

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**FILED**

02 MAR 22 PM 3:29

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 01-30006-DRH
	)	
ARTHUR M. HAWKINS,	)	
ALAN E. GAUTHIER, and	)	
DOUGLAS N. PEARSON,	)	
	)	
Defendants.	)	

CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS OFFICE

**REX LUZADER’S AMENDED MOTION TO QUASH SUBPOENAS**

Comes now Rex Luzader, by his attorney John D. Stobbs II, and for his Amended Motion to Quash Subpoenas states:

*Introduction*

Because different subpoenas have been served on Mr. Luzader (Exhibits A & B), the original Motion to Quash Subpoenas needs to be amended with regard to that. However, because all other factual issues and caselaw cited previously is unchanged, Mr. Luzader adopts all other aspects of the original Motion to Quash Subpoenas for this Motion, with the following observations.

*Result of Subpoenas is to Harass/Embarrass Mr. Luzader*

Initially, the undersigned wanted nothing more than to believe that the purpose of the subpoenas was *not* to intimidate, harass or embarrass a witness. The undersigned assumed that an inexperienced law student out of the legion of attorneys working feverishly on this case on Mr. Pearson’s behalf concluded at the last possible second that it would be a good idea to serve trial subpoenas on all of the Government’s witnesses.

Much like on M\*A\*S\*H when Colonel Blake signed whatever Radar put in front of him, the undersigned assumed Mr. Ruvoldt approved the subpoenas without thinking the matter through sufficiently. Sadly, that is not the case. Mr. Ruvoldt has indicated through his actions in having Mr. Luzader served as he was prepared to testify that a process server will be parked in front of the courtroom to serve any prospective Government witness with subpoenas to produce non-relevant financial records in a very short period of time.

The undersigned initially focused his argument on having these subpoenas quashed on the fact that the subpoenas are a fishing expedition and are overly-broad, but has reluctantly come to the conclusion that the subpoenas are being used as nothing more than a sledgehammer Mr. Ruvoldt will use to bully witnesses like Mr. Luzader. Why else would he wait until the ultimate nanosecond to serve Mr. Luzader? Why couldn't he have or didn't he serve the subpoenas on Mr. Luzader in February or early March?

The subpoenas have already greatly impacted Mr. Luzader. He has been shaken by their intrusiveness. The subpoenas have already had the effect Mr. Ruvoldt desired insofar as Mr. Luzader's focus has shifted from providing truthful testimony to scurrying around for the plethora of information demanded by Mr. Ruvoldt. He is scared that today is Friday, and the documents are required to be produced on Monday. He is at work and hasn't been at home, nor will he be able to locate all of the documents demanded to be disclosed by Mr. Ruvoldt. He is genuinely concerned about allowing the three Defendants against whom he will testify to get a glimpse into his private financial life for no real reason.

These are the first subpoenas served on a prospective Government witness and as such it would be inappropriate for the undersigned to request sanctions against Mr. Ruvoldt for his actions herein. There are various grounds on which the subpoenas should be quashed, but for purposes of future witnesses who will in all likelihood file identical Motions to Quash, where hopefully sanctions can be requested, the undersigned feels that the subpoenas should be quashed solely on the grounds that they are meant to intimidate, harass or embarrass Mr. Luzader.

*Compliance With Subpoena Would Be Unduly Burdensome*

Alternatively, the subpoenas should be quashed because in order to comply with them would be unduly burdensome. Mr. Luzader was essentially given the weekend to produce a myriad of documents and even though he has been diligent, it has been impossible for him to comply with the subpoenas. As such the subpoenas should be quashed on the grounds that it would be unduly burdensome to produce the documents in the time frame allowed.

*Conclusion*

For the foregoing reasons, Rex Luzader requests that this Honorable Court grant his Motion and quash the subpoenas served by Defendant Pearson, because the purpose of the subpoenas is to intimidate/harass/embarrass Mr. Luzader and to comply with the subpoenas causes an undue burden to Mr. Luzader.

STOBBS LAW OFFICES

BY:

  
\_\_\_\_\_  
John D. Stobbs II, NO. 06206358

Attorney for Defendant

346 West St. Louis Avenue

East Alton, Illinois 62024

Telephone: (618)259-7789

FAX: (618)259-4145

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 22<sup>nd</sup> day of March, 2002, a copy of the attached **REX LUZADER'S AMENDED MOTION TO QUASH SUBPOENAS** was served on the following persons by FAXing and placing same in an envelope and placing same in a mailbox in East Alton, Illinois to the following individuals:

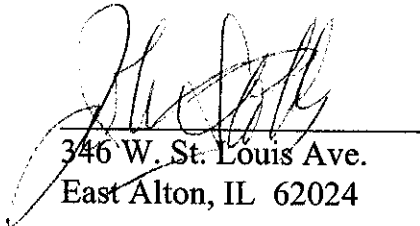
Ms. Miriam Miquelon  
Assistant U.S. Attorney  
Nine Executive Drive, Suite 300  
Fairview Heights, Illinois 62208

Mr. Joel Slomsky  
Two Penn Center Plaza  
1500 J.F. Kennedy Blvd.  
Philadelphia, PA 19102

Mr. Harold J. Ruvoldt  
Edwards & Angell  
750 Lexington Avenue  
New York, NY 10022

Mr. Thomas K. McQueen  
Jenner & Block  
One IBM Plaza  
Chicago, IL 60611

STOBBS LAW OFFICES

  
346 W. St. Louis Ave.  
East Alton, IL 62024

# United States District Court

DISTRICT OF

UNITED STATES OF AMERICA

V.

