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STATE OF WISCONSIN
BEFORE THE ACCOUNTING EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDING AGAINST GREGORY A. BERNA, RESPONDENT	:	FINAL DECISION AND ORDER

The parties to this action are:

Gregory A. Berna
1710 Second St. North
Wisconsin Rapids WI 54494

Accounting Examining Board
P.O. Box 8935
Madison WI 53708

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Gregory A. Berna (D.O.B. September 23, 1947) is duly licensed in the state of Wisconsin as a Certified Public Accountant, license #8679. This license was first granted on April 4, 1984.

2. Gregory A. Berna's address of record with the Department is 1710 Second Street North, Wisconsin Rapids, but is presently located at the Federal Prison Camp, P.O. Box 1085, Oxford WI 53952.

3. On December 7, 1992, in the United States District Court for the Western District of Wisconsin, Gregory A. Berna was convicted on one count of fraud by wire in violation of Title 18, United States Code Section 1343. Gregory A. Berna was sentenced for this offense on December 7, 1992. A copy of the Judgement in a Criminal Case Including Sentence under the Sentencing Reform Act is attached at Exhibit 1 and is incorporated herein by reference.

4. The circumstance of the conviction of fraud by wire in violation of Title 18, United States Code, Section 1343, substantially relates to the practice of accounting.

CONCLUSIONS OF LAW

By the conduct described above, Gregory A. Berna is subject to disciplinary action against his license to practice as a Certified Public Accountant in the state of Wisconsin, pursuant to secs. ACCY 1.401(2)(b)(1), (4), Wis. Adm. Code.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is accepted.

2. The Wisconsin Accounting Examining Board hereby accepts the voluntary surrender of Gregory A. Berna's Certified Public Accountant's license No. 8679, AND UNDERLYING CERTIFICATE.

3. It is further Ordered that the Accounting Examining Board shall close the investigative file.

This Order shall become effective ten (10) days following the date of its signing.

Wisconsin Accounting Examining Board

BY: Joel D Barlock
A Member of the Board

8-29-93
Date

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WISCONSIN

U.S. DISTRICT
WEST. DIST OF
DEC - 8 1992
FILED / RECEIVED
JOSEPH W. SKUPNIEWITZ, CLERK

UNITED STATES OF AMERICA,

vs

Gregory Berna,
(By Attorney Steven C. Underwood)

JUDGMENT IN A CRIMINAL CASE
INCLUDING SENTENCE UNDER
THE SENTENCING REFORM ACT

Case No.: 92-CR-040-C-01

THE DEFENDANT pleaded guilty to count I of the superseding indictment.

Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

Count Number	Title & Section	Nature of Offense
I	18 USC § 1343	Fraud By Wire

The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Counts II through XXIX are dismissed on the motion of the United States.

It is ordered that the defendant shall pay to the United States a special assessment of $50.00, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence is imposed on December 4, 1992.

Barbara B. Crabb — December 7, 1992

Barbara B. Crabb
U. S. District Judge

Date

A TRUE COPY Certified
DEC 10 1992
Joseph W. Skupniewitz, Clerk
U. S. District Court
Western District of Wisconsin
By _____ Deputy Clerk

Defendant's S.S.A.N.:
387-50-2487

Defendant's date of birth:
September 23, 1947

Defendant's mailing address:
1710 Second Street North
Wisconsin Rapids, Wisconsin 54494

Defendant's residence address:
1710 Second Street North
Wisconsin Rapids, Wisconsin 54494

(WDWI rev. 11/92)

Exhibit "1"

SENTENCE AND STATEMENT OF REASONS

I accept the plea agreement based on my finding that the offense of conviction adequately represents defendant's criminal conduct and does not undermine the Sentencing Guidelines or the statutory purposes of sentencing. I adopt the guideline calculations proposed by the probation office. They take into account all of the conduct that was part of the same course of conduct or common scheme as the offense of conviction, pursuant to §§1B1.3 and 3D1.2(d). I find the amount of loss to Roehl Transport in this case was $1,141,300.00.

I am granting a two-level downward adjustment for acceptance of responsibility. However, I am not granting the additional one-level downward adjustment under §3E1.1(b) because the defendant did not start to provide information to the government until recently and he did not plead guilty in a timely manner. Based on the defendant's position within Roehl Transport and his level of authority to use the Comdata system, I find he did abuse a position of trust in his role in the offense.

I am imposing a sentence at the top of the applicable guideline range because it is necessary to provide specific and general deterrence and to hold defendant accountable for his behavior. The amount of money taken was also near the top of the applicable loss range in the guidelines.

