

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

**FILED**

M. 11 26 2011  
DAVID J. MALAND, CLERK  
U.S. DISTRICT COURT  
By [Signature] DEPUTY

UNITED STATES OF AMERICA  
v.  
HERMAN "LEE" GROCE (1)  
JOHN "PHIL" FITZGERALD (2)  
MARK WAYNE MIKSCH (3)

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NO. 1:11-CR-5

*Clark - Giblin*

**INDICTMENT**

THE UNITED STATES GRAND JURY CHARGES:

Introduction

At all times relevant to this indictment:

1. The United States Congress has established programs to assist victims of hurricanes and other presidentially declared disasters.

Liberty County, Texas

2. Liberty County, Texas is one of the 254 counties in the State of Texas. It was founded in 1836, and covers approximately 1,170 square miles. It is populated by approximately 75,000 citizens. All of Liberty County is within the boundaries of the Eastern District of Texas.

3. Liberty County was a governmental entity receiving benefits in excess of \$10,000.00 under federal programs involving federal assistance during a one-year period between October 1, 2008 and September 30, 2009.

4. In the State of Texas, by law, local county governmental business is

conducted by "county commissioners," who along with a "county judge," are elected by the county citizenry and serve four-year terms. In Liberty County, Texas, in 2008, each of the four precincts in the county was represented by a county commissioner. These four individuals, together with the elected county judge, made up the Liberty County Commissioners Court. By law, each member of the Liberty County Commissioners Court was a "local public official," elected or appointed by a county, exercising responsibilities beyond those that are advisory in nature. In matters requiring commissioners court approval, each of the four commissioners was allotted one vote. By law, the county judge was only required to vote in the event of a deadlock involving the votes of the four commissioners. By law, each member of the commissioners court, including the county judge, was required to disclose any potential conflicts on any voting matter before the court for consideration, prior to any vote on such matter. Further, any member of commissioners court, including the county judge, that had any potential conflict of interest was required to abstain from voting on any such matter.

5. Commissioners Court members owed a duty to act in the best interest of the public they served. To that end, state law prohibited county officials from using their positions for their own personal gain. Such laws, which were intended to protect the public good, addressed the following matters:

a. Conflicts of Interest. Texas Local Government Code § 171.004 required local public officials that had a substantial interest in a business entity to file an affidavit stating the nature and extent of the interest before a vote or decision on any

matter involving the business entity, and to abstain from further participation in the matter if:

- in the case of a substantial interest in a business entity, the action on the matter would have a special economic effect on the business entity that is distinguishable from its effect on the public.
- the affidavit must be filed with the official record keeper of the governmental entity.
- a local public official is considered to have a substantial interest if a person related to the official in the first degree by consanguinity or affinity has a substantial interest in the business entity.

b. Misuse of Official Information. Texas Penal Code § 39.06

prohibited County officials from using information which was not publically available and to which they had access by virtue of their official positions for the purpose of:

- acquiring or aiding another to acquire a pecuniary interest in any property, transaction, or enterprise that may have been affected by the information; or
- speculating or aiding another to speculate on the basis of the information.

County officials were also prohibited from disclosing or using such information for non-governmental purposes with the intent to obtain a benefit or to harm or defraud another. An offense under these provisions of state law was a felony.

6. **Herman "Lee" Groce**, defendant, was the elected county commissioner for Precinct Two in Liberty County, and thereby a public official. **Groce** held that elected position since 1986.

7. **John "Phil" Fitzgerald**, defendant, a local public official, was the Liberty County Judge and presided over the Liberty County Commissioners Court and its bi-monthly meetings. He was elected to the position of county judge in 2006 and held that office until December 31, 2010. Prior to his election as county judge, **Fitzgerald** was an elected Justice of the Peace in Liberty County for eighteen (18) years. **Groce** and **Fitzgerald** had been long-time friends and political allies for several years, and **Groce** championed **Fitzgerald's** original campaign and election as county judge. "Fitzpak" was a convenience store/gas station in Moss Hill, Texas, owned and operated by **Fitzgerald**. "Hard Rock Construction" was a construction business and sole proprietorship owned by **Fitzgerald**.

8. **Mark Wayne Miksch**, defendant, was the brother-in-law of **Fitzgerald**. MWM Enterprises ("MWM") was a for-profit company and sole proprietorship formed by **Miksch**. MWM's main business address during 2008-2009 was in LaVernia, Texas

FEMA Assistance for Local Entities Affected by Hurricanes

9. Federal Emergency Management Agency ("FEMA") is an agency of the United States Department of Homeland Security. FEMA was established by Congress to administer assistance to disaster victims. After the President of the United States declares

a disaster in a particular area, FEMA is authorized to provide financial assistance to victims, including local and state governmental entities. Amongst the expenses that FEMA is authorized to provide local governmental entities financial assistance is the removal of debris incurred as a result of natural disasters, such as Hurricane Ike ("IKE"). FEMA is authorized by Congress to reserve funds for financial assistance to victims of natural disasters in a FEMA General Fund for Public Assistance.

#### Hurricane Ike

10. On September 13, 2008, IKE made landfall in Texas. IKE caused extensive damage along the southeast Texas coast. In response to IKE, when the President declared a major disaster for certain areas of Southeast Texas, including Liberty County, FEMA was permitted to disperse federal funds to assist the affected population.

