

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

Case. No. 6:08-cr-176-Orl-28GJK

FRANK L. AMODEO
_____ /

DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW, Defendant FRANK AMODEO, by and through undersigned counsel, and hereby submits this Sentencing Memorandum to assist the Court in the resolution of the sentencing issues in this case.

Respectfully submitted this 4th day of May, 2009.

s/Kenton V. Sands
Co-Counsel for Defendant
Fla. Bar # 0788708
SANDS WHITE & SANDS, P.A.
760 White Street
Daytona Beach, Florida 32114
Phone: (386) 258-1622
Fax: (386) 238-3703
E-mail: kent@sandswhitesands.com

TABLE OF CONTENTS**STATEMENT OF THE FACTS**

Introduction	4
Amodeo's childhood and education	6
Amodeo's legal career in Atlanta	8
Amodeo's move to Orlando and first incarceration	11
Amodeo's supervised release violation and second incarceration...	14
Amodeo's association with Matrix Network, Inc	16
The Sunshine Companies Plan	18
The Wildermuth and Flynn memoranda	25
The December 2004 sale of the Sunshine Companies	30
Early IRS negotiations re Sunshine Companies' tax liabilities	38
Distribution of fees earned under the Consulting Agreement	42
The PBS Plan	43
IRS negotiations and related discussions in early 2006	60
AEM's assumption of formal ownership of PBS book of business...	63
Amodeo's Capital Genesis Plan	70
June 13, 2006 Mirabilis meeting	79
The Capital Genesis Plan – cont'd	80
Acquisition of BCA	82
July 20, 2006 meeting with the IRS	83
The 3 rd quarter 2006 PBS payroll taxes	84
The mock deposition	85

Table of contents – cont’d

The 4 th quarter PBS payroll taxes	87
Disclosure of the grand jury investigation	89
December 2006 payroll taxes	89
Winding down of operations at AEM and Mirabilis	90
Substantial assistance to the government	96
Post-offense mental health diagnosis and treatment	98
Polygraph examination results	104

ARGUMENT

Introduction	106
Determination of loss (guidelines, forfeiture and restitution)	106
§ 2B1.1(b)(2) enhancement for 250 or more victims	109
§ 2B1.1(b)(14)(A) enhancement for harm to financial institution	111
Denial of acceptance of responsibility adjustment under § 3E1.1	112
Determination of sentencing range before departures	113
Departure to provide credit for acceptance of responsibility	113
Substantial assistance departure under § 5K1.1	114
Diminished capacity departure under § 5K2.13	115
Non-Guidelines Sentence	120

STATEMENT OF THE FACTS

Introduction

The Indictment in this case addresses an extremely complicated series of acts and transactions occurring over a three year period from 2004-2006. Due to the fact that the defense is seeking sentencing reductions on account of both Frank Amodeo's mental condition and his substantial assistance to the government, the facts relevant to sentencing cover a much broader timeframe, involving Frank Amodeo's personal and business history before 2004, as well as events occurring after the initiation of the government's investigation in late 2006. Many of the facts herein are not in dispute between the parties, including the overarching fact that Amodeo was a leader and organizer of a plan to withhold payroll tax collections from the IRS and to instead use the funds for other purposes, including, but not limited to, the payment of officers' salaries and expanding into new business areas.

However, one critical area where the parties do disagree relates to the significance of Amodeo's history of mental illness to the determination of an appropriate sentence. It is the position of the defense that Amodeo's brain disorder, bipolar I disorder with psychotic tendencies, substantially mitigates his culpability for the crimes of which he has pled guilty. Amodeo has suffered from this disorder most of his life, experiencing symptoms as early as his late adolescence, and being diagnosed with a variant of the disorder years before the time period of the crimes involved in this case.

According to the National Institute of Mental Health, bipolar disorder often develops in a person's late teens or early adult years, and in at least half of the cases it starts before age 25. People with bipolar disorder experience unusually intense emotional states that occur in distinct periods called "mood episodes", with an overly joyful or overexcited state termed a manic episode and an extremely sad or hopeless state termed a depressive episode. Behavioral changes that may accompany a manic episode include, but are not limited to, an increased activity level, racing thoughts, distractibility, an unrealistic belief in one's abilities, and impulsive and high-risk behaviors such as spending sprees and impulsive investments. In some cases (as with Amodeo), a person with severe episodes or mania or depression has psychotic symptoms too, such as hallucinations or delusions. The psychotic symptoms tend to reflect the person's extreme mood. For example, psychotic symptoms for a person having a manic episode may include believing he or she has special powers.¹

Amodeo's brain disorder is fundamental to answering a question that underlies this entire case. Why would a well educated and highly intelligent man willfully fail to pay over a hundred million dollars in corporate payroll taxes, in the midst of an ongoing audit by the IRS, with no reasonable prospect of avoiding exposure and punishment for his conduct? As will be shown, the answer essentially involves consideration of a combination of three factors: (i) Amodeo's own character flaws, for which he is justly accountable; (ii) the effects of Amodeo's brain disorder, for which sentencing mitigation is appropriate; and (iii) the collusion of a number of other persons, including attorneys,

¹ See <http://www.nimh.nih.gov/health/publications/bipolar-disorder/complete-index.shtml>. Site accessed: May 3, 2009.

accountants and business executives, who found it in their own interests to encourage Amodeo or stand idly by so that they could reap the financial benefits of his actions.

Amodeo's childhood and education

Frank Louis Amodeo ("Amodeo") was born in 1960 in Detroit, Michigan, the first of four children to his parents, Frank Phillip Amodeo and Margaret Amodeo. In 1966, the family moved to Orlando, Florida. Amodeo attended high school at Oak Ridge, where he was an extremely industrious student, serving as student council president, commentator on a local radio show and a local Sunday morning television program, *Pro and Con*, student advisor to the Orange County School Board, and a student member of the PTSA Board of Directors. Even then, Amodeo's hyperactivity had its eccentric aspects. When he was elected student council president, he cajoled his fellow students to treat him as if he were a head of state, with the ROTC cadets serving as his honor guard and a cadre of other students dressed as Secret Service Agents. In his high school year book, fellow students jokingly mocked his grandiosity and self-proclaimed destiny to rule the world.

After graduating from Oak Ridge High School in 1978, Amodeo accepted a scholarship to attend the University of Central Florida, majoring in Political Science. In 1983, during his senior year at UCF, Amodeo underwent what he now believes was his first major bipolar episode. At first, he thought he was sick and simply stayed in bed for several weeks. When he finally came out of the debilitating depression, he transitioned into an extremely energized phase, which, as will be discussed in greater detail below, was to be followed by a succession of manic phases throughout his life. A formal diagnosis of this condition would not occur for many years, but it is important to note that

Amodeo's doctors now believe that another factor probably exacerbated the manic phases during this early period of Amodeo's life. Amodeo has had an almost lifelong dependence on caffeine. As a child, he drank as much as a dozen sodas a day, gradually transitioning to iced tea in his adult life (drinking as much as two to three gallons a day). His psychiatrists now believe that his caffeine dependence substantially aggravated his bipolar condition.

It was during this same energized period in his senior year in college that Amodeo met his first wife, who was then attending Georgia Tech. Within the space of a few months, they were married and Amodeo enrolled at Emory Law School. In order to support himself and his wife and pay their tuition, Amodeo began working the graveyard shift at a 24-hour delicatessen in downtown Atlanta. After he began to miss morning classes, he was forced by the Dean of the Law School to quit his job at the delicatessen and instead took a part-time job as a pizza deliveryman on weekend nights. Meanwhile, his marriage was collapsing. The couple eventually separated after only four months of marriage.

Amodeo confronted the collapse of his marriage and the difficulties in juggling school and work in characteristically manic fashion: he took on more responsibilities. In the second semester of his first year in law school, he enrolled in night-time classes in a graduate business program at Georgia State University, shortly thereafter changing over to an extremely demanding pre-doctoral program in finance. Only a year later, in the midst of full-time attendance at Emory Law School, night-time classes in the finance doctoral program at Georgia State University, and weekend work as a pizza deliveryman, Amodeo applied to join the CIA. While he changed his mind in the middle of the testing

process, the episode is nonetheless noteworthy because it marks the beginning of a long-term fascination by Amodeo with the CIA and its clandestine activities, a fascination which later in his life would have material consequences.

Amodeo's legal career in Atlanta

After law school, Amodeo planned to finish his doctoral studies and teach finance. However, in 1987 his father was diagnosed with throat cancer. Amodeo consequently decided to begin practicing law so that he could financially assist his parents. He passed the Georgia bar examination in 1988, and took a job with one of the Atlanta offices of Hyatt Legal Services, which provided legal services to low and middle income families and small businesses.

At the time that Amodeo started employment with Hyatt Legal Services, the firm had six offices in the Atlanta region. The offices had accumulated problems in bankruptcy court due primarily to Hyatt's high attorney turnover, the relatively modest fees that had been charged, and the fact that individual cases would often drag on for years. Hyatt's solution to their dilemma was to turn over to Amodeo all of the several hundred accumulated Atlanta area bankruptcy cases, plus all of the new bankruptcy cases. Again, in characteristic fashion, Amodeo took on far more than he or anyone could have been reasonably expected to handle. Almost immediately, he became the third largest bankruptcy filer in the Atlanta area.

Amodeo's personal life followed the same frenetic arc as his professional life. During the summer of 1988, Amodeo met his future wife, Claire Holland, another attorney with the firm. They began dating and were married by the end of the year. Ms. Holland was just coming out of a troubled marriage. She had a four year old son at the

time, Gentry, who suffered from Down's Syndrome. At the same time that Amodeo was taking on a breathtakingly difficult role at Hyatt, he had thus immersed himself in a new marriage with the added emotional commitments of a special needs child.

Ms. Holland, who is now separated from Amodeo, will testify at sentencing about the history of their relationship. Almost from the beginning of their relationship, she became aware of certain essential oddities about him. Amodeo held a seemingly messianic belief that he would someday be called upon to resolve an international crisis. He claimed to be the head of a mysterious entity, the Aurelius Foundation, and carried business cards naming him as the Director (Ms. Holland later discovered that the foundation was a complete fiction). He propagated the fictitious rumor around the Hyatt offices that his family was extremely wealthy and lived in a "compound" in Orlando. There was also a more paranoid undertone to his delusions. For example, on one occasion Amodeo appeared convinced that he was being followed by a helicopter hovering outside Ms. Holland's apartment.

Although Ms. Holland was seriously concerned about Amodeo's behavior, she eventually reached the conclusion that there was a pharmacological basis for it. Amodeo suffers from asthma, a condition for which he had been prescribed a prescription drug, Isochlor, while at Emory Law School. Isochlor is known to cause excitation and irritability. By combining excessive amounts of caffeine and Isochlor, Amodeo was traveling down a path that exaggerated and catalyzed his manic episodes. At the time, Ms. Holland was not aware of Amodeo's bipolar condition, nor was she aware of the role that caffeine might be playing in Amodeo's behavior. However, she was aware of the powerful stimulant effect of Isochlor, and she drew the conclusion that Amodeo's behavior was

attributable to the drug. She expressed her concerns to Amodeo and demanded that he stop taking the drug. Amodeo complied with her wishes, stopped taking Isochlor, and thereafter stopped discussing his grandiose delusions with her.

Unbeknownst to Ms. Holland, Amodeo simply switched to the over-the counter drug, Sudafed, taking as many as 16 pills a days (four every four hours, twice the maximum recommended dosage). It is now known that Sudafed not only can cause insomnia, but can also trigger manic episodes in bipolar individuals, an adverse reaction for which the manufacturer now provides a specific written warning. Consequently, by switching from Isochlor to Sudafed, Amodeo simply substituted one catalyst for another. Many years later, in 2000, Amodeo confessed to Ms. Holland that he had never given up his grandiose beliefs, he had simply stopped talking with her about them.

Ms. Holland became pregnant in 1990. Mia Amodeo, the couple's only child together, was born on September 20, 1990. Ms. Holland subsequently left Hyatt to care for Mia and Gentry. Shortly thereafter, in 1991, Hyatt severed its employment relationship with Amodeo. This parting of the ways was in part a prophylactic measure by Hyatt, as it helped to insulate the firm from the mounting problems of an unmanageable and insufficiently remunerative bankruptcy caseload. However, Hyatt continued to supply Amodeo with bankruptcy cases, simply taking a referral fee and eliminating direct responsibility for the firm. In order to handle the ever-increasing case load, Amodeo entered into a partnership with two other attorneys, Stan Durden and Rich Thompson. With the mass of bankruptcy cases and a growing complex litigation caseload, the staff of the new firm, Amodeo, Durden & Thompson grew relatively quickly to approximately 14 attorneys.

Within a relatively short period of time, the business collapsed, in part because of the thin profit margin for small bankruptcy cases and in part because of sheer mismanagement by Amodeo and his partners. As had already been evident at various junctures in his life, the sheer intensity of Amodeo's activity could not substitute for sober planning and sound decisions. Bar complaints began to accumulate about the lack of activity in bankruptcy cases, and in other cases the lack of internal controls at the firm produced more complaints.² Eventually, Amodeo's firm formally dissolved. This further exacerbated the problems with the Georgia bar, because the insolvency trustee failed to pay the commercial storage fees for the firm's records and the records were discarded.

Amodeo's move to Orlando and first incarceration

Out of money and lacking any records with which to even attempt to mount a coherent response to the various complaints against him, Amodeo voluntarily agreed to a suspension of his law license in 1993. However, this did not end the matter, as several of the bar complaints resulted in criminal inquiries. For years, these inquiries never passed beyond the filing of an initial complaint. Amodeo attempted to start a new career as a financial consultant, focusing, somewhat ironically, on failed business workouts. Notwithstanding his own business failure, Amodeo was actually well qualified for his sort of work as a result of his years in bankruptcy court and his background in finance. During this period, Amodeo moved his family to Orlando to be close to his parents and rented a small two bedroom home. He reconnected with an old high school friend, Ken

² For example, a grievance was filed for the firm's disbursement of \$30,000 in trust funds as fees after Amodeo's partner, Stan Durden, who handled all of the bank accounts for the firm, was unable to produce the fee contract or an adequate record of his hours spent on the case.

Mueller, who was a practicing CPA, and would ultimately consult on a number of cases involving Mueller's clients who were attempting to work out tax debts with the IRS. However, his financial situation at this point was at an all time low. He filed for bankruptcy in 1995 listing only \$500 in assets.

Just after Amodeo moved with his family to Florida in 1994, Ms. Holland came to her first tentative conclusion that he might be suffering from bipolar disorder. After discussing the situation with Ms. Holland, Amodeo agreed to go to the Princeton Behavioral Center in Orlando, where he underwent a one hour intake interview, which resulted in a recommendation of in-patient treatment. Amodeo did not have the money to seek the recommended treatment at that time.

Undeterred, Ms. Holland convinced Amodeo to seek a Social Security Disability ("SSDI") evaluation, which occurred in 1995. Ms. Holland was subsequently informed by Amodeo that the disability had not been granted, and she assumed that this was on medical grounds. However, years later, during Amodeo's first incarceration (discussed below), Ms. Holland contacted the doctor who conducted the 1995 SSDI examination, Dr. Cyndey Yerushalmi, and was shocked to discover that Dr. Yerushalmi considered Amodeo the most manic patient she had ever evaluated. Dr. Yerushalmi never followed through on the disability process, not because Amodeo was unimpaired, but because he had failed the financial test.

The reason Amodeo failed the financial test was because he claimed his finances were sound and that he had many lucrative financial deals forthcoming. This pronouncement came at a time when the family of four was bankrupt, living in a small two bedroom apartment, driving ten year old automobiles, and living without medical

insurance. Notwithstanding the failure to obtain assistance from Social Security, Ms. Holland was able to convince Amodeo to seek treatment from a local mental health therapist, Dr. Phillip Tell, who saw Amodeo intermittently up to 1998.

Beginning in 1997, Amodeo began working with building contractors, acting as a sort of middleman connecting the contractors with potential clients and collecting a percentage of the profits from the contract as a finder's fee. However, these efforts toward rehabilitating himself financially were short lived. In 1998, he was informed by the Postal Inspector that he was under investigation for mail fraud, relating back to his firm's work in 1993 for a Chapter 11 client. In that case, the client's mother had deposited approximately \$50,000 to the firm's trust account after Amodeo had indicated that the money would be used to pay the client's creditors and only used in conjunction with the confirmed bankruptcy plan. According to the client's mother, she was promised by Amodeo that the \$50,000 would be fully refunded if the bankruptcy was not successful in protecting the client's real estate assets. Instead, the client had the firm invest the funds in a Puerto Rico public relations company for which Amodeo was doing legal work. When the Puerto Rican company itself went bankrupt and the firm could not return the funds, the client's mother filed a complaint with the Bar and took steps which eventually led to the Postal Inspector investigation.

In March of 1998, Amodeo pled guilty to a one-count mail fraud information in U.S. District Court in Atlanta before the Honorable G. Ernest Tidwell. During the sentencing phase, the United States Probation Office inquired into Amodeo's mental health and recommended that a psychological evaluation be performed. Amodeo subsequently had a full psychiatric examination conducted by Stephen O' Hagan, M.D.

(in or about September 1998) while being represented by the Federal Defenders Program. These results have never been provided to Mr. Amodeo or the BOP despite repeated attempts to obtain the results.

On October 30, 1998, Judge Tidwell sentenced Amodeo to 24 months imprisonment and a 3 year period of supervised release, ordered him to pay \$50,000 in restitution, and recommended him for the boot camp program at Lewisburg FPC in Pennsylvania. No mental health treatment component was included in the sentence. However, while in prison, he was taken off of Sudafed and his caffeine intake was severely restricted. Amodeo successfully participated in the boot camp program at Lewisburg FPC, where he served 6 months and 11 days before being released to an Orlando halfway house.

Amodeo's supervised release violation and second incarceration

Almost immediately after arriving at the halfway house, Amodeo lapsed into a familiar manic pattern, fueled by a resumption of his excessive intake of caffeine and Sudafed. He began spending all of his available hours working with accountant Mueller and with building contractors. He was so successful in these endeavors that he actually began hiring other residents of the halfway house to work for him. However, his mania once again brought its own punishment, because he eventually was found in violation of halfway house rules (he was found to be working at an unapproved job site). The halfway house component of his sentence was revoked, and in January 2000 he was remanded to the Pensacola FPC for service of a sentence of nine months.

At the prison camp, Amodeo was seen by a BOP psychiatrist, Dr. Janet Lewis. Although not able to complete a full evaluation of Amodeo, Dr. Lewis diagnosed him as

suffering from Cyclothymia, a chronic bipolar disorder consisting of short periods of mild depression and short periods of hypomania (lasting a few days to a few weeks), separated by short periods of normal mood. Dr. Lewis further opined that the Cyclothymia was being exacerbated by Amodeo's constant consumption of Sudafed and caffeine. The Sudafed was discontinued and Amodeo's caffeine intake was substantially curtailed. He was also placed on a disciplined regimen including running several miles a day, every day of the week, as part of the treatment. During this period, Amodeo experienced a marked diminution of his manic phases, both in frequency and duration.

Amodeo was released from prison camp in September 2000 and began serving three years of supervised release under the supervision of Probation Officer Scott Fanelli. By 2001, Mr. Amodeo was in a position to privately pay for his treatment and began seeing Dr. Joseph Trimm at the New Leaf Center, a Winter Park outpatient mental health facility. Amodeo eventually ended treatment with Dr. Trimm for financial reasons. Probation Officer Fanelli subsequently explained to Amodeo that if he agreed to modify his supervised release order to require psychological counseling, the government would have to pay for the treatment. Amodeo agreed, and as a result of this modification, he was treated by mental health specialist Diane Shuker through the conclusion of his supervised release, which terminated in September 2003.

After his release from supervised release, Amodeo again was without any ongoing mental health counseling. However, from this point forward he took the initiative to avoid all pseudophed drugs. He also met and became friends with Dr. Robert Pollack ("Dr. Pollack"), a local psychiatrist retired from active practice who had started a second

career building internet technology companies and consulting in that field.³ Although Amodeo did not undergo any sort of formal treatment by Dr. Pollack, Dr. Pollack was familiar with Amodeo's personal and psychiatric history and acted as his physician for the purpose of prescribing Albuterol (a bronchodilator) for Amodeo's asthma and referring him to other specialists for treatment.

Amodeo's association with Matrix Network, Inc.

Meanwhile, Amodeo had resumed his career as a financial consultant, focusing once again on failed business workouts and liquidations, including businesses with outstanding IRS debts. In this capacity, he began collaborating as an independent consultant with Matrix Network Inc., an Orlando consulting firm in which Dr. Pollack was a principal. By late summer of 2003, Matrix Network, Inc. was struggling and on the verge of filing for bankruptcy. In an effort to restructure and expand its business operations, the company recruited Bob Curry,⁴ Dan Myers,⁵ Jason Carlson⁶ and Tom

³ Dr. Pollack received his B.S. from Yale University, and his M.D. from the Downstate Medical Center, Kings County Hospital in Brooklyn, New York. His psychiatric and chief residencies were spent at University of Florida's Shands Teaching Hospital. He subsequently settled into professional practice in Orlando, where he co-founded Florida Psychiatric Associates. He devoted a substantial part of his practice to forensic consultation in criminal cases. In addition to his medical background, Dr. Pollack has extensive business consulting/management experience, having assisted companies with mergers and acquisitions, organizational development, trend analysis and task force guidance. To that end, he co-founded Professional Quality Analysts and The Rondo Group. He has been honored with the Quality Excellence Award from the Central Florida Health Care Coalition.

⁴ Bob Curry holds a B.A. in Business Administration Accounting from Waynesburg College and a Masters Degree in Taxation from Widener University. He has more than 20 years experience in senior financial management positions in both public and private companies.

⁵ Myers holds a B.S. in Economics from the University of Central Florida and is a licensed C.P.A.

Broadhead,⁷ who at the time were working together in another consulting company, CBC Consulting. As part of the reorganization, the company was renamed Matrix Network Orlando, LLC (“Matrix”), and commenced operations in a suite on the 14th floor of the Wachovia building in downtown Orlando. Mr. Broadhead eventually left the company and his wife, Edie Curry (Bob Curry’s sister),⁸ took his place.

Notwithstanding the reorganization, Matrix continued to struggle financially. Meanwhile, Amodeo, in collaboration with Dr. Pollack, was trying to develop a new product for professional employee organizations (PEOs), a type of company that specializes in leasing employees to businesses. The responsibilities of PEOs include, among other duties, the reporting and paying over of the payroll wages and payroll taxes of the worksite employees. Amodeo’s objective was to create a PEO model that would include an internally coordinated insurance benefits/manage care program. Working with two local businessmen, Denny Kurir and Jerry Cox, Amodeo and Dr. Pollack set up a company, Quantum Delta Enterprises (“Quantum Delta”), to market the new program to existing PEOs.

⁶ Carlson holds a B.A. from Carlton College and an M.B.A. from Duke University.

⁷ Broadhead holds an M.B.A. from Duke University and a J.D. from the College of William and Mary.

⁸ Edie Curry holds a B.S. in Accounting from Frostburg State University, an MBA from Golden Gate University, and J.D. from the University of Akron School of Law. A former Director of Accounting for Nestle Frozen Food, she is the President of the Brookmeade Group, LLC, a Virginia consulting firm. In that capacity, she has provided both financial and legal guidance to mid-sized and large corporations. Curry regularly lectures on corporate governance and fraud detection. She was a featured guest speaker at this year’s “Sarbanes-Oxley Strategic Symposium” in Orlando, Florida on March 23rd and 24th, 2009. She spoke on the topic of “Is Your Anti-Fraud Strategy Strong Enough to be SOX-compliant?”

