

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL, : No. 2669 Disciplinary Docket No. 3  
: :  
Petitioner : No. 187 DB 2019  
: :  
v. : Attorney Registration No. 30018  
: :  
NEIL I. MITTIN, : (Montgomery County)  
: :  
Respondent :

**ORDER**

**PER CURIAM**

**AND NOW**, this 11<sup>th</sup> day of June, 2020, upon consideration of the Verified Statement of Resignation, Neil I. Mittin is disbarred on consent from the Bar of this Commonwealth, retroactive to December 8, 2019. See Pa.R.D.E. 215. Respondent shall comply with all of the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola  
As Of 06/11/2020

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF  
THE SUPREME COURT OF PENNSYLVANIA

IN THE MATTER OF : No. 2669 Disciplinary Docket No. 3  
NEIL I. MITTIN :  
: No. 187 DB 2019  
: Attorney Registration No. 30018  
: (Montgomery County)

RESIGNATION  
UNDER Pa.R.D.E. 215

Neil I. Mittin, hereby tenders his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215 ("Enforcement Rules") and further states as follows:

1. He is an attorney formerly admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 18, 1979. His attorney registration number is 30018. By Order dated November 8, 2019, effective December 8, 2019, the Supreme Court of Pennsylvania placed Respondent on temporary suspension.

2. He desires to submit his resignation as a member of said bar.

3. His resignation is freely and voluntarily rendered; he is not being subjected to coercion or duress and he is fully aware of the implications of submitting this resignation.

**FILED**  
**05/28/2020**  
**The Disciplinary Board of the**  
**Supreme Court of Pennsylvania**

4. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted with and acted upon the advice of counsel in connection with his decision to execute the within resignation.

5. He is aware that there are presently pending disciplinary proceedings instituted against him pursuant to Rule 214, Pa.R.D.E. relating to his criminal conviction in the United States District Court for the Eastern District of Pennsylvania in the case of *United States v. Neil I. Mittin*, #2:19-cr-00418.

6. He acknowledges that the material facts which form the basis for his criminal matter are true and that he entered a plea of guilty on September 11, 2019 to one count of mail fraud in violation of 18 U.S.C. § 1341. A true and correct copy of the Transcript of Arraignment-Plea Before The Honorable Michael M. Baylson United States District Judge is attached hereto and marked Exhibit A.

7. He submits the within resignation because he knows that he could not successfully defend himself against the charges of professional misconduct set forth in the attached Exhibit.

8. He is fully aware that the submission of this Resignation Statement is irrevocable and that he can only apply for reinstatement to the practice of law pursuant to the provisions of Enforcement Rule 218(b) and (c).

9. He is aware that pursuant to Enforcement Rule 215(c) the fact that he has tendered his resignation shall become a matter of public record immediately upon delivery of the resignation statement to Disciplinary Counsel or to the Board Prothonotary.

10. Upon entry of the order disbaring him on consent, he will promptly comply with the notice, withdrawal, resignation, trust account, and cease-and-desist provisions of Enforcement Rule 217 (a), (b), (c) and (d).

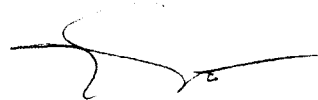
11. After entry of the order disbaring him on consent, he will file a verified statement of compliance as required by Enforcement Rule 217(e)(1).

12. He is aware that the waiting period for eligibility to apply for reinstatement to the practice of law under Enforcement Rule 218(b) shall not begin until he files the verified statement of compliance required by Enforcement Rule 217(e)(1), and if the order of disbarment contains a provision that makes the disbarment retroactive to an earlier date, then the waiting period will be deemed to have begun on that earlier date.

13. He requests that his disbarment be made retroactive to December 8, 2019, the effective date of the temporary suspension Order. He is advised that the Office of Disciplinary Counsel does not oppose his request. He understands that the decision to grant his request lies solely within the discretion of the Supreme Court of Pennsylvania.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S., Section 4904 (relating to unsworn falsification to authorities).

Signed this 6<sup>TH</sup> day of ~~March~~ <sup>APRIL</sup>, 2020.



Neil I. Mittin

WITNESS: Joseph G. Poluka  
Joseph G. Poluka

Mr. Mittin emailed to me this signed, but not witnessed, Resignation statement. I attest to the fact that the signature is known to me as that of Mr. Mittin.



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1 (The following was heard at 10:13 a.m.)

2 THE COURT: Good morning, everyone.

3 MR. LAPPEN: Good morning, Your Honor.

4 MR. POLUKA: Good morning, Your Honor.

5 THE COURT: Please be seated. All right, we are  
6 here this morning for what I am told will be an arraignment  
7 and a plea of guilty by the United States vs. Neil Mittin --  
8 M-I-T-T-I-N. Present for the United States is Louis Lappen  
9 and present for the defendant is Mr. Joseph Poluka and Joel  
10 Shapiro. And from the Pretrial Services, Christopher Narcisi.

11 MR. NARCISI: Good morning, Your Honor.

12 THE COURT: Okay, all right, good morning. Let's  
13 proceed by swearing in the defendant.

14 COURTROOM DEPUTY: Please raise your right hand.

15 NEIL I. MITTIN, DEFENDANT, SWORN

16 COURTROOM DEPUTY: Thank you. Please state your  
17 full name and spell your last name for the record.

18 THE DEFENDANT: Neil I. Mittin, M-I-T-T-I-N.

19 THE COURT: Okay, Mr. Mittin, good morning.

20 THE DEFENDANT: Good morning, sir.

21 THE COURT: I understand that you -- that this is  
22 your first appearance and that in addition to being arraigned,  
23 you intend to plead guilty to an information, is that correct?  
24 Is that right, Mr. Poluka?

25 MR. POLUKA: It is, Your Honor.



1 THE COURT: Okay. Now, what I've done in other  
2 instances, Mr. Poluka, but it's up to you and Mr. Lappen, is I  
3 would first have the arraignment and then -- to which the  
4 defendant can plead not guilty, and then I would proceed with  
5 the colloquy for the guilty plea. Is that okay with you, or  
6 do you want to do it differently?

7 MR. POLUKA: Your Honor, that's fine. I've seen it  
8 done all kind of different ways. That's perfectly acceptable.

9 THE COURT: Okay. All right, so let's do the  
10 arraignment.

11 MR. POLUKA: That's fine.

12 THE COURT: Yes, is that all right, Mr. Lappen?

13 MR. LAPPEN: Yes.

14 THE COURT: All right, let's do the arraignment.

15 COURTROOM DEPUTY: Neil Mittin, you have been  
16 charged in Information Number 19-418 with mail fraud in  
17 violation of 18 USC 1341. As to Count 1 of this information,  
18 how do you plead, guilty or not guilty?

19 THE DEFENDANT: Not guilty.

20 THE COURT: Okay, all right. All right, Mr. Mittin,  
21 I understand that there's no plea agreement here, this is an  
22 open plea?

23 MR. LAPPEN: No, Your Honor, there is a plea  
24 agreement.

25 THE COURT: Oh, there is. All right, I stand

1 corrected. Okay. Okay, you're right. Thank you.

2 (Pause in proceedings)

3 THE COURT: Okay, do you understand that I'm going  
4 to be asking you a number of questions about your intention to  
5 plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you understand that you must  
8 answer those questions truthfully?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand that if you don't  
11 answer the questions truthfully, you can be prosecuted for  
12 making false statements or for perjury?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you don't understand one of my  
15 questions, will you tell me that before you answer it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you understand that at any time  
18 you want to talk to Mr. Poluka, just tell me that and I'll  
19 stop the questioning so you can discuss anything you want with  
20 him in private?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay.

