2B1.1 Fact Patterns

1. Harvey Hacker has pleaded guilty to one count of wire fraud, a violation of 18 U.S.C. § 1343 with a statutory maximum punishment of 20 years imprisonment. Harvey used his home computer to gain access to the UberBank online banking system's password file after he noticed a loophole in the bank's security. The password file identified the name, account number, social security number and e-mail address of 260 UberBank account-holders. He used the passwords to access 48 different checking and savings accounts that belonged to 48 different UberBank account-holders. Harvey transferred $50 from each account into a separate UberBank account that he opened using the name, address, and social security number of his neighbor Dillford Grimely. A few days before Harvey had removed a letter from Dillford's mailbox which contained Dillford's name and social security number. Harvey signed up for a new account and received an account number in Dillford's name. Harvey was then able to transfer the money online in about ninety minutes. Soon after Harvey transferred the money using the UberBank online banking system, the online security manager at UberBank noticed the unusual transfers. The security manager conducted a quick investigation and then reversed all of the transfers and closed the account in Dillford's name. Harvey did not withdraw any cash from the new account before the fraud was discovered and the new account was closed. UberBank's action in reversing the 48 transfers happened before any of the 48 account-holders noted the shortfall in their respective accounts. UberBank subsequently spent $25,000 to remedy the fraudulent transfers and the loophole in online security.

Harvey has no prior criminal history. He has cooperated with the investigation and provided a written statement accepting responsibility for his actions.

The defense argues that since UberBank noted the issue before any account-holder was deprived of his or her money, and since UberBank closed his fraudulent new account prior to Harvey removing any cash, the loss is zero. Further, the defense states that even if an intended loss is determined there is only one victim: UberBank. The defense contends that because the account-holders and Dillford suffered no pecuniary harm they are not victims. The defense argues that after calculating his guideline range under §2B1.1, and applying a two -level reduction for acceptance of responsibility, the final guideline offense level is 5.

How would the guidelines be calculated in this case?

Answer: Under §2B1.1 loss would be calculated based on the higher of the actual or intended loss.

a) In this case the actual loss would include the $25,000 that UberBank spent to remedy the fraud and the security issue. Repairs that may also be improvements

of property can be included in loss. See United States v. Lindsley, 254 F.3d 71 (5th Cir. 2001)(Improvements made to a victim company's computer system after a hacker broke in could be attributed to the loss figure as necessary repair costs). A court can also reasonably estimate the intended loss by looking at the available facts. In this case the intended loss could be calculated based on the amounts that Harvey transferred from the account-holders into his bogus account, or $2,400. However, intended loss could also include amounts that the defendant did not necessarily appropriate (or did not yet appropriate), but that he or she had clear access to appropriate. See United States v. Wilfong, 475 F.3d 1214 (10th Cir. 2007)(the defendant fraudulently opened credit accounts at local businesses in the names of victims and the court calculated intended loss by totaling up the credit limits of all open accounts even though the defendant had not used all of the available credit);United States v. Kushner, 305 F.3d 194, 198 (3d Cir. 2002)(Holding that the "intended loss" in a fraudulent check scheme can include the value of counterfeit checks turned over by the defendant at the time of his voluntary surrender even if those checks were never used); United States v. Ravelo, 370 F.3d 266 (2d Cir. 2004)(A case where the defendant unsuccessfully attempts to obtain cash advances from stolen credit cards, each unsuccessful attempt represented an intended loss); and United States v. Rettenberger, 344 F.3d 702, 708 (7th Cir. 2003)(A case where the sentencing judge assumed that the defendant would have continued to collect benefits until the age of 65 and assessed the intended loss as that full amount, holding that when confronted with an ongoing scheme, a sentencing judge may have to extrapolate to find the intended loss). A sentencing judge in this case could determine, based on the evidence, that the intended loss included $50 from each of the accounts for which Harvey had access information. This would raise the loss figure to $13,000.

b) *Effective November 1, 2009, the Commission broadened the definition of victim to include any individual whose "means of identification" was improperly used. Such individuals are considered "victims" regardless of whether they sustained any pecuniary harm. In this case, Harvey had access to the means of identification of 260 account-holders, but only "used" the means of identification for 48 of these accounts. This, along with the use of Dillford's means of identification and the pecuniary loss suffered by UberBank to repair their system, bring the total number of victims to 50. Under §2B1.1(b)(2)(B) this would add four levels to Harvey's guideline calculation for number of victims.*

