

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
v.)	09 CR 795
)	
RUDOLPH C. FRATTO,)	MATTHEW F. KENNELLY, J
DEFENDANT)	

DEFENDANT RUDOLPH C. FRATTO'S POSITION PAPER
REGARDING A SENTENCE UNDER §3553(a) AND §3582(a)
THAT INCLUDES A TERM OF HOME CONFINEMENT
RATHER THAN A TERM OF IMPRISONMENT

The defendant Rudolph C. Fratto, by and through his attorney Arthur N. Nasser, respectfully requests that the Court consider the following facts and circumstances in determining a sentence pursuant to §3553(a) as well as §3582(a), Title 18, U.S.C., and forge a sentence of home detention which would include electronic monitoring, reporting requirements to the United States Probation Department, unannounced visits by Probation or any designated law enforcement agencies, and any other stringent conditions or restrictions that would accomplish the goals of sentencing and, yet, enable defendant to carry on during designated hours his present income producing activities as disclosed in the Plea Agreement, dated October 13, 2009, page 2, ¶6 and fulfill his financial obligations to his Government and to his family for whom he is the sole provider.

THE BASIC FACTS LEADING UP TO THIS CASE

Commencing in the first two months of 2009, defendant Fratto upon learning that the Internal Revenue Service (IRS) was investigating him for tax offenses, retained his present attorney and a certified public accountant who had prepared Federal and Illinois income tax

returns for him in years prior to those included in the Information, to determine his correct income tax liabilities for the years 2002 through 2008. After spending scores of hours combing through voluminous records including bank statements, cancelled checks, invoices, IRS forms W-2 and 1099, and other taxpayer and employment records, a determination was made of tentative income taxes due. This process took several months to complete.

During the review and audit of defendant Fratto's income and tax records, a series of conferences were held between his counsel, counsel for the United States as well as at least two IRS agents. It was made abundantly clear to the Assistant United States Attorney (AUSA) assigned to Mr. Fratto's case, that it was his intention to waive a Grand Jury indictment, agree to an Information and plead guilty, all of which was eventually done. With the full cooperation of all parties involved the amount of income tax owed was arrived at and agreed upon for the year 2005, the *plea year*, as well as the years 2001-2004, and 2006 and 2007, the *relevant conduct years*¹. See Plea Agreement, pages 4-5, ¶7.

THE PLEA AGREEMENT

Defendant Fratto and his counsel with the cooperation of the AUSA and IRS agents, hammered out the provisions contained in the Plea Agreement including sources and amounts of income and tax due for the years 2001 through 2007. It is not the intent of this Position Paper to re-hash the provisions of the Plea Agreement, including the applicable Sentencing Guidelines. Suffice it to say, the Sentencing Guidelines offense level and adjusted offense range were agreed upon by Mr. Fratto's counsel and the United States after lengthy deliberations and discussions.

¹ Mr. Fratto timely filed his Federal and Illinois 2008 income tax returns, paid a portion of the Federal tax due and, all of the Illinois tax, and, by the time of sentencing, will pay the balance of Federal tax, either in full or installments, depending upon his financial status.

The Guidelines, however, are only the starting point. They are only one of the essential factors §§3553(a) and 3582(a) mandate a sentencing court to consider in determining a §3553(a) sentence.

IMPOSITION OF A SENTENCE PURSUANT TO §§3553(a) AND 3582(a)

Section 3553(a) first requires that a sentencing court “shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes of sentencing as set forth in subparagraphs (1) through (7). Section 3582(a) reiterates that a sentencing court “[I]n determining whether a term of imprisonment is to be imposed - - - shall consider the factors set forth in section 3553(a) to the extent they are applicable, *recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.* - - - (italics added).”

United States v. Gall, 552 U.S. _____, 128 S.Ct. 586, 596, 169 L.Ed.2d 445 (2007 and the companion case of *United States v. Kimbrough*, 552 U.S. _____, 128 S.Ct. 558, 570 169 L.Ed.2d 481 (2007), both freed sentencing courts from the stranglehold of the Federal Sentencing Guidelines. *Gall*, *ante*, at 596, put it succinctly, stating that:

[A]fter giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the §3553(a) factors to determine whether they support the sentence requested by a party. In doing so he may not presume the Guideline range is reasonable. (Citation omitted.)

Kimbrough, *ante*, at 570, emphasized the overarching provision of §3553(a) instructing district courts to impose a sentence *sufficient, but not greater than necessary* to accomplish the goals of §3553(a). In *Nelson v. United States*, 555 U.S. _____, 129 S.Ct. 890 (2009) (*Per Curiam*) the Supreme Court, in what appears to be an effort to clear the lingering hold of the Guidelines on some district and appellate courts, stated:

[T]he sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, 18 U.S.C. §3553(a), explaining any variance from the former with reference to the latter - - - [T]he Guidelines are not only *not* mandatory on sentencing courts; they are also not to be presumed reasonable. - - -

With the foregoing Supreme Court opinions in mind, we implore your Honor to impose a sentence under §3553(a) that is individualized and appropriate as to Rudy Fratto. We also respectfully request that the Court keep in mind §3582(a)'s recognition that, in considering an individualized sentence as required by §3553(a), "imprisonment is not an appropriate means of promoting correction and rehabilitation."