11. After the Governor of the State of Texas declared an emergency in several Texas counties, including Liberty County, on or about September 13, 2008, the President of the United States declared a disaster in those areas. The President's declaration automatically made FEMA General Fund for Public Assistance funds available for local governmental entities in those affected areas. FEMA then set up a federal account called a "Public Assistance Grant" ("Grant"), for financial assistance to victims, including local governmental entities like Liberty County. The Grant was given a disaster number (1791), and the State of Texas was identified as the "grantee." The State of Texas was then given access to a "Smart Link" account and a pin number that allowed the State of

Texas to access funds by receiving wire transfers of federal funds contained within the Grant. The federal Grant funds were transferred to a Texas Department of Public Safety ("DPS"), Department of Emergency Management ("DEM") account. The DEM account was an account maintained in Austin, Texas, from which the State could allocate funds made available by federal agencies for disaster assistance to local governmental entities, such as Liberty County.

12. As with other governmental entities seeking disaster relief, Liberty County was a "sub-grantee," and received funds from those that the State of Texas obtained from the FEMA Grant, by submitting individual "Project Worksheets" ("PWs") to the State of Texas. Those individual PWs were submitted, or caused to be submitted by **Fitzgerald**. The State of Texas then forwarded the PWs to FEMA. After FEMA approved the submitted PWs, the funds were passed through the DPS DEM account before being transferred to Liberty County.

#### Scheme by the Defendants

13. On or about September 16, 2008, members of the Liberty County Commissioners Court, including **John "Phil" Fitzgerald** and **Herman "Lee" Groce**, decided to select individual debris removal contractors to perform debris removal work in Liberty County, Texas. Liberty County officials intended to seek reimbursement for the costs of the debris removal from FEMA. **Fitzgerald** made it clear that he wanted each precinct commissioner to select his own debris removal contractor. On or about

September 21, 2008, Liberty County officials posted a notice, soliciting bid for debris removal contracts for the whole of Liberty County. On September 23, 2008, at the regularly scheduled commissioners court meeting, four separate contractors were selected by the commissioners for debris removal contracts.

14. Sometime between September 16, 2008, but prior to the awarding of the debris removal contracts on September 23, 2008, **Fitzgerald** and **Miksch** met with a person known to the Grand Jury as "BC" in Moss Hill and discussed the debris removal bidding.

15. C&C Lumber, Inc., ("C&C") was a lumber business located in Moss Hill, Texas, within Liberty County. C&C was owned and operated by BC. BC was a long time friend, neighbor, and campaign contributor of **Fitzgerald's**. BC's "foreman" at C&C was a person known to the Grand Jury as "JM". C&C was one of the twelve contractors that submitted a bid for debris removal in Liberty County.

16. In the days prior to the September 23, 2008, commissioners court meeting, **Fitzgerald** arranged for BC to enter into a subcontracting agreement with **Miksch** for the debris removal work in return for his influence in awarding the contract to C&C. **Miksch** was to be paid at the rates provided in the contract that C&C had submitted with its bid. In return for securing the subcontracting agreement between **Miksch** and C&C, **Fitzgerald** and **Miksch** entered into an agreement, whereby **Miksch** would pay **Fitzgerald** "kickbacks" disguised as legitimate business transactions.

17. On September 23, 2008, bidding was closed on the debris removal contracts after twelve bids, including the one belonging to C&C, were submitted to Liberty County for consideration. Later that day, during a commissioners court meeting, **Groce** selected C&C as one of two contractors to perform debris removal work in Precinct Two, despite the fact that C&C submitted the highest bid of the twelve received.

18. From on or about October 1, 2008, through on or about March 1, 2009, **Groce** audited invoices submitted by C&C for debris removal work for the purpose of approving payments to C&C.

19. From on or about October 10, 2008, through on or about March 19, 2009, **Fitzgerald** directed the placement of payments to C&C for debris removal work to be placed on agendas for commissioners court meetings for approval.

20. From on or about October 10, 2008, through on or about March 19, 2009, **Groce** and **Fitzgerald** were present at commissioners court meetings where votes to approve payments to C&C for debris removal work were cast.

21. From on or about October 10, 2008, through on or about March 19, 2009, **Fitzgerald**, with **Groce** present, personally received checks from Liberty County made payable to "C&C Lumber, Inc., immediately after commissioners court meetings.

22. From on or about October 10, 2008, through on or about March 19, 2009, **Fitzgerald** and **Groce**, by way of their official positions, arranged for, approved, and delivered approximately \$3,200,000 in payments to C&C for debris removal work in



Liberty County Precinct Two.

23. From on or about October 14, 2008, through on or about March 19, 2009, "BC" and/or C&C made payments of \$1,660,000 to **Miksch**.

24. From on or about October 14, 2008, through on or about March 19, 2009, **Miksch** made payments of approximately \$611,000, disguised as legitimate business transactions, to **Fitzgerald** in return for **Fitzgerald's** role in influencing the awarding of the debris removal contract to C&C, and for ensuring timely payment by Liberty County to C&C for debris removal work.

25. From on or about November 4, 2008, through on or about September 23, 2009, **Fitzgerald** sought and obtained funds from FEMA to reimburse Liberty County for the payments made to C&C for debris removal and to compensate C&C directly.

