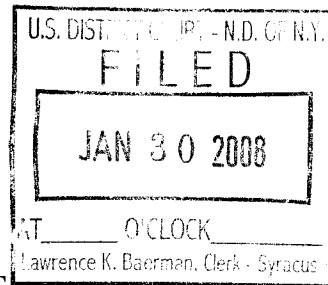


501



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

\*\*\*\*\*

**UNITED STATES OF AMERICA**

**CRIMINAL NO. 5:08-CR-61 (FJS)**

**v.**

**INDICTMENT**

**JAMES M. KERNAN and ROBERT  
J. ANDERSON, a/k/a Skip,**

**Vio: 18 U.S.C. § 1349 [1 Count]  
18 U.S.C. § 1341 [5 Counts]  
18 U.S.C. § 1343 [5 Counts]  
18 U.S.C. § 1033 [4 Counts]**

**Defendants.**

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**THE GRAND JURY CHARGES:**

**INTRODUCTION**

1. At all relevant times herein:

a. Oriska Insurance Company (Oriska) is an insurance company with offices at 1310 Utica Street, Oriskany, New York. The defendant James M. Kernan is the president of Oriska.

b. Monument Agency, Inc. acts as an agent of Oriska with offices located at 1310 Utica Street, Oriskany, New York.

c. Pay Source Incorporated (Pay Source) is a Professional Employer Organization

(PEO) with offices at 251 New Karner Road, Albany, New York.

d. AM Personnel Partners, Inc. is a PEO with offices at 9661 Mission Blvd., Riverside, California.

e. Total Benefit Management, Inc. is a PEO with offices at 2A Halfmoon Executive Park Drive, Clifton Park, New York.

f. All Staffing, Inc. is a PEO with offices at 100 W. Ridge Street, Lansford, Pennsylvania.

g. The Power P.E.O. is a PEO with offices at 14811 N. Kierland Blvd., Suite 250, Scottsdale, Arizona.

h. U.S. Management, Inc. is a PEO with offices at 129 South 8<sup>th</sup> Street, Brooklyn, New York.

i. Pay Source, AM Personnel Partners, Total Benefit Management, All Staffing, Inc., The Power P.E.O. and U.S. Management will be collectively referred to as the victim PEOs.

### **COUNT 1**

2. Paragraphs 1(a)-(i) inclusive of this Indictment are realleged as if fully set forth herein.

3. From on or about July 30, 2002 and continuing through the date of this Indictment, in the Northern District of New York and elsewhere, the defendants,

**JAMES M. KERNAN and ROBERT J. ANDERSON,**

together and with others known and unknown to the grand jury, did unlawfully, willfully and

knowingly combine, conspire, confederate and agree among themselves and each other to commit certain offenses against the United States as follows:

(a) Having devised and intending to devise any scheme or artifice to defraud and for obtaining money or property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme or artifice and attempting so to do, knowingly caused to be delivered by the Postal Service or any private or commercial interstate carrier according to the direction thereon any matter or thing, contrary to Title 18, United States Code, Section 1341;

(b) Having devised and intending to devise any scheme or artifice to defraud and for obtaining money or property by means of false or fraudulent pretenses, representations, and promises, transmits or causes to be transmitted by means of wire, radio, or television, communication in interstate or foreign commerce, any writings, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice, contrary to Title 18, United States Code, Section 1343.

#### **MANNER AND MEANS**

4. It was part of the conspiracy that the defendants James M. Kernan and Robert J. Anderson and their coconspirators fraudulently marketed to the victim PEOs unlawful and invalid workers compensation insurance policies.

5. It was further part of the conspiracy that the defendants James M. Kernan and Robert J. Anderson and their coconspirators induced the victim PEOs to pay premiums and

other monies by fraudulently representing that Oriska was approved and authorized to write the workers compensation insurance policies purportedly issued to those PEOs and their clients.

### **OVERT ACTS**

6. In furtherance of the conspiracy and to achieve the objects thereof, the defendants and their coconspirators, known and unknown to the grand jury, committed and caused to be committed the following overt acts in the Northern District of New York:

(a) On or about February 6, 2003, an invoice was sent from Monument Agency, Inc., 1310 Utica Street, Oriskany, New York to All Staffing, Inc., Lansford, Pennsylvania.

(b) On or about February 10, 2003, an invoice was sent via fax from Monument Agency, Inc., 1310 Utica Street, Oriskany, New York to All Staffing, Inc. in Lansford, Pennsylvania.

(c) On or about February 18, 2003, a check in the amount of \$432,468.33 was sent from the Power P.E.O., Inc. to Monument Agency, Inc., 1310 Utica Street, Oriskany, New York.

