

TM:WK
F.#2009R00768

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CR INDICTMENT **14**

UNITED STATES OF AMERICA

- against -

GERARDO P. FUSELLA and
VINCENT J. FUSELLA, JR.,

Defendants.

Cr. No. _____
(T. 18, U.S.C., §§ 371,
664, 981(a)(1)(C),
1001(a)(3), 1027, 1341,
1349, 2 and 3551 et
seq.; T. 21, U.S.C., §
853(p); T. 26, U.S.C.,
§ 7202; T. 28, U.S.C.,
§ 2461(c); T. 29,
U.S.C., §§ 186(a)(1)
and 186(d)(2))

MATSUMOTO, J.

THE GRAND JURY CHARGES:

INTRODUCTION

GOLD, M.J.

At all times relevant to this Indictment, unless
otherwise indicated:

1. The defendants GERARDO P. FUSELLA and VINCENT J.
FUSELLA, JR., were in the business of trucking construction and
demolition debris between construction sites and landfills.

2. In or about 2005, the defendants GERARDO P.
FUSELLA and VINCENT J. FUSELLA, JR., established Fusella Group,
L.L.C. ("Fusella Group") and Alpine Investment Group, Inc.
("Alpine Investment"), New Jersey corporations they used at
various times to conduct their trucking business in Long Island,
New York City, New Jersey and elsewhere. Fusella Group and
Alpine Investment operated out of the same truck yards and

offices, and used the same truck drivers, mechanics and office staff.

3. Pursuant to Title 26 of the United States Code, employers, including Fusella Group and Alpine Investment, had a duty to collect, truthfully account for and pay over to the Internal Revenue Service ("IRS") Federal Insurance Contributions Act ("FICA") taxes, and to file an Employer's Quarterly Tax Return, IRS Form 941 ("Form 941").

4. FICA required the payment of taxes by employees and employers to fund various federal benefit programs, including Social Security and Medicare. As the owners and operators of Fusella Group and Alpine Investment, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., were required to collect, truthfully account for and pay over to the IRS the FICA taxes that were due and owing.

A. The Tax Fraud Scheme

5. In or about and between 2007 and 2009, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., paid wages by check to Fusella Group and Alpine Investment office workers and mechanics without withholding the required FICA taxes and without reporting these wages to the IRS in the companies' Forms 941 as required. The defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., also falsely claimed that salaries paid

to Fusella Group and Alpine Investment mechanics and office workers were deductible business expenses.

6. In or about and between 2007 and 2009, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., falsely classified Fusella Group drivers as independent subcontractors when, in truth and in fact, as the defendants then and there well knew and believed, the drivers were employees for whom the defendants were required to collect, truthfully account for and pay over to the IRS, FICA taxes, and to quarterly file IRS Forms 941.

B. The Union Benefit Fund Embezzlement Scheme

7. On or about May 1, 2007, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., entered Fusella Group into a standard form Collective Bargaining Agreement (the "CBA") with the International Brotherhood of Teamsters, Local 282 ("Local 282"), located in Lake Success, New York. By doing so, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., were eligible to obtain contracts to haul construction and demolition debris from sites such as the new World Trade Center Port Authority Trans-Hudson ("PATH") Transportation Hub located close to the northeast corner of the World Trade Center site at Church and Fulton Streets in Lower Manhattan ("WTC Hub"), where trucking subcontractors were required to pay salaries and benefits in accordance with the provisions of Local 282's CBA.

8. The CBA was a contract between Fusella Group and Local 282 specifying, among other things, that for each hour worked by one of Fusella Group's truck drivers, Fusella Group was obligated (1) to pay that driver a specified hourly amount in excess of thirty dollars, and (2) to make additional payments to Local 282's welfare, pension, annuity, job training, and vacation and sick leave trust funds (the "Union Benefit Funds"), which funds were governed by Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"). Fusella Group additionally was obligated periodically to report to Local 282 the number of hours of work performed by each of its drivers. For the drivers and their families to receive the full union health and disability benefits to which they were entitled, the Fusella Group had to fully report the drivers' work hours and make the related payments, as required, to the Union Benefit Funds.