In light of the responsibilities and obligations he, and he alone has, not only to his family, but to his Government, we request that the Court impose a sentence of home confinement for a term and with the most stringent of conditions and requirements the Court deems appropriate. Those requirements can include electronic monitoring, periodic reporting to the United States Probation Office, unannounced residential visits during hours of confinement by designated law enforcement personnel, any method of telephonic monitoring of residential and mobile/cell telephones (or no cell phone), continued employment during specified hours which will enable him to carry on his income producing activities, all of which will enable him to pay off the outstanding income tax liabilities² he has incurred as a result of his defalcation, and support his

² Both parties to the Plea Agreement agreed that the total federal tax loss (the outstanding tax liability) for the tax years 2001-2007 was \$140,192; that agreement had the dual purpose of determining the Guidelines offense level as well as restitution. However, that amount does not begin to cover additional potential penalties and for interest running from the due date of each income tax return for each of the years 2001 through 2007. Some of the potential penalties include civil fraud (75%); failure to pay tax on time (max of 25%); failure to file returns (25% up to a maximum of 75% if no fraud penalty; and underestimate of estimated tax, all calculated on the amount of tax due.

family as described, *infra*.

**APPLICABLE §3553(a) FACTORS AND CIRCUMSTANCES
THAT SHOULD BE CONSIDERED IN THE FORMULATION OF
A SENTENCE APPROPRIATE TO DEFENDANT RUDY FRATTO**

SECTION 3553(a)(7) – THE NEED TO PROVIDE RESTITUTION TO THE UNITED STATES.

Factor (a)(7) is the easiest, thus the first factor, we consider. There is no argument about the amount of the underpayment of tax for which Mr. Fratto must make restitution – \$141,192. As described in footnote 2, *ante*, that amount does not begin to cover the monumental financial obligation he has inflicted upon himself by what would appear to a stranger to be an inexplicable failure to file returns and pay taxes lawfully due from him, especially after considering his compliance with the tax laws a score and more of years prior to 2001, as well as considering the paper trail he left behind in each of the years he failed to file returns, a paper trail any first year accounting student could not fail to pick up! Be that as it may, he recognized and admitted his responsibility for failing to file returns and failing to pay tax due. Not discussed in footnote 2, is the amount of interest that is running on the underpayment of tax due for each of the years 2001 through 2007.

As provided in §§6601(a) and 6621(a)(2), Title 26, U.S.C., (the Internal Revenue Code), interest on underpayments of tax is imposed at the federal short-term rate plus 3 percentage points and accrues from the date the payment was *due*, i.e. the filing date without regard to extensions, until *paid*, i.e., received by the IRS. Interest is compounded daily and runs on applicable additions (penalties) to tax from the due date of the returns, if not paid after notice and demand. *See*, Internal Revenue Code, §§6601(e)(1), (2) and (3). Without fear of contradiction,

restitution will not be *only* \$141, 192; after assessment has been made, the potential for additions to tax as well as the certainty of interest following, as sure as the night follows the day, the amount of *restitution will be more than double from \$141,192*. And, at the *present* rate of 8% that amount will double in approximately 10 years. What is the point of the foregoing discussion? If the Court sees fit to impose a term of home confinement with stringent requirements including the opportunity to continue his income providing activities, he will be able with sufficient time to satisfy that backbreaking tax obligation he wrought by his failure to comply with the tax laws.

In addition, he and his spouse, Kim Fratto, own their residence; if he is granted home confinement and given a reasonable time to sell the home in an arms-length transaction and not *under the hammer* or foreclosure, in a good market the home could be sold at or near its appraised value of \$750,000 to \$800,000. An arms-length sale could net him approximately \$300,000 plus after paying-off mortgages of \$430,000 to \$450,000. The net amount of \$300,000 plus, would be used to pay-off the *restitution* amount which will include taxes is, penalties and interest; if any balance remains, it would be an amount easily payable by him in installments, if not in one lump sum.

Home confinement would give defendant an opportunity to make good the “budgetary short falls and reduced sources of funds for the schools and the poor” his defalcation caused to the “public fisc.” *See, Government’s Version of the Offense*, dated October 14, 2009 (page 3 indicates “Memorandum, November 10, 2009.”)³

³ The Government, in its Version of the Offense, decries defendant’s fraud upon the *public fisc*. And that is as it should be. He has accepted responsibility for that fraud upon the *public fisc*; it is now time to forge a sentence that provides defendant with an opportunity to right

SECTION 3553(a)(1) – THE NATURE AND CIRCUMSTANCES OF THE OFFENSE AND THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT.