23 PLEA COLLOQUY

24 BY THE COURT:

25 Q Where were you born?

1 A Philadelphia, Pennsylvania.

2 Q All right. And how far did you go in school?

3 A I graduated law school.

4 Q Okay. And have you ever been treated for drug or alcohol  
5 addiction or for mental illness?

6 A No.

7 Q Okay. Are you under any kind of -- are you under any  
8 medical care at this time?

9 A Yes.

10 Q Are you taking any medicine?

11 A Yes.

12 Q What kind of medicine?

13 A I have been diagnosed with Graves' disease because of  
14 thyroid problems so and that causes in my particular case  
15 optical problems, so I see double --

16 Q Okay.

17 A -- when I look at things --

18 Q All right.

19 A -- cannot see them because the tissues behind my eyes  
20 have become swollen. That's why my eyes are bulging now. So  
21 I'm on a medication to -- to help control that; however, it  
22 hasn't worked to the satisfaction after undergoing radiation  
23 treatments, so I'm tentatively scheduled to have surgery on my  
24 eyes sometime in November, so that's the -- the major thing  
25 I'm being treated for.

1 Q Okay.

2 A I do take medication for other things.

3 Q Okay.

4 A I have --

5 Q How do you feel today just aside from the medication.

6 A Fine --

7 Q All right.

8 A I mean fine --

9 Q All right.

10 A -- I feel fine. My vision sometimes is a problem and I

11 have to look away, but absent that, I can understand

12 everything.

13 Q Okay. All right, now you signed a plea agreement in this

14 case, is that correct?

15 A Yes.

16 THE COURT: And who has the original plea agreement?

17 MR. POLUKA: Mr. Lappen does.

18 THE COURT: All right. Mr. Lappen, show it to the

19 defendant, please.

20 BY THE COURT:

21 Q All right, look at page 11. Is that your signature?

22 A Yes, sir.

23 Q All right. And then there's an acknowledgment of rights.

24 Did you sign that as well?

25 A Yes, sir.

1 Q Okay. Now, did you read these documents before you  
2 signed them?

3 A Yes, I read them with Mr. Poluka.

4 Q And did you have a chance to discuss them with Mr.  
5 Poluka?

6 A I did.

7 Q And did you discuss them with him and did you have the  
8 opportunity to ask him any questions you wanted to about the  
9 document?

10 A I did, and I also discussed them with my other counsel --

11 Q Okay.

12 A -- Joel Shapiro.

13 Q Okay.

14 THE COURT: Now, and I want to go through the plea  
15 agreement. Just put it in front of the defendant.

16 BY THE COURT:

17 Q All right, in paragraph one, it states that you -- you  
18 the defendant, agree to plead guilty to an information,  
19 waiving prosecution by indictment charging you with one count  
20 of mail fraud in violation of Federal law, and also not to  
21 contest forfeiture is set forth in the notice of forfeiture  
22 charging criminal forfeiture, and all of these arise out of  
23 your scheme to defraud your law firm of fees to which your law  
24 firm was entitled by referring cases of the law firm to  
25 outside lawyers to resolve the cases and share the proceeds

1 with you. Is that correct?

2 MR. POLUKA: Your Honor, if I may?

3 THE COURT: Yes.

4 MR. POLUKA: It is correct except the not contest  
5 forfeiture. I've had extensive discussions with Mr. Lappen  
6 about the interplay between forfeiture and restitution in this  
7 case and there is a tweak or fix if you will as to that issue.  
8 Maybe it is the right time --

9 MR. LAPPEN: Your Honor --

10 MR. POLUKA: -- for Mr. Lappen --

11 MR. LAPPEN: -- Your Honor, there's no tweak,  
12 there's no fix. He is not -- he's not contesting forfeiture.  
13 All we're doing, to clarify the record, is that at some point  
14 Your Honor is going to determine what the loss is that's  
15 appropriate in this case -- the finding of what the loss is  
16 that he caused to the victims, and when Your Honor determines  
17 what that loss is -- because that is contested, the parties  
18 haven't agreed on that, the Government will have available to  
19 it the tools of forfeiture and restitution as set forth in the  
20 plea agreement to collect on that number.

21 We do not intend -- and I'll be clear for the  
22 defendant -- we do not intend to double recover. So for  
23 example, if Your Honor were to find that the loss is \$4.2  
24 million, we are not going to try to get \$8.4 million or  
25 anything above the \$4.2 million --

1 THE COURT: Okay.

2 MR. LAPPEN: -- but we are going to use restitution  
3 and forfeiture as necessary to obtain the loss and repay the  
4 victims --

5 THE COURT: Okay.

6 MR. LAPPEN: -- as Your Honor determines.

7 THE COURT: All right. Well, that --

8 MR. LAPPEN: That's a clarification.

9 THE COURT: -- that sounds understandable to me. Is  
10 that agreed, Mr. Poluka?

11 MR. POLUKA: It is, Your Honor. Maybe tweak is not  
12 the right word, but in my view it is a modification because  
13 we've had extensive discussions, we do not want to see the  
14 Government try to double collect in any way, shape or form.

15 Whatever loss the Court determines we are --  
16 whatever it is between 1.3 and 4.2 million which is set forth  
17 in the plea agreement, that money should go to the victim law  
18 firm and not to the US Treasury.

19 THE COURT: Okay. Well, for purposes of the plea  
20 agreement, the information contains a notice of forfeiture on  
21 page seven, okay? Now, the -- what the plea agreement  
22 prepared by the Government and which your client signed, is he  
23 agreed not to contest forfeiture, which is what I read to him.  
24 Is that correct?

25 MR. POLUKA: It is correct, Your Honor, but -- it is

1 correct, but again, let's just say the Court found that the  
2 loss was 1.3 million. What the agreement is with the  
3 Government is that would be the total penalty. It wouldn't be  
4 1.3 of restitution and 1.3 of forfeiture, so yes --

5 THE COURT: Well, Mr. Lappen just agreed to that.

6 MR. POLUKA: Okay.

7 THE COURT: But he signed a plea agreement that he's  
8 not going to contest forfeiture, so I need to know if he  
9 agrees he's not going to -- if he's not going to agree to  
10 that, then I'm not going to approve the plea agreement.

11 MR. POLUKA: He agrees to it, Your Honor, as  
12 clarified by Mr. Lappen, yes.

13 THE COURT: All right.

14 BY THE COURT:

15 Q So -- well, Mr. Lappen did not say anything that annulled  
16 the agreement not to contest forfeiture. So my question, Mr.  
17 Mittin, you talked to Mr. Poluka about this, but this  
18 paragraph clearly says that you've agreed not to contest  
19 forfeiture, so I want to know whether you agree with that and  
20 I'm not going to accept a qualification on it.

21 MR. POLUKA: All right, let us have a minute.

22 (Pause in proceedings)

23 MR. POLUKA: Okay, Your Honor, we're prepared to  
24 proceed.

25 THE COURT: All right.



1 BY THE COURT:

2 Q So do you agree as stated here not to contest forfeiture?

3 A As stated by counsel, no. No, I won't contest forfeiture  
4 based upon the information provided by Mr. Lappen to the  
5 Court.