(d) On or about March 26, 2003, an invoice from IPA Acquisitions, Inc. was sent from Monument Agency, Inc., 1310 Utica Street, Oriskany, New York to the Power P.E.O. in Scottsdale, Arizona.

(e) On or about January 28, 2004, New York State Workers Compensation Board Certificates of Insurance were sent from Oriska to U.S. Management, 129 South 8<sup>th</sup> Street,

Brooklyn, New York.

(f) On or about February 19, 2004, a letter was sent from Oriska to HMI Associates, 6400 Canoga Avenue, #300, Woodland Hills, California regarding “alleged” insurance coverage.

(g) On or about September 13, 2005, an e-mail regarding insurance claims arising in Arizona was sent from Oriska to Power P.E.O. in Arizona.

All in violation of Title 18, United States Code, Section 1349.

**THE GRAND JURY FURTHER CHARGES:**

**COUNTS 2-5**

7. Paragraphs 1(a)-(i) inclusive of this Indictment are realleged as if fully set forth herein.

8. From on or about December 2001 up to and including the date of this Indictment, the defendants,

**JAMES M. KERNAN and ROBERT J. ANDERSON,**

devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises from the victim PEOs.

9. It was part of the scheme that the defendants James M. Kernan and Robert J. Anderson fraudulently induced the victim PEOs to purchase unlawful and invalid workers compensation insurance policies issued by Oriska purportedly to provide coverage for the

PEOs and their clients.

10. It was further part of the scheme that the defendants falsely and fraudulently represented to the victim PEOs that Oriska could provide a workers compensation insurance policy to cover their clients with a \$250,000 deductible, when as the defendants James M. Kernan and Robert J. Anderson well knew, Oriska was not approved or authorized to issue workers compensation policies with a \$250,000 deductible.

11. It was further part of the scheme that, in an effort to conceal Oriska's lack of authorization to issue workers compensation policies with a \$250,000 deductible, Oriska did not timely provide written policies to some PEOs.

12. It was further part of the scheme that, to conceal Oriska's lack of authority to issue \$250,000 deductible policies, Oriska provided some PEOs written workers compensation insurance policies providing for a \$5,000 deductible while charging and collecting premium applicable to a \$250,000 deductible policy.

13. It was further a part of the scheme that Oriska sent invoices to the victim PEOs which stated that the Oriska workers compensation policies provided a \$5,000 deductible.

14. It was further part of the scheme that the defendants James M. Kernan and Robert J. Anderson falsely and fraudulently represented to the victim PEOs that Oriska could provide workers compensation insurance coverage for their clients who, at the time the policy was purportedly issued, were located and working in states where Oriska was not licensed, authorized, or approved to write insurance.

15. It was further part of the scheme that the defendants James M. Kernan and Robert J. Anderson instructed victim PEOs that were located outside of New York State to obtain a New York State address to be used by Oriska on written policies purportedly issued to those PEOs.

16. On or about the dates listed below, each date constituting a separate count of this Indictment, in the Northern District of New York, the defendants,

**JAMES M. KERNAN and ROBERT J. ANDERSON,**

having devised the above-described scheme and artifice to defraud and obtain money and property by means of false and fraudulent pretenses, for the purpose of executing and in order to effect the scheme and artifice to defraud and obtain money and property by false and fraudulent pretenses, representations and promises, did knowingly cause to be sent, delivered and moved by the United States Postal Service, the following items:

COUNT	DATE OF MAILING	FROM	TO	ITEM MAILED
2	On or about January 28, 2004	Oriska Insurance Company, 1310 Utica Street, Oriskany, NY 13424	Hershell Weber U.S. Management 129 South 8 <sup>th</sup> St. Brooklyn, NY 11211	Letter, notice and certificate of insurance

COUNT	DATE OF MAILING	FROM	TO	ITEM MAILED
3	On or about February 18, 2003	All Staffing, Inc. 100 W. Ridge Street Lansford, PA 18232	Monument Agency, Inc. 1310 Utica Street PO Box 855 Oriskany, NY 13424	\$3935.08 check
4	On or about February 19, 2004	Oriska Insurance Company 1310 Utica Street Oriskany, NY 13424	HMI Associates, Inc. 6400 Canoga Ave. #300 Woodland Hills, CA 91367	Letter
5	On or about February 27, 2003	All Staffing, Inc. 100 W. Ridge Street Lansford, PA 18232	Monument Agency, Inc. 1310 Utica Street PO Box 855 Oriskany, NY 13424	\$62,110 check

In violation of Title 18, United States Code, Sections 1341 and 2.

