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

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

REX LUZADER'S MOTION TO QUASH SUBPOENAS

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

Introduction

Rex Luzader, a former employee of Exide Corporation is a witness who has been subpoenaed by the Government to testify in its case in chief against Exide Corporation and Defendants herein. Mr. Luzader has no agreement with the Government, and no "deal" has been offered by the Government for Mr. Luzader's testimony.

On or about November 20, 2001, Harold Ruvoldt, an attorney for Defendant Pearson sent a letter via Federal Express to Laurence Urgenson an attorney for Exide Corporation. (Exhibit A) Said letter requested among other things Mr. Luzader's personnel file and a request by Mr. Ruvoldt to interview Mr. Luzader. In a letter dated November 30, 2001 (Exhibit B) the undersigned indicated Mr. Luzader would follow his advice and not meet with Mr. Ruvoldt.

The undersigned also objected to the dissemination by Exide of Mr. Luzader's personnel file, which had been subpoenaed pursuant to Federal Rule of Criminal Procedure 17 (c). The undersigned states on information and belief that the Government moved to

quash this particular 17(c) subpoena, and the subpoena for Mr. Luzader's personnel file was in fact quashed by this Honorable Court. In any event, Exide did not turn Mr. Luzader's personnel file over to Mr. Ruvoldt.

On March 14, 2002 at 10:13 a.m., Mr. Ruvoldt FAXed to the undersigned a letter with a trial subpoena (subpoena #1) demanding the production of certain documents (Exhibit C) which apparently would be used to cross-examine Mr. Luzader.

The documents requested include any records showing drug or alcohol rehabilitation by Mr. Luzader and virtually all of Mr. Luzader's financial records for the last 10-17 years.

Besides the fact that these documents have no relevance whatsoever, the breadth of documents demanded in these subpoenas is staggering, and it would be impossible for Mr. Luzader or any witness to produce the documents requested.

On March 18, 2002 at approximately 9:30 a.m. the undersigned received another trial subpoena (subpoena #2) via Federal Express (Exhibit D). This subpoena does not appear to be as invasive as the March 14, 2002 subpoena but it appears to be a "general" subpoena and asks Mr. Luzader to make legal conclusions as to what he is being asked to produce. On its face this subpoena should be quashed.

The letter which is attached to subpoena #2 seems to indicate that Mr. Ruvoldt desires to subpoena Mr. Luzader to testify after the Government has rested. The undersigned would object to that and will ask this Honorable Court at the appropriate time to "release" Mr. Luzader from the Government's trial subpoena once he has been cross-examined by the Defendants herein. Obviously, if another matter arises bearing on Mr. Luzader's testimony this might change, but it seems to be a waste of time to have Mr. Luzader and ***all*** of the other witnesses to be at Defendants' beck and call for the three months this trial is expected to last.

Mr. Luzader Was Never Personally Served With These Subpoenas

Neither of the subpoenas was ever personally served on Mr. Luzader and the undersigned never agreed to accept service for Mr. Luzader.

Based solely on this the subpoenas regarding Mr. Luzader must be quashed, but because it appears as if a multitude of other witnesses (who were properly served with trial subpoenas by the Government) received identical subpoenas from Mr. Ruvoldt, the undersigned will endeavor to explain why common sense and caselaw require that the subpoenas *in toto* should be quashed at the appropriate time.

That will allow this Honorable Court to conserve valuable time in not being required to hear arguments from each witness as to why their particular subpoenas should be quashed. If in fact the subpoenas are identical for all of the witnesses, this Honorable Court can rely on the arguments presented by Mr. Luzader here when considering whether or not to quash other witnesses' subpoenas. Also, perhaps an adverse ruling here could convince Mr. Ruvoldt to *withdraw* the subpoenas issued for the other witnesses.

Even if Mr. Luzader had been properly served, as this Honorable Court is now aware, Mr. Luzader will be among the first witnesses called by the Government to testify in its case in chief and neither of the subpoenas would give Mr. Luzader enough time to compile the documents requested and bring them with him for his testimony.

Documents Requested in the Subpoena

Mr. Ruvoldt has broken his requests in subpoena #1down into the following nine broad categories:

1. Mr. Luzader's substance abuse history/treatment from 1990 to the present;
2. All partnership or business related records from 1987 to the present;
3. All of Mr. Luzader's Exide Corporation transactions with no beginning or ending point;
4. All of Mr. Luzader's stock transactions with no beginning or ending point;
5. Virtually all of Mr. Luzader's and his entire family's financial records with no beginning or ending point;
6. Storage/antique records with no beginning or ending point;
7. Exide business records in Mr. Luzader's possession from 1985 to the present;
8. Sears business records from 1993 to the present; and
9. Mr. Luzader's income tax returns from 1990 to the present.

As will be shown below, these requests could harass/embarrass Mr. Luzader, are not relevant, are overly-broad, unduly burdensome and as such Mr. Luzader is requesting that

this Honorable Court quash subpoena #1. As was stated above, subpoena #2 should be quashed on its face. By use of its power to quash or modify subpoenas, courts can control use of Rule 17(c) to limit it to good faith efforts to obtain evidence, even though materials subpoenaed need not actually be used in evidence. *Bowman Dairy Co. v United States* (1951) 341 US 214, 95 L Ed 879, 71 S Ct 675, and the decision to quash or modify subpoena duces tecum is left to discretion of the trial judge. *Margoles v United States* 402 F2d 450 (1968, CA7 Wis).

Result of Subpoena is to Harass/Embarrass Mr. Luzader

The difficulty in a situation such as this is that the undersigned and Mr. Ruvoldt are upholding their ethical obligations to vigorously represent the interests of their respective clients. There is no middle ground. This Honorable Court must decide whether or not to quash the subpoenas in their present state or require a witness to disclose the overwhelming amount of material demanded in the subpoenas.

An unwitting result of using the enormous power of a federal subpoena to demand production of a layperson's entire financial history or implicitly accusing someone of having a substance abuse problem is to make the individual shrink from wanting to be called as a witness at all. Here, Mr. Luzader knows he is going to be called by the Government to testify truthfully about his knowledge of the goings on at Exide during the relevant time period mentioned in the indictment and similarly knows that he will be vigorously cross-examined by Defendants' attorneys regarding his testimony. Nowhere though did he bargain for a federal subpoena to be used to demand the type of invasive action into his private life that these subpoenas present.

Any layperson believes that the filing of income tax returns are intensely private and sacrosanct. No one expects that they would be required to turn over financial records which are outside of the periods charged in a federal indictment. To have those records disclosed to third parties, without a sound basis for doing so deprives the tax filer from keeping confidential something which he never expected to have to disclose. Because Mr. Ruvoldt

has used trial subpoenas to demand these intensely private documents, the only vehicle to protect Mr. Luzader and other witnesses from having private matters disclosed in a public forum is for this Motion to Quash to be granted.

If someone has never had any sort of substance abuse problems, and a federal subpoena is served on that individual to disclose substance abuse records, that person automatically becomes defensive about everything, which converts the subpoena into a mechanism that has a chilling effect on prospective witnesses.

The decision of the District Court in *United States v. Noriega*, 764 F. Supp. 1480, 1493 (S.D. Fla. 1991) applies to the notion of harass/embarrass because, "if the moving party cannot reasonably specify the information contained or believed to be contained in the documents sought but merely hopes that something useful will turn up, this is a sure sign that the subpoena is being misused." That appears to be the case here.

The undersigned is not casting any aspersions on Mr. Ruvoldt for doing what an attorney should do to help his client. However, the repercussions of receiving subpoenas as broad as the subpoenas at issue here are enormous. A witness is made to think that, ***under penalty of contempt***, he must divulge matters which in his mind are not even remotely related to the matters alleged in the indictment. The subpoena is transformed into a weapon whereby a witness is implicitly threatened with *"if you testify we'll dig your past up and make you pay for testifying."* A trained attorney or trial court judge knows that Mr. Ruvoldt's is ***not*** using the subpoenas as a "velvet hammer," but it is a logical conclusion that a layperson would make when he receives subpoenas which make baseless allegations about substance abuse or perceived financial wrongdoing. As such the subpoenas should be quashed.

Rule 17(b)

Before discussing the fact that the subpoenas are over-broad and to be required to produce the voluminous material would be unduly burdensome, a quick look at Federal Rule of Criminal Procedure 17 (b) will add perspective to this matter.

If Mr. Pearson had an attorney appointed to represent him pursuant to the Criminal Justice Act, the CJA attorney would have to get prior approval from this Honorable Court prior to serving ***any*** trial subpoena. In 17(b) situations, the Court acts as a "buffer," and the CJA attorney would have to explain to the Court why it is necessary to have the requested material subpoenaed for trial.

As this Honorable Court is aware, a preliminary showing is required of an indigent defendant under Rule 17(b) who must show that the witness is "necessary" to an adequate defense. "Necessary" is read to mean relevant, material and useful to an adequate defense. *United States v Barker* 553 F2d 1013 (1977, CA6) Also, see *United States v Conder* 423 F2d 904 (1970, CA6), cert den 400 US 958, 27 L Ed 2d 267, 91 S Ct 357 (1970).

The ***only*** difference between the instant situation and one which arises under Rule 17(b) is that here Mr. Ruvoldt is able to serve dozens of subpoenas on prospective witnesses unfettered by Court interference.

But, the first question this Honorable Court might ask itself before proceeding to other matters is what would it do if pursuant to Rule 17(b) a CJA attorney presented Mr. Ruvoldt's subpoenas to it and requested that the American taxpayer be required to pay for the witness to be served, produce the documents demanded in the subpoenas and transported to court to testify? The undersigned is confident that under those circumstances the request for a Rule 17(b) subpoena would have been denied and the subpoenas prepared by Mr. Ruvoldt would never have seen the light of day.

Requested Material is Not Relevant

In reality, these two subpoenas are nothing more than a fishing expedition by a Defendant hoping to pry something loose from a Government witness which *might be* admissible at trial for impeachment purposes. But, before the requested documents could be used to impeach Mr. Luzader, or any other witness, Mr. Ruvoldt must first convince this Honorable Court that the documents would be admissible. With any evidentiary issue regarding admissibility, the moving party must show that a document is *relevant*. see *United*

States v. Kalter, 5F.3d 1166 (8th Cir. 1993), *United States v. Eden*, 659 F.2d 1376, 1381 (9th Cir. 1981),cert. denied,455 U.S. 949, 71 L. Ed. 2d 663, 102 S. Ct. 1450 (1982). It is Mr. Luzader's position that the documents requested have no relevance to the charges pending against the Defendants, and that it would be foolhardy to be required to produce something which would not be admissible at trial.

In *United States v. Ausbrook*, 1993 U.S. Dist. Lexis 9896, 92-40064-01, 1993 WL 270506 (June 4, 1993), a defendant's request for subpoena duces tecum was denied, and the court concluded that:

> Without a way to determine the nature and substance of the requested documents, the court is left to guess what might turn up, what information might be found, what relevance it might have, and what admissibility issues might arise. Rule 17(c) does not operate on assumptions and conjecture. The court has no choice but to find that the defendant failed to carry his burden of making a sufficient preliminary showing for these subpoenas to issue and similarly has failed even to make a threshold showing necessary for an in camera review of the requested documents.

Whether or not Mr. Luzader might have stored things in a storage facility or purchased antiques, while perhaps interesting, is not relevant to what Defendants are accused to have done. It would almost seem farcical for Mr. Luzader to be "impeached" on whether or not he purchased an "antique" lamp or stored elderly family members' heirlooms in a storage facility.

Similarly, even if Mr. Luzader had a substance abuse problem, how would that be relevant to his testimony? What is the basis for Mr. Ruvoldt asking for ***any*** of these records? Does he have information/facts which lead him to believe that Mr. Luzader has had a substance abuse problem? Does he have information/facts which lead him to have formed a ***basis*** for asking for the other records mentioned in the subpoenas? Or are these requests being made based on a "hunch?" "Hunch" is a fancy word for fishing expedition.

And, the Supreme Court has been rather clear regarding its view of using a federal subpoena to conduct discovery type fishing expeditions, and the undersigned will not belabor the seminal cases of *Bowman Dairy Co. v United States* 341 US 214, 95 L Ed 879, 71 S Ct

675 (1951) and *United States v. Nixon*, 418 U.S. 683, 41 L. Ed. 2d 1039, 94 S. Ct. 3090 (1974), because these cases have already been extensively briefed and argued by the Government and Defendants at a previous motion on subpoenas served by Mr. Ruvoldt. However, it seems clear that by uttering the "magical" word "impeachment" Mr. Ruvoldt is doing nothing more than casting his line in the water hoping to troll up some mud to throw at witnesses.

Regardless, substance abuse *might* go to Mr. Luzader's ability to recollect things he is testifying about, but this could be dealt with by simply asking on cross-examination whether or not Mr. Luzader had a drug or alcohol problem. If he did, then Mr. Ruvoldt could ask Mr. Luzader whether or not it impacted his ability to recall events. If he did not have a substance abuse problem then Mr. Ruvoldt could move on to his next question.

As far as the undersigned is aware, there have been no allegations by the Government or any of the Defendants that Mr. Luzader illegally profited financially from the charged conduct mentioned in the indictment. If allegations of financial impropriety were made against Mr. Luzader, then perhaps a better argument could be made that the documents requested are in some way relevant to the issues at hand, but absent those allegations the subpoenas should be quashed on grounds of relevance.

Requested Material is Overly-Broad

With regard to quashing these overly-broad subpoenas, it is important to note what these subpoenas do ***not*** request. They do not request documents prepared by Mr. Luzader or other witnesses, while employed at Exide Corporation, nor do they request materials which could exculpate any of the Defendants standing trial. The reason for this is simple. These type of documents have no doubt already been provided to the Defendants by the Government pursuant to its discovery obligations. Mr. Ruvoldt now takes the position that the documents mentioned in the subpoenas are required for impeachment purposes but assuming he can show that the documents are relevant for purposes of impeachment, this Honorable Court should still quash the subpoenas because they are overly-broad insofar as not one of Mr. Ruvoldt's requests has a reasonable time period.

Rule 17(c) contains a specificity requirement to ensure that subpoenas are used only to secure for trial certain documents or sharply defined groups of documents. Rule 17(c) also serves to prevent a subpoena from being converted into license for a fishing expedition to see what may turn up, *United States v King* 164 FRD 542 (1996, DC Kan), and the requests must be confined to reasonable period of time. *Application of Radio Corp. of America* 13 FRD 16 (1952, DC NY). See also *United States v Hensel* 699 F2d 18 (1983, CA1), cert den 461 US 958, 77 L Ed 2d 1317, 103 S Ct 2431 (Rule 17 gives District Court authority to deny subpoena where production would be unreasonable, and requested subpoena was too broad, untimely and harassing).

With regard to quashing subpoenas aimed at procuring financial records from Government witnesses, the Court in *United States v Lippincott*, 579 F2d 551 (1978, CA10), cert den 439 US 854, 58 L Ed 2d 159, 99 S Ct 164 held that where subpoenas were both too broad and irrelevant to defendant's purported defense the subpoena should be quashed. Without having the benefit of knowing what Defendant Pearson's defense is, it would be surprising if Mr. Luzader's financial records would add to, or for that matter detract from, any possible defense he has. As such subpoena #1 should be quashed.

Here, subpoena #1 deals almost exclusively with Mr. Luzader's financial past, present and future, with little if any specificity. Requests 3, 4, 5 and 6 have ***no*** time periods and in order to fully comply with these requests, Mr. Luzader would have to provide documentation of every shred of financial dealings he has ***ever*** had. Is Mr. Luzader supposed to provide documents from when he was a teenager working at a summer job? Or perhaps in order to fully comply with the subpoena he should spend time trying to recollect the weekly allowance his parents gave him for doing household chores? What about the $3.00 Christmas gift his grandmother might have given him 50 years ago? The absurdity of demanding production of something with no time limit shows why these requests should be quashed.

Turning to the other requests in subpoena #1, the time period for those requests is not much better than the "forever in time" requests mentioned above. The other requests include

a demand for all partnership/business records commencing in 1987, and a request (number 7) which calls for all Exide records from 1985 to the present.

Requests 1 and 9 almost seem reasonable when comparing production of documents from the last 12 years to "forever" or the past 17 years, but nevertheless these requests are similarly doomed to being quashed because like the above requests they simply cover too great a time spanse and are therefore overly-broad.

The ***only*** request in subpoena #1 which is remotely reasonable for purposes of being over-broad is request 8, but as an employee of Exide during all relevant periods mentioned in the indictment, Mr. Luzader would not have had access to Sears' records.

The indictment charges that from 1993 through 2000 Defendants were involved in illegal activities, and because Mr. Luzader's employment with Exide concluded on November 19, 1999 anything subsequent to that time or anything before 1993 would certainly be overly-broad.