As to Count I of the Superseding Indictment, it is adjudged that the defendant is to pay a $50 criminal assessment penalty to the U.S. Clerk of Court for the Western District of Wisconsin, immediately following sentencing. Further as to Count I, it is ordered that the defendant pay $1,141,300.00 in restitution to Roehl Transport, Inc., P.O. Box 750, Marshfield, Wisconsin 54449; $13,497.00 restitution to Emmons-Napp Office Products, Inc., 601 Division Street, Steven Point, Wisconsin 54481; and $47,773.00 as directed by the Wood County District Attorney. Payments are to commence immediately. Restitution is ordered jointly and severally with any other defendants who might be charged in this course of conduct in the future.

Further, it is ordered that defendant is committed to the custody of the Bureau of Prisons for imprisonment for a term of 37 months, to be followed by a three-year term of supervised release.

Defendant has the earning potential to pay restitution in monthly installments but the imposition of a fine would impair his ability to pay restitution and to support himself and his dependents.

Defendant is neither a flight risk nor a danger to the community. Accordingly, execution of the sentence of imprisonment is stayed until January 4, 1993. The present conditions of release are continued until January 4, 1993.

The defendant shall surrender to an institution to be designated by further court order on January 4, 1993 between the hours of 10:00 am and 12:00 noon.

"Exhibit 1"

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court (set forth on the following page). The defendant shall comply with the following special conditions of supervised release:

1) defendant is to pay restitution in minimum monthly installments of $250 through the U.S. Clerk of Court for the Western District of Wisconsin, by the 5th day of each month, as directed by the supervising U.S. Probation Officer. Restitution is to be paid in full at least 6 months prior to the expiration of supervised release.

2) Defendant is to permit full financial disclosure to the supervising U.S. Probation Officer.

3) Defendant is to register with local law enforcement authorities as directed by the supervising U.S. Probation Officer.

STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this judgment:

1) The defendant shall not commit another federal, state or local crime;

2) the defendant shall not leave the judicial district without the permission of the court or probation officer;

3) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

5) the defendant shall support his or her dependents and meet other family responsibilities;

6) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

7) the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;

8) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

9) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

10) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

11) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

12) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

13) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;

15) the defendant shall not receive, possess, or transport in commerce or affecting commerce any firearm, as defined in Title 18 USC §922(g), including any handgun, rifle or shotgun.

These conditions are in addition to any other special conditions imposed by this judgment.

RETURN

I have executed this judgment as follows:

The defendant was delivered on _____ to _____ at

_____, with a certified copy of this Judgment.

_____
United States Marshal

by _____
Deputy Marshal

Exhibit "1"

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA v. GREGORY BERNA, Defendant.	)	INDICTMENT Case No. 92CR040-C 18 U.S.C. 1343

THE GRAND JURY CHARGES:

COUNT I

That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc. to the defendant's business, Designed Ad-Ventures, Inc. by means of a series of deceptive acts, knowing the acts to be fraudulent when executed.

1. It was part of the scheme that the defendant knowingly and intentionally misused his position of controller, or chief financial officer, at Roehl Transport, Inc. for the purpose of defrauding Roehl Transport, Inc.

2. It was further part of this scheme that the defendant misused his position as controller at Roehl Transport, Inc. to misappropriate a series of Comdata Network Comchek codes which had been furnished by Comdata Corporation for the use and

Exhibit

benefit of Roehl Transport, Inc.; the Comdata system is commonly used to transfer money in the trucking industry.

3. It was further part of this scheme that the defendant provided the misappropriated Comdata codes to persons associated with Designed Ad-Ventures for purposes of obtaining money to further the business goals of Designed Ad-Ventures.

4. It was further a part of this scheme that after each instance where the misappropriation of funds was brought to the attention of Everett Roehl, President of Roehl Transport, Inc., the defendant assured Everett Roehl that all previously taken money would be repaid, and further, the defendant intentionally misrepresented to Everett Roehl that no more money would be taken, thus ensuring the continued flow of money to associates of Designed Ad-Ventures, Inc.

5. It was further a part of this scheme that the defendant misused the loyalty placed in him by Everett Roehl and violated his fiduciary duties as an employee of Roehl Transport, Inc. by defrauding Roehl Transport, Inc. of tangible property in the form of money.

6. It was further part of this scheme that the defendant misused his position as controller at Roehl Transport, Inc. by directing Roehl Transport Inc. accounts payable clerk Carol Groff to post monies diverted to Designed Ad-Ventures to the miscellaneous receivables account within the financial records of Roehl Transport, Inc. to make detection less likely by disguising monies diverted to Designed Ad-Ventures, Inc. as a legitimate business expense.

