

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	Criminal No. 01-144
v.)	
)	Filed: 04-04-01
ANCHOR INDUSTRIAL)	
PRODUCTS, INC.)	Violation: 15 U.S.C. § 1
)	
Defendant.)	

PLEA AGREEMENT

The United States of America and Anchor Industrial Products, Inc., (hereinafter “Anchor”), formerly Hepworth Refractories, Inc., hereby enter into the following Plea Agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”).

RIGHTS OF DEFENDANT

1. Anchor understands its right:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against it;
 - (d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every element of the charged offense in order for it to be found guilty beyond a reasonable doubt;
 - (e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
 - (f) to appeal its conviction if it is found guilty at trial; and

(g) to appeal the imposition of sentence against it.

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

2. Anchor waives the rights set out in Paragraph 1(b)-(g) above.

Pursuant to Rule 7(b), Fed. R. Crim. P., Anchor will waive indictment and plead guilty pursuant to Fed. R. Crim. P. 11(e)(1)(C) to a one-count Information, to be filed in the United States District Court for the Eastern District of Pennsylvania. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by fixing the price of carbon cathode block, as defined in the Information, that was sold in the United States and elsewhere, beginning at least as early as February 1996 and continuing until at least December 1997 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. Pursuant to the terms of this Plea Agreement, Anchor will plead guilty at arraignment to the criminal charge described in Paragraph 2 above.

FACTUAL BASIS FOR OFFENSE CHARGED

4. 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 beginning at least as early as February 1996 and continuing until at least December 1997. Throughout the relevant period, Anchor, formerly Hepworth Refractories, Inc., was a corporation organized and existing under the laws of the state of Ohio, and was engaged in the sale of carbon cathode block in the United States.

(b) During the relevant period, the defendant, through its directors, officers, employees, and representatives, participated in a conspiracy among the major producers of carbon cathode block, the primary purpose of which was to fix the price of carbon cathode block sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant, through several of its directors, officers, employees, or representatives, engaged in conversations and attended meetings with representatives of the other major sellers of carbon cathode block. During such meetings and conversations, agreements were reached as to the prices the firms would charge for carbon cathode block sold in the United States and elsewhere.

(c) During the relevant period, carbon cathode block sold by one or more of the conspