

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :
 :
 -v- :
 :
 JACK KRONIS, :
 : 97-CR-
 Defendant. :
 _____ :

PLEA AGREEMENT

97 - CR - 0192 A

The defendant, JACK KRONIS, and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to waive indictment and to plead guilty to a One Count Felony Information charging him with a felony violation of Title 18, United States Code, Section 371 (Conspiracy), which carries a maximum possible sentence of 5 years imprisonment, a fine of \$7,932,354, or both, a mandatory \$50 special assessment and a term of supervised release of at least 2 years and up to 3 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that the costs of imprisonment (approx. \$1,910.17/mo.), community confinement (approx. \$1,186.25/mo.) and supervised release or probation (approx. \$217.18/mo.) may be imposed as part of the defendant's sentence.

In addition, should the defendant be placed in community confinement, such facility may assess the defendant up to 25% of the defendant's gross earnings, over and above any amount assessed by the Court and should the defendant be placed in home confinement, the cost in the Western District of New York is \$153.45 per month.

3. The defendant also understands that the Court may require restitution in the amount of \$3,966,177.00 to be paid as part of the sentence, pursuant to § 5E1.1 of the Sentencing Guidelines and 18 U.S.C. § 3663.

4. The defendant understands that, if it is determined that he has violated any of the terms and conditions of his term of supervised release, he may be required to serve in prison all or part of the term of supervised release, up to 2 years, without credit for time previously served on supervised release. Therefore, the defendant could serve a maximum term of imprisonment of 7 years, if the defendant violates a term of supervised release, and had been sentenced to the maximum term of incarceration. As a consequence, a prison term imposed for a violation of supervised

release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum (5 years) set forth in Paragraph 1 of this agreement.

II. SENTENCING GUIDELINES

5. The defendant understands that sentence in this action will be determined pursuant to the Sentencing Guidelines (Sentencing Reform Act of 1984).

FACTUAL BASIS

6. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty:

a) Between on or about July, 1990 and December, 1993, in the Western District of New York and elsewhere, the defendant, **JACK KRONIS**, conspired with Lorne Banks, Marshall Alexander ("Sandy") Reid, Walter Fantin, Howard Dick, Al Cohen, Irv Bielas, Thomas Laquer, Butch Kaplan, Brian Wilson, Robin Singer, Russell Bronson, Michael Hamley, Steve Milgram, Martin Seagel, Vito Tomasicchio and others known and unknown to devise a scheme to defraud and obtain money from various persons throughout the United States through various corporate entities known as "Eurocan Metals, Inc.", "Columbia Metals Corp.", "Walker Sales, Inc." and "The Sandstone Group".

b) At all times pertinent to the information, the defendant, **JACK KRONIS**, was employed as a "loader" for telemarketing companies known as Eurocan Metals Group, Inc. (Eurocan) and Columbia Metals Corp. (Columbia) which were located in Toronto, Ontario and The Sandstone Group (Sandstone) in Nassau, Bahamas.

c) It was part of the scheme to defraud that the defendant, **JACK KRONIS**, conspired with

others to sell industrial metals known as indium and germanium, for grossly overinflated prices through Eurocan, Columbia, and Sandstone by falsely representing to customers that (1) the industrial metals had a very high value when in fact the offered price was far in excess of the then market value; (2) that there was a scarcity of such metals when in fact the metals were widely available for industrial use; (3) that there was an active trading market for such metals when in fact the metals were sold only for industrial use and were not actively traded on a market or exchange; and (4) that the value of the metals would "skyrocket" and/or would increase anywhere from 30% to 50% in a relatively short period of time, when in fact the defendant knew that the value of the metals had historically remained relatively constant and was unlikely to rise.

d) It was a further part of the scheme to defraud that the coconspirators used telemarketers known as "openers" to make initial sales of indium and germanium to customers by making false representations similar to those described above. If hesitant, potential customers were encouraged by the "openers" to make a small investment to see for themselves if the metals would increase in value in a short time.