The Sunshine Companies Plan

In the summer of 2004, while attempting to market the new PEO program, Amodeo was introduced to John Burcham, the Chairman of the Board of Directors of Presidion Corporation, the publicly traded parent company of Presidion Solutions, Inc. (“PSI”). PSI was a Michigan-based holding company for several PEOs that provided comprehensive and integrated resource management services, including payroll services, to small and medium sized companies. Although Burcham was not immediately interested in the new PEO concept being marketed by Amodeo, he was interested in enlisting Amodeo’s assistance in bailing out his struggling company.

In July of 2004, Burcham visited Amodeo in Florida; he was followed by Craig Vanderburg, the CEO and President of Presidion Corporation and PSI, who visited Amodeo in August. They explained to Amodeo that Ken Hendricks, the former owner of another PEO, Paradyme, Inc. (Paradyme”), had sold Paradyme to PSI for stock in PSI and a \$2 million promissory note. Burcham and Vanderburg further explained that PSI was financially burdened not only by the debt to Hendricks, but also by approximately \$5 million in unpaid payroll taxes that had been accrued by certain companies under its control, and by continuing difficulties in maintaining a sufficient asset reserve to keep its worker’s compensation insurance policy in force with its insurance company, First Commercial Insurance Company (“FCIC”).

PSI had previously acquired seven PEOs, which made up PSI's “PEO book of business” (i.e. the contracts PSI had with its PEO clients). In or about May 2001, PSI acquired Sunshine Staff Leasing, Sunshine Companies I, II, III, and IV (collectively referred to as the Sunshine Companies). Post-acquisition, these entities did business as

Presidion Solutions I, II, II, IV, and V, respectively. After PSI acquired Paradyme from Hendricks, in or about January 2002, Paradyme subsequently did business as Presidion Solutions VI. PSI then acquired certain PEO customer contracts from BST, Inc. in or about June 2002.

The clients of the PEOs entered into contracts, or service agreements, with PSI or its subsidiaries. According to the contracts signed by the clients, when PSI or its subsidiaries started providing services to the clients PSI became the statutory employer of its clients' worksite employees under IRC § 3401(d) and assumed the liabilities and responsibilities for paying the wages of the employees and for reporting and paying over to the Internal Revenue Service the payroll taxes of the worksite employees. At the end of a client's payroll cycle, a client would e-mail, fax or mail the number of hours worked by the worksite employee(s) to PSI. After receiving the information, PSI computed the amount of FICA, Medicare (HITS), Withholding Taxes, Workers' Compensation Insurance, and 401K contributions to be added to the clients' bill, along with PSI's administrative fee. PSI would then e-mail, fax or mail this information back to the clients, who would either direct debit, mail or wire the funds to PSI.

At the time that Burcham and Vanderburg commenced negotiations with Amodeo, PSI's publicly traded parent corporation, Presidion Corporation, was preparing for an annual audit. Burcham and Vanderburg were acutely concerned about the millions of dollars in unpaid payroll taxes that had been accrued by the Sunshine Companies. In an attempt to have Presidion Corporation appear more profitable as a publicly traded company, PSI wanted the Sunshine Companies' payroll tax liabilities removed from Presidion Corporation's financial statements.

As their negotiations continued, the level of potential future involvement between the Matrix personnel and Presidion escalated. On September 7, 2004, Amodeo, acting on behalf of Trafalgar Capital, entered into a “commitment letter” agreement with Presidion Corporation. Under the terms of the letter, Trafalgar would provide a broad array of services, including assistance in reactivating Presidion’s insurance contract with FCIC (possibly by substituting assets to establish a sufficient reserve and to free up cash for other purposes) and the provision of “guarantees” to restructure other debts (including restructuring or retiring the Hendricks’ debt). The commitment letter also contemplated consulting assistance on tax strategy for an unspecified contingency fee. As a further inducement for Trafalgar to provide these services, Presidion Corporation offered to sell Trafalgar 25% of its own common stock for the aggregate price of \$100,000.⁹

The vague outline of a plan of action was beginning to emerge. Amodeo and his colleagues were interested in the long-term growth potential of Presidion Corporation, notwithstanding its problems, and were eager to obtain an equity interest in the

⁹ Trafalgar Capital was a consulting firm formed by Amodeo. The principal reason that Amodeo had used Trafalgar Capital, as opposed to Matrix, as a vehicle for entering into this initial commitment with Presidion Corporation, was that Trafalgar Capital was in possession of certain precious metals which the parties hoped could be used as substitute collateral with FCIC to rehabilitate Presidion’s workers’ compensation insurance contract and to free up the cash then on deposit with FCIC for other uses. The precious metals were actually purported to be unrefined alluvial deposits, maintained in steel cases at a warehouse, which Trafalgar had acquired the contractual rights to from one of its former clients, Glen Thompson. Under the terms of the agreement with Mr. Thompson, he remained entitled to royalties on the use of the alluvial deposits, and ultimately was paid over \$2 million by Amodeo and his associates. Much later, it would be learned that the assay value of alluvial deposits was completely misrepresented, and Mr. Thompson was referred by the principals of Trafalgar, and others, to the FBI for criminal investigation.

company.¹⁰ Prior to entering into a contract with Presidion, Amodeo took the initiative to disclose his prior criminal record, which as a general matter he did with all of the persons with whom he did business. He also brought in both current and former Matrix personnel to help him with the project, enlisting John Murphy's assistance in assisting PSI to find sources of capital to help them buy out Hendricks, and Bob Curry to conduct a profit improvement analysis for PSI. Jason Carlson, Jack Duvall and Edie Curry were tasked to do due diligence on PSI. At that time, Amodeo's expectation was that he and Matrix would receive a fee for their services, and in addition would acquire a 25% equity interest in Presidion, but would not actually take over the Sunshine Companies.

The original commitment letter had left unspecified the exact amount of the payment to which AQMI would be entitled for assisting Presidion in resolving its problems with the IRS. Resolving that issue, on October 18, 2004, Vanderburg, on behalf of PSI, signed a "Consultant Agreement" with Amodeo, acting on behalf of AQMI Strategy Corporation ("AQMI"), a corporation which Amodeo created for this purpose. The Consultant Agreement called for AQMI to provide tax advice to PSI for a non-refundable fee in the amount of \$150,000.00 and an additional fee of 25% of any tax savings of the company's current payroll tax liability. After payment of the initial

¹⁰ One of the principals of Matrix, Jason Carlson, came from a family that was prominent in the printing business, and Amodeo and his associates reasonably believed that the Presidion business could be increased by as much as 10% simply by obtaining the Carlson family's businesses as PEO clients. Because of the family's connections (Carlson's father was the former President of the American Printers Association), Amodeo optimistically speculated that they could add thousands of more employees over time. Amodeo and his associates thought that they could benefit from this expansion in two ways: first, through stock participation in Presidion; and second, through commission on bringing in the new PEO clients. Toward the latter end, on October 15, 2004, Carlson, acting as President of Quantum Delta, entered into an "Outside Marketing Representative Agreement" with Presidion entitling Quantum Delta to a 25% fee on the value of the business it brought to the company.

\$150,000, the Consultant Agreement provided that, commencing in January of 2005, PSI would either pay \$75,000 per month to AQMI or accrue this amount on its financial statements pending completion of services under the Consultant Agreement.¹¹

During the course of the due diligence investigation, the Matrix personnel discovered that the Sunshine Companies' accrued tax liabilities were actually much larger than had originally been disclosed to Amodeo, amounting to approximately \$13 million (including interest, penalties and taxes) as of October of 2004. In addition, Vanderburg disclosed to Amodeo that Presidion Corporation and its related entities were being investigated by an organized crime task force in Michigan for racketeering activities. However, Jim Baiers, the general counsel for Presidion Corporation, informed Amodeo that he had been told by the Special Agent in charge of the investigation that the delinquency of the payroll taxes was not a focus of the investigation, and that the tax delinquency was a civil matter. Amodeo also learned that Burcham, Vanderburg and Baiers had previously worked at Simplified Employment Services ("SES"), another PEO, which had been implicated in an alleged check kiting scheme that was also under investigation by the government.¹²

¹¹ Edie Curry, on behalf of her personal consulting firm, Brookmeade Group, L.L.C., executed her own Consultant Agreement with PSI on or about November 1, 2004, under which she was tasked with restructuring non-tax debt with specified Presidion creditors in return for a \$25,000 flat fee plus 50% of the amount of any principal reduction.

¹² The criminal investigation of Presidion Corporation was closed in February of 2005, and Baiers subsequently provided Amodeo with a copy of a letter dated February 4, 2005 from IRS Special Agent Gary Patterson confirming the termination of the case. The U.S. Attorney's Office in Michigan continued to investigate Burcham with respect to the activities of another unrelated corporation. Following the indictments of a number of business associates, Burcham was indicted in 2007.

Amodeo initially concluded that there were too many problems with Presidion Corporation to become further involved with the company. However, he became convinced, based in part from the input of attorneys and accountants who were advising him, that he could achieve the objectives sought by Presidion Corporation by purchasing the Sunshine Companies himself.¹³ Amodeo's plan (the "Sunshine Companies Plan") was to have Wellington Capital Group, Inc. ("Wellington"), a Nevada corporation wholly owned by him, purchase the Sunshine Companies from PSI and thereby relieve Presidion Corporation's consolidated financial statements of the Sunshine Companies' accumulated payroll tax liabilities. Prior to the sale of the Sunshine Companies stock to Wellington, the Sunshine Companies would sell all of their client service agreements, subscriber agreements, accounts and notes receivable, bank accounts, and other assets to a PSI subsidiary, Paradyme. After the sale of the Sunshine Companies stock to Wellington, and after the winding down of the companies, including negotiations with the IRS and the conclusion of several pending courts cases in which the companies were involved, the companies would be administratively dissolved.

As set forth above, the viability of this entire plan depended on its success in achieving the ultimate objective of freeing Presidion Corporations' balance sheet of the Sunshine Companies' liabilities. Presidion Corporation was not dependent on Amodeo alone to confirm the viability of the plan. The company was receiving legal advice during this period of time both from its general counsel, Jim Baiers, and from the

¹³ It is noteworthy that Amodeo made this fateful decision just a little more than one year removed from the termination of his supervised release, with a felony conviction on his record and little in the way of personal equity.

prestigious New York tax law firm, Kostelanetz & Fink.¹⁴ Vanderburg was also receiving legal advice from the corporate law firm of Kirkpatrick & Lockhart regarding the securities law implications of the sale. Presidion Corporation, a publicly traded entity, was also under audit at the time by the accounting firm UHY, LLP, and Vanderburg made the auditors aware on an ongoing basis of the details of the plan.

Amodeo did not have any serious reservations about the legal viability of the essential premise of the plan; i.e., that the sale of a subsidiary encumbered by historical payroll tax obligations would eliminate the liability from the parent corporation's consolidated balance sheet. However, it was not until several months after the completion of the sale of the Sunshine Companies that this position would be confirmed in a legal memorandum completed at Amodeo's request by Elena Wildermuth, an associate with the Fort Lauderdale law firm of Berman, Kean & Riguera (see the discussion, *infra*, of attorney Richard Berman's involvement with Amodeo). While Wildermuth's memorandum was supportive of the viability of the central objective of the transaction, i.e., ridding the Presidion balance sheet of the Sunshine Companies' liabilities, it also recognized that any individuals who had played a role in the original diversion of the payroll taxes by the Sunshine Companies, would remain liable for the taxes under the "100 percent penalty" imposed by IRC § 6672, which imposes liability on individual officers and employees to the extent that they are determined to be "responsible persons" for the collection and payment of the payroll taxes.¹⁵

¹⁴ On November 30, 2004, Amodeo participated in a conference call regarding the tax ramifications of the proposed deal with Vanderburg and Kostelanetz & Fink senior partner Robert Fink.

¹⁵ The Wildermuth memorandum actually was preceded by another memorandum authored by Lawrence Haber and his assistant, Matthew Porter. Haber, a corporate

The Wildermuth and Flynn Memoranda

The Wildermuth memorandum was written with a specific objective in mind – to explain whether, after the proposed sale, Presidion Corporation would remain potentially liable under IRC § 6672 for the historical unpaid payroll taxes of the Sunshine Companies. However, the memorandum also provides a relatively broad overview of the statutes and court decisions dealing with the collection and payment of payroll taxes. It is consistent with and reflective of the general understanding of the law that Amodeo had in late 2004 and early 2005 regarding the payroll tax withholding rules. As set forth in the memorandum, the Internal Revenue Code requires the payment of a variety of taxes by corporate employers with regard to the earnings of the employees, including the following:

- (i) the employees' federal income taxes that have been withheld from the employees' paychecks in accordance with the W-4s filed by the employees (IRC §§ 3401 and 3402) ;
- (ii) the employees' share of Social Security taxes imposed at a flat rate of 6.2% of the wages up to a statutory ceiling (currently \$106,900 in annual wages) and Medicare taxes imposed at a flat rate of 1.45% (IRC § 3101), which together make up the Federal Insurance Contributions Act ("FICA") taxes;

attorney formerly employed by Walt Disney World Co., prepared a memorandum for Amodeo in February of 2005 on the application of I.R.C. Section 6672 to "responsible parties" that could be found liable for the 100% penalty. Haber's memorandum was found by Presidion Corporation to be unsatisfactory to present to the company's auditors for a variety of reasons, in particular its failure to sufficiently address whether a corporation could be considered to be a responsible party subject to the 100% penalty. As a result, Richard Berman delegated the task to his associate, Wildermuth.

- (ii) the employer's share of the FICA taxes, equal to the employees' share (IRC § 3111); and
- (iv) the employer's Federal Unemployment Act ("FUTA") taxes imposed at a flat rate of 6.2% (IRC § 3301) up to a statutory ceiling (currently \$7,000 in wages), but subject to a credit of 5.4% if state unemployment ("SUTA") taxes have also been paid, resulting in an effective federal rate of 0.8%, or \$56 per employee per year (in Florida, the SUTA rate for new employers is 2.7% up to a \$7,000 statutory ceiling, with the rate adjusted over time based on the claims history of the employer).

As stated above, the employees' income taxes and FICA taxes must be deducted and withheld from the employees' paychecks, and are collectively referred to as "trust fund taxes" to reflect the fact that the employer is essentially acting as an intermediary for the IRS in collecting and paying over these taxes that are being assessed, not against the employer, but against the employees. Employers are required to report the withheld income taxes and the employer and employee portions of FICA taxes on a quarterly basis on Form 941 unless the employer has an annual liability of less than \$1,000 for FICA and withheld income taxes. In the latter case, only an annual filing using Form 944 is required. The FUTA taxes are reported annually on Form 940. In Florida, the SUTA taxes are reported and paid quarterly on Form UCT-6.

The Wildermuth memorandum describes the variety of statutory tools at the IRS' disposal to civilly enforce compliance with the payroll tax withholding and payment rules:

- (i) The IRS may assess civil penalties against the employer under IRS § 6656 (which imposes penalties of up to 10% of the tax if the payment is delinquent for more than 15 days);
- (ii) The IRS may create a lien upon the property of the employer under IRC § 6321 and subsequently levy, distrain and sell the property in satisfaction of the debt;
- (iii) The IRS may provide written notice of the failure to the employer pursuant to IRC § 7512, triggering a requirement that the payroll taxes be segregated into a separate bank account and maintained there until payment is made to the IRS; and
- (iv) The IRS may assess a penalty amounting to 100% of the tax against individual officers and employees of the employer to the extent that such persons were personally responsible for collection and payment of trust fund taxes and willfully failed to fulfill this responsibility.

The Wildermuth memorandum is primarily devoted to establishing that § 6672 does not apply to corporations, such as Presidion Corporation, because a corporation is not a “person” as defined in the statute. Consequently, the memorandum devotes little attention to the rules regarding an individual’s potential liability under the statute. A more comprehensive analysis of these rules can be found in another legal memorandum that was circulating in the same time period, late 2004 and early 2005, prepared for

Presidion Corporation by Kevin Flynn, an attorney at Kostelanetz & Fink (the “Flynn memorandum”).¹⁶

As stated in the Flynn memorandum, IRC § 6672 provides that any person required to collect, truthfully account for, and pay over any Title 26 tax who willfully attempts in any manner to evade or defeat the payment of the tax shall be subjected to a penalty amounting to 100% of the tax (where there are multiple responsible persons, they are jointly and severally liable for the 100% penalty). This means that separate and apart from corporate liability for the unpaid taxes, individual officers and employees of a corporation may find themselves personally liable for the unpaid trust fund taxes. Attorney Flynn goes on to succinctly summarize the law on this issue, a discussion that is worth summarizing at length both for its explanation of the law and for the light it casts on the mindset of the parties during this period:

A person cannot be held liable for the penalty in Section 6672 unless (i) he is a “responsible person” for collecting and paying the employer’s taxes to the IRS, and (ii) he willfully fails to do so. *See Fiataruolo v. United States*, 8 F.3d 930, 938 (2d Cir. 1993); *Godfrey v. United States*, 748 F.2d 1568, 1574 (Fed. Cir. 1984). The key question under the first prong of the Section 6672 test is whether “the individual has significant control over the enterprise’s finances.” *Hochstein v. United States*, 900 F.2d 543, 547 (2d Cir. 1990), *cert. denied*, 112 S. Ct. 2967 (1992) (emphasis added). *See also Kenagy v. United States*, 942 F.2d 459, 464 (8th Cir. 1991) (to be liable responsible person must have significant authority in decision making areas involving employment taxes). In this regard, the penalty “is not meant to ensnare those who have merely technical authority or titular designation.” *Fiataruolo v. United States*, 8 F.3d 930, 939 (2d Cir. 1993). The

¹⁶ Although Amodeo does not have any recollection of ever seeing this memorandum, its content is generally reflective of what he was gleaned from conversations with James Baiers, the general counsel of Presidion Corporation, and with Kostelanetz & Fink attorneys.

requirement of significant control is met by a person who has “ultimate authority over the expenditure of funds” for the corporation. *Godfrey v. United States*, 748 F.2d at 1575, quoting from *White v. United States*, 372 F.2d 513, 517 (Ct. Cl. 1967).

Like the Wildermuth memorandum, the Flynn memorandum concludes that Presidion Corporation will not be liable under § 6672 for the Sunshine Companies’ unpaid payroll taxes, albeit based on a different rationale, *i.e.*, that Presidion Corporation, even if it could be construed as a “person” within the ambit of the statute, did not have the necessary responsibility for or control over the payroll tax obligations of the Sunshine Companies to trigger liability under § 6672.

Two important facts can be distilled from the flurry of memo writing in late 2004 and early 2005. First, the parties believed that the central objective of the Sunshine Companies Plan, freeing Presidion Corporation of the Sunshine Companies’ historical payroll tax liabilities, could be achieved under existing tax rules. Second, it is clear from these memoranda (as well as from a variety of other evidence) that the parties were well aware that the extent to which individual officers or employees might become personally liable for unpaid payroll taxes under § 6672 depended upon whether the company for which they worked had a corporate responsibility for the payment of payroll taxes, and if so, whether their degree of involvement in the actual collection and payment of the payroll taxes was sufficient to qualify them as a “responsible person” under the applicable case law.¹⁷ Much of the subsequent history of this case can be understood as

¹⁷ For example, former IRS-CID Chief and Rachlin LLP principal Marerro sent Amodeo an e-mail on February 25, 2005 enclosing an internet link to a section of the IRS Manual regarding the liability of third parties for unpaid employment taxes. Amodeo subsequently received a print out of a section of the Manual dealing with the 100% penalty.

the attempt by certain companies and individuals to avoid the 100% penalty under § 6672 while at the same time retaining effective control over the disposition of the unpaid payroll taxes.

It is noteworthy that neither memorandum makes any mention of potential criminal penalties associated with the nonpayment of payroll taxes. This would not necessarily be expected in the Flynn memorandum, which was specifically focused only on the civil trust fund penalty. However, the Wildermuth memorandum contained a broader overview of the applicable statutes. In fact, an early draft of the Wildermuth memorandum actually contained a reference (later deleted by Baiers) to a potential criminal penalty under I.R.C. § 7202, but only discussed the penalty in the context of a willful failure to comply with I.R.C. § 7512, the statute enabling the IRS to compel the segregation of trust fund taxes. Both the draft memorandum and the final version were completely silent with respect to any criminal penalties for the simple nonpayment of payroll taxes. This lack of any consideration of the potential criminal consequences arising from the nonpayment of payroll taxes was both consistent with and reflective of the general mindset that appears to have prevailed at the time. For Amodeo, considerations of any criminal implications arose in only one respect: he believed that in any tax filings or other dealings with the IRS it was imperative that he truthfully account for status of the payroll taxes, both in terms of the amount collected and the amount paid over to the IRS.

The December 2004 sale of the Sunshine Companies

As set forth above, under the October 2004 Consultant Agreement AQMI was not entitled to receive any additional payments from PSI until January of 2005, when the

obligation to pay \$75,000 per month under the contract would commence. Even then, PSI had the option to simply accrue this amount on its financial statements pending completion of services under the Consultant Agreement and the final determination of payroll tax savings to PSI for which AQMI would be entitled to a 25% fee. However, in the interval since the execution of the Consultant Agreement, the entire dynamics of the deal had changed – Amodeo and Wellington were now proposing to take over the Sunshine Companies’ rather than simply providing consulting services. In this situation, neither Amodeo nor his associates at Matrix would agree to enter into a deal with Vanderburg that provided them with no immediate source of compensation, not only for the work that they had already performed, but even more important, for the burdens and potential liabilities they were assuming in acquiring the Sunshine Companies. Curry, in particular, was adamant that AQMI would have to get a significant amount of the 25% fee up front in order for the transaction to make any sense.

Amodeo consequently demanded that prior to the purchase of the companies, Presidion make an advance payment to AQMI of the projected 25% fee. Amodeo intended to use these funds in part as the source of capital for the acquisition of the stock of the Sunshine Companies, the purchase price of which had been set at \$500,000. For Vanderburg and PSI, the value of the transaction had nothing to do with the \$500,000 purchase price, since the source of funds for the \$500,000 was actually PSI itself. For PSI, and more specifically for its corporate officers such as Vanderburg and Burcham, the real value of the transaction was that it moved the tar baby, the Sunshine Companies’ accrued payroll tax liabilities, off of Presidion Corporation’s balance sheet. This would greatly improve the financial position of Presidion Corporation and its corresponding

stock price. On December 8, 2004, the parties executed a Securities Purchase Agreement memorializing the terms of the proposed transaction.

In a series of payments commencing on December 10, 2004 and continuing through December 31, 2004, PSI began transferring all of its excess cash to AQMI after the payment of ongoing operating expenses, eventually transferring a total of \$8,905,201.26. Prior to the first such payment, Vanderburg, acting on behalf of the Sunshine Companies, granted Amodeo a limited power of attorney authorizing him to act on behalf of the Sunshine Companies in “any matter relating to receipt, escrowing, and payments to the appropriate parties of any and all tax monies.” On December 8, 2004, Baiers sent the power of attorney to Amodeo along with a set of written instructions, to be signed in acknowledgement by Amodeo, indicating that all of the Sunshine Companies’ future payroll tax deposits were to be deposited into a specified AQMI bank account, which was then to issue and deliver daily certified checks, made payable to the IRS, to the accounting firm of Rachlin Cohen & Holtz LLP (“Rachlin LLP”), where the checks would be held until such time as Amodeo directed that the checks be provided to him for delivery to the IRS. The instructions go on to state that if the power of attorney is revoked or if the Sunshine Companies sale is not consummated, Amodeo will immediately cause the checks to be returned to Vanderburg.

Amodeo interpreted Baiers’ e-mail and attachments as an obvious attempt by Vanderburg and Baiers to set him up: Vanderburg and Baiers wanted to pay AQMI to extricate Presidion from the Sunshine Companies’ morass, but still leave themselves with an avenue through which to claim that the payments made to AQMI should have been applied to reduce the Sunshine Companies’ accumulated payroll tax liabilities, thereby

shifting liability for the 100% penalty from Vanderburg and Baiers to Amodeo and other responsible persons at AQMI. Amodeo refused to execute the proposed instructions and acknowledgement, and fired off a responsive e-mail to Vanderburg and Baiers threatening to terminate the entire deal. In effect, Amodeo was telling Vanderburg that he could either use his excess cash to pay off a portion of the existing payroll tax debt, or use the cash to complete the deal with AQMI, but not both.