26. **John "Phil" Fitzgerald** and **Herman "Lee" Groce**, at all times had, and owed, a duty to provide their honest services to the citizens of Liberty County and Liberty County Commissioners Court. The scheme outlined above was created for the personal benefit of the defendants and others. The laws of the State of Texas prohibit soliciting, accepting, or agreeing to accept any benefit as consideration for the recipient's discretion as a public servant.

**Count One**

Violation: Count One - 18 U.S.C. §371 Conspiracy to commit (a) 18 U.S.C. §§ 1343 and 1346 (Wire Fraud), (b) 18 U.S.C. § 666(a)(1)(A)(Theft or bribery concerning programs receiving Federal funds), (c) 18 U.S.C. § 666(a)(1)(B) (Theft or bribery concerning programs receiving Federal funds), (d) 18 U.S.C. § 666(a)(2)(Theft or bribery concerning programs receiving federal funds), and (e) 18 U.S.C §1040 (Fraud in connection with major disaster or emergency benefits.

27. The Grand Jury re-alleges paragraphs 1-26 of the Introduction described in this indictment and incorporates here the same by reference.

28. From on or about September 13, 2008, through on or about October 1, 2009, in the Eastern District of Texas, **Herman "Lee" Groce, John "Phil" Fitzgerald, and Mark Wayne Miksch**, defendants, did knowingly and willfully combine, conspire, confederate, and agree with each other and with others known and unknown to the Grand Jury to commit offenses against the United States:

a. to devise a scheme and artifice to defraud and deprive the citizens of Liberty County, Texas, of their intangible right to the honest services of **Herman "Lee" Groce**

and **John "Phil" Fitzgerald** as county commissioner and county judge, through bribery, kickbacks and the concealment of material information, and for the purpose of executing said scheme and artifice to defraud, and attempting to do so, did transmit or cause to be transmitted by means of wire, radio, or television communication, in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, in violation of 18 U.S.C. §§ 1343 and 1346;

b. while being agents of a local government or organization receiving benefits in excess of \$10,000 in a one-year period under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, did embezzle, steal, obtain by fraud, or otherwise without authority, knowingly convert to the use of another person other than the rightful owner or intentionally misapplies property that is owned by, or under the care, custody, or control of Liberty County, valued at \$5,000 or more, in violation of 18 U.S.C. § 666(a)(1)(A).

c. while being agents of a local government or organization receiving benefits in excess of \$10,000 in a one-year period under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, did corruptly solicit, demand for the benefit of any person, accept and agree to accept any thing of value from another intending to be influenced and rewarded in connection with any business, transaction, or series of transactions of Liberty County, involving anything of value of \$5,000 or more, in violation of 18 U.S.C. § 666(a)(1)(B);

d. to corruptly give, offer, and agree to give things of value to a person, with

intent to influence and reward an agent of a local government or organization receiving benefits in excess of \$10,000 in a one-year period under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance in connection with any business, transaction, or series of transactions of Liberty County, involving anything of value of \$5,000 or more, in violation of 18 U.S.C. § 666(a)(2);

e. to devise a scheme and artifice to falsify, conceal, or cover up any material fact in any matter involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a major disaster declaration, where the benefit is a record, voucher, payment, money, or thing of value, of the United States, or of any department or agency thereof, in violation of 18 U.S.C. § 1040.

#### Objects of the Conspiracy

29. The objects of the conspiracy were (1) for **Herman "Lee" Groce** and **John "Phil" Fitzgerald** to use their elected positions to fraudulently influence and award a debris removal contract to C&C in return for C&C's subcontracting a portion of the debris removal contract to **Mark Wayne Miksch**, (2) for C&C to profit from their being awarded a contract despite being a high bidder, and (3) for **John "Phil" Fitzgerald** to receive "kickbacks" disguised as legitimate payments from **Mark Wayne Miksch**, in return for his actions and planned actions as a public official in Liberty County, Texas.

#### Manner and Means of the Conspiracy

30. The conspirators used the following manner and means, among others, to

carry out the objects of the conspiracy:

a. **Fitzgerald** and **Groce** used their influence as Liberty County officials to award a debris removal contract to C&C;

b. **Fitzgerald** and **Groce** disguised their true intention to select C&C for a debris removal contract prior to bids being submitted;

c. **Fitzgerald** failed to disclose his relationship with BC, owner of C&C, and **Mark Wayne Miksch**, prior to C&C being awarded a debris removal contract;

d. **Groce** approved invoices submitted by **Miksch**, on behalf of C&C, allowing C&C to receive payment;

e. **Fitzgerald** placed payments to C&C on the Liberty County Commissioners Court agenda for approval and authorization for Liberty County to pay C&C;

f. **Fitzgerald** picked up Liberty County checks made out to C&C for delivery to C&C;

g. C&C, pursuant to authorization by BC, paid **Mark Wayne Miksch** for debris removal work under the terms of a sub-contracting agreement;

h. **John "Phil" Fitzgerald** provided **Mark Wayne Miksch** with equipment to facilitate "kickback" payments, disguised as "lease" and "fuel" payments.

i. **Fitzgerald** accepted things of value;

j. **Miksch** would and did cause things of value to be provided to

**Fitzgerald.**

### Overt Acts

31. In furtherance of the conspiracy and to effect the objects thereof, the defendants and others committed, and caused to be committed, the following overt acts, among others, in the Eastern District of Texas, and elsewhere:

32. On or about September 18, 2008, **Fitzgerald** and BC met and discussed debris removal at the **Fitzgerald** residence in Moss Hill, Texas.