e) It was a further part of the scheme to defraud that once a customer made an initial purchase of indium or germanium, the customer was contacted within a short time by a more experienced telemarketer known as a "loader" to make additional sales through high pressure sales tactics and false representations similar to those described above.

f) It was a further part of the scheme to defraud that after a customer made an initial purchase of the metals, the "loader" on first contacting the customer would falsely represent that the metal had gone up in price since the time of the original purchase, in an attempt to mislead the customer into believing that additional purchases of the metal would be profitable.

g) It was a further part of the scheme to defraud that the "loader" would also often try to sell the customer another metal known as

germanium, also for grossly overinflated prices, at times offering the customers an "opportunity" to "trade in" the indium for a credit on the germanium purchase in order to further perpetuate the fraudulent scheme.

h) It was a further part of the scheme to defraud that the defendant and other "loaders" would strongly discourage customers from attempting to sell the indium and germanium back to the companies by falsely representing that "bids" were "low" or "weak" due to "Clinton's proposed budget" or "political uncertainty" or "Clinton's economic plan" or other fictitious reasons which they knew were untrue.

i) It was a further part of the scheme to defraud that the defendant and other coconspirators did at times falsely represent to customers that they had a buyer for the customer's indium or germanium which would result in substantial profits to the customer provided the customer paid additional monies to the coconspirators to cover the "costs and expenses" related to the fictitious sale.

j) It was a further part of the scheme to defraud that the coconspirators rented offices at various locations in the Western District of New York to process indium and germanium for shipment to victims in the United States.

k) It was a further part of the scheme to defraud that the defendant, and other coconspirators did on numerous occasions cause mail to be sent to victims of the scheme from Buffalo, New York through the United States Postal Service.

l) It was a further part of the scheme to defraud that the defendant and other coconspirators, did cause signals and sounds to be transmitted by means of wire in interstate and foreign commerce through numerous telephone calls and telefaxes which were made and sent to victims for the purpose of executing the scheme.

m) During the course of the conspiracy, the defendant, **JACK KRONIS**, personally made fraudulent sales to victims in the approximate sum of \$3.9 million U.S. funds.

BASE OFFENSE LEVEL

7. (a) The government and the defendant agree that Guidelines § 2F1.1 applies to the offense of conviction and has a base offense level of 6.

SPECIFIC OFFENSE CHARACTERISTICS
USSG CHAPTER 2 ADJUSTMENTS

8. The government and the defendant agree that the following specific offense characteristic does apply:

(i) § 2F1.1(b)(1)(B): the total loss (including Relevant Conduct) was in excess of \$2,500,000 (namely \$3,966,117) and thus there is a 13 offense level increase to 19.

(ii) § F1.1(b)(2): the overall scheme involved more than minimal planning and thus there is a 2 offense level increase to 21.

WAIVER OF EXTRADITION

9. Defendant agrees that the defendant is not a citizen of the United States, and that the defendant is a native and a citizen of Canada. The defendant understands that the United States can obtain his presence for prosecution only through formal extradition proceedings in Canada, but voluntarily waives his rights to contest

extradition and agrees to voluntarily appear and enter a guilty plea to the Information described in Paragraph 1.

10. In exchange for defendant's agreement to waive extradition, the government will recommend to the Court that a two level downward departure under the Sentencing Guidelines is justified as conduct not contemplated by the Guidelines pursuant to U.S.S.G. § 5K2.0, which, if granted by the Court, would result in an offense level of 19.

11. The defendant agrees that the Court may order as a condition of the defendant's sentence that the defendant be delivered to Immigration and Naturalization Service for deportation at the conclusion of the defendant's sentence of imprisonment and that the defendant not reenter the United States without the permission of the Attorney General.

ACCEPTANCE OF RESPONSIBILITY

12. At sentencing, the government further agrees to recommend that the Court apply the three (3) level downward adjustment of Guidelines § 3E1.1(a) and (b) (acceptance of responsibility), which would result in a total offense level of 16.