6 Q Okay. All right, now I want to be sure that you  
7 understand the procedure that will apply, assuming I accept  
8 the guilty plea. The Probation Department will do a  
9 presentence report about this offense and your background and  
10 you're required to cooperate in providing information, do you  
11 understand that?

12 A Yes, sir.

13 Q And do you understand that you'll get a copy of that  
14 report, as will the Government, and you have then 14 days to  
15 review it with your attorney and make objections to anything  
16 in the report that you think is untrue or unfair, do you  
17 understand that?

18 A Yes, sir.

19 Q And do you understand I will then have a sentencing  
20 hearing and at which time I will review the presentence report  
21 and any objections that were filed by you or the Government  
22 and I will rule on that objections, do you understand that?

23 A Yes, sir.

24 Q All right. And then I will hear from you and your  
25 counsel and any witnesses you want to prepare and I'll hear

1 from the Government and determine what sentence to impose, do  
2 you understand that?

3 A Yes, sir.

4 Q Now, do you understand that if you are unhappy with any  
5 of my rulings or you don't agree with them, that that's not  
6 grounds to withdraw your guilty plea?

7 A Yes, sir.

8 Q So do you understand that if you plead guilty today,  
9 you're pleading guilty for all time?

10 A Yes, sir.

11 Q And you understand that your lawyer and the Government  
12 lawyer can ask me to do certain things, but I don't have to do  
13 anything of them, do you understand that?

14 A Yes, sir.

15 Q All right. Now, do you also understand as set forth in  
16 paragraph two that at the time of sentencing, the Government  
17 can make whatever recommendation as to imprisonment, fines,  
18 forfeiture, restitution and other matters which the Government  
19 deems appropriate, and your counsel has the same opportunity,  
20 do you understand that?

21 A May I have a moment to speak to counsel?

22 Q Sure.

23 (Pause in proceedings)

24 A Yes, sir.

25 Q Okay. All right. And do you understand that the

1 Government has the opportunity to bring to my attention all  
2 facts relevant to sentencing including any background facts or  
3 to correct any inaccuracies in the presentence report, and you  
4 have the same opportunity, do you understand that?

5 A Yes, sir.

6 Q All right. And do you --

7 THE COURT: -- I want Mr. Lappen to recite what is  
8 the maximum sentence in this case.

9 MR. LAPPEN: Yes, Your Honor, for the one count in  
10 which the defendant is charged which is mail fraud, the  
11 maximum penalty is 20 years in prison, a three-year period of  
12 supervised release, a \$250,000 fine and a \$100 special  
13 assessment. The maximum restitution is as much as \$4.2  
14 million and forfeiture maximum is also not greater than \$4.2  
15 million.

16 THE COURT: All right.

17 BY THE COURT:

18 Q So do you understand, Mr. Mittin, that that's the maximum  
19 sentence?

20 A Yes, sir.

21 Q All right. Now, has anybody given you any promises as to  
22 what sentence I will impose?

23 A No, sir.

24 Q Do you understand no one can give you such a promise?

25 A Correct, sir --

1 Q All right.

2 A -- yes.

3 Q Now, have you discussed the Sentencing Guidelines with  
4 your attorney?

5 A I have, sir.

6 Q All right. Do you understand that the presentence report  
7 will contain a calculation of the Sentencing Guidelines?

8 A Yes, sir.

9 Q And do you understand that in a case of this nature the  
10 sentence -- the presentence report will indicate what is  
11 referred to as "the amount of the loss," which roughly or is  
12 -- intends -- is intended to reflect the amount of money that  
13 the victim lost due to your crime, do you understand that?

14 A Yes, sir.

15 Q All right. Now, I understand in this case there may be a  
16 dispute as to the amount of the loss, do you understand that?

17 A Yes, sir.

18 Q So as part of the sentencing hearing, I will most likely  
19 receive evidence about that and then I have to make a finding  
20 as to what the amount of the loss is, do you understand that?

21 A Yes, sir.

22 Q Okay. Now, because you pled guilty, you may not have the  
23 opportunity to appeal -- file an appeal from my determination  
24 about that, do you understand that?

25 A Yes, sir.

1 Q There's a waiver of appeal in this plea agreement, isn't  
2 that correct?

3 A Yes.

4 Q All right. So the plea agreement states very  
5 specifically that as part of your agreement with the  
6 Government -- this is paragraph 14 on page eight -- that  
7 you're giving up any right to appeal or collaterally attack  
8 your conviction, sentence or any other matter that arises in  
9 this case, is that correct?

10 A Yes, sir.

11 Q All right. Now, that -- the way I read this, that  
12 probably includes any decision I make as to the amount of the  
13 loss, do you understand that?

14 A Yes, sir.

15 Q Okay. Now, do you understand the amount of the loss  
16 directly relates to the guideline offense level that I have to  
17 find as part of the sentencing proceeding, do you understand  
18 that?

19 A Yes, sir.

20 Q Okay. All right. Now, do you also understand that at  
21 the time of sentencing, that I have to consider not only the  
22 guideline sentencing range, but I also have to consider other  
23 sentencing factors such as deterrence, the seriousness of the  
24 crime, the need for punishment, public safety, prospects for  
25 rehabilitation and things of that nature, do you understand

1 that?

2 A Yes, sir.

3 Q And have you discussed those with Mr. Poluka as well?

4 A Yes, sir.

5 Q Okay. All right. Now, do you also understand that the  
6 sentence will contain a period of supervised release which is  
7 a form of parole that while after you're released from prison,  
8 you will get a -- you will be under the supervision of the --  
9 of a probation officer, do you understand that?

10 A Can I have a moment, Your Honor?

11 Q Sure.

12 (Pause in proceedings)

13 A Yes, sir.

14 Q And do you understand that if you violate the terms of  
15 supervised -- supervised release, you may get additional  
16 prison time?

17 A Yes, sir.

18 Q All right. Now, in paragraph five, you're agreeing to --  
19 to fully disclose all income, assets, liabilities and  
20 financial interests held directly or indirectly which were  
21 held in your own name or the name of a relative, spouse,  
22 tenants by the entirety, associate, another person or entity  
23 or in trust or in any other format, whether held in this  
24 country or outside this country, is that correct?

25 A Yes, sir.

1 Q Okay.

2 MR. POLUKA: And I would add, Your Honor, if I may,  
3 that that statement has already been submitted to the US  
4 Attorney's Office.

5 THE COURT: Okay. Thank you.

6 BY THE COURT:

7 Q So in paragraph (a), you're going to submit a completed  
8 financial statement of the debtor to the US Attorney's Office,  
9 that's already been done?

10 A Yes, sir.

11 MR. POLUKA: It has.

12 THE COURT: Okay.

13 BY THE COURT:

14 Q All right, and then you authorize the US Attorney to  
15 obtain a credit report, you also agree to submit a financial  
16 deposition or interview prior to sentencing and provide all  
17 documents, you agree not to transfer, assign, dispose, remove,  
18 et cetera, any property that you have with the effect of  
19 hindering, delaying or defrauding the United States, and you  
20 may not devalue any property worth more than \$1,000 before  
21 sentencing, you agree to execute any documents necessary to  
22 release any funds held wherever and to comply with the  
23 paragraph of this plea agreement -- or no -- if you fail to  
24 comply with the -- with this paragraph of the plea agreement  
25 or any of your other misrepresentations, then the Government

1 may elect to void this agreement or argue that you're not  
2 entitled to any downward adjustment, do you understand that?