33. Between on or about September 18 and September 23, 2008, **Groce**, **Fitzgerald**, **Miksich**, BC, and others, discussed the awarding of a debris removal contract to C&C.

34. On or about September 19, 2008, **Fitzgerald** ordered, for payment by Liberty County, five trailers and two Kawasaki "mules" from Highlands Tractor Kawasaki.

35. On or about September 23, 2008, **Groce** and **Fitzgerald** attempted to change C&C's bid to reflect a lower price, after the debris removal bids were sealed and submitted to the Liberty County Attorney's Office.

36. On or about September 23, 2008, **Groce** selected C&C and awarded it a debris removal contract for half of Liberty County Precinct Two.

37. On or about September 29, 2008, **Miksich** and BC entered into a formal "Subcontract Agreement" for **Miksich** to perform debris removal under the terms of C&C's contract with Liberty County.

38. On or about September 30, 2008, after securing the sub-contracting

agreement between BC and **Miksch, Fitzgerald** instructed Highlands Tractor Kawasaki to bill him personally for the five trailers and two Kawasaki "mules" he ordered on September 19, 2008, and to credit the Liberty County account. The trailers were already at the C&C yard, and **Fitzgerald** subsequently "leased" them to **Miksch** during the debris removal project.

39. On or about October 11, 2008, **Fitzgerald** placed, or directed the placement of approval for payment to C&C in the amount of \$146,130.66, on the Liberty County Commissioners Court Agenda for the meeting on October 14, 2008.

40. On or about October 14, 2008, **Groce** voted for the approval of payment to C&C in the amount of \$146,130.66.

41. On or about October 14, 2008, **Mark Wayne Miksch** deposited, or caused to be deposited a cashier's check from C&C in the amount of \$117,520.26.

42. On or about October 14, 2008, **Mark Wayne Miksch** issued the following checks to **Fitzgerald** or his businesses:

- a. \$9,500 to "Hardrock Construction"
- b. \$50,000 to "Phil Fitzgerald"
- c. \$9,320.40 to "FitzPak"

43. On or about October 15, 2008, **Fitzgerald** wrote, or caused to be written, a check on Hard Rock Construction Account number XXX8601 to "Highlands Tractor," in the amount of \$22,299.80, for payment of the five trailers and two Kawasaki "mules" that **Fitzgerald** previously ordered on September 19, 2008.

44. On or about October 15, 2008, **Fitzgerald** wrote, or caused to be written, a

check on Hard Rock Construction Account number XXX8601 to a person known to the Grand Jury as "W.S." in the amount of \$5,400 for "grain trucks & trailer."

45. On or about October 27, 2008, **Fitzgerald** placed, or directed the placement of approval for payment to C&C in the amount of \$564,913.07, on the Liberty County Commissioners Court Agenda for the meeting on October 28, 2008.

46. On or about October 28, 2008, **Groce** voted for the approval of payment to C&C in the amount of \$564,913.07.

47. On or about October 28, 2008, **Mark Wayne Miksch** deposited, or caused to be deposited a cashier's check from C&C in the amount of \$299,152.17.

48. On or about October 28, 2008, **Mark Wayne Miksch** issued the following checks to **Fitzgerald** or his businesses:

- a. \$51,500 to "Phil Fitzgerald"
- b. \$22,815.97 to "FitzPac"
- c. \$20,000 to "Hardrock Construction"

49. On or about November 4, 2008, **John "Phil" Fitzgerald**, and others submitted, or caused to be submitted, to FEMA, a Department of Homeland Security Project Worksheet (number VDL-005), for reimbursement for debris removal for Precinct Two, Liberty County, Texas, for September 30, 2008 through October 5, 2008.

50. On or about November 8, 2008, **Fitzgerald** placed, or directed the placement of approval for payments to C&C in the amounts of \$274,419.07 and \$547,445.24 on the Liberty County Commissioners Court Agenda for the meeting on November 12, 2008.



51. On or about November 12, 2008, **Groce** voted for the approval of payment to C&C in the amount of \$821,864.31.

52. On or about November 13, 2008, **Mark Wayne Miksch**, deposited, or caused to be deposited a cashier's check from C&C in the amount of \$460,128.82.

53. On or about November 12, 2008, **Mark Wayne Miksch** issued the following checks to **Fitzgerald** or his businesses:

- a. \$74,000 to "Hard Rock Const"
- b. \$29,430.15 to "Fitzpac Phil Fitzgerald"

54. On or about November 22, 2008, **Mark Wayne Miksch** issued the following checks to **Fitzgerald** or his businesses:

- a. \$11,000 to "Hard Rock Const"
- b. \$21,588.51 to "Fitzpac"

55. On or about December 1, 2008, **John "Phil" Fitzgerald**, and others, submitted, or caused to be submitted, to FEMA, a Department of Homeland Security Project Worksheet (number DVJ-003), for reimbursement for debris removal for Precinct Two, Liberty County, Texas, for October 5, 2008 through October 26, 2008.