9. The CBA's requirements applied to all work that took place, in whole or in part, within the geographical jurisdiction of Local 282, which encompassed the City of New York, Nassau, Suffolk and Richmond Counties ("the CBA Geographical Area"). In addition, the CBA barred Fusella Group from operating a non-union company to engage in trucking work in the CBA Geographical Area.

10. Beginning in 2008, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., knowingly and falsely

underreported the Fusella Group drivers' hours by conducting a substantial portion of their trucking business under the name Alpine Investment, in order to avoid making the hourly wage and Union Benefit Fund payments required by the CBA.

C. The World Trade Center Fraud Scheme

11. At all relevant times, the Port Authority of New York and New Jersey ("the Port Authority") oversaw construction at the WTC Hub.

12. Through the Federal Transit Administration, the United States Department of Transportation committed in excess of \$2.2 billion toward the WTC Hub project, valued at more than more than \$3.2 billion, with the Port Authority investing a substantial portion of the remainder.

13. On or about July 30, 2007, Shamrock Materials, LLC ("Shamrock"), a Staten Island, New York-based trucking company and Local 282 CBA signatory, was chosen to serve as lead trucking subcontractor for the removal of dirt and debris from an area known as the "East Bath Tub" of the WTC Hub ("East Bath Tub contract"). Shamrock in turn subcontracted certain portions of the East Bath Tub contract to Fusella Group.

14. In connection with the East Bath Tub contract, Fusella Group completed certified payroll records specifying, among other things, the dates and hours of Fusella Group drivers' work at the WTC Hub. These certifications specified that

"payments of fringe benefits . . . have been or will be made to appropriate programs for the benefit of such employees." These certifications were submitted to the Port Authority for review by the Port Authority and the Federal Transit Administration. The standard-form certifications contained a warning, printed in capital letters immediately below the signature line, that a false statement in the certification may subject a subcontractor to criminal prosecution under Title 18, United States Code, Section 1001.

15. The defendant VINCENT J. FUSELLA, JR., signed Fusella Group payroll certifications, falsely representing that Fusella Group had made, or would make, its CBA-required contributions to the Union Benefit Funds for the drivers who had performed work at the WTC Hub. In truth and in fact, as the defendant VINCENT J. FUSELLA, JR., then and there well knew and believed, Fusella Group had not made, and would not make, the required payments to the Union Benefit Funds.

COUNT ONE

(Conspiracy to Defraud the United States)

16. The allegations in paragraphs 1 through 15 are realleged and incorporated as if fully set forth in this paragraph.

17. In or about and between January 2007 and June 2009, both dates being approximate and inclusive, within the District of New Jersey, the defendants GERARDO P. FUSELLA and

VINCENT J. FUSELLA, JR., together with others, did knowingly and intentionally conspire to impede, impair, obstruct and defeat the lawful government functions of the IRS, an agency and department of the United States, in the ascertainment, computation, assessment and collection of the revenue, to wit: FICA taxes.

18. In furtherance of the conspiracy, and to effect its objectives, within the District of New Jersey, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

a. On or about September 28, 2007, the defendant GERARDO P. FUSELLA signed a Fusella Group check, #7304, made payable to employee John Doe #1, an individual whose identity is known to the Grand Jury, in the amount of \$1,074.30.

b. On or about November 16, 2007, the defendant VINCENT J. FUSELLA, JR., signed a Fusella Group check, #7741, made payable to employee John Doe #2, an individual whose identity is known to the Grand Jury, in the amount of \$1,156.81.

c. On or about August 11, 2008, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, caused to be filed with the IRS an Alpine Investment IRS Form 941 for the Second Quarter of 2008.

d. On or about October 24, 2008, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, caused to be filed with the IRS an Alpine Investment IRS Form 941 for the Third Quarter of 2008.