3 A Yes, as per what we indicated on the financial statement  
4 form --

5 Q Okay.

6 A -- that we've already provided.

7 Q All right. Now, paragraph six says that you agree to pay  
8 a fine as determined by the Court and restitution as much as  
9 \$4,200,000 as determined by the Court, is that correct?

10 A Yes, sir.

11 Q All right. And as I understand from the discussion, that  
12 that amount may be disputed by you, but you understand that I  
13 have the power and the duty to make a finding as to the amount  
14 of loss and how much is -- should be a fine or restitution,  
15 but not to double count, is that -- is that understood?

16 A Yes, sir.

17 Q Okay. All right. And you agree in paragraph seven that  
18 forfeiture, restitution, fine, assessment, tax interest or  
19 other payments do not constitute extraordinary acceptance of  
20 responsibility or provide any basis to seek a downward  
21 departure or variance from the applicable Sentencing Guideline  
22 range, except that you may elect to seek a downward variance  
23 based on your intention to pay substantial restitution prior  
24 to sentencing, is that correct?

25 A Yes, sir.



1 Q Okay. You also agree to pay a special assessment of  
2 \$100, correct?

3 A Yes, sir.

4 Q Now, with respect to the forfeiture which is set forth in  
5 paragraph nine, you agree to forfeit your right, title and  
6 interest in an amount to be determined by the Court of as much  
7 as \$2 million, which represents the proceeds that you obtained  
8 from the offense of mail fraud charged in Count 1 of the  
9 indictment, is that correct?

10 (Pause in proceedings)

11 A Yes, sir.

12 Q Now, the last sentence in this paragraph says as follows:  
13 "The defendant agrees that due to your acts or omissions, all  
14 of these proceeds are not currently available to the  
15 Government for forfeiture, and that the Government is entitled  
16 to the forfeiture of substitute assets because one or more of  
17 the conditions in 21 US Code Section 853(p) have been met," is  
18 that correct?

19 (Pause in proceedings)

20 A Yes, sir.

21 Q All right. Now, paragraph (b), do you agree to the entry  
22 of a preliminary order of forfeiture -- that you already  
23 agreed to that, but I'm going to sign that.

24 THE COURT: Has that been prepared, Mr. Lappen? Is  
25 that --

1 MR. LAPPEN: Your Honor, we will submit one  
2 following this hearing.

3 THE COURT: Okay. Thank you.

4 BY THE COURT:

5 Q And you understand that in paragraph (9)(c), the  
6 Government is going to recommend to the Attorney General that  
7 any payments by you towards the money judgment be remitted or  
8 restored to eligible victims of the offense?

9 THE COURT: Now, does that mean there's going to be  
10 a money judgment in addition to any criminal penalties?

11 MR. LAPPEN: It -- it means that there -- there can  
12 be. It depends -- I mean, we've been discussing with defense  
13 counsel the payment of restitution in advance of sentencing,  
14 so depending on how much money we get, we -- there may be  
15 that, or he may end up paying it through restitution.

16 THE COURT: Okay.

17 MR. LAPPEN: The point is that both of those  
18 vehicles are available to us.

19 THE COURT: All right.

20 MR. POLUKA: Said another way, Your Honor, we're  
21 trying to work it out.

22 THE COURT: All right. Thank you.

23 BY THE COURT:

24 Q Paragraph ten, you agree to waive any claims, defenses or  
25 challenging arising under the double jeopardy or excessive

1 fine clauses of the Eighth Amendment, correct?

2 A I do, sir. Yes, sir.

3 Q All right. (11), I've already asked you about but I'll  
4 repeat it. You may -- you understand you may not withdraw  
5 your plea because the Court declines to follow any  
6 recommendation, motion or stipulation of the parties to this  
7 agreement, correct?

8 A Yes, sir.

9 Q All right. Now, then paragraph 12 contains certain  
10 stipulations. First, that the base offense level is seven,  
11 that under the other provisions of law set forth here, that  
12 the base offense level should be increased by at least 14  
13 levels on the following basis set forth in this document, is  
14 that correct?

15 (Pause in proceedings)

16 MR. POLUKA: Your Honor, one -- one second.

17 (Pause in proceedings)

18 A Based -- based on my conversation with counsel, yes, sir.

19 Q All right. Now, then this paragraph goes on and says  
20 that you're -- you're going to argue -- you've agreed that you  
21 and your counsel will argue that the gain to you is  
22 approximately \$1,340,000, but the Government is going to argue  
23 that the loss caused in furtherance of your criminal activity  
24 can reasonably be determined to be as much as \$4,200,000 which  
25 would result in an 18 level increase to the base offense

1 level, is that correct?

2 A Yes, sir.

3 Q Okay. All right. And, all right, you understand that  
4 it's indicated as I said before that your guideline range --  
5 that would be the recommended prison sentence under the  
6 guidelines, will be calculated based on the amount that I  
7 determine is the loss, do you understand that?

8 A Yes, sir.

9 Q Okay. You agree under paragraph (c) that another  
10 guideline provision that is applicable is that you abused the  
11 position of private trust and or you used a special skill in a  
12 manner significantly facilitating the commission and  
13 concealment of the offense resulting in a two level increase.

14 MR. POLUKA: Yes, yes, Your Honor, but there's  
15 another sentence. We -- we likely will oppose that adjustment  
16 and that is in the plea agreement --

17 THE COURT: All right.

18 MR. POLUKA: -- in the last sentence of that  
19 paragraph.

20 THE COURT: All right.

21 BY THE COURT:

22 Q Paragraph (d), you're going to -- the Government has  
23 agreed you're entitled to a two-level downward adjustment for  
24 acceptance of responsibility and also an additional one-level  
25 downward adjustment because you timely notified the Government

1 of your intent to plead guilty, is that correct?

2 A Yes, sir.

3 Q Paragraph 13, you understand under this plea agreement,  
4 you agree not to commit any Federal, State or local crime  
5 between today and the date of your sentencing and but if you  
6 do so, then the Government has certain options as set forth in  
7 paragraph 13, do you understand that?

8 A Yes, sir.

9 Q All right. Paragraph 14, I mentioned before that you're  
10 giving up any right to appeal or collaterally attack your  
11 conviction. By collateral attack, you understand I'm talking  
12 about a post-conviction petition or habeas corpus, do you  
13 understand that?

14 A Yes, sir.

15 Q Now, do you understand, Mr. Mittin, that the significance  
16 of this paragraph is that after I impose sentence, there's  
17 nothing you can do except serve the sentence, do you  
18 understand that?

19 A Yes, sir.

20 Q Okay. And you're giving up any right to appeal, unless  
21 the Government appeals or unless I impose an illegal sentence,  
22 do you understand that?

23 A Yes, sir.

24 Q And by collateral attack, it means you can't file a  
25 habeas corpus petition or a post-conviction petition for any

1 reason other than alleging that you had -- alleging and  
2 showing that you had incompetent counsel, do you understand  
3 that?

4 A Yes, sir.

5 Q Now, are you fully satisfied with Mr. Poluka's  
6 representation of you?

7 A Yes, and Mr. Shapiro.

8 Q And Mr. -- and yes, and your co-counsel, okay. All  
9 right, and you understand that if you do file an appeal of  
10 collateral attack, that that may constitute a breach of this  
11 plea agreement?

12 A Yes, sir.

13 Q Okay. All right, and you're -- all right, now did  
14 anybody use any force, violence or threats to get you to plead  
15 guilty?

