

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) CRIMINAL NO. _____)
)
 BDO SEIDMAN, LLP, a New York)
 Limited Liability Partnership,)
)
 Defendant.)

PRETRIAL DIVERSION AGREEMENT

It appearing that you are reported to have committed an offense against the United States beginning in or about October 1995 and continuing to and including January 8, 1998, in violation of Title 18, United States Code, Section 4, in that you are reported to have engaged in a misprision of a felony as set forth in the subject Information attached hereto and incorporated by reference as Exhibit A.

Upon accepting responsibility for your behavior as set forth in the "Stipulation of Facts" and by your authorized signature on this Agreement, it appearing, after an investigation of the offense, that the interest of the United States and your own interest and the interests of justice will be served by the following procedure, therefore:

On the authority of the United States Attorney for the Southern District of Illinois and the Criminal Division, U.S. Department of Justice, prosecution in the Southern District of Illinois for this offense shall be deferred for a period of 18 months or the last payment, whichever is later, from this date, provided you abide by the following conditions and the requirements of the program set out below.

Should you violate the conditions of this supervision, the government may revoke or modify any conditions of this pretrial diversion program or change the period of supervision which shall in no case exceed

18 months or the last payment date, whichever is later. The government may release you from supervision at any time. The government may at any time within the period of your supervision initiate prosecution for this offense against BDO should you violate the terms of this Agreement as set forth hereinbelow. In this case, the government will furnish you with notice specifying the conditions of the Agreement which you have violated. The government may extend your term of supervision if you fail to comply with all conditions.

If, upon completion of your period of supervision, a pretrial diversion report is received to the effect that you have complied with all the rules, regulations and conditions above-mentioned, no criminal prosecution for the offense set out above will be instituted in the Southern District of Illinois or in the Eastern District of Missouri, and the Information will be discharged. The undersigned Assistant United States Attorneys represent that they have been authorized by the United States Attorney's Office for the Eastern District of Missouri to make such representation on its behalf.

This agreement and all related documents may be released by the United States Attorney's Office. BDO hereby waives all compliance requirements of the Privacy Act of 1974 (Title 5, U.S.C., Section 552a) with regard to the above-described offense.

BDO is aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information or in bringing a defendant to trial. BDO hereby requests that the United States Attorney's Office for the Southern District of Illinois defer any prosecution of it for violation of Title 18, United States Code, Section 4, for a period of 18 months, or the date of final payment, whichever is later, and to induce the government to defer such prosecution BDO agrees and consents that any delay from the date of this Agreement to the date of the initiation of the prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at BDO's request and BDO waives any defense to such

prosecution on the ground that such delay operated to deny BDO's rights under Rule 48(b) of the Federal Rules of Criminal Procedure or to bar the prosecution by reason of the running of the statute of limitations for a period of 18 months, or the date of final payment, whichever is later, which is the period of this Agreement.

CONDITIONS OF PRETRIAL DIVERSION

No Illegal Conduct

1. BDO shall not violate any law (federal, state or local).

Cooperation

2. Disclosure Of Documents To Which The Attorney-Client Privilege Attaches: In order to aid the Government in any continuing aspects of its investigation against other third parties and in the event that the Government deems it necessary to its investigation and issues a subpoena, BDO agrees to produce additional documents in its possession created between January 1, 1990, and October 6, 1999, relating to its provision of professional services to James R. Gibson and Gibson-related companies, that have been withheld from the Government on the ground of attorney-client privilege. In making any such production of additional documents to assist the Government's enforcement efforts, BDO neither expressly nor implicitly waives its right to assert any privilege with respect to the produced documents or the subject matters thereof that is available under law against non-parties to this Agreement. The privileged materials and information provided pursuant to this Agreement are for the limited purpose of cooperation in the criminal investigations of third-parties, which investigations the Government acknowledges are confidential and for purposes of any trial.

3. Encouraging Cooperation Of Employees: BDO will use its best efforts to make available for interviews, or for testimony, present or former BDO partners and employees as requested by the government. BDO's Chairman agrees to instruct these partners and employees to cooperate fully and completely with the

government. BDO will provide qualified custodians of records to introduce into evidence documents produced by BDO.

4. General Cooperation: BDO agrees to respond truthfully and completely, through its counsel or other qualified representative, to any questions or inquiries directed to BDO relating to this investigation. BDO will assemble and organize all documents, records, or other tangible evidence in BDO's possession, custody, or control, as requested by the government.