**THE GRAND JURY FURTHER CHARGES:**

**COUNT 6**

17. Paragraphs 1 and 8-15 inclusive of this Indictment are realleged as if fully set forth herein.

18. On or about February 18, 2003, in the Northern District of New York, the defendants,

**JAMES M. KERNAN and ROBERT J. ANDERSON,**



having devised the above described scheme and artifice to defraud and obtain money by false and fraudulent pretenses, representations and promises, did knowingly cause to be sent by Federal Express, a private commercial interstate carrier, a letter and check from The Power F.E.O., 14811 N. Kierland Blvd., Suite 250, Scottsdale, Arizona 85254 to Monument Agency, Inc., 1310 Utica Street, Oriskany, New York 13424.

In violation of Title 18, United States Code, Sections 1341 and 2.

**THE GRAND JURY FURTHER CHARGES:**

**COUNTS 7-10**

19. Paragraphs 1 and 8-15 inclusive of this Indictment are realleged as if fully set forth herein.

20. On or about the dates listed below, each such date constituting a separate count of this Indictment, in the Northern District of New York, the defendants,

**JAMES M. KERNAN and ROBERT J. ANDERSON,**

having devised the above-described scheme and artifice to defraud and obtain money and property by means of false and fraudulent pretenses, for the purpose of executing and in order to effect the scheme and artifice did cause to be transmitted in interstate commerce by means of a wire communication, certain signs and signals, that is, facsimile transmissions as set forth below:

COUNT	DATE	FROM	TO	Item Faxed
7	On or about February 6, 2003	Monument Agency, Inc. 1310 Utica Street Oriskany, NY 13424	All Staffing 100 W. Ridge Street Lansford, PA	Invoices
8	On or about February 10, 2003	Monument Agency, Inc. 1310 Utica Street Oriskany, NY 13424	All Staffing 100 W. Ridge Street Lansford, PA	Invoices
9	On or about February 13, 2003	Monument Agency, Inc. 1310 Utica Street Oriskany, NY 13424	The Power P.E.O. 14811 N. Kierland Blvd., Suite 250, Scottsdale, AZ	Insurance Policy
10	On or about March 6, 2003	Monument Agency, Inc. 1310 Utica Street Oriskany, NY 13424	The Power P.E.O. 14811 N. Kierland Blvd., Suite 250 Scottsdale, AZ	Invoices

In violation of Title 18, United States Code, Sections 1343 and 2.

**THE GRAND JURY FURTHER CHARGES:**

**COUNT 11**

21. Paragraphs 1 and 8-15 inclusive of this Indictment are realleged as if fully set forth herein.

22. On or about September 13, 2005 in the Northern District of New York, the defendants,

**JAMES M. KERNAN and ROBERT J. ANDERSON,**

having devised the above-described scheme and artifice to defraud and obtain money and

property by means of false and fraudulent pretenses, for the purpose of executing and in order to effect the scheme and artifice, did cause to be transmitted in interstate commerce by means of a wire communication, certain signs and signals, that is, an e-mail transmission concerning Arizona claims from Oriska Insurance Company in Oriskany, New York to the Power P.E.O. in Scottsdale, Arizona.

In violation of Title 18, United States Code, Sections 1343 and 2.

**THE GRAND JURY FURTHER CHARGES:**

**COUNT 12**

23. From on or about December 1, 2001 through on or about March 30, 2005, in the Northern District of New York, the defendant,

**ROBERT J. ANDERSON,**

having been convicted of the following criminal felonies involving dishonesty and breach of trust:

- (a) submitting a false financial statement for the purpose of influencing the action of the Napa Valley Bank concerning a loan and bankruptcy fraud in violation of Title 18, United States Code, Section 1014 and 152 in United States District Court for the Northern District of California on or about December 9, 1988;
- (b) grand theft in violation of Sections 484/487(1) of the

California Penal Code in the Superior Court of California, County of Solano, on or about July 8, 1988;  
and

- (c) conspiracy and mail fraud in violation of Title 18, United States Code, Sections 371 and 1341 in United States District Court for the Central District of California on or about October 7, 1996;

did willfully engage and participate in the business of insurance whose activities did affect interstate commerce.

In violation of Title 18, United States Code, Section 1033(e)(1)(A).