56. On or about December 8, 2008, **John "Phil" Fitzgerald**, **Herman "Lee" Groce**, and others, transmitted or caused to be transmitted by means of wire transfer in or affecting interstate commerce, \$290,803.15 from FEMA Public Assistance Grant 1791 to a State of Texas, DPS Account Number XXXXX-1605-6.

57. On or about January 11, 2009, **Fitzgerald** placed, or directed the placement of approval for payment to C&C in the amount of \$879,095.91, on the Liberty County

Commissioners Court Agenda for the meeting on January 14, 2009.

58. On or about January 14, 2009, **Groce** voted for the approval of payment to C&C in the amount of \$879,095.91.

59. On or about January 15, 2009, **Mark Wayne Miksch** deposited, or caused to be deposited a cashier's check from BC in the amount of \$460,128.82.

60. On or about January 13, 2009, **Mark Wayne Miksch** issued the following checks to **Fitzgerald** or his businesses:

- a. \$67,500 to "Hard Rock Const"
- b. \$29,930 to "Fitzpac"

61. On or about January 16, 2009, **John "Phil" Fitzgerald, Herman "Lee" Groce**, and others, transmitted or caused to be transmitted by means of wire transfer in or affecting interstate commerce, \$3,156,906.20 from FEMA Public Assistance Grant 1791 to a State of Texas, DPS Account Number XXXXX-1605-6.

62. On or about January 17, 2009, **John "Phil" Fitzgerald, Herman "Lee" Groce**, and others, transmitted or caused to be transmitted by means of wire transfer in or affecting interstate commerce, \$623,057.78 from a FEMA Public Assistance Grant 1791 to a State of Texas, DPS Account Number XXXXX-1605-6.

63. On or about January 29, 2009, **John "Phil" Fitzgerald**, and others, submitted, or caused to be submitted, to FEMA, a Department of Homeland Security Project Worksheet (number PAH-064), for reimbursement for debris removal for Precinct Two, Liberty County, Texas, DPS Account Number XXXXX-1605-6.

64. On or about February 7, 2009, **Fitzgerald** placed, or directed the placement of approval for payment to C&C in the amount of \$463,342.61 on the Liberty County Commissioners Court Agenda for the meeting on February 10, 2009.

65. On or about February 10, 2009, **Groce** voted for the approval of payment to C&C in the amount of \$463,342.61.

66. On or about February 11, 2009, **Mark Wayne Miksch** deposited, or caused to be deposited a cashier's check from "C&C Lumb-B. Cassity", in the amount of \$262,834.71.

67. On or about February 11, 2009, **Mark Wayne Miksch** issued the following checks to **Fitzgerald** or his businesses:

- a. \$50,000 to "Hard Rock Const"
- b. \$50,000 to "Hard Rock Const"
- c. \$20,315 to "Fitzpac"

68. On or about February 11, 2009, **John "Phil" Fitzgerald**, and others, submitted, or caused to be submitted, to FEMA, a Department of Homeland Security Project Worksheet (number PAH-075), for reimbursement for debris removal for Precinct Two, Liberty County, Texas, for October 27, 2008, through December 30, 2008.

69. On or about February 24, 2009, **John "Phil" Fitzgerald**, and others, submitted, or caused to be submitted, to FEMA, a Department of Homeland Security Project Worksheet (number PAH-094), for reimbursement for debris removal for Precinct Two, Liberty County, Texas, for January 5, 2009 through February 6, 2009.

70. On or about March 7, 2009, **Fitzgerald** placed, or directed the placement of

approval for payment to C&C in the amount of \$376,509.40 on the Liberty County Commissioners Court Agenda for the meeting on March 10, 2009.

71. On or about March 10, 2009, **Groce** voted for the approval of payment to C&C in the amount of \$376,509.40.

72. On or about March 18, 2009, **Mark Wayne Miksch** deposited, or caused to be deposited a cashier's check from BC in the amount of \$186,509.40.

73. On or about March 18, 2009, **Mark Wayne Miksch** issued the following checks to **Fitzgerald** or his businesses:

- a. \$40,000 to "Hard Rock Const"
- b. \$55,000 to "Fitzpac"

74. On or about March 9, 2009, **John "Phil" Fitzgerald, Herman "Lee" Groce**, and others, transmitted or caused to be transmitted by means of wire transfer in or affecting interstate commerce, \$2,721,956.10 from FEMA Public Assistance Grant 1791 to a State of Texas, DPS Account Number XXXXX-1605-6.

75. On or about May 1, 2009, **John "Phil" Fitzgerald, Herman "Lee" Groce**, and others, transmitted or caused to be transmitted by means of wire transfer in or affecting interstate commerce, \$373,503.93 from FEMA Public Assistance Grant 1791 to a State of Texas, DPS Account Number XXXXX-1605-6.

76. On or about May 13, 2009, **John "Phil" Fitzgerald, Herman "Lee" Groce**, and others, transmitted or caused to be transmitted by means of wire transfer in or affecting interstate commerce, \$5,518,418.18 from FEMA Public Assistance Grant 1791

to a State of Texas, DPS Account Number XXXXX-1605-6.