e. On or about December 23, 2008, the defendant VINCENT J. FUSELLA, JR., signed an Alpine Investment check, #10113, made payable to employee John Doe #3, an individual whose identity is known to the Grand Jury, in the amount of \$843.95.

f. On or about December 23, 2008, the defendant GERARDO P. FUSELLA signed an Alpine Investment check, #10098, made payable to employee John Doe #4, an individual whose identity is known to the Grand Jury, in the amount of \$359.68.

g. On or about January 21, 2009, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, caused to be filed with the IRS an Alpine Investment IRS Form 941 for the Fourth Quarter of 2008.

h. On or about January 31, 2009, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, caused to be filed with the IRS a Fusella Group IRS Form 941 for the Fourth Quarter of 2008.

i. On or about April 21, 2009, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, caused to be filed with the IRS an Alpine Investment IRS Form 941 for the First Quarter of 2009.

j. On or about April 21, 2009, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, caused to be filed with the IRS a Fusella Group IRS Form 941 for the First Quarter of 2009.

k. On or about July 22, 2009, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, caused to be filed with the IRS an Alpine Investment IRS Form 941 for the Second Quarter of 2009.

l. On or about July 23, 2009, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, caused to be filed with the IRS a Fusella Group IRS Form 941 for the Second Quarter of 2009.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNTS TWO THROUGH SIXTEEN

(Willful Failure to Collect, Account for and Pay Over Taxes)

19. The allegations in paragraphs 1 through 15 are realleged and incorporated as if fully set forth in this paragraph.

20. In or about and between January 2007 and June 2009, both dates being approximate and inclusive, within the District of New Jersey, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., being the owners and operators of Fusella Group and Alpine Investment, and thereby being required to collect, truthfully account for and pay over FICA taxes to the

IRS, did knowingly and willfully fail to collect, truthfully account for and pay over FICA taxes to the IRS, knowing that such FICA taxes were due and owing, in approximately the following amounts:

Count	Company	Taxable Quarter	Amount
2	Fusella Group	January 1, 2007 - March 31, 2007	\$ 27,131.56
3	Fusella Group	April 1, 2007 - June 30, 2007	\$ 37,564.71
4	Fusella Group	July 1, 2007 - September 30, 2007	\$ 23,851.34
5	Fusella Group	October 1, 2007 - December 31, 2007	\$ 22,849.00
6	Fusella Group	January 1, 2008 - March 31, 2008	\$ 6,064.15
7	Alpine Investment	April 1, 2008 - June 30, 2008	\$ 1,116.82
8	Fusella Group	April 1, 2008 - June 30, 2008	\$ 7,637.69
9	Alpine Investment	July 1, 2008 - September 30, 2008	\$ 2,606.33
10	Fusella Group	July 1, 2008 - September 30, 2008	\$ 6,176.23
11	Alpine Investment	October 1, 2008 - December 31, 2008	\$ 1,766.66
12	Fusella Group	October 1, 2008 - December 31, 2008	\$ 3,471.26

Count	Company	Taxable Quarter	Amount
13	Alpine Investment	January 1, 2009 - March 31, 2009	\$ 12,795.28
14	Fusella Group	January 1, 2009 - March 31, 2009	\$ 2,519.92
15	Alpine Investment	April 1, 2009 - June 30, 2009	\$ 4,488.19
16	Fusella Group	April 1, 2009 - June 30, 2009	\$ 1,598.85

(Title 26, United States Code, Section 7202; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT SEVENTEEN

(Conspiracy to Embezzle from Employee Benefit Plans)

21. The allegations in paragraphs 1 through 15 are realleged and incorporated as if fully set forth in this paragraph.

22. On or about and between July 10, 2007 and July 15, 2009, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, did knowingly and willfully conspire to embezzle, steal and unlawfully abstract and convert to their own use and the use of one or more others, credits, property and other assets of one or more employee pension benefit plans subject to Title I of ERISA, to wit: the right to collect monies and funds owed to the

Union Benefit Funds, contrary to Title 18, United States Code, Section 664.