**THE GRAND JURY FURTHER CHARGES:**

**COUNT 13**

24. From on or about December 1, 2001 through on or about March 25, 2005 in the Northern District of New York, the defendant,

**JAMES M. KERNAN,**

who was engaged in the business of insurance as President of Oriska Insurance Company, whose activities affect interstate commerce, did knowingly and willfully permit the defendant, Robert J. Anderson, an individual who had been previously convicted of a criminal felony involving dishonesty and breach of trust, namely

- (a) submitting a false financial statement for the purpose of influencing the action of the Napa Valley Bank

concerning a loan and bankruptcy fraud in violation of Title 18, United States Code, Sections 1014 and 152 in United States District Court for the Northern District of California on or about December 9, 1988;

(b) grand theft in violation of Sections 484/487(1) of the California Penal Code in the Superior Court of California, County of Solano, on or about July 8, 1988;  
and

(c) conspiracy and mail fraud in violation of Title 18, United States Code, Sections 371 and 1341 in United States District Court for the Central District of California on or about October 7, 1996;

to engage and participate in the business of insurance whose activities affected interstate commerce.

In violation of Title 18, United States Code, Section 1033(e)(1)(B).

**THE GRAND JURY FURTHER CHARGES:**

**COUNT 14**

25. On or about September 29, 2004 in the Northern District of New York, the defendant,

**JAMES M. KERNAN,**

who was engaged in the business of insurance as President of Oriska Insurance Company, whose activities affect interstate commerce, did knowingly and with intent to deceive, make a false material statement and report in connection with a financial report presented to an insurance regulatory agency and examiner appointed by such agency to examine the affairs of such person for the purpose of influencing the actions of such agency and appointed examiner in that the defendant, James M. Kernan, submitted an affirmation under the penalty of perjury to an examiner from the New York State Insurance Department who was engaged in an examination of Oriska that \$39,841.54 was paid on the balance of an automobile lease so that the defendant Kernan could have transportation available to him in and about the New York City metro area when as he then and there well knew, the purpose of the payment was not as stated but rather was compensation for another person in exchange for services provided to Oriska Insurance Company.

In violation of Title 18, United States Code, Section 1033(a)(1) and (a)(2).

**THE GRAND JURY FURTHER CHARGES:**

**COUNT 15**

26. On or about September 23, 2003 in the Northern District of New York, the defendant,

**JAMES M. KERNAN,**

who was engaged in the business of insurance as President of Oriska Insurance Company, whose activities affect interstate commerce, did knowingly make a false entry of material fact

in a book, report and statement with intent to deceive an insurance regulatory official and agency and any agent and examiner appointed by the agency to examine the affairs of such person about the financial condition or solvency of such business in that the defendant James M. Kernan signed, as President, the Annual Statement for the Year Ended December 31, 2002 of the Condition and Affairs of the Oriska Insurance Company which falsely reported that workers compensation premiums written for the year ended December 31, 2002 was \$14,150,750.00, including premiums to PEOs of \$11,529,911.00, when in truth and fact, as the defendant Kernan then and there well knew, the premiums written were substantially less.

In violation of Title 18, United States Code, Section 1033(c)(1) and (c)(2).

**FORFEITURE ALLEGATION RELATING**  
**TO COUNTS ONE THROUGH ELEVEN**

Counts One through Eleven of this Indictment are realleged and incorporated by reference as though fully set forth herein.

As a result of committing one or more of the alleged offenses in Counts One through Eleven of this Indictment, if convicted, the defendants, **JAMES M. KERNAN and ROBERT J. ANDERSON** shall forfeit to the United States, pursuant to:

Title 18, United States Code, Section 981(a)(1)(C), Title 18, United States Code, Section 1956(c)(7), Title 18, United States Code, Section 1961(1) and Title 28, United States Code, Section 2461(c), shall forfeit their interest, if any, in any and all property, real or personal, which constitutes or is derived from proceeds traceable to a violation of Title 18, United States Code, Sections

1341 (mail fraud) and 1343 (wire fraud) and conspiracy to commit such offenses.

The intent of the United States of America to forfeit such property includes, but is not limited to, the following property:

**FORFEITABLE PROPERTY**

**A. MONEY JUDGMENT**

A money judgment representing the total dollar amount derived from a violation of one or more of the violations alleged in Counts One through Eleven of this Indictment.

**SUBSTITUTE ASSETS**

If the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party,
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants' up to the value of the



forfeiture judgment.

Dated: January 30, 2008

A TRUE BILL,

Carin E. Tietjen  
FOREPERSON

GLENN T. SUDDABY  
UNITED STATES ATTORNEY  
NORTHERN DISTRICT OF NEW YORK

By: Edward R. Broton  
Edward R. Broton  
Assistant U.S. Attorney  
Bar Roll #101230