



Department of Justice

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**FORMER EXECUTIVES AT SOMMET GROUP, LLC CHARGED WITH
CONSPIRACY, FRAUD AND TAX CHARGES**

*Indictment alleges that defendants defrauded clients
in various ways, including by paying clients' \$83 million
in gross wages but only reporting \$4 million to IRS*

NASHVILLE, Tenn.— March 2, 2012 -L. Brian Whitfield, 46, formerly of Franklin, Tennessee; Marsha Whitfield, 39, of Franklin, Tennessee, and D. Edwin Todd, 68, of Franklin, Tennessee were charged yesterday by a federal grand jury for their roles in a multi-million-dollar fraud perpetrated by the Sommet Group, LLC, a payroll-processing company and former sponsor of the Nashville arena once known as the Sommet Center.

The indictments were announced today during a morning press conference by U.S. Attorney Jerry E. Martin, joined by Aaron T. Ford, Special Agent-in-Charge (SAC), FBI-Memphis Division and Christopher A. Henry, SAC, IRS-Criminal Investigation-Nashville Field Office.

Brian and Marsha Whitfield both face one count of conspiracy, three counts of wire fraud, three counts of theft from an employee pension benefit plan, and four counts of money laundering. In addition to those charges, Brian Whitfield alone faces four counts of filing a false tax return. Ed Todd faces a single count of criminal conspiracy. The different offenses carry varying maximum penalties from three years of imprisonment (for filing false return), five years (for conspiracy and for theft from a pension benefit plan), ten years (for money laundering), and 20 years (for wire fraud).

“This case represents just the latest example of this U.S. Attorney’s Office and the Department of Justice’s ongoing commitment to prosecuting white-collar crime,” said United States Attorney Jerry E. Martin. “Sommet was a prominent Middle Tennessee business that had millions of dollars of client funds under its control. But instead of safeguarding that money and

meeting their legal obligations to their clients and the IRS, these defendants diverted it to their own business and personal use. Citizens and businesses in the Middle District of Tennessee can be assured that this office, along with our many valued law enforcement partners, stand committed to rooting out and prosecuting such frauds. Would-be fraudsters can be assured that they will face stiff consequences for their crimes.”

According to the 24-page indictment, Sommet purported to be a payroll-processing company. For a fee, business clients provided Sommet their gross payroll and Sommet would allocate and distribute the funds in the appropriate amounts to state and federal taxing authorities, a health-insurance plan, 401(k) plans and client employees’ paychecks. The indictment alleges that, instead of distributing those client funds in appropriate amounts at appropriate times, the defendants diverted those funds to the Whitfields' personal use, including, among other things, the purchase of a houseboat and various home renovations and to prop up several start-up businesses affiliated with Sommet (referred to in the indictment as the "Sommet Business Units"). As a result, clients’ employees’ 401(k) funds were not fully deposited into their 401(k) accounts, their medical and prescription drug claims were not fully paid by health insurance, and their gross wages were not fully reported to the IRS.

The indictment alleges that the defendants made various misrepresentations to clients, the IRS, and others regarding taxes, health insurance, and 401(k) plans.

“Fraud by well-known or high-profile companies get the biggest headlines, but it is important to remember how devastating fraud of this kind can be to the hard working victims, who simply want justice,” said Aaron T. Ford, Special Agent in Charge of the Memphis Division of the Federal Bureau of Investigation. “Today’s indictments underscore that the FBI, working with our law enforcement partners, will pursue fraudsters in whatever form and that we will use all the investigative techniques in our arsenal to find you, stop you, and bring you to justice.”

“This type of manipulation and deception by educated and skilled professionals who know better will not be tolerated,” stated Christopher A. Henry, Special Agent in Charge, IRS Criminal Investigation-Nashville Field Office. “The defendants’ repeated and protracted deception over a two year period resulted in a substantial loss of funds and is insulting and harmful to the honest, hard-working citizens. This is not a victimless crime. Employment tax evasion results in the loss of tax revenue to the United States Government and the potential loss of future social security, Medicare, or retirement benefits as well as health-care coverage for employees.”

“Theft of employee benefit assets jeopardizes the benefits of workers. This case reaffirms the Labor Department’s commitment to protect workers’ benefits by identifying criminal activity wherever and whenever it occurs,” said Isabel Colon, Regional Director of the Employee Benefits Security Administration’s (EBSA) Atlanta Regional Office.

Regarding taxes, according to the indictment, the defendants misrepresented to clients that Sommet would report their gross wages on Sommet's own employer quarterly federal tax return (IRS Form 941). Contrary to that representation, between Fourth Quarter 2008 and First Quarter 2010, Sommet paid approximately \$83 million in gross wages to employees of Sommet, the Sommet business units, and certain Sommet clients known as Professional Employer Organizations or PEOs. During that same time period, however, Sommet only reported to the IRS approximately \$4 million in gross wages for those same entities. The defendants also misrepresented that they would remit to the IRS the clients' federal taxes in appropriate amounts. Sommet, however, only remitted approximately \$1.23 million of the clients' approximately \$20 million tax liability.

In addition, the indictment alleges that Brian Whitfield filed four false federal tax returns for Sommet and the Sommet Business Units, in which, returns only reported \$2.4 million in gross wages instead of the \$6.2 million in gross wages it had paid to employees.

Regarding health insurance, the indictment alleges that Sommet offered a health insurance plan to clients but failed to adequately fund that health insurance plan with clients' premiums. Because Sommet failed to fund the plan, two third-party administrators (companies that process health insurance claims) terminated their relationship with Sommet. The defendants attempted to conceal this and other problems related to health insurance by providing clients with false excuses and misleading information. By June 2010, Sommet had outstanding unpaid health insurance claims of approximately \$3.8 million.

Regarding 401(k) funds, the indictment alleges that Sommet offered clients a 401(k) plan. Instead of directing employees' designated retirement funds to that plan, the defendants diverted it to Sommet's business or their personal use. Approximately \$44,000 of employer and employee contributions were never forwarded to the 401(k) plan.

The indictment in this case followed a July 2010 search warrant executed by federal agents on Sommet's offices. The case was investigated by agents with the Internal Revenue Service-Criminal Investigation, the Federal Bureau of Investigation and the Department of Labor-Employee Benefits Security Administration. The United States is represented by Assistant U.S. Attorney Ty Howard and Tax Division Trial Attorney Kathryn Ward.

An indictment is merely an accusation and is not evidence of guilt. All defendants are presumed innocent unless and until proven guilty in a court of law.

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