23. In furtherance of the conspiracy, and to effect its objectives, within the Eastern District of New York and elsewhere, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., committed and caused to be committed, among others, the following:

OVERT ACTS

a. On or about July 10, 2007, the defendant GERARDO P. FUSELLA signed and filed with Local 282 a remittance report.

b. On or about December 29, 2007, the defendant GERARDO P. FUSELLA signed and filed with Local 282 a remittance report.

c. On or about March 17, 2008, the defendant VINCENT J. FUSELLA, JR., signed and filed with Local 282 a remittance report.

d. On or about March 18, 2008, the defendant GERARDO P. FUSELLA signed and filed with Local 282 a remittance report.

e. On or about July 15, 2009, the defendant VINCENT J. FUSELLA, JR., signed and filed with Local 282 a remittance report.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT EIGHTEEN

(Embezzlement from Employee Benefit Plans)

24. The allegations in paragraphs 1 through 15 are realleged and incorporated as if fully set forth in this paragraph.

25. On or about and between July 10, 2007 and July 15, 2009, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, did knowingly and willfully embezzle, steal and unlawfully abstract and convert to their own use and the use of one or more others, credits, property and other assets of one or more employee pension benefit plans subject to Title I of ERISA, to wit: the right to collect monies and funds owed to the Union Benefit Funds.

(Title 18, United States Code, Sections 664, 2 and 3551 et seq.)

COUNT NINETEEN

(False ERISA Statements)

26. The allegations in paragraphs 1 through 15 are realleged and incorporated as if fully set forth in this paragraph.

27. On or about and between July 10, 2007 and July 15, 2009, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants

GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, in documents required by Title I of ERISA to be published and kept as part of the records of employee welfare benefit plans and employee pension benefit plans, did knowingly and intentionally make and cause to be made false statements and representations of fact, knowing them to be false, and did knowingly and intentionally conceal, cover up and fail to disclose facts the disclosure of which was required by Title I of ERISA, and was necessary to verify, explain, clarify and check for accuracy and completeness reports required by such title to be published, to wit: GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, submitted to the Union Benefit Plans false reports in which they and others intentionally omitted hours worked by Fusella Group employees.

(Title 18, United States Code, Sections 1027, 2 and 3551 et seq.)

COUNTS TWENTY THROUGH TWENTY-THREE

(Using False Writings and Documents - WTC Certified Payrolls)

28. The allegations in paragraphs 1 through 15 are realleged and incorporated as if fully set forth in this paragraph.

29. On or about and between the dates listed below, which dates are approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant VINCENT J. FUSELLA, JR., did knowingly and willfully make and use a false

writing and document, knowing the same to contain materially false, fictitious, and fraudulent statements and entries in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the United States Department of Transportation, in that FUSELLA stated and represented, in certified payroll documents submitted for Fusella Group drivers' work at the WTC Hub, that Fusella Group had made or would make required payments into the Union Benefit Funds, when, in fact, as he then and there well knew and believed, such payments had not and would not be made:

Count	Approx. Date	Document	Pay Period
20	12/12/07	Certified Payroll	12/03/07 - 12/09/07
21	12/18/07	Certified Payroll	12/10/07 - 12/16/07
22	01/02/08	Certified Payroll	12/24/07 - 12/30/07
23	01/03/08	Certified Payroll	12/17/07 - 12/23/07

(Title 18, United States Code, Sections 1001(a)(3), 2 and 3551 et seq.)

COUNT TWENTY-FOUR
(Conspiracy to Commit Mail
Fraud - Reports of Workers' Hours)

30. The allegations in paragraphs 1 through 15 are realleged and incorporated as if fully set forth in this paragraph.

31. On or about and between October 24, 2007 and June 29, 2009, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud the Union Benefit Funds, and to obtain money and property from the Union Benefit Funds by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, did place and cause to be placed in a post office and authorized depository for mail matter, one or more matters and things to be sent and delivered by the United States Postal Service and any private and commercial interstate carrier, contrary to Title 18, United States Code, Section 1341.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNTS TWENTY-FIVE THROUGH THIRTY
(Mail Fraud - Reports of Workers' Hours)

32. The allegations in paragraphs 1 through 15 are realleged and incorporated as if fully set forth in this paragraph.

33. On or about and between the dates set forth below, which dates are approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants GERARDO P.

