

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA)

vs.)

KIRBY SEAN MCKEE)

10CR50014

No. _____
Violations: Title 18, United States Code,
Section 1033(b)(1)

FILED

COUNT ONE

FEB 23 2010

The MAY 2009 GRAND JURY charges:

MAGISTRATE JUDGE P. MICHAEL MAHONEY
United States District Court

Judge Kapala

1. At times material to this indictment:

a. A Title Escrow Company, Inc. (hereinafter "ATEC") was an Illinois corporation located in Freeport, Illinois. ATEC was in the business of insurance, as that term is defined in Title 18, United States Code, Section 1033(f), and its activities affected interstate commerce.

b. Defendant KIRBY SEAN MCKEE operated and managed ATEC.

c. Stewart Title Guaranty Company (hereinafter "Stewart") was a Texas-based title insurance company that did business in Illinois. Stewart was in the business of insurance, as that term is defined in Title 18, United States Code, Section 1033(f), and its activities affected interstate commerce.

d. ATEC was a registered title insurance agent pursuant to a written underwriting agreement with Stewart. ATEC's agency relationship with Stewart lasted until approximately June 6, 2005, at which time Stewart terminated the underwriting agreement.

e. A title insurance policy insures a purchaser's interest in real property from loss due to title defects, pre-existing liens, or other matters, subject to certain explicit exceptions that are set forth in the insurance policy. Lenders whose loans are secured by real property usually require a buyer/borrower to purchase such insurance so that the lender does not have to bear any title risk. As a registered title insurance agent for Stewart, ATEC sold title insurance policies issued by Stewart to ATEC's customers in northern Illinois.

f. Entities in the title insurance business often provide other services to their customers, including acting as an escrow agent for real estate transactions. An escrow agent typically receives funds and holds them in an escrow account until the parties to the escrow direct the agent to disburse them. The escrow agent's specific responsibilities are set forth in the agreement establishing the escrow. ATEC acted as an escrow agent for real estate transactions.

g. Ordinarily, funds could be disbursed from an escrow account only if there were supporting deposits, meaning that funds had previously been deposited into the escrow account in an amount equal to or greater than the disbursement, and the customer had directed the disbursement. Due to the volume of business, there was a substantial float in ATEC's escrow accounts, meaning that on any particular day, the total amount of title insurance customer funds that had been deposited into ATEC's escrow accounts substantially exceeded the total amount of funds paid out that day in escrow transactions.

h. According to the written underwriting agreement with Stewart, funds ATEC received in connection with real estate transactions were required to be maintained in a separate escrow account and to be disbursed solely for, and only in connections with, real estate transactions, and in accordance with written instructions relating to the real estate transactions. Pursuant to the written underwriting agreement, ATEC maintained escrow accounts at Kent State Bank in Freeport, Illinois (hereinafter "Kent State Bank Escrow Account 4681" and at Gateway Community Bank in Roscoe, Illinois (hereinafter "Gateway Bank Escrow Account 1208"). ATEC also maintained separate operating accounts at Gateway Community Bank ("Gateway Bank Operating Account 1033" and "Gateway Bank Operating Account 1410").

i. As an escrow agent, ATEC was a fiduciary for all parties to the escrow, was required to hold the escrowed funds in trust, and was legally bound to strictly comply with all escrow instructions. As was common in the industry, Stewart issued "closing protection letters" under which Stewart indemnified parties to the escrow against any defalcation or failure to follow closing instructions by ATEC. Stewart thereby guaranteed the escrow accounts and became liable for any loss sustained as a result of the fraud or dishonesty of ATEC with respect to funds in the escrow accounts maintained by ATEC. As a title insurance agent, ATEC also owed a fiduciary duty to Stewart.

2. Defendant KIRBY SEAN MCKEE embezzled and misappropriated funds that had been provided by title insurance customers to ATEC and placed by ATEC in escrow

accounts. The defendant used some of the embezzled and misappropriated funds for his own personal use, including using more than \$15,000 to purchase jewelry. The defendant used other embezzled and misappropriated funds to pay operational expenses of ATEC. The embezzled and misappropriated funds enabled the otherwise insolvent ATEC to continue in business, which allowed defendant to obtain thousands of dollars in salary and other funds from ATEC and the ability to cause ATEC to hire family members and personal friends as ATEC employees.

3. Defendant KIRBY SEAN MCKEE embezzled and misappropriated title insurance premiums that ATEC had collected from customers on behalf of Stewart. Instead of remitting those premiums to Stewart as ATEC was required to do, defendant embezzled and misappropriated those premiums to his own use and for the use of ATEC.

4. On or about October 13, 2004, in Stephenson County, in the Northern District of Illinois, Western Division, and elsewhere,

KIRBY SEAN MCKEE,

defendant herein, being an officer, employee and agent of persons engaged in the business of insurance whose activities affect interstate commerce, namely ATEC and Stewart, did willfully embezzle and misappropriate \$50,000 in money, funds and premiums of ATEC and Stewart by transferring or causing to be transferred \$50,000 from ATEC's Kent State Bank Escrow Account 4681 to ATEC's Gateway Bank Operating Account 1033.

All in violation of Title 18, United States Code, Section 1033(b)(1).