The first prong of §3553(a)(1) is easily disposed of – a non-violent tax offense which, after prolonged argument discussion and deliberation, was agreed to be chargeable under §7201, Attempt To Evade Or Defeat Tax, a felony imposing a term of imprisonment of not more than 5 years or a fine of not more than \$250,000, or both, *and*, costs of prosecution which, according to the *Government’s Version of the Offense, p2*, Memorandum November 10, 2009, is estimated to be \$500. With respect to the term of imprisonment the thrust and intent of defendant Fratto’s position paper is to convince the Court to forego a term of imprisonment and impose a term of home confinement as heretofore requested and the salutary effect it would have as far as achieving the goals of sentencing – correction, rehabilitation and restitution.

Insofar as a fine is concerned, considering the monumental amount of *restitution* which Mr. Fratto faces and the limited assets and financial resources available to him to repay his tax obligations and support his family, being the sole provider, he will be effectively insolvent. Any amount of fine would virtually choke-off any chance for him to rehabilitate himself, make restitution and provide the financial support his family will require. It is requested that the Court not impose any fine which will give defendant a fair chance at rehabilitating himself financially.

The second prong of §3553(a)(1), *the history and characteristics of the defendant*, follows:

Rudy Fratto is sixty five years of age and a life-long resident in the Chicagoland area. He is presently married to Kim Fratto whose present physical condition will be discussed in detail, *ante*. During their now twenty-one year marriage Kim gave birth to two boys, Rudy, III and Sam,

the wrong he wrought and fulfill the goals of sentencing.

who are presently twenty and sixteen, respectively. Prior to his marriage to Kim, defendant was married to Janet Scalabroni for eighteen years. From that marriage defendant had two daughters, Janell and Jeannine, now 40 and 37 years of age, respectively. Janell has two sons, Vincent, 18 and Frank, 9. Jeannine has one son Joey, 11. All of the children and grandchildren reside in the Chicagoland area.

Son Rudy, III, is a sophomore attending college at the University of Illinois, Champaign. Son Sam attends Hinsdale Central High School, and is a sophomore. Grandchild Vincent attends Fenwick High School in Oak Park, Illinois. Frank and Joey attend grade school in Bloomingdale, Illinois. Defendant Fratto enjoys a warm, close, loving relationship with all of his children and grandchildren. They all are in frequent communication with him and his wife Kim.

Just reciting the names of defendant Fratto's loved ones, his wife, children and grandchildren, falls far short of describing the human being Rudy Fratto. The Court is respectfully requested to peruse the letters sent in on Mr. Fratto's behalf by his four children, and his siblings. Those letters as well as the letters of his neighbors and long time friends are all testaments to Rudy Fratto's true character, his compassion and devotion and unbelievable love and generosity towards family, friends and acquaintances, alike. Without those letters as witnesses to who Mr. Fratto truly is, the Court would never know how devoted and involved he has been to the raising of his children including their spiritual and moral upbringing, their character, and their emotional, intellectual and physical life. As well, the letters of his friends and neighbors testify and affirm defendant's deep devotion and involvement not only in the lives of his immediate family but the lives of those neighbors and friends and their families. Again we respectfully request that the Court, in determining the type of sentence to impose, to give the

utmost consideration to the scores of family, friends, and neighbors who have attested to Rudy Fratto's excellent character and everything that flows from it. We also ask the Court to consider the horrendous punishment any term of confinement will wreak on Mr. Fratto's family: probable loss of the family home, loss of educational opportunities for his sons and loss of a sole caretaker for his disabled wife.

The Physical Condition Of Kim Fratto

In July 2009 Kim Fratto, the spouse of Rudy Fratto, suffered a fall at her home which resulted in a fracture and broken toe in her left foot and five broken bones in her right foot. The injuries required major surgery. *See*, Defendant Fratto's Sentencing Hearing Group Exhibit A, consisting of four pages, attached hereto and made a part hereof. Said Exhibit A contains medical narratives of her condition and x-rays of the fractures and broken bones. The breaks in her right foot required eight screws and a steel shaft or plate. *See*, Exhibit A, page 3. Mrs. Fratto has been diagnosed with osteoporosis. The attending orthopedic surgeon indicates she should be tested annually for the disease and her "Fracture risk is moderate." *See*, Exhibit A, page 1, Dr. Rahul Gokhale's "DXA Bone Densitometry Report," dated August 14, 2009.

Her recovery from the injuries is slow. She is presently undergoing rehabilitation but suffers extreme pain. For the Court's information Mrs. Fratto has compiled a time line dated from the date of her injury to December 18, 2009 which is attached as Defendant Fratto's Sentencing Exhibit B, consisting of three pages. The most notable observations are the extreme pain she has suffered and continues to suffer and her inability to care for herself.