If Harvey's conduct occurred prior to November 1, 2009, the applicability of the enhancement at §2B1.1(b)(2) may vary, depending on the law of the circuit in which Harvey was sentenced. For such offenses, the definition of victim in the guidelines required that the person suffer actual loss (or bodily injury) and actual loss requires pecuniary harm. Courts have differed on what "pecuniary harm" can mean. See United States v. Lee, 427 F.3d 881 (11th Cir. 2005)(Where the

court determined that businesses who were able to offset losses due to return of collateral were still "victims" under §2B1.1(b)(2) since they had suffered a "pecuniary harm" when the defendant had not returned the property prior to discovery); and United States v. Abiodun, 536 F.3d 162 (2d Cir. 2008). The Second Circuit decided that individuals who are reimbursed for losses by their credit card companies or banks can still be considered "victims" for the purposes of §2B1.1(b)(2) as long as they have experienced a loss that can be measured in 'monetary terms." Such a loss could include a "loss of time" due to the victim attempting to secure reimbursement). In this case it appears that, in most circuits save possibly the Eleventh Circuit, the account-holders would not be considered victims under earlier versions of the guidelines. Thus, using the current manual under those circumstances may be an ex post facto violation.

c) Two additional levels may be added for the use of sophisticated means (using a computer to access the UberBank files) under §2B1.1(b)(9)(C). Defense counsel could rebut any evidence that the accessing of the UberBank user file required sophisticated means. If, for example, the loophole in security was obvious and did not require any specialized computer knowledge, the court might determine that sophisticated means would not apply.

d) Under §2B1.1(b)(10)(C)(I), a two level enhancement for the unauthorized use of a means of identification to obtain another means of identification, would apply in this case since Harvey used Dillford's name and information to open a bank account in his name and was given a new account with a new account number. Note that under §2B1.1(b)(10) that Harvey's offense level must have a floor of level 12.

e) The total offense level for Harvey using the intended loss figure of $13,000 and applying all the other specific offense characteristics discussed above, less a three point downward adjustment for acceptance of responsibility, would be 16. This calculation would resulted in the same total offense level if the court used the actual loss figure.

1A. Assume the same facts as in Fact Pattern 1, but 100 accounts were accessed instead of 48, and the amount withdrawn from the account-holder's bank accounts was $5,000 rather than $50.

How would the guidelines be calculated in this case?

Answer: If the loss figure included $5,000 per victim (assuming 100 account-holders were determined to be victims), then §2B1.1(b)(14)(B)(iii) may be applicable. This provision calls for a four level enhancement if the offense "substantially endangered the

financial security of 100 or more victims." The court would have to determine whether the loss of $5,000 constitutes "substantial" financial endangerment under the circumstances. There are no reported cases interpreting this subsection. Note that §2B1.1(b)(14)(C) notes that the cumulative adjustments from application of both (b)(2) for number of victims, and (b)(14)(B)(iii) cannot exceed eight levels.

2. The defendant, Haley Houseseller ("Houseseller"), has pled guilty to one count of mail fraud, a violation of 18 U.S.C. § 1341 with a statutory maximum punishment of 30 years imprisonment. The offense involved a scheme in which she conspired with others to defraud American Mortgage Bank, N.A. ("Bank") in connection with the sale of four properties.

Investigation uncovers that Houseseller worked as a certified mortgage broker and recruited four individuals ("buyers") to purchase what she termed "investment properties." Houseseller told the four buyers that she would use her real estate expertise to find "distressed investment properties" from which they could make a quick profit. Prior to approaching the four buyers, Houseseller purchased four properties herself:

(1) property one sold to Houseseller at $200,000, and it appraised at $225,000 at the time she re-sold it to the first buyer for the appraised value;
(2) property two sold to Houseseller at $175,000, and it appraised at $200,000 at the time she re-sold it to the second buyer for the appraised value;
(3) property three sold to Houseseller at $250,000, and it appraised at $275,000 at the time she re-sold it to the third buyer for the appraised value; and
(4) property four sold to Houseseller at $300,000, and it appraised at $325,000 at the time she re-sold it to the fourth buyer for the appraised value.

None of the four buyers had ever previously purchased property, and their incomes were all below $20,000 per year.

Houseseller employed five people in her office who aided in preparing the loan applications for the four buyers Houseseller recruited. These loan applications included forged bank records, pay stubs, and other materials provided to the Bank. The Bank provided mortgage financing for the full amount of the re-sale prices for all of these properties; there were no down payments required. The buyers were all unable to make any payments on these houses and after default the houses all went into foreclosure. The Bank conducted an internal investigation and contacted the authorities two months prior to foreclosure.

