

FOURTH CIRCUIT UPDATE  
November 20, 2006

**Government not obligated by plea agreement to move for 3-level reduction for acceptance of responsibility when defendant had not paid assessment as required by plea agreement and had not fully cooperated “in the opinion of the United States”**

*United States v. Chase*, Docket No. 05-4727 (25 October 2006)

Defendant entered into a plea agreement with United States in which he agreed to plead guilty to one count of distributing cocaine base within 1,000 feet of a school.

The plea agreement contained “non-binding recommendations” for the U.S. Attorney to make a recommendation for a 2-level reduction for acceptance of responsibility, as well as an additional 1-level reduction contingent upon the defendant’s timely and complete information about his criminal involvement and timely notice of intent to plead guilty.

The plea agreement further provided that the United States would not be required to make the recommendations if, in its opinion, the defendant failed to cooperate as promised or failed to pay the special assessment within 40 days of entry of his plea.

Defendant failed to pay the special assessment and, in the Government’s opinion, failed to provide complete information about certain details of his criminal activity – in particular, the first and last names of his cocaine source. The Government further argued that it was not required to make the recommendation for a reduction because the defendant had lied about his identity when he was originally arrested.

The district court granted the two-level reduction but refused to require the United States to make the additional one-level reduction motion pursuant to USSG § 3E1.1(b).

The Fourth Circuit affirmed, holding that under a “clear error” standard of review, the record adequately supported a determination that the defendant had not fully cooperated “in the opinion of the United States” and that the defendant had not paid the \$100 special assessment. The Court held that either one of these bases justified a conclusion that the Government did not have to move for the additional reduction.

The Fourth Circuit also rejected defendant’s argument that the district court erred in ruling that it lacked authority to grant the additional reduction in the absence of a Government motion. Defendant argued that, after *Booker* rendered the Guidelines advisory, a Government motion is no longer required in order to justify the additional reduction. The Fourth Circuit held that, under *Moreland*, the district court is required to calculate the Guideline accurately, and therefore a Government motion is still required.