

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States District Court  
Southern District of Texas  
FILED

DEC 09 2008

Michael N. Milby  
Clerk of Court

UNITED STATES OF AMERICA

§  
§  
§  
§  
§  
§  
§

v.

MISAO HIOKI,

Criminal No. H-08-795

Defendant.

UNITED STATES' RESPONSE TO SENTENCING  
MEMORANDUM OF MISAO HIOKI

On December 8, 2008, the defendant filed a Sentencing Memorandum in anticipation of the December 10, 2008 hearing in this matter. The United States writes briefly in response to that Memorandum and in support of the uncontested sentencing recommendation as contained in the plea agreement in this matter. The United States respectfully submits that an appropriate sentence in this matter is a jail term of twenty-four months and a fine of \$80,000. The defendant does not oppose this recommendation. *Plea Ag. at Par. 10*. Indeed, the United States and the defendant both agree that the recommended sentence is reasonable. *Id.* As such, the recommended sentence satisfies the factors enumerated in 18 U.S.C. § 3553, which the Court must consider before imposing sentence in this case. In short, there is no dispute between the parties about the recommended sentence in this case.

**I. The Parties are in Agreement About the Key Facts and Advisory Guidelines Range**

Much of the information the Court must consider before imposing sentence has been stipulated by the parties. The defendant will admit that he is guilty of the crimes alleged in the Information. *Plea Ag. at paragraph 3*. The parties have agreed to the facts supporting this charge. *Plea Ag. at paragraph 4*. The defendant also admits that during the period that he was

in the conspiracy, the volume of commerce attributable to him relating to the Sherman Act violation (Count 1), within the meaning of United States Sentencing Guideline (“U.S.S.G.”) section 2R1.1(b)(2), is between \$10 million and \$40 million. *Plea Ag. at paragraph 9(a)(iii)*. He admits that the amount of corrupt payments attributable to him relating to the FCPA violation (Count 2) is more than \$1 million. *Plea Ag. at paragraph 9(b)(iii)*. Given these facts, the parties further agree that the defendant’s U.S.S.G. adjusted offense level for both Counts is 27, which, under the Guidelines, calls for a term of imprisonment of between 70 and 87 months. *Plea Ag. at paragraph 9(e)*. The parties also agree that the appropriate Guidelines fine range within the meaning of §2R1.1(c)(1) for the offense in Count 1 is \$107,000 to \$535,000 and the appropriate Guidelines fine range within the meaning of §5E1.2(c)(3) for the offense in Count 2 is \$12,500 to \$125,000. *Id.*

There is also no dispute that the defendant agreed to cooperate with the United States a short time after his arrest. Further, there is no dispute that because of the defendant’s significant cooperation relating to both the Sherman Act and FCPA aspects of the investigation, a departure pursuant to U.S.S.G. section 5K1.1 is warranted.

## **II. The Parties Agree the Recommended Sentence is Reasonable**

Notwithstanding comparisons the Defendant draws between the recommended sentence in this case and the sentences of others involved only in the Sherman Act conspiracy, the defendant agrees that the recommended sentence for his involvement in both the Sherman Act and FCPA conspiracies is reasonable, and he does not oppose it. *Plea Ag. at paragraph 10*. The factors which the defendant calls to the Court’s attention in his Memorandum relating to his substantial assistance have been considered by the United States and are adequately considered in

the recommended sentence, which includes a substantial departure from the Guidelines sentencing range.

**Conclusion**

The uncontested twenty-four month prison term recommended in the plea agreement represents a substantial departure from the seventy month Guidelines recommended sentence. The recommended \$80,000 fine is a departure from the Guideline fine range on Count 1 and falls within the range on Count 2. Both parties agree the recommended sentence is reasonable. The United States believes a sentence of twenty-four months in prison is the shortest term possible that will adequately reflect the seriousness of the offense in this case and afford adequate deterrence as required by 18 U.S.C. section 3553. Therefore, we request the Court to impose a sentence of twenty-four months in prison and a \$80,000 criminal fine.

Respectfully submitted,

Date: 12-9-08

By: /s/ Mark C. Grundvig  
Mark C. Grundvig  
Attorney  
United States Department of Justice  
Antitrust Division, National Criminal Enforcement  
450 5th St., N.W., Suite 11300  
Washington, DC 20530  
Tel. (202) 305-1878  
Fax. (202) 514-6525

/s/ Brigham Cannon  
Brigham Cannon  
Attorney  
United States Department of Justice  
Criminal Division  
1400 New York Avenue NW  
Washington, DC 20530

**CERTIFICATE OF SERVICE**

I certify that on December 9, 2008, a copy of the foregoing Motion was delivered by electronic mail to Philip H. Hilder and James H. Mutchnik, counsel for the above-listed defendant.

/s/ Mark C. Grundvig  
Mark C. Grundvig  
Attorney  
United States Department of Justice  
Antitrust Division, National Criminal Enforcement  
450 5th St., N.W., Suite 11300  
Washington, DC 20530  
Tel. (202) 305-1878  
Fax. (202) 514-6525