

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

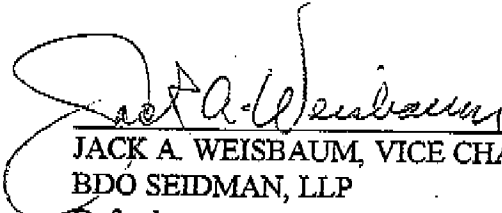
13. Preservation Of Rights Under Federal Rule Of Evidence 408: Nothing stated in this Agreement is intended to or shall operate as an admission or a waiver of any rights BDO may have pursuant to Fed.R.Evid. 408.


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.

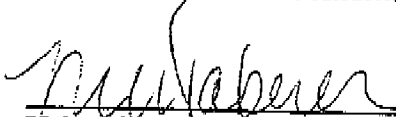
  
\_\_\_\_\_  
JACK A. WEISBAUM, VICE CHAIRMAN  
BDO SEIDMAN, LLP  
Defendant.

  
\_\_\_\_\_  
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

c. Of all test reports, studies, surveys, or demonstrations in Sears' possession that contradict, qualify, or call into question any claim or representation in advertising, sales materials, promotional materials, or post purchase materials disseminated by Sears, or by any advertising agency on behalf of Sears, concerning the performance characteristics of any DieHard brand battery.

9. For purposes of paragraphs 7 and 8, the term "DieHard brand battery" means automotive, lawn and garden, marine, or motorcycle batteries. The phrase "competent and reliable test" means a test in which persons with skill and expert knowledge in the field to which the test pertains, conduct the test and evaluate its results in an objective manner, using test procedures that ensure accurate and reliable results. Such tests must be truly and fully representative of expected consumer usage.

10. SAMS and/or Sears shall deliver a document setting forth the substance of paragraphs 7, 8, and 9 to each of its operating divisions, and to each of its officers, agents, representatives and employees engaged in or connected with the preparation and placement of advertisements for DieHard brand batteries.

#### **PROMISES BY THE UNITED STATES OF AMERICA**

11. Non-Prosecution of SAMS and/or Sears: In consideration of the foregoing undertakings by SAMS and/or Sears, the Government will not charge SAMS, Sears, their predecessors, successors, or assigns or any Sears subsidiaries, divisions or affiliates. The government has informed SAMS and/or Sears that it will not seek to charge any former or current officers or employees of SAMS and/or Sears with any federal offenses relating in any way to the sale of DieHard automotive batteries manufactured by Exide Corporation from 1994 through 1999 or relating in any way to Sears' relationship with Assix International, Inc., the termination of that relationship, or Sears' sale of the AccuBalance service.

12. Release Of Civil Liability: By entering into this Agreement, the United States has released any and all civil liability arising out of the sale of batteries and the Sears/Assix business transaction as

investigated by the government that SAMS and/or Sears, their predecessors, successors, or assigns; any Sears subsidiaries, divisions or affiliates; any current or former officers or employees of Sears, their subsidiaries, divisions, or affiliates may have incurred at any time as a result of their conduct in the sale of DieHard automotive batteries produced by Exide Corporation or in Sears' relationship with Assix International, Inc., the termination of that relationship, or Sears' sale of the AccuBalance service.

**VIOLATION OF CONDITIONS OF PRETRIAL DIVERSION**

13. It shall be a violation of the conditions of pretrial diversion for SAMS and/or Sears to fail to abide by or fully perform any of the promises set forth in paragraphs 1 to 10 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 SAMS' and/or Sears' undertakings with respect to paragraph 6 of this Agreement will be binding for the time period set forth in that paragraph.

14. In the event that the government believes that SAMS and/or Sears respectively have violated the conditions of pre-trial diversion, the government shall provide SAMS and/or Sears respectively with written notice of such breach, and SAMS and/or Sears respectively shall have thirty (30) days therefrom in which to respond and cure the breach.

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

MISCELLANEOUS PROVISIONS

18. 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 SAMS and/or Sears may have pursuant to Fed.R.Evid. 408.

19. Authority: Each of the attorneys executing this Agreement on behalf of SAMS and/or Sears 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.

20. Effective Date: This pre-trial diversion agreement becomes effective upon acceptance by the U.S. Office of Probation and upon written notice to SAMS and/or Sears and in no case earlier than December 28, 2001.

SAMS and Sears hereby state that the above has been read and explained to SAMS and Sears. SAMS and Sears understand the conditions of its pretrial diversion and agrees that they will comply.

Anastasia D. Kelly 12/14/01  
ANASTASIA D. KELLY  
Director of Sears Automotive Marketing  
Services, Inc.

