

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_

15 U.S.C. § 78j(b)  
15 U.S.C. § 78ff(a)  
17 C.F.R. § 240-10b-5  
15 U.S.C. § 78m(a)  
17 C.F.R. § 240.12b-20  
17 C.F.R. § 240.13a-1  
17 C.F.R. § 240.13a-13  
15 U.S.C. § 78m(b)(2)(A)  
15 U.S.C. § 78m(b)(5)  
17 C.F.R. § 240.13b2-1  
18 U.S.C. 371  
18 U.S.C. § 2

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN R. BOYD, and  
CHRISTOPHER CURBELLO,

Defendants.

\_\_\_\_\_ /

**INDICTMENT**

THE GRAND JURY CHARGES THAT:

**General Allegations**

At all times relevant to this Indictment:

1. Between August 1996 and June 2000, Golden Bear Golf, Inc. (hereinafter “Golden Bear”), was an international golf services company with its principal office located in Palm Beach

County, Florida. Golden Bear engaged in a number of golf-related business activities, including golf course construction, through its wholly owned subsidiary, Paragon Golf Construction, Inc., (“Paragon”).

2. Golden Bear’s common stock was, until Golden Bear went private on June 20, 2000, registered with the Securities and Exchange Commission (“SEC”), pursuant to Section 12(g) of the Securities and Exchange Act of 1934, (“the Exchange Act”), Title 15, United States Code, Section 78(l)(g). Golden Bear’s common stock traded in the National Market System of the Nasdaq Stock Market, Inc.

3. As a wholly-owned subsidiary of Golden Bear, Paragon’s financial statements were a material component of Golden Bear’s consolidated financial statements and Paragon’s books, records and accounts were a material part of Golden Bear’s books, records and accounts. Federal securities laws and SEC rules and regulations required Golden Bear to file with the SEC, among other things, reports on the financial results of its operations. Golden Bear was required to file its quarterly reports on SEC Form 10-Q and its annual reports on a Form 10-K, respectively. In those reports, Golden Bear was required to disclose to the investing public information which fairly and accurately reported its operating results prepared according to SEC rules and regulations and certified by independent public accountants.

4. In January 1997, Golden Bear named Defendant John R. Boyd President of Paragon. Boyd then named Defendant Christopher Curbello Paragon’s Vice President of Operations. Boyd and Curbello directed Paragon’s operations and financial reporting. In or about July 1997, defendant John R. Boyd was paid an annual salary of \$250,000, and granted options to purchase 30,000 shares of Golden Bear common stock. In or about March 1998, defendant John R. Boyd received a bonus

based on performance of approximately \$100,000. Defendant Christopher Curbello was paid an annual salary of \$100,000, and was paid a bonus of approximately \$40,000 in March, 1998.

5. In April 1998, Golden Bear dismissed defendants John R. Boyd and Christopher Curbello. After their departure, Golden Bear announced that it had identified material discrepancies between the actual status of Paragon's projects and that which defendants John R. Boyd and Christopher Curbello had reported to Golden Bear and its auditors. Because Golden Bear had included the materially false and misleading financial reporting in its SEC filings, on October 19, 1998 Golden Bear restated its results for the periods ended December 31, 1997 and March 31, 1998. As a result of the restatements and the announcements preceding them, the price of Golden Bear stock dropped substantially.

### **COUNT ONE**

#### **Conspiracy to Commit Securities Fraud**

6. The general allegations section of this indictment is realleged herein.

7. From in or about October 1996, to on or about May 15, 1998, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

**JOHN R. BOYD,  
and  
CHRISTOPHER CURBELLO,**

did knowingly and willfully combine, conspire, confederate and agree with each other, and with persons known and unknown to the grand jury, to commit certain offenses against the United States, that is:

(a) to commit fraud in connection with the purchase and sale of securities issued by Golden Bear, in violation of Sections 10(b) and 32(a) of the Exchange Act, Title 15, United States Code,

Sections 78j(b) and 78ff(a), and Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission promulgated thereunder, Title 17, Code of Federal Regulations, Section 240.10b-5;

(b) to make and cause to be made false and misleading statements of material fact in applications, reports, and documents to be filed under the Exchange Act, in violation of Sections 13(a) and 32(a) of the Exchange Act, Title 15, United States Code, Sections 78m(a) and 78ff(a); and Rules 12b-20, 13a-1, and 13a-13 of the Rules and Regulations of the SEC promulgated thereunder, Title 17, Code of Federal Regulations, Sections 240.12b-20, 240.13a-1, and 240.13a-13; and

(c) to falsify books, records, and accounts of Golden Bear, in violation of Sections 13(b)(2)(A), 13(b)(5), and 32(a) of the Exchange Act; Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a); and Title 17, Code of Federal Regulations, Sections 240.13b2-1.

### **Object of the Conspiracy**

8. It was the object of the conspiracy for the defendants to deceive Golden Bear, its shareholders, the investing public and others, by materially misrepresenting Golden Bear's financial condition in order to make Golden Bear appear to be generating more revenue and profit than it actually was.