FUSELLA and VINCENT J. FUSELLA, JR., together with others, did knowingly and intentionally devise a scheme and artifice to defraud the Union Benefit Funds, and to obtain money and property from the Union Benefit Funds by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, did place and cause to be placed in a post office and authorized depository for mail matter, one or more matters and things to be sent and delivered by the United States Postal Service and any private and commercial interstate carrier, as set forth below:

Count	Approx. Date	From	To	Description
25	10/24/2007	Fusella Group East Hanover, NJ	Local 282 Trust Funds, New Hyde Park, NY	Report of Drivers' Hours
26	12/29/2007	Fusella Group East Hanover, NJ	Local 282 Trust Funds, New Hyde Park, NY	Report of Drivers' Hours
27	5/29/2008	Fusella Group East Hanover, NJ	Local 282 Trust Funds, New Hyde Park, NY	Report of Drivers' Hours
28	6/19/2008	Fusella Group East Hanover, NJ	Local 282 Trust Funds, New Hyde Park, NY	Report of Drivers' Hours
29	7/1/2008	Fusella Group East Hanover, NJ	Local 282 Trust Funds, New Hyde Park, NY	Report of Drivers' Hours

Count	Approx. Date	From	To	Description
30	8/7/2008	Fusella Group East Hanover, NJ	Local 282 Trust Funds, New Hyde Park, NY	Report of Drivers' Hours

(Title 18, United States Code, Sections 1341, 2 and 3551 et seq.)

COUNT THIRTY-ONE
(Unlawful Payments)

34. The allegations in paragraphs 1 through 15 are realleged and incorporated as if fully set forth in this paragraph.

35. On or about and between January 17, 2008 and October 6, 2008, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants GERARDO P. FUSELLA and VINCENT J. FUSELLA, JR., being employers, did knowingly and willfully pay, lend and deliver, and agree to pay, lend and deliver, money and other things of value in excess of \$1,000, to John Doe #5, an individual whose identity is known to the Grand Jury, who worked as a representative of the Fusella Group employees, who were employed in an industry affecting commerce, to wit: the trucking industry.

(Title 29, United States Code, Sections 186(a)(1) and 186(d)(2); Title 18, United States Code, Sections 2 and 3551 et seq.)

FORFEITURE ALLEGATION

36. The United States hereby gives notice to the defendants charged in Counts Seventeen, Eighteen and Twenty-four through Thirty-one, that, upon their conviction of any such offense, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any property, real or personal, constituting or derived from proceeds obtained traceable to such offenses.

37. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

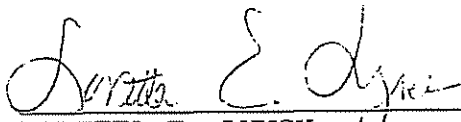
it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any

other property of such defendants up to the value of the
forfeitable property described in this forfeiture allegation.

(Title 28, United States Code, Section 2461(c); Title
18, United States Code, Section 981(a)(1)(C); Title 21, United
States Code, Section 853(p))

A TRUE BILL

FOREPERSON



LORETTA E. LYNCH
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No.

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

GERARDO P. FUSELLA, et al.,

Defendants.

INDICTMENT

(T. 18, U.S.C., §§ 371, 664, 981(a)(1)(C), 1001(a)(3), 1027, 1341, 1349, 2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 26, U.S.C., § 7202; T. 28, U.S.C., § 2461(c); T. 29, U.S.C., §§ 186(a)(1) and 186(d)(2))

A true bill.

Foreman

Filed in open court this ... day,

of ... A.D. 20 ...

Clerk

Bail, \$...

William G.S. Knapp, Assistant U.S. Attorney, (718) 254-6107