**SUBPOENA IN A  
CRIMINAL CASE**

ARTHUR M. HAWKINS

ALAN E. GAUTHIER

DOUGLAS N. PEARSON

CASE NUMBER:

01-30006-DRH

TO:

Rex Luzader

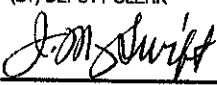
YOU ARE COMMANDED to appear in the United States District Court at the place, date and time specified below, or any subsequent place, date and time set by the court, to testify in the above referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

PLACE United States Court House 750 Missouri Avenue East St. Louis, IL 62024	COURTROOM Chambers of Judge Herndon
	DATE AND TIME 3/25/02 9:00AM

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

IF you testify at trial, THEN you are required to produce the documents identified in Attachment A to this subpoena.

This subpoena DUCES TECUM IS ONLY RETURNABLE if and when you are called as a witness by the government in this trial.

U.S. MAGISTRATE JUDGE OR CLERK OF COURT NOBERT G. JAWORSKI	DATE 3/21/02
(BY) DEPUTY CLERK 	
ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER	

Harold J. Ruvoldt, Jr.; Edwards & Angell, LLP; 750 Lexington Avenue; New York, NY

10022 212-308-4411

Exhibit A

## ATTACHMENT A

### A. Definitions and Instructions

1. "Document" means each and every writing, of whatever nature, whether an original, a draft, or a copy, however produced, reproduced or stored, whether manually, mechanically, electronically, electromagnetically or otherwise, and each and every tangible thing from which information can be processed or transcribed. Non-identical copies are deemed to be separate documents.

(i) The term "document" includes, but is not limited to, letters, telegrams, telexes, facsimiles, contracts, agreements, memoranda, receipts, calendars, diaries, appointment books, personal files, telephone messages and message logs, notes, schedules, work sheets, books, pamphlets, summaries, proposals, photographs, ledgers, statements, files, invoices, billing information, notebooks, verifications of assets, adding machine tapes, financial statements and other compilations of financial data, workpapers, bank statements and associated bank records, checks, records of wire transfers or cash payments, charts, graphs, research materials, prospectuses, registration statements, and computer printouts and other computer generated writings, or any similar item.

(ii) The term "document" includes all such material now in your possession, custody or control, including each and every document that is under your control but is not in your immediate possession.

2. "Records" includes all tangible, written or non-written forms of expression in your possession, custody or control, including partial, preliminary and completed versions, however created, produced or stored, whether electronically, electromagnetically or otherwise, including, but not limited to, tape recordings, video recordings, magnetic tapes, disks, diskettes, disk packs and other electronic media, microfilm, microfiches, and storage devices, or any similar item.

3. In the event that any document called for by this Subpoena is to be withheld on the basis of any claim of privilege, as to each such document:

(i) identify the nature of the privilege which is being claimed and all facts upon which any such privilege is based; and

(ii) provide the following information: (1) the type of document; (2) the subject matter of the document; (3) the date of the creation of the document and the date the document bears; (4) the author of the document, including the author's address, telephone number and employment capacity; (5) the signator of the document, if different from the author of the document; (6) the addressee of the document, including the addressee's address and employment capacity; (7) where

not apparent, the relationship of the author and the addressee to each other; (8) any other recipient of the document; and (9) the number of pages of the document.

4. If any document requested was, but no longer is, in your possession or subject to your control, whether actual or constructive, identify the document as completely as possible and provide the following information:

(i) The manner of disposal, including destruction, loss, discarding, or any other means of disposal;

(ii) The date of disposal;

(iii) The reason for disposal;

(iv) The person authorizing disposal and the person disposing of the document; and

(v) The present custodian and location of the document.

5. Each and every document requested by this Subpoena shall be produced in the manner in which it is or has been maintained in the ordinary course of business. If, by way of illustration, documents requested by this Subpoena are or have been maintained in a folder, the documents requested shall be produced in the original folder.

6. Please label each page of each document produced with an identifying number or notation and provide an index of the documents produced. The index should specify the number of the document and a brief description of the document.