Vanderburg quickly capitulated, calling Amodeo personally and assuring him that they would continue to make the payments, asking only that Amodeo keep the entire issue confidential until the completion of the deal. Vanderburg took no subsequent action to reiterate his previous position or back out of the deal prior to its completion.¹⁸ Most

¹⁸ In a December 10th e-mail to Vanderburg, Baiers alludes to Amodeo's email and suggests that they should "call and settle him down." Baiers concludes with "I like this e-mail for the file." After the sale was completed, Vanderburg and other officers at Presidion continued to take the position in internal memoranda, and in emails to Amodeo and other AQMI personnel, that part or all of the \$8.9 million should have been applied to the payroll tax liability. See, e.g., January, 26, 2005 Presidion internal memorandum from Presidion CFO Sue Schumacher to Vanderburg containing a schedule purporting to show the entire \$8.9 million in payments to AQMI being applicable to the payment of the Sunshine Companies' payroll tax liability; March 10, 2005 e-mail from Vanderburg to Amodeo asking for "confirmation" of the payroll tax deposits in December 2004; March 17, 2005 Baiers e-mail to Amodeo and others indicating that in December 2004 AQMI "directed the tax payments for the Sunshine entities under the Limited Power of Attorney;" March 25, 2005 e-mail from Chris O'Connor at Presidion to Dan Myers "reminding" him that Presidion "ran up the [tax] liability by \$9 million at the direction of Frank via a limited power of attorney." On February 11, 2005, Vanderburg sent Amodeo a "deposit confirmation request" asking Amodeo to confirm that as of December 31, 2004, AQMI had been holding the \$8.9 million on deposit for PSI. Amodeo signed the confirmation request, but included a handwritten interpolation that the amount on deposit was "for tax controversy resolution," on the basis that the payments were actually being made under the Consultant Agreement, but that the payments were contingent until the end of the year when the contracts were actually signed on December 31st. All of this was followed by a flurry of e-mails in late March 2005 to the effect that the \$8.9 million in payments should be treated as part of the consideration exchanged in the sale of the Sunshine Companies, in effect buttressing Amodeo's position that the \$8.9 million had been paid pursuant to the Consultant Agreement and not as a transfer of monies to be

tellingly, as the payments continued between December 10th and December 31st, Vanderburg never took any action to enforce compliance with the written instructions he had sent Amodeo on December 8th requiring daily checks to be delivered to Rachlin LLP, or to suspend payments pending proof that Amodeo was following the procedure dictated by the instructions. The acknowledgement to the written instructions was never signed by Amodeo and the instructions were never complied with by him, and PSI transferred the \$8.9 million to AQMI free and clear, from Amodeo's position, of any obligation to use the funds to pay off the Sunshine Companies' historical tax obligations. In return, AQMI agreed to the Sunshine Companies' assumption of PSI's obligations under the Consultant Agreement, effectively removing this liability from Presidion Corporation's corporate balance sheet.¹⁹

On December 21, 2004, Amodeo, other Matrix personnel and outside advisors met to finalize the strategy at the Miami office of Rachlin LLP, one of the largest independent accounting and advisory services firms in the Southeastern United States.²⁰

In attendance, among others, were the following persons, all of whom were assembled at

held in trust for payment to the IRS. The payments were ultimately booked by Presidion Corporation and its auditor in precisely this manner. It is also noteworthy that in the aforementioned Flynn memorandum completed in early 2005, the details of the December 31, 2004 sale are recited, but no mention is made of any issue regarding AQMI's responsibility for any taxes collected during the month of December – a curious omission if Vanderburg in fact believed that this had been the arrangement with AQMI.

¹⁹ The power of attorney remained in effect. Amodeo needed the power of attorney so that, if the deal fell through in the last weeks of December, he could pay over the \$8.9 million directly to the IRS and not be left in a position where the funds would have to be returned and thereafter potentially dissipated by Vanderburg and others at PSI, leaving Amodeo potentially vulnerable to allegations by the IRS of transferee liability.

²⁰ According to their website at www.Rachlin.com, the company is ranked among the top 100 National Accounting Firms by Accounting Today, and has more than 200 employees and 26 partners. In 2006, Rachlin LLP was considered the fastest-growing audit firm in the nation, according to the Bowman Accounting Report. Site accessed: May 3, 2009.

Amodeo's request: Laurie Holtz (a Rachlin LLP Senior Advisor reputed to be one of the nation's foremost forensic accountants);²¹ Hans Beyer (a Tampa bankruptcy attorney);²² Edie Curry (the Matrix employee tasked with vetting UCC and Bankruptcy Code Article 9 issues); and Ken Levine (Holtz' son-in-law, a Tallahassee attorney specializing in state insurance regulatory matters).²³ James Baiers, the General Counsel of Presidion, was also in attendance. Jose Marrero (a Rachlin LLP partner and former CID Chief of the Miami field Office of the IRS) was not in attendance at the meeting, but was briefed on the meeting by Holtz, and subsequently participated in negotiations with the IRS.²⁴

²¹ Holtz is reportedly "one of the nation's pioneers in the area of investigative accounting," and is known for his "keen ability to track financial footprints and to present valid, accurate evidence of the nature and logistics of fraud." See Holtz profile at <http://www.rachlin.com/firmprofile/lholtz.htm>. Site accessed: May 3, 2009. Amodeo had known Holtz for approximately two years, had worked with him on previous matters, and at the very outset of their working relationship had disclosed his criminal record.

²² Beyer was retained by Amodeo to advise him on bankruptcy and conveyance issues in connection with the Sunshine Companies Plan. Mr. Beyer is currently a partner in the Tampa law firm of partner at Saxon, Gilmore, Carraway, Gibbons, Lash & Wilcox, P.A. At the time of the meeting, he was an attorney with the Tampa office of Buchanan, Ingersol & Rooney, P.C., a large corporate law firm with offices throughout the United States. According to the Saxon, Gilmore website, Mr. Beyer concentrates his practice in the areas of bankruptcy and creditors' rights with an emphasis on fraudulent conveyances as well as international and domestic asset recovery, and in the areas of estate planning and probate. Mr. Beyer is a 1988 graduate of the University of Michigan with a B.A. in Economics, with high honors. He earned his J. D. degree in 1991 from the University of Michigan Law School.

²³ Levine is currently a partner in the Tallahassee law firm, Dunlap, Toole, Shipman & Whitney, P.A. He holds a B.S. in Management and a J.D. from Tulane University, and is a former Senior Counsel at the Chief of Staff Office of the Florida Department of Insurance.

²⁴ During the time frame of the indictment, Marrero was a partner in Rachlin LLP's Advisory Services division. According to information previously contained on Rachlin LLP's website, he is a 28 year veteran of the IRS, where he served in many roles, including revenue agent, special agent, group manager, regional analyst, division chief/special agent in charge and deputy director in the Criminal Investigation Division. Mr. Marrero directed the national policies and programs of Criminal Investigation employees in the Office of Strategy. As the special agent in charge of the Miami field

Richard Berman (a Fort Lauderdale commercial litigation attorney) also was not physically present, but may have been present by phone and in any event later discussed the meeting with both Amodeo and Holtz.²⁵

At the meeting, all aspects of Amodeo's Sunshine Companies Plan were discussed, without any suggestion from any of the panel of assembled experts that the Plan violated any state or federal laws. Given Presidion's legal problems in Detroit, Amodeo specifically authorized Berman to contact the United States Attorney's Office for the Southern District of Florida, Marrero to contact the Criminal Investigation Division of the Internal Revenue Service, and Levine to contact the State of Florida, to discuss the details of the Sunshine Companies Plan – including the divestiture of the Sunshine Companies and deconsolidation from Presidion Corporation – with the objective of prospectively clearing the Sunshine Companies plan with the federal government and state authorities.²⁶

office, he was responsible for all criminal investigation resources in the southern district of Florida, Puerto Rico and the U.S. Virgin Islands.

²⁵ Berman is partner in the Fort Lauderdale law firm of Berman, Kean & Riguera. He had worked with both Amodeo and Holtz in the past. According to his firm's website, Mr. Berman has been a practicing attorney for more than 30 years. Prior to forming Berman, Kean & Riguera, P.A., he was a senior partner in a large prestigious Florida firm, where he served on the Management Committee and as chairman of the Risk Management and Ethics Committees. Mr. Berman specializes in trial practice in State and Federal Court as well as in various arbitration proceedings. He is also a Florida Supreme Court Certified Mediator and Broward County Certified Arbitrator. See Berman profile at <http://www.bermankean.com>. Site accessed: May 3, 2009.

²⁶ As a practical matter, it is of course difficult, if not impossible, to obtain a prospective legal opinion from either IRS-CID or a U.S. Attorney's Office. Although Amodeo repeated his requests to Berman on December 30, 2004 and January 5, 2005, and to Marrero on December 31, 2004, there is no evidence that they actually followed up with the requested action at this time. A detailed agenda setting forth Amodeo's requests with regard to government contacts discussed above is contained in a memorandum from Amodeo to Berman which was distributed to all of the participants.

By late December 2004, the proposed transaction had thus been run by a bevy of well-credentialed experts, none of whom communicated to Amodeo even a murmur of dissent as to the legality of the transaction or to its viability to achieve the desired result. On December 31, 2004, Wellington acquired the Sunshine Companies for the stipulated purchase price of \$500,000, which was paid by Wellington from the AQMI line of credit derived from the \$8.9 million fee that had previously been paid to AQMI by PSI. As discussed above, Wellington's purchase of the Sunshine Companies was not intended to include their book of business. Prior to consummation of the sale, PSI transferred the Sunshine Companies' book of business, to Paradyme, PSI's wholly owned subsidiary, under an Assignment and Assumption Agreement, a transaction which was booked as being made in satisfaction of pre-existing inter-corporate liabilities.

Trafalgar Capital's option to buy 25% of the common stock of Presidion Corporation, recited in the September 2004 commitment letter, was never exercised by Trafalgar. However, in December of 2004, Amodeo and his colleagues at Matrix had negotiated for the purchase of Burcham's 27% interest in the common stock of Presidion Corporation in return for an upfront payment of \$600,000 (paid out of the \$8.9 million in fees paid by Presidion) and monthly payments of \$60,000 for three years. This acquisition managed to kill two birds with one stone: it achieved Presidion's objective of eliminating Burcham as a shareholder, and achieved Amodeo's and his colleagues' objective of obtaining a stake in Presidion Corporation, which they placed in Mirabilis Ventures, Inc. ("Mirabilis"), a private equity fund created for this express purpose.²⁷ At

²⁷ The Mirabilis stock was originally registered in the name of Yaniv Amar ("Amar"), the Matrix employee who had set the company up by acquiring and renaming a defunct Nevada corporation. However, Amodeo considered himself to be the beneficial

the same time, Mirabilis negotiated for the purchase of additional shares from another Presidion shareholder, Fred Sandlin, raising Mirabilis' overall ownership of the common stock of Presidion Corporation to approximately 34%.

Early IRS negotiations over the Sunshine Companies' tax liabilities

On January 6, 2005, Amodeo, Richard Berman, Jose Marrero, Daniel Myers and Hans Beyer attended a meeting at the office of the Plantation, Florida branch of the IRS Collections Division with Revenue Officer Judith Berkowitz. At the meeting, the details of the Sunshine Companies Plan were specifically discussed, including the prior non-payment of taxes by the Sunshine Companies. Revenue Agent Berkowitz was told at that time that the trust fund portion of the overall tax liability, exclusive of interest and penalties, was believed to be approximately \$25 million.²⁸ At the meeting, Revenue Agent Berkowitz requested that the Sunshine Companies change their corporate address to a local mailbox to ensure that the case was assigned to her.²⁹

The ensuing months were spent administratively winding down the business of the Sunshine Companies, including concluding pending litigation involving the companies. Many of these lawsuits were handled by Berman's law firm. One of the

owner of the stock, albeit with plans to distribute shares in the near future. See January 18, 2005 memorandum from Amodeo to Berman outlining his ownership interests in various corporations. As of January 3, 2005, the Mirabilis Board of Directors consisted of Carlson, Dr. Pollack and Curry, and, as the board, they appointed Carlson as President, Dr. Pollack as Vice President, and Curry as Secretary and Treasurer.

²⁸ It was subsequently determined that the total payroll tax liability as of December 31, 2004, inclusive of both the non-trust fund and the trust fund portions but excluding interests and penalties, was approximately \$52,000,000, with several million more in local and state taxes outstanding.

²⁹ On February 25, 2005, Jose Marrero, who had already provided a Power of Attorney to the IRS authorizing to him to represent the Sunshine Companies, formally notified the IRS that the companies' mailing addresses had been changed to a Hollywood, Florida address.

major pieces of litigation was a class action suit that had been filed on behalf of former employees of the PEOs alleging the embezzlement of approximately \$5 million in funds that should have been used to pay for the employees' health care coverage. This litigation was settled in August 2005, with Amodeo receiving praise from the Circuit Court Judge for his role in the settlement.

There were also additional contacts with Revenue Agent Berkowitz during this time period. On or about April 21, 2005, Jose Marrero met with Revenue Agent Berkowitz, at which time she informed him that the total liabilities for just one of the Sunshine Company entities, Sunshine Staff Leasing, appeared to be in excess of \$24 million. She provided Marrero with a list of questions, including asking why no deposits were made during the first quarter of 2005 and whether another company had taken over the business. She also wanted to know more generally what plans were being made to pay the outstanding liabilities. She gave Marrero until June 1, 2005 to obtain the requested information. According to Marrero's written recollection of the meeting, Revenue Agent Berkowitz appeared "to be very cooperative and flexible at this time." On May 11, 2005, Revenue Agent Berkowitz sent Marrero a fax updating her analysis of the outstanding tax liability for Sunshine Staff Leasing, including penalties and interest which she calculated at that time to total approximately \$26 million (this was the liability for just one of the Sunshine Companies). Via e-mail, Marrero subsequently updated Myers on the status of the case, indicating that Revenue Agent Berkowitz "has been very cooperative and understanding so far and I want to keep the relationship very positive and working in our favor." Sometime prior to the June 1st deadline, all of the information Revenue Agent Berkowitz had requested was provided to her, with the exception of

certain tax returns that had not been deconsolidated from the Presidion Corporation return and adjusted as of that time. Revenue Agent Berkowitz was also informed that the Sunshine Companies book of business was now owned by a new subsidiary of Presidion Corporation, Professional Benefits Solutions, Inc. (discussed more fully below).

Meanwhile, Presidion Corporation was proceeding with its own corporate audit. In the course of the audit, Presidion's auditor, UHY, discovered that the December 31st sale had not accounted for one of the Sunshine Companies' assets, a contingent obligation on the part of FCIC to repay collateral based on actual claims performance; i.e., the actual amount that would have to be paid out on workman's compensation claims in the future. Although the exact amount of the obligation could not be determined until the completion of a 7-year claim history, the value was estimated at \$12.24 million. In accordance with the original December 31, 2004 Assignment and Assumption Agreement, the Sunshine Companies transferred this contingent asset to Paradyme, obtaining in return a \$12.24 million promissory note from Paradyme, payable in a lump sum balloon payment after five years. In an attempt to conclude the settlement of the case with the IRS, Amodeo offered to simply transfer over this note to the IRS. Not surprisingly, Revenue Agent Berkowitz had little interest in taking possession of a promissory note of uncertain collectibility from a distressed company. She directed Amodeo to find a buyer for the note and to transfer over to her any automobiles that were titled to the companies.

Amodeo and his associates subsequently arranged to have Mirabilis buy the note from the Sunshine Companies. Based on the uncertain collectability of the note, they set

a price of 10 % of face value (\$1.24 million), payable in three installments.³⁰ This proposal was conveyed to Revenue Agent Berkowitz with copies of the contracts. Revenue Agent Berkowitz raised no objections to the transaction and stipulated only that payments were sent directly to her. The payments were sent to the IRS over a ninety day period during the summer of 2005. Subsequent to the disposition of the Paradyme note, the last remaining assets of the corporations were liquidated and the Sunshine Companies were administratively dissolved in the late summer of 2005.

The final assessment of the Sunshine Companies tax liabilities, including penalties and interest, was approximately \$52 million. In addition to making the payments referred to above in the summer of 2005, Amodeo and his associates continued to negotiate with Revenue Agent Berkowitz over the resolution of the remaining Sunshine Companies' tax debt and to assist her in locating old unfiled tax returns. Although the IRS has continued to pursue the former principals of the Sunshine Companies for their personal liability under the 100% penalty, it has never asserted liability for the Sunshine Companies' taxes against Presidion Corporation or PSI. The government's treatment of Sunshine Companies' tax liabilities has thus been consistent with the analysis that underlay Amodeo's initial Sunshine Companies Plan, i.e., that the parent corporation had no continuing responsibility for the payroll tax obligations of the subsidiary companies after their sale in December of 2004.

³⁰ The Assignment and Assumption Agreement under which the note was transferred was executed on May 31, 2005 by Amodeo on behalf of the Sunshine Companies, and Dr. Pollack, on behalf of Mirabilis. Obviously, this did not have the appearance of an "arms length" transaction and the parties' valuation of the note is open to dispute, particularly insofar as the practical effect was to substantially discount an asset that might potentially have been used to pay tax debts. On the other hand, Amodeo had managed to obtain \$1.24 million of liquid assets which the IRS, under the circumstances, was eager to accept.

Distribution of fees earned under the Consultant Agreement

In addition to the original \$8.9 million paid in December of 2004, PSI paid an additional \$3.1 million to AQMI pursuant to the Consultant Agreement over the course of the first seven months of 2005, for a total of \$13,113,000, reflecting the fact that the IRS' final determination of the Sunshine Companies' payroll tax liability was approximately \$52,000,000 (\$13.1 million amounting to 25% of the tax liability, as per the Consultant Agreement).

Of the approximately \$13 million that was paid by PSI to AQMI pursuant to the Consultant Agreement, 40% went to Amodeo personally, for a total of \$5.25 million. Amodeo used \$1.5 million of these funds to purchase a home at 709 Euclid Avenue in Orlando in February of 2005. He had previously established a trust for his adopted son, Gentry, to which he contributed \$125,000 (he later contributed an additional \$75,000). He spent \$800,000 on a variety of charitable causes, as reflected on his tax returns. He bought cars for himself and his wife, Claire, costing a total of approximately \$170,000. After setting aside money to pay taxes on his earnings, he was left with approximately \$1,000,000, most of which he eventually spent in early 2006 to acquire two additional properties: a condo on DeLaney Avenue which he purchased for \$550,000 in February of 2006; and a house on Lake Avenue which he purchased jointly with Mirabilis in April of 2006 for development as a business property (contributing \$300,000 of his own funds). The remaining \$7.85 million paid by PSI to AQMI was expended for a variety of business purposes, including the buyout of Burcham and Sandlin in December 2004, compensation for the participation of Amodeo's partners at Matrix, and the legal fees concomitant to the winding down of the Sunshine Companies' operations.

For Amodeo, the apparent (or at least temporary) success of the Sunshine Companies Plan, after years of struggle on his part, was a powerful fuel for his manic tendencies. According to his wife, Claire, Amodeo's transformation during this period was profound and frightening. In her words, he became "manic, angry when confronted, cocksure of anything and everything he believes, especially with regard to the delusion of controlling the world." In fact, Amodeo's mania, and the power and influence that fueled it, were about to increase precipitously over the course of the next year.

The PBS Plan

On or about January 1, 2005, PSI purchased a South Florida PEO, Professional Benefits Solutions, Inc. (subsequently renamed Presidion Solutions VII, but referred to herein as "PBS"). Immediately, thereafter, PSI began reporting all Florida employees under the PBS EIN number. All non-Florida employees were reported under the Paradyme EIN number. As of April 20, 2005, PBS had no federal tax liability. At this point in time, Amodeo was not involved in any of the financial or operating decisions at PBS, and had no involvement in decisions as to how to process the individual employees' payroll. These decisions were made by the management of Presidion Corporation.

However, as discussed above, Mirabilis held a substantial minority stake in Presidion and Amodeo consequently had a considerable interest in its future success. Although Amodeo did not expect to play a direct role in running the company, Dr. Pollack and Carlson were appointed to the Presidion Corporation Board of Directors on January 1, 2005. Both Dr. Pollack and Carlson subsequently became integrally involved

in strategic planning with regard to Presidion Corporation's subsequent operations.³¹ In February of 2005, Dr. Pollack arranged for a specialist in Sarbanes-Oxley Act compliance, Frank Hailstones, to consult on Presidion Corporation's Sarbanes-Oxley compliance issues.³²

During this time period, Presidion Corporation was continuing to fall behind in the payment of payroll taxes for the Sunshine Companies' book of business (now owned by PBS). Presidion Corporation's Director of Tax, Lori Burgess, resigned in late March of 2005, in protest of Presidion's ongoing nonpayment.³³ The continuing non-payment of the trust fund taxes was no secret at Presidion Corporation, or among the officers and directors of Mirabilis.³⁴ Both Dr. Pollack and Carlson, as members of the Board of Directors of Presidion Corporation, were now in a position of potential personal liability for the unpaid taxes. The strategic ramifications of their exposure, as Directors of both Presidion Corporation and Mirabilis, is perfectly encapsulated in a April 25, 2005 e-mail from Presidion Executive-Vice President Chris O'Connor to Vanderburg, in which O'Connor notes that the "current status of payroll taxes" should be documented, and that

³¹ See, e.g., January 10, 2005 memorandum from Baiers to Dr. Pollack regarding input solicited on purchase of PBS.

³² Prior to joining Mirabilis, Hailstones was a Partner of Price Waterhouse Coopers Europe. Hailstones regularly lectures on corporate governance and fraud detection. He was a featured guest speaker at the 2008 "Fraud Summit" in Las Vegas, Nevada on April 13, 2008. Hailstones spoke on the following topics: "Fighting White Collar Fraud Now" and "How to Perform a Fraud Risk Assessment for the Internal Auditor."

³³ In her resignation e-mail to Presidion management, Ms. Burgess cites the nonpayment of payroll taxes as the most important reason for her resignation. Of all of the persons involved in the business affairs of either Presidion Corporation or Mirabilis during the time period of the indictment, Ms. Burgess is the *only* person who resigned from the companies in protest of the non-payment of taxes.

³⁴ See, e.g., March 14, 2005 e-mail from Edie Curry to Baiers referring to Gaines' and Sandlin's concerns that "things would continue at Presidion as they had in the past" and they would still be left liable for nonpayment of the trust fund taxes.

once it becomes clear to Dr. Pollack and Carlson “that they are active participants,” it may “serve as a catalyst to get Mirabilis to fund.” Not coincidentally, on March 4, 2005, Mirabilis extended a \$5 million letter of credit to PSI to help the still struggling company with its creditors.³⁵

In May of 2005, Amodeo was again approached by Vanderburg and Baiers regarding further problems with Presidion Corporation, including a severe shortage of working capital, liabilities (including payroll tax deficiencies) totaling millions of dollars,³⁶ and of most urgency, the potential cancellation of its workers’ compensation insurance policy with FCIC. Amodeo proposed a plan that involved consolidating and settling the Presidion liabilities into one secured claim owed to the IRS. Specifically, Amodeo intended to have Presidion convert the 11 million dollar unsecured claim owed to the IRS into a 70 million dollar secured claim owed to the IRS and use the excess operating cash to settle all other claims. This would be accomplished via the short-term nonpayment of payroll taxes.

