

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

COURT FILE NO.
PROSECUTOR CASE NO. 19A00991
SILS ID. 856274
SILS TRACKING. 3079498
CONTROLLING AGENCY. MN062095Y
CONTROL NO. 16000399

State of Minnesota,

Plaintiff,

v.

CRIMINAL COMPLAINT

LEROY LOUIS MEHR (DOB: 08/14/1969)
12744 JARVIS AVE NW

Summons Warrant
 Order of Detention

ANNANDALE, MN 553022803,
Defendant.

Amended
 Tab Charge Previously Filed

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that Defendant committed the following offense(s):

Count I

Charge: **Theft-By Swindle (X)**

Minnesota Statute: **609.52.2(a)(4)**, with reference to: 609.05.1, 609.05.2, 609.52.3(1)

Offense Level: **Felony**

Maximum Sentence: **20 YEARS AND/OR \$100,000**

Offense Date (on or about): **04/01/2016**

Charge Description: That on or about April 1, 2016, through April 1, 2017, in Hennepin County, Minnesota, LEROY LOUIS MEHR acting alone or intentionally aiding, advising, hiring, counseling or conspiring with another or otherwise procures the other to commit the crime obtained property or services from Federated Insurance by swindling them using artifice, trick, device or other means, and the property or services had a value in excess of Thirty-Five Thousand Dollars (\$35,000.00).

Count II

Charge: **Insurance Fraud-Present False Representation/Conceals Facts-Policy Application (X)**

Minnesota Statute: **609.611.1(a)(1)**, with reference to: 609.05.1, 609.05.2, 609.52.3(2)

Offense Level: **Felony**

Maximum Sentence: **10 YEARS AND/OR \$20,000**

Offense Date (on or about): **02/05/2016**

Charge Description: That on or about February 5, 2016, in Hennepin County, Minnesota, LEROY LOUIS MEHR, acting alone or intentionally aiding, advising, hiring, counseling or conspiring with another or otherwise procures the other to commit the crime with intent to defraud, presented or caused to be presented, or prepared with knowledge or reason to believe that it would be presented, on behalf of an insured, claimant, or applicant to an insurer, insurance professional, or premium finance company, information that contained a false representation as to a material fact, or concealed a material fact concerning an application for, rating of, or renewal of, an insurance policy for the purpose of depriving another of property or for pecuniary gain that had a value in excess of Five Thousand Dollars (\$5,000.00).

Count III

Charge: **Insurance Fraud-Present False Representation/Conceals Facts-Policy Application (X)**

Minnesota Statute: **609.611.1(a)(1)**, with reference to: 609.05.1, 609.05.2, 609.52.3(2)

Offense Level: **Felony**

Maximum Sentence: **10 YEARS AND/OR \$20,000**

Offense Date (on or about): **06/01/2017**

Charge Description: That on or about June 1, 2017, in Hennepin County, Minnesota, LEROY LOUIS MEHR, acting alone or intentionally aiding, advising, hiring, counseling or conspiring with another or otherwise procures the other to commit the crime with intent to defraud, presented or caused to be presented, or prepared with knowledge or reason to believe that it would be presented, on behalf of an insured, claimant, or applicant to an insurer, insurance professional, or premium finance company, information that contained a false representation as to a material fact, or concealed a material fact concerning an application for, rating of, or renewal of, an insurance policy for the purpose of depriving another of property or for pecuniary gain that had a value in excess of Five Thousand Dollars (\$5,000.00).

STATEMENT OF PROBABLE CAUSE

The Complainant states that the following facts establish probable cause:

Complainant has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

From April 2016 through April 2017, the defendants engaged in an elaborate scheme to avoid paying workers' compensation premiums, enriching themselves and defrauding the workers' compensation insurance provider of thousands of dollars. Through an investigation by the Minnesota Commerce Fraud Bureau it was discovered that the defendants deliberately misclassified employees as independent contractors, set up shell companies for the employees, and misrepresented the employment relationship to their insurance company.

The defendants—LEROY MEHR, born 8/14/1969, and JOYCE MEHR, born 4/19/1970, owned and operated Merit Drywall. Merit Drywall has been an active corporation since December 31, 1998. The defendants are husband and wife with both Defendant Leroy Mehr and Defendant Joyce Mehr owned and operated Merit Drywall. For the relevant time frame herein, Merit Drywall performed drywall installation throughout the twin cities area, including jobsites located in Hennepin County, Minnesota.