7. No modifications will be made to the terms of this Subpoena except in writing.

#### **B. Documents To Be Produced**

Any and all documents, generally inclusive for the time period of January 1, 1990 until present - unless otherwise specified, relating to the following:

1. All records, account statements, diagnoses, treatment regimens, completion records or certificates, or any other documentation for the admission, entry, placement, or commitment into any chemical or substance dependency treatment or modification program, or into any addictive behavior treatment or modification program, either in-patient or out-patient, and either within or outside of the United States, for the period of January 1, 1990 to the present;

2. All records, account statements, banking statements, accounting records, partnership records or agreements, articles of incorporation, expense statements, invoices, purchase orders, expense division or payment calls, balance sheets, income statements, land and/or buildings purchase and deed records, Forms 1099 or other income reporting documents, income tax returns, or any other business related document for any personal partnership, incorporated or any other ownership interest for the period of January 1, 1987 to the present;

3. All records, account statements, banking statements, stock transaction records, stock option documents, vesting documents, or any other record of the vesting, purchase, or sale of any and all Exide Corporation stocks or bonds held or sold by you or your immediate family, to include spouse, ex-spouse, significant others, siblings, children, or step-children;

4. All records, account statements, banking statements, stock transaction records, stock option documents, vesting documents, or any other record of the vesting, purchase, or sale of any and all stocks or bonds (other than Exide Corporation) held or sold by you or your immediate family, to include spouse, ex-spouse, significant others, siblings, children or step-children;

5. All records, account statements, or banking statements for all personal or business banking accounts, to include savings, checking, money market, or any other banking account which may hold a balance of funds, whether held within or outside the United States, which are held by you or your immediate family, to include spouse, ex-spouse, significant others, siblings, children, or step-children;

6. All records, auction records, account statements, moving and storage statements and records, or any other document or instrument relating to the purchase, moving, or storage of antiques by you or your immediate family, to include spouse, ex-spouse, significant others, siblings, children, or step-children;

7. All business records of Exide Corporation still in your possession or your immediate family, to include spouse, ex-spouse, significant others, siblings, children or step-children, for the period of January 1, 1985 to the present;

8. All business records of Sears Roebuck and Company still in your possession or your immediate family, to include spouse, ex-spouse, significant others, siblings, children, or step-children, for the period January 1, 1993 to the present;

9. Income tax returns for the calendar years 1990 to the present.

These documents must be turned over in advance of your appearance as a trial witness in this matter.



# United States District Court

DISTRICT OF

UNITED STATES AMERICA

V.

**SUBPOENA IN A  
CRIMINAL CASE**

ARTHUR M. HAWKINS  
ALAN E. GAUTHIER  
DOUGTLAS N. PEARSON

CASE NUMBER:

01-30006-DRH

TO: Rex Luzader

YOU ARE COMMANDED to appear in the United States District Court at the place, date and time specified below, or any subsequent place, date and time set by the court, to testify in the above referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

PLACE  United States Court House 750 Missouri Avenue East St. Louis, IL 62024	COURTROOM  Judge Herndon's Courtroom
	DATE AND TIME  3/25/02 at 9:00A.M.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

All items described in Attached Schedule A hereto.

U.S. MAGISTRATE JUDGE OR CLERK OF COURT  NORBERT G. JAWORSKI	DATE  3/21/02
(BY) DEPUTY CLERK  <i>J. M. Swift</i>	

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

Harold J. Ruvoldt, Esq.  
Edwards & Angell, LLP  
750 Lexington Avenue  
New York, NY 10022  
212-308-4411

*Exhibit B*

## SCHEDULE A

### DEFINITIONS AND INSTRUCTIONS

1. The term "Document(s)" shall mean a true copy of any writings, drawings, graphs, charts, photographs, recordings, phone records or other data compilations from which information can be obtained, whether maintained in hard copy or stored on a computer or disc, including, but not limited to books, records, correspondence, notes or memoranda of personal conversations, telephone calls or interviews, contracts, agreements, communications, letters, diaries, appointment calendars, financial statements, reports, work papers, instructions, minutes or other communications (including but not limited to) inter- and intra-office communications, orders, invoices, statements, bills, checks, vouchers, ledger sheets, accounts, journals, cancelled checks, bank statements, bank instructions and confirmations, statements of accounts, analyses, diaries, graphs, notebooks, charts, tables, tabulations, indices, summaries or records of meetings or conferences, summaries, reports of investigations or negotiations, opinions or reports of accountants or consultants.

2. You shall produce all documents called for by these requests that are in your possession, custody or control including, but not by way of limitation, documents in the possession of representatives, agents, servants, employees, accountants, attorneys, or financial advisors.

3. The conjunctions "and" and "or" shall each be interpreted in every instance as meaning "and/or" and shall not be interpreted in the disjunctive to exclude any information otherwise within the scope of any description of documents or requests made herein.

4. All references to the singular contained herein shall be deemed to include the appropriate plural, and all references to the plural shall be deemed to include the singular.