77. On or about September, 23, 2009, **John "Phil" Fitzgerald, Herman "Lee" Groce**, and others, transmitted or caused to be transmitted by means of wire transfer in or affecting interstate commerce, \$205,011.97 from FEMA Public Assistance Grant 1791 to a State of Texas, DPS Account Number XXXXX-1605-6.

All in violation of 18 U.S.C. § 371.

**Counts Two through Seven**

Violation: 18 U.S.C. §§  
1343(A) and 2. (Wire Fraud  
involving a major disaster )

78. The Grand Jury adopts, and re-alleges the Introduction (paragraphs 1-26) and paragraphs 27-77 of this indictment, and incorporates here the same by reference.

79. On or about the below dates, in the Eastern District of Texas and elsewhere, **Herman "Lee" Groce and John "Phil" Fitzgerald**, defendants, and others, for the purpose of executing and attempting to execute the aforesaid scheme and artifice involving a benefit transmitted, disbursed, or paid in connection with a presidentially declared major disaster or emergency, did knowingly cause to be transmitted in interstate and foreign commerce, by means of a wire communication, certain signs, signals, and sounds, namely, electronic facsimiles of wiring instructions and authorizations for the electronic transfer of funds, and the electronic transfer of funds, as described below, which caused the transfer of funds in or affecting interstate commerce, from a FEMA

Public Assistance Grant 1791 to a State of Texas, DPS Account Number XXXXX-1605-6:

<b>Count</b>	<b>Date</b>	<b>Nature of Wire Transmission</b>	<b>Amount</b>
Two	December 8, 2008	Transfer of funds from FEMA	\$290,803.15
Three	January 17, 2009	Transfer of funds from FEMA	\$623,057.78
Four	March 9, 2009	Transfer of funds from FEMA	\$2,721,956.10
Five	May 1, 2009	Transfer of funds from FEMA	\$373,503.93
Six	May 13, 2009	Transfer of funds from FEMA	\$5,518,418.18
Seven	September 23, 2009	Transfer of funds from FEMA	\$205,011.97

Each Count in violation of 18 U.S.C. §§ 1343 and 2.

**Counts Eight through Thirteen**

Violation: 18 U.S.C. §§  
666(a)(1)(A) and 2 (Theft  
From Organization Receiving  
Federal Funds)

78. The Grand Jury adopts, and re-alleges the Introduction (paragraphs 1-26) and paragraphs 27-77 of this indictment, and incorporates here the same by reference.

79. In the one year period ending September 23, 2009, in the Eastern District of Texas, and elsewhere, **Herman "Lee" Groce** and **John "Phil" Fitzgerald**, defendants, agents of Liberty County, Texas, a local government which received federal assistance in excess of \$10,000 during said one year period, did intentionally misapply and embezzle, steal, and obtain by fraud property valued at \$5,000 or more that was owned by and under

the care, custody and control of Liberty County, as described below:

<b>Count</b>	<b>Date</b>	<b>Transfer of Property</b>	<b>Amount</b>
Eight	October 14, 2008	Check to C&C	\$146,130.66
Nine	October 28, 2008	Check to C&C	\$564,913.07
Ten	November 12, 2008	Check to C&C	\$274,419.07
Eleven	January 14, 2009	Check to C&C	\$879,095.91
Twelve	February 10, 2009	Check to C&C	\$463,342.61
Thirteen	March 10, 2009	Check to C&C	\$376,509.40

Each Count in violation of 18 U.S.C. §§ 666(a)(1)(A) and 2.

**Count Fourteen**

Violation: 18 U.S.C. §§  
666(a)(1)(B) and 2 (Theft of  
bribery concerning programs  
receiving Federal funds)

80. The Grand Jury adopts, and re-alleges the Introduction (paragraphs 1-26) and paragraphs 27-77 of this indictment, and incorporates here the same by reference.

81. a. In the one year period ending September 23, 2009, in the Eastern District of Texas, and elsewhere, **John "Phil" Fitzgerald**, defendant, an agent of Liberty County, Texas, a local government which received federal assistance in excess of \$10,000 during said one year period, did corruptly solicit, demand for the benefit of himself and other persons, and accept and agree to accept, things of value from a person, intending to be influenced and rewarded in connection with business, transactions, and a series of

transactions of Liberty County, Texas, involving things of value of \$5,000 or more.

b. **Herman "Lee" Groce, Mark Wayne Miksch**, defendants, and others, did intentionally and knowingly aid, abet, counsel, command, induce, and procure the commission of the offense and purposefully participated in the criminal venture set forth in Paragraph (a) by engaging in some conduct designed to aid the venture or assist **Fitzgerald** in its commission.

In violation of 18 U.S.C. §§ 666(a)(1)(B) and 2.

**Count Fifteen**

Violation: 18 U.S.C. §§  
666(a)(2) and 2 (Theft of  
bribery concerning programs  
receiving Federal funds)

82. The Grand Jury adopts, and re-alleges the Introduction (paragraphs 1-26) and paragraphs 27-77 of this indictment, and incorporates here the same by reference.