Amodeo’s plan took another turn in July of 2005 when he was notified that the Presidion workers’ compensation policy with FCIC would be cancelled within days. Moreover, the insurance underwriter that they were negotiating with to take over the

³⁵ Under the terms of the Note, \$1 million could be borrowed on demand and the remaining \$4 million was available upon certification that the amount to be borrowed was less than 80% of receivables less than 90 days old. The note was secured by a \$300,000 deposit with Mirabilis, a \$2,300,000 deposit on account with Brentwood Capital Corporation, and PSI’s business assets. This is a very interesting example of an action taken by Mirabilis that indirectly benefited two of the members of its Board of Directors, Dr. Pollack and Carlson, at a time when Amodeo himself had no exposure for the accumulating payroll tax deficiencies of the Presidion-owned companies.

³⁶ By this point in time, Presidion’s remaining subsidiaries owed approximately \$2.1 million in delinquent payroll taxes for the second quarter of 2005. By the end of June, it was up to \$11 million.

policy, Sunz Insurance, refused to do business with Vanderburg or Baiers. The immediate loss of workers compensation would have the following two effects: (1) it would trigger defaults under a variety of loan and security agreements and (2) it would decimate the PEO book of business; this in turn would immediately destroy the company and result in 20,000 employees losing their insurance and having their payroll checks returned for insufficient funds. At this point, it was clear that the business could not continue under the Presidion mantle, as the company had lost all credibility with its lenders and was the subject of numerous damaging rumors in the industry.

In order to avoid the complete collapse of the business, Vanderburg agreed to sell all of the client service agreements owned by PBS, the aforementioned PSI subsidiary processing all Florida employees, to AEM, Inc. (“AEM”), a subsidiary of Mirabilis, an idea which originated not with Amodeo, but with Edie Curry.³⁷ On July 28, 2005, an Assignment Agreement was executed by Vanderburg, acting on behalf of PSI, and Amar, acting on behalf of AEM, transferring the entire PBS book of business to AEM, excluding from the transfer any liabilities (including accrued tax liabilities) other than PSI’s indemnity proxy and employment agreements with Vanderburg and Baiers. The purchase price for the sale was \$12 million, to be paid in monthly payments equaling .50% of the monthly gross payroll associated with the transferred book of business. On

³⁷ AEM was originally a shell corporation purchased by Presidion shareholder Fred Sandlin in 2004. When Sandlin purchased AEM, it had an extremely low state unemployment tax (“SUTA”) rate making it a prime acquisition for a PEO. Immediately after the purchase, Sandlin had AEM licensed as an employee leasing company with the state of Florida. On or about April 29, 2005, Sandlin sold the stock of AEM to Mirabilis for \$125,000. Mirabilis purchased AEM for the general purpose of developing a PEO business and making use of AEM’s advantageous SUTA rate. The original idea was to simply develop the business independent of Presidion, but these plans were overtaken by developments in May and June of 2005.

the same date, July 28, 2005, Presidion Corporation sold PSI, Paradyme, PBS, and other non-operating entities to Wellington for \$100,000.

Notwithstanding the fact that the Assignment Agreement appears to contemplate a simultaneous transfer of the PEO book of business, the parties determined that it would be more advantageous to delay the formal transfer of the assets until the end of the 2005 year in order to avoid millions of dollars in state unemployment taxes on "SUTA restarts." The parties subsequently executed a First Amendment to the Assignment Agreement, effective September 8, 2005, indicating that the assets had not in fact been transferred from PBS to AEM and that the transfer would be delayed until December 31, 2005. As an interim measure, the parties entered into a Management Services Agreement, effective July 28, 2005, providing that AEM would manage PBS' book of business in exchange for 2% of PBS' monthly revenues.

Even after the execution of the Management Agreement, Vanderburg remained CEO of PBS and Paradyme, controlled the bank accounts for those entities, supervised personnel and contracting, and generally continued to manage the PEO business, with the important exception that he agreed that PSI would not pay any of its debts without the prior consent of Amodeo. Amodeo's role during the second half of 2005 primarily consisted of reviewing on a daily basis the available amount of cash, determining the amount necessary to implement the rehabilitation plan, and allocating the balance to the creditors on the payables list. In a nutshell, Amodeo was allowing Vanderburg to create a pool of funds from the payroll taxes of PBS and make it available to PSI. From this fund, he used the payroll tax collections to pay off secured creditors who could otherwise impair the operation of the business, obtain the necessary insurance coverage to continue

the business (with the long term plan to acquire a captive insurance company, Beacon Insurance), and to grow the business to the point where AEM, its parent, Mirabilis, or Presidion Corporation (through a reverse merger) could become a viable publicly traded company. A key element of the strategy was the diversification of the company into other business areas, particularly areas where the company could enjoy competitive advantages by using the existing PEO business to service the labor force of new, otherwise unrelated, businesses. In Amodeo's manically positive view, once all of that was accomplished, the revived publicly traded company would be able to repay the payroll taxes.

Pursuant to the PBS Plan, between June and December 2005 the parties used \$9.5 million in payroll tax funds to fund a new insurance policy with Sunz Insurance for the entire PEO book of business, \$18 million in payroll tax funds to pay various secured creditors (including FCIC, Sandlin and Hendricks), \$8 million in payroll tax funds to pay various unsecured creditors, and an additional \$250,000 a month to pay Nexia Strategy Corporation ("Nexia"), a wholly-owned subsidiary of Mirabilis engaged by Presidion to execute a profit improvement plan and/or sell the PEO business, \$1.2 million toward AQMI's outstanding bill for services implementing the Sunshine Companies Plan, and \$1 million to \$1.5 million to resolve outstanding health care claims for which PSI was jointly liable with the Sunshine Companies.³⁸ Additional funds were used to defray operating losses from bad contracts, and to implement the second phase of the plan, i.e., the rehabilitation of the company as a business enterprise through the acquisition of new

³⁸ The money was paid to Amodeo and then transferred to the trust account of the law firm of Gray Robinson to be used as security for payment of the health care claims. The claims were ultimately paid by Wellington from other funds and Wellington was reimbursed out of the trust account.

companies. During this period, PSI acquired High Tech Development, Inc., a gold refinery facility in El Paso, Texas, for approximately \$1.5 million, and Mirabilis acquired Florida Industrial Electric, a commercial electrical company in Orlando, for approximately \$6 million.

In order to facilitate the PBS Plan and the aforementioned disbursements, Amodeo advised Vanderburg that any and all funds which Vanderburg wanted to commit to the PBS Plan be deposited into a PSI account opened by Vanderburg at First Southern Bank in Fort Lauderdale (the "Reserve account").³⁹ Amodeo was given sole signature authority over this account. First Southern Bank in Fort Lauderdale was chosen for this purpose, at Amodeo's request, because Berman was an attorney for the bank, and Amodeo understood that the bank had agreed not to permit Vanderburg to remove Amodeo as a signatory without advance notification to Amodeo or closing of the account. As the sole signatory on the Master Account, Vanderburg was consequently personally involved in the transfer of the payroll tax funds to the Reserve Accounts. The funds were later disbursed from the Reserve account by Amodeo for the aforementioned business

³⁹ At the time, Amodeo wrongly believed that payroll tax collections by Paradyme and PBS were being deposited into separate Paradyme and PBS operating accounts which were also being used to pay creditors, with the balance then being paid over to PSI. In actuality, payroll taxes collected by electronic means for both Paradyme and PBS were being collected in a single Paradyme Key Bank account, rather than separate Paradyme and PBS accounts, and subsequently being transferred en masse to a PSI account maintained by Vanderburg at Bank of America (the "Ultimate Master account"), from which payments to creditors were being made at Vanderburg's direction on behalf of both companies. These details are significant because Amodeo's intent was to have the decision as to whether to divert the tax monies to non-tax creditors made at the corporate level by Vanderburg while the monies were still within Paradyme and PBS. This was important to Amodeo because, based on advice of counsel, he knew that at this point he was arguably a "responsible person" for the payment of trust funds taxes by PSI, and was consequently at risk for any decisions by PSI to divert trust monies to non-tax purposes.

purposes unrelated to the payment of payroll taxes.⁴⁰ From June 10, 2005 until December 31, 2005, Amodeo and Vanderburg caused to be transferred approximately \$64,600,000.00 to the Reserve account from the Ultimate Master account.

Given that the parties had delayed the effective date of the sale to December 31, 2005, they still needed a mechanism whereby the reality on the ground, i.e., Mirabilis' use of the trust fund taxes for non-tax purposes as part of the PBS Plan, could be booked as reflecting a bona fide transfer of funds from Presidion to Mirabilis that would also constitute a perfected security interest that would trump the IRS' claim to the funds. Consequently, the parties entered into a Hold Harmless Agreement whereby PSI promised to pay Mirabilis \$50,000,000 by December 31, 2005 in return for Mirabilis' agreement to hold PSI harmless for any subsequent claims against the company, up to a maximum of \$70,000,000. The Agreement was executed by Dr. Pollack as Vice-President of Mirabilis and Vanderburg as President of PSI, and ratified by Amodeo and the Mirabilis Board of Directors, which at the time included Edie Curry, Jason Carlson, Dr. Pollack, James Sadrianna⁴¹ and Bruce Walko.⁴² This obligation effectively diverted to Mirabilis \$34,000,000⁴³ of funds owed to the Internal Revenue Service, with the

⁴⁰ This is corroborated by the general ledger notes for PSI for 2005, which reflect the disbursement of monies for these purposes. All of PSI and Presidion Corporation's officers had access to these records.

⁴¹ James Sadrianna has a BS in Accounting, MBA and J.D. from Pace University. He is a C.P.A. in both New York and Florida and admitted to practice law in New York. Prior to Mirabilis, he worked for Coopers & Lybrand, LLP and the IRS.

⁴² Bruce Walko is an M.B.A. graduate of the University of Southern California with extensive consulting, business and project management experience in start-up environments. He joined Mirabilis in or about April of 2005, and would continue with Mirabilis in various capacities, including as a member of the Board of Directors, until December 2006.

⁴³ Although the Agreement contemplated that \$50,000,000 would be transferred, only \$34,000,000 was ever paid out pursuant to the Agreement.

additional advantage of creating a \$70,000,000 debt owed by Mirabilis that could be used in negotiating with the Internal Revenue Service for deferment of the payment of the rapidly escalating unpaid trust fund taxes.

In devising the plan to collect payroll taxes and use them for unrelated business purposes, Amodeo believed himself to be acting in accordance with a theory that was originally expounded by Edie Curry as early as November of 2004, in connection with the Sunshine Companies Plan, and which was expanded on by Curry in mid and late 2005 in connection with the PBS Plan. According to Curry, unsecured IRS debts, including accrued liabilities for trust fund taxes, were subordinate to properly perfected security interests. In her opinion, the favoring of other creditors over the IRS under such circumstances would expose any “responsible persons” to the I.R.C. Section 6672 100% penalty, but this was the extent of the potential liability risked by such nonpayment as long as the tax liability was truthfully reported on the applicable tax reporting forms. Amodeo had believed much the same even before hearing this opinion voiced by Curry, but her articulation of the theory added all of the fuel he needed to proceed forward with the PBS Plan.⁴⁴

Amodeo had surrounded himself with an array of legal and financial professionals, many of whom had considerable experience in anti-fraud corporate compliance. Amodeo’s wife, Claire Holland, will testify that Amodeo confided to her on more than one occasion that he wanted people around him like Dr. Pollack and the legal

⁴⁴ During an October of 2005 conversation between Baiers and one of Amodeo’s employees, Brian Taylor, at which Curry was present, Baiers was asked by Taylor whether PSI’s failure to pay over the Sunshine Companies’ tax debt to the IRS in 2004 was a criminal act. According to Baiers, Curry corrected Taylor, asserting that it was not illegal. See Baiers handwritten notes of October 18, 2005 meeting.

and accounting experts to provide a compass for his actions, and to help make sure that he did not, through manic impulses or simple bad judgment, repeat the mistakes of his past. However, the experts not only stood idly by and did nothing to prevent the tax fraud, they at many points in time actively encouraged Amodeo in his self-destructive course of action.

The persons who were integrally involved with the business operations during the second half of 2005 and on whom Amodeo relied, to varying degrees, in forming his own judgment that the risks of his course of action did not outweigh the potential benefits, included, among others, the following:

- (1) **Laurie Holtz:** As stated above, Holtz was Amodeo's personal business advisor, and his firm, Rachlin LLP, provided accounting and tax advice to Amodeo. In this capacity, he conferred regularly with Amodeo on matters relating to both the Sunshine Companies Plan and the PBS Plan. Holtz was present at the meeting in his Miami office on July 28, 2005 when it was disclosed that Presidion would be closed down if the PBS plan was not implemented immediately. He was aware that the lynchpin of the plan was to use payroll tax funds for other business purposes, including the payment of secured and unsecured creditors. In connection with the management of the PBS book of business, Holtz personally advised Amodeo that Amodeo should not become the President of PBS or Paradyme because of the increased risk of liability for the 100% penalty under I.R.C. Section 6672 and because any application by Amodeo for a controlling person license under Florida law would necessitate a public

hearing that would be problematic given his criminal background. Holtz suggested that it would be advantageous to leave Vanderburg as the controlling person of the companies and their related bank accounts so that he would remain on the front line of exposure for any Section 6672 penalty. In October of 2005, Holtz was offered a position as a member of the Mirabilis Board of Directors and member of its Audit Committee. He deferred until he could complete a personal review of Amodeo's financial affairs, which was complete in January 2006. He then accepted a position as Chairman of the Board of Directors of Mirabilis, effective March 1, 2006. In a videotaped meeting on April 19, 2006, Holtz stated: I'm his [Amodeo's] doctor; he asked me to come onboard – I came onboard.”

- (2) **Edie Curry:** As stated above, Curry performed the original due diligence with regard to Presidion in connection with the Sunshine Companies Plan, and had continuing due diligence responsibility in 2005, which culminated in her recommendation that Mirabilis acquire Presidion's book of business. From January through December of 2005, she was the Treasurer of Mirabilis. Curry sat on the Mirabilis Board of Directors from January 2005 until October of 2006, eventually becoming chairperson of the Audit Committee in 2006 with responsibility for the original audit of Mirabilis. She was the fourth largest shareholder of Presidion, owning 8 million shares of common stock, an interest she had acquired in part as a result of her work performed on the Sunshine Companies Plan. She also was the president of Nexia, which was a direct beneficiary of Amodeo's

PBS Plan, earning \$250,000 in consulting fees from PSI during the latter half of 2005. She was the head of the PBS reorganization team from June 2005 through September 2005. Finally, and most important, she was the person who most vocally articulated and reinforced Amodeo's theory that the IRS' claim to the trust fund taxes could be thwarted by the creation of perfected secured creditor positions.

- (3) **Hans Beyer:** Beyer, a bankruptcy attorney, prepared draft bankruptcy schedules for Paradyme, PBS and PSI in anticipation of the possibility that these entities might have to be placed in bankruptcy if matters could not be resolved with the IRS. Later, in January of 2006, he became an Executive Vice-President and Manager for the Tampa region for Mirabilis. In anticipation of assuming that position, he conducted a review of the Presidion transactions and the PBS Plan with a view toward ascertaining whether any civil or criminal liability would arise as a result of the Plan. Following his review, he brought no such concerns to the attention of Amodeo. Between January and June of 2006, he attended several conferences with the IRS as counsel for Mirabilis.
- (4) **Richard Berman:** Berman, a Fort Lauderdale attorney, served as the primary legal counsel for Amodeo and his businesses. He was present at the July 28, 2005 meeting at Holtz's office in Miami when the acceleration of the PBS plan was discussed. He was personally involved in the drafting of many of the documents that underlay the transfer of control of the PBS book of business in July 2005. In January of 2006, he

became Executive Vice-President, general counsel and Member of the Board of Directors of Mirabilis. In his capacity as general counsel, he was charged with reviewing all contracts and corporate governance.

- (5) **James Baiers:** Baiers, the general counsel for Presidion Corporation and PSI, was also the general counsel for PBS and Paradyme and a statutory controlling person (along with Vanderburg) of those companies. He remained in this role even after the sale of PBS and Paradyme to Wellington. He was present by phone from Detroit for the July 28, 2005 meeting at Presidion's office when the acceleration of the PBS Plan was discussed, and was involved in drafting the contracts that were executed on that date. In 2006, he continued on as Presidion Corporation's general counsel during the winding down of its affairs, but had no role in Mirabilis. In his capacity as general counsel for Presidion, he assisted in the preparation of the PBS 941 tax returns for the first two quarters of 2006, which reflected PBS as having the liability for the taxes related to the Florida PEO book of business in those quarters, as well as an affidavit, signed by Vanderburg, admitting that PBS was liable for the unpaid taxes and that Vanderburg was personally responsible for their payment under I.R.C. Section 6672.
- (6) **Dr. Robert Pollack:** Dr. Pollack became an Executive Vice-President and Board Member of both Presidion and Mirabilis in January of 2005, and became Chairman of the Mirabilis PEO Steering Committee in July of 2006. Dr. Pollack was charged with managing the acquisition of PBS by

Presidion at the end of 2004 and handled relations between Presidion and PBS until the State of Florida approved the acquisition in February of 2005. He was part of the team that performed Sarbanes-Oxley compliance (internal controls) work for Presidion during the period from February through December 2005. He was the principal corporate contact for Mirabilis with the Axena Corporation, a Sarbanes-Oxley compliance consulting and software development company run by his long-time friend and colleague, Frank Hailstones.

- (7) **Dan Myers:** Myer's was Amodeo's personal accountant, having worked with him on three previous unrelated workout matters that were successfully resolved with the IRS. Myers was the Controller for Amodeo's companies, including AQMI and Wellington. He was the CFO for Mirabilis from its inception and controlled all of the financial disbursements out of the aforementioned Reserve Account at Southern Bank. Myers eventually became overwhelmed by his responsibilities and asked to step down from his CFO position at the end of 2005. He was replaced as CFO as of January 1, 2006, by Paul Glover.
- (8) **Jason Carlson:** Carlson was President of Mirabilis until he was succeeded by Sadrianna on September 1, 2005, thereafter serving as Executive Vice President. He was responsible for communications with Presidion Corporation's auditor during the first half of 2005, particularly with regard to the Sunshine Companies Plan. During all of 2005, he was the primary liaison for Presidion and Mirabilis in their efforts to raise

funds from the investment banking community. He was a Board member of Mirabilis from January 2005 to February 2007, and was a Board member of Presidion from January 2005 to December 2006.

- (9) **Lawrence Haber:** Haber, an attorney, was an executive Vice-President of Mirabilis, and staff counsel for Amodeo at AQMI since 2004. He was charged with updating the Presidion narrative for outside inquiries. In 2006, he was both President and controlling person of certain Mirabilis PEO's, including Human Resource Enterprises and the Allstaff Group. During the period from April through October 2006, he was one of two officers of Mirabilis responsible for providing customers with federal and state employment tax verification letters identifying the entity that would be withholding taxes on behalf of the client businesses. He was also the attorney who prepared the first version of the tax memorandum in 2005 that identified many of the issues under I.R.C. Section 6672 that motivated the subsequent behavior of the conspirators.
- (10) **Yaniv Amar:** Amar was a former client of Amodeo's and his closest friend in the Mirabilis organization. Beginning in July of 2005, he implemented the cost cutting portion of the profit improvement plan. In 2006, he began to make the day-to-day PEO operational decisions as the President and statutory controlling person of AEM until he was succeeded by Michael Stanley in March of 2006. Amar acquiesced in the PBS Plan, in part because he thought that the diverted payroll taxes would be used only to pay existing creditors for a limited period of time as part of a

workout arrangement, and in part because Holtz, Curry and Berman, three business people he admired and respected, were involved in and approved the Plan.

- (11) **Craig Vanderburg:** As stated above, even after the execution of the Management Agreement, Vanderburg remained CEO of PBS and Paradyne, was an officer, director and statutory controlling person for both companies along with Baiers, controlled the bank accounts for those entities, supervised personnel and contracting, and generally continued to manage the PEO business, with the important exception that he agreed that PSI would not pay any of its debts without the prior consent of Amodeo.
- (12) **Laurie Andrea:** Andrea was the original owner of PBS before its acquisition by PSI in late 2004. She became a Presidion Corporation shareholder and a Mirabilis shareholder, as well as a statutory controlling person of AEM commencing in June of 2005. Andrea was a Vice-President of both corporations, specializing in employee benefits. She was aware of the problems with PBS' unpaid payroll taxes as early as January 2005, and was concerned that she might be a responsible person for the tax obligation. In February 2005, she, along with Dr. Pollack, established a protocol for the regular review and audit of the payroll tax deposits.
- (13) **Frank Hailstones:** Hailstones continued the consulting work he had begun with Presidion earlier in 2005, and began in the fall of 2005 to establish internal control procedures at Mirabilis, eventually becoming President of Mirabilis in January of 2006. In December of 2005, he

agreed to become a statutory controlling person of AEM, along with Yaniv Amar, Paul Glover and Laurie Andrea. He ultimately would receive several million in cash and stock from the PBS Plan.

Notwithstanding their awareness of the essential details of the PBS Plan, and their integral involvement in carrying out the PBS Plan, none of the above persons took any action to dissuade Amodeo or to otherwise prevent the implementation of the plan in 2005. On the contrary, many of the individuals listed above directly benefited from the PBS Plan in the form of substantial compensation and/or the repayment of existing debts.⁴⁵

Comments made by various attendees at a Mirabilis conference held on April 20, 2005 provide valuable insight into Amodeo's relationship with the Mirabilis employees during this time period. The conference was videotaped and the recording will be made available for review by the Court at the sentencing. During the conference, the participants are each asked to stand and introduce themselves, and they proceed to provide a brief explanation of their background, and in some instances, an explanation or anecdote about their relationship with Amodeo. Collectively, the clear impression that is conveyed is that those in the audience who know Amodeo are generally familiar with both his strengths and his weaknesses, i.e., his energy and creativity, as well as his need for guidance and supervision. As befits the occasion, this is presented in an essentially positive light, but the overall effect is almost as if the participants are trying to convince

⁴⁵ In the case of the principals of Presidion Corporation, they received the added and not inconsiderable benefit of minimizing potential criminal exposure. Past business associates of Vanderburg and Baiers continued to be investigated for bank and securities fraud involving various entities. PSI paid off various outstanding workers' compensation and health claims that were within the ambit of the criminal investigation, and criminal cases against Vanderburg and Baiers were never pursued by the government.

each other that Amodeo is manageable. Berman indicates that he has worked with Amodeo on a number of projects over the years, and that he is “a client who listens,” who “takes instruction and criticism.” Dr. Pollack comments that “I am here to keep Frank in check.” Perhaps most tellingly, Khanokar jokingly explains that “I always come away from meeting with Frank with a very giddy high that lasts for at least a couple of days.”

IRS negotiations and related discussions in early 2006

At the beginning of 2006, arrangements were made for a January 20th conference with Revenue Agent Berkowitz in Plantation to lay down the groundwork for a formal installment plan to resolve both the Sunshine Company payroll tax debt (which at that time was estimated to be \$52 million) and the PBS debt (at that time estimated to be \$71 million). Myers checked with Vanderburg to ensure that Vanderburg had properly filed the 941 tax returns for the third and fourth quarters of 2005. Vanderburg initially indicated that they had been prepared by Melanie Levigne, the Presidion Corporation tax manager, and filed electronically. However, he was unable to produce a signed version. At the insistence of Amodeo, Vanderburg then printed and signed new copies of the tax returns that were mailed to Myers and to Revenue Agent Berkowitz in Plantation, Florida.