Houseseller has no prior criminal history. She has cooperated with the investigation and provided a written statement accepting responsibility for her actions.

The defense argues that there was no loss in this case because the Bank received title to the properties which secured the loans after foreclosure. The defense argues that, since the Bank does not dispute the appraisals or value of the homes, there is no loss. The defense also argues that after calculating her guideline range under §2B1.1, and applying a two -level reduction for acceptance of responsibility, the final guideline offense level is 5.

How would the guidelines be calculated in this case?

Answer: Under §2B1.1 loss would be calculated based on the higher of the actual or intended loss.

a) Recall that "credits against loss" are generally only valid when property or money is returned before the offense was detected by a victim or a government agency. (See Application Note 3(E)(i)). In such cases, while the value of the property may be a consideration in restitution, for the purposes of loss calculation the defendant will not receive any credit under these circumstances. This case triggers a special rule, however. In a case involving collateral pledged or otherwise provided by the defendant, loss is reduced by the amount the victim (here, the Bank) has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing. (See Application Note 3(E)(ii)).

b) The actual loss is the "reasonably foreseeable pecuniary harm" that resulted from the conduct. This would include the entire amount procured from the bank based on the fraud, or specifically, $1,025,000, minus the fair market value of the properties at the time of sentencing (or the amount recovered for them if they are disposed of before sentencing). Thus, if the appraised values do not decrease, the loss could be zero.

c) Under §2B1.1(a)(1), a mail fraud case involving a financial institution has a base offense level of seven. At most, sixteen levels would be added for the $1,025,000 loss amount under §2B1.1(b)(1), bringing the offense level to 23. As best, no addition would be made for loss, leaving the offense level at seven.

d) Two additional levels might be added for the use of sophisticated means (preparation of the fraudulent documentation to supply the lender) under §2B1.1(b)(9)(C). This is likely to be a disputed issue.

e) Additionally, consideration must be given to whether §2B1.1(b)(14)(A) applies (a 2-level increase if "the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense"). Note that this

is one of the few specific offense characteristics that focuses on the defendant personally rather than relevant conduct (which extends beyond the defendant personally). Note that if the resulting offense level were to be less than level 24, §2B1.1(b)(14)(E) requires that it be increased to level 24.

f) [Aggravating role? An argument can be made for a four level increase because Houseseller directed the activities of her five employees and was the leader or organizer of the fraud scheme. See §3B1.1(a). The defense may argue that the employees were not "participants" as defined in the guidelines. See §3B1.1, comment. (n.1).]

g) [Abuse of trust? Although she was not in a position of trust with the Bank, the government might argue that she occupied at position of trust with the borrowers.]

h) [Vulnerable victims? Although she took advantage of the buyers, they probably could not be considered victims of the offense.]

i) Assuming the court did not apply any Chapter Three adjustments but did apply all of the specific offense characteristics discussed above, the total offense level for Houseseller will be a maximum of 24 (taking into consideration a three point adjustment for acceptance of responsibility). If the court did not apply any of the specific offense characteristics, the total offense level would be 5 (BOL of 7 less 2 points for acceptance of responsibility).

2A. Imagine the same facts but, in this case, Houseseller did not recruit the purchasers, but paid an appraiser to inflate the appraised values of the properties by $25,000 each. The homes in this case do not go into foreclosure. At the time of sentencing the value of the four properties now exceeds or equals the inflated value.

Is there still a loss, and what would it be?

a) It depends on whether the Bank has already disposed of the properties. She may get the benefit of the rising market under Application Note 3(E)(iii) even though she would be stuck with the price at which the properties were sold if the Bank completed the foreclosure sale before the properties appreciated in value. There is a separate issue of "intended loss" however. It could be argued that she intended to defraud the Bank of the difference between the true value and the falsely appraised value at the time of the offense. Loss is calculated at the time of the offense, or the time that the conspiracy ended. If the intended loss exceeds the actual loss, the intended loss would be used (and vice versa).