7. It was further part of this scheme that the defendant directed Roehl Transport, Inc. accounts payable clerk Carol Groff to process payments from Roehl Transport, Inc. to Comdata Corporation to ensure the continued flow of money to associates of Designed Ad-Ventures, Inc.

8. It was further part of this scheme that Roehl Transport, Inc. accounts payable clerk Carol Groff would authorize a wire transfer from the checking account of Roehl Transport, Inc. at First Bank in Milwaukee, Wisconsin, to the account of Comdata Corp. at Mellon Bank in Pittsburg, Pennsylvania, thereby assuring the continued use of the Comdata Comchek system by the defendant.

9. On or about January 9, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $21,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT II

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

Exhibit "

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about January 23, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $65,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT III

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about January 29, 1991, in the Western District of Wisconsin, the

defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $51,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT IV

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about February 13, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $73,000 00 from the

Exhibit

account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT V

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about February 15, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $63,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT VI

1. That from on or about January 9, 1991, to July 26, 1991, in the Western

District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about February 20, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $33,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT VII

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as

EXHIBIT

if fully set forth herein.

2. On or about February 22, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $9,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT VIII

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about February 25, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in

interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $14,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT IX

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about February 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $12,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT X

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about March 27, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $103,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XI

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl

EXHIBIT

Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about April 10, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $24,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XII

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about April 17, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $32,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XIII

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about April 24, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $18,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XIV

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about April 25, 1991, in the Western District of Wisconsin, the defendant, GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $38,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XV

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl

Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about May 1, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $34,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XVI

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about May 15, 1991, in the Western District of Wisconsin, the defendant, GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $10,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XVII

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about May 22, 1991, in the Western District of Wisconsin, the defendant, GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $31,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XVIII

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about June 6, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $41,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XIX

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl

Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about June 12, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $35,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XX

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about June 24, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $28,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XXI

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about June 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $45,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata

Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XXII

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about July 3, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $37,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

COUNT XXIII

1. That from on or about January 9, 1991, to July 26, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

knowingly and intentionally devised and executed a scheme to defraud Roehl Transport, Inc. and to divert money from Roehl Transport, Inc., this scheme being set forth in paragraphs 1 through 8 of Count I which are realleged and incorporated as if fully set forth herein.

2. On or about July 10, 1991, in the Western District of Wisconsin, the defendant,

GREGORY BERNA,

for the purpose of executing this scheme, knowingly caused to be transmitted in interstate commerce, by means of a wire communication, certain signals, signs and sounds: to wit, an electronic transfer of funds in the amount of $32,000.00 from the account of Roehl Transport, Inc. at First Bank of Milwaukee to the account of Comdata Corporation at Mellon Bank in Pittsburg, Pennsylvania.

(All in violation of Title 18, United States Code, Section 1343).

A TRUE BILL

FOREMAN

Kevin C. Potter
United States Attorney

Indictment returned: 3/31/92

Exhibit "

U.S. Department of Justice

United States Attorney
Western District of Wisconsin

660 West Washington Avenue
Suite 200
P.O. Box 1585
Madison, Wisconsin 53701-1585

Telephone:
(608) 264-5158
FTS (608) 264-5158

October 4, 1992

Mr. Steven C. Underwood
Attorney at Law
7617 Mineral Point Road
PO Box 5510
Madison, WI 53705-0510

Re: United States v. Gregory Berna
Case No. 92-CR-40-C

Dear Mr. Underwood:

The purpose of this letter is to reduce to writing a proposed plea agreement between the defendant and the United States government relating to the above-captioned case. The defendant is currently charged in a twenty-nine count indictment with violating Title 18, United States Code, Section 1343. The maximum penalty for each count of the indictment is a term of imprisonment of not more than five years, a fine of not more than $250,000, a term of supervised release of not longer than three years and a $50 criminal assessment penalty.

The government would propose that the defendant enter a plea of guilty to Count I of the indictment. If the defendant enters a plea of guilty, the government agrees to dismiss Counts II through XXIX of the indictment. The United States also agrees that it will not pursue charges against the defendant's wife, Karen Berna, based on any activity involving Roehl Transport Inc. or Designed Ad-Ventures Inc.

If the defendant enters a plea of guilty to count I of the federal indictment, Portage County District Attorney Susan Lynch has agreed to dismiss the current criminal charges filed against the defendant in Portage County stemming from an alleged fraudulent check payable to Emmons-Napp Office Products, Inc. of Stevens Point, Wisconsin. District Attorney Lynch has also agreed not to bring charges against the defendant's wife, Karen Berna. In return, the defendant has agreed to pay restitution to Emmons-Napp. If the defendant and Emmons-Napp cannot arrive at an agreed upon restitution figure, the defendant is entitled to a restitution hearing before a Portage County circuit judge.

