. I agreed to indirectly involve
21 myself in these discussions with these contractors by engaging
22 in the conduct outlined in Count 2.

23 Q. And did you understand as well that the mail was to be used
24 for all purposes in connection with the bidding process?

25 MR. KEATING: Mr. Schambra has yet to allocute as to

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1 Count 2.

2 THE COURT: I'm sorry?

3 MR. KEATING: He has to allocute as to Count 2 first.

4 THE COURT: I can't hear you, I'm sorry.

5 MR. KEATING: Mr. Schambra has not allocuted as to
6 Count 2 as of yet.

7 THE COURT: In other words, you're telling me nicely
8 that I interrupted him.

9 (Laughter)

10 MR. KEATING: Perhaps.

11 THE COURT: Okay.

12 BY THE COURT:

13 Q. Go ahead, Mr. Schambra, I'm sorry.

14 A. That's perfectly okay. The period between June 2004 and
15 August 2005, I engaged in discussions with contractors in the
16 asphalt business concerning one or more contracts to be awarded
17 by the Town of Brookhaven. These discussions were intended to
18 restrict competition for these contracts or to fix prices and,
19 as a result, defraud the Town. These contracts would involve
20 the use of the United States mail.

21 Q. And once again, the mail was used for all purposes in
22 connection with the bidding process, including receipt of
23 payment, is that correct?

24 A. Yes.

25 THE COURT: Okay, Mr. Miskiewicz, is that acceptable?

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1 MR. MISKIEWICZ: Your Honor, I'm concerned just about
2 the allocution as to Count 1 regarding he understood it would
3 have been the Government's proof, among other things, that the
4 Defendant, Mr. Schambra, had been solicited as early as
5 September of 2003 by Defendants Haney and Fehr to provide
6 information that he was otherwise prevented from doing so under
7 the non-collusive certification required by the State for a
8 State contract. He was solicited to provide information in
9 accordance with that contract. He subsequently had indicated
10 to Haney and Fehr and others that he intended to cooperate
11 generally with the objectives of the conspiracy, although he
12 did not necessarily expect to win a Suffolk County project or
13 bid. And that by June, July and August of 2005, he was a party
14 to conversations between Fehr, Jr., Fehr, Sr., Mr. Haney and
15 others in which, in essence, a bid rigging formula had been
16 reached whereby in exchange for rigging of the price for
17 Suffolk County contract by which Mr. Fehr, Sr.'s company would
18 win the bid, another co-conspirator, John Montecalvo, would
19 have, in exchange, won certain areas in Brookhaven. And at the
20 same time, Mr. Schambra would have won or been guaranteed the
21 opportunity to provide tonnage, or in other words, supply
22 asphalt to Montecalvo for his job in Brookhaven. And
23 consequently understood and joined the conspiracy for purposes
24 of the overall objectives, whether it was Suffolk or
25 Brookhaven, he understood that he was directly and/or

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The Court - Finding

28

1 indirectly going to benefit by participating in this
2 overarching collusion.

3 BY THE COURT:

4 Q. Do you understand that, Mr. Schambra?

5 A. Yes.

6 THE COURT: And Mr. Keating, do you disagree with any
7 of that?

8 MR. KEATING: I don't disagree with the Government's
9 version of the proof, Your Honor.

10 THE COURT: Very well. All right, based on the
11 information that's been given to me, I find that each of the
12 Defendants is acting voluntarily, that each fully understands
13 his rights and the consequences of his plea, and that there is
14 a factual basis for each of the pleas. I therefore will
15 recommend that Judge Spatt accept the plea of guilty to Counts
16 1 and 2 of the Superceding Indictment as to each Defendant.
17 Mr. Haney, your sentence date has been set by Judge Spatt for
18 March 23, 2007 at 10 a.m. And Mr. Fehr, your sentencing will
19 be before Judge Spatt on March 30th, 2007 at 1:30 p.m. And Mr.
20 Schambra, your sentencing will likewise be before Judge Spatt
21 on April 13th, 2007 at 1:30 p.m. As to the individual
22 Defendants, is there anything further for the Government?

