

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA)	Criminal No: 8:97CR213
)	
v.)	Filed: 12/17/97
)	
CASEY WILMOT,)	Violations: 15 U.S.C. § 1;
)	18 U.S.C. § 1341
Defendant.)	Judge Shanahan

INDICTMENT

COUNT ONE - SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The Grand Jury for the District of Nebraska charges:

1. CASEY WILMOT is hereby indicted and made a defendant on the charge stated below.

DESCRIPTION OF THE OFFENSE

2. Beginning at least as early as August 1995 and continuing until at least September 1995, the exact dates being unknown to the Grand Jury, the defendant and his co-conspirators engaged in a combination and conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendant and his co-conspirators to rig a bid for the purchase of cattle being sold by Alex Pester in Minatare, Nebraska.

4. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and his co-conspirators did those things that they conspired to do, including, among other things:

- (a) discussing among themselves the prospective submission of a bid to Alex Pester for the purchase of cattle;
- (b) agreeing upon a bid price to be submitted to Alex Pester;
- (c) agreeing upon and designating which co-conspirator would be the winning bidder;
- (d) having the designated co-conspirator purchase the cattle from Alex Pester;
- (e) accepting payment for the cattle from Excel Corporation and dividing up among the co-conspirators the profits from the conspiracy; and
- (f) concealing and attempting to conceal the conspiracy.

DEFENDANT AND CO-CONSPIRATORS

5. During all or part of the period covered by this Count, defendant CASEY WILMOT was engaged in the cattle industry in Nebraska and elsewhere in his capacity as packer buyer for Excel Corporation.

6. Two other individuals, not made defendants in this Count, participated as co-conspirators in the offense charged and performed acts and made statements in furtherance of it.

TRADE AND COMMERCE

7. After purchasing the cattle, the defendant and his co-conspirators caused the cattle to be shipped across state lines for slaughter in Colorado. The defendant and his co-conspirators also received payment for the cattle from Excel Corporation by means of a check which crossed state lines.

8. The business activities of the defendant and his co-conspirators that are the subject of this Count were within the flow of, and substantially affected, interstate commerce.

JURISDICTION AND VENUE

9. The combination and conspiracy charged in this Count was carried out, in part, in the District of Nebraska, and elsewhere, within the five years preceding the return of this Indictment.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

COUNT TWO - MAIL FRAUD (18 U.S.C. § 1341)

The Grand Jury for the District of Nebraska further charges:

1. CASEY WILMOT is hereby indicted and made a defendant on the charge stated below.

2. Paragraph 5 of Count One of this Indictment is hereby repeated, realleged, and incorporated in Count Two.

3. Beginning at least as early as August 1995 and continuing until at least September 1995, the exact dates being unknown to the Grand Jury, the defendant and his co-schemers, within the District of Nebraska, as part of an

ongoing arrangement, did knowingly devise and intend to devise a scheme and artifice to defraud Excel Corporation. The purpose of that scheme and artifice to defraud was to sell cattle (which the defendant and his co-schemers purchased from Alex Pester after rigging a bid for the purchase of those cattle) to Excel Corporation at a higher price than Excel Corporation otherwise would have had to pay and concealing the defendant's and co-schemers' split in the profits.

4. As part of the charged scheme and artifice to defraud, the defendant and his co-schemers met in August 1995 at the County Fairgrounds in Mitchell, Nebraska, to discuss rigging the bid to Alex Pester and defrauding Excel Corporation on the sale of the Pester cattle to Excel Corporation.

5. On or about August 25, 1995, in connection with the sale of the cattle to Excel Corporation, the defendant and his co-schemers, for the purpose of executing the scheme and artifice to defraud and attempting to do so, knowingly caused to be delivered by mail according to the direction thereon, by the United States Postal Service, an envelope addressed to Burford Industries, P.O. Box 1347, Scottsbluff, NE, containing a check from Excel Corporation to Burford Industries in payment for the initial delivery of Pester cattle to Excel Corporation.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1341.

COUNT THREE - MAIL FRAUD
(18 U.S.C. § 1341)

The Grand Jury for the District of Nebraska further charges:

1. CASEY WILMOT is hereby indicted and made a defendant on the charge stated below.

2. Paragraph 5 of Count One of this Indictment is hereby repeated, realleged, and incorporated in Count Three.

3. Beginning at least as early as August 1995 and continuing until at least September 1995, the exact dates being unknown to the Grand Jury, the defendant and his co-schemers, within the District of Nebraska, as part of an ongoing arrangement, did knowingly devise and intend to devise a scheme and artifice to defraud Excel Corporation. The purpose of that scheme and artifice to defraud was to sell cattle (which the defendant and his co-schemers purchased from Alex Pester after rigging a bid for the purchase of those cattle) to Excel Corporation at a higher price than Excel Corporation otherwise would have had to pay and concealing the defendant's and co-schemers' split in the profits.

4. As part of the charged scheme and artifice to defraud, the defendant and his co-schemers met in August 1995 at the County Fairgrounds in Mitchell, Nebraska, to discuss rigging the bid to Alex Pester and defrauding Excel Corporation on the sale of the Pester cattle to Excel Corporation.

5. On or about August 31, 1995, in connection with the sale of the cattle to Excel Corporation, the defendant and his co-schemers, for the purpose of executing the scheme and artifice to defraud and attempting to do so, knowingly caused to be delivered by mail according to the direction thereon, by the United States Postal Service, an envelope addressed to Burford Industries, P.O. Box 1347, Scottsbluff, NE, containing a check from Excel Corporation to Burford Industries in payment for the second and final delivery of Pester cattle to Excel Corporation.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1341.

A TRUE BILL

Dated:

_____/s/_____
Foreperson

_____/s/_____
Joel I. Klein
Assistant Attorney General
Antitrust Division

_____/s/_____
Gary R. Spratling
Deputy Assistant Attorney General
Antitrust Division

_____/s/_____
John T. Orr
Director of Criminal Enforcement
Antitrust Division

_____/s/_____
Marvin N. Price, Jr.
Assistant Chief
Midwest Field Office
Antitrust Division

_____/s/_____
Thomas J. Monaghan
United States Attorney
District of Nebraska

_____/s/_____
Diane C. Lotko-Baker
Frank J. Vondrak
John A. Henderson
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Antitrust Division
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209 S. LaSalle Street
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(312)353-7530

The United States of America requests that trial of this case be held in Omaha, Nebraska, pursuant to the rules of this Court.

_____/s/_____
Diane C. Lotko-Baker
Antitrust Division