When companies, such as one owned by the defendants, apply for workers' compensation insurance, they must provide the insurance company with sufficient information to determine the proper premium. One of the relevant pieces of information is the amount of payroll the company anticipates paying employees as these employees will be covered under the workers' compensation policy. The payroll of the prior year is often used as a basis to estimate the payroll for the following year. Other relevant factors include, for instance, the type of work done by the company as that will also affect the premium rate. However, when companies utilize independent contractors, they will not need to obtain workers' compensation for the independent contractor as that contractor must cover themselves.

Unlike typical insurance policies, the premiums for workers' compensation are estimated based upon the company's projections at the time of application. Merit Drywall's estimated premium was based off its projected payroll and the type of work to be performed. At the end of the policy period, Merit Drywall's insurance provider, Federated Insurance, conducted an audit to determine the actual figures from the year. If an increase in payroll or a change in work performed were discovered, it would result in a premium being owed at that time. The defendants took multiple steps in an elaborate scheme to avoid these premiums. At the time of application and the audit, the defendants made significant material misrepresentations to Federated Insurance.

Merit Drywall applied for a worker's compensation plan to cover the period spanning April 1, 2016, through April 1, 2017. At the time of its application on February 5, 2016, Merit Drywall indicated that it had a total of eleven employees, including the defendants. They also indicated that they work with numerous subcontractors throughout the year who are all independently covered under their own workers' compensation policies.

On June 1, 2017, Federated Insurance sent a representative to perform an onsite audit of Merit Drywall's April 1, 2016, through April 1, 2017, workers' compensation policy. Defendant Joyce Mehr compiled records from Merit Drywall to provide to Federated Insurance. The audit reports show that for the audit period Merit Drywall had gross sales of approximately \$7,784,124 and had a total payroll of approximately \$670,853. During the same audit period, Merit Drywall reported paying subcontractors approximately \$3,053,770. As part of the audit, Merit Drywall supplied Federated Insurance with certificates of liability insurance to show that their subcontractors were covered under their own policies. All representations made by Merit Drywall to Federated Insurance indicated that they only had eleven employees and the remainder of their work force were independent subcontractors. Had Federated Insurance known, as the Commerce Fraud Bureau later discovered through its investigation, that Merit Drywall was misclassifying employees as independent subcontractors, Merit would have owed substantially more to cover its premium.

Whether someone is an independent contractor is determined under Minnesota law by a nine-factor test found within Minnesota Statute § 181.723, subd. 4(a). The statute provides that someone is an independent contractor only if they meet the nine-factor test.

In summary, an individual is an independent contractor and not an employee only if the individual (1) maintains a separate business with their own office, equipment, materials and other facilities; (2) hold or has applied for a federal employer identification number, or has filed business or self-employment federal taxes; (3) operates under contract to perform specific services for a specific amount of money and the individual controls the means of performing the services; (4) incurs the main expenses related to the services performed under the contract; (5) is responsible for satisfactory completion of the services and is liable for a failure to complete the services; (6) receives compensation for the services performed on a commission or per-job or competitive bid basis and not any other basis; (7) may realize a profit or suffer a loss under the contract; (8) has continuing or recurring business liabilities or obligations; and (9) the success or failure of the individual's business depends on the relationship of business receipts to expenditures.

The Commerce Fraud Bureau's investigation revealed that many of the defendants' subcontractors' businesses did not meet the nine-factor test. These subcontractors were not normal functioning businesses. Additionally, Merit Drywall would not pay them by the job or after a competitive bid process. As admitted by Defendant Leroy Mehr, Merit Drywall was responsible for satisfactory completion of the work and supplied the materials (such as drywall) necessary to complete the work.

During the course of its investigation the Commerce Fraud Bureau utilized the use of two confidential informants, "CI1" and "CI2" herein. CI1 went to a Merit Drywall jobsite in Edina, Hennepin County, Minnesota, to inquire about jobs. CI1 was told to come back the following day. The next day CI1 was told that he would be paid per sheet of drywall installed. CI1 was not asked to provide any identification or personal information prior to beginning work. CI1 was overseen by a man at the jobsite, L.M., who would direct CI1 and others on what to do at the jobsite. L.M. would also tell the workers when to take lunch breaks and when the workday was done. CI1 was always paid in cash.

On July 6, 2016, J.P., a listed employee of Merit Drywall since 2013, conducted a safety meeting for insurance purposes. Aside from the review of safety and safety equipment, J.P. also provided each worker with two t-shirts that had "Merit Drywall Incorporated" written across the chest. Workers wore these shirts while at the jobsite.

