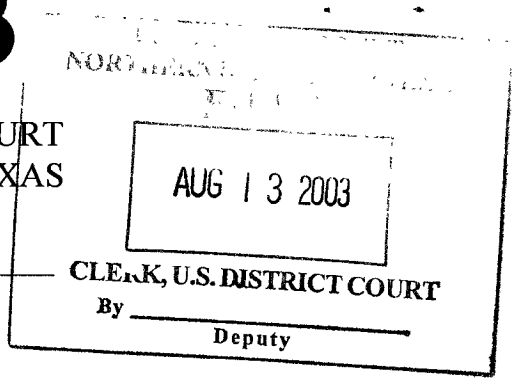


ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION



UNITED STATES OF AMERICA

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§

v.

NO. 4:03-CR-188-A  
(Supersedes Indictment Returned on June 19, 2003)

RICHARD MICHAEL SIMKANIN

SUPERSEDING INDICTMENT

The Grand Jury charges:

At all times material to the indictment:

Introduction

1. The Internal Revenue Code requires employers to pay to the United States the employer's share of Federal Insurance Contribution Act taxes ("FICA" or social security taxes) and Medicare taxes owing on wages paid to employees.

2. The Internal Revenue Code also requires employers to withhold from the wages of their employees the employees' share of Federal Insurance Contribution Act taxes, Medicare taxes and income taxes, to account for, those taxes, and to pay the withheld amounts over to the United States.

3. A person is responsible for collecting, accounting for, and paying over employees' share of FICA, Medicare, and income taxes if he has the authority to exercise significant control over the employer's financial affairs, regardless of whether the individual exercised such control in fact.

4. A person willfully violates his duty to collect, account for, and pay over FICA, Medicare and income taxes, if he knew of the duty and he voluntarily and intentionally violated that duty.

5. On or about April 5, 1982, Arrow Custom Plastics, Inc. (Arrow) was incorporated in the State of Texas, with its principal place of business in Bedford, Texas. From April of 1982 (when the Company was formed), through and including the dates included in this indictment, Arrow was engaged in the business of the production of customized plastic molds for various manufacturers. At the time of incorporation, through and including the dates included in this indictment, **Richard Michael Simkanin** (**Simkanin** or the defendant) served in the capacity of President and Chief Executive Officer of Arrow.

6. From the date of Arrow's incorporation through approximately September 2001, **Simkanin** was the sole shareholder of Arrow Custom Plastics, Inc. Sometime in August of 2001, **Simkanin** was informed by the government that he must produce Arrow's corporate documents. Shortly after receiving notice to produce these corporate documents, in September of 2001, **Simkanin** caused the dissolution of Arrow Custom Plastics, Inc. From about September 2001 through the dates included in this indictment, **Simkanin** continued to operate and control the business as a sole proprietorship under the name Arrow Custom Plastics (Arrow).

7. **Simkanin** had the authority to exercise significant control over the financial affairs of Arrow. This fact made **Simkanin** responsible for collecting FICA, Medicare

and income taxes from the wages of Arrow employees, accounting for those taxes, and paying those taxes over to the United States Treasury (through the IRS).

8. Prior to December 1999, **Simkanin** caused Arrow to withhold, account for, and pay over FICA, Medicare and income taxes from the wages of Arrow employees.

9. In or about December 1999, and again in or about June 2000, **Simkanin** called meetings for Arrow employees and informed them that Arrow would no longer withhold taxes from employee paychecks. **Simkanin** told his employees that **Simkanin** did not consider the wages of Arrow employees to be taxable income. **Simkanin** also encouraged employees to file amended tax returns and request refunds of taxes the employees had previously paid.

10. Beginning sometime in or about late 1999 or shortly thereafter, **Simkanin** instructed Arrow's bookkeeper to no longer collect, account for, and pay over taxes from the wages of Arrow employees. On or about November 5, 1999, **Simkanin** told Arrow's accounting firm that effective January 1, 2000, Arrow was no longer going to withhold taxes from the wages of Arrow's employees. On or about November 5, 1999, Arrow's accounting firm advised **Simkanin** against this course of action and sent **Simkanin** a copy of Section 3402, entitled "Requirement of Withholding."

**Counts One-Twelve**  
**[Wilful Failure to Collect, Account For, and Pay Over Taxes Due]**  
**26 U.S.C. § 7202**

1. The allegations contained in paragraphs one through ten of the Introduction are incorporated herein by reference as though they were fully restated.