Turning briefly to subpoena #2, the material requested is simply impossible for a layperson to know what he is being asked to produce. When Mr. Luzader ceased working at Exide he did not take corporate documents with him. Furthermore, Defendants can cross-examine Defendant about the documents he might have in his possession which are germane to the indictment, and it is not necessary to require production of these documents pursuant to a subpoena since these documents would only substantiate Mr. Luzader's testimony. See *United States v Hughes* 895 F2d 1135 (1990, CA6).

Compliance With Subpoena Would Be Unduly Burdensome

In order to comply with the overly-broad subpoena, Mr. Luzader would be required to disclose virtually ***every*** financial transaction he has ever made, and to do this in the time frame available would simply be impossible. How does one go about gathering all of the documents demanded in the subpoena within a four day time period?

Assuming *arguendo* that the subpoena had been served in a timely manner, it would still be unduly burdensome, because the documents requested would be extraordinarily

difficult to locate. Besides this, Mr. Luzader or another witness would be required to expend a great deal of time, energy and money to locate documents whose evidentiary value might very well be nil.

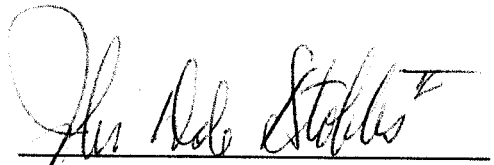
Simply stated, the breadth of subpoena #1 is overwhelming. It encompasses practically Mr. Luzader's entire life, and no witness should be expected or required to produce the documents mentioned in the subpoena. Common sense dictates that it would be unduly burdensome to expect or require someone who testifies for ***either side*** to produce the plethora of highly sensitive and personal documents that Mr. Ruvoldt demands be produced for trial.

In *United States v Bibby* 752 F2d 1116 (1985, CA6), cert den 475 US 1010, 89 L Ed 2d 300, 106 S Ct 1183 (1986), a prosecution for conspiracy as well as mail and wire fraud, the District Court denied issuance of a subpoena, because like here, the Defendants in *Bibby* were allowed extensive discovery and were provided with numerous documents as part of discovery. The Court in *Bibby* concluded that defendants would not be able to accomplish that which they wished to accomplish with subpoena, and to comply with the subpoena would be unduly burdensome. As such the subpoenas here should be quashed because it would be unduly burdensome to comply with their requests.

Conclusion

For the foregoing reasons, Rex Luzader requests that this Honorable Court grant his Motion and quash the two subpoenas served by Defendant Pearson.

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 20th day of March, 2002, a copy of the attached **REX LUZADER'S MOTION TO QUASH SUBPOENAS** was served on the following persons by hand delivering a copy of same 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

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Harold J. Ruvoldt, Jr.
Direct Dial: (212) 756-0325
E-Mail: hruvoldt@ealaw.com

November 20, 2001

VIA FEDERAL EXPRESS

Laurence A. Urgenson, Esq.
Kirkland & Ellis
655 Fifteenth Street NW, Suite 1200
Washington, D.C. 20005

Re: United States v. Pearson, et al.
Indictment No. 01-CR-30006-DRH

Dear Mr. Urgenson:

This firm represents defendant Douglas N. Pearson in the above-referenced matter.

We understand that you are counsel to Exide Corporation in connection with the above referenced matter.

As you are aware, Mr. Pearson, as a former director and officer of Exide Corporation, has been charged by the United States Attorney for the Southern District of Illinois, along with former Exide President/CEO Arthur Hawkins and Chief Financial Officer Alan Gauthier, with allegations relating to, *inter alia*, the payment of illegal bribes to a former Sears employee, Gary Marks, and their participation with Sears and other Exide employees in distributing and selling known used and defective batteries as new to the general public.

In preparation for trial, we wish to conduct interviews of certain former and present Exide officers or employees who may possess knowledge or information regarding these allegations. We understand that your client, Exide Corporation has cooperated with the Government in connection with this prosecution. We understand that Exide has entered into a plea agreement and has agreed to continue to cooperate. We further understand that the Government has already interviewed one or more of the employees, who we desire to interview. In the interest of fairness, we would request the same opportunity to interview these individuals as they and Exide have afforded the U.S. Government.