Mrs. Fratto's only caretaker since the accident to the present time and into the future is her spouse, defendant Rudy Fratto. He must attend to her most basic everyday needs. The time

line, Exhibit B, describes those needs in detail. The health insurance he carries and pays for does not provide for in-home care. In addition to attending to Mrs. Fratto's basic needs, he must also act as cook, house cleaner, dishwasher and chauffeur, not only for Kim, but for his 16 year old son Sam (Rudy III is away at school, University of Illinois, Champaign). Further, Mr. Fratto must also fit into his daily household activities, time to conduct his sales and other activities for the several companies for which he works.

As if the suffering she has endured from her broken right foot and fractured left foot, was not enough, Mrs. Fratto has recently learned that she will require eye surgery for her left eye, the sight of which she is in danger of losing. As soon as the medical reports of the eye surgery is available, they will be furnished to the Court.

In view of Mrs. Fratto's almost entire reliance on defendant for her everyday care and welfare, it is respectfully requested that, for that reason as well, he be sentenced to a term of home detention as requested and suggested herein.

Other than this non-violent criminal tax conviction Mr. Fratto has no criminal record. The road to redemption for him began when he first retained tax counsel to straighten out the tax mess he created by not filing returns. That journey began prior to the time the IRS launched a full scale tax investigation; albeit an investigation had commenced it was in its earliest stages.⁴ From that point on he was prepared to and did accept responsibility for his conduct and plead guilty, whatever the cost to him.

⁴ As disclosed in the Government's Version of the Offense, the "estimated costs of prosecution is \$500."

§3553(a)(2)(A) – (D) – The Need For The Sentence Imposed

(D). The provisions of (2)(D) are not, for all practical purposes, a factor applicable to defendant. He is an adult, aged 65 and not in need of educational or vocational training or medical care⁵ or *other correctional treatment* (whatever that phrase means).

As to §3553(a)(2)(C), neither the Court nor the public need fear that defendant will commit further crimes. He fully understands the implication and impact of this felony conviction. He has always had a healthy and great respect for the law and instilled that respect in his children and others with whom he came into contact. The chance of Mr. Fratto committing another crime are nil. §3553(a)(2)(B). The conviction and sentence of Rudy Fratto for tax evasion will not deter anyone from committing tax fraud⁶ or any other criminal offense.

We recognize the seriousness, the grave seriousness, of the offense of non-payment of taxes. For better or worse, our voluntary system of paying taxes is what has made the United States as great and powerful as it is. Rudy Fratto admittedly defaulted in his duty to pay tax. Recognizing the seriousness of the offense, the issue for the Court is how is he to be punished in order to achieve the goals of, among provisions of §3553, subsection (a)(2)(A). A corollary issue is does “just punishment” exclude ever other kind of sentence available *except prison*? We say

⁵ For all practical purposes educational or vocational training in the Federal prison system is virtually non-existent. Medical care is at a bare minimum. Any extraordinary medical care is contracted out by the Bureau Of Prisons to private medical institution, e.g., at FMC, Rochester, Mn., to Mayo Clinic, the cost of which is tremendous.

⁶ As a personal aside, this practitioner, in more years than he cares to remember, has never met a taxpayer who is under audit or investigation who was deterred from cheating on his taxes because some other taxpayer was convicted and sentenced to jail. Deterrence based on tax convictions is a myth. As long as the tax code, as it is written and re-written, leaves open a multitude of loop-holes, vague definitions and indecipherable code provisions, there will be attempts to skirt the law.

no.

In addition to the financial havoc a prison sentence would impose on defendant and his family, it would completely strangle any chance he has to make good his tax obligations to the United States. It should now be crystal clear to everyone that those obligations including penalties and interest, will more than double the amount of agreed *restitution*. If one of the primary, significant concerns of rehabilitation is restitution to victims, here the United States (the IRS), meting out a prison sentence to defendant “just ain’t gonna do it.” Imposing “just punishment” can be achieved by home confinement/detention. It will provide defendant with an orderly and timely opportunity to dispose of what is his sole asset, his residence, in the most effective way, an arms-length sale, the proceeds from which will be used to satisfy most, if not all of the taxes, penalties and interest due from him. Albeit inflicted upon himself, the penalties and interest for the years 2001 through 2007, are a form of “just punishment” which Congress determined should be imposed upon tax cheats.

In addition to the foregoing, “just punishment” is achieved by home confinement/detention, because it, like supervision or probation, carries with it the threat that, if any of the requirements or provisions of home confinement are violated, the Government is free to move for the immediate revocation of home confinement and the Court, in all likelihood, would order his immediate incarceration. Mr. Fratto is keenly aware this would happen for any violation of home confinement, if ordered by the Court. And, Mr. Fratto has been made aware that any violation of home detention could lead to more severe punishment than the Guideline range.

Section 3553(a)(3) – The Kind Of Sentences Available.

Besides incarceration in a Federal penal institution, there are a variety of sentences available to the Court, especially since *Kimbrough*, *Gall* and *Nelson*, *ante*, laid to rest the mandatory nature of the Sentencing Guidelines and relegated them to only one of the sentencing factors for courts to consider under §3553(a).