5. As used in the foregoing requests, "concerning" means relating to, referring to, describing, evidencing or constituting.

6. Where a claim of privilege is asserted in objecting to any request herein, and a response is not provided on the basis of such assertion, the following information shall be provided in the objection: (i) the type of Document; (ii) the general subject matter of the Document; (iii) the date of the Document; (iv) such other information as is necessary to identify the Document for a subpoena *duces tecum*, including the author of the Document, the addressee of the Document, and where not apparent, the relationship of the author and addressee to each-, other; and (v) identification of the nature of the privilege (including work product) that is being claimed.

7. In the event that any Document called for by these requests has been destroyed, discarded, or otherwise disposed of, state in writing the information called for in the immediately preceding paragraph, and, in addition, state: (i) the date of destruction or disposal; (ii) the reason for destruction or disposal; and (iii) the person who destroyed or disposed of the Document.

8. This is a continuing request and requires production of documents that come into your possession, custody or control through the final hearing of this matter.

**DOCUMENTS REQUESTED**

Any documents in your possession, custody or control reflecting knowledge of or participation in the events described in the indictment attached hereto as Schedule B, as the term "document" is defined at paragraph 1.

**SCHEDULE B**

**FILED**

**JUL 18 2001**

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS OFFICE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA )

Plaintiff, )

v. )

ARTHUR M. HAWKINS, )  
ALAN E. GAUTHIER, and )  
DOUGLAS N. PEARSON )

Defendants. )

~~UNDER SEAL~~

Case No. 01-30006-DRH

Title 18,  
United States Code,  
Sections 371, 1343, 1346 and 3551  
et. seq.

**SECOND SUPERSEDING INDICTMENT**

THE GRAND JURY CHARGES:

**COUNT ONE**  
**CONSPIRACY TO COMMIT WIRE FRAUD**  
**18 USC § 371**

**INTRODUCTION**

At all times material to this indictment:

**PARTIES**

1. EXIDE CORPORATION, doing business as EXIDE TECHNOLOGIES [hereinafter "Exide"] was and is a multinational corporation with its principal place of business in Reading, Pennsylvania, with worldwide business operations in the United States and Europe. Exide was and is a publicly traded corporation on the New York Stock Exchange (NYSE) in the business of manufacturing automotive and marine batteries, among other similar battery products.

During 1994 through at least 1997, Exide manufactured and supplied several lines of batteries to Sears, Roebuck & Co.[hereinafter "Sears"], which batteries were marketed and sold to consumers, in the Southern District of Illinois and elsewhere, as the Sears "DieHard" battery.

2. Defendant ARTHUR M. HAWKINS was the president and chief executive officer of Exide. HAWKINS was also a shareholder of Exide. In his capacity as president and chief executive officer, defendant ARTHUR M. HAWKINS would and did exercise authority and control over the day to day business and operating decisions at Exide, including the decisions involving the manufacture and sale of batteries to Sears. Defendant HAWKINS would and did negotiate with the employees of Exide customers, including the Sears battery buyer, one Gary Marks, to make illegal payments using Exide corporate funds.

3. Defendant ALAN E. GAUTHIER was the chief financial officer of Exide. GAUTHIER was also a shareholder of Exide. In his capacity as chief financial officer, defendant ALAN E. GAUTHIER would and did exercise authority and control over the day to day business and financial decisions at Exide, including but not limited to approving voucher requests for payments to third parties, including, employees of Exide customers. Defendant GAUTHIER would and did approve the use of Exide corporate monies to fund the subject illegal payments to a Sears battery buyer, Gary Marks. Defendant GAUTHIER would and did cause false financial records to be included in the corporate records of Exide to conceal the true nature of the payments. GAUTHIER further instructed that certain cash payments in 1995 be made in amounts less than \$10,000 to avoid bank financial reporting and disclosure requirements to the Internal Revenue Service.

4. Defendant DOUGLAS N. PEARSON was the vice president of North American Operations of Exide. PEARSON was also a shareholder of Exide. In his capacity as vice president of North American Operations, defendant DOUGLAS N. PEARSON would and did exercise authority and control over the day to day business and operating decisions at Exide, including some decisions involving the manufacture and sale of batteries to Sears. Defendant PEARSON would and did agree to use or cause to be used Exide corporate monies to fund illegal payments made to a Sears battery buyer, Gary Marks. Defendant PEARSON further ordered a reluctant Exide employee to make the payments to Marks after the employee refused to do so.

#### ILLEGAL PAYMENTS

5. At all relevant times it was an offense under Illinois law to engage in acts of commercial bribery as set forth below:

**5/29A-1. Offering a bribe**

A person commits commercial bribery when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs.

**5/29A-2. Accepting a bribe**

An employee, agent or fiduciary commits commercial bribe receiving when, without consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs.