Miriam F. Miquelon  
MIRIAM F. MIQUELON  
Assistant United States Attorney

F. Joseph Warin  
F. JOSEPH WARIN  
Gibson, Dunn and Crutcher LLP

Hal Goldsmith  
HAL GOLDSMITH  
Assistant United States Attorney

Lanny A. Breuer / FJB  
LANNY A. BREUER  
Covington and Burling

\_\_\_\_\_  
United States Probation Officer

Date: 12/13/01

Date: \_\_\_\_\_

Norman R. Smith, General  
Division Chief 12/13/01

CLOSED, FRC

**U.S. District Court  
Southern District of Illinois (East St. Louis)  
CRIMINAL DOCKET FOR CASE #: 3:01-cr-30184-DRH-ALL**

Case title: USA v. Sears Automotive

Date Filed: 12/27/2001

Assigned to: Judge David R Herndon

**Defendant****Sears Automotive Marketing Services  
Inc (1)***TERMINATED: 10/08/2003*represented by **F. Joseph Warin**

Gibson, Dunn et al.

1050 Connecticut Avenue, NW

Washington, DC 20036-5306

202-887-3609

Fax: 202-530-9608 fax

*TERMINATED: 10/08/2003**LEAD ATTORNEY**ATTORNEY TO BE NOTICED**Designation: Retained***Frederick J. Hess**

Lewis, Rice et al.

Generally Admitted

325 South High Street

Belleville, IL 62220

618-234-8636

Email: FHess@lewisrice.com

*TERMINATED: 10/08/2003**LEAD ATTORNEY**ATTORNEY TO BE NOTICED**Designation: Retained***Pending Counts**

None

**Disposition****Highest Offense Level (Opening)**

None

**Terminated Counts**18:1341, 2 & 3551 FRAUDS AND  
SWINDLES; mail fraud

(1)

**Disposition**Upon a motion by defendant, the Court  
dismisses the information against Sears  
Automotive Marketing Services Inc.

**Highest Offense Level (Terminated)**

Felony

**Complaints**

None

**Disposition**

**Plaintiff**

USA

represented by **Hal Goldsmith**  
 Assistant U.S. Attorney - St. Louis  
 Generally Admitted  
 111 South Tenth Street  
 20th Floor  
 St. Louis, MO 63102  
 314-539-2200  
 Fax: 314-539-2309  
 Email: Hal.Goldsmith@usdoj.gov  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Miriam F. Miquelon**  
 U.S. Attorney  
 Generally Admitted  
 9 Executive Drive  
 Suite 300  
 Fairview Heights, IL 62208  
 618-628-3700  
*TERMINATED: 10/14/2003*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
12/27/2001	1	WAIVER OF INDICTMENT by Sears Automotive (myz) (Entered: 12/27/2001)
12/27/2001	2	INFORMATION by USA Sears Automotive (1) count(s) 1 (myz) (Entered: 12/27/2001)
12/27/2001	3	MINUTES OF INITIAL APPEARANCE of defendant (pab): before Judge David R. Herndon; initial appearance of Sears Automotive; Attorney F. Joseph Warin, Frederick J. Hess present as to Sears Automotive . Pretrial diversion agreement entered. Interest on monetary payment waived (cc: all counsel) Court Reporter Vicki Kasten (Keefe) (myz) (Entered: 12/27/2001)
12/27/2001	4	PRETRIAL DIVERSION AGREEMENT by defendant Sears Automotive (myz) (Entered: 12/27/2001)

12/27/2001	5	STIPULATIONS of fact as to Sears Automotive (myz) (Entered: 12/27/2001)
02/06/2002		TRANSCRIPT of hearing on pretrial diversion agreement; held 12/27/01 as to defendant Sears Automotive ; 1 volume(s) Court Reporter: Vicki Kasten (Keefe) (dlr) (Entered: 02/08/2002)
09/15/2003	6	APPEARANCE for defendant Sears Automotive by Attorney Frederick J. Hess (tjh) (Entered: 09/16/2003)
09/15/2003	7	MOTION for order to discharge the information by Sears Automotive (tjh) (Entered: 09/16/2003)
10/08/2003	8	REPLY (RESPONSE) by plaintiff USA to defendant's motion for order to discharge the information [7-1] (car) (Entered: 10/09/2003)
10/08/2003	9	ORDER by Judge David R. Herndon granting defendant's motion to discharge the information [7-1]; dismissing Count 1 against defendant Sears Automotive (1) and dismissing the Information filed 12/27/01 (cc: all counsel) (car) (Entered: 10/14/2003)
10/14/2003		SUBSTITUTION of Attorney Hal Goldsmith replacing attorney Miriam F. Miquelon for USA (per telephone conversation with Hal Goldsmith on 10/14/03) (car) (Entered: 10/14/2003)
03/16/2006		File Sent to FRC on 3/22/05: accession number 021-04-0293, box number 73 of 73, location 326654-326726SAN. (skp, ) (Entered: 03/16/2006)