In September 2016, CI2 began working for Merit Drywall. CI2 worked at the same jobsite as CI1 in Edina, Minnesota. While at the jobsite, Defendant Leroy Mehr told CI2 that he reported to A.T. A.T. had been a reported employee of Merit Drywall since 2015. A.T. provided CI2 with specific instruction on where to perform the job, who to work with, and the order of work to be performed. When CI2 would finish his assigned work, A.T. would assign him additional tasks. On September 19, 2016, CI2 spoke with Defendant Leroy Mehr in a recorded phone call. The conversation regarded CI2 setting up a company in CI2's name. Defendant Leroy Mehr inquired about CI2's mobility by vehicle, ability to read blueprints, and whether CI2 owned an iPad. Defendant Leroy Mehr offered to pay CI2's business insurance premium and said CI2 could work off the expense.

On September 20, 2016, Defendant Leroy Mehr introduced CI2 to J.B. J.B. had been a reported employee of Merit Drywall since 2013. Defendant Leroy Mehr and J.B. discussed installing construction management software on CI2's iPad and getting an email address for CI2. Defendant Leroy Mehr then instructed Defendant Joyce Mehr to create a company for CI2. Additionally, Defendant Leroy Mehr instructed Defendant Joyce Mehr to set CI2 up with an email address with a Merit Drywall domain name and give CI2 access to the construction management software.

Defendant Joyce Mehr searched the Minnesota Secretary of State's website for a company name chosen by CI2. Defendant Joyce Mehr then set up a login for CI2 and created a business by registering the name with the Secretary of State. Defendant Joyce Mehr paid for the registration by credit card.

CI2 questioned Defendant Joyce Mehr about the differences between companies and employees. Defendant Joyce Mehr responded that they will not take taxes out of payments to companies, but they would do so when they paid an employee. Defendant Joyce Mehr told CI2 to submit invoices at an hourly rate under CI2's business name. Following Defendant Joyce Mehr's instruction, CI2 later obtained minimum workers' compensation coverage for his business which excluded himself thus providing him with significantly less protection than if he were to receive coverage as an employee of Merit Drywall. CI2 had the bill for this coverage sent to Defendant Joyce Mehr.

In September and October 2016, CI2 began working at another jobsite in White Bear Lake. Defendant Leroy Mehr told CI2 that he was the superintendent of the jobsite when J.P. was not there. J.P. otherwise directed CI2 what to do at the jobsite. At one point, J.P. told CI2 to push another installer to work harder or they may have to terminate the installer. That installer was also represented by Merit Drywall as being an independent contractor.

CI2 submitted hourly rate invoices as Defendant Joyce Mehr had instructed him. Checks were

written out to his created company's name even though he was being paid for some work which occurred prior to the company's formation. There were two itemized deductions on CI2's first paycheck—one for \$100.00 that read "insurance," and another for \$155.00 that read "LLC."

According to the Secretary of State records, the Commerce Fraud Bureau found three companies that had been paid for online in the name of Joyce Mehr, including CI2's company.

On August 1, 2017, agents of the Commerce Fraud Bureau executed a search warrant at Merit Drywall's headquarters.

During the execution of the search warrant, agents spoke with Defendant Leroy Mehr. Defendant Leroy Mehr stated that he would work with general contractors to submit competitive bids in order to get work. This would involve coming up with an estimate on the expense of a job and bidding accordingly. However, Defendant Leroy Mehr admitted that there were no such contract with the subcontractors he employed. He frequently did not have formal bids from or contracts with the subcontractors. Defendant Leroy Mehr stated that he worked frequently with the same people. He stated that Merit Drywall would have a supervisor on site and would purchase the materials (such as drywall) necessary to complete a job. Defendant Leroy Mehr stated that his wife, Defendant Joyce Mehr, handled the finances and made sure that the subcontractors followed the law. Defendant Leroy Mehr stated that when the insurance audit was performed, Defendant Joyce Mehr compiled all the necessary records to provide the insurance company. In terms of paying workers, the subcontractors would submit invoices to Defendant Joyce Mehr and she would see that they were paid. Defendant Leroy Mehr denied that any of their subcontractors were paid by the hour. He stated that their margins for profit were very small and that workers' compensation is expensive. Defendant Leroy Mehr stated that he was aware that workers at construction sites have been injured and been told not to file claims.

During the execution of the search warrant, agents were unable to find contracts between Merit Drywall and its many purported independent contractors. Among documents found, agents located invoices that had been submitted to Merit Drywall. Many of these invoices were submitted from people Merit Drywall classified as independent contractors. The invoices had payment stubs attached which would list the builder name, jobsite, dates worked, and work performed. According to Merit Drywall's own records, many of their 'subcontractors' were being paid on an hourly basis or on a piecework basis.

Additionally, an agent located a binder which contained subcontractor's certificates of insurance. The binder showed that the defendants are aware of the law relating to independent contractors as it contained many documents relating to subcontractors and workers' compensation law. For instance, the binder contained documents titled, "Subcontractor Agreement." These agreements were not subcontracts of an independent contractor agreeing to perform a particular job for a set amount, but rather were documents signed by Merit Drywall subcontractors affirming that they meet the nine-factor test. The defendants would have been aware that the subcontractors did not meet the test given the relationship they knew to have with the individuals.