16 A No, sir.

17 Q Why do you want to plead guilty?

18 (Pause in proceedings)

19 A I want to at this point in time, Your Honor.

20 Q I'm sorry, I didn't hear that.

21 A I want to at this point in time.

22 Q Why?

23 A I did something I wasn't supposed to do.

24 Q Well, did you recognize that you were committing a crime?

25 A At the time that I did it, no. Now looking back, yes,

1 sir.

2 Q Okay. Do you understand that by entering this plea, this  
3 may deprive you of valuable civil rights such as the right to  
4 vote, hold public office, serve on a jury, possess a firearm  
5 or hold a professional license?

6 A Yes, sir.

7 Q All right. Have you ever been on supervision for a crime  
8 before such as probation, parole or supervised release?

9 A No.

10 Q I want to be sure that you understand all of your  
11 constitutional rights. Do you understand that you're presumed  
12 innocent until you're proven guilty by the Government beyond a  
13 reasonable doubt?

14 A Yes, sir.

15 Q Do you understand that you have the right to the  
16 assistance of a lawyer at every stage of the proceedings  
17 including before trial, during trial and after trial and for  
18 any appeals to Higher Courts and if you cannot afford a  
19 lawyer, we will appoint one for you free of charge?

20 A Yes, sir.

21 Q Do you understand that you have the right to plead not  
22 guilty and persist in that plea and have your case tried by  
23 either a jury of 12 people or a Judge sitting alone?

24 A Yes, sir.

25 Q Do you understand that you have the right to a jury of

1 your peers pulled from the residence of the District of this  
2 Court and you would get to select who was on the jury?

3 A Yes, sir.

4 Q Do you understand that in order to find you guilty, the  
5 verdict of the jury must be unanimous, that means all 12  
6 jurors must agree that you were proven guilty by the  
7 Government beyond a reasonable doubt?

8 A Yes, sir.

9 Q Do you understand you could obtain a subpoena or court  
10 order to make witnesses come to Court and testify during a  
11 trial on your behalf?

12 A Yes, sir.

13 Q Do you understand that if you are found guilty, you could  
14 appeal such a finding of guilt to a Higher Court which would  
15 set aside or modify the finding of guilt or give you a new  
16 trial?

17 A Yes, sir.

18 Q Do you understand that at a trial, you have the right to  
19 confront and cross-examine, that is be in the courtroom and  
20 face, see, hear and question the Government's witnesses  
21 against you?

22 A Yes, sir.

23 Q Do you understand that at a trial you do not have to  
24 testify or take the witness stand if you do not want to, and  
25 if you don't take the witness stand, the prosecutor cannot



1 comment on or make reference to your failure to testify?

2 A Yes, sir.

3 Q Do you understand that by entering this guilty plea,  
4 there will be no trial and that you would be giving up all of  
5 the rights that I just told you about and admitting that  
6 you're guilty?

7 A Yes, sir.

8 Q All right.

9 THE COURT: Mr. Lappen, would you please relate the  
10 elements of the crime charged, mail fraud, and what the  
11 Government would have to prove if the case had gone to trial?

12 MR. LAPPEN: Yes, Your Honor. The elements are for  
13 mail fraud, (1), that the defendant knowingly devised a scheme  
14 to defraud, that is to deprive another of money or property by  
15 fraud including by false or fraudulent pretenses,  
16 representations or promises or omissions concerning a material  
17 fact; (2), the defendant did so with the intent to defraud;  
18 and (3), that in advancing, furthering or carrying out the  
19 scheme, the defendant used the mails or a private or  
20 commercial interstate carrier, or caused the mails or a  
21 private or commercial interstate carrier to be used.

22 THE COURT: All right.

23 BY THE COURT:

24 Q Do you understand, Mr. Mittin, that's what the Government  
25 would have to prove if you pled not guilty and the case went

1 to trial?

2 A Yes, sir.

3 Q And do you understand because you're pleading guilty, the  
4 Government doesn't have to prove anything?

5 A Yes, sir.

6 Q Now, I have to include in this colloquy a summary of the  
7 evidence the Government believes it can prove if the case had  
8 gone to trial. I can have Mr. Lappen relate that or if you  
9 have read that document and with your lawyer's advice, you're  
10 willing to agree to those statements, I can incorporate that  
11 by reference.

12 MR. POLUKA: We agree, Your Honor, with one -- with  
13 one exception, if I may.

14 THE COURT: All right, I saw there's a footnote to  
15 that effect.

16 MR. POLUKA: Yeah. So, Your Honor, as the Court has  
17 already alluded to several times, there's a -- there's a  
18 dispute as to whether gain or loss is the appropriate measure  
19 for restitution in this case. The number varies from 1.3 to  
20 4.2 million.

21 Part of the issue, Your Honor, is which cases are  
22 within the scope of the fraud, which cases referred out are  
23 within the scope of the fraud and which are not. The cases  
24 which are clearly of sufficient factual basis for the crime to  
25 which my client is pleading today are as follows, this is what

1 happened. The case came into the law firm, a case card for  
2 that case -- and they were to our knowledge, Your Honor, they  
3 were all personal injury cases.

4 There was a reference in the information to non-  
5 personal injury cases. Our knowledge is -- what I'm about to  
6 say refers only to personal injury cases. The case was opened  
7 by Mr. Mittin at the victim law firm.

8 Expenses in furtherance of that case were charged to  
9 the law firm, the defendant marked that case closed within the  
10 law firm's records, the case was then referred out to the  
11 attorney referred to in the information by the initials H.L.,  
12 and then Mr. Mittin received a referral fee for those cases.

13 That is to what, Your Honor, Mr. Mittin is pleading  
14 guilty today. The dispute on the loss is other cases, other  
15 referrals where those facts are not present.

16 THE COURT: All right. Mr. Lappen, any comment on  
17 that?

18 MR. LAPPEN: Well first of all, it is true that the  
19 -- the factual basis that's sets forth in the change of plea  
20 memo or the plea memo is what we are talking about here that's  
21 incorporated in the record, so I want to make sure that's  
22 clear. I've gone over that with counsel.

23 He -- he agrees with everything in there, and I  
24 understand his client does, except that he wants to challenge  
25 loss in part on the basis that some of the cases that the

1 Government believes are part of the fraud, defendant does not  
2 agree are part of the fraud, so I don't -- I'm not going to  
3 accept his complete characterization of the fraud as he  
4 articulates it.

5 I would rather say that what is set forth as a fraud  
6 in the plea memo is accurate with the exception that he's  
7 going to challenge whether there are -- whether some of the  
8 cases that were not personal injury cases were part of that  
9 fraud. That will all be ironed out at the time of sentencing.  
10 He has certainly admitted to a sufficient factual basis to  
11 establish the elements of the offense --

12 THE COURT: All right. And exactly --

13 MR. LAPPEN: -- and we will address that.

14 THE COURT: -- what does the Government allege was  
15 the mailing that took place here?

16 MR. LAPPEN: Your Honor, the mailing is the mailing  
17 that is set forth in the information and it is summarized  
18 here. I will go through that. That is a check that was  
19 mailed to the defendant's home.

20 So in committing this fraud, when he stole the cases  
21 from the law firm and then sent them out to outside attorneys,  
22 the outside attorneys resolved those cases and then paid  
23 Mittin a fee and the way they did that was in many cases by  
24 sending him via the United State Mail or a private interstate  
25 carrier, his share of those fees to his home.