Payment To The United States

5. BDO agrees to pay a total of Sixteen Million Dollars (\$16,000,000.00) into a fund established by the Government for the victim restitution of former clients of SBU. The payment of this money into the fund shall not constitute an adjudication of any individual claim asserted or to be asserted by any victim. The payment shall be made according to the following schedule: BDO will pay Four Million Dollars (\$4,000,000.00) within 30 days of acceptance of this agreement by the U.S. District Court. BDO will make a second payment to the Government of Four Million Dollars (\$4,000,000.00) by April 30, 2002. BDO will make a final payment to the Government of Eight Million Dollars (\$8,000,000.00) by June 30, 2002. BDO may pre-pay the monetary payments as called for in this paragraph.

Any victims who receive money from the government's restitution fund that was directly funded by BDO must sign a release that would prohibit them from filing or pursuing a previously filed claim against BDO for any of BDO's activities in relation to Gibson or Gibson-related companies. The release shall be in a form agreed to by the Government and BDO. To the extent that any money is not claimed by victims within four (4) years, the remaining money shall be distributed to the United States Postal Inspection Service Consumer Fraud Awareness Fund Account, said monies to be used to support activities which facilitate and

support the prevention and investigation of frauds against the public.

Retention Of Records

6. BDO, its partners, representatives, agents and employees, shall maintain written and electronically maintained records for a period of three (3) years from the date of this Agreement that relate in any manner whatsoever to BDO's provision of professional services to James R. Gibson and any Gibson-related company.

PROMISES BY THE UNITED STATES OF AMERICA

7. Non-Prosecution of BDO: In consideration of the foregoing undertakings by BDO, the United States Attorney's Offices for the Southern District of Illinois and the Eastern District of Missouri will not file any charges, other than that provided herein, against BDO, any of its current partners, principals or employees, or affiliates for any actions relating in any way to the provision of professional services to James R. Gibson and Gibson-related companies. The undersigned Assistant United States Attorneys represent that they have been authorized by the United States Attorney's Office for the Eastern District of Missouri to make such representation on its behalf.

VIOLATION OF CONDITIONS OF PRETRIAL DIVERSION

8. It shall be a violation of the conditions of pretrial diversion for BDO to fail to abide by or fully perform any of the promises set forth in paragraphs 1 to 6 above, during the eighteen (18) months following the signing of this Agreement or the date of the last payment, whichever date is later, and the Agreement shall expire on that date, with the exception that BDO's undertakings with respect to paragraph 5 of this Agreement will be binding for the time period set forth in that paragraph.

9. In the event that the government believes that BDO has violated the conditions of pre-trial diversion, the government shall provide BDO with written notice of such breach, and BDO shall have thirty (30) days therefrom in which to respond and cure the breach.

10. In the event that the government believes that BDO has violated the conditions of pre-trial diversion, and that BDO has not adequately cured the breach, the government shall initiate proceedings in the District Court to determine whether a violation has occurred.

WAIVER OF STATUTE OF LIMITATIONS

11. Upon a finding by the Court of a violation of any term in this Agreement, BDO agrees to toll the statute of limitations for eighteen (18) months, from the date the violation is determined to have occurred, for any federal criminal offense that relates to the provision of professional services to James R. Gibson and Gibson-related companies. BDO expressly acknowledges that this waiver of statute of limitations is knowing and voluntary and in express reliance on the advice of counsel. BDO agrees that in the event that the criminal prosecution is reinstated pursuant to the terms of this agreement, that it shall not raise as an affirmative defense or other legal argument, the statute of limitations as a bar to prosecution. BDO agrees that the statute of limitations is not a jurisdictional bar to prosecution and may be waived pursuant to law.

REINSTATEMENT OF PROSECUTION

12. Should the government and district court declare this Agreement violated,
 - a. The government will no longer be bound by its promises concerning non-prosecution and

will be free to bring a prosecution against BDO, or any entity or person, for any federal offense.

b. The government will be free to use any information provided by BDO under the terms of this Agreement in any criminal prosecution the government may bring against it, and BDO will be unable to assert any constitutional or statutory right of privilege, or claim that the information is inadmissible because of Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other statute or rule with the exception stated hereinbelow.

MISCELLANEOUS PROVISIONS

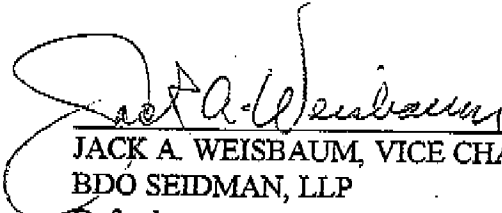
13. Preservation Of Rights Under Federal Rule Of Evidence 408: Nothing stated in this Agreement is intended to or shall operate as an admission or a waiver of any rights BDO may have pursuant to Fed.R.Evid. 408.