6. Beginning in or about November 1, 1993, and continuing throughout all times material to this indictment, Exide had written "Guidelines on Business Conduct" which prohibited certain "Unlawful Payments" as set forth below:



V. FAIR COMPETITION

Payments or transactions that relate directly or indirectly to improper or illegal activities, such as bribes or kickbacks, are unacceptable business practices.

A. UNLAWFUL PAYMENTS

No unlawful payment is to be made to secure or maintain business, to influence any decision relating to the Company's business or affect the enactment or enforcement of any laws or regulations or to obtain favors. The purpose of this policy is to prohibit direct or indirect payments or gifts to payments, gifts or arrangements to or with any public or private individual including officials, employees and representatives of political bodies, governments and their branches and agencies, private corporations and organizations doing business or otherwise having dealings with the Company.

THE CONSPIRACY

7. Beginning in or about January 1994 and continuing until in or about September 2000, both dates being approximate and inclusive, in St. Clair County, in the Southern District of Illinois, and elsewhere,

**ARTHUR M. HAWKINS,  
ALAN E. GAUTHIER, and  
DOUGLAS N. PEARSON,**

defendants herein, along with other corporations and individuals, both known and unknown to the grand jury, did knowingly and wilfully combine, conspire, confederate and agree together to commit offenses against the United States States, to wit: to violate Title 18, United States Code, Sections 1343 and 1346 (the wire fraud statutes) by using wire transfers in furtherance and execution of a scheme and artifice to defraud consumers of money and property by means of false and fraudulent pretenses, representations, and promises in connection with the distribution, sale

and marketing of Sears' automotive batteries manufactured by Exide. It was further a part of the scheme and artifice to defraud that Exide, together with the defendants **HAWKINS, GAUTHIER and PEARSON** and others, would and did facilitate and guarantee the overall success of the scheme by depriving Sears of the intangible right of the honest, faithful, and impartial services of its employee, Gary Marks, and would and did deprive the shareholders of Exide of the intangible right of the honest, faithful, and impartial services of its management. It was further a part of the scheme and artifice to defraud that defendants **HAWKINS, GAUTHIER and PEARSON**, along with others, would and did engage in efforts to conceal the conspiracy by attempting to hide improper cash payments to Marks in company records, creating false documents, making additional improper cash payments and providing false sworn testimony.

#### BACKGROUND TO THE CONSPIRACY

8. In or about early 1994, Sears retained A.T. Kearney, [hereinafter "Kearney"] a Chicago based consulting firm, to assist Sears in negotiating a new battery manufacturing contract for the "DieHard" battery product line. The battery brand name "DieHard" was well known to consumers through nationwide advertising, including advertising aimed at consumers shopping at Sears automotive centers located in the Southern District of Illinois.

9. Kearney, together with Sears' employees, including the Sears battery buyer, Gary Marks, conducted a Strategic Sourcing Initiative or SSI. The SSI program solicited various battery manufacturers to submit contract bids to manufacture all or part of the various battery products comprising the DieHard battery line. As part of the SSI, Kearney and others conducted "due diligence," an investigation into the qualifications of each prospective bidder.

10. In or about early 1994, a Sears quality assurance testing report was released to Sears regarding battery quality comparisons based upon selective battery product testing of various manufacturers. Exide was ranked lower in manufacturing quality than its competitors.

11. Marks would and did communicate material information about the various bidders to Sears' management in order to facilitate the final selection of the new manufacturer. Exide would and did submit a bid and business plan to Sears through its battery buyer, Gary Marks, in or about early February 1994.

#### MANNER AND MEANS OF THE CONSPIRACY

12. It was a part of the conspiracy that defendant HAWKINS would and did operate Exide's business through a pattern of making cash payments and/or providing other things of value to employees of Exide's customers and other third parties. The payments, variously referred to as "consulting payments," travel advances, or "advances for promotional materials" were made at defendant HAWKINS' instruction to insure that Exide would continue its business relationships with its customers regardless of the quality of its manufacturing processes.

13. It was further a part of the conspiracy that Exide and defendant HAWKINS knew or should have known that such payments and gratuities made to employees of its customers deprived the customers of the honest, faithful, and impartial services of their employees, respectively, and represented a conflict of interest.

14. It was further a part of the conspiracy that defendant HAWKINS would and did advise Exide employees that he intended to "set up" the Sears battery buyer, Gary Marks, as an

Exide "consultant" while Marks was employed as the Sears battery buyer to "take care of" Marks.

15. It was further a part of the conspiracy that during the bidding process, Exide misrepresented to Sears that its battery product design included certain proprietary features and was, among other things, the "cutting edge of technology" for the "next generation of DieHard," and could be manufactured at a much lower cost to Sears than its competitors for similar product designs when in truth and in fact, Exide manufactured battery products that omitted proprietary features, utilized common, inexpensive technology, and had reduced lead content in order to cut manufacturing costs.

16. It was further a part of the conspiracy that lead content, among other design specifications, directly affected the duration of battery performance after the battery was installed in a vehicle.