2. On or about the dates listed below, in the Fort Worth Division of the Northern District of Texas, Richard Michael Simkanin did willfully fail to collect, truthfully account for, and pay over to the Internal Revenue Service the federal income taxes, Medicare taxes, and Federal Insurance Contributions Act taxes due and owing to the United States of America from the total taxable wages of Arrow employees for each quarter listed below in counts one through twelve respectively:

<b>Count</b>	<b>Tax Quarter Ending Date</b>	<b>Total Wages Subject to Collection</b>	<b>Total Taxes Not Collected</b>
1	March 31, 2000	\$240,217	\$18,377
2	June 30, 2000	\$234,704	\$17,955
3	September 30, 2000	\$236,928	\$18,125
4	December 31, 2000	\$263,427	\$20,152
5	March 31, 2001	\$233,309	\$17,848
6	June 30, 2001	\$162,197	\$12,408
7	September 30, 2001	\$165,738	\$12,679

<b>Count</b>	<b>Tax Quarter Ending Date</b>	<b>Total Wages Subject to Collection</b>	<b>Total Taxes Not Collected</b>
8	December 31, 2001	\$177,689	\$13,593
9	March 31, 2002	\$146,217	\$11,186
10	June 30, 2002	\$141,907	\$10,856
11	September 30, 2002	\$144,610	\$11,063
12	December 31, 2002	\$141,048	\$10,790
	<b>Total:</b>	<b>\$2,287,991</b>	<b>\$175,032</b>

All in violation of Title 26, United States Code, Section 7202.

**Counts Thirteen -Twenty Seven**  
**[False Claims Against the United States]**  
**18 U.S.C. § 287**

1. The allegations contained in paragraphs one through ten of the Introduction are incorporated herein by reference as though they were fully restated.

2. On or about January 28, 2000, in the Fort Worth Division of the Northern District of Texas, **Richard Michael Simkanin**, as president of Arrow, did knowingly make and present and cause to be made and presented to the United States Treasury Department, through the Internal Revenue Service, fifteen false claims against the United States, claiming the payment of refunds of the employer's share of FICA taxes and Medicare taxes paid by Arrow, and of the employees' share of FICA taxes, Medicare taxes and income taxes collected from Arrow's employees, covering the period March of

1997 through December of 1999, each of which the defendant knew to be false, fictitious, and fraudulent, for each of Counts 13 through 27 respectively:

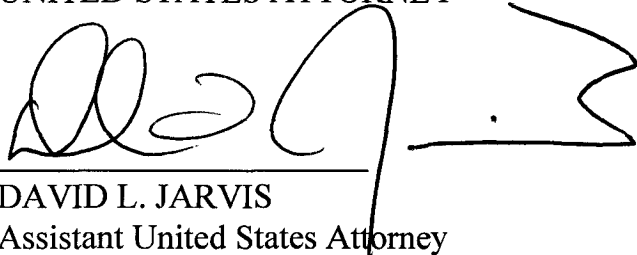
<b>Count</b>	<b>Form Submitted</b>	<b>Period Ending</b>	<b>Refund Amount</b>
13	Amended Form 941	3-31-97	\$18,120
14	Amended Form 941	6-30-97	\$17,310
15	Amended Form 941	9-30-97	\$16,517
16	Amended Form 941	12-31-97	\$18,508
17	Amended Form 940-EZ	12-31-97	\$ 2,548
18	Amended Form 941	3-31-98	\$16,295
19	Amended Form 941	6-30-98	\$17,616
20	Amended Form 941	9-30-98	\$18,677
21	Amended Form 941	12-31-98	\$19,979
22	Amended Form 940-EZ	12-31-98	\$ 2,291
23	Amended Form 941	3-31-99	\$18,766
24	Amended Form 941	6-30-99	\$19,049
25	Amended Form 941	9-30-99	\$22,829
26	Amended Form 941	12-31-99	\$22,818

Count	Form Submitted	Period Ending	Refund Amount
27	Amended Form 940-EZ	12-31-99	\$ 3,192

All in violation of Title 18, United States Code, Sections 287 and 2.

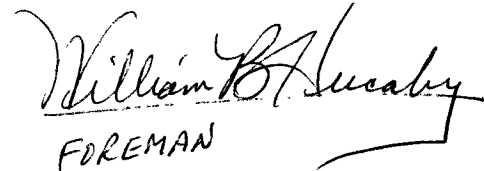
Respectfully submitted,

JANE J. BOYLE  
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A TRUE BILL



FOREMAN

No. 4:03-CR-188-A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

---

THE UNITED STATES OF AMERICA

VS.

RICHARD MICHAEL SIMKANIN

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SUPERSEDING INDICTMENT

26 U.S.C. § 7202  
Willful Failure to Collect, Account for and Pay Taxes

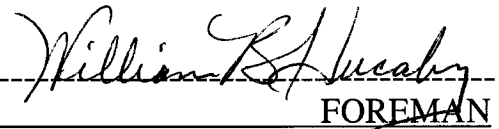
18 U.S.C. § 287 and 2  
False, Fictitious or Fraudulent Claims

(27 COUNTS)

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A true bill,

FORT WORTH

  
FOREMAN

Filed in open court this 13th day of August, A.D. 2003.

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UNITED STATES MAGISTRATE JUDGE

CLERK

IN CUSTODY - 4:03-CR-188-A