PACER Service Center			
Transaction Receipt			
04/25/2006 12:53:08			
PACER Login:	us0838	Client Code:	
Description:	Docket Report	Search Criteria:	3:01-cr-30184-DRH
Billable Pages:	2	Cost:	0.16

Remote access to documents filed in criminal cases prior to 11/1/04 is not available

### Select A Case

**This person is a party in 3 cases.**

3:02-cr-30040-GPM USA v. BDO Seidman filed 04/12/02 closed 08/27/03

3:02-cr-30040-GPM-1 BDO Seidman filed 04/12/02 closed 04/12/02

3:99-cv-00839-DRH Stone v. Gibson, et al filed 11/04/99 closed 05/01/00

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<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
04/25/2006 12:55:46			
<b>PACER Login:</b>	us0838	<b>Client Code:</b>	
<b>Description:</b>	Search	<b>Search Criteria:</b>	Last Name: bdo
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08

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CLOSED

**U.S. District Court  
Southern District of Illinois (East St. Louis)  
CRIMINAL DOCKET FOR CASE #: 3:02-cr-30040-GPM-ALL**

Case title: USA v. BDO Seidman

Date Filed: 04/12/2002

Assigned to: Chief Judge G. Patrick  
Murphy

**Defendant**

**BDO Seidman (1)**

*TERMINATED: 08/27/2003*

represented by **Amy Conway**

Morgan, Lewis et al. - Washington DC  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
202-739-3000  
Fax: 202-739-3001 fax  
*TERMINATED: 08/27/2003*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*  
*Designation: Retained*

**Mark Srere**

Morgan, Lewis et al. - Washington DC  
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**William Gardner**



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**Michael Thompson**  
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*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
04/12/2002	1	WAIVER OF INDICTMENT by BDO Seidman (tjh) (Entered: 04/16/2002)
04/12/2002	2	INFORMATION by USA BDO Seidman (1) count(s) 1 (tjh) (Entered: 04/16/2002)
04/12/2002	3	MINUTES OF PRETRIAL DIVERSION AGREEMENT HEARING (lmc): before Chief Judge G. P. Murphy dft BDO Seidman arraigned; Attorney William Gardner, Steve Hill, Amy Conway, Mark Srere present as to BDO Seidman ; court finds pretrial diversion is appropriate and approves same as to defendant BDO Seidman (cc: all counsel) Court Reporter Molly Clayton (tjh) Modified on 08/28/2003 (Entered: 04/16/2002)
04/12/2002	4	PRETRIAL DIVERSION (PLEA) Agreement as to BDO Seidman (tjh) (Entered: 04/16/2002)
04/12/2002	5	STIPULATIONS of fact as to BDO Seidman (tjh) (Entered: 04/16/2002)
04/12/2002	6	CERTIFICATE OF RESOLUTIONS OF BOARD OF DIRECTORS (MISCELLANEOUS document) for defendant BDO Seidman (tjh) (Entered: 04/16/2002)
04/12/2002	7	ORDER by Chief Judge G. P. Murphy placing defendant BDO Seidman



08/08/2003	18	MOTION for (order) release from Pretrial Diversion Supervision by BDO Seidman (scj) (Entered: 08/12/2003)
08/27/2003	19	ORDER by Chief Judge G. P. Murphy granting motion for (order) release from Pretrial Diversion Supervision [18-1] case dismissed as to BDO Seidman (1) count(s) 1. Upon review of BDO Seidman's Motion for release from pretiral diversion supervision, the Court finds that BDO has fully complied with all requirements of the Pretrial Diversion Agreement. Accordingly, the Court hereby releases BDO from pretrial diversion supervision and orders that the Information filed on 4/12/02 be dismissed with prejudice. See Order for specifics , case terminated as to BDO Seidman (cc: all counsel) (js) (Entered: 08/28/2003)
09/29/2005	20	ORDER: The Clerk is ORDERED to distribute accrued interest to the victims. See Order for specifics. Signed by Judge G. Patrick Murphy on 9/28/05. (lmc) (Entered: 09/29/2005)

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<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	3:02-cr-30040-GPM
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.24

CLOSED

**U.S. District Court  
Southern District of Illinois (East St. Louis)  
CRIMINAL DOCKET FOR CASE #: 3:02-cr-30040-GPM-1**

Case title: USA v. BDO Seidman

Date Filed: 04/12/2002

Assigned to: Chief Judge G. Patrick  
Murphy

**Defendant**

**BDO Seidman (1)**  
*TERMINATED: 08/27/2003*

represented by **Amy Conway**  
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**Pending Counts**

None

**Disposition**

**Highest Offense Level (Opening)**

None

**Terminated Counts**

18:4 WITHHOLDING  
INFORMATION ON A CRIME  
(1)

**Disposition**

Upon review of BDO Seidman's Motion for release from pretrial diversion supervision, the Court finds that BDO has fully complied with all requirements of the Pretrial Diversion Agreement. Accordingly, the Court hereby releases BDO from pretrial diversion supervision and orders that the Information filed on 4/12/02 be dismissed with prejudice.