Also in preparation for the January 20th conference, Amodeo attended a meeting with Berman, Holtz and Curry at which they discussed the persons who should attend the IRS conference. At that meeting, Curry reaffirmed her opinion that unsecured IRS debts were subordinate to properly perfected security interests. The understanding Amodeo took away from this meeting, as from the previous discussions with Curry, was that Mirabilis and AEM could relegate the accruing IRS debt to a secondary status behind

perfected security interests, especially its own. Amodeo requested that a legal memorandum be prepared by Berman which would confirm this (preparation of the memorandum was once again tasked to Berman's associate, Wildermuth). The meeting participants were so confident in their position at this point that they agreed to only send the "B" team to the IRS conference – Dan Myers and Sharmilla Khanokar (a CPA with Rachlin LLP). Amodeo insisted that Hans Beyer also attend the IRS meeting as the company's bankruptcy expert, since bankruptcy remained Amodeo's failsafe strategy if the IRS was ultimately not amenable to an installment plan.⁴⁶

The legal memorandum was not completed until after the IRS conference, which was generally uneventful. Subsequent to the January 20, 2006 meeting with Berkowitz, Myers also provided her with an additional copy of the tax returns in February of 2006. The tax returns, filed on behalf of PBS, accurately reflected the full amount of the accrued and unpaid employment tax liabilities, a fact that is not disputed by the government. Included in the copy of the tax returns sent to Revenue Agent Berkowitz by Myers was a February 8, 2006 letter from Amodeo confirming the original tax liability of the Sunshine Companies of \$52 million, and indicating that the PBS liability for 2005 was \$71 million. Pursuant to a previous conversation between Myers and Revenue Agent Berkowitz, Amodeo directed the payment of approximately \$600,000 to the IRS in the month of February 2006, the first of what was intended to be a series of \$600,000 monthly payments to the IRS to pay off historic (non-current) tax liabilities of both the

⁴⁶ Amodeo repeatedly suggested the possibility of a filing in Bankruptcy Court, an idea that was always rejected by both Berman and Beyer. If Amodeo really had envisioned himself as immersed in an ongoing fraud, the idea of exposing their dealings in federal court would have been a strange one.

Sunshine Companies and PBS.⁴⁷ Approximately two months later, on April 10, 2006, Revenue Agent Berkowitz formally assessed the PBS tax for the third quarter of 2005 consistent with the returns previously supplied to her by Myers.

On February 2, 2006, a final version of the requested legal memorandum was submitted to Amodeo regarding the relationship between current trust fund obligations, after acquired funds and willfulness under I.R.C. Section 6672. This second Wildermuth memorandum described in detail the legal obligation to hold payroll tax funds for the Internal Revenue Service, and added back in the reference that had been deleted in Wildermuth's 2005 memorandum about the potential criminal penalties under § 7202 for failure to comply with the requirement of I.R.C. § 7512 (regarding the maintenance of a segregated trust account upon written demand from the IRS). However, once again there was no mention of potential criminal penalties for the simple failure to pay over payroll tax collections to the IRS.⁴⁸

⁴⁷ In connection with the proposed payments, Myers called Revenue Berkowitz and asked if the IRS would accept weekly installments of \$150,000 made directly from a PSI American Express "Black Card" registered to Amodeo. On February 2, 2006, Revenue Agent Berkowitz replied in writing that the IRS would accept the payments charged to the Black Card.

⁴⁸ The legal memorandum was personally delivered by Berman to Amodeo when they had lunch together near Berman's office at a Sonny's Barbecue in Fort Lauderdale, but was not touched upon by either of them in conversation. Instead, Berman talked about his desire to become even more involved in the operation of the Mirabilis business. Amodeo encouraged him to do so, but declined to become more involved in the day-to-day running of the business himself, insisting that he was an "entrepreneur" and not an "operator". Amodeo concluded by saying he preferred to pursue his own interests, including his plan to establish a world empire making the existing nation state governments obsolete. He handed the legal memorandum back to Berman, never reading it, and directed him "to give it to the people in charge of running Mirabilis," by which he meant the Mirabilis Board of Directors. Several months later, in July of 2006, Amodeo also personally delivered a copy of the memorandum, still unread by him, to the Internal Revenue Service.

AEM's assumption of formal ownership of PBS book of business

At the end of 2005, AEM had assumed formal ownership of PBS's book of business pursuant to the previously executed First Amendment to the Assignment Agreement. Taking over from Vanderburg on a transitional basis, Amar had begun making day-to-day operations decisions for the PEOs as President and statutory controlling person of AEM. At this time, Paul Glover was hired as CFO of Mirabilis.⁴⁹ At the end of February of 2006, Amar was replaced as CEO of AEM by Michael Stanley, a C.P.A. who was previously an Associate Treasurer at Anheuser Busch, and more recently had been the CFO of a large Central Florida staffing company, Workers Temporary Staffing, Inc. ("WTS"). With the approval of Amodeo and Vanderburg, WTS was acquired by Mirabilis contemporaneous with Stanley's accession to the position of AEM CEO. Mirabilis paid the owners of WTS, Mark Lang and Frank Falconetti, \$5 million for the company out of payroll tax funds. In addition, the broker who brought WTS to Mirabilis' attention, Kevin Munroe, was paid \$250,000 out of payroll tax funds.⁵⁰

⁴⁹ Glover graduated with a B.S. in Accounting from the University of Florida and is a CPA. He has more than 25 years of experience with a diverse range of businesses, including serving as CFO for Pan Am International Flight Academy Holdings, Inc., a holding company for a consolidated group of businesses that principally provide flight training to the commercial aviation industry. Shortly after being hired by Mirabilis, Glover approached Martin Flynn, the head of the Mirabilis HR Department, and asked him if he realized that the company was primarily built on unpaid payroll taxes. Flynn responded that this was common knowledge and he referred Glover to Berman and Holtz. Glover subsequently informed Amodeo that he had spoken with Berman, and that Berman had directed him to ask Amodeo for a copy of the Wildermuth tax memorandum.

⁵⁰ Mark Lang subsequently became Vice-President of Staffing Acquisitions for Mirabilis. Kevin Munroe became President of WTS, now a subsidiary of Mirabilis, and a consultant for Nexia. In that capacity, Munroe conducted a review of payroll tax compliance for both AEM and PSI.

Reflecting the change of ownership, as of January 1, 2006 all funds collected from the PEOs were deposited into an AEM d/b/a Mirabilis HR bank account with Bank of America. The account was opened by Amar. He also had signature authority over the account, although the account was actually managed by Sue Schumacher, Presidion's CFO who was now in the same effective role with AEM without the title. Under Amar's supervision, Schumacher made disbursements using Amar's electronic signature to pay for day-to-day operations.

From the BOA depository account, the monies were disbursed to various other AEM accounts for the payment of payroll, operating expenses, taxes, etc. Funds used for the acquisition of new business assets would be transferred from the BOA depository account to an account maintained by Mirabilis at SunTrust Bank in Orlando⁵¹ or to Berman's law firm trust account at First Southern Bank in Fort Lauderdale. Transfers were also made from AEM's operating account to PSI's account at SunTrust Bank in Orlando (the "PSI Capital Account") to pay Presidion related expenses and for the purchase of two businesses, WTS and Winpar (a real estate development project based in Nashville, Tennessee purchased for approximately \$3 million), both of which provided security for Presidion within the context of the Hold Harmless Agreement.⁵² Mirabilis anticipated the receipt of \$40 to \$50 million in profit from the eventual sale of these two

⁵¹ Sadrianna originally held signature authority over the SunTrust account, and was later succeeded by Hailstones.

⁵² Many of the payments to PSI were actually for the use of PSI equipment and facilities with respect to which PSI had existing lease contracts with third parties. The original intention of the parties was to title both WTS and Winpar in PSI's name, but Sunz Insurance, for reasons already discussed, would not agree to continue to insure WTS if PSI was its owner. Wellington consequently assumed ownership of WTS, with an informal assurance from Amodeo to Vanderburg that the asset would be used as security for the Hold Harmless Agreement.

businesses. Amodeo spoke with both Dr. Pollack and Bruce Carpenter, and they agreed that any sales proceeds would first be used to pay off debts to the IRS.

In or about January of 2006, all of Presidion's Florida customers were sent letters informing them that AEM had purchased the book of business and all of AEM's subsequent actions were consistent with it being the owner of the Florida book of business. However, in April of 2006, Michael Stanley discovered that the client service agreements were in the name of Paradyme and not PBS. Consequently, the July 28, 2005 Assignment Agreement between AEM and PBS was with the wrong party.⁵³ As a result, AEM and Paradyme entered into an April 1, 2006 Transfer Agreement (the "Transfer Agreement") to correct the error whereby Paradyme agreed that AEM could purchase as much of its book of business as AEM wished for an amount not to exceed 0.5% of the transferred book of business' gross wages per month, with a cap on total payments of \$10,800,000, an agreement which essentially took the place of the 2005 agreement between PBS and AEM.

At the time of Stanley's revelation that the PEO contracts were with the wrong party, AEM was already several weeks in arrears on its payroll tax deposits. The

⁵³ This was not the only defect with the July 28, 2005 sale. Under Florida law, Vanderburg, as controlling person of PSI, had a duty to inform the Florida Department of Business and Professional Regulation that there had been a change in ownership of a company that owned Florida PEOs. In the absence of such notice, the sale is voidable, and the original owners remain liable for all insurance and state and federal tax obligations. Vanderburg failed to ever contact the State of Florida. Vanderburg's failure to inform Amodeo that Paradyme was the actual owner of the Florida PEO contracts, as well as his failure to ever contact the State of Florida, raises the possibility that he intended to use this loophole as a means to reacquire the PEO book of business at a later date. Such a conclusion would be buttressed by the fact that Vanderburg continued to look for a new WC insurer even after completing the sales agreement with AEM. His failure to ever attempt to capitalize this loophole may be explained by the fact that he was never able to find another insurer who would do business with him.

discovery of the contract glitch was thus a convenient pretext to engage in a familiar fiction. Amodeo and Amar, on behalf of Paradyme and AEM, respectively, entered into a “Service Agreement”, retroactively effective as of January 1, 2006, which purported once again to maintain that AEM was in the first quarter of 2006 just managing the book of business on behalf of Paradyme. The whole purpose of this charade was to avoid or at least diminish the possibility that the AEM management would become responsible under the 100% penalty for the unpaid taxes in the first quarter of 2006. The one person who did not gain any advantage from this transaction was Amodeo, since he was now the owner of Paradyme through its parent company, Wellington.⁵⁴

However, notwithstanding the revelation about Paradyme’s ownership of the PEO contracts and the retroactive execution of the Service Agreement, there was no getting

⁵⁴ Apparently as a result of this pretense, at a videorecorded April 18, 2006 Mirabilis Chairman’s Finance Meeting attended by Mirabilis CFO Glover, Mirabilis COO Simo, Mirabilis CEO Hailstones, Mirabilis Executive Vice-President Curry, Mirabilis Chairman Holtz, and Mirabilis auditors Khanokar and Stephen Holtz, Glover claims that the PBS/Paradyme book of business “is not really our [Mirabilis/AEM’s] book of business.” Glover goes on to say that they have “drawn a very thin line in the sand” and that Amodeo thinks they are “well insulated.” Much of the rest of the meeting is an interesting exercise in coy denial. Holtz asks Glover if there is some way that they [Mirabilis/AEM] can get information on the tax payments from Presidion (notwithstanding the fact that the PEO payroll and tax deposits were then being run through AEM bank accounts, all tax deposits in 2006 had been made by AEM, and Mike Stanley had just filed a 941 return on behalf of AEM indicating that it was responsible for the book of business). Glover responds, “probably not,” and goes on to note that “they’re negotiating the IRS resolution and the proposal is \$144 million.” Holtz states that he knows about the negotiations, to which Glover replies: “then you know how bad it is.” Holtz concludes by worrying aloud that “what would be bad to me is in the middle of doing that [negotiating with the IRS] they [the IRS] found out that they [Presidion] were grabbing the money. . . . And that everything we are doing over there, nobody’s going to know that it was theirs, because it was part of the time that we were part of it.” Much of the rest of the meeting is devoted to a discussion of Mirabilis/AEM’s potential liability for the unpaid employment taxes, with Hailstones reaching the conclusion that their exposure is basically limited to the first quarter of 2006 due to the fact that the letters had been sent out to clients in that quarter acknowledging that the book of business had been moved to AEM.

around the fact that letters and invoices had already been sent out to the PEO customers stating that AEM was in control of the book of business, that all of the funds were collected by AEM, that all of the checks were issued by AEM, and that AEM was providing the insurance for the business. Mike Stanley ultimately decided to take the position that AEM was in fact the proper reporting entity for the payroll taxes for the first quarter of 2006.⁵⁵ AEM submitted a 941 return to the IRS properly showing the tax liability for that quarter, the amount that had been paid, and the deficiency remaining. Approximately 2/3 of the taxes had been paid, reflecting the fact that proper collection and payment procedures had been followed for the short period from January 1, 2006 through late February 2006. The unpaid taxes were used for the \$5 million acquisition of WTS, discussed above, as well as for the acquisition by Mirabilis of two other PEOs, National Medstaff, owned by Charles Kirkpatrick,⁵⁶ and Allstaff, owned by Jeff Riechel.⁵⁷ The decision to purchase both Medstaff and Allstaff was made by the Mirabilis Board of Directors with some input from Amodeo on Medstaff, but no input from Amodeo on Allstaff. Again, the source of the funds for the acquisitions was the unpaid payroll taxes.

⁵⁵ Another contributing factor in this decision had to do with the applicable SUTA rates. If the returns had been filed by Paradyme, its applicable SUTA rate would have exceeded 5%, whereas AEM's SUTA rate was the Florida minimum of .43%. The difference amounted to over \$8 million in tax savings (\$310 x 28,000 employees = \$8,680,000).

⁵⁶ Kirkpatrick was the Chief Operating Officer of Presidion Corporation and PSI since January 2004. He was also the owner of a Georgia PEO, National Medstaff. In January 2006, Mirabilis purchased National Medstaff and Kirkpatrick became Vice-President of PEO Acquisitions for Mirabilis, leaving after only a month due to personality conflicts with Amar and other personal reasons. Over the next eight months, Kirkpatrick received \$1 million in installment payments as consideration for the purchase of National Medstaff.

⁵⁷ Mirabilis paid Reichel \$1 million upfront for Allstaff, with another \$1 million to be paid in monthly installments over a two year period.

Subsequent to the submission of the aforementioned AEM 941 return for the first quarter of 2006, on April 20, 2006, Beyer, Khanokar and Myers attended a meeting at the IRS office in Plantation Florida with Revenue Officer Berkowitz. The agenda for the meeting was to continue discussion about a potential installment for the repayment of the existing Sunshine Companies and PBS tax obligations (the basic plan was to pay \$600,000 a month until the end of the year, and then a \$1,000,000 a month thereafter, increasing to an amount sufficient to pay off all of the debt within 72 months).⁵⁸ After the meeting, Beyer and Myers reported back to Amodeo that everything was satisfactory with the IRS. Khanokar indicated that if there were going to be any problems, they would probably hear about it within the next week or two.

The IRS sent back the AEM 941 Form for the first quarter of 2006 with a letter rejecting the Form on the technical basis that AEM had insufficient employees in 2005 to warrant the filing of a Form 941, directing that a Form 944 should be filed instead (thereby permitting the company to wait until the end of the year to file). By this point, Mike Stanley and Paul Glover had made another revelation, i.e., that PSI had a second computer system (the "Alpha 5 system") that was producing a different set of financial

⁵⁸ On April 18, 2006, immediately subsequent to the aforementioned Mirabilis Chairman's Finance Committee Meeting, Holtz attended another meeting with Khanokar and Curry in which he references the upcoming IRS meeting, and indicates that he intends to go over the "bullet presentation" for that meeting with Curry (in a later taped discussion with his son, he indicates that he made the charts that he wanted them to use at the meeting). At this point in time, Holtz was thus well aware of the magnitude of the tax problem, having just attended a meeting in which the \$144 million deficiency was referenced, and was also actively involved in supervising the preparations for the ongoing negotiations with the IRS. Holtz's meeting with Khanokar and Curry is also instructive in at least one other respect: contrary to his implicit suggestion in the Finance Committee Meeting earlier that day that he was somehow cut off from knowledge about the day-to-day flow of funds because of a lack of access to information about Presidion's operations, he acknowledges in this meeting that all of the PEO business is in fact being run through one man [Amar], the President of AEM, who had no relation to Presidion.

numbers than the main system (the "Lawson system"). As a result, the Alpha 5 system was masking the fact that certain contracts were actually being priced below cost. Charles Kirkpatrick, who created and owned the Alpha 5 system and was now hostile to Mirabilis since his resignation in February of 2005, refused to allow Stanley and Glover to have access to the system.

On or about May 9, 2006, Amar, who was still acting President of AEM pending Stanley's approval by the State of Florida, sent Presidion a letter unilaterally rescinding the original July 28, 2005 Assignment Agreement on the basis of "inaccurate statements" and "misinformation" which induced AEM to enter into the contract. The letter makes no mention of the April 1, 2006 Transfer Agreement. However, the intent was to unwind both the Assignment Agreement and the Transfer Agreement.

In reality, the computer system imbroglio was mostly a pretext for rescinding the sale. At this point, it had become apparent to Stanley and others that AEM could not afford to both keep the taxes current on the PBS book of business and subsidize the mounting operating loss of Mirabilis. By rescinding the Transfer Agreement, the liability for the unpaid trust fund taxes could potentially be placed back on Presidion's doorstep. At this time, Presidion was no longer a viable entity and did not respond to the rescission letter.

Based on this rescission, Stanley and the Mirabilis Board of Directors decided to continue to operate the PBS book of business pursuant to the pre-existing Management Agreement executed in 2005. AEM retroactively amended the Management Agreement in order to justify the company's control over the PBS book of business through March 31, 2006. The amendment extended the term of the Management Agreement through

August 1, 2006. A new 941 was consequently prepared for PBS, which reflected the same tax collection as the 941 Form originally filed for AEM, but differed from that Form in that it showed zero tax deposits with the IRS during the first quarter of 2006. AEM correspondingly did not include the PBS book of business for the first quarter of 2006 in its annual 944 tax filing the following year, nor in its filing with the State of Florida for the first quarter of 2006. Moreover, AEM applied the tax credit resulting from the deposits previously made on behalf of the PBS book of business to taxes accruing after April 1, 2006 as opposed to applying the tax credit to the PBS book of business for the first quarter of 2006.

In one fell swoop, AEM foisted the tax liability back onto Presidion while depriving Presidion of credit for the tax deposits already made in the first quarter of 2006. In the second quarter of 2006, AEM continued this practice. Even though by its own account it was no longer the owner of the PBS book of business, but only its manager, AEM continued to apply the currently accruing PBS trust fund tax collections to the costs of Mirabilis' operations.⁵⁹

Amodeo's Capital Genesis Plan

The PBS Plan had always contemplated that Amodeo would eventually be phased out of the day-to-day operations of Mirabilis in favor of more well-credentialed and blemish-free professionals better suited to manage the soon-to-be publicly traded entity. As reflected above by the hiring of Mike Stanley and Paul Glover, this transition was

⁵⁹ Vanderburg may have agreed to this arrangement because one of the consequences of this was that Mirabilis would pay off Presidion's pre-existing insurance obligations, and it was the payment of these obligations that was arguably preventing Vanderburg from becoming a target of the letter of credit fraud investigation then being conducted by the U.S. Attorney's Office in Fort Lauderdale.

already well underway in early 2006 and took another substantial step forward with Holtz' accession to the Chairmanship of the Board of Directors in Mirabilis in March of 2006. For Amodeo, this transition to a team of more experienced managers who were expected to impose more internal controls served the additional purpose of reining in his manic tendencies. As he explained in a videotaped March 23, 2006 Mirabilis Board of Directors Meeting, "[c]atch me in the doggone hallway and I'll blow \$100,000 -- this process is designed to protect me from myself."⁶⁰ Holtz subsequently confirmed Amodeo's disengagement from the day-to-day operations of the business, noting in an April 18, 2006 videotaped conversation with his son, Steven Holtz,⁶¹ that Amodeo has "let go of the reins," and further stating in an April 19, 2006 Mirabilis meeting with Curry and others that "Frank is not going to challenge the people he's putting in." Later that same day, in another videotaped conversation, Holtz commented: "Frank is not going to get in our way," subsequently adding "just because you put the money up, doesn't mean you can run it."

Notwithstanding Amodeo's stepping back from the day-to-day operations of the company, he continued to assert himself with regard to the long range planning for the company. For example, during a March 23, 2006 Mirabilis Board of Directors meeting attended by Amodeo, he told the Board that they had a fiduciary obligation to him as the

⁶⁰ Jodi Jaiman, a Mirabilis employee tasked with purchasing equipment and leasing facilities, recalls that one of her responsibilities was to prevent other Mirabilis employees from bypassing the Acquisitions Department and gaining direct access to Amodeo to approve projects that would later prove to be self-serving. Toward this end, strict security measures were implemented on the 28th Floor of the SunTrust Building to stop individuals from seeing Amodeo without an appointment.

⁶¹ Steven Holtz, a forensic accountant like his father, had just been brought in to perform an audit of the Mirabilis financial operations. He was paid approximately \$100,000 for his services. As previously stated, Holtz' son-in-law, Ken Levine, was also on retainer, providing insurance advice.

company's sole common stock shareholder and senior secured creditor, recommended various changes to the composition of the Board of Directors that were subsequently implemented by the Board, laid out recommended changes in operational procedures that were also implemented by the Board, and proposed future acquisition strategies.⁶²

Amodeo also remained extremely active in trying to realize his ambitious plans for expanding the portfolio of companies into new areas, efforts which, at least initially, were encouraged by the Mirabilis management. Mirabilis eventually grew to include approximately 80 subsidiary and affiliate companies and approximately 1,000 internal employees. During Holtz's aforementioned April 18, 2006, videotaped conversation with his son, Holtz comments that Amodeo was looking toward "huge deals that may or may not happen." His son responds that "there's a fine line between ambitious and delusional." Holtz replies: "[t]o me reaching across the table is a success. He [Amodeo] wants to reach across the world." Holtz concludes by saying that "[i]f this thing is a success we could make a [expletive] fortune. And you get a piece."

As stated above, Amodeo had suffered from delusions for years that he had a special destiny and would somehow, someday, become master of the world. The funds made available by the Sunshine Companies Plan allowed Amodeo and his wholly owned

⁶² Although Amodeo represented at the meeting that he would be making the cash infusions that would fund such acquisitions, the funds were in fact not being supplied by Amodeo personally, but from the trust fund taxes that were being collected by AEM. Everyone on the Board of Directors knew or should have known that this was in fact the case, as the flow of funds into and out of the AEM bank accounts was no secret. In fact, as stated repeatedly above, it was commonly understood among the Board members and was in fact an integral part of the PBS Plan that future acquisitions would be funded directly with trust fund tax collections. Amodeo's comments at the meeting are an incredibly illustrative example of his particular strain of mania – even though he was essentially performing for an audience of one, himself, he could not resist grandiosely playing the corporate benefactor.

corporation, AQMI, to pursue various opportunities to fulfill that vision. Some of these ventures were completely philanthropic and laudable. For example, immediately after Katrina devastated the Gulf Coast in August of 2005, Amodeo took steps to reestablish cellular and satellite communication to the region by acquiring unused cellular towers in Pennsylvania and Ohio, moving them to Louisiana, and connecting them to the MCI system. Within days of the disaster, this enabled emergency personnel to use cell phones to communicate in the field. Mirabilis employee James Vandevere was the project leader and an IT team employed by a Mirabilis subsidiary, ISI, remained in place in Louisiana for 18 months to maintain the system until regular communications were reestablished.

However, other activities were more troubling in their implications. Amodeo increasingly occupied himself with laying the groundwork for what he called his "Capital Genesis Plan." The economic basis of the Capital Genesis Plan was a broad theory of business integration; in a nutshell, Amodeo envisioned combining PEO businesses into a broader family of companies that would provide synergies not achievable between unrelated companies. Just as the original PEO model which Amodeo had been marketing in 2004 contemplated an integration of medical insurance/managed care with traditional PEO functions, the more ambitious model that he was germinating would integrate an even broader array of complementary businesses. Rather than simply contracting with unrelated companies for PEO services, Amodeo anticipated acquiring labor intensive businesses, such as construction companies and restaurant chains, on a large scale, that would serve as captive customers for the PEO businesses.