17. It was further a part of the conspiracy that the amount of lead content, among other design specifications, directly affected the ability of a battery to meet industry quality assurance testing standards. The two principle industry standards used to test the quality of a battery were "Cold Cranking Amperes" or "CCA" and "Reserve Capacity" or "RC." Each battery manufactured by Exide, for distribution to Sears and retail sale to consumers, would and did contain a label advising the consumer of the CCA and RC ratings for the battery.

18. It was further a part of the conspiracy that consumers would and did pay more money for certain Exide manufactured DieHard batteries based upon advertising and warranty claims that the subject DieHard batteries would meet the CCA and RC quality assurance standards and last longer than battery lines that were priced lower, when in truth and in fact, the battery

products did not contain proprietary design features, regularly failed CCA and RC testing, and contained manufacturing defects caused by a faulty formation process during manufacture.

19. It was further a part of the conspiracy that Exide would and did offer a contract bid that was materially lower than its competitors to ensure that Sears would accept Exide's offer making Exide the largest battery supplier in the world when in truth and in fact, Exide and the defendants knew that in order to deliver the product at the proposed cost that Exide would be unable to supply a battery with enough lead and other design specifications to satisfy industry CCA and RC standards. Sears would and did accept Exide's bid in part because the cost of the battery to Sears was materially lower than other competing battery manufacturers. Lower product costs to Sears enabled Sears to retain higher markups and greater profits on the sale of its DieHard batteries to consumers.

20. It was further a part of the conspiracy that in or about August 1994, Sears awarded a battery manufacturing contract to Exide for the manufacture of numerous battery lines including the "DieHard Silver" battery. A contract entitled "Master Agreement between Sears and Exide" was entered into between the two companies [hereinafter "battery contract"].

21. It was further a part of the conspiracy that the battery contract included certain design specifications, including CCA and RC performance standards. Specifically, the contract provided that: "The cold cranking amps and reserve capacity targets should be met 95% of the time for all [Store Keeping Units] or SKU's at all factories." A SKU number identified a number of batteries in the same product group. In truth and in fact, numerous Exide batteries selected for quality testing as part of the representative sample would and did fail the SKU testing and

employees were instructed by defendant HAWKINS to falsify SKU testing results on internal quality assurance reports that were provided to Sears.

22. It was further a part of the conspiracy that the contract required that batteries "shall be manufactured with the Silvium II alloy, HUP paste and one inch breed lug." In truth and in fact, these proprietary design features were either omitted during manufacture or offered no added value to the performance of the DieHard battery. Defendant HAWKINS instructed that only negligible trace amounts of Silvium or silver be added to the battery in order to reduce Exide's manufacturing costs. Further, HUP paste provided no added value to battery performance contrary to Exide's representations, and the breed lug was missing from certain product lines.

23. It was further a part of the conspiracy that Exide would and did fail to provide all actual physical plans and design specifications of the batteries described in the battery contract to Sears to enable Sears to determine if the batteries were actually being manufactured according to the contract design and proprietary specifications when in truth and in fact, the batteries manufactured and supplied to Sears under the battery contract failed to meet the contract design and proprietary specifications, batteries regularly failed to pass the CCA and RC testing specifications, and Exide manufactured batteries at plants not approved in its contract with Sears which required batteries to be built at only approved plants.

24. It was further a part of the conspiracy that in or about September and October 1994, Exide would and did manufacture the initial battery shipment for Sears of approximately 750,000 (seven hundred fifty thousand) batteries. Exide, in direct violation of the battery contract, completed the "formation process" of the battery manufacturing at one or more unapproved plants resulting in hidden or latent defects in the batteries. The faulty formation

process caused overheating of the batteries resulting in internal grid corrosion. The latent defects were not always readily apparent at the initial installation of the battery but could cause a malfunction even months or years after the initial battery installation.

25. It was further a part of the conspiracy that in or about September and October 1994, Exide would and did manufacture the initial battery shipment for Sears of approximately 750,000 (seven hundred fifty thousand) batteries that contained additional obvious manufacturing defects, including acid leaks, broken carrying straps, and dead batteries.

26. It was further a part of the conspiracy that the defective batteries were distributed by Sears to its automotive centers nationwide, including to automotive centers located in the Southern District of Illinois. Within approximately thirty days of delivering the batteries, the Sears automotive centers reported excessive problems with the batteries and Sears then advised Exide in writing that Exide was in breach of its contract.

27. As a further part of the conspiracy, and in order to market and sell the Exide manufactured DieHard batteries, a nationwide advertising campaign was run both before and after the initial delivery of the defective batteries. Exide, acting together with the defendants and others, would and did misrepresent and cause to be represented material facts to the consumers that the Exide line of DieHard batteries were "America's most trusted battery" with a longer operating life, when in truth and in fact, the batteries were not manufactured according to contract design and proprietary specifications, did not have sufficient lead, regularly failed to satisfy CCA and RC contract requirements, and had both obvious and latent manufacturing defects, all of which could reduce the operating life of the batteries well below the representations made to the consumers in the advertising.