The parties also agree that the amounts involved and restitution owed are open questions to be decided by the court in

Exhibit "

the sentencing process. The defendant, however, understands that restitution may not be solely limited to the violation of Title 18, United States Code, Section 1343 to which he is pleading guilty (see Title 18, United States Code, Section 3663(a)(3)).

Additionally, the United States Attorney's Office for the Western District of Wisconsin agrees not to pursue further criminal charges against the defendant for criminal conduct associated with Roehl Transport, Inc. or Designed Ad-Ventures, Inc. or any further criminal activity of which this office is currently aware. If the defendant has been involved in other criminal activities, including but not limited to other instances of wire fraud, then he could be charged with those violations of law.

The defendant further agrees to make a full, complete and truthful disclosure regarding the involvement of other individuals in the scheme to defraud Roehl Transport, Inc. The defendant agrees to testify fully and truthfully before a federal grand jury and at any trials or hearings which may result from the information provided.

If the defendant provides substantial assistance in the investigation and prosecution of these other individuals, the government agrees to make the appropriate motions pursuant to either Section 5K1.1 of the sentencing guidelines and/or Rule 35 of the Federal Rules of Criminal Procedure. The decision whether or not to make the motion is within the discretion of the United States Attorney's Office for the Western District of Wisconsin. The defendant acknowledges that the court has sole discretion in ruling on a motion based on substantial assistance and in ruling on the extent of any departures granted.

No direct use will be made of the defendant's statements in any criminal or civil proceeding involving him. The indirect use of these statements is permitted. This "indirect use" includes pursuing leads based on the information provided by the defendant, as well as the use of the statements themselves for impeachment and rebuttal purposes should the defendant, at any point, be allowed to withdraw his plea and proceed to trial.

Pursuant to United States v. Threw, 861 F.2d 1046 (7th Cir. 1988), the information provided by the defendant will be provided to the sentencing judge prior to any sentencing hearing. However, pursuant to Section 1B1.8 of the sentencing guidelines, this information may not be used against the defendant to determine the defendant's appropriate sentencing range, nor may the defendant be subject to any increased sentence within a guideline range by virtue of the information provided by him pursuant to this plea agreement.

The defendant and the United States both reserve the right to comment on, and to challenge or support, the guidelines computations which will be calculated by the probation officer and the sentencing judge. In addition, both the defendant and the government reserve the right to appeal the sentence imposed, if appropriate, pursuant to Title 18, United States Code, Section 3742. In the event the defendant chooses to appeal from the

sentence imposed, the United States reserves the right to raise all appropriate arguments in support of the sentence imposed by the court.

If the defendant wishes to accept this plea agreement proposal, would you and he please sign this letter and return it to me. By his signature, the defendant will acknowledge his understanding that the United States has made no promises or guarantees regarding the sentence which will be imposed. The defendant will also acknowledge his understanding that the court is not required to accept the recommendations which will be made by the United States and that the court is free to impose any sentence, up to and including the maximum penalties set out above.

Very truly yours,

KEVIN C. POTTER
United States Attorney

By:

TIMOTHY M. O'SHEA
Assistant U.S. Attorney

10-4-92
Date

TIMOTHY M. O'SHEA
Assistant U.S. Attorney

10-4-92
Date

GREGORY BERMA
Defendant

10-4-92
Date

STEVEN C. UNDERWOOD
Attorney for Defendant

TMO:pac

Exhibit "11"

STATE OF WISCONSIN
BEFORE THE ACCOUNTING EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDING AGAINST GREGORY A. BERNA, RESPONDENT	: : : :	STIPULATION

It is hereby stipulated between Gregory A. Berna, personally on his own behalf and Henry E. Sanders, Complaint Attorney, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Gregory A. Berna's licensure by the Divison of Enforcement. Gregory A. Berna consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Gregory A. Berna understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Gregory A. Berna is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this Stipulation.

4. Gregory A. Berna agrees to the adoption of the attached Final Decision and Order by the Accounting Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney for the Division of Enforcement may appear before the Accounting Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

7. The Division of Enforcement joins Gregory A. Berna in recommending the Accounting Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

Gregory A. Berna

Date

Henry E. Sanders, Attorney
Division of Enforcement

7/9/93
Date

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each, and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Accounting Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Accounting Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Accounting Examining Board.

The date of mailing of this decision is September 7, 1993.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17 025 (3) (e) No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court