14. Authority: Each of the individuals and attorneys executing this Agreement on behalf of BDO and the Government warrants and represents that he or she has been duly authorized and empowered to execute this Agreement on behalf of each such respective party. Jack A. Weisbaum, Vice Chairman of defendant BDO Seidman, LLP, warrants and represents that he has been authorized by the Chairman of BDO Seidman, LLP to execute this Agreement on behalf of defendant.

15. Effective Date: This pre-trial diversion agreement becomes effective upon acceptance by the

U.S. Office of Probation and upon written notice to BDO.

BDO hereby states that the above has been read and explained to BDO. BDO understands the conditions of its pretrial diversion and agrees that it will fully comply.



JACK A. WEISBAUM, VICE CHAIRMAN
BDO SEIDMAN, LLP
Defendant.




MIRIAM F. MIQUELON
Assistant United States Attorney




WILLIAM L. GARDNER
Attorney for Defendant



HAL GOLDSMITH
Assistant United States Attorney



STEPHEN L. HILL, JR.
Attorney for Defendant



United States Probation Officer

Date: April 12, 2002

Date: April 12, 2002

representatives, agents and employees directly or through any corporation, subsidiary, division, or other entity. SAMS acknowledges that it was and is a wholly owned subsidiary of Sears. Any and all references in this Agreement to Sears shall also be a reference to SAMS.

Should you violate the conditions of this supervision, the government may revoke or modify any conditions of this pretrial diversion program or change the period of supervision which shall in no case exceed 18 months or the last payment date, whichever is later. The government may release you from supervision at any time. The government may at any time within the period of your supervision initiate prosecution for this offense against SAMS and/or Sears should you violate the terms of this Agreement as set forth hereinbelow. In this case, the government will furnish you with notice specifying the conditions of the Agreement which you have violated. The government may extend your term of supervision if you fail to comply with all conditions.

If, upon completion of your period of supervision, a pretrial diversion report is received to the effect that you have complied with all the rules, regulations and conditions above-mentioned, no criminal prosecution for the offense set out above will be instituted in this District or elsewhere, and the Information will be discharged.

This agreement and all related documents may be released by the United States Attorney's Office. Sears hereby waives all compliance requirements of the Privacy Act of 1974 (Title 5, U.S.C., Section 552(a)) with regard to the above-described offense.

SAMS and Sears are aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information or in bringing a defendant to trial. Sears hereby requests that the United States Attorney's Office for the Southern District of Illinois defer any prosecution of it for violation

of Title 18, United States Code, Section 1341, for the period of 18 months, or the date of final payment, whichever is later, and to induce the government to defer such prosecution SAMS and Sears agree and consent that any delay from the date of this Agreement to the date of the initiation of the prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at SAMS' and/or Sears' request and SAMS and Sears waive any defense to such prosecution on the ground that such delay operated to deny SAMS' and/or Sears' rights under Rule 48(b) of the Federal Rules of Criminal Procedure or to bar the prosecution by reason of the running of the statute of limitations for a period of 18 months, or the date of final payment, whichever is later, which is the period of this Agreement.

CONDITIONS OF PRETRIAL DIVERSION

No Illegal Conduct

1. SAMS and/or Sears shall not violate any law (federal, state or local).

Cooperation

2. Disclosure Of Documents To Which The Attorney-Client Privilege Attaches: In order to aid the Government in any continuing aspects of its investigation against other third parties and in the event that the Government deems it necessary to its investigation and issues a subpoena, SAMS and/or Sears agree to produce additional documents in their possession created between January 1, 1994, and March 1, 1999, relating to their relationship with Exide, and their advertising, labeling, promotion, offering for sale, sale or distribution of DieHard brand batteries that have been withheld from the Government on the ground of attorney-client privilege. In making any such production of additional documents to assist the Government's enforcement efforts, SAMS and/or Sears neither expressly nor impliedly waive their rights to assert any privilege with respect to the produced documents or the subject matters thereof that is available under law against non-parties to this Agreement. The privileged materials and information provided pursuant to this

Agreement are for the limited purpose of cooperation in the criminal investigations of third-parties, which investigations the Government acknowledges are confidential and for purposes of any trial.