Based on all of the foregoing and “[R]ecognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation,” §3582(a), it is respectfully requested that the Court sentence defendant Rudy Fratto to home detention for a term to be determined by the Court together with other conditions providing, among other conditions:

1. Electronic monitoring or other effective monitoring requirements that would serve the same purpose at much less cost to defendant, e.g., reporting to Probation on a daily basis or unannounced visits to his residence or both;
2. A time table strictly requiring his presence at home and at work. To the extent necessary, it is also requested that the Court permit him to negotiate the sale of his home, first without real estate brokers or sales agents or, second, if that is unsuccessful, with such brokers or sales agents. Further, since he is the sole caretaker for his incapacitated wife, designated times and days to transport her for necessary medical care;
3. To the extent desired, defendant will agree to the monitoring of his home and cell telephones by any Federal law enforcement agency; and
4. Any other condition the Court may consider appropriate to achieve *just punishment*.

Respectfully submitted,
Rudolph C. Fratto,
Defendant.

Dated: December 28, 2009

By: Arthur N. Nasser
110 East Delaware Place
Suite 1802
Chicago, Illinois 60611
312-282-2960 (cell)
312-397-1156 (fax)

CERTIFICATE OF SERVICE

The undersigned attorney of record for defendant Rudolph C. Fratto certifies that copies of DEFENDANT RUDOLPH C. FRATTO'S POSITION PAPER REGARDING A SENTENCE UNDER §§ 3553(a) and 3582(a) THAT INCLUDES A TERM OF HOME CONFINEMENT RATHER THAN A TERM OF IMPRISONMENT have been served upon the following parties in accordance with Federal Rules of Criminal Procedure, Rule 49, and General Order on Electronic Filing pursuant to the District Court's ECF filing system:

United States District Court
Clerk Of The Court
Ms. Denise Slappey
219 South Dearborn Street,
Chicago, Illinois 60604
E-mail Address:Denise_Slappey@ilnd.uscourts.gov

United States Attorney
Assistant United States Attorney Patrick King
5th Floor
219 South Dearborn Street,
Chicago, Illinois 60604
E-mail Address: patrick.king@usdoj.gov

United States Probation Office
Attention: Scott Porter
Probation Officer
55 West Monroe Street,
Chicago, Illinois 60603
E-mail Address: Scott_Porter@ilnp.uscourts.gov

Dated: December 28, 2009

By: Arthur N. Nasser
110 East Delaware Place
Suite 1802
Chicago, Illinois 60611
312-282-2960 (cell)
312-397-1156 (fax)

EXHIBIT A
PAGES A – 1, A – 2, A – 3

EXHIBIT A - 1

4077

M & M ORTHOPAEDICS

4115 Fairview Ave, Downers Grove, IL, 60515
Phone: 630-968-1881 Fax: 630-968-6449

DXA Bone Densitometry Report: Friday, August 14, 2009

Dear Dr Adam Ramsey,

Your patient Kim Pratto completed a BMD test on 8/14/2009 using the Lunar Prodigy Advance DXA System (analysis version: 11.30) manufactured by GE Healthcare. The following summarizes the results of our evaluation.

PATIENT BIOGRAPHICAL:

Name:	Pratto, Kim K	Birth Date:	5/30/1957	Height:	63.0 in.
Patient ID:	4077	Exam Date:	8/14/2009	Weight:	190.0 lbs.
Gender:	Female	Fractures:	Ankle, Foot, Tibia	Treatments:	Calcium, Daily Vitamins
Indications:	History of Fracture (Adult)				

ASSESSMENT:

The BMD measured at Femur Neck Left is 0.820 g/cm² with a T-score of -1.6. This patient is considered osteopenic according to World Health Organization (WHO) criteria. Bone density is between 10 and 25% below young normal. Fracture risk is moderate. Treatment is advised.

The BMD measured at AP Spine L1-L4 is 1.169 g/cm² with a T-score of -0.2. Bone density is up to 10% below young normal. This patient is considered normal according to World Health Organization (WHO) criteria. Fracture risk is low.

The BMD measured at Femur Neck Right is 0.850 g/cm² with a T-score of -1.4. This patient is considered osteopenic according to World Health Organization (WHO) criteria. Bone density is between 10 and 25% below young normal. Fracture risk is moderate. Treatment is advised.

The BMD measured at Femur Total Left is 0.842 g/cm² with a T-score of -1.3. This patient is considered osteopenic according to World Health Organization (WHO) criteria. Bone density is between 10 and 25% below young normal. Fracture risk is moderate. Treatment is advised.

The BMD measured at Femur Total Right is 0.852 g/cm² with a T-score of -1.2. This patient is considered osteopenic according to World Health Organization (WHO) criteria. Bone density is between 10 and 25% below young normal. Fracture risk is moderate. Treatment is advised.