Case law example: In United States v. Radziszewski, 474 F.3d 480, 487 (7th Cir. 2007)*, the defendant objected to the sentencing judge's use of a foreclosure value for a property secured with a fraudulent loan rather than a higher appraisal of the property at a date prior to foreclosure. The court declined to use the defendant's preferred value in part because it did not represent the amount the bank actually recovered from foreclosure.*

b) Recall that under §2B1.1(b)(13)(E), when the defendant receives more than $1,000,000 in gross receipts from a financial institution, the resulting offense level floor is 24. Therefore, the total offense level for Houseseller could be ***21,*** *taking into consideration a three-level adjustment for acceptance of responsibility, even if the Bank suffered no actual loss in the end.*

2B. Also, imagine that there was a fifth property sold to one of the buyers, using the buyer's information, without the buyer's knowledge.

How would this change the sentence?

a) The calculation would be the same with two levels added because of Houseseller's use of a means of identification to obtain another means of identification (the new mortgage application for the fifth property) under §2B1.1(b)(10)(C)(i).

3. Dave Data pleaded guilty to one count of computer fraud, a violation of 18 U.S.C. § 1030 with a statutory maximum punishment of 10 years imprisonment. Dave is a computer database designer who had contracted with the Department of Transportation to design and implement a new database platform. The new database was to contain information about several sensitive public programs including the new national Supertrain program. The database contract was worth $120,000 for one year of work at $10,000 per month. Dave bribed Pearl Dailey, a procurement officer at DOT, with $10,000 to pick his bid over any other bids. Dave was given access to some, but not all of the DOT's files, after he was awarded the contract. The DOT paid the entire $120,000 up front. Six months after the project started Pearl Dailey was suddenly dismissed. Dave, fearing discovery of his misconduct, determined he would access the DOT Supertrain data files including the bid files in an attempt to delete any evidence of the bid rigging. To gain access to these files he removed a card with access code information from a DOT employee's jacket pocket while that employee was distracted. After he gained access to the files Dave was unable to erase the files related to his bid. Frustrated, Dave then released a computer virus which he hoped would destroy the evidence surrounding the bids. Although Dave did not intend for it to happen, the virus also corrupted some of the technical and

proprietary data surrounding the Supertrain project and will likely set the project back several weeks at an estimated cost of $330,000. Internal DOT computer security noted the breach soon after this event and Dave was dismissed from his database contract.

Dave has no prior criminal history. He has cooperated with the investigation and provided a written statement accepting responsibility for his actions.

The defense argues that Dave intended no loss to the DOT and was performing his duties under the contract. Dave also returned the entire $120,000 he had received under the contract as soon as he was contacted by DOT investigators. The defense argues that after calculating his guideline range under §2B1.1, and applying a two -level reduction for acceptance of responsibility, the final guideline offense level is 4.

How would the guidelines be calculated in this case?

Answer: Under §2B1.1 loss would be calculated based on the higher of the actual or intended loss.

a) The actual loss is the "reasonably foreseeable pecuniary harm" that resulted from the conduct. While Dave may not have intended to cause the damage that resulted from his release of the computer virus, it is a reasonably foreseeable outcome. The cost of repairs to damaged property is to be included in any actual loss calculation (n. 3(C)(iii)). Under n. 3(C)(iii), the $330,000 represents a fair estimation of the repair costs involved and it is included in the loss calculation. Dave will receive no credit against loss for the return of the entire $120,000 because he returned it after the investigation at DOT had already begun (n. 3(E)(I)). Assuming Dave has completed six months of his contract properly, and assuming that $10,000 per month is determined to be a reasonable estimate of the value of the work performed, then Dave will get a credit of $60,000 against the loss. Id. The total loss in this case is $390,000.

b) Two levels would be added since his conduct also included theft from the person of another (the taking of the access card from the jacket) under §2B1.1(b)(3) .

c) Two additional levels may be added for the use of sophisticated means (using a computer virus) under §2B1.1(b)(9)(C). The defense could rebut the argument that setting loose a computer virus in a computer system is evidence of the use of sophisticated means. Sophisticated means require "a greater level of planning or concealment"than the average fraud. Id.

If Dave had created the virus for the purposes of destroying the files then it would seem likely that the enhancement would apply. In this case it would be a fact question for the court as to whether the manipulation and use of a computer virus requires a "greater level" of planing than an average fraud defendant's conduct.

d) Under §2B1.1(b)(16)(A)(ii), a four level enhancement would apply in this case, and a strong argument could be made under §2B1.1(b)(16)(A)(iii) that a six level enhancement should apply if the court determined there was a "substantial disruption of a critical infrastructure" (the Supertrain project). There are no reported cases discussing what constitutes a "substantial disruption" nor a "critical infrastructure" under this guideline so it will be a fact question for the court to decide if delay of the project for several weeks meets the criteria. Note that under §2B1.1(b)(16)(B) Dave's offense level must have a floor of level 24 if §2B1.1(b)(16)(A)(iii) applies.

e) The total offense level for Dave will be 25 (taking into consideration a three point downward adjustment for acceptance of responsibility) if the court adopts all enhancements, including the six level enhancement for a "substantial disruption" of a critical infrastructure.