83. a. In the one year period ending September 23, 2009, in the Eastern District of Texas, and elsewhere, **Mark Wayne Miksch**, defendant, did corruptly give, offer, and agree to give things of value to **John "Phil" Fitzgerald**, an agent of Liberty County, Texas, a local government which received federal assistance in excess of \$10,000 during said one year period, with intent to influence and reward **Fitzgerald** in connection with business, transactions, and a series of transactions of Liberty County, Texas, involving things of value of \$5,000 or more.

b. Defendants **John "Phil" Fitzgerald, Herman "Lee" Groce**, and others, did



intentionally and knowingly aid, abet, counsel, command, induce, and procure the commission of the offense and purposefully participated in the criminal venture set forth in Paragraph (a) by engaging in some conduct designed to aid the venture or assist **Miksch** in its commission.

In violation of 18 U.S.C. §§ 666(a)(2) and 2.

**Count Sixteen thru Twenty-One**

Violation: 18 U.S.C. §§ 1040 and 2 (Fraud in connection with major disaster or emergency assistance)

84. The Grand Jury adopts, and re-alleges the Introduction (paragraphs 1-26) and paragraphs 27-77 of this indictment, and incorporates here the same by reference.

85. Between on or about September 13, 2008, and October 1, 2009, in the Eastern District of Texas and elsewhere, **Herman "Lee" Groce, John "Phil" Fitzgerald and Mark Wayne Miksch**, defendants, knowingly made a material claim against and upon FEMA, an agency of the United States, for IKE disaster assistance, knowing that the claim was false, fictitious, and fraudulent in a matter involving a benefit disbursed or paid in connection with a major disaster declaration, in that it falsely represented that Liberty County was entitled to reimbursement from FEMA for debris removal work performed by C&C between the dates of September 30, 2008 through February 6, 2009, when in truth and in fact, as defendants well knew, the payments from FEMA, as described below, where of an inflated amount to support undisclosed "pay-offs" or "kickbacks" to **John**

**"Phil" Fitzgerald, to-wit;**

<b>Count</b>	<b>Date</b>	<b>Transfer of Property</b>	<b>Amount</b>
Sixteen	December 8, 2008	Transfer of funds from FEMA	\$290,803.15
Seventeen	January 17, 2009	Transfer of funds from FEMA	\$623,057.78
Eighteen	March 9, 2009	Transfer of funds from FEMA	\$2,721,956.10
Nineteen	May 1, 2009	Transfer of funds from FEMA	\$373,503.93
Twenty	May 13, 2009	Transfer of funds from FEMA	\$5,518,418.18
Twenty-One	September 23, 2009	Transfer of funds from FEMA	\$205,011.97

Each Count in violation of 18 U.S.C. §§ 1040 and 2.

**Count Twenty-Two**

Violation: 18 U.S.C. §§ 1040  
and 2 (Fraud in connection  
with major disaster or  
emergency assistance)

86. The Grand Jury adopts, and re-alleges the Introduction (paragraphs 1-26) and paragraphs 27-77 of this indictment, and incorporates here the same by reference.

87. On or about May 21, 2009, in the Eastern District of Texas and elsewhere, **John "Phil" Fitzgerald**, defendant, knowingly made a claim that was materially false against and upon FEMA, an agency of the United States, for Hurricane Ike disaster assistance, knowing that the claim was false, fictitious, and fraudulent in a matter involving a benefit disbursed or paid in connection with a major disaster declaration, in that it falsely represented that Liberty County was entitled to reimbursement from FEMA for the cost of

fuel for the use of a 155 KW John Deere generator between the dates of September 16, 2008 through September 22, 2008, when in truth and in fact, as defendant well knew, that the 155 KW John Deere generator was not being used by Liberty County during that time period.

In violation of 18 U.S.C. §§ 1040 and 2.

**Count Twenty-Three**

Violation: 18 U.S.C. §§ 1040 and 2 (Fraud in connection with major disaster or emergency assistance)

88. The Grand Jury adopts, and re-alleges the Introduction (paragraphs 1-26) and paragraphs 27-77 of this indictment, and incorporates here the same by reference.

89. On or about May 21, 2009, in the Eastern District of Texas and elsewhere, **John "Phil" Fitzgerald**, defendant, knowingly made a claim that was materially false against and upon FEMA, an agency of the United States, for Hurricane Ike disaster assistance, knowing that the claim was false, fictitious, and fraudulent in a matter involving a benefit disbursed or paid in connection with a major disaster declaration, in that it falsely represented that Liberty County was entitled to reimbursement from FEMA for the cost of fuel for the use of a 51 KW John Deere generator between the dates of September 16, 2008 through September 20, 2008, when in truth and in fact, as defendant well knew, that the 51 KW John Deere generator was not being used by Liberty County during that time period.

In violation of 18 U.S.C. §§ 1040 and 2.

**Count Twenty-Four**

Violation: 18 U.S.C. § 287  
(False, fictitious or fraudulent  
claims)

90. The Grand Jury adopts, and re-alleges the Introduction (paragraphs 1-26) and paragraphs 27-77 of this indictment, and incorporates here the same by reference.

91. On or about May 21, 2009, in the Eastern District of Texas and elsewhere, **John "Phil" Fitzgerald**, defendant, knowingly made a false or fraudulent claim against and upon FEMA, an agency of the United States, for Hurricane Ike disaster assistance, knowing that the claim was false, fictitious, and fraudulent in that it falsely represented that Liberty County was entitled to reimbursement from FEMA for the cost of fuel for the use of a 155 KW John Deere generator between the dates of September 16, 2008 through September 22, 2008, when in truth and in fact, as defendant well knew, that the 155 KW John Deere generator was not being used by Liberty County during that time period.