**Highest Offense Level (Terminated)**

Felony

**Complaints**

None

**Disposition**

**Plaintiff**

USA

represented by **Hal Goldsmith**  
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04/12/2002	6	CERTIFICATE OF RESOLUTIONS OF BOARD OF DIRECTORS (MISCELLANEOUS document) for defendant BDO Seidman (tjh) (Entered: 04/16/2002)
04/12/2002	7	ORDER by Chief Judge G. P. Murphy placing defendant BDO Seidman

		on pretrial diversion supervision for a period of 18 months or the date of final payment, whichever is later, subject to the conditions set forth in the pretrial diversion agreement (cc: all counsel) (tjh) (Entered: 04/16/2002)
04/12/2002	8	PROBATION REPORT (SEALED document) for hearing on 4/12/02 (tjh) (Entered: 04/16/2002)
04/16/2002		TRANSCRIPT of Pretrial Diversion Agreement; held 4/12/02 as to defendant BDO Seidman ; 1 volume(s) Court Reporter: Molly Clayton (tjh) (Entered: 04/17/2002)
05/01/2002	9	ORDER by Chief Judge G. P. Murphy that the sums of \$4,000,000.00 be paid out of the Court registry and deposited into an interest-bearing account. The Clerk of Court and his deputies are to carry out this Order with dispatch (cc: all counsel) (scj) (Entered: 05/02/2002)
06/04/2002	10	ORDER by Chief Judge G. P. Murphy the deadline for the victims to return a signed waiver form is extended until 7/24/02. The restitution hearing remains set for 6/24/02 at 9:00 AM. The total amount of restitution owed to each victim by James R. Gibson, Marjorie G. Gibson & Jacquelyn M. Little will be determined at that time. See order for specifics (cc: all counsel) (myz) (Entered: 06/06/2002)
06/25/2002	11	MOTION by petitioners to modify the pretrial diversion agreement as to BDO Seidman (myz) (Entered: 06/28/2002)
06/28/2002	12	ORDER by Chief Judge G. P. Murphy denying motion to modify the pretrial diversion agreement [11-1] (cc: Thomas Ducey, all counsel & US Probation with copy of motion) (myz) Modified on 06/28/2002 (Entered: 06/28/2002)
07/16/2002	13	ORDER by Chief Judge G. P. Murphy in re the terms of the BDO Seidman pretrial diversion agreement filed 4/12/02, the US Probation Office is directed to send copies of this Order to each victim (cc: all counsel) (myz) (Entered: 07/16/2002)
07/22/2002	14	APPEARANCE for unknown Brenda Vaughn by Attorney John J. Allan (tjh) (Entered: 07/23/2002)
09/23/2002	15	Certified Copy of ORDER by Chief Judge G. P. Murphy (original located in 01-30005-GPM) that the Clerk of Court shall distribute said funds to the victims; exhibit A shall be placed UNDER SEAL in case 01-30005-GPM and not disclosed to anyone without further order of this court (cc: all counsel) (tjh) Modified on 09/26/2002 (Entered: 09/26/2002)
09/25/2002	16	ORDER by Chief Judge G. P. Murphy that the Clerk's Office is ordered to close the interest bearing account which was opened in response to the 5/1/02 order and transfer the funds to the Court's registry in order to facilitate immediate payment to the victims (cc: all counsel) (tjh) Modified on 09/26/2002 (Entered: 09/26/2002)
11/08/2002	17	MOTION (RESPONSE) by unknown Brenda Vaughn regarding motion to modify [11-1] (tjh) (Entered: 11/13/2002)

08/08/2003	18	MOTION for (order) release from Pretrial Diversion Supervision by BDO Seidman (scj) (Entered: 08/12/2003)
08/27/2003	19	ORDER by Chief Judge G. P. Murphy granting motion for (order) release from Pretrial Diversion Supervision [18-1] case dismissed as to BDO Seidman (1) count(s) 1. Upon review of BDO Seidman's Motion for release from pretiral diversion supervision, the Court finds that BDO has fully complied with all requirements of the Pretrial Diversion Agreement. Accordingly, the Court hereby releases BDO from pretrial diversion supervision and orders that the Information filed on 4/12/02 be dismissed with prejudice. See Order for specifics , case terminated as to BDO Seidman (cc: all counsel) (js) (Entered: 08/28/2003)
09/29/2005	20	ORDER: The Clerk is ORDERED to distribute accrued interest to the victims. See Order for specifics. Signed by Judge G. Patrick Murphy on 9/28/05. (lmc) (Entered: 09/29/2005)

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<b>Billable Pages:</b>	3	<b>Cost:</b>	0.24