Exhibit A

We have initially identified the following individuals as persons whom we seek to interview:

Name	Title (if known)
John Van Zile*	General Counsel (10/96-present)
James Leupold*	Vice President, National Account Sales
Leland Coulter*	Executive Director, Internal Audit Dept. (10/98-9/99)
Gary Hackenberg*	Director of Motor Pool
Anand "Phil" Rendall*	Director of Product Engineering (3/88-2/95)
Nina Basile*	Director of National Accounts
William Barnes	Vice President, Manufacturing
Jack Bergeron	Director of Product Control
John Bear	Product Engineering Manager
David Beidler*	Product Engineering Manager
Donna Giles*	Director Product Development for Marketing
William Veit	Testing Lab Manager
Rex Luzader*	Vice President, Engineering
Wayne Frady*	Quality Engineer, Greer Plant (1990-1995)
Craig Tidey*	National Marine Account Manager
David Neal*	Greer Plant Manager (12/93-4/95)
Curt Orwig	Vice President, Quality Assurance
Jeff Barna*	Vice President Sales and Branch Operations for Eastern Division

Cindy Dever*	Executive Secretary to Douglas Pearson
Richard Randalls	President, Speed Clip Division
Joseph Calio	Executive Vice President, Corporate Marketing (11/81-11/96)
Kim Bryant	Auditor, Traveler's Rest Distribution Center
David Johnson*	Manager, Traveler's Rest Distribution Center
William Batson*	Greer Quality Control Manager
Michael Greenlee*	Vice President, Engineering (5/95-present)
Robert Hall	Greer Plant Supervisor
Ted Meloon*	Corporate Quality Auditor
Thomas DiStefano	Sears Account Manager
Bernard Stewart*	Executive Vice President, Legal Affairs, and Secretary
Roseanne Alisauskas	Director of Marketing
Debra Burkhardt*	Associate Manager, Marketing
Nick Stratigeas*	Senior Vice President
William Rankin*	Executive Vice President, Engineering & Group Operations
Gordon Lane*	Vice President, Marketing
Steven Kovacs*	Financial Analyst
Peter Cutler*	Director Southeast Sales Branches
Mark Roberts	Daytona & Jacksonville Branch Manager (1988-9/95)
Karen Smith*	Accounts Payable Supervisor
Jack Bergeron*	Director Product Control
Ronald Taylor	Board Member

Thomas Reilly	Board Member (10/96-8/99)
Earl Dolive	Board Member
Robert Irwin	Board Member
Lawrence M. Wagner*	Board Member
Sally Colkett*	Manager, Branch Accounting & Systems
David Johnson	Supervisor, Greer, Greenville & Charlotte Branches
Gale Bryner*	

We further request that you agree to make available the personnel files of these individuals and any information in the possession of your client concerning them. Pursuant to Rule 17(c) of the Federal Rules of Procedure, we have enclosed herein a subpoena for those records. In lieu of appearing in court on the designated return date, we encourage you to forward any responsive documents to this firm's New York address.

We request that you please (i) identify any of the above-named individuals whom you do represent, (ii) identify any persons whom you consider to be in Exide's "control group", (iii) communicate to your client(s) our desire to interview them and advise us as to whether they consent or refuse to be interviewed, and (iv) advise us if any of the above-named individuals are represented by someone other than yourself and provide the name, address and phone number of their counsel. To the extent we believe to have identified their home addresses, we are simultaneously with this letter forwarding a letter by Certified Mail, Return Receipt Requested, to the above individuals with asterisks by their name requesting their permission to be interviewed.

If you have any questions, please contact me directly.

We thank you in advance for your anticipated cooperation.

Very truly yours,

Harold J. Ruvoldt, Jr.

HJR:hmg

107191-1

Enclosure
cc: Joel Slomsky, Esq.
Thomas McQueen, Esq.
Mr. Douglas Pearson

STOBBS LAW OFFICES
346 West St. Louis Avenue
East Alton, Illinois 62024

JOHN D. STOBBS, II
(Licensed in Illinois & Missouri)

(618) 259-7789
Fax (618) 259-4145

November 30, 2001

Harold J. Ruvoldt, Jr.
Edwards & Angell
750 Lexington Avenue
New York, NY 10022-1200

******Sent via Certified Mail******

RE: U.S.A. v. Pearson, et al
No. 01-CR-30006-DRH

Dear Mr. Ruvoldt:

The undersigned has been retained to represent Rex Luzader in the above captioned case and he will follow my advice and refuse to be interviewed by you.