23 MS. MONACO: Yes, Your Honor. In the event Judge
24 Spatt inquires as to whether the Government satisfied its
25 burdens under the Victim/Witness Rights Act, I have had

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1 numerous conversations with the two victims in this case,
2 specifically the Town of Brookhaven through the Town
3 Supervisor, Brian Foley, and the Town Attorney, Mr. Bob
4 Quinlan. And with regard to the County of Suffolk, we've had
5 numerous conversations with Deputy County Executive Paul
6 Sabatino and Town Attorney Kevin Law. And present in the
7 Courtroom today is Christine Malafi, that's M-A-L-A-F-I,
8 Suffolk County Attorney. And we have described to them and
9 given them an opportunity to consult with the Government on the
10 terms of these Plea Agreements, and specifically on the terms
11 of the restitution.

12 THE COURT: Very well. Anything further on behalf of
13 Mr. Haney, Mr. Scaring?

14 MR. SCARING: No, Your Honor. Thank you.

15 THE COURT: And Mr. Perini, anything on behalf of Mr.
16 Fehr?

17 MR. PERINI: Your Honor, just procedurally, I don't
18 believe we actually executed a form allowing you to take the
19 plea. I'll consent to that.

20 THE COURT: A formal what?

21 MR. PERINI: Consenting to having a Magistrate take
22 the plea. I don't know if that's required or not, but I don't
23 believe we executed one.

24 THE COURT: Well, you consent to my jurisdiction --

25 MR. PERINI: Absolutely.

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1 THE COURT: -- for that purpose, right? Very well,
2 that's sufficient. And Mr. Keating on behalf of Mr. Schambra,
3 anything further?

4 MR. KEATING: No, Your Honor.

5 THE COURT: Very well.

6 MR. SCARING: And Judge, Mr. Haney also consents to
7 your jurisdiction.

8 THE COURT: Thank you.

9 MR. KEATING: As does Mr. Schambra.

10 THE COURT: Thank you. All right, we also have
11 corporate pleas that have been entered on behalf of Suffolk
12 Asphalt Supply, Incorporated, Sundial Asphalt Company,
13 Incorporated, All-County Paving Corporation, and Prima Asphalt
14 Concrete Corporation. And I have reviewed corporate
15 resolutions and marked them as Court exhibits as to each of
16 those respective corporations. And Mr. Carman on behalf of
17 Suffolk Asphalt, did you advise your client of the consequences
18 of the plea and have they knowingly entered into the plea to
19 Counts 1 and 2 of the Indictment?

20 MR. CARMAN: Yes, Your Honor.

21 THE COURT: And as well as the Forfeiture Agreement?

22 MR. CARMAN: That's correct.

23 THE COURT: And Mr. Keating on behalf of Sundial
24 Asphalt Company, Incorporated, have you as well advised them of
25 the consequences of their plea and have they knowingly entered

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1 into the plea of guilty to Counts 1 and 2 of the Superceding
2 Indictment?

3 MR. KEATING: Yes, Your Honor.

4 THE COURT: As well as the Forfeiture Agreement?

5 MR. KEATING: Yes, Your Honor.

6 THE COURT: And Mr. Pinks on behalf of All-County
7 Paving Corporation and Prima Asphalt Concrete, Incorporated and
8 Pavco Asphalt, Incorporated, have you likewise advised your
9 clients of the consequences of the their plea and have they
10 knowingly entered into the plea of guilty to Counts 1 and 2 of
11 the Superceding Indictment?

12 MR. PINKS: Yes, Your Honor.

13 THE COURT: As well as the Forfeiture Agreement?

14 MR. PINKS: Yes, Your Honor.

15 THE COURT: Okay, anything else on behalf of the
16 Government in this matter?

17 MR. MISKIEWICZ: Nothing, Your Honor.

18 THE COURT: Or any of the Defendants?

19 MR. SCARING: No, Your Honor.

20 THE COURT: Okay, thank you, folks.

21 ALL: Thank you, Your Honor.

22 (Court adjourned)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Lewis P. ...
Signature of Transcriber

2-2-07
Date