3A. Assume the same facts as in Fact Pattern 3, but in this case the contract was to be awarded to a Disadvantaged Business Enterprise to increase the participation and opportunities for women and minority-owned businesses in DOT contracting. When Dave bids for the contract he also misrepresents that he is a DBE.

How would the guidelines be calculated in this case?

Answer: Some sentencing courts have determined that the special rule in n. 3(F)(ii) (for Government Benefits) could apply in some cases where government grants and set-asides fund the contract. In so applied in this case the calculation of loss would include the entire contract award of $120,000 despite any services honestly rendered. See United States v. Tulio, 2008 WL 324193 (3d Cir. Feb. 7, 2008); United States v. Tupone, 422 F.3d 145 (3d Cir. 2006); and United States v. Leahy, 464 F.3d 773 (7th Cir. 2006). Thus loss calculation would be increased to $450,000 and two levels would be added under the SOC. The total offense level, if all the other enhancements were determined to apply, would therefore be a 27.

4. The defendant, Timmy Trader, is a former gas trader for Gas Giant Corp. ("GGC"), a large, publicly traded gas exploration company that makes significant trades on the open market to hedge its position as a producer of natural gas.

Beginning in January 2005, Trader entered into several transactions that lost money for the company. Trader hid these losing trades in an electronic account he controlled and did not report the losses to GGC. Trader's bonus, a significant part of his annual income, was based on the profitability of his trading. For all of 2005 and the first quarter of 2006, the losses went unnoticed by the company and were not reported in GGC's quarterly or yearly filings with the Securities and Exchange Commission ("SEC"). In March of 2006 Trader received a $100,000 bonus for his performance in 2005. Later that month an internal audit uncovered the losses and Trader was suspended. An internal investigation was commenced by the GGC board of directors.

During late 2005 GGC had become the target of a possible takeover or buyout by rival company UniversalOil, Inc. ("UOI"). The share price of GGC went from $60 in late 2005 to as high as $80 in June of 2006. GGC has two million shares of stock outstanding with thousands of investors. On June 15, 2006 UOI announced that it was no longer interested in acquiring GGC and GGC's stock began to decline. On June 19, 2006 the stock price closed at $50.

On June 20, 2006 GGC filed revised reports with the SEC and released a press statement regarding the losses Trader had suffered. The press statement revealed that the revenues for 2005 and the first quarter of 2006 would be revised downward to reflect these losses. GGC's stock price closed at $48 on June 20, 2006 and subsequently fell to a low of $46 on June 30, 2006 before rising again. GGC also contacted the Department of Justice, which launched an investigation that resulted in Trader pleading guilty to one count of wire fraud.

The plea agreement stipulates that the defendant will repay his $100,000 bonus to the company for restitution. In the plea agreement, the parties take no position with respect to a loss figure. The pre-sentence investigation uncovers that Trader's hidden trading losses amounted to $2,000,000. Trader has cooperated with the investigation and expressed acceptance of responsibility.

How would the guidelines be calculated in this case?

Answer: Under §2B1.1 loss can be estimated by the court.

a) In cases involving the "reduction in value of securities" an estimation of the losses to the shareholders based on the defendant's conduct is suggested by §2B1.1. comment. (n.3(C)(iv)). The loss must actually be attributable to specific conduct of the defendant and includes only losses accumulated when "the truth is subsequently revealed and the price of the stock accordingly declines." See United States v. Olis, 429 F.3d 540 (5th Cir. 2005). In this case there was a $4 drop in stock price after the

revelation of Trader's conduct on June 20th. This would yield a $8,000,000 loss amount given two million outstanding shares.

b) Starting with a base offense level seven under §2B1.1(a), 20 levels are added for the $8 million loss under §2B1.1(b)(1), for an offense level 27.

c) Six levels would be added under §2B1.1(b)(2)(C) because of the number of victims, for an offense level 33.

d) Two additional levels could be added for the use of sophisticated means (the use of the electronic trading account to hide losses) under §2B1.1(b)(9)(C), for an offense level 35.

e) The enhancement under §2B1.1(b)(14)(B) for "jeopardizing the safety and soundness" of a publicly traded company would probably not apply as there is no evidence of "substantial" harm in this case, such as a serious devaluation or bankruptcy.

f) Additionally, the enhancements under §2B1.1(b)(17) would not apply as Trader was not an officer of the company or a registered broker or adviser.

