

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

IN RE:	)	
	)	MDL Docket No. 02-1335-B (PJB)
	)	
TYCO INTERNATIONAL LTD.,	)	This document relates to:
SECURITIES LITIGATION	)	Securities Action
	)	Civil Action No. 02-266-PB
	)	
	)	Individual Actions
	)	(Tyco v. Kozlowski; Tyco v. Kozlowski
	)	and Swartz)
	)	

**DECLARATION OF MATTHEW R. A. HEIMAN IN SUPPORT OF MOTION FOR A  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Matthew R. A. Heiman declares under penalty of perjury as follows:

1. My full name is Matthew R. A. Heiman.
2. I am Senior Litigation Counsel at Tyco International Ltd. (“Tyco”).
3. During the Spring and Summer of 2002, Tyco, with the assistance of counsel,

engaged in a thorough and far-reaching internal investigation of L. Dennis Kozlowski (“Kozlowski”), the Chairman and Chief Executive Officer of Tyco, and other senior executives. The Company disclosed the results of this investigation through an 8-K filing with the Securities and Exchange Commission on September 17, 2002 (the “2002 8-K”). A true and accurate copy of the 2002 8-K (without exhibits) is attached hereto as Exhibit A.

4. The 2002 8-K details that despite the substantial compensation provided to him, Kozlowski, beginning at least as early as 1995, contrived a scheme to abuse the trust that had been placed in him by Tyco’s Board of Directors (the “Board”) by misappropriating money and assets from the Company, and engaging in a concerted pattern of conduct to conceal his larcenous acts from the Board.

5. The 2002 8-K illustrates that Kozlowski had concealed and conspired to conceal from the Board and its relevant committees numerous unauthorized, disloyal, and criminal activities, including the following:

- a. Kozlowski transformed an approved Tyco 1995 relocation program that complied with IRS regulations and was available to all employees into a special program for senior executives that permitted them to use millions of dollars of Company funds to purchase and speculate in New York real estate.
- b. Kozlowski abused Tyco's Key Employee Loan ("KEL") program, which had been established for the purposes of facilitating the continued ownership of Tyco stock, from at least 1997 onward, by using it as his personal line of credit to fund myriad personal expenditures.
- c. Kozlowski manipulated Tyco's Florida Relocation Program to obtain \$29,756,110 in interest-free loans, and then contrived and executed a plan to relieve his relocation indebtedness by granting himself loan forgiveness and gross-up benefits costing the Company nearly \$100 million ("TyCom Bonus"). The benefit to Kozlowski alone from the unauthorized loan forgiveness program was \$32,976,067.
- d. Kozlowski fabricated another bonus program in favor of himself and other select executives in November of 2000 (the "ADT Automotive Bonus") from which Kozlowski received a benefit of approximately \$25.6 million.
- e. Kozlowski, as part of a purported gain on the Exchange of TyCom shares for an equity interest in Flag Telecom Holdings Ltd. ("Flag") in 2001, caused 290,000 previously issued shares to vest for certain executive officers. Tyco

reported a \$79,264,700 gain associated with the exchange of TyCom shares for the Flag equity on June 20, 2001. On the same day, Kozlowski authorized the accelerated vesting of shares to various key individuals, including at least 155,000 shares for himself. Those shares were sold back to the Company and cash delivered to the recipients in August 2001 (“Flag Bonus”). Kozlowski alone received the benefit of \$8,219,650.

- f. Kozlowski misused subsequent Tyco loan programs, using millions of dollars of Company funds to purchase and speculate in real estate and various personal investments, including the acquisition of artwork and antiques from New York merchants exceeding \$11 million; renting a lavish Fifth Avenue apartment with an annual rental of \$264,000, paid for by Tyco from 1997 to 2001; purchased a separate Fifth Avenue apartment for \$16.8 million in 2001 and expend \$3 million in improvements, all without disclosing to the Board or its Committees that the apartment was paid for and carried by Tyco as a corporate asset.
- g. From 1997 to 2002, Kozlowski committed sizeable donations and pledges to charitable organizations with Company money amounting to more than \$106 million. Fully \$43 million of these donations were represented as his personal donations or made using Tyco funds for Kozlowski’s personal benefit.

