

# **Bond Case Briefs**

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## **BONDS - LITIGATION - NORTH CAROLINA**

### **U.S. v. Murphy**

**United States District Court, W.D. North Carolina, Charlotte Division - October 16, 2013 - Slip Copy - 2013 WL 5636710**

Defendant was charged with participating in a bid-rigging scheme to control and manipulate the bidding process for municipal bond proceeds.

A three count bill of indictment was entered charging defendant with 1) conspiracy to commit wire fraud and to defraud the United States in violation of 18 U.S.C. § 371; 2) a substantive wire fraud charge in violation of 18 U.S.C. § 1343; and 3) conspiracy to make false entries in bank records in violation of 18 U.S.C. § 371.

Before the indictment was entered, the government and defendant entered into two separate tolling agreements. Under these agreements, the period covered by the tolling agreements would be excluded from calculating time “for the purpose of any statute of limitation” for certain charges. The parties agree that these agreements together tolled the statutes for a total of two years and eleven days.

Defendant then moved to dismiss the indictment on the grounds that the charges were time-barred.

With respect to Counts I and II, the wire fraud charges, the issue was whether the applicable statute of limitations is the ten year period by 18 U.S.C. § 3293(2). This provision extends the statute of limitations from five years to ten “if the offense affects a financial institution.” The indictment alleged that a financial institution was affected in that Bank of America, one of the co-conspirators and defendant’s employer from 1998 to 2002, was made “susceptible to substantial risk of loss” as a result of the scheme and, in fact, the bank agreed to pay federal and state agencies over \$137 million in settlements “as compensation for the losses incurred by those agencies and victims.” Defendant contended that this allegation is insufficient to bring the charges under the ten year statute and requested that the court dismiss these charges as time barred. The court agreed with the government’s interpretation and denied defendant’s motion as to Counts I and II.

Defendant contended that Count III of the Indictment was time barred because the charges contained in this count were not included in the two tolling agreements. The court agreed with the government that the tolling agreements did apply to Count III.