COUNT TWO

The MAY 2009 GRAND JURY further charges:

1. Paragraphs 1, 2 and 3 of Count One of this Indictment are re-alleged and incorporated herein as if fully set forth.

2. On or about October 25, 2004, in Stephenson County, in the Northern District of Illinois, Western Division, and elsewhere,

KIRBY SEAN MCKEE,

defendant herein, being an officer, employee and agent of persons engaged in the business of insurance whose activities affect interstate commerce, namely ATEC and Stewart, and while being engaged in the business of insurance whose activities affected interstate commerce, did willfully embezzle and misappropriate \$50,000 in money, funds and premiums of ATEC and Stewart by transferring or causing to be transferred \$50,000 from ATEC's Kent State Bank Escrow Account 4681 to ATEC's Gateway Bank Operating Account 1033.

All in violation of Title 18, United States Code, Section 1033(b)(1).

COUNT THREE

The MAY 2009 GRAND JURY further charges:

1. Paragraphs 1, 2 and 3 of Count One of this Indictment are re-alleged and incorporated herein as if fully set forth.

2. On or about November 18, 2004, in Stephenson County, in the Northern District of Illinois, Western Division, and elsewhere,

KIRBY SEAN MCKEE,

defendant herein, being an officer, employee and agent of persons engaged in the business of insurance whose activities affect interstate commerce, namely ATEC and Stewart, and while being engaged in the business of insurance whose activities affected interstate commerce, did willfully embezzle and misappropriate \$50,000 in money, funds and premiums of ATEC and Stewart by transferring or causing to be transferred \$50,000 from ATEC's Kent State Bank Escrow Account 4681 to ATEC's Gateway Bank Operating Account 1033.

All in violation of Title 18, United States Code, Section 1033(b)(1).

COUNT FOUR

The MAY 2009 GRAND JURY further charges:

1. Paragraphs 1, 2 and 3 of Count One of this Indictment are re-alleged and incorporated herein as if fully set forth.

2. On or about January 18, 2005, in Stephenson County, in the Northern District of Illinois, Western Division, and elsewhere,

KIRBY SEAN MCKEE,

defendant herein, being an officer, employee and agent of persons engaged in the business of insurance whose activities affect interstate commerce, namely ATEC and Stewart, and while being engaged in the business of insurance whose activities affected interstate commerce, did willfully embezzle and misappropriate \$100,000 in money, funds and premiums of ATEC and Stewart by transferring or causing to be transferred \$100,000 from ATEC's Kent State Bank Escrow Account 4681 to ATEC's Gateway Bank Operating Account 1410.

All in violation of Title 18, United States Code, Section 1033(b)(1).

COUNT FIVE

The MAY 2009 GRAND JURY further charges:

1. Paragraphs 1, 2 and 3 of Count One of this Indictment are re-alleged and incorporated herein as if fully set forth.

2. On or about February 2, 2005, in Stephenson County, in the Northern District of Illinois, Western Division, and elsewhere,

KIRBY SEAN MCKEE,

defendant herein, being an officer, employee and agent of persons engaged in the business of insurance whose activities affect interstate commerce, namely ATEC and Stewart, and while being engaged in the business of insurance whose activities affected interstate commerce, did willfully embezzle and misappropriate \$40,000 in money, funds and premiums of ATEC and Stewart by transferring or causing to be transferred, \$40,000 from ATEC's Kent State Bank Escrow Account 4681 to ATEC's Gateway Bank Operating Account 1410.

All in violation of Title 18, United States Code, Section 1033(b)(1).

COUNT SIX

The MAY 2009 GRAND JURY further charges:

1. Paragraphs 1, 2 and 3 of Count One of this Indictment are re-alleged and incorporated herein as if fully set forth.

2. On or about February 16, 2005, in Stephenson County, in the Northern District of Illinois, Western Division, and elsewhere,

KIRBY SEAN MCKEE,

defendant herein, being an officer, employee and agent of persons engaged in the business of insurance whose activities affect interstate commerce, namely ATEC and Stewart, and while being engaged in the business of insurance whose activities affected interstate commerce, did willfully embezzle and misappropriate \$19,000 in money, funds and premiums of ATEC and Stewart by transferring or causing to be transferred \$19,000 from ATEC's Kent State Bank Escrow Account 4681 to ATEC's Gateway Bank Operating Account 1410.

All in violation of Title 18, United States Code, Section 1033(b)(1).

COUNT SEVEN

The MAY 2009 GRAND JURY further charges:

1. Paragraphs 1, 2 and 3 of Count One of this Indictment are re-alleged and incorporated herein as if fully set forth.

2. On or about March 15, 2005, in Stephenson County, in the Northern District of Illinois, Western Division, and elsewhere,

KIRBY SEAN MCKEE,

defendant herein, being an officer, employee and agent of persons engaged in the business of insurance whose activities affect interstate commerce, namely ATEC and Stewart, and while being engaged in the business of insurance whose activities affected interstate commerce, did willfully embezzle and misappropriate \$200,000 in money, funds and premiums of ATEC and Stewart by transferring or causing to be transferred \$200,000 from ATEC's Gateway Bank Escrow Account 1208 to ATEC's Gateway Bank Operating Account 1410.

All in violation of Title 18, United States Code, Section 1033(b)(1).

A TRUE BILL:



FOREPERSON



UNITED STATES ATTORNEY