3. SAMS and/or Sears will not waive attorney-client privilege, attorney work product privilege, or any other applicable state or federal privilege with respect to its relationship with Assix International, Inc., the termination of that relationship, or Sears' sale of the AccuBalance service.

4. Encouraging Cooperation Of Employees: SAMS and/or Sears will use their best efforts to make available for interviews, or for testimony, present or former Sears officers, directors, and employees as requested by the government. SAMS and/or Sears and Sears' Chairman agree to instruct these officers, directors and employees to cooperate fully and completely with the government. SAMS and/or Sears will provide qualified custodians of records to introduce into evidence documents produced by SAMS and/or Sears.

5. General Cooperation: SAMS and/or Sears agree to respond truthfully and completely, through its counsel or other qualified representative, to any questions or inquiries directed to SAMS and/or Sears relating to this investigation. SAMS and/or Sears will assemble and organize all documents, records, or other tangible evidence in Sears' possession, custody, or control, as requested by the government.

Payment To The United States

6. SAMS and/or Sears and the government do not have evidence that specific persons suffered any actual damages traceable to this offense conduct, except those persons who have already exercised their warranty rights to have Sears provide new batteries. Therefore, SAMS and/or Sears are not making restitution as would be appropriate under 18 U.S.C. 3663 and 3663A. SAMS and/or Sears shall make a monetary payment in this matter in the amount of Sixty-Two Million Six Hundred Thousand Dollars (\$62,600,000.00), to be paid according to the following schedule. SAMS and/or Sears will pay Ten Million

Dollars (\$10,000,000.00) within 30 days of approval by U.S. Probation. SAMS and/or Sears will make a second payment to the Government of Ten Million Dollars (\$10,000,000.00) by January 15, 2003. SAMS and/or Sears will make a third payment to the Government of Ten Million Dollars (\$10,000,000.00) by January 15, 2004. SAMS and/or Sears will make a fourth payment to the Government of Ten Million Dollars (\$10,000,000.00) by January 15, 2005. SAMS and/or Sears will make a fifth payment to the Government of Ten Million Dollars (\$10,000,000.00) by January 15, 2006. SAMS and/or Sears will make a sixth and final payment of Twelve Million Six Hundred Thousand Dollars (\$12,600,000.00) by January 15, 2007. SAMS and/or Sears may pre-pay the monetary payments as called for in this paragraph. In the event that the District Court does not approve this Agreement, any payments made pursuant to this Agreement shall be refunded.

The payment shall be applied as follows:

a. Fifteen Million Dollars (\$15,000,000.00) to the United States Postal Inspection Service Consumer Fraud Awareness Fund account, said monies to be used to support activities which facilitate and support the prevention and investigation of frauds against the public. The Chief Postal Inspector will report yearly to the Court the status of all disbursements from these funds. The Fifteen Million Dollars (\$15,000,000.00) will be paid out of the first two annual installments.

b. Forty Seven Million Six Hundred Thousand Dollars (\$47,600,000.00) to the United States Treasury.

Sears Advertising Practices

7. Cease And Desist Agreement: SAMS and/or Sears, its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, labeling, promotion, offering for sale, sale or distribution of DieHard brand batteries, shall not:

a. Make any material statements or representations, directly or by implication, concerning the performance of DieHard brand batteries unless such statements or representations are true and unless, at the time the statements or representations are made, Sears possesses and relies on a reasonable basis for such statements or representations, which shall consist of competent and reliable tests consistent with industry standards and norms for the product, or other competent and reliable evidence that substantiates such statements or representations.

b. Materially misrepresent in connection with the advertisement of DieHard brand batteries, and/or any particular DieHard battery product line, or in any other manner, directly or by implication, the existence, purpose, content, validity, result, interpretation or conclusion of any test, experiment, demonstration, study, survey, report, or research; and

c. Make any material misrepresentation about the quality or features of DieHard brand batteries, including misrepresenting, directly or by implication, that DieHard brand batteries possess any technological advancements and/or proprietary features that they do not in fact possess.

8. Retention Of Records: SAMS and/or Sears, their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, labeling, promotion, offering for sale, sale or distribution of DieHard brand batteries, shall maintain written records for a period of three (3) years:

a. Of all advertisements and promotional materials that make any representation about the quality or features of any DieHard brand battery;

b. Of all materials that were relied upon in making any claim or representation in advertising, sales materials, promotional materials, or post purchase materials, concerning the performance characteristics of any DieHard brand battery; and