6. Upon Tyco’s information and belief, Kozlowski’s total W-2 compensation paid by Tyco from his first known disloyal act to his resignation amounted to more than \$325 million.

7. Kozlowski was indicted on September 12, 2002 by the District Attorney for the County of New York for enterprise corruption, fourteen counts of larceny, and fourteen counts of falsifying business records and other charges stemming from his fraudulent conduct as a Tyco executive.

8. In June 2005, a jury convicted Kozlowski on twelve counts of grand larceny stemming from the TyCom, ADT, and Flag telecom bonuses and the unpaid KEL loan amounts, as well as eight counts of falsifying business records and one count of conspiracy.

9. Kozlowski was sentenced to serve 8 1/3 – 25 years in prison and ordered to pay restitution to Tyco in the amount of \$97,778,296. He is currently in prison.

10. At the time of Kozlowski's indictment, the District Attorney initiated a civil forfeiture proceeding in the Supreme Court of the State of New York against Kozlowski and co-defendant Mark H. Swartz, styled *Robert M. Morgenthau v. L. Dennis Kozlowski & Mark H. Swartz*, Index No. 403698/02. The Court entered a temporary restraining order freezing Kozlowski and Swartz's assets to the extent of \$600 million. A copy of the Court's September 2002 order is attached as Exhibit B.

11. The temporary restraining order of Kozlowski's assets by the Supreme Court of the State of New York effectively made any effort by Tyco to restrain, attach, or freeze those same assets in this Court duplicative and unnecessary.

12. At the end of September 2008, with the consent of the District Attorney, the Supreme Court of the State of New York dismissed the civil forfeiture action and vacated the temporary restraining order. The District Attorney stipulated that Kozlowski had satisfied the terms of a part of his sentence to pay restitution and a criminal fine in conjunction with his criminal convictions. A copy of the Court's order, signed on September 17 and entered on

September 22, 2008, together with the stipulation on which it was based, is attached as Exhibit C.

13. Upon Tyco's information and belief, on July 31, 2006, Kozlowski's wife of five years, Karen Mayo Kozlowski, filed a petition for divorce in the Circuit Court of Palm Beach County, Florida, seeking an equitable distribution of marital property.

14. According to recent press reports, Dennis and Karen Kozlowski announced a confidential settlement of the divorce action in July 2008. Upon Tyco's information and belief, this confidential settlement was approved by the Circuit Court of Palm Beach County, Florida on or around August 22, 2008.

15. Kozlowski's divorce attorney, Martin Haines III, is quoted in recent press reports as stating that "Karen [Mayo Kozlowski] will be a wealthy lady [as a result of the settlement], and Dennis [Kozlowski] will have some money one day when he's permitted to leave jail. ... Is it fair? Who the hell knows. Is it something Dennis [Kozlowski] wanted to do? Absolutely." ("Former Tyco head Kozlowski in divorce settlement," July 17, 2008, *available at* <http://www.reuters.com/article/idUSN1749202420080717>) (attached as Exhibit D).

16. Haines was also quoted as saying "[s]he'll do well. ... She should be getting millions from the settlement." ("Ex-Tyco chief Kozlowski reaches divorce settlement," July 17, 2008, *available at* <http://www.royalgazette.com/siftology.royalgazette/Article/article.jsp?sectionId=65&articleId=7d878b330030008>) (attached as Exhibit D).

17. Karen Kozlowski's attorney publicly stated that "[t]he terms of their marital settlement agreement, although confidential, is a reflection of [her] support and commitment [to Kozlowski]." ("Former Tyco CEO Kozlowski settles divorce case," July 17, 2008, *available at* [http://biz.yahoo.com/ap/080717/kozlowski\\_divorce.html?.v=4](http://biz.yahoo.com/ap/080717/kozlowski_divorce.html?.v=4)) (attached as Exhibit D).