Furthermore, I would object to the dissemination of his personnel file due to the obvious privacy interests involved. I understand the Government's Motion to Quash was granted and I assume the Motion was directed to the 17c subpoenas mentioned in your letter. In the event this is not the case, by copy of this letter I am requesting that Mr. Urgenson, who is counsel for Exide ***not*** provide Mr. Luzader's personnel file to you.

Very truly yours,

STOBBS LAW OFFICES

BY: John D. Stobbs II

JDSII:eb
cc: Rex Luzader
Laurence A. Urgenson
Miriam Miquelon

Exhibit B

E
&
A EDWARDS & ANGELL, LLP

COUNSELLORS AT LAW
since 1894

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E-Mail: hruvoldt@ealaw.com

March 13, 2002

VIA FACSIMILE AND REGULAR MAIL
John Stobbs, Esq.
Stobbs Law Offices
346 West St. Louis Avenue
East Alton, IL 62024

RE: United States v. Hawkins, et al.

Dear Mr. Stobbs:

Attached please find a subpoena for your client Rex Luzader requiring that certain documents be produced in the event that your client is called as a Government witness in the above entitled matter. Please note that the subpoena is only operable if your client is called as a Government witness in this case.

Would you kindly call to acknowledge receipt of this fax and to advise us as to whether you will accept service on your client's behalf or whether we need to go through the expense of personal service on your client.

We would also appreciate it if you would let us know when you expect your client to be called to testify. We are of course available to discuss any aspect of this matter with you.

You may call either Harold J. Ruvoldt, Jr. (at 314-231-1234, Room 430) or Cathy Fleming (at 314-231-1234, Room 428). If you prefer, you may call our New York office which numbers are: Harold J. Ruvoldt, Jr. (212-756-0325) and Cathy Fleming (212-756-0329).

We would also appreciate knowing when you expect to travel to St. Louis to testify if you are going to be a witness for the Government.

Exhibit C

We very much appreciate your anticipated cooperation.

Very truly yours,

Harold J. Ruvoldt, Jr.

Enclosure

AO 89 (Rev. 7/95) Subpoena in a Criminal Case

United States District Court

Southern DISTRICT OF Illinois

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
c/o John Stobbs, Esq.
Stobbs Law Offices
346 West St. Louis Avenue
East Alton, IL 62024

xxx 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	COURTROOM
United States Courthouse 750 Missouri Avenue East St. Louis, Illinois	Judge Herndon's courtroom
	DATE AND TIME 3/18/02 9:00 a.m.

XX 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	DATE
NORBERT G. JAWORSKI	March 8, 2002
(BY) DEPUTY CLERK	

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

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

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.

AO 89 (Rev. 7/95) Subpoena in a Criminal Case

United States District Court

Southern DISTRICT OF Illinois

UNITED STATES OF AMERICA

V.

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

SUBPOENA IN A CRIMINAL CASE

CASE NUMBER: 01-30006-DRH

TO: Rex Luzader
c/o John Stobbs Esq.
346 West St. Louis Avenue
East Alton, IL 62024

☐ 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	COURTROOM
United States Courthouse 750 Missouri Avenue East St. Louis, Illinois	Judge Herndon's Courtroom
	DATE AND TIME 3/18/02 @ 9am

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

See attached Schedule A

U.S. MAGISTRATE JUDGE OR CLERK OF COURT	DATE
NORBERT G. JAWORSKI	3/15/02
(BY) DEPUTY CLERK Justene French	

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

Harold J. Ruvold,t Esq. 212-308-4411
Edwards & Angell
750 Lexington Avenue
New YOrk, NY 10022

Exhibit D

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

SCHEDULE B

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 Sates 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 Carde
FOREPERSON

for W. CHARLES GRACE
United States Attorney

Recommended Bond: $50,000 unsecured

STOBBS LAW OFFICES
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East Alton, Illinois 62024

JOHN D. STOBBS, II
(Licensed in Illinois & Missouri)

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Fax (618) 259-4145

Facsimile Transmission

* *

Date: March 22, 2002

To: Tom McQueen

Phone: (312) 222-9350

FAX: (312) 527-0484

From: STOBBS LAW OFFICE

RE: USA v. Hawkins, et al

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USAGE TIME	15'34
PAGES	47
RESULT	OK

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* *

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RESULT	OK