Extensive analysis of Merit Drywall's payroll records alone shows that the subcontractors were

not independent contractors. Many of those identified as subcontractors were paid hourly or on a piecework basis. The regional underwriter of Federated Insurance, S.P., confirmed that Federated Insurance utilizes the statutory nine-factor test to determine whether there is an employee/employer relationship. Had Federated Insurance learned that those being represented as 'subcontractors' were in fact employees, Merit Drywall's insurance premium would have been significantly higher.

During the policy period, underwriting guidelines applied a base rate of \$10.69 per \$100 of payroll for drywall installers. The regional underwriter of Federated Insurance calculated that based on the amount of \$2,892,494.06 that was paid to 36 drywall 'companies,' the premium increase would have been approximately \$309,207.61. The defendants had avoided paying this increase by misrepresenting the classification of its workers to Federated Insurance.

Utilizing records found during the execution of the search warrant, the Commerce Fraud Bureau attempted to contact as many individuals who the defendants listed as subcontractors. Five individuals were located and interviewed. All five were listed as subcontractors during the April 1, 2016, through April 1, 2017, audit period. None of the individuals operated under a per job contract with Merit drywall. None of the individuals bid on a job prior to performing their work. None of the individuals purchased materials except for some very low-cost materials. All of the individuals worked at either an hourly rate or were paid by the square foot of drywall installed. Four of the five individuals reported using at least some of Merit Drywall's tools to complete their work, though they did report buying their own tools as well. One individual said he was not required to fix any errors that he made on a job, nor would he be billed for those repairs. None of the individuals had a thorough understanding of the employee/employer relationship.

During the period of April 1, 2016, through April 1, 2017, the defendants engaged in an ongoing elaborate swindle to misclassify employees as independent subcontractors which evaded many legal obligations they would otherwise have towards those employees. At the time the defendants submitted their application for workers' compensation on February 5, 2016, and at the time of Federated Insurance's audit on June 1, 2017, the defendant materially misrepresented the employment relationship to the insurance company. The defendants' actions resulted in them avoiding approximately \$309,207.61 in insurance premiums.

Merit Drywall closed its doors at the end of 2019. Neither defendant is in custody.

PLEASE TAKE NOTICE that the State will seek an upward departure from the presumptive sentence in this matter. The grounds for the upward departure are that the offense constitutes a major economic offense because the offense involved a high degree of sophistication or planning and occurred over a long period of time and the offense involved an attempted or actual monetary loss substantially greater than the minimum loss specified in statutes.

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant
otherwise be dealt with according to law.

COMPLAINANT'S NAME:

COMPLAINANT'S SIGNATURE:

<Name>

Subscribed and sworn to before the undersigned this ____ day of _____, 20__.

NAME/TITLE:

SIGNATURE:

Being authorized to prosecute the offenses charged, I approve this complaint.

Date: _____

PROSECUTING ATTORNEY'S SIGNATURE:

Name: John Monnens
Assistant County Attorney
C2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487
612-348-6764
Attorney Registration # 393286

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense.

SUMMONS

THEREFORE YOU, THE ABOVE-NAMED DEFENDANT, ARE HEREBY SUMMONED to appear on the ___ day of _____, 20__ at _____ a.m./p.m. before the above-named court at _____ to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I hereby order, in the name of the State of Minnesota, that the above-named Defendant be apprehended and arrested without delay and brought promptly before the above-named court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

Execute in MN Only *Execute Nationwide* *Execute in Border States*

ORDER OF DETENTION

Since the above-named Defendant is already in custody, I hereby order, subject to bail or conditions of release, that the above-named Defendant continue to be detained pending further proceedings.

Bail: \$
Conditions of Release:

This complaint, duly subscribed and sworn to, is issued by the undersigned Judicial Officer this ___ day of _____, 20__.

JUDICIAL OFFICER:
NAME:
TITLE:

SIGNATURE:

Sworn testimony has been given before the Judicial Officer by the following witnesses:

<p>COUNTY OF HENNEPIN STATE OF MINNESOTA</p> <p>STATE OF MINNESOTA Plaintiff,</p> <p>vs. LEROY LOUIS MEHR, Defendant</p>	<p><i>Clerk's Signature or File Stamp:</i></p> <p>RETURN OF SERVICE <i>I hereby Certify and Return that I have served a copy of this COMPLAINT upon Defendant herein named.</i> Signature of Authorized Service Agent:</p> <p>_____</p>
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