13. The defendant agrees not to request or recommend any downward adjustments or departures other than those specifically set out above.

14. The defendant understands that the Probation Office will make an independent determination of the defendant's total offense level and criminal history category and that the Court will ultimately determine the appropriate total offense level and criminal history category. The defendant will not be entitled to withdraw the plea of guilty because of the Court's failure to adopt any Sentencing Guidelines calculations set forth in this agreement or because of an upward departure made by the Court.

ADJUSTED OFFENSE LEVEL

15. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 16.

CRIMINAL HISTORY CATEGORY

16. It is the understanding of the government -- and the defendant specifically represents -- that the defendant has a criminal conviction in Canada which is not counted under the Sentencing Guidelines § 4A1.2(h) or § 4A1.3 but may be considered by the Court as a basis for an upward departure under the Sentencing Guidelines. The defendant also has criminal charges pending against him in Belgium. As a result, for the purposes of this plea agreement, the defendant agrees to be sentenced under Criminal History Category II.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

17. It is the understanding of the government and the defendant that, with a total offense level total of 16 and criminal history category of II, the defendant's sentencing range would be a term of imprisonment of 30 to 37 months, a fine of \$5,000.00 to \$50,000.00, and a period of supervised release of 2 to 3 years. Notwithstanding this, the defendant understands that, at sentencing, he is subject to the maximum penalties set forth in paragraph 1 of this agreement.

III. GOVERNMENT RIGHTS AND RESERVATIONS

18. The defendant understands that the government has reserved the right to:

a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;

b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;

c. advocate for a specific sentence within the Guideline range;

d. modify its position with respect to any recommendation the government agreed to make or not oppose in the event that subsequent to this agreement the government receives previously unknown information regarding the recommendations.

19. The government agrees that this plea is in full satisfaction for any other federal criminal offenses committed in the Western District of New York in any way involving or related to telemarketing fraud, committed up to the date of this agreement and about which the government has knowledge.

20. The government will not oppose any efforts by the defendant to transfer to Canada under the Prisoner Exchange Treaty to serve all or part of his sentence in Canada.

IV. APPEAL RIGHTS

21. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal or collaterally attack any sentence imposed by the Court which falls within or is less than the sentencing range set forth in Section II, paragraph 17 above, notwithstanding the fact that the Court may reach that range by a Guidelines analysis different from that set forth in this agreement.

22. The government similarly waives its right to appeal any sentence imposed by the Court which falls within or is greater than the sentencing range set forth in Section II, paragraph 17 above, notwithstanding the fact that the Court may reach that range by a Guidelines analysis different from that set forth in this agreement. However, in the event of an appeal from the defendant's

sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence. Further, the government reserves all of its rights of appeal as provided for in the Sentencing Reform Act of 1984.

V. COOPERATION

23. The defendant will cooperate with the government by providing complete and truthful information regarding his knowledge of any and all criminal activity, whether undertaken by himself or others, in any way involving or related to telemarketing fraud. The defendant's cooperation shall also include submitting to interviews by government attorneys and agents, as well as testifying truthfully and completely before grand juries and at such pretrial and trial proceedings as the government shall deem necessary.

24. The defendant's cooperation shall also be provided to any local, state or federal authorities designated by the government and who have agreed to abide by ¶ 25 of this agreement. The defendant's obligation to testify truthfully and completely shall extend to proceedings in federal, state and local courts in jurisdictions which have agreed to abide by ¶ 25 of this agreement.

25. In exchange for the defendant's plea of guilty and cooperation as set forth in this agreement, he will not be prosecuted by the Office of the United States Attorney for the

Western District of New York for any other federal criminal offenses committed in the Western District of New York in any way involving or related to telemarketing fraud committed up to the date of this agreement and about which he provides complete and truthful information.

Further, no testimony, statements or other information given by the defendant in compliance with this agreement (or any information directly or indirectly derived therefrom) will be used against the defendant in any criminal case, except a prosecution for perjury or making false statements.