Site	Region	Measured Date	Measured Age	WHO Classification	Young Adult T-score	BMD
DualFemur	Neck Left	8/14/2009	52.2	Osteopenia	-1.6	0.820 g/cm ²
AP Spine	L1-L4	8/14/2009	52.2	Normal	-0.2	1.169 g/cm ²
DualFemur	Neck Right	8/14/2009	52.2	Osteopenia	-1.4	0.850 g/cm ²
DualFemur	Total Left	8/14/2009	52.2	Osteopenia	-1.3	0.842 g/cm ²
DualFemur	Total Right	8/14/2009	52.2	Osteopenia	-1.2	0.852 g/cm ²

World Health Organization (WHO) criteria for post-menopausal, Caucasian Women:
 Normal: T-score at or above -1 SD
 Osteopenia: T-score between -1 and -2.5 SD
 Osteoporosis: T-score at or below -2.5 SD

RECOMMENDATIONS:

NOF Guidelines recommend treatment for patients with a T-score of -1.5 and below with risk factors or -2.0 and below without risk factors. Effective therapies are available in the form of bisphosphonates (Fosamax and Actonel), and Evista. Hormone therapy may be an option based on review of risks and benefits of treatment. All patients should ensure an adequate intake of dietary calcium (1200 mg/d) and vitamin D (400-800 IU daily).

All patients should ensure an adequate intake of dietary calcium (1200 mg/d) and vitamin D (400-800 IU daily). Effective therapies for the prevention of osteoporosis include bisphosphonates (Fosamax and Actonel) and Evista. Hormone therapy may be an option based on review of risks and benefits of treatment.

M & M ORTHOPAEDICS

4115 Fairview Ave, Downers Grove, IL, 60515
Phone: 630-968-1881 Fax: 630-968-6449

4011

DXA Bone Densitometry Report: Friday, August 14, 2009

FOLLOW-UP:

People with diagnosed cases of osteoporosis or at high risk for fracture should have regular bone mineral density tests. For patients eligible for Medicare, routine testing is allowed once every 2 years. The testing frequency can be increased to one year for patients who have rapidly progressing disease, those who are receiving or discontinuing medical therapy to restore bone mass, or have additional risk factors.

Based on these results, a follow-up exam is recommended in August 2011.