1           So the one that we allege in the information is that  
2 on January 3rd, 2017, H.L., which is one of those outside  
3 attorneys, used the mail or a commercial interstate carrier to  
4 send the defendant a check from his office in New Jersey to  
5 the defendant's home in Huntingdon Valley, Pennsylvania.

6           The check was drawn on the attorney trust account of  
7 H.L. and Associates. It was dated January 3rd, 2017 for  
8 \$65,148.50 made payable to Neil Mittin. The check represented  
9 compensation for the fraud referral of a personal injury  
10 matter on behalf of the client law firm that the defendant was  
11 not authorized to remove from the law firm.

12           THE COURT: Okay. Well, I see that. That's on page  
13 six of the information.

14 BY THE COURT:

15 Q       So do you admit those facts, Mr. Mittin?

16           MR. POLUKA: Your Honor, may we have one moment?

17           THE COURT: Yes, sure.

18           (Pause in proceedings)

19           MR. POLUKA: Your Honor --

20           THE COURT: Yes.

21           MR. POLUKA: -- if I could just back up for --  
22 before he answers that question. The reason for the narrower  
23 scope, so to speak, of the plea for the cases which we assert  
24 are within the scope of the fraud -- and I understand what Mr.  
25 Lappen said and I don't disagree with him, is if there is a

1 parallel civil suit, again, which we're trying and hoping to  
2 avoid, obviously anything that Mr. Mittin agrees to today  
3 would be an admission hence the narrower category of cases to  
4 which we're agreeing --

5 THE COURT: Well --

6 MR. POLUKA: -- are part of the fraud.

7 THE COURT: -- I appreciate that but, you know, he  
8 needs to admit that he committed the mail fraud that is set  
9 forth on page eight of the information. That's what Mr.  
10 Lappen specifically referred to.

11 MR. POLUKA: On page -- you mean paragraph eight?

12 THE COURT: Wait a minute. I think it's on page  
13 eight.

14 MR. POLUKA: Or do you mean --

15 THE COURT: Yes, page --

16 MR. POLUKA: -- the mail fraud count itself?

17 THE COURT: Sorry, no, page six. Page six.

18 MR. LAPPEN: So that would be, for the record, page  
19 six of the plea memo, Your Honor.

20 THE COURT: No, it's page six of the information.

21 MR. LAPPEN: Okay, it's also --

22 MR. POLUKA: Yes.

23 MR. LAPPEN: -- yes --

24 MR. POLUKA: May I --

25 MR. LAPPEN: -- page six of both --

1 MR. POLUKA: Yes.

2 MR. LAPPEN: -- of both, as it turns out.

3 THE COURT: Page six is entitled "Mail Fraud" so  
4 paragraph 23 of the information.

5 MR. POLUKA: Your Honor, the answer is yes, but Mr.  
6 Mittin should answer that question --

7 THE COURT: Yes, well --

8 MR. POLUKA: -- obviously not me.

9 THE DEFENDANT: As to that paragraph, yes, sir.

10 THE COURT: Okay. All right, now here's the  
11 question I have. So, Mr. Lappen, paragraph -- the mail fraud  
12 count which has just been read, paragraph 23, that just  
13 alleges one mailing, correct?

14 MR. LAPPEN: That's correct.

15 THE COURT: Now, the Government -- but if I  
16 understand the plea agreement correctly, the defendant is  
17 agreeing that there were other acts and omissions that he  
18 committed and all of his entire conduct would be considered  
19 relevant conduct which would be applicable under the  
20 Sentencing Guidelines and also provide a basis for the  
21 imposition of sentence, is that correct?

22 MR. LAPPEN: That's correct. And I also think it's  
23 important that the record is clear and that Your Honor ask the  
24 defendant if he's admitting to the facts that are set forth in  
25 the factual basis section --

1 THE COURT: Yes, I --

2 MR. LAPPEN: -- of the plea memo --

3 THE COURT: I agree with that.

4 MR. LAPPEN: -- with the small and very minor carve  
5 out that he's not agreeing to any specific cases, particularly  
6 those that do not arise in the personal injury context, but  
7 that the crime as is described there, is accurate and it's  
8 what he did.

9 THE COURT: All right. Mr. Poluka, I think that's  
10 correct.

11 MR. POLUKA: I think it is, Your Honor. I'm not  
12 sure I would agree with the characterization of "small." I  
13 mean, that's -- will be for the Court to determine what the  
14 gain or loss is, I -- I would disagree with that  
15 characterization.

16 But the -- the cases to which are clearly fraudulent  
17 and in the scope of the plea are the ones where the case was  
18 opened at the law firm, costs were charged to the law firm,  
19 the cases were removed to one attorney -- not multiple  
20 attorneys. The information refers to multiple attorneys.

21 Those personal injury cases were referred to one person  
22 by the initials in the information and those costs were never  
23 paid back to the law firm and my client received a referral  
24 fee for those cases.

25 THE COURT: All right.



1 BY THE COURT:

2 Q Well, first of all, Mr. Mittin, have you read the  
3 Government's plea memorandum?

4 A Yes, sir.

5 Q All right. So I need to -- do you understand that the  
6 information just alleges one mailing, the one that Mr. Lappen  
7 read on page six, paragraph 23 --

8 A Yes, sir.

9 Q -- do you understand that?

10 A Yes.

11 Q But do you understand that your guilty plea and your plea  
12 agreement reflect an agreement by you that you are going to be  
13 held responsible for a series of events that are set forth in  
14 the plea agreement and that will be calculated as part of the  
15 presentence report that include many more offenses -- crimes,  
16 in addition to what's set forth in paragraph 23?

17 A As to those files that were referred to the attorney by  
18 the initials of H.L.

19 MR. POLUKA: Your Honor, if I may, Mr. Mittin  
20 clearly understands that the Government only needs to charge  
21 one mailing. He understands that there's multiple mailings  
22 that would support obviously a much larger loss than \$65,000.  
23 The issue is and where is it in that range between the 1.3  
24 million and 4.2 million.

25 THE COURT: Well --

1 MR. LAPPEN: And if I --

2 THE COURT: Well look here's the --

3 MR. LAPPEN: -- may I address --

4 THE COURT: Usually --

5 MR. LAPPEN: -- the mailing issue?

6 THE COURT: Just a minute. Just a minute. Usually  
7 when a person is accused of a series of offenses, there's a  
8 separate count for each offense, that's the usual practice.  
9 Now, you're not doing that here, correct?

10 MR. LAPPEN: If I may, Your Honor, that actually --  
11 that's partially true. If we -- if we had charged this as an  
12 indictment, we might have had three mailings, four mailings,  
13 maybe ten mailings. We would never charge every single --  
14 almost never would charge every single mailing, nor would  
15 there necessarily be a mailing to correspond with every part  
16 of the crime. We just -- there just needs to be a mailing or  
17 even multiple mailings.

18 THE COURT: Well, I understand that, but I --

19 MR. LAPPEN: The point is there's a huge --

20 THE COURT: -- but the defendant has to understand  
21 that under the concept of relevant conduct, which I'm sure Mr.  
22 Poluka has explained to him, when it comes time for  
23 sentencing, he's going to be held responsible and he's -- I  
24 want -- he needs to admit and agree that he understands by  
25 entering into this guilty plea to this single count of mail

1 fraud, he is agreeing that he's going to be sentenced on a  
2 broad range of mailings and other cases which he says were  
3 limited to personal injury cases.

