

Case Number:

**IN THE REGIONAL DIVISION OF GAUTENG
IN THE REGIONAL COURT HELD AT JOHANNESBURG**

THE STATE

versus

MARIAN TUPY
(hereinafter called the accused)

**PLEA AND SENTENCE AGREEMENT IN TERMS OF SECTION 105A
OF THE CRIMINAL PROCEDURE ACT, ACT 51 OF 1977 AS
AMENDED**

PREREQUISITES IN TERMS OF SECTION 105A

1.

WHEREAS the Accused is charged with the crime of Fraud.

2.

AND WHEREAS the prosecution negotiated with the Accused, Marian Tupy, as represented by Mr. Dolph Jonker and subsequently came to a plea and sentence agreement in terms of Section 105A of Act 51 of 1977 as amended.

3.

AND WHEREAS a Deputy Director of Public Prosecutions, duly authorised, declared in writing that he entered into the agreement with the Accused. **(Annexure A)**

4.

AND WHEREAS the prosecution made the agreement with the necessary cognisance of the nature and circumstances pertaining to the crime, the personal circumstances of the Accused and the interest of society.

5.

AND WHEREAS the prosecution before entering into the said agreement consulted with the Investigating Officer, to wit Colonel Dumisani Patrick Mbotho as attested by his signature.

Col. D P Mbotho
Investigating officer

6.

AND WHEREAS opportunity has been granted to the complainants, to wit Liberty Group Holdings and/or Liberty Life Insurance as represented by Mr. Henk Fourie to make representations pertaining to the content of this agreement as attested by a letter of agreement. **(Annexure B)**

7.

AND WHEREAS the Accused admit that before entering into the agreement he was informed that he has the right:

- to be presumed innocent until proven guilty beyond reasonable doubt
- to remain silent and not to testify during the proceedings and
- not to be compelled to give self incriminating evidence

8.

AND WHEREAS all the parties confirmed that this document contain the terms of their agreement, the relevant facts pertaining to this matter, all other facts that are relevant to this agreement and admissions made by the Accused.

Signed at **Johannesburg** on the **15th** day of **March** 2011.

PROSECUTOR

ACCUSED

LEGAL REPRESENTATIVE

TERMS OF THE AGREEMENT

1.

It is agreed between the parties that the substantial facts relating to the charge are as set out in the charge sheet and preamble thereto. The Accused admits the truth and correctness of the averments in the charge sheet.

2.

The Accused confirm that he knows and understands the charge as set out in the charge sheet.

3.

The Accused further confirm that he has agreed to plead guilty to the charge of Fraud.

4.

The Accused admit that he freely and voluntarily entered into this agreement whilst in his sound and sober senses and without having been

influenced thereto by anyone and has at all relevant times, been assisted by his legal representative.

5.

The Accused pleads guilty to count 1 in that he admits that he is guilty of the crime of Fraud and admits a loss to Liberty Holding Group in the amount of R4 579 600-00.

6.

The Accused admits that he intentionally, wrongfully and fraudulently gave out and pretended to Peter Faulkal and/or Lauren Rennie and/or Jamila Hassim and/or Liberty Group Holdings and/or Liberty Life Insurance and/or their employees that:

Radovan Krejcir was suffering from cancer of the urinary bladder

The medical reports and test results with regard to the medical condition of Krejcir submitted by the Accused was true and a correct reflection of his condition

That the samples submitted by the Accused for histological tests were samples taken from Krejcir

Based on the claim by Krejcir and by the medical reports and test results submitted by the Accused in support of that claim, Krejcir was entitled to a benefit under policy number 59261513500

7.

The Accused further admits that:

Radovan Krejcir was not suffering from cancer of the urinary bladder

The medical reports and test results with regard to the medical condition of Radovan Krejcir submitted by the Accused was not a true and correct reflection of his medical condition

That the samples submitted by the Accused for histological tests were not samples taken from Radovan Krejcir, but were samples the Accused obtained from another patient of his

Radovan Krejcir was not entitled to a benefit under policy number 59261513500

8.

The Accused further admits that he pleads guilty freely and voluntarily.

9.

Therefore the State accepts the plea of guilty of the Accused on count 1.

RELEVANT FACTS PERTAINING TO THE SENTENCE AGREEMENT

Aggravating Circumstances

10.

The following aggravating circumstances were taken into consideration:

The offence was committed over an extended period of time.

The offence was planned over an extended period of time.

The Accused committed the offence when he occupied a position of trust.

Mitigating Circumstances

11.

The following mitigating circumstances were taken into consideration:

The Accused has no previous convictions and can be considered as a first offender at the age of 59.

The Accused has pleaded guilty he also assisted the police in the investigation and cooperated from the beginning.

The Accused has agreed to testify against his co-perpetrator.

He is currently self employed and specializes as an urologist.

THE SENTENCE AGREEMENT

12.

In terms of Section 105A(1)(a)(ii) the parties have agreed that the following sentence to be a proper and just sentence to be imposed on the Accused by the Court:

The Accused is sentenced to 7 years imprisonment which is wholly suspended for 5 years on condition that the Accused is not convicted of Fraud or Theft or any other crime of which dishonesty is an element, during the period of suspension.

OTHER RELEVANT FACTS PERTAINING TO THE PLEA AND SENTENCE AGREEMENT

13.

The parties further agree that the State will not bring an application in terms of Section 18 of the Prevention of Organised Crime Act, Act 121 of 1998 for the attachment or confiscation of the property of the Accused.

14.

That the State will not proceed with charges of Forgery and Uttering pertaining to medical reports purporting to be from Drs. Van Rensburg & Partners as well as Drs. De Meullenaar & Partners.

15.

That the Accused will provide the State with full disclosure and detailed affidavits pertaining to his involvement in the fraudulent claim/dealings with regard to Liberty Life Insurance. The Accused will be utilised as a State witness. Although not an exhaustive list the information that will be given will include fraudulent transactions by inter alia Radovan Krejcir.

16.

Paragraphs 13 to 15 are subject to full and frank disclosure by the Accused regarding all information he has as well as full co-operation as witness in any and all trials that may flow from the investigations.

Signed at **Johannesburg** on the **15th** day of **March** 2011.

PROSECUTOR

ACCUSED

LEGAL REPRESENTATIVE