

CR 05 924

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F.#2004R01083  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

JAMES KENNETH HANEY,  
also known as "Jimmy,"  
SUFFOLK ASPHALT SUPPLY, INC.,  
WILLIAM LOUIS FEHR, JR.,  
ALL-COUNTY PAVING CORP.,  
WILLIAM LOUIS FEHR, SR.,  
PAVCO ASPHALT, INC.,  
JOHN MONTECALVO,  
MONTECALVO ASPHALT PAVING CORP.,  
FRANK GERALD SCHAMBRA, and  
SUNDIAL ASPHALT CO., INC.,

Defendants.

-----X

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

1. The Suffolk County Department of Public Works ("SCDPW") and the Town of Brookhaven's Division of Purchasing ("Brookhaven") were local government agencies in the State of New York that were responsible for, among other things, maintaining county and town roads within their respective jurisdictions. The SCDPW and Brookhaven periodically solicited bids from contractors in anticipation of estimated road repair work that would be

INDICTMENT SPATT, J.

Cr. No. \_\_\_\_\_  
(T. 18, U.S.C., §§ 1349 and 3551 et seq.) WALL, M.J.

needed in upcoming months. Under New York State law, contracts were to be awarded to the lowest responsive and responsible bidder in a sealed competitive bidding process.

2. New York State law also mandated that all bids for government contracts were to be accompanied by a "Non-Collusive Bidding Certification," signed by the contractor or the contractor's agent, which provided, among other things, that:

[E]ach bidder . . . certifie[d] as to his organization, under penalty of perjury, that to the best of his knowledge and belief,

a. The prices in this bid [had] been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and

b. . . . [T]he prices which [had] been quoted in this bid [had] not been knowingly disclosed by the bidder . . . to any competitor; and

c. No attempt [had] been made . . . by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

The failure to comply with these requirements would render the bidder ineligible for the contract.

3. The defendant SUFFOLK ASPHALT SUPPLY, INC.

("SUFFOLK ASPHALT") was a New York Corporation that maintained its principal place of business at 100 Rogers Avenue, Westhampton Beach, New York. The defendant JAMES KENNETH HANEY, also known as "Jimmy" ("HANEY"), was the president of SUFFOLK ASPHALT.

4. The defendant ALL-COUNTY PAVING CORP. ("ALL-COUNTY") was a New York corporation that maintained its principal place of business at 205 Peconic Avenue, Medford, New York. The defendant WILLIAM LOUIS FEHR, JR. ("FEHR, JR.") was president of ALL-COUNTY.

5. The defendant PAVCO ASPHALT, INC. ("PAVCO") was a New York corporation that maintained its principal place of business at 615 Furrows Road, Holtsville, New York. The defendant WILLIAM LOUIS FEHR, SR. ("FEHR, SR.") owned and operated PAVCO.

6. The defendant MONTECALVO ASPHALT PAVING CORP. ("MONTECALVO ASPHALT") was a New York corporation whose mailing address was Post Office Box 34, Center Moriches, New York. The defendant JOHN MONTECALVO ("MONTECALVO") owned and operated MONTECALVO ASPHALT.

7. The defendant SUNDIAL ASPHALT CO., INC. ("SUNDIAL") was a New York corporation that maintained its principal place of business at 56 Comsewogue Road, East Setauket, New York. The defendant FRANK GERALD SCHAMBRA ("SCHAMBRA") owned and operated SUNDIAL.

The Scheme to Defraud

8. The defendants HANEY, SUFFOLK ASPHALT, FEHR, JR., ALL-COUNTY, FEHR, SR., PAVCO, MONTECALVO, MONTECALVO ASPHALT, SCHAMBRA and SUNDIAL, together with others, manipulated the

awarding of the SCDPW and Brookhaven contracts and artificially inflated the cost of such contracts through a system of bid-rigging. The defendants controlled the bidding process by (i) agreeing among themselves upon a non-competitive winning bid price; (ii) choosing a defendant who would submit a bid with the non-competitive winning bid price; (iii) agreeing that the remaining defendants would submit bids that included prices higher than the non-competitive winning bid price; and, (iv) rotating among themselves as winners of contracts to be awarded by the SCDPW or Brookhaven. In exchange for not submitting economically viable and competitive bids, the defendants also agreed to sub-contract portions of SCDPW and Brookhaven contracts to each other.