26. Upon condition that the defendant has fully complied with all terms and conditions of this agreement, should the government determine that the defendant has provided substantial assistance in the investigation or prosecution of other persons who have committed offenses, the government will move the Court at sentencing to grant a 2 level downward adjustment from the Guidelines as provided for in Guidelines § 5K1.1. In the event the motion is granted, the defendant's offense level would be level 14, Criminal History Category II, with a sentencing range of 18-24 months, and a fine range of \$4,000 to \$40,000. The defendant understands that the decision to make such a motion is within the sole discretion of the government and that the decision to grant such a motion, and the extent of any downward departure, is a matter solely within the discretion of the Court.

27. This agreement does not preclude the prosecution of the defendant for perjury or making false statements in the event the defendant testifies falsely or provides false information to the government. This agreement is not contingent upon the filing of charges against, the return of an Indictment against, or the successful prosecution of, any person or entity.

28. It is a condition of this agreement that, up through the date of the defendant's sentencing, the defendant shall commit no further crimes. It is also a condition of this agreement that the defendant must, at all times, give complete, truthful and accurate information and testimony and not withhold information from the government or refuse to testify truthfully and completely.

29. In the event the government believes the defendant has violated any of the conditions of this agreement, then the government may, in its discretion, petition the Court to declare that the defendant has breached this agreement and for an order relieving the government of its obligations under this agreement.

Whether or not the defendant has violated any of the conditions of this agreement shall be determined by the Court in an appropriate proceeding at which any disclosures and documents provided by the defendant shall be admissible and at which the government shall be required to establish any violation by a preponderance of the evidence. In order to establish any violation by the defendant, the government is entitled to rely on statements

and information given by the defendant pursuant to this agreement.

If this agreement is declared breached, the defendant shall thereafter be subject to prosecution for any federal criminal violations of which the government has knowledge, including but not limited to, perjury and obstruction of justice. If this agreement is declared breached, the defendant has no right to withdraw the plea of guilty.

In the event this agreement is declared breached, the defendant shall waive all rights under Fed.R.Crim.P. 11(e)(6), Fed.R.Evid. 410 and Sentencing Guidelines § 1B1.8 and the defendant expressly agrees that all statements, testimony and tangible objects information and testimony provided by the defendant (with the exception of statements made in open court during guilty plea proceedings), whether prior or subsequent to this agreement, can be used directly and indirectly in any and all criminal proceedings against the defendant. Further, if this agreement is declared breached, the defendant agrees that any charges that were dismissed pursuant to this agreement may be automatically reinstated at the request of the government. Furthermore, the defendant agrees not to assert the statute of limitations as a defense to any criminal offense which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the Court's order declaring the agreement breached by the defendant becomes final.

30. The defendant's attorney is expressly permitted to be present at any time the defendant is questioned or interviewed by government agents regarding the matters set forth in this agreement.


31. The government will seek an adjournment of the defendant's sentence for the purpose of allowing the defendant to cooperate with the government under the terms of the agreement. In the event there may be substantial delays in the prosecution of other individuals or in the event the defendant violates any condition of pre-trial release, the Government may in its sole discretion move the Court to immediately sentence the defendant.

VI. TOTAL AGREEMENT AND AFFIRMATIONS

32. This plea agreement represents the total agreement between the defendant, **JACK KRONIS**, and the government. There are no promises made by anyone other than those contained in this agreement.

DENISE E. O'DONNELL
United States Attorney
Western District of New York

BY:


JOSEPH J. KARASZEWSKI
Assistant U.S. Attorney

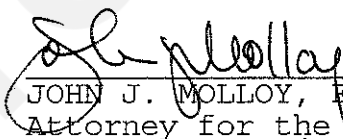
Dated: September 30, 1997

I have read this agreement, which consists of 16 pages, including this page. I have had a full opportunity to discuss this agreement with my attorney, JOHN J. MOLLOY, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.



JACK KROMIS
Defendant

Dated: September 30, 1997



JOHN J. MOLLOY, Esq.
Attorney for the Defendant

Dated: September 30, 1997