4 MR. LAPPEN: That is true, and I would say to Your  
5 Honor --

6 THE COURT: And he's also limiting it to those  
7 personal injury cases that were referred to this lawyer whose  
8 initials are H.L. Is that correct?

9 MR. LAPPEN: Well, you've -- let me back up to what  
10 you said initially.

11 THE COURT: Go ahead.

12 MR. LAPPEN: So it is true that he's responsible for  
13 -- for relevant conduct, but before one even gets into the  
14 concept of relevant conduct, the crime is everything that he  
15 did, and then there has to be a mailing. So what is described  
16 in the information is part of what he's charged with, so he's  
17 charged with doing all those things, and having at least one  
18 mailing in furtherance of it.

19 So you are right, Your Honor, that's there's issues  
20 of relevant conduct, and that he has to admit to the crime, at  
21 least enough to establish all the elements of the crime as  
22 we've charged in the information.

23 And the -- the largest part of his fraudulent  
24 activity as we allege, did involve that particular lawyer and  
25 it did involve the personal injury cases in the way in which

1 they're described in the information and the way in which  
2 they're described in the change of plea memo. So not  
3 surprisingly, I believe this is getting overly complicated for  
4 no good reason.

5 All the defendant has to do is say I did what it  
6 said in the -- in the information, I did what it says in the  
7 change of plea memo and the facts, but I reserve my right to  
8 contest at the time of sentencing some number of cases that  
9 would not fit into a category of personal injury cases that  
10 were referred to H.L., and we can address of all that at  
11 sentencing.

12 THE COURT: Okay, so all right, that's fair enough.

13 BY THE COURT:

14 Q So, Mr. Mittin, let me phrase the question like this with  
15 what Mr. Lappen said and I'll try and put it clearly to you,  
16 but you can discuss this -- consult with Mr. Poluka. Do you  
17 understand that you are pleading guilty to this information  
18 and that you are also acknowledging that you admit the facts  
19 in the change of plea memorandum, that you admit committing  
20 all of those acts set forth there, except that you want to  
21 reserve the right to object to an abuse of trust enhancement,  
22 and you also don't admit to committing any mail fraud with  
23 regard to non-personal injury cases that you're -- you're  
24 asserting that your mail fraud conduct -- the criminal conduct  
25 was limited to your referrals of personal injury cases to the

1 lawyer identified as H.L. Now, is that -- do you admit that?

2 A Yes, sir.

3 THE COURT: Are you satisfied with that, Mr. Lappen?

4 MR. LAPPEN: Yes, Your Honor. And then the rest of  
5 it can absolutely be addressed at sentencing.

6 THE COURT: All right.

7 BY THE COURT:

8 Q Now, so you understand, Mr. Mittin, just to be clear,  
9 that when it comes time to be sentenced, the presentence  
10 report will be clear that it is going to be best -- it's going  
11 to be based on a course of conduct of you reflecting all of  
12 these personal injury cases referred to H.L. and that the  
13 offense level will be based on those and my sentence can be  
14 based on those as well, do you understand that?

15 A Yes, sir.

16 Q All right. Okay.

17 MR. LAPPEN: And before -- I have one request, Your  
18 Honor, given the nature of this unusual plea hearing, is Your  
19 Honor did go into some detail about the appellate waiver with  
20 the defendant --

21 THE COURT: Yes.

22 MR. LAPPEN: -- I would like to go into explicit  
23 detail about the appellate waiver with the defendant so there  
24 is no question on the record that he understands exactly what  
25 he's waiving.

1 THE COURT: All right, well, Mr. Poluka, have a look  
2 at page nine of the plea agreement.

3 THE DEFENDANT: Which paragraph? If I may ask  
4 counsel which paragraph do you want to turn to?

5 MR. POLUKA: It's paragraph 14 --

6 THE COURT: It's paragraph 14.

7 THE DEFENDANT: Okay, paragraph 14.

8 THE COURT: Well, I think I covered paragraph 14  
9 but --

10 MR. LAPPEN: Well it is -- it's the rest of  
11 paragraph 14. Your Honor definitely covered it to a degree,  
12 but there's --

13 THE COURT: All right, well let's --

14 MR. LAPPEN: -- there are specific provisions --

15 BY THE COURT:

16 Q Let me just read it to you. So look at -- do you have  
17 that in front of you, Mr. Mittin?

18 A I do, sir.

19 Q So the last sentence on paragraph -- on page eight reads  
20 as follows: "As part of this knowing and voluntary waiver of  
21 the right to appeal or collaterally attack the conviction and  
22 sentence, the defendant expressly waives the right to raise on  
23 appeal or in a collateral review any argument that (1), the  
24 statute to which you pled guilty is unconstitutional; and (2),  
25 the admitted conduct does not fall within the scope of the

1 statute." Is that correct?

2 A Yes, sir.

3 Q All right. And then on page nine, paragraph (a), I said  
4 this before, that if the Government appeals, you can appeal;  
5 (b), that if the Government does not appeal, then you can file  
6 an appeal only if your sentence exceeds the maximum -- that's  
7 what I referred to before as an illegal sentence. Sub (2),  
8 challenging a decision by the sentencing judge to impose an  
9 upward departure pursuant to the Sentencing Guidelines. That  
10 means that as long as I sentence you up -- no greater than the  
11 -- the top guideline range, you can't appeal. But if I were  
12 to give you a sentence greater than the maximum guideline  
13 range, you could appeal.

14 A I understand that, Your Honor.

15 Q All right. Then (3), challenging the decision by the  
16 sentencing judge to impose an upward variance above the  
17 sentencing guideline range, that's the same thing.

18 A Yes, sir.

19 Q And then (4), that your attorney was constitutionally  
20 ineffective. I just covered that because you're thoroughly  
21 satisfied with Mr. Poluka's representation of you, as I'm sure  
22 he has done -- he's an outstanding lawyer, I know that  
23 personally. But you're fully satisfied with him, correct?

24 A And Mr. Shapiro, yes, Your Honor.

25 Q And Mr. Shapiro, yes. Okay. All right.

1 THE COURT: Does that --

2 MR. LAPPEN: Yes, thank you very much, Your Honor.

3 THE COURT: Okay. All right. Now, it occurs to me  
4 that what -- I don't know how this is going to turn out, but I  
5 think that I need to set a date for a hearing on the amount of  
6 loss, unless you can come to some agreement about it, prior to  
7 the actual sentencing because I may want to take it under  
8 advisement for a few days or have briefs or things like that.

9 MR. POLUKA: One or either of us, Your Honor, were  
10 going to suggest that today. We may need a separate hearing  
11 on loss and we'll try to avoid it. Whether the Court wants to  
12 tickle a date or not we'll leave to the Court. We would like  
13 to work it out, but if we can't, it may require a separate  
14 hearing.

15 MR. LAPPEN: Right. And actually, the way that it  
16 may be the most efficient for the Court is there may be some  
17 briefing that we could do in advance of a hearing to identify  
18 an issue that if Your Honor were to decide it in a particular  
19 way, it would eliminate a lot of the factual presentation at a  
20 hearing. In other words, there's a -- there's a threshold  
21 legal issue about whether certain deductions from loss would  
22 even be allowed. If Your Honor would find that those  
23 deductions would be allowed, then we would have a hearing and  
24 we would address exactly what those deductions should be. But  
25 it may be that we could start off by briefing that issue and



1 then moving --

2 THE COURT: All right, well --

3 MR. LAPPEN: -- to a separate hearing date and then  
4 Your Honor could have a -- you know, you could sentence then  
5 or if you wanted a third date for the sentencing, we could do  
6 that.