### **Manner and Means of the Conspiracy**

The manner and means by which the defendants sought to accomplish the object of the conspiracy included the following:

9. Defendants John R. Boyd and Christopher Curbello caused Paragon to record revenue in connection with non-existent construction agreements. Some of these agreements were simply

potential deals that defendant Boyd was attempting to obtain, but never did, and others were projects that bids were pending on but which had not yet been awarded to Paragon. Boyd and Curbello recorded revenue and gross margin in connection with these non-existent agreements and reported them to Golden Bear as awarded projects. This made Boyd and Curbello look like they were more successful in expanding Paragon's business than they were in reality. Based on this reporting, Golden Bear included this revenue and gross margin in its financial statements, which were included in Golden Bear's Form 10-K for 1997 and Form 10-Q for the first quarter of 1998. (Paragon's gross margin equaled its expected revenues less its estimated costs under a contract, and showed each project's estimated profit or loss).

10. In 1997 and 1998, the defendants Boyd and Curbello also artificially inflated Paragon's revenue and gross margin by overstating the amount of revenue Paragon expected to realize under numerous construction contracts. In several instances, Paragon's clients retained it to provide limited services in connection with the planning phase of a development project. The subsequent, more valuable phases of the project had not been awarded to Paragon, or to any builder. To make these small contracts look more significant and profitable than they were, the defendants Boyd and Curbello falsely reported to Golden Bear and its auditors that Paragon had been awarded the larger, more valuable work associated with the later phases of the development.

11. Defendants John R. Boyd and Christopher Curbello caused Paragon to materially understate the costs it estimated it would incur in connection with numerous of its real projects. Boyd and Curbello gave these bogus cost estimates to Golden Bear and its auditors in an effort to hide the fact that some projects were actually losing substantial amounts of money and to make Paragon's profitable jobs look even more profitable.

12. Defendant's Boyd and Curbello also caused Paragon to change the way it determined its revenue recognition during the course of a contract. Paragon changed from an objective method based on Paragon's progress towards completion on a job as reflected in the amount of cost Paragon had actually incurred under a contract ("Cost Method"), to a subjective method based on actual job progress estimates prepared by project managers at the job site. The defendants called the new method the "earned value method" and cleared the new method through Golden Bear's auditors, Arthur Andersen ("Andersen").

13. During 1997, after Paragon started to report its revenue based on the "earned value method," defendants Boyd and Curbello caused Paragon to artificially inflate the job progress estimates being reported by managers in the field which resulted in Paragon materially overstating its revenue and gross margin. Boyd and Curbello provided these artificially inflated numbers to Golden Bear and its auditors and represented that they were accurate. Golden Bear relied on these representations and as a result materially overstated its revenue.

14. In the summer and fall of 1997, Andersen noted that Paragon was reporting materially higher revenue and gross margin under the newly adopted "earned value method" than what it would have reported under the cost method. Andersen told Boyd and Curbello that if that this gap did not close by the end of Golden Bear's 1997 fiscal year, Andersen might require Golden Bear to use the lower cost method numbers. Rather than correct the false progress reports to record accurate revenue, Boyd and Curbello caused Paragon to record millions of dollars in fictitious costs on various jobs in order to make it look like Paragon was making more progress on its jobs, and hence earning more revenue and gross margin, than it truly was. This helped the defendants conceal Paragon's artificially inflated revenue and gross margin and made them appear to be much more

successful managers than they were.

15. In 1997 and 1998, the defendants Boyd and Curbello also signed new jobs by intentionally bidding low amounts on projects to entice owners into awarding them to Paragon, despite being advised by field managers that the jobs could not be done for the price bid by Paragon. Since Paragon's underbidding resulted in several large projects being awarded at bids below the cost of construction, these projects were, in effect, loss contracts from the moment they were signed. Defendants Boyd and Curbello directed Paragon employees to misrepresent the status of these projects and failed to account for the resulting forecast losses.

16. As a result of Paragon's materially misstated financial reporting, Golden Bear filed false and misleading financial statements for its Fiscal Year 1997 and first quarter of 1998. Paragon caused Golden Bear to do so by artificially inflating and accelerating its revenue and gross margin resulting in Golden Bear substantially overstating its construction revenue and its gross margin for construction operations.