28. It was further a part of the conspiracy that Exide, acting together with the defendants and others, would and did refuse to recall the initial battery shipment to conceal from consumers the latent and hidden manufacturing defects in order to safeguard and protect the "DieHard" brand name which had great monetary and economic value to Sears and to protect Exide's business reputation.

29. It was further a part of the conspiracy that Exide, acting together with the defendants and others, knew that Sears would and did charge the consumer higher prices for the Exide manufactured DieHard batteries than other lower priced battery lines when in truth and in fact, if the battery defects as described in this indictment had been disclosed to the consumer, the consumer would not have paid a higher price for the DieHard battery as advertised.

30. It was further a part of the conspiracy that Exide, acting together with the defendants and others, would and did engage and caused others to engage in acts of concealment to prevent the consumers from learning the true facts about the manufacturing defects, including but not limited to: the refusal to recall the batteries, false advertising, and extending the 24 month replacement warranties to 30 months in an effort to placate customers. The battery complaints became so voluminous that many sales associates refused to sell DieHard lines manufactured by Exide and instead, sold higher volumes of the DieHard Gold product line manufactured by an Exide competitor.

31. It was further a part of the conspiracy that in late 1994, defendant HAWKINS would and did travel to Chicago, Illinois and to the Sears headquarters located in a suburb outside of Chicago. Defendant HAWKINS met with Sears' battery buyer Gary Marks at a restaurant and offered to pay him at least \$10,000 per month to ensure the continuing good will of Sears and the



continuation of the contractual relationship. Defendant **HAWKINS** further explained to Marks the need to set up a shell consulting corporation for the sole purpose of receiving the payoffs and concealing the true purpose for the payments. Thereafter, Marks followed defendant **HAWKINS** instructions and incorporated a shell company known as DG Consulting Inc.

32. It was further a part of the conspiracy that in or about March 1995, after the first illegal gratuity payment was made to Marks, Marks and others received confirmation from a "tear down" analysis of the Exide manufactured battery that there was no silver in the battery as required by the contract and that other defects existed in the batteries. Exide, together with the defendants and others, would and did continue to misrepresent or cause to be misrepresented to the consumers that the DieHard battery was a premium battery when in truth and in fact, it was not.

33. It was further a part of the conspiracy, that defendant **HAWKINS** would and did authorize defendant **GAUTHIER** to use corporate funds to make eight separate \$10,000 payments to Marks, while Marks was the Sears battery buyer, using an Exide corporate bank account.

34. It was further a part of the conspiracy that wire transfers were used to deliver in interstate commerce illegal payments to Marks as set forth more fully in the "OVERT ACTS" listed below.

35. It was a further part of the conspiracy that defendants **HAWKINS**, **GAUTHIER** and **PEARSON**, would and did attempt to conceal the payments to Marks by making and causing to be made false entries in the Exide financial books and records, including variously characterizing the payments as "consulting payments," travel advances, and advances to purchase promotional materials when in truth and in fact Marks never performed any consulting services

for Exide and the payments deprived Sears of the faithful, honest and independent services of its employee.

36. It was a further part of the conspiracy that an Exide engineer instructed employees to increase the lead content in the batteries manufactured for Sears. Defendant HAWKINS upon learning about this, would and did instruct the employees to remove the additional lead because of his concern for the profit figures at Exide for the end of the operating quarter. Later, when the engineer again advised management of the need to increase the lead content of the batteries, defendant HAWKINS threatened to fire the battery engineer.

37. It was further a part of the conspiracy that the defendants through the aforementioned conduct deprived the shareholders of Exide of the faithful, honest and independent services of their management to the detriment of Exide.

38. It was a further part of the conspiracy that in or before April 1998, a former Exide employee supplied information to the Florida Attorney General in the course of an investigation. The employee disclosed that improper cash payments had been made by Exide to the Sears battery buyer, Gary Marks. Subsequently, defendant HAWKINS would and did prepare or cause to be prepared a false affidavit for Marks to sign in an effort by defendant HAWKINS to conceal the existence of the conspiracy, which false affidavit stated that Marks "never received an envelope full of cash from Joe Calio or any other Exide employee," when in truth and in fact defendant HAWKINS knew that Marks had received such cash payments.

39. It was further a part of the conspiracy that in or about April 1998 defendant HAWKINS would and did prepare or caused to be prepared a phony consulting letter agreement between Exide and Marks' company, DG Consulting, Inc., purportedly dated July 7, 1995, to

conceal the existence of the conspiracy by attempting to create a legitimate consulting business arrangement between Marks and Exide in an effort to mischaracterize the cash payments as legitimate consulting fees, when in truth and in fact, no consulting agreement was entered into between Marks or his company and Exide during 1995 or at any time and no consulting services were ever performed by Marks or his company for Exide.