The economic basis of the Genesis Plan was just a means to an end. Amodeo envisioned himself heading a global conglomerate that through its integration of services

would insinuate itself into almost every aspect of the individual's life. In essence, he envisioned an institution that would not only dominate the economic life of cities, towns and countries, but also take the place of government in providing for the needs of the people.

As a first step toward the realization of the Capital Genesis Plan, Amodeo tasked AQMI employees to identify the key elements in every geographical area of the world necessary to implement the Plan. In Amodeo's estimation, each geographical area of the world had specific resource advantages and social needs which needed to be identified. He tasked the AQMI employees to write what he called "Master Strategic Reports" for each such geographical area, beginning with comprehensive reports for the five major continents and Eastern Europe. These reports were akin to State Department briefing papers, containing information on such diverse issues as political factions, cultural factions, key companies, key NGOs, detailed commercial reports on available resources in production and planned production, as well as existing relationships, if any, between Amodeo/Mirabilis affiliated persons and government officials in the specified regions. Six to twelve employees worked on this project over an 8-12 month period commencing in or around October of 2005.

At the same time, in order to effectuate the Plan, Amodeo began identifying and hiring former law enforcement and military personnel, particularly those with foreign intelligence experience. Amodeo thought that this was crucial to the success of the Plan because he needed people with real world experience of the conditions "on the ground" in the countries and regions that were being investigated. In addition, Amodeo anticipated that the same personnel would provide security for future operations in those countries

and regions. Toward that end, in 2005 Amodeo hired, *inter alia*, a former senior supervisor for the FBI's organized crime task force in New York City; the then highest ranking DOJ attorney before the FISA Court; former foreign intelligence officers; a security firm, Tactical Intelligence, that was under contract with the DEA and ATF to apprehend fugitives wanted for drug and weapons crimes; and private security contractors who had previously provided security services, through a subcontract with the security firm, Blackwater, for Ambassador Bremer in Iraq.

In February of 2006, Amodeo was introduced to Oscar Kashala, a Harvard educated oncologist from the Democratic Republic of Congo (the "DRC"), who was then living in Boston, Massachusetts. The DRC was about to have its first free election in 46 years and Dr. Kashala was one of thirty-two persons on the slate of Presidential candidates. Kashala explained to Amodeo that he wished to obtain security services from the security firm, Tactical Intelligence, to protect him and his staff while he campaigned in the DRC. Amodeo convinced Kashala that he needed his help with more than just security services, and Amodeo eventually became Kashala's chief financial backer and a senior political advisor.⁶³ Kashala's political party, UREC, even went so far as to adopt the Capital Genesis Plan as one of the planks in its political platform, actually including the plan, by name, in its campaign literature in the DRC.

⁶³ On or about April 13, 2006, Amodeo, through AQMI, entered into a Professional Consulting Agreement with Dr. Kashala and his political party 'Union Pour La Reconstruction Du Congo' (UREC) wherein AQMI agreed to act as the national campaign manager and policy think-tank for the Kashala Campaign and UREC in return for \$30 million. As was often the case with Amodeo stratagems, things did not work out as planned. Amodeo did not receive any money from Kashala or UREC, but instead expended several million dollars supporting Kashala's unsuccessful campaign.

Amodeo was also introduced to Karen Tramontano (“Tramontano”), a former Deputy Chief of Staff to President Clinton, who at the time was a principal in the prominent Washington, D.C. lobbying and international consulting firm, Dutko Worldwide. Amodeo retained Tramontano with the intention of enlisting her assistance in implementing the Capital Genesis Plan. Dutko Worldwide arranged for AQMI personnel to meet with senior government officials throughout Eastern and Central Europe, and opened up preliminary discussions between AQMI personnel and government and corporate commercial interests in Central Asia. In addition, Dutko Worldwide arranged for Amodeo to be nominated for a seat on the Board of Directors of the Global Fairness Initiative (of which Tramontano is the founder and President), which also included on its Board former President Bill Clinton, the President of the AFL-CIO, John Sweeney, the former Prime Minister of the Netherlands, Willem Kok, and other major international political and business leaders. On May 9, 2006, Amodeo was offered a seat on the Board, but had to decline the offer because of a crisis that was then developing in the DRC.

One of Amodeo’s employees was Kevin Billings, the former head of the Presidential Protection Unit of the Secret Service. He and Amodeo’s Chief of Staff at AQMI, Joe Robinson,⁶⁴ along with two security contractors from Tactical Intelligence, had been sent in early May 2006 to the DRC to do advance planning work in anticipation of Dr. Kashala’s arrival later that month. While doing the advance work, they were also scouting opportunities for Amodeo’s Capital Genesis Plan, and were given by the governor of one of the DRC provinces a diamond survey showing what were purported to

⁶⁴ Robinson is a retired captain with the Orlando Police Department who had served as Deputy Chief of Staff to Orlando Mayor Buddy Dyer until January 2006.

be previously untapped resources. After nine days in the DRC, they had completed their tasks and were planning on flying back to the United States. However, while in the airplane on the tarmac at Kinshasa Airport, they were confronted by military police, who pulled them from the plane and forced them to surrender their passports and baggage. Billings was able to place a cell phone call to Amodeo, notifying him of their situation. The police sent Billings and Robinson back to their rental home and told them that they could return to the airport for their passports the next day. That night, while they were sleeping, armed police broke into the home and arrested both them and the security contingent of eight subcontractors that Tactical Intelligence had already hired to provide local security.

When AQMI personnel in Orlando did not hear from their employees in the morning, they knew that there was some sort of problem. Amodeo began trying to mine contacts in the DRC that could assist them in establishing a line of communication with the DRC government. They also commenced publicizing the situation, so the DRC government would be aware that it was no longer a secret. Eventually, Amodeo received a report from a Kinshasa Rotary Club member that Billings, Robinson and the contractors were being held at a prison near Kinshasa. Amodeo and his staff then stepped up their efforts, contacting members of Congress, prompting them to make their own inquiries to the DRC. These efforts eventually paid off, and the DRC government allowed staff from the U.S. Embassy to meet with Billings and Robinson at the prison. However, the government had no intention of immediately releasing the men, and instead paraded them in front of the local press, claiming that they had been part of a corrupt effort to manipulate the outcome of the Presidential election.

The following day, six days into Billings' and Robinson's captivity, the story began to be picked up by the international press. AQMI increased its own media campaign, conducting interviews with the AP, CNN, ABC, CBS World News, and all of the Central Florida television stations. While Amodeo also began preparing for the possibility that they might have to pay some sort of ransom to secure his employees' release, the mounting publicity about the situation eventually led to a breakthrough. On the ninth day of their captivity, Billings, Robinson and the contractors were released by the DRC government with no charges against them. They were driven to the airport, paraded before the media one last time, and placed on a plane home.

Subsequent to the Congo episode, Amodeo was invited to Washington D.C. to meet with officials from the Department of Interior, Department of Commerce and USAID about the application of his theories to domestic and foreign policy in the United States. While Amodeo was in Washington, he met with an international consultant, Dan Barks, who introduced him to former national Security Advisor Robert "Bud" MacFarlane. MacFarlane complained that a project he had been working on in Afghanistan to provide soybeans to farmers was going to fail because of government inaction in transporting the seeds from the United States to Afghanistan.

In typical fashion, Amodeo volunteered to make sure that the seeds arrived within eight days in Afghanistan. He had already been in negotiations with some aviation companies about possible acquisitions, and some of the potential acquisition companies were willing to donate planes for, or subsidize the cost of, flying the seeds to Afghanistan. The seeds subsequently arrived in Afghanistan in a timely manner. Later, Amodeo's interest in acquiring aviation and paramilitary companies led on one occasion

to two F-16 pilots landing their jets at Orlando Executive Airport to deliver due diligence packages to Amodeo on companies that they knew were interested in being acquired by Amodeo.

June 13, 2006 Mirabilis meeting

On May 1, 2006, Stanley opened up new AEM bank accounts because he was uncomfortable using an account to which Vanderburg or Schumacher had previously had any access. Now as a signatory on the bank accounts and clearly a “responsible person” subject to the 100% penalty, he also made clear that payroll taxes, which had not been paid as they accrued since late February of 2006, would henceforth be paid on an ongoing basis. However, in early June, AEM was again unable to pay its ongoing payroll tax obligations.

On June 13, 2006, Myers called Amodeo and told him that he needed his assistance with the Mirabilis audit being conducted by the outside accounting firm, James Moore & Company, as part of the Sarbanes-Oxley compliance mandated by their corporate charter. According to Myers, Amar was raising red flags about the unpaid payroll taxes and beginning to make both external and internal auditors nervous about the relationship between PSI and Mirabilis. Amodeo agreed to attend a meeting at the Boheme Restaurant in downtown Orlando and address any issues. In attendance at the meeting were Stanley, Myers, Amar, Kevin Leonard (the Controller of Mirabilis) and Glover. The parties revisited the issue of the use of employment taxes to fund operations, reorganize businesses and capitalize acquisitions. In particular, the parties discussed how the payroll tax funds had been transferred from Presidion to Mirabilis because of Mirabilis’ secured creditor interest under the 2005 Hold Harmless Agreement. Glover

had previously discussed many of the same issues on April 18, 2006 with Holtz, Berman, Curry and Fernando Simo (as of April 1, 2006, the COO of Mirabilis).

At the conclusion of the meeting, it was decided that the payroll taxes would not be paid for the rest of the quarter, or until June 30th, that PBS would take responsibility for the unpaid taxes, and that Mirabilis and AEM would have to get their affairs in order by July 1st so that they could pay their own bills, including AEM being able to pay payroll tax obligations on an ongoing basis. The parties all left the meeting apparently satisfied, with no other substantive change in the status of operations anticipated except that Stanley was expected to complete the approval process for his controlling person license by June 21st and that Amar would then officially resign as President of AEM. Immediately after the meeting, Amodeo told Myers that he wanted to personally attend the next IRS meeting, and asked Myers to schedule the meeting for early July. Amodeo's plan was to use the July meeting as a forum to bring the negotiations to a head and to reach some final agreement as to the disposition of the Sunshine Companies and PBS cases.

The Capital Genesis Plan – cont'd

The June 13th meeting did not signal a renaissance of Amodeo's involvement in the day-to-day operations of Mirabilis. Instead, he immediately turned his attention back to implementing the Capital Genesis Plan on a worldwide basis. In late June, Dutko Worldwide presented AQMI to the Bush administration and the Republic of Latvia as a potential corporate sponsor of the NATO Bi-Annual Global Summit which was to be held in Riga, Latvia in November 2006. The Bush administration approved the proposal and offered the sponsorship to AQMI. AQMI became one of the five principal corporate

sponsors of the Summit, along with AT&T, Daimler-Chrysler, EADS, and LiepAjas Metalurgs.⁶⁵

Amodeo would eventually travel to Latvia to attend the Summit, where he was surrounded by heads of state and industrialists with whom he openly and avidly discussed his Capital Genesis Plan. The NATO Summit, as well as the preparations leading up to it, resulted in negotiations over a variety of foreign projects which only served to further Amodeo's delusions of world domination. Some examples of the potential projects included: (i) the provision of helicopters to the Czech Republic for both military and civilian purposes (involving a pre-Summit meeting in the Czech Republic with Czech government officials); (ii) the provision of decommissioned U.S. naval ships to Latvia for use as recycled scrap metal; and (iii) the acquisition of a 50% interest in a Russian aircraft factory.

In July of 2006, AQMI was invited to send six representatives to a Washington D.C. ceremony honoring Afghanistan President Hamid Karzai, and Mirabilis subsidiaries were invited to participate in substantive discussions with NATO, Afghanistan and United Nations representatives about resource exploitation and security issues in Afghanistan. Meanwhile, Amodeo was swept up in a myriad of activities, including being invited to sit in a private balcony seat during a joint session of Congress, and meeting in the White House's Roosevelt Room with President Bush, the Secretary General of NATO, and the Deputy National Security Advisor.

Amodeo's expanding influence provided plenty of fuel for his mania, as poignantly demonstrated by a May 22, 2006 e-mail from Professor Peng Lu, a Chinese

⁶⁵ See <http://rigasummit.lv/en/id/cats/nid/1010/>. Site accessed: May 1, 2009.

academic and member of China's Shandong Province Economic Development Committee. Professor Lu had made contact with Amodeo through one of Mirabilis' subsidiaries that was seeking out business opportunities in China. In the e-mail, Professor Lu expresses his interest in assisting Amodeo in setting up "your Mirabilis Kingdom China," going on to state: "[t]he Chinese need a better King, rather than the democracy, to have a better life. The City of Heze, and more broadly, the Shandong Province with 100 million people, could be the test field for your ideal 'to educate people and to give them higher wage to buy their condo.'" Professor Lu concludes with a personal appeal to Amodeo: "[b]ut it can only be done by a leader like you who has the broad vision, the ideal and the strength."

Acquisition of BCA

Sometime in early 2006, Vanderburg presented to Mirabilis a potential PEO target based in Pennsylvania ("BCA"). BCA was not very profitable and was carrying pre-existing debt that caused it to have a negative book value. What made BCA attractive to Mirabilis, and particularly Stanley, was that it already owned the software and hardware preferred by Stanley as the IT engine for AEM.⁶⁶ On the other hand, Amodeo saw the potential acquisition of BCA as an opportunity to ensure that the officers and directors of Mirabilis did not expropriate the value of the PBS/Paradyme book of business from either PBS/Paradyme or the IRS as creditor, a matter about which he was particularly concerned as he headed toward a final resolution of the case with the IRS. He believed that the best way to resolve matters with the IRS, and thereby protect both himself and his colleagues from potential Section 6672 liability, was to create a substantial income stream on which

⁶⁶ The same software was the IT platform for WTS, Stanley's former company.

the IRS could levy. Amodeo's concern was that the officers and directors of Mirabilis, who did not believe they were going to be held responsible for the unpaid taxes, would try to expropriate the value by paying a much smaller sum to PBS than had previously been agreed.

As set forth above, Amodeo's principal interest in BCA at this point was as a conduit to facilitate settlement with the IRS. Although he remained involved in the settlement negotiations with the IRS, he had little involvement in the day-to-day PEO business of Mirabilis, and never met with or talked to the owners of BCA before the purchase. All of these matters were handled by Mirabilis acquisitions personnel. His only real contribution to the BCA purchase was to recommend that the deal be structured as an agreement by BCA to acquire the Paradyme/PBS contracts for a price certain and then merge with AEM. Amodeo believed that if the PBS/Paradyme book of business was sold to BCA for actual market value, he could preserve the legal rights to the PBS/Paradyme PEO contracts, make a showing of good faith to the IRS, and place himself in a better position to negotiate a favorable settlement.

July 20, 2006 meeting with the IRS

On July 20, 2006, Amodeo attended a meeting at the IRS office in Plantation, Florida. The second quarter 941 return for PBS was either hand delivered to Berkowitz on or before this date or filed with the IRS by Vanderburg, along with an affidavit from Vanderburg accepting personal responsibility for the payment of the tax. The 941 return reflected \$27 million in additional payroll tax liability and no payments to the IRS. In attendance at the meeting on behalf of PBS and the Sunshine Companies were Amodeo, Khanokar and Myers. In attendance on behalf of the IRS were Revenue Agent

Berkowitz, Revenue Agent Daley (who was replacing Agent Berkowitz on the case), their Group Manager, and District Counsel John Lordi. Amodeo produced a large binder containing documents, some of which had been requested by the IRS and the remainder of which Amodeo thought would be useful in the meeting. The parties discussed the fees that had been charged by Amodeo in the case (he told them he had received a total of \$13 million out of \$18 million due).⁶⁷ Amodeo explained that he had a plan to acquire and merge as many PEO's as possible, but already four (Hancock Group, National Medstaff, Allstaff, and BCA), onto the same IT platform as AEM.

Included in the package Amodeo provided to the IRS was a chart showing the consolidation plan whereby the PEOs would be merged together by the end of the 2006 year. He further explained that he believed that the newly merged company could then be sold for a market value of between \$264 million and \$480 million. The meeting concluded with an agreement to have Khanokar and Myers produce additional documents and to schedule another meeting between Amodeo and District Counsel Lordi sometime in September 2006.

The 3rd quarter 2006 PBS payroll taxes

In July of 2006, prior to his meeting with the IRS, Amodeo had issued an e-mail directive that Mirabilis-controlled PEO's should, as a matter of best practice (even though not legally required), segregate all of the withholdings from an employee check into a separate bank account that would be segregated from general operating revenues.

⁶⁷ Although not specifically discussed at the meeting, Amodeo at this point had received approximately \$13, million as part of the Sunshine Companies Plan and was due another \$5 million for reducing the cost of the worker's compensation insurance as part of the PBS Plan. He never received the latter payment.

At this point in time, Amodeo believed that Stanley had started paying currently accruing payroll taxes on a timely basis as of July 1, 2006. However, in August 2006, Amodeo learned that AEM payroll tax payments were starting to lag behind their due dates. He was nevertheless assured by Stanley that this was more of a computer problem than a financial problem, and that the matter was in the process of being corrected. Around the end of September, Holtz made an inquiry to Amodeo about the payment of payroll taxes, and Amodeo subsequently checked with Stanley and was told that they were still somewhat behind, but would be caught up by September 30th. Amodeo then reminded Stanley that to be safe he needed to make sure he at least deposited \$238,000 a day in order to make sure that he was depositing enough to cover the trust fund obligations.

The mock deposition

Given the vast number of new employees that had joined the company since February of 2006, in August of 2006 Dr. Pollack suggested that Amodeo hold a town hall style meeting with Mirabilis employees and others (including outside representatives from the PEO and insurance industry) to field questions about the past, present and future relationship of Presidion and Mirabilis. A second purpose of the meeting, suggested by Berman, was that this would be a good dry run for Amodeo before his next meeting with the IRS in September. The format that was eventually agreed upon was to solicit questions from the audience (and in advance from employees not in attendance) which were to be submitted in writing to Holtz and Amodeo's D.C. attorney, Dan Barks, who would then consolidate the questions and pass them on to Berman. The meeting has been referred to as the "mock deposition" because it was conducted in the format of a sworn question and answer session between Berman and Amodeo. The mock deposition was

held in the AQMI Training Room on August 29, 2006 in two 2½ hour sessions with an hour recess in between the sessions. In attendance at the mock deposition were Amodeo, Berman, Pollack, Beyer, Curry, Holtz, Glover, Haber, Amar, Simo, Khanokar, Sadrianna and Stanley, as well as approximately 40 other persons who attended one or both sessions. Both sessions were professionally videotaped and transcribed by a court reporter and are available for review by the Court.

During the first session, Berman asked questions to Amodeo in a chronologically random fashion about various issues concerning the historical relationship of Presidion and Mirabilis, and asked follow up questions that flowed responsively from the Amodeo's answers. In the session, Amodeo talked explicitly about the various periods of time in which the payroll taxes had not been remitted to the IRS and had instead been used for other purposes, including the reasons why it was considered necessary at each such time to do so.

During the recess in the mock deposition, Amodeo was advised by Curry that he needed to change the way that he presented the past events, because the way that Amodeo was testifying, it appeared that actions had been planned in a manner that would constitute a "racketeering offense."⁶⁸ Curry stated that she was concerned that it looked like the entire set of activities were planned, including moving the book of business back and forth between companies, and not that they were simply responding on an "ad hoc basis to the crisis de jour." She also complained that Amodeo did not emphasize enough the various benefits that accrued to creditors and employees as a result of their activities.

⁶⁸ Months later, Sadrianna confided to Amodeo that he overheard Curry make a similar statement to Beyer during the mock deposition.

In the second session of the mock deposition, Berman accordingly changed the way in which he asked his questions, making them more open-ended and allowing Amodeo to present the transactions in chronological order, emphasizing the perceived benefits of the transactions to the various stakeholders of Presidion. After the mock deposition concluded, Amodeo tasked Khanokar and Mark Middleton (a media specialist with Mirabilis and former local television news reporter) with preparing a seminar-style presentation of the PBS Plan to present to various potential clients and prospect groups in an attempt to gain new business. Amodeo also directed Khanokar to make her subsequent representations to the IRS consistent with the second half of the deposition, rather than the first. As soon as Amodeo had finished his discussion with Khanokar, Holtz and Berman approached Amodeo and advised him to take the videotape of the deposition and destroy it. A few minutes later, Curry and Beyer advised Amodeo not to have the court reporter make a transcription of the deposition. Amodeo ignored their advice, preserved the videotape, and ordered a transcription from the court reporter.

The 4th quarter PBS payroll taxes

On November 1, 2006, Holtz made his regular monthly visit from Miami to Mirabilis' Orlando headquarters, where he met with Amodeo, and together they made an inquiry to Debra Cole (the CFO of AEM since March of 2006) about the amount of taxes that were currently being paid over to the IRS. They discovered that the number was substantially less than the \$238,000 a day Amodeo had previously insisted upon. Cole responded that since AEM had a tax credit available, there was no reason to pay more money over on its behalf. Cole informed Amodeo and Holtz that they had not been paying the taxes with respect to the Presidion PEOs, and had instead been applying these

taxes collected in the third quarter of 2006 to meet AEM's current obligations, just as they had done in the first and second quarters of 2006. This had resulted in a large credit for AEM with regard to its own trust fund tax liabilities. Amodeo then renewed his directive to Stanley that he had to pay \$238,000 a day to defray PBS' trust fund tax obligations, regardless of who owned the PBS book of business at the moment.

Amodeo and Holtz agreed that this was a major problem that would jeopardize their position with the IRS, particularly because it appeared to be a replication of the same bad management that had landed Vanderburg and Baiers in trouble in the first place. They agreed to retain separate counsel for Mirabilis and Presidion who were familiar with the IRS in Miami, and then meet with the IRS and suffer the consequences. Amodeo subsequently contacted potential legal counsel to represent the various entities, and Holtz began to take a more aggressive role in attempting to place the Mirabilis house in order.

As an apparent result of Holtz' efforts, Stanley and Andrea approached Amodeo and informed him that they were not going to include any of the former PBS employees on the AEM tax returns, and that they would not sign any PBS tax returns because they did not want to be "responsible persons" for the payment of the taxes. They asked Amodeo what he was going to do, because this would result in none of the various employees of the PEOs that were either owned or being controlled by Mirabilis being reported to the IRS or the Social Security Administration. In typical fashion, Amodeo indicated that he would personally file the third and fourth quarter 941 returns for PBS (or more properly, for AEM) if they prepared them correctly, i.e., showing the correct tax liability and the fact that no taxes had in fact been paid.

Disclosure of the grand jury investigation

In the last week of November 2006, Presidion PEO customers began receiving subpoenas from the Orlando Office of the U.S. Attorney's Office for the Middle District of Florida relating to PEO tax collections during the 2004-2005 time period. The customers informed AEM of the subpoenas and asked for help in complying with the subpoenas. AEM personnel informed Dan Myers, and both Amar and Myers eventually informed Amodeo. The key personnel at Mirabilis, including those who had been present since the implementation of the Sunshine Companies Plan, then began to leave the company.

Earlier in the year, Amodeo had retained undersigned counsel, Harrison Slaughter, Jr. ("Slaughter"), for the limited purpose of assisting him in an attempt to recover his bar license. In that capacity, Slaughter had attended the mock deposition in late August 2006. In November of 2006, in the wake of Amodeo's aforementioned decision to retain separate counsel for the various Mirabilis and Presidion affiliates, he enlisted Slaughter's assistance in the search for corporate counsel in South Florida. Slaughter requested that Amodeo provide him with the transcript of the mock deposition to assist him in familiarizing himself with the Mirabilis operations. Shortly thereafter, Slaughter reported back to Amodeo that he had reviewed the transcript with a former IRS Criminal Investigation Division Special Agent, Paul Hawkins, and their mutual conclusion was that Amodeo had been involved in a massive criminal tax fraud.