*g) The total offense level would be **32** after accounting for acceptance of responsibility.*

5. Kyle Kenner forced open a U.S. mail collection box and removed 10 pieces of mail. One of the envelopes contained confidential trade secrets of CompuSoft Corporation's new computer operating system. Kenner passed the trade secrets off to an acquaintance he had met on the internet for $4000. The information was disseminated across the internet, and CompuSoft had to immediately make changes to its operating system to avoid security breaches. These changes cost CompuSoft $200,000. Kenner was later tracked down and he pleaded guilty to one count of theft of a trade secret. Kenner pleaded guilty to a violation of 18 U.S.C. § 1030(a)(5)(A)(I), which carries a maximum sentence of ten years imprisonment (18 U.S.C. § 1030(c)(4)(A)).

How would the guidelines be calculated in this case?

Answer:

a) The loss would include the $200,000 that CompuSoft had to pay because of the dissemination of its confidential information. This is "reasonably

foreseeable pecuniary harm," as noted in §2B1.1. comment. (n.3(A)(v)(III)), even though Kenner did not release the information himself.

b) Starting with a base offense level of six from §2B1.1(a), 10 levels will be added for the loss figure of $200,000, for an offense level 16.

d) Because the theft was made from undelivered U.S. mail, §2B1.1. comment. (n. 4(C)(ii)(I)) instructs that mail taken from a collection box shall be considered to have involved at least 50 victims. Four levels will be added under §2B1.1(b)(2)(B) for 50 or more victims, resulting in an offense level 20.

e) Because Kenner was convicted of an offense under 18 U.S.C. § 1030(a)(5)(A), four levels will be added under §2B1.1(b)(16)(ii).

*f) Kenner will receive a total offense level **21** after taking into account a three level reduction for acceptance of responsibility.*

5A. Assume the same facts as in Fact Pattern 5, but in this case the purchaser of the CompuSoft trade secret information, DataSys, Inc.("DataSys"), believes that Kenner is the bona fide owner of the information and pays Kenner $4000 for the unlimited use of the information. DataSys then uses the information to implement its own software products which it sells commercially. In this case the information is disseminated as before, causing CompuSoft $200,000 in costs. After the fraud is uncovered, DataSys incurs $200,000 in costs to remove the stolen information from its products and provide substitute products for its customers. Additionally, DataSys aids in the prosecution of Kenner by providing three of its employees as witnesses during the investigation at a cost of $75,000.

How would the guidelines be calculated in this case?

Answer:

a) The loss would still include the $200,000 that CompuSoft had to pay because of the dissemination of its confidential information.

b) The loss could also include the $200,000 DataSys incurred in re-writing its software products. The"reasonably foreseeable pecuniary harm" in such cases includes the costs of making substitution products and any disruptions to the victim's business operations, as noted in §2B1.1. comment. (n.3(A)(v)(I)). While the product may have worked as

anticipated, the misrepresentation about its origin effected the victim and required the costs of replacement.

c) *Additionally, DataSys' losses include the $4000 originally paid to Kenner for the information, bringing the total loss figure to $404,000.*

d) *The Loss will not include the $75,000 in costs DataSys incurred aiding the investigation of Kenner. The costs to the government and to victims aiding in the prosecution of defendants are not included in the loss calculation. USSG §2B1.1, comment. (n.3(D)(ii)); see United States v. Schuster, 467 F.3d 614, 618-20 (7th Cir. 2006).*

e) *Starting with a base offense level of six under §2B1.1(a), 14 levels will be added for the $404,000 loss figure, resulting in an offense level 20.*

f) *As in the original example, because the theft was made from undelivered U.S. mail, four levels will be added under §2B1.1(b)(2)(B) for 50 or more victims, resulting in an offense level 24.*

g) *As in the original example, because Kenner was convicted of an offense under 18 U.S.C. § 1030(a)(5)(A), four levels will be added under §2B1.1(b)(16)(ii), resulting in an offense level 28.*

h) *Kenner will receive a total offense level **25** after taking into account a three level reduction for acceptance of responsibility.*