7 THE COURT: All right, well I'm not opposed to that,  
8 but don't you think the presentence report should be prepared  
9 before any of that takes place?

10 MR. LAPPEN: Definitely. Definitely.

11 THE COURT: Okay. All right. All right, we'll set  
12 that. All right, let me -- I have a couple more questions.

13 BY THE COURT:

14 Q Do you understand, Mr. Mittin, that you have the right to  
15 have had these charges submitted to a Grand Jury of 16 to 23  
16 people and at least 12 of these people would have had to find  
17 probable cause you committed this offense in order for you to  
18 be charged with indictment, are you voluntarily giving up this  
19 right and agreeing to let the Government bring charges against  
20 you in an information?

21 A Yes, sir.

22 Q All right.

23 THE COURT: And he signed the waiver?

24 THE DEFENDANT: I did.

25 THE COURT: Okay. All right. All right, I'm going

1 to find the defendant is alert, competent, capable of entering  
2 an informed plea, that this is a knowing and voluntary plea  
3 supported by an independent basis of fact containing each of  
4 the essential elements of the offenses pled to. I therefore  
5 accept the plea and he arraigned on the information, one count  
6 of mail fraud.

7 COURTROOM DEPUTY: Neil Mittin, you previously pled  
8 not guilty to Information Number 19-418 charging you with mail  
9 fraud in violation of 18 USC 1341 as to Count 1 of this  
10 information, how do you plead now, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 MR. LAPPEN: And, Your Honor, if I may --

13 THE COURT: Yes.

14 MR. LAPPEN: -- beg Your Honor's indulgence, one  
15 more request so this record is clear. At the beginning of  
16 this hearing, Your Honor asked the defendant about medication  
17 and health issues and he went to some length to explain what  
18 his current situation is.

19 THE COURT: Right.

20 MR. LAPPEN: Would Your Honor mind asking him now,  
21 did he -- given the fact that he has those issues, we just  
22 went through this long hearing, was he able to understand and  
23 comprehend everything, despite the fact that he has those  
24 health and medical issues?

25 THE COURT: Okay, all right --

1 THE DEFENDANT: I understand it, Your Honor.

2 THE COURT: You do understand what's going on?

3 THE DEFENDANT: I do.

4 THE COURT: Mr. Poluka, you are an outstanding  
5 member of the bar here, a former AUSA as I'm well aware and  
6 based on your representation of the client and Mr. Shapiro,  
7 I'll ask you the same question, are you satisfied that he's --

8 MR. POLUKA: I am, Your Honor. I appreciate the  
9 Court's comments. We've had extensive discussions with Mr.  
10 Mittin. He's been lucid, he's asked the right questions and  
11 we have no question whatsoever that he is competent to discuss  
12 everything that we've discussed today and to enter a plea  
13 knowingly.

14 THE COURT: Okay, thank you.

15 MR. LAPPEN: Thank you, Your Honor.

16 THE COURT: All right, now I have to set bail, Mr.  
17 Mittin. Do you have a passport?

18 THE DEFENDANT: I do, sir.

19 THE COURT: All right, is it with you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, well you'll surrender it to  
22 the gentleman here from Pretrial Services.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right, I'll set \$50,000 bail and you  
25 can sign your own recognizance. There will be a number of

1 conditions that will apply to pretrial release that the  
2 Pretrial Services will advise you of including no travel out  
3 of this district without permission. And do you possess any  
4 kind of firearm or other dangerous weapon?

5 THE DEFENDANT: Your Honor, I'd like to be able to  
6 travel to New Jersey. My daughter and grandchildren live in  
7 New Jersey.

8 THE COURT: All right. Okay, New --

9 THE DEFENDANT: I'm asking if I can travel to  
10 Pennsylvania and New Jersey.

11 THE COURT: New Jersey, I'll --

12 MR. POLUKA: Yeah, Your Honor, we had discussed this  
13 with the Government and the Pretrial Services that travel  
14 limited to the States of Pennsylvania and New Jersey, if Mr.  
15 Mittin wants to travel outside those states, he should get  
16 permission --

17 THE COURT: Okay.

18 MR. POLUKA: -- if that's okay with the Court.

19 THE COURT: All right, do you understand that?

20 MR. LAPPEN: That's correct, no objection from the  
21 Government.

22 THE COURT: All right, do you have any -- do you own  
23 any kind of gun or any other kind of firearm?

24 MR. LAPPEN: No, sir.

25 THE COURT: All right, and you -- part of the

1 conditions is that you not possess any kind of gun or other  
2 dangerous weapon. And you'll have to report to Pretrial  
3 Services, as they will require. Okay, all right, well the --  
4 I think we have to allow approximately close to 90 days for  
5 the presentence report, probably what, Janice, isn't it  
6 usually circulated within 60 days?

7 This one may take a little longer so let's assume  
8 that the presentence report is prepared before the Christmas  
9 holidays. I would like to -- well, let me -- all right, look  
10 -- just one second. I thought I had a 2020 calendar here.

11 (Pause in proceedings)

12 THE COURT: Okay, I think we should -- I'm going to  
13 make a special effort to make sure we have the presentence  
14 report prepared and circulated by the middle of December.  
15 That's -- that should give you plenty of time. I'd like to  
16 have any briefs filed by Friday, January 3rd. I'll put this  
17 in a separate order.

18 And then I'd like to have the hearing on January 7th  
19 and I'm going to set January 14th for the sentencing. So the  
20 briefs will be due on the 3rd, and then we'll have an  
21 evidentiary -- unless there's an agreement, then whatever are  
22 here we're going to have on January 7th and I'll set aside the  
23 entire day for that.

24 And then the sentencing will be on January 14th and  
25 I'll set aside one hour for that. I will intend to -- my

1 intention will be to make findings -- I don't know if I'll  
2 make findings before the sentencing date or at the sentencing  
3 date, but that's the -- that's the schedule, okay?

4 All right, anything further from counsel?

5 MR. LAPPEN: Nothing from the Government.

6 MR. POLUKA: No, Your Honor.

7 THE COURT: Okay, thank you very much. Court is  
8 adjourned.

9 (Proceeding concluded, 11:09 a.m.)

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**C E R T I F I C A T I O N**

14

15 I, Diane Gallagher, court approved transcriber,  
16 certify that the foregoing is a correct transcript from the  
17 official electronic sound recording of the proceedings in the  
18 above-entitled matter.

19

**Diane Gallagher**

Digitally signed by Diane Gallagher  
DN: cn=Diane Gallagher, o, ou,  
email=dianadoman@comcast.net, c=US  
Date: 2019.10.25 13:23:22 -04'00'

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DIANE GALLAGHER

DATE

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DIANA DOMAN TRANSCRIBING, LLC

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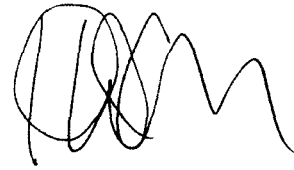
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Harold E. Ciampoli, Jr.

A handwritten signature in black ink, consisting of several loops and a trailing line, positioned to the right of the signature label.

Signature: \_\_\_\_\_

Name: Harold E. Ciampoli, Jr.

Attorney No. (if applicable): 51159