Amodeo's use of December 2006 payroll taxes for non-tax purposes

On or about December 15, 2006, the Directors of Mirabilis met with Amodeo and informed him that they wanted to sell all of the PEOs and discontinue any further

involvement with them. Amodeo indicated that he believed he could arrange for a sale of the PEOs to an unrelated company, Paysource, with which Mirabilis had already been in acquisition negotiations. In essence, Amodeo proposed reversing the transaction by having Paysource buy the PEO contracts and then having the Mirabilis shareholders buy the stock of Paysource. It was believed that Paysource's note payments on its purchase of the PEOs would provide the necessary funds to allow Mirabilis to meet its ongoing obligations on a much scaled down operation that would no longer include the PEOs. It was also hoped that this would provide some insulation for Mirabilis from liability for the historical unpaid payroll taxes, simply by virtue of the fact that Mirabilis would have retired from the PEO business after learning of the government investigation.

One of the problems with this plan was that Mirabilis would have to terminate a significant portion of its workforce, and it then lacked the funds to pay the employees and their health and benefit claims. In order to make the payroll for December 15th to January 1st, Amodeo decided to use the funds from the PBS trust fund tax collections to pay Mirabilis' final payroll and health plan obligations as well as the health plan obligations of all of the PEO employees. Whatever misguided notions Amodeo had previously harbored about the lack of criminal penalties for the nonpayment of taxes, he knew after his discussion with Slaughter that he could be subjected to criminal penalties for continuing to divert trust fund taxes to any purposes other than the payment of accrued tax liabilities.

Winding down of operations at AEM and Mirabilis

In the midst of plea negotiations initiated by Mr. Slaughter, in early February 2007 Amodeo agreed to act as a confidential informant for the government and to work

with the government in winding down the AEM and Mirabilis operations. Shortly thereafter, Mr. Slaughter received a phone call from IRS-CID Special Agent Richard Smith notifying him that AEM was not paying its payroll taxes for the first quarter of 2007. Amodeo subsequently discovered that Stanley was engaging in the same behavior as before, i.e., using payroll tax funds to pay operating expenses. A few weeks later, Stanley resigned from his position at AEM, leaving no one with signature authority over the AEM bank accounts. Amodeo consequently took active control of the operations of AEM and the PEO book of business until the business was sold on April 30, 2007, with the government's acquiescence, to Oxygen Unlimited, an unrelated company, for a promissory note with a face value of approximately \$13 million. Prior to the sale, and with the government's approval, he collected funds from AEM and applied them to the 2007 payroll tax deficiencies.

Meanwhile, back at Mirabilis, the entire Board of Directors resigned by mid-March 2007 in the wake of the criminal investigation. They were replaced by AQMI personnel, Jodi Jaiman, Jay Stollenwerk and Shane Williams. With the PEO book of business now sold off, the question still remained how to wind up operations at Mirabilis and liquidate its remaining assets. Mark Bernet, a bankruptcy attorney who was acting general counsel for Mirabilis from December 15, 2006 until his resignation in May 2007, wanted to appoint a receiver for the company. Amodeo thought it made more sense to initiate a Chapter 11 bankruptcy proceeding. AUSA Gold, who was then heading the criminal investigation, did not want the complications of a bankruptcy, and directed Amodeo to simply wind up the operations of the company and shut it down himself.

Acting on AUSA Gold's direction, Amodeo spent the next 13 months, from May of 2007 to June of 2008, selling off corporate assets, pursuing claims on behalf of the company, and defending claims brought against it. Again, in characteristic fashion, Amodeo applied the same manic energy to attempting to recover the payroll tax funds as he had previously applied to spending them. An initial review of assets in January 2007 revealed personal property consisting of equipment, machinery and vehicles which if auctioned would have produced net proceeds of approximately \$900,000. In addition, there were two pieces of unencumbered real property existing in Huntsville, Alabama and El Paso, Texas. The anticipated net proceeds at auction from these properties were \$1.1 million and \$800,000, respectively. There were other pieces of encumbered real property, with respect to which any recovery was extremely speculative. Amodeo calculated the total anticipated recovery from the disposition of assets at less than \$5 million.

Due to Mirabilis' abrupt termination, Mirabilis faced extensive litigation arising from its layoffs and cancelled insurance policies. At Amodeo's direction, Mirabilis successfully resolved all undisputed employment and insurance related claims. Specifically, Mirabilis researched over 450 healthcare claims totaling more than \$450,000, and settled those claims for approximately \$250,000. In addition, Amodeo reviewed \$3,000,000 in other vendor claims against Mirabilis and settled them for approximately \$450,000. Amodeo and Mirabilis also defended approximately 26 court cases in which Mirabilis was a named defendant, and obtained dismissal or negotiated settlement in over 20 of the cases. The claimed compensatory damages against Mirabilis (not including exemplary damages, interests, costs or fees) in the aggregate, exceeded

\$9,000,000. The cases were dismissed or settled for a total cost of approximately \$500,000. As part of the winding down process, Amodeo directed the sale of approximately 10 companies for over \$25,000,000 in cash and notes. Many of the entities would have been worthless and/or looted by their former principals had Amodeo not interceded.

Amodeo also directed Mirabilis to place several subsidiary entities in bankruptcy in order to protect their assets from being misappropriated by opportunistic insiders. For example, Mirabilis placed Winpar Hospitality Chattanooga, LLC (“Winpar”), in bankruptcy to avoid Atlantic American Capital Group, LLC, (“Atlantic American”) from foreclosing on their mortgage and seizing Winpar’s only asset, certain real property located in Chattanooga, TN. As a result of Mirabilis’ efforts, the property was later sold at auction for over \$7,000,000. The validity of the Atlantic American mortgage (which is held by former Mirabilis insiders) is now being litigated and may be declared invalid.

In December of 2007, Amodeo personally settled an insurance premium dispute with Sunz Insurance over the length and amount of the tail obligation for potential Workers’ Compensation claims. Sunz Insurance Company had claimed that it did not owe Mirabilis any portion of its workers compensation payments and provided significant evidence in support of its position. Sunz subsequently offered Mirabilis \$1,000,000 to commute its policy and settle its claims. After significant negotiations, an audit, revised actuary tables, and the threat of litigation, Sunz paid Mirabilis \$5,500,000 to commute its policy and settle its claims.

Amodeo calculated what might still be owed by AEM for 2007 payroll tax deficiencies at \$770,000, and, after speaking to Special Agent Smith, paid this amount to

the IRS using the Paradyme EIN so that the IRS could hold the funds until an exact liability determination could be made. Amodeo then spent the rest of the insurance refund paying various administrative expenses and costs of liquidating the company, including settling claims and paying the attorneys' fees of various firms that were attempting to recover assets on the company's behalf. During this period, Amodeo was paid \$10,000 a month for his services, via a regular paycheck drawn from an account that was being monitored by the government.

In April of 2008, the IRS-CID Agents and AUSA Gold became aware for the first time of the \$5 million settlement with Sunz Insurance. This became a major point of conflict between AUSA Gold and Amodeo, primarily for two reasons. First, Amodeo had never discussed the Sunz settlement with AUSA Gold or the Agents. Second, AUSA Gold recollected that he had instructed Amodeo in advance that any attorneys who were retained to pursue collection efforts would have to agree to a contingency fee, whereas, as AUSA Gold ultimately discovered, Amodeo had in fact been paying the attorneys' fees based on an hourly rate. Amodeo acknowledges that he did not inform the government of the \$5 million payment from Sunz Insurance, but he does not recollect receiving any directions from AUSA Gold pertaining to how attorneys should be paid. In addition, he believed at the time that he was acting in the government's best interests in pursuing the assets on behalf of the company.⁶⁹ More broadly, he believed that these efforts were part and parcel of his original mandate from AUSA Gold to wind down the operations of the company.

⁶⁹ Amodeo passed a polygraph examination on this issue. See, infra., p. 105.

The dispute over the use of the Sunz Insurance funds precipitated the execution of seizure warrants for the funds obtained by the various law firms employed by Amodeo. This, in turn, effectively ended the collection efforts. Settlement offers stopped in cases in which Mirabilis was the plaintiff, and in cases in which Mirabilis was the defendant, default judgments were entered in much higher amounts than would otherwise have occurred if the cases had been actively litigated. Real property owned by Mirabilis was subjected to uncontested foreclosure proceedings for real estate tax deficiencies for which there were no longer any company funds to pay.

Under the circumstances, attorney Elizabeth Green, bankruptcy advisor to AQMI, recommended that Mirabilis file for Chapter 11 bankruptcy in order to protect its remaining assets. Acting on her advice and with Amodeo's concurrence, the Mirabilis Board of Directors filed their Chapter 11 petition on May 20, 2008, effectively freezing the pending litigation and stopping the pending default judgments against the company. Again, however, Amodeo's actions proved to create a controversy with the government, at least in part because Amodeo had provided no advance warning to the government of his intention to have the company file for bankruptcy protection, and in part because AUSA Gold had expressed his preference all along that the company not be placed in bankruptcy.

In total, Amodeo and his companies paid the IRS approximately \$17.7 million since January 2005 in direct cash payments allocable to the historic tax deficiencies of the Sunshine Companies and PBS, with another \$1.2 million coming directly from Mirabilis and applied toward the Sunshine Companies' debt.

Substantial assistance to the government

Upon receiving the initial grand jury subpoenas of over seventy (70) relevant companies in late-2006, Amodeo retrieved and preserved original evidence consisting of millions of documents, hundreds of computer hard drives, and over 20,000 hours of corporate audio and video surveillance from multiple locations around the country. Additionally, Amodeo helped organize and store this evidence in two centralized warehouses in Orlando, Florida. In these warehouses, Amodeo funded and created a searchable computerized Summation database containing over two (2) million scanned documents critical to proving the government's case. Amodeo also reviewed and catalogued over 8,000 hours of the aforementioned audio-video surveillance and continues to do so today. Amodeo provided indexed reports and logs of this evidence to the United States.

On or about February 15, 2007, Amodeo entered into a confidential informant agreement with the United States which provided that he would cooperate in the investigation of other individuals involved in the conspiracy. At the request of the United States, Amodeo participated in seven (7) undercover surveillance interviews of grand jury targets (in his personal residence) and provided IRS agents with two (2) tours of the companies' facilities while they were still operating. Amodeo also assisted the U.S. Attorney's Office in preparing questions for approximately twelve (12) different witnesses and targets related to this case. Furthermore, from February 2007 through May of 2007, Amodeo attended approximately (12) meetings at the U.S. Attorney's office, debriefing agents of the IRS Criminal Investigative Division, FBI and other government agents on the inner-workings of the conspiracy. The meetings lasted anywhere from

three to eight hours a piece. During the meetings, Amodeo provided the government with volumes of background information on the criminal case and its relevant participants. Additionally, Amodeo provided the United States summarized corporate governance documents on over eighty (80) companies, summarized bank account information covering over one hundred and forty (140) different accounts, and answered a variety of general and specific questions relating to a host of legal and factual issues. Since May of 2007, Amodeo has met with government agents on at least eighteen occasions at various locations and has provided them with hundreds of hours of audio-video tapes.

Throughout the government's ongoing investigation, Amodeo has responded to regular requests by the United States for extremely specific information. During the past two years, it was not uncommon for Amodeo and his counsel to deliver two or three detailed packages of information to the United States in a given week. These packages consisted of a wide variety of information including: (i) original evidence (ii) video clips involving witnesses and targets (iii) summaries of documents found in the Summation database (iv) corporate emails of targets and witnesses (v) transcripts of important meetings and depositions (vi) banking information (vii) corporate governance information and (viii) other requested information.

Moreover, Amodeo created and provided the United States with thousands of pages of explanatory work product (both in narrative and chronological form) specifically designed to educate the government on the details of the case, including the complex corporate structure of both Mirabilis and Presidion. These documents broke down the 80+ affiliate and subsidiary companies (which, combined, had over 1,000 employees) involved in this case and explained the roles and responsibilities of the principal officers,

directors, and employees of Mirabilis and Presidion. Furthermore, at the request of the government, Amodeo provided seventy-five (75) summaries of other individuals involved in the conspiracy, including, 31 detailed notebooks describing specific acts committed by other co-conspirators and 11 extremely specific notebooks detailing express criminal conduct of other targets. Each of these notebooks included relevant conduct timelines indexed to the Summation database. Amodeo also provided the United States with thousands of pages of accounting and banking records and assisted the government with the enormous task of calculating the exact tax loss caused by the conspiracy.

Post-offense mental health diagnosis and treatment

After several months of representing Mr. Amodeo in his ongoing plea negotiations and related cooperation with the government, attorney Slaughter had become convinced that Amodeo was suffering from mental problems serious enough to necessitate consulting with a psychiatrist, a conclusion also reached by Amodeo's wife. Slaughter referred Amodeo to Dr. Jeffrey Danziger, a local psychiatrist, who saw him on multiple occasions beginning in August 2007. During the first such meeting, on August 20, 2007, Amodeo expressed the belief that because of his economic prowess his company would grow to economically dominate the earth, governments would wither away and he would be appointed the emperor of the earth. Because of these delusional symptoms, and wishing to remain in a purely forensic role, Dr. Danziger referred Amodeo to another local psychiatrist, Dr. Jeffrey Krotenberg.

Amodeo thereafter began seeing Dr. Krotenberg, who began treating him with Depakote, a mood stabilizing agent. However, Amodeo deliberately withheld his manic

fantasies from Dr. Krotenberg. Amodeo subsequently confessed that, in much the same manner as he had withheld his grandiose view of his destiny from Ms. Holland for many years after she expressed concern about it, he simply decided to keep it to himself. Upon being apprised of the situation, Dr. Krotenberg additionally prescribed Seroquel, an anti-psychotic medication.

On May 12, 2008, in the wake of the abrupt rupture in relations with the government and Amodeo's increasingly erratic behavior, attorney Slaughter asked Dr. Danziger to evaluate Amodeo with a view toward determining whether he was at that point competent to conduct his own affairs. As reflected in Dr. Danziger's resulting report, dated May 28, 2008, Amodeo experienced episodes of mania "where his mood was elated, he believed that he had a religious destiny to rule the world, he had increased energy, racing thoughts, reckless spending, pressured speech and what could only be described as megalomania." Amodeo also experienced episodes of depression during which "he slept a lot, had low energy, felt guilty and hopeless, had an extremely low mood, isolated himself and lost a great deal of weight."

When Dr. Danziger met with Amodeo on May 12, 2008, Ms. Holland informed him that Amodeo had recently been extremely irritable, angry and restless, and was once more ranting about his destiny to rule the world. He had also informed his wife that he was going to walk away unscathed from the legal charges, that his legal theory would win the day, that his lawyers were all wrong, and that he had the law on his side. Amodeo reiterated this to Dr. Danziger, claiming that he was not mentally ill and that no charges would ever be brought against him, adding that he was sure of this because he had the preternatural powers of the Old Testament prophets. He also reiterated his belief that he

would be emperor of the earth and that the “Mirabilis System” would be at the core, with community enterprises with regional managers and 3.5 million people every 30,000 square miles to build the infrastructure. Amodeo predicted: “In seven years I will take over the entire globe . . . the Terran Empire, my empire, is coming.”

Dr. Danziger’s conclusion, based not just on his interviews with Amodeo, his wife and his attorneys, but also on review of Mirabilis video and audio tapes, was that Amodeo suffers from Bipolar Disorder, Type I, with clear past episodes of mania and depression. He also concluded that Amodeo was at that time incompetent to proceed in any trial or handle himself in any criminal proceedings.

Based on Dr. Danziger’s report, attorney Slaughter commenced Guardianship proceedings in Orange County Circuit Court before the Hon. Judge Belvin Perry. The Examining Committee appointed in the case included Dr. Darlene Antonio, a local psychologist, who authored the Examining Committee’s Report. According to Dr. Antonio, Amodeo presented with symptoms consistent with Bipolar Disorder, as well as an associated Delusion Disorder. With regard to Amodeo’s prognosis, Dr. Antonio reported that it was “guarded,” noting that Amodeo had been non-compliant with treatment in the past and that “his delusional beliefs appear to be quite long-standing and ingrained.” The Committee concluded that Amodeo lacked the capacity at that time to make informed decisions regarding his right to contract, to sue or assist in the defense of suits of any nature against him, or to make informed decisions regarding his right to manage property or make dispositions of property.

The indictment against Amodeo was returned by the grand jury on August 6, 2008. However, in light of the questions raised about Amodeo’s competency, the

government acquiesced in allowing attorney Slaughter to have Amodeo travel to Harvard Medical School's McLean Hospital for a period of inpatient treatment before surrendering to answer the charges. On the same day as the return of the indictment, August 6, 2008, Amodeo was admitted to McLean Hospital for a two week course of evaluation and treatment. His attending psychiatrist was Dr. Peter Choras. He was also seen daily by the Medical Director of the psychiatric unit, Dr. Alexander Vuckovic, and on a consultative basis by several other doctors. The doctors who attended Mr. Amodeo were aware of his legal situation; i.e., that he was being investigated with regard to the evasion of millions of dollars in taxes and that an indictment was imminent. All of the medical records have been made available to the government and will be provided for the Court's review at the time of sentencing.

On August 7, 2008, Amodeo was evaluated by Dr. Evan Murray, a Behavioral Neurologist. Amodeo reported feeling that he would be "emperor of the world" since the age of 13 or 15, and still believed he would accomplish his goal by year 2015. He spoke with Dr. Murray about his plans for implementing a Mirabilis model of employment in all the cities in the world, thereby making governments "irrelevant" and putting him in charge, and ultimately leading to peace in the world. He also reported a sort of inner dialogue, in which a voice in his own head tells him what to do, as well as being able to see apparitions at night or in dim light with whom he could converse. Dr. Murray's overall impression was that Amodeo exhibited grandiosity, delusional thought processes, slight impulsivity, mild attentional difficulties, and mild memory retrieval difficulties.

On August 12, 2008, Amodeo was given a neuropsychological battery of tests by Dr. Susan Parks, a Neuropsychologist who serves as the Training Director of the

Neuropsychology Post Doctoral Training Program at Harvard Medical School. According to Dr. Parks, Amodeo put forth good effort on all of the tests, and the evaluation was regarded as an adequate representation of his current level of cognitive and psychological functioning. Cognitive testing suggested that Amodeo is a bright individual, with average cognitive test results, many well developed cognitive abilities and no indication of learning difficulties. Psychological testing indicated, *inter alia*, that Amodeo tends to take in more information than he can organize efficiently, and that in time demanding or more stressful situations, his over-incorporative style tends to interfere with effective decision-making processes. When Amodeo experiences intense emotions, he experiences a concomitant diminished ability to think coherently, and may demonstrate arbitrary and circumstantial reasoning and confused thought processes. Testing suggested the presence of ideas of reference (the belief that unrelated phenomena in the world refer directly to or have special personal significance for the individual), feelings of grandiosity, and irrational jealousy reaching delusional, paranoid levels. Amodeo has difficulty anticipating the consequences of his own actions or recognizing the boundaries of appropriate behavior. While Amodeo does not appear to suffer from a pervasive psychotic disorder, his test results suggest that he may suffer from “mini episodes” marked by paranoia, disorganization or delusions, fluctuating in intensity with his mood state. According to Dr. Parks, Amodeo’s results suggest that he is susceptible to episodes of affective disturbance with marked features of depression and mania. His manic episodes appear to involve a display of expansive and hostile character features, rather than euphoria. Evidence of emotional dyscontrol include feeling erratic, quick changing moods and feeling like things are out of control when things do not go as

planned. Amodeo may purposely avoid self-examination; despite his narcissistic and grandiose features, his tendency toward avoidance may be an effort to avoid engaging in negative self-examination. He may attempt to deal with uncertainty about his image of himself or concerns about his self-value in an overly intellectualized manner and may distort or overlook realistic considerations. He tends to be a socially withdrawn and isolated person.

After reviewing all of the results of Amodeo's evaluation at McLean Hospital, including but not limited to the reports of Drs. Murray and Parks summarized above, Drs. Vuckovic and Choras confirmed a likely diagnosis on Axis I of a Bipolar Disorder, Manic, with psychotic features,⁷⁰ as well as a history of stimulant dependency, presently in a degree of partial remission. On Axis II, it was established that Amodeo likely suffers from a Mixed Personality Disorder, with narcissistic and antisocial features. Dr. Choras had initiated a trial of anti-psychotic medication, olanzapine, and after a week of the trial, Dr. Vockovic was able to report that "Amodeo's previously intractable delusional system appeared to soften considerably, as he acknowledged that he indeed be suffering from symptoms of Bipolar Illness, and also acknowledged that his hope of becoming emperor of the world was quite unrealistic." Amodeo was ultimately discharged on August 21, 2008, with prescriptions for both Geodon (an anti-psychotic medication) and Depakote ER. At the time of his discharge, he was reportedly non-suicidal, cooperative with treatment, and willing to follow the treatment team's recommendations.

⁷⁰ The same conclusion was separately confirmed by Dr. Bernard Katz, a forensic psychiatrist. On August 18, 2008, Dr. Katz interviewed Amodeo for approximately three hours. In addition to interviewing Amodeo, Dr. Katz spoke with Dr. Danziger, and reviewed various transcripts and records relating to Amodeo, including taped footage of Amodeo at a Mirabilis meeting in 2005. Dr. Katz concluded that Amodeo suffers from bipolar disorder with psychotic features, specifically, chronic grandiose delusions.

Since his discharge from McLean Hospital, Amodeo has been under the care of Dr. Danziger and Dr. Choras. On September 23, 2008, Dr. Danziger testified at Amodeo's change of plea hearing. Dr. Danziger testified that based on Amodeo's improvement since his departure for McLean Hospital, as well as his stabilization on a consistent medication regimen involving the Geodon and Depakote, that Amodeo was competent to enter into the plea agreement that he had executed with the government. Subsequent to the change of plea hearing, Amodeo has remained on pre-trial release with electronic monitoring. He has now been under pre-trial supervision for seven months without incident.

Polygraph examination results

On April 10, 2008, Amodeo's attorneys retained retired FBI Agent Richard Keifer to administer a series of polygraph examinations to Amodeo.⁷¹ The first series of questions involved the December 21, 2004 meeting Amodeo held with Holtz, Berman, Curry, and others to discuss the impending acquisition of the Sunshine Companies from PSI. In the course of the examination, Amodeo denied deliberately concealing any material facts from anyone at the meeting or denying anyone at the meeting access to information from the Sunshine Companies. Amodeo also denied that anyone at the meeting told him that there was anything wrong or illegal with the purchase of the Sunshine Companies. Mr. Keifer evaluated the test results as not indicative of deception.

⁷¹ Mr. Keifer was a Special Agent with the FBI from 1970 until his retirement in 1996, and was a Certified Polygraph Examiner with the FBI starting in 1981. He served as a Supervisory Special Agent in the FBI's Polygraph Unit, where he conducted over 2000 polygraph examinations and was the quality control reviewer of approximately 20,000 examinations. During the years 1987-1988, he served as the national manager of the FBI's polygraph program.

The next series of questions involved Amodeo's involvement in the "Presidion Plan" a/k/a as the PBS Plan, which was explicitly defined in the polygraph examination to encompass a strategy to stop payments of payroll taxes to the IRS during the second half of 2005 so that the overall business could be rehabilitated through the payment of other creditors, the acquisition of new lines of business and cost cutting operations, with a planned resumption of payments to the IRS in January 2006. During the course of the examination, Amodeo maintained that he had told both Holtz and Berman about the Presidion Plan as previously defined, and that neither Holtz nor Berman indicated to him that there was anything illegal or criminal about the plan. Amodeo also indicated that during the same time period, between June 2005 and December 2005, he was not aware of any plan by Presidion Corporation or any of its subsidiaries to defraud the IRS or evade payment of taxes, and that he was not aware of any plan, through fraudulent representations, promises or premises to deprive any customer of the Presidion PEO's of property, money or services. Mr. Keifer evaluated the test results as not indicative of deception.