Sincerely,

Dr Rahul Gokhale

02 10:44:47

EXHIBIT A - 2

R
MCP
Ⓢ

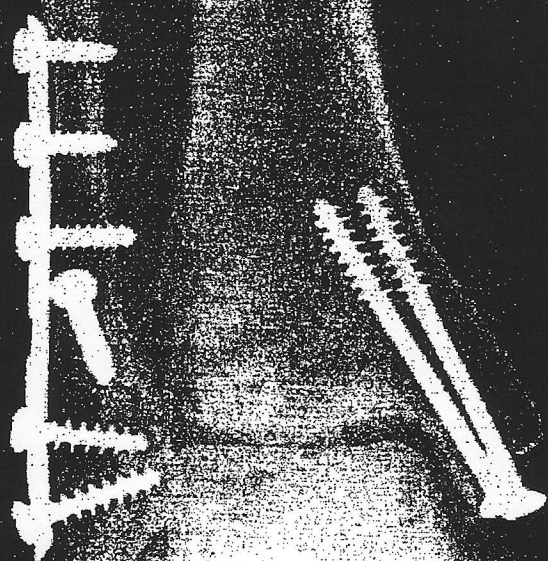


EXHIBIT A - 3

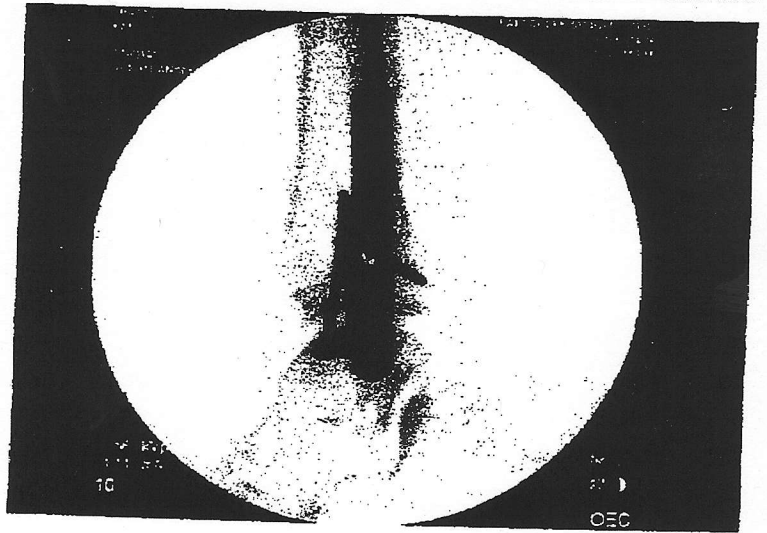
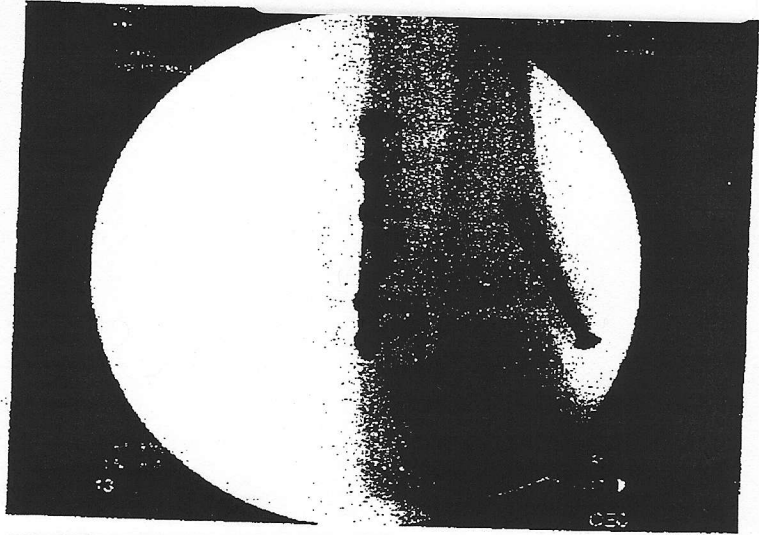
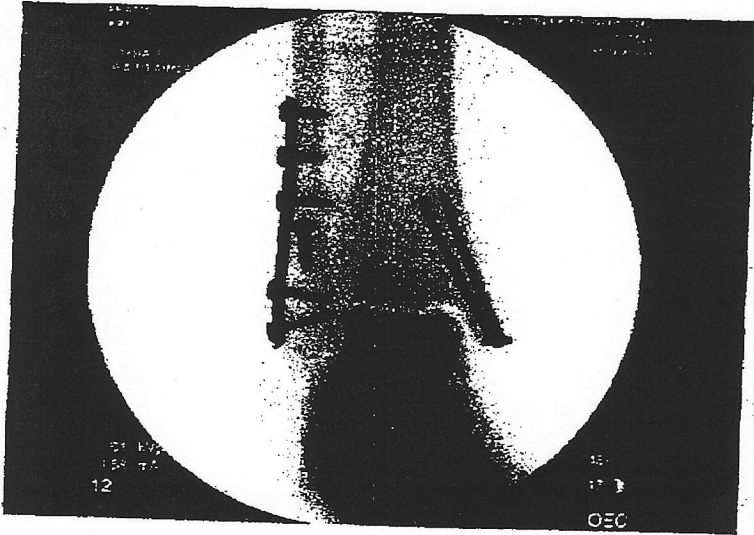


EXHIBIT B
PAGES B – 1, B – 2, B – 3, B – 4

EXHIBIT B - 1**FOOT ACCIDENT TIME LINE OF:**

KIM FRATTO
1520 Winterberry Lane
Darien, Illinois

Born: May 30, 1957

July 25, 2009

- Opened my front door to go outside, stepped down onto a thick welcome mat, breaking 2 feet, 5 bones

July 25, 2009

M& M Othropaedics
4115 Fairview Ave., Downers Grove, Il. 60515
630.968.1881

- Seen by Dr. Mash of M & M Orthopaedics
- X-rays both feet / ankles
- 5 bones broken total
- Right foot: 2 ankle bones & the tibia
- Left foot: Side medacarpes and baby toe
- Unexplainable pain
- Digionoses: Totally non weight bearing on both feet for minimum of 12 weeks.

July 29, 2009

Dr. Mash refers me to a Trauma Surgeon,
Dr. Rahul Gokhale, M.D.
M&M Orthopaedics
4115 Fairview Ave., Downers Grove, Il. 60515
630.968.1881

- Surgery mandatory for the right foot/ankle but must be postponed until swelling minimizes.
- Dr. Mash refers the case, due to the severity, to trauma surgeon,
- Dr. RAHUL GOKHALE / M & M Orthopaedics
- UNABLE TO MOVE - CANNOT STAND OR CRAWL!
- Unbearable pain
- MUST BE LIFTED TO LAY FLAT ON COUCH (Since bedrooms are upstairs)
- NOT ABLE TO BATHE
- NO USE OF A TOILET / BEDPAN ONLY

EXHIBIT B - 2

July 25-August 1st

- Instructed to lay 24/7 to wait for swelling to minimize so surgery can be performed.
- FOR 2 WEEKS, (From August 25 to August 7th, laid flat with feet elevated, iced and on pain meds)
- CANNOT USE EITHER FOOT
- No casts, no movement, no walking, no surgery until severe swelling minimizes
- COMPLETELY DEPENDENT FOR ALL BODILY NEEDS.
- Unexplainable pain

August 7, 2009

- Surgery performed @ Salt Creek Surgical Center
- 2 hour surgery
- General Anesthesia administered
- 8 screws, steel plate inserted in the right ankle / 35 staples total
- Left foot boot casted for 2 broken bones
- NO WALKING, STANDING OR ANY MOVEMENT.
- SLEEPING ON A FIRST FLOOR COUCH / feet continually elevated and ice packs
- BEDPAN ONLY
- TOTALLY PARALIZED IN BOTH FEET, ANKLES, LEGS