In violation of 18 U.S.C. § 287.

**Count Twenty-Five**

Violation: 18 U.S.C. § 287  
(False, fictitious or fraudulent  
claims)

92. The Grand Jury adopts, and re-alleges the Introduction (paragraphs 1-26) and paragraphs 27-77 of this indictment, and incorporates here the same by reference.

91. On or about May 21, 2009, in the Eastern District of Texas and elsewhere,

**John "Phil" Fitzgerald**, defendant, knowingly made a false and fraudulent claim against and upon FEMA, an agency of the United States, for Hurricane Ike disaster assistance, knowing that the claim was false, fictitious, and fraudulent in that it falsely represented that Liberty County was entitled to reimbursement from FEMA for the cost of fuel for the use of a 51 KW John Deere generator between the dates of September 16, 2008 through September 20, 2008, when in truth and in fact, as defendant well knew, that the 51 KW John Deere generator was not being used by Liberty County during that time period.

In violation of 18 U.S.C. § 287.

**NOTICE OF INTENT TO SEEK CRIMINAL FORFEITURE**  
**Pursuant to 18 U.S.C. § 982**

As the result of committing the violations alleged in this Indictment, the defendants shall forfeit to the United States of America pursuant to 18 U.S.C. § 982 all property, real or personal, that constitutes or is derived from proceeds traceable to the aforementioned violations, including but not limited to the following:

**Cash Proceeds**

Approximately \$3,269,456.76 in United States currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property constituting, or derived from, proceeds obtained directly or indirectly, as the result of the offenses alleged in this Indictment.

**Substitute Assets**

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

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

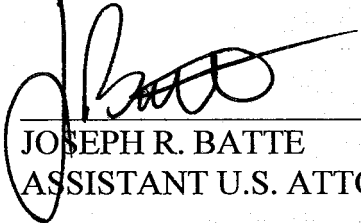
it is the intent of the United States, pursuant to 18 U.S.C. § 982(a)(4), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property, including but not limited to all property, both real and personal owned by the defendants.

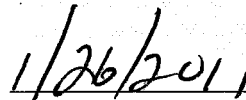
By virtue of the commission of the offenses alleged in this Indictment, any and all interest the defendants have in the above-described property is vested in and forfeited to the United States.

A TRUE BILL

  
\_\_\_\_\_  
GRAND JURY FOREPERSON

JOHN M. BALES  
UNITED STATES ATTORNEY

  
\_\_\_\_\_  
JOSEPH R. BATTE  
ASSISTANT U.S. ATTORNEY

  
\_\_\_\_\_  
Date

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

UNITED STATES OF AMERICA

VS.

HERMAN "LEE" GROCE.  
JOHN "PHIL" FITZGERALD, and  
MARK WAYNE MIKSCH

§  
§  
§  
§  
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§  
§

CRIMINAL NO. 1:11cr 5

**NOTICE OF PENALTY**

**Count One**

**Violation:** 18 U.S.C. § 371 (Conspiracy)

**Penalty:** Not more than five (5) years imprisonment; a fine of not more than \$250,000, or both. A term of supervised release of not more than three (3) years.

**Special Assessment:** \$100.00

**Counts Two through Seven**

**Violation:** 18 U.S.C. §§ 1343 and 2 (Wire Fraud involving a major disaster )

**Penalty:** Not more than thirty (30) years imprisonment; a fine of not more than \$1,00,000, or both. A term of supervised release of not more than three (3) years.

**Special Assessment:** \$100.00

**Counts Eight through Thirteen**

**Violation:** 18 U.S.C. §§ 666 (a)(1)(A) and 2 (Theft From Organization Receiving Federal Funds)

**Penalty:** Not more than ten (10) years imprisonment; a fine of not more than \$250,000, or both. A term of supervised release of not more than three (3) years.

Special Assessment: \$100.00

**Count Fourteen**

Violation: 18 U.S.C. §§ 666 (a)(1)(B) and 2 (Program Bribery and Kickbacks)

Penalty: Not more than ten (10) years imprisonment; a fine of not more than \$250,000, or both. A term of supervised release of not more than three (3) years.

Special Assessment: \$100.00

**Count Fifteen**

Violation: 18 U.S.C. §§ 666 (a)(2) and 2 (Program Bribery and Kickbacks)

Penalty: Not more than ten (10) years imprisonment; a fine of not more than \$250,000, or both. A term of supervised release of not more than three (3) years.

Special Assessment: \$100.00

**Counts Sixteen through Twenty-Three**

Violation: 18 U.S.C. § 1040 (Fraud in Connection with Major Disaster)

Penalty: Not more than thirty (30) years imprisonment; a fine of not more than \$250,000, or both. A term of supervised release of not more than three (3) years.

Special Assessment: \$100.00

**Counts Twenty-Four through Twenty-Five**

Violation: 18 U.S.C. § 287 (Making a False Claim)

Penalty: Not more than five (5) years imprisonment; a fine of not more than \$250,000, or both. A term of supervised release of not more than three (3) years.

Special Assessment: \$100.00