Amodeo was also questioned about his collection of the \$5.5 million refund from Sunz Insurance in 2007, which, as discussed above, became a point of conflict between Amodeo and the government during his cooperation with the government because of his failure to inform the government about the settlement and to pay the funds over to the government (he instead allocated only a portion of the funds to tax payments, and used the rest to paying various administrative expenses and costs of liquidating the company, including settling claims and paying the attorney's fees of various firms that were attempting to recover assets on the company's behalf). Amodeo denied attempting to

defraud the government and affirmatively represented that he used the Sunz proceeds for the direct or indirect benefit of the IRS. Mr. Keifer evaluated the test results as not indicative of deception.

ARGUMENT

Introduction

Under the Presentence Investigation Report (“PSR”) analysis, Amodeo’s total offense level is 43 and his criminal history category is II, resulting in a sentencing range of life imprisonment. However, his statutory maximum sentence is 25 years. Under these circumstances, U.S.S.G. § 5G1.1(a) provides that the statutory maximum (300 months) shall be the guideline sentence. The defense objects to some of the guidelines sentencing enhancements proposed in the PSR, as well as the denial of acceptance of responsibility under U.S.S.G. § 3E1.1. If the Court accepts the defense analysis, Amodeo will be subject to a total offense level of 39, with a corresponding sentencing range of 292-300 months (the upper limit due to the statutory cap). Consequently, with respect to the determination of the defendant’s sentencing range, *prior to the application of any departures*, there is little substantive difference between the PSIR’s computations and the defense analysis.

Determination of loss (guidelines, forfeiture and restitution)

The government contends that the amount of loss is \$181,810,518.66. The defense concedes that the amount of loss is in excess of \$100 million, and may be as high as \$172,666,566.34.⁷² The difference of approximately \$9.1 million from the

⁷² Amodeo believes that the government’s figures may be in error because the payroll tax returns may have provided figures in *excess* of the amount actually due and owing as a result of accounting irregularities (they may have actually collected less from

government's figure is attributable to the fact that Amodeo disputes the government's inclusion of a part of the payroll tax deficiencies for the Sunshine Companies for the last quarter of 2004.

As set forth in detail in the Statement of Facts, Amodeo was not an owner, officer or employee of the Sunshine Companies, or any affiliated entity, prior to December 31, 2004, the date on which Wellington purchased the Sunshine Companies from PSI. In acknowledgement of this fact, the government has not charged Amodeo with all the unpaid Sunshine Companies' payroll taxes during the 4th quarter of 2004. However, the government has charged him with part of the tax loss associated with the Sunshine Companies for the last quarter of 2004, roughly equal to the funds received by Wellington from Presidion Corporation during the period between December 10, 2004 and December 31, 2004.⁷³ This position is premised on the apparent theory that Amodeo received these funds from Vanderburg in a fiduciary capacity with the obligation to subsequently pay them over to the IRS in satisfaction of the Sunshine Companies' payroll tax obligations.

The facts of the case do not support the government's theory. It is true that prior to making any payment to Wellington in mid-December 2004, Vanderburg tried to get Amodeo to contractually agree to set the funds aside for the payment of payroll taxes, thereby attempting to maneuver Amodeo and Wellington into a situation where they would be assuming all of the Sunshine Companies accumulated baggage with little or no

employees and employers than they reported). Amodeo is not yet able to substantiate any such error, but wishes to reserve his right to bring any such errors to the Court's attention at sentencing.

⁷³ Wellington actually received \$8.9 million from Presidion Corporation rather than the \$9.1 million included in the government's figures.

security that they would eventually be paid for their troubles. However, it is equally clear that Amodeo immediately rebuffed him and stood firm on the position that the funds that were to be paid were fees under the Consultant Agreement with AQMI. Amodeo refused to sign the acknowledgement that accompanied the instructions on the use of the funds and instead fired off a responsive e-mail threatening to back out of the entire transaction. Vanderburg took no action to rescind the transaction and instead proceeded to send AQMI the funds in a series of payments sent in the second half of December 2004. Thereafter, Presidion Corporation actually booked the transaction as a payment to Wellington rather than as tax deposits. In addition, and perhaps most revealingly, Vanderburg and Baiers were more than happy to continue to do business with Amodeo,⁷⁴ and ultimately appealed for his help when their company was again in dire straits in mid-2005.

Based on the foregoing, Amodeo cannot be criminally accountable for the payroll taxes that the Sunshine Companies failed to pay in the 4th quarter of 2004, any more than any of the other providers of goods and services to Presidion Corporation can be held accountable for the fact that Presidion Corporation was routinely using payroll tax collections during this period for purposes other than paying the IRS. There is no requirement that payroll tax collections be segregated into a special account (absent an explicit direction to do so from the IRS pursuant to 26 U.S.C. § 7512), and there is no basis for holding outside parties receiving compensation for their services liable as constructive trustees of company funds, even if it turns out that the company is delinquent on its payroll tax obligations. Although Amodeo would soon become

⁷⁴ Baiers, Presidion Corporation's general counsel, can be seen singing Amodeo's praises at the videotaped April 20, 2005 Mirabilis conference.

involved in the diversion of PBS payroll tax receipts to non-tax purposes in the second half of 2005, in the last quarter of 2004 he was not responsible or liable for the payroll tax liabilities of Presidion Corporation or its subsidiary companies.

The determination of the exact amount of the loss is irrelevant to the loss computation because all losses between \$100 million and \$200 million are assigned the same guideline level (offense level 32). It will have a slight effect, albeit ultimately potentially meaningless, on the restitution determination. However, it will have an important effect on a specific forfeiture issue involving the forfeitability of two parcels of real property in Orlando, located at 1159 Delaney Avenue and 709 Euclid Avenue, because Amodeo used part of the payments made under the Consultant Agreement to purchase the properties. The properties are currently being used, respectively, as the domiciles of Amodeo and of his estranged wife, Claire Holland. The government is seeking to forfeit both properties under 18 U.S.C. § 981(a)(1)(C) as purchased with the proceeds of “specified unlawful activity” as defined in 18 U.S.C. § 1956(c)(7). Of course, Amodeo’s interest in both properties will be forfeited even if the properties are determined not to have been purchased with the proceeds of specified unlawful activity, because his interest will still be forfeitable as a “substitute asset.” However, Ms. Holland would then have a potential claim to a part of the properties, which would have to be determined by the Court in a separate proceeding.

§ 2B1.1(b)(2) enhancement for 250 or more victims

The PSR includes an enhancement of 6 levels under § 2B1.1(b)(2) on the grounds that the offense involved 250 or more victims. The defense objects to the application of this enhancement on the basis that the term “victim”, as technically defined in the

Application Notes to § 2B1.1, does not include persons who have not as yet suffered any pecuniary harm as a result of the offense. Application Note 1 to § 2B1.1 defines “victim” as “any person who sustained any part of the *actual loss* determined under subsection (b)(1) [emphasis added].” Application Note 3(A)(i) defines “actual loss” as “reasonably foreseeable pecuniary harm that resulted from the offense,” and specifically distinguishes this concept from intended loss.⁷⁵

In this case, the only entity that has suffered any actual loss has been the federal government. Under the Internal Revenue Code, individual wage earners are given credit for payroll tax collections regardless of whether the amounts are actually paid over by the companies where they work, and none of the companies which contracted with the PEOs have been required to pay over any amounts to compensate the government for its loss. Although the government acknowledges this point, they have argued for the enhancement on the basis that at some point in the future the IRS may assert liability against the 250+ companies that contracted with the PEOs, on the theory that they are jointly liable with the PEOs for the payment of the payroll tax deficiencies.

The defense disputes this enhancement on two independent grounds. First, as stated above, there has been no *actual loss* to anyone but the federal government. Second, even assuming, *arguendo*, that the prospect of a future IRS assessment against the companies could theoretically be counted, the contracts between the companies and PEOs provide no legal basis for such an assessment. I.R.C. § 3403 provides that it is the employer who is liable for the payment of the payroll taxes required to be deducted and

⁷⁵ Application Note 3(A)(iii) defines “pecuniary harm” as “harm that is monetary or is otherwise measurable in money.” Application Note 3(A)(iv) defines “reasonably foreseeable pecuniary harm” as “pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.”

withheld, and I.R.C. § 3401(d) excludes from the definition of “employer” any person who does not have control of the payment of wages. In this case, paragraph 1 of the PEO contracts with the companies contains a provision that the PEO is the employer controlling the payment of wages under § 3401(d), *without regard to payment by the contracting companies*. As the IRS has itself explained in similar circumstances in Private Letter Ruling 200128018 (April 10, 2001), “in three-party arrangements like the one in the instant case, if the Section 3401(d)(1) employer is obligated to pay the common law employer’s employees regardless of whether the common law employer advances funds to the § 3401(d)(1) employer or whether the common law employer subsequently reimburses it, the § 3401(d)(1) employer is in control of the payment of the wages.”

As stated above, none of the employers has as yet sustained any “actual loss” as a result of the crime in this case, nor are they expected to in the future. From the point of view of the Guidelines, the sole victim in this case is the federal government, the entity which was denied the collections to which it was legitimately entitled. Consequently, the enhancement should not be applied.

§ 2B1.1(b)(14)(A) enhancement for harm to financial institution

The PSR includes a 2 level enhancement under § 2B1.1(b)(14)(A) on the basis that the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions. The defense maintains that the enhancement is not applicable because Amodio did not derive gross receipts from a “financial institution” as defined in § 2B1.1. “Financial institution” is defined in Application note 1 to include a list of entities of financial entities. However, professional employee organizations (PEOs) are

not included in this list, and the government has made no showing that Amodeo derived more than \$1,000,000 in gross receipts *indirectly* from financial institutions, i.e., from “financial institutions” that were employer customers of the PEOs. Consequently, this enhancement should not be applied.

Denial of acceptance of responsibility adjustment under § 3E1.1

The PSR has denied Amodeo an acceptance of responsibility adjustment under § 3E1.1 because of his obstruction of justice. It is true that Application Note 4 indicates that conduct resulting in an enhancement under § 3C1.1 “ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct.” However, Application Note 4 goes on to state that there may be “extraordinary cases” where both adjustments apply. The defense maintains that this is such a case, because the obstructive conduct in this case occurred over two years prior to the return of the indictment against Amodeo and his guilty plea (and at a time when he was not receiving medication for his bipolar condition).

In *United States v. Wade*, 458 F.3d 1273 (11th Cir. 2006), the Eleventh Circuit Court of Appeals joined the First and Sixth Circuits in concluding that it is appropriate to look to the commencement of federal charges against the defendant as the starting point for measuring acceptance of responsibility. In that case, the Eleventh Circuit reversed the District Court Judge’s denial of acceptance of responsibility based on the defendant’s commission of crimes subsequent to his federal offense, but prior to the return of an indictment against him. The Court concluded that a bright line rule measuring acceptance of responsibility from the time of the filing of charges avoids “uncertainty,

disagreement and appeals” and acts as an incentive to defendants in such circumstances to actually accept responsibility for their crimes. 458 F.3d at 1281.

Determination of sentencing range before departures

Based on Amodeo’s criminal history category of II and on the foregoing arguments, Amodeo’s offense level should be a level 39, resulting in a sentencing range of 292-365 months. U.S.S.G. § 1B1.1(h) provides that, after determining the guideline range based on the defendant’s total offense level and criminal history category, the Court should determine the sentencing requirements and options pursuant to Parts B through G of Chapter Five of the Guidelines. Section 5G1.1 provides that where the statutorily authorized sentence (25 years, or 300 months) falls within the sentencing guideline range (292-365 months), the sentence may be imposed at any point within the applicable guideline range, provided that the sentence is not greater than the statutorily authorized cap. This results in a sentencing range of 292-300 months. If the offense level is higher because of the Court’s acceptance of the PSIR’s position on one or more of the disputed sentencing factors, § 5G1.1(a) provides that the statutory maximum (300 months) shall be the guideline sentence.

Departure to provide credit for acceptance of responsibility

As reflected above, even if Amodeo is granted a reduction for acceptance of responsibility, he will receive little or no benefit from this reduction because his sentence is statutorily capped at 300 months. Accordingly, the defense submits that a downward departure to effectively reward Amodeo for his acceptance of responsibility should be granted by the Court in this case.

In *United States v. Rodriguez*, 64 F.3d 638 (11th Cir. 1995), the Eleventh Circuit Court of Appeals considered the appeal of a defendant whose offense level and criminal history category had resulted in a 135 to 168 months sentencing range, but whose sentence had been statutorily capped at 8 years (96 months). The defendant had pled guilty and been granted a 3 level reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1, but the reduction had been irrelevant to the actual computation of his sentence due to the aforementioned statutory cap. Under these circumstances the Court stated:

A departure from the sentence prescribed by § 5G1.1(a) when the defendant's acceptance of responsibility has not been duly recognized is consistent with the goals of the guidelines. As discussed above, the guidelines contemplate that a defendant's acceptance of responsibility will be recognized at sentencing. Moreover, one of the "legitimate social interests" served by rewarding a defendant's acceptance of responsibility is providing an incentive to engage in plea bargaining. Plea bargaining is an "essential component of the administration of justice" that should be encouraged because it keeps the justice system from becoming overburdened with full-scale trials [citation omitted].

64 F.3d at 643. The Court of Appeals accordingly held that the District Court had the discretion to reward a defendant's acceptance of responsibility by departing downward when § 5G1.1(a) rendered § 3E1.1 ineffectual in reducing the defendant's actual sentence.

Substantial assistance departure under § 5K1.1

U.S.S.G. § 1B1.1(k) provides that after determination of the sentencing range (including the application of the statutory cap), the Court is to refer to Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and to any other policy

statements or commentary in the guidelines that might warrant consideration in imposing sentence. This would include a potential departure under § 5K1.1 for Amodeo's substantial assistance to the government. At the time of the submission of this Sentencing Memorandum, it is known that the government will be filing a motion with the Court to recognize Amodeo's substantial assistance, although the extent of the requested departure is not known to the defense at this time. Regardless of the specific recommendation made by the government, it is within the Court's power to evaluate the quantum of assistance provided by Amodeo, and to accordingly depart downward from the pre-departure sentencing range of 292-300 months in recognition of Amodeo's substantial assistance to the government.

Amodeo has spent over two years assisting the government, acting as both an undercover consensually monitored informant, and as a source of copious information on the internal operations of Mirabilis, personally retrieving and organizing original evidence consisting of millions of documents, hundreds of computer hard drives, and over 20,000 hours of corporate audio and video surveillance from multiple locations around the country. His assistance is set forth in greater detail in the Statement of the Facts, and information regarding Amodeo's assistance with regard to the investigation of particular government targets can be provided to the Court at sentencing (*in camera* if necessary).

Diminished capacity departure under § 5K2.13

U.S.S.G. § 5K2.13 provides that a downward departure may be warranted if (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to

the commission of the offense. Application Note 1 to the guideline provides that “significantly reduced mental capacity” means the defendant, although convicted, has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful. Echoing the Guideline, the Eleventh Circuit has held that in order to grant a departure pursuant to this section, the district court must find that the defendant’s diminished capacity contributed to the offense. See *United States v. Holden*, 61 F.3d 858 (11th Cir. 1995).

Based on Amodeo’s personal history, and on the psychiatric reports that are now available in this case, it seems clear that he has been struggling with bipolar disorder with psychotic features for many years, and that during the time period of the conspiracy he was undergoing that struggle without the benefit of any mood stabilizing or anti-psychotic medications. It is anticipated that the defense will present testimony from psychiatric experts that his illness would have substantially impaired his judgment and decision-making. In particular, during manic phases Amodeo would have been prone to engage in reckless and irresponsible behavior with an unrealistic, and even psychotic, understanding of the world around him. The experts are expected to testify that any approbation and encouragement by persons Amodeo perceived to be authority figures would have further catalyzed his mania and potentially led to even more irresponsible decision-making. The psychiatrists are also expected to identify specific instances in videotaped meetings and conferences in which the manic manifestations of Amodeo’s illness are clearly demonstrated.

When Amodeo first became involved with Mirabilis and Presidion Corporation, he had at least a partial understanding of the nature of his illness, and tried to take steps to protect himself and his family from repeating the sort of conduct that had led to his first incarceration. One of the striking ironies of this case is that Amodeo actually went to extraordinary lengths to surround himself with employees and business advisors who would rein in his worst tendencies, including a psychiatrist, Dr. Pollack, a prominent forensic accountant, Holtz, experts on Sarbanes-Oxley such as Hailstones and Curry, and several attorneys, including Berman and Beyer. As reflected in the videotaped meetings, some of these individuals expressly identified their relationship with Amodeo in doctor-patient terms, and there is a clear sense conveyed throughout the videotaped meetings that Amodeo is a brilliant but unstable business strategist who must be protected from his manic tendencies. However, instead of protecting Amodeo and Mirabilis, the involvement of the various experts appears to have had the reverse effect. By standing silent and even encouraging Amodeo in his self-destructive behavior, the so-called experts actually acted as enablers, helping to convince Amodeo that nothing would stand in the way of the realization of his Capital Genesis Plan.

One of the most striking examples of this extraordinary lapse in professional responsibility is the legal advice that was provided to Amodeo by attorney Berman and his law firm. On two separate occasions, in early 2005 and early 2006, Berman's firm was tasked with providing Amodeo with a legal memorandum concerning potential liability for unpaid payroll taxes. On both occasions, the legal memorandum that was produced did not contain a single reference to potential criminal exposure that would

result as a consequence of the willful nonpayment of payroll taxes.⁷⁶ While this omission might have been understandable in early 2005, at a time when Amodeo had not yet embarked upon the PBS Plan, it is indefensible with respect to early 2006, in the wake of a full six months of the nonpayment of millions of dollars of PBS payroll taxes.

Of course, there is an underlying absurdity to the proposition that experienced professionals like those on staff at Mirabilis would need a legal memorandum to understand that diverting trust fund taxes is unethical and improper, even in the absence of any explicit understanding about criminal penalties. Any competent, responsible layperson could probably arrive at the same conclusion without benefit of counsel. However, Amodeo was neither completely competent nor completely responsible, making the stunning silence from his advisors, the people he depended on to establish boundaries for his behavior, all the more disastrous.

Even more absurd is the fact that the purported experts actually claimed to *rely on Amodeo* in making these same judgments. One of the most poignant moments in the collection of videotape recordings can be found in the April 18, 2006 Mirabilis Chairman's Finance Meeting, when Holtz, the dean of forensic accountants, mumbles that Amodeo thinks they are "well insulated" with regard to their legal exposure for unpaid payroll taxes. As incredible as it may seem, Holtz was purporting to rely on the sage judgment of Amodeo, the disbarred manic depressive ex-felon, with regard to the single most important legal issue facing Mirabilis. Of course, in a sense Holtz *was*

⁷⁶ The fact that the 2006 Wildermuth memorandum contains a reference to potential criminal liability for disobeying a direct IRS order to segregate payroll tax trust funds actually only makes matters worse, because it can be construed as negatively conveying the impression that, short of disobeying an express order from the IRS (or filing a fraudulent return), there are no criminal penalties for the simple nonpayment of payroll taxes.

relying on Amodeo, just not for sound legal advice. Holtz, like Vanderburg and Baiers, needed Amodeo, someone who in Holtz' words would "reach across the world," to take the risks that he was unwilling to take on his own.

The presence of the purported experts also had an obvious effect on the handling of the case by IRS Revenue Agent Berkowitz. It is highly unlikely that Revenue Agent Berkowitz would have shown the forbearance she demonstrated in this case, for over nearly two years and despite millions of dollars in escalating payroll tax deficiencies, if not for the involvement of highly respected figures such as forensic accountant Holtz, ex-CID Chief Marerro and the other attorneys and accountants who were involved in various capacities with Mirabilis and with the ongoing IRS audit negotiations. They provided an imprimatur of legitimacy to the ongoing negotiations upon which Revenue Agent Berkowitz no doubt relied in making the decision not to simply shut down the business, or at the very least, to require the segregation of the payroll trust funds into a separate bank account under I.R.C. § 7512 pending payment of the funds to the IRS. Revenue Agent Berkowitz would never have acted in this manner simply on the word of Amodeo, a disbarred attorney with a prior federal conviction for fraud. The fact that she did show such forbearance only served to further catalyze Amodeo's delusional behavior, as he truly believed, particularly following the apparent success of the Sunshine Companies Plan, that the government itself would accede to his wishes.

For the foregoing reasons, it is respectfully submitted that Amodeo qualifies for a downward departure based on the fact that his diminished capacity substantially contributed to the commission of the offense. It is hard to imagine a way in which this bizarre offense could have occurred *without* Amodeo's mental illness. His mania and

associated psychotic features so shaped his view of his own destiny, so relentlessly drove him toward the realization of his delusions, that without the bipolar condition he would have been like a train with no engine and no tracks. Amodeo's importance to the success of the overall enterprise lay precisely in his mania, his willingness to take positions that his associates were too circumspect to publicly adopt; to take extraordinary risks while his associates stood at a safer distance, assiduously avoiding frank discussions of the unpaid payroll taxes and endlessly restructuring transactions, often *ex post facto*, in order to better shield themselves from potential liability. The catastrophic result simply provided the obvious answer to a loaded question -- what would happen if millions of dollars of taxpayer money was entrusted to a man with a brain disorder that compelled him to take extraordinary financial risks in pursuit of a messianic vision, and who was surrounded by people who, for their own reasons, encouraged him in his psychotic delusions?

Non-Guidelines Sentence

The U.S. Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005) has once again freed District Court Judges to consider non-guidelines factors in fashioning a reasonable sentence. The U.S. Sentencing Guidelines are now advisory and appellate review of sentencing decisions is limited to determining whether they are reasonable. The abuse of discretion standard now applies to appellate review of sentencing decisions, regardless of whether the sentence is inside or outside the guideline range. *Gall v. United States*, 128 S. Ct. 586, 596 (2007). If the sentence is outside the guideline range, the appellate court may not apply a presumption of unreasonableness. The appellate court may consider the extent of the deviation, but must give due deference

to the district court's decision that the §3553(a) factors, on a whole, justify the extent of the variance. The fact that the appellate court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court.

Section 3553(a) lists seven factors that a sentencing court must consider. These factors include (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the advisory guideline range; (5) any pertinent policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities; and (7) the need to provide restitution to any victims of the offense.

This case presents such a unique set of circumstances that it compels the question whether it is most appropriately dealt with on a non-guidelines basis. The crimes could not have been committed in the absence of an extraordinary combination of circumstances – Amodeo's brain disorder, his being granted access to millions of dollars of tax funds, the professionally irresponsible behavior of many of the lawyers and accountants who were advising him, and the forbearance of the IRS in the face of rapidly mounting payroll tax deficiencies. Should the Court simply rely on guideline criteria such as the amount of loss, etc., to determine just punishment and adequate deterrence, or does it make more sense to acknowledge the bizarre nature of the crime and the unusual

psychological profile of the individual who is being judged by the Court, and try to fashion a non-guidelines sentence?

If Amodeo is properly medicated and supervised, and if he is prohibited from taking on positions of public or private financial trust, there is good reason to believe that he could lead a law-abiding and even socially productive life, and could have a reasonable prospect of paying back at least some of the loss in this case. Of course, any non-prison component to his sentence should include a lengthy period of probation or supervised release, and Amodeo should be required to receive ongoing mental treatment and comply with his medication regime.

Respectfully submitted this 4th day of May, 2009.

s/Kenton V. Sands

Co-Counsel for Defendant

Fla. Bar # 0788708

SANDS WHITE & SANDS, P.A.

760 White Street

Daytona Beach, Florida 32114

Phone: (386) 258-1622

Fax: (386) 238-3703

E-mail: kent@sandswhitesands.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: I. Randall Gold, Assistant U.S. Attorney, Suite 300, 501 W. Church Street, Orlando, Florida, 32805.

s/Kenton V. Sands
Co-Counsel for Defendant
Fla. Bar # 0788708
SANDS WHITE & SANDS, P.A.
760 White Street
Daytona Beach, Florida 32114
Phone: (386) 258-1622
Fax: (386) 238-3703
E-mail: kent@sandswhitesands.com