

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

UNITED STATES OF AMERICA)	
)	Criminal No. 5:05-CR-35-1
v.)	
)	Filed: March 8, 2005
CARLTON GARY WALKER)	
)	Violation:
Defendant.)	
<hr/>		

PLEA AGREEMENT

The United States of America (“United States”), by and through attorneys for the United States Department of Justice, Antitrust Division, and Carlton Gary Walker (“defendant”) and the defendant’s attorney, Joseph E. Zeszotarski, Jr., hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not

guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;

(e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;

(f) not to be compelled to incriminate himself;

(g) to appeal his conviction, if he is found guilty at trial; and

(h) to appeal the imposition of sentence against him.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant waives the rights set out in Paragraph 1(b)-(g) above. The defendant agrees to have his sentence determined under the United States Sentencing Guidelines (“U.S.S.G.”) and waives all constitutional challenges to the validity of the U.S.S.G. The defendant waives any right he may have to have facts that determine his Guidelines fine and imprisonment ranges under the U.S.S.G. (including any facts used to determine his offense level, volume of commerce, and specific offense characteristic or other enhancement or adjustment under the U.S.S.G.) alleged in an indictment and found by a jury beyond a reasonable doubt. The defendant agrees that facts that determine his Guidelines fine and imprisonment ranges will be found by the court at sentencing by a preponderance of the evidence and that the court may consider any evidence, including hearsay, in making such determinations. The defendant agrees to waive

knowingly and expressly the right to appeal whatever sentence is imposed on any ground, including any appeal pursuant to 18 U.S.C. § 3742, and further to waive any right to contest the conviction or the sentence in any post-conviction proceeding, including any proceeding under 28 U.S.C. § 2255. Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Eastern District of North Carolina. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by agreeing to fix prices of ten and eighteen count open-end spun yarn sold in the United States from October 2000 until June 15, 2001, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 5 below. The United States agrees that at the arraignment, it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

FACTUAL BASIS FOR OFFENSE CHARGED

4. The elements of a Sherman Act offense under 15 U.S.C. § 1, each of which the United States must prove beyond a reasonable doubt at trial are:

(a) The conspiracy charged was formed, and it was in existence at or about the time alleged;

(b) The defendant knowingly formed or participated in that conspiracy; and

(c) The activity which was the object of the conspiracy was within the flow of, or substantially affected, interstate or foreign commerce.

5. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

(a) For purposes of this Plea Agreement, the “relevant period” is that period from October 2000 through June 15, 2001. During the relevant period, the defendant was Vice President of Sales of Harriet & Henderson Yarns, Inc., an entity organized and existing under the laws of North Carolina and with its principal place of business in Henderson, North Carolina. During the relevant period, Harriet & Henderson Yarns, Inc. was a producer of ten and eighteen count open-end spun yarn and was engaged in the sale of ten and eighteen count open-end spun yarn in the United States. Open-end spun yarn means yarn produced by the open-end spinning system. Ten count open-end spun yarn is of a thickness used primarily in the manufacture of hosiery such as athletic socks. Eighteen count open-end spun

yarn is of a thickness used primarily in the manufacture of printed T-shirts. During the relevant period, the sales by Harriet & Henderson Yarns, Inc. of ten and eighteen count open-end spun yarn to U.S. customers totaled at least \$2,750,000.

(b) During the relevant period, the defendant participated in a conspiracy with other persons and entities engaged in the manufacture and sale of ten and eighteen count open-end spun yarn, the primary purpose of which was to fix the prices of ten and eighteen count open-end spun yarn sold in the United States. In furtherance of the conspiracy, the defendant engaged in conversations and attended a meeting with representatives of other ten and eighteen count open-end spun yarn producing firms. During the meeting and conversations, an agreement was reached to fix the prices of ten and eighteen count open-end spun yarn to be sold in the United States.

(c) During the relevant period, ten and eighteen count open-end spun yarn sold by one or more of the conspirator firms traveled in interstate commerce. The business activities of Harriet & Henderson Yarns, Inc. and other co-conspirators in connection with the production and sale of ten and eighteen count open-end spun yarn affected by this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(d) Acts in furtherance of this conspiracy, including the conspiratorial meeting that was attended by the defendant, occurred in the Eastern District of North Carolina, Raleigh Division.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- (a) a term of imprisonment for three (3) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of (1) \$350,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and
- (c) a term of supervised release of one (1) year following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and U.S.S.G. § 5D1.2(a)(3)).

7. In addition, the defendant understands that:

- (a) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay restitution to the victims of the offense; and
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

8. Sentencing for the offense to be charged will be conducted pursuant to

the U.S.S.G. Manual in effect on the day of the plea agreement is filed. Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant's applicable sentencing guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

9. Pursuant to Fed R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose upon the defendant a sentence from Offense Level 9 of the Sentencing Table of the Sentencing Guidelines and a fine within the guidelines range of \$27,500 to \$137,000 (hereinafter "the recommended sentence").

10. The United States and the defendant agree and stipulate that, under the U.S.S.G. Manual, the total adjusted offense level applicable to the offense charged in the attached information is level 11 with an applicable guideline range of 8-14 months, which is derived from the following calculations:

- (a) The base offense level is level 10, pursuant to U.S.S.G. § 2R1.1(a);
- (b) The amount of commerce attributable to the defendant was approximately \$2,750,000, thereby increasing the base offense level by an additional three levels to level 13, pursuant to U.S.S.G. § 2R1.1(b)(2)(B) (more than \$1,000,000);

(c) Defendant has demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct, thereby reducing the adjusted offense level two levels to level 11, pursuant to U.S.S.G. § 3E.1.1(a); and

(d) The Criminal History Category is Category I.

11. The United States and the defendant agree and stipulate that the fine range for the offense charged in the attached Information is from one to five percent of the volume of commerce done by him or his principal in goods affected by the conspiracy (between \$27,500 and \$137,500), but not less than \$20,000, pursuant to U.S.S.G. § 2R1.1(c).

12. The United States and the defendant agree that the applicable sentencing guidelines range exceeds the recommended sentence set out in Paragraph 9 above. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 16 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 5K1.1, for a downward departure from Offense Level 11 to Offense Level 9 in this case and will request that the Court impose the recommended sentence set out in Paragraph 9 of this Plea Agreement because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in the ten and eighteen count open-end spun yarn industry.

13. In light of the availability of civil causes of actions, which potentially

provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order for the offense charged.

14. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 16 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and his commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

15. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommendation contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.

DEFENDANT'S COOPERATION

16. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the manufacture or sale of ten and eighteen count open-end spun yarn in the United States, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the

United States is a party (“Federal Proceeding”). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States;

(b) making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

(d) otherwise voluntarily providing the United States with any material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. § 1503).

GOVERNMENT'S AGREEMENT

17. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 16 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of ten and eighteen count open-end spun yarn in the United States ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

REPRESENTATION BY COUNSEL

18. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

19. The defendant's decision to enter into this Plea Agreement and

to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

20. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 16 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

21. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