### **Overt Acts**

17. In furtherance of the conspiracy and to achieve the objects thereof, at least one of the coconspirators committed or caused to be committed, in the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

a. In or about May 1997, defendant John R. Boyd discussed with other Paragon employees a scheme to solicit false invoices from subcontractors in order to make it look like Paragon had incurred more costs and was doing more work than it was, so that Paragon could report more revenue and gross margin on its projects than it had really earned.

b. In or about May 1997, defendants John R. Boyd and Christopher Curbello caused a change in the way Paragon determined its revenue recognition from the cost method to what they called the “earned value method.”

c. In or about November 1997, defendants Boyd and Curbello reported to Golden Bear and its auditors \$360,000 in revenue and \$57,600 in gross profit in connection with a project they identified as the “Cancun” project, but no such project was ever awarded to Paragon.

d. In or about November 1997, defendant Boyd agreed to a \$6.3 million contract in connection with the Trump International project, despite being told by Paragon’s cost estimator that Paragon could not complete the job for the contract amount.

e. In or about December 1997, defendant Boyd decided to delay recording the known Mansion Ridge loss until fiscal 1998.

f. In or about January 1998, defendant Boyd, in connection with preparing Paragon’s 1997 fiscal year-end financial reports, directed Paragon personnel to change accurate project status information prepared by Paragon’s project managers to reflect materially false information.

g. In or about January 1998, defendant Boyd agreed to a \$12,800,000 agreement in connection with the Tobago Plantations project, despite being told by Paragon’s Tobago project manager that Paragon could not complete the job for the contract amount.

h. In or about February 1998, defendant Boyd directed Paragon employees to record approximately \$4,000,000 in fictitious costs as of year-end 1997.

i. In or about February 1998, defendant Christopher Curbello caused the submission to Golden Bear’s auditors of a false audit confirmation in connection with the La Vista project.



j. In or about February 1998, defendant Boyd told Golden Bear's Chairman that based on Paragon's financial condition, Paragon was carrying Golden Bear and that he, Boyd, should be promoted to run the entire Company.

All in violation of Title 18, United States Code, Section 371.

**COUNT TWO**

**Securities Fraud**

18. The general allegations section and paragraphs 9 through 16 of this Indictment are realleged herein.

19. From in or about January 1997, to on or about May 15, 1998, in Palm Beach County, in the Southern District of Florida, and elsewhere, defendants,

**JOHN R. BOYD  
and  
CHRISTOPHER CURBELLO,**

unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, used and employed, in connection with the purchase and sale of securities, namely Golden Bear common stock, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts and practices and courses of business which operated and would operate as a fraud and deceit upon purchasers and sellers of Golden Bear stock.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240-10b-5; and Title 18, United States Code, Section 2.

**COUNT THREE**

**False Books and Records**

20. The general allegations section and paragraphs 9 through 16 of this Indictment are realleged herein.

21. From in or about January 1997, to on or about May 15, 1998, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

**JOHN R. BOYD,  
and  
CHRISTOPHER CURBELLO,**

unlawfully, willfully and knowingly directly and indirectly, falsified and caused to be falsified books, records and accounts by entering and directing others to enter into Golden Bear's books and records, among other things, false estimated total costs, revenues, percentage of completion estimates, and fictitious costs, that, among other things, materially overstated revenue and profit in fiscal year 1997 and for the first quarter of 1998, which, in reasonable detail, should have accurately reflected the transactions and dispositions of the assets of Golden Bear, an issuer with a class of securities registered pursuant to Section 12(g) of the Exchange Act, Title 15, United States Code, Section 78l(g), in violation of Sections 13(b)(2)(A) and 32(a) of the Exchange Act, Title 15, United States Code, Sections 78m(b)(2)(A) and 78ff(a); and Rule 13b2-1 of the Rules and Regulations of the SEC promulgated thereunder, Title 17, Code of Federal Regulations, Section 240.13b2-1; and Title 18, United States Code, Section 2.

**COUNTS FOUR AND FIVE**

**False Filings With The SEC**

22. The general allegations section and paragraphs 9 through 16 of this Indictment are realleged herein.

23. On or about the dates listed below, in Palm Beach County, in the Southern District of Florida, and elsewhere, defendants,

**JOHN R. BOYD  
and  
CHRISTOPHER CURBELLO,**

unlawfully, willfully, and knowingly, made and caused to be made statements in reports and documents required to be filed with the SEC under the Exchange Act and the rules and regulations promulgated thereunder, which statements were false and misleading with respect to material facts, to wit, defendants JOHN R. BOYD and CHRISTOPHER CURBELLO caused to be submitted in Palm Beach County, Florida, and Washington, DC, the filings below to the SEC which included materially false financial statements:

COUNT	FILING	APPROXIMATE DATE OF FILING
FOUR	Form 10-K for Golden Bear Golf, Inc., for the year ending December 31, 1997	March 31, 1998
FIVE	Form 10-Q for Golden Bear Golf, Inc., for the First Quarter of 1998	May 15, 1998

All in violation of Sections 13(a) and 32(a) of the Exchange Act, Title 15, United States Code, Sections 78m(a) and 78ff(a); and Rules 12b-20, 13a-1, and 13a-13 of the Rules and

Regulations of the SEC promulgated thereunder, Title 17, Code of Federal Regulations, Sections 240.12b-20, 240.13a-1, and 240.13a-13; and Title 18, United States Code, Section 2.

A TRUE BILL:

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FOREPERSON

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MARCOS DANIEL JIMENEZ  
UNITED STATES ATTORNEY

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EMALYN H. WEBBER  
ASSISTANT UNITED STATES ATTORNEY

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JAMES M. FAY  
SPECIAL ASSISTANT UNITED STATES ATTORNEY