August 20, 2009

- With assistance, am able to get into a wheelchair
- Both feet must be elevated at all times /ice
- Still using bedpan
- No movement
- Heavy pain medications
- Extreme pain / swelling

August 28, 2009

- With complete 100% assistance, being placed in a wheelchair and lifted onto a "paddy chair"
- Completely non weight bearing on both feet/legs
- Stitches removed (32 staples) from both ankle incisions on right foot
- Elevated and icing both feet
- Not able to shower at all yet

EXHIBIT B – 3**September 10, 2009**

- With complete "In home aid", attempt to take a shower for the first time since July 24th
- Dependant for all food, care, medicines, general health / 24 hour care needed
- Cannot yet even "crawl"
- Extreme pain 24/7

October 10, 2009

- In home nursing and physical therapy begins
- Both feet are still not "weight bearing"
- Still completely Wheelchair bound and needing assistance to get on/off potty chair
- Can now "crawl" on hands and knees to get upstairs to sleep in a regular bed
- Can now "scoot" down on my butt to get back down the stair with the wheelchair waiting at the bottom of stairs.

October 20th

- Begin physical therapy using a walker for distance and time "as tolerated"
- In home physical therapy 3x a week
- Cannot sit with feet hanging down still!
- Feet are still extremely swollen, continue ice and elevation
- Off the potty chair and can crawl to the toilet, but need help standing erect to get on the seat
- Can now crawl into the shower and shower on my hands and knees with assistance
- LEFT FOOT STILL BROKEN ON XRAYS!

November 1, 2009

- Using walker with more frequency
- Pain is still unbearable – burning, throbbing, swelling, and stabbing sensations
- Able to now use walker to get to/from bed
- Crawling into the shower, but now able to stand erect in the shower with the aid of walker!

November 20, 2009

- Using the walker now, one step at a time,
- Continued wheelchair usage for any/ all walking activities
- Still on pain medications
- Continued elevation and ice packs

December 1, 2009

- Begin Outpatient Physical Therapy, Paulsen Center

- 2x a week
- Using a walker, but still limping
- Still taking pain meds for the pain
- Wearing an ankle brace on right ankle/foot
- **LEFT FOOT STILL BROKEN! SHOWING SLIGHT FRACTURE ON XRAY!**
- Still unable to "sit" with both legs hanging down, for longer than 15-20 minutes without increased pain, numbing, throbbing and swelling in the right ankle. Must elevate when sitting
- Still keeping right foot elevated, ice packs

December 18, 2009

- Increased walking for short distance in home without walker assistance, one foot at a time (but very slowly!!!)
- Limping
- Outpatient Physical Therapy 2x weekly
- Continue to wear a brace on right foot
- Pain meds when needed
- Right Ankle and foot still swollen
- Painful to touch and increased swelling by days end
- Not able to wear "regular" shoes
- Stabbing pain, burning in the right foot/ankle
- Left foot ALONE cannot support or handle pain, 100% weight bearing
- Right foot ALONE cannot support or handle pain, 100% weight bearing

- Still unable to "sit" with both legs hanging down, for longer than 20 - 30minutes without increased pain, numbing and swelling in the right ankle. Must continue elevating when sitting
- Still keeping right foot elevated, ice packs

Case 1:09-cr-00795 Document 14-12 Filed 12/30/09 Page 1 of 1
U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
ATTORNEY APPEARANCE FORM

NOTE: In order to appear before this Court an attorney must either be a member in good standing of this Court's general bar or be granted leave to appear *pro hac vice* as provided for by Local Rules 83.12 through 83.14.

In the Matter of
United States Of America v. Rudolph C. Fratto

Case Number: 09CR795

AN APPEARANCE IS HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:
Defendant, Rudolph C. Fratto.

NAME (Type or print) Arthur N. Nasser	
SIGNATURE (Use electronic signature if the appearance form is filed electronically) s/ Arthur N. Nasser	
FIRM Law Office of Arthur N. Nasser	
STREET ADDRESS 110 East Delaware , Suite 1802	
CITY/STATE/ZIP Chicago, Illinois 60611	
ID NUMBER (SEE ITEM 3 IN INSTRUCTIONS) 2018411	TELEPHONE NUMBER 312-282-2960
ARE YOU ACTING AS LEAD COUNSEL IN THIS CASE?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
ARE YOU ACTING AS LOCAL COUNSEL IN THIS CASE?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
ARE YOU A MEMBER OF THIS COURT'S TRIAL BAR?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
IF THIS CASE REACHES TRIAL, WILL YOU ACT AS THE TRIAL ATTORNEY?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
IF THIS IS A CRIMINAL CASE, CHECK THE BOX BELOW THAT DESCRIBES YOUR STATUS. RETAINED COUNSEL <input checked="" type="checkbox"/> APPOINTED COUNSEL <input type="checkbox"/>	