40. It was further a part of the conspiracy that defendant HAWKINS would and did assure Marks that in exchange for Marks signing the false affidavit and agreeing to the phony consulting letter agreement, that defendant HAWKINS would use his best efforts to "protect" Marks from "involvement" and to pay Marks more money.

41. It was further a part of the conspiracy that HAWKINS made two separate cash payments to Marks totaling \$25,000 during 1999.

#### OVERT ACTS

42. In furtherance of the conspiracy and in order to accomplish the objects of the conspiracy, the defendants

**ARTHUR M. HAWKINS,  
ALAN E. GAUTHIER, and  
DOUGLAS N. PEARSON,**

performed and caused to be performed, in the Southern District of Illinois and elsewhere the following overt acts:

a) In or about September 1994, Exide manufactured DieHard batteries were delivered to Sears automotive centers located at 235 St. Clair Square, Fairview Heights, Illinois and 3000 W. DeYoung, Marion, Illinois, respectively, all in the Southern District of Illinois.

b) On or about October 28, 1994, the Sears automotive center located at 3000 W. DeYoung, Marion, Illinois, returned eleven (11) batteries found to be defective during a quality assurance audit conducted by Exide at the subject automotive center as a result of being notified by Sears of the contract breach.

c) During 1994, television advertising regarding the DieHard batteries was aired to consumers located in the Southern District of Illinois.

d) On or about September 5, 1995, defendant ALAN E. GAUTHIER, approved a check request form, an internal Exide financial record, for an illegal payment of \$10,000 to the Sears battery buyer, Gary Marks which form falsely reported that the payment was for consulting services.

e) In or about March 1995, defendant ALAN E. GAUTHIER advised an Exide employee to unlawfully structure a \$10,000 payment to Marks to avoid bank reporting and disclosure requirements which regulations required the filing of currency reports by financial institutions for payments of more than \$10,000.00.

f) In or about June 1995, defendant DOUGLAS N. PEARSON ordered an Exide employee to deliver illegal cash payments to Marks, stating to just "do it" and that the employee "had no choice."

g) On or about January 31, 1996, Exide caused funds in the amount of \$10,000, less bank fees, to be wire transferred from its bank account at the CoreStates Bank in Philadelphia, Pennsylvania, wire transfer number B00035879 to DG Consulting, Inc., Lake Zurich, Illinois.

h) On or about February 1, 1996, after the subtraction of wire transfer fees, the amount of \$9,980 was deposited into the bank account maintained at the Bank of Palatine, Palatine, Illinois in the name of DG Consulting, Inc., account no. 051-594-01.

i) In or about April 1998, defendant HAWKINS prepared or caused to be prepared the "Affidavit of Gary Marks."

j) In or about April 1998, defendant HAWKINS prepared or caused to be prepared a letter agreement purportedly dated July 7, 1995.

k) In or about September 1, 2000, defendant HAWKINS gave a sworn deposition in a civil case and stated under oath that Gary Marks had a consulting agreement with Exide.

All in violation of Title 18, United States Code, Sections 371 and 3551 et. seq.

**COUNT TWO**  
**WIRE FRAUD**  
**18 USC § 1343**

43. The Grand Jury realleges and reincorporates by reference herein, the allegations contained in Count 1, paragraphs 1-33 of this Indictment, as constituting a scheme and artifice to defraud.

44. It was further a part of the scheme and artifice to defraud that Exide, together with the defendants, HAWKINS, GAUTHIER and PEARSON would and did facilitate and guarantee the overall success of the scheme by depriving Sears of the intangible right of the honest, faithful, and impartial services of its employee, Gary Marks, and would and did deprive the shareholders of Exide of the intangible right of the honest, faithful, and impartial services of its management.


45. Beginning in or about January 1994 and continuing until in or about February 1996, both dates being approximate and inclusive, in St. Clair County, in the Southern District of Illinois, and elsewhere,

**ARTHUR M. HAWKINS,  
ALAN E. GAUTHIER, AND  
DOUGLAS N. PEARSON,**

defendants herein, along with other individuals, both known and unknown to the grand jury, for the purpose of executing the scheme and artifice to defraud consumers of money and property by means of false and fraudulent pretenses, representations, and promises in connection with the distribution, sale and marketing of Sears' automotive batteries manufactured by Exide, caused to be transmitted by wire from an Exide bank account at the CoreStates Bank in Philadelphia, Pennsylvania, wire transfer number B00035879, writings, signs, and symbols representing \$10,000 cash to an account maintained at the Bank of Palatine, Palatine, Illinois in the name of DG Consulting, Inc., account no. 051-594-01.

All in violation of Title 18, United States Code, Sections 1343, 1346, 2 and 3551 et.seq.

**A TRUE BILL**

  
Margaret Cude  
FOREPERSON



W. CHARLES GRACE  
United States Attorney

Recommended Bond: \$50,000 unsecured