#### Use of the Mails

9. Correspondence, including performance bonds, which indemnified the SCDPW and Brookhaven against damages in the event contractors failed to perform on contracts, were sent by third parties on behalf of the defendants to the SCDPW and Brookhaven by means of the United States mail. The SCDPW and Brookhaven sent notices of contract awards to the defendants by means of the United States mail. In addition, the SCDPW and Brookhaven sent by United States mail payment for services rendered on contracts that were fraudulently obtained.

COUNT ONE

(Mail Fraud Conspiracy - SCDPW)

10. The allegations contained in paragraphs 1 through 9 are realleged and incorporated as if fully set forth in this paragraph.

11. In or about and between July 2003 and September 2005, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JAMES KENNETH HANEY, also known as "Jimmy," SUFFOLK ASPHALT SUPPLY, INC., WILLIAM LOUIS FEHR, JR., ALL-COUNTY PAVING CORP., WILLIAM LOUIS FEHR, SR., PAVCO ASPHALT, INC., JOHN MONTECALVO and MONTECALVO ASPHALT PAVING CORP., together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud the SCDPW, and to obtain money and property from the SCDPW by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to place and caused to be placed in post offices and authorized depositories for mail matter matters and things to be sent and delivered by the United States Postal Service and commercial interstate carriers according to the directions thereon, in violation of Title 18, United States Code, Section 1341.

(Title 18, United States Code, Sections 1349 and 3551  
et seq.)

COUNT TWO

(Mail Fraud Conspiracy - Brookhaven)

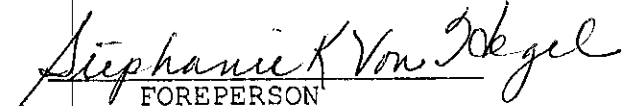
12. The allegations contained in paragraphs 1 through 9 are realleged and incorporated as if fully set forth in this paragraph.

13. In or about and between June 2005 and July 2005, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JAMES KENNETH HANEY, also known as "Jimmy," SUFFOLK ASPHALT SUPPLY, INC., WILLIAM LOUIS FEHR, JR., ALL-COUNTY PAVING CORP., WILLIAM LOUIS FEHR, SR., PAVCO ASPHALT, INC., JOHN MONTECALVO, MONTECALVO ASPHALT PAVING CORP., FRANK GERALD SCHAMBRA and SUNDIAL ASPHALT CO., together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud Brookhaven, and to obtain money and property from Brookhaven by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to place and cause to be placed in post offices and authorized depositories for mail matter matters and things to be sent and delivered by the United States Postal Service and commercial interstate carriers according to the directions

thereon, in violation of Title 18, United States Code, Section  
1341.


(Title 18, United States Code, Sections 1349 and 3551  
et seq.)

A TRUE BILL

  
FOREPERSON

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ROSLYNN R. MAUSKOPF  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

BY:   
ACTING UNITED STATES ATTORNEY  
PURSUANT TO 28 C.F.R. 0.138

SIR:

Criminal Action No.

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U.S. Courthouse, 610 Federal Plaza, Central Islip, New York, on the \_\_\_ day of \_\_\_, 20\_\_ at 10:30 o'clock in the forenoon.

**UNITED STATES DISTRICT COURT  
Eastern District of New York**

UNITED STATES OF AMERICA

Dated: Central Islip, New York, \_\_\_\_\_, 20\_\_

- against-

JAMES KENNETH HANEY,  
a/k/a "Jimmy," et al.,

Defendants.

United States Attorney,  
Attorney for \_\_\_\_\_

INDICTMENT

(T. 18, U.S.C., §§ 1349 and 3551 et seq.)

Attorney for \_\_\_\_\_

a true bill.

Foreman

PLEASE TAKE NOTICE that the within is a true copy of \_\_\_\_\_ duly entered herein on the \_\_\_ day of \_\_\_\_\_, in the office of the Clerk of the Eastern District of New York,

Filed in open court this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_

Clerk

Dated: Central Islip, New York, \_\_\_\_\_, 20\_\_

Bail, \$ \_\_\_\_\_

James M. Miskiewicz  
Assistant U.S. Attorney 631-715-7841

United States Attorney,  
Attorney for \_\_\_\_\_

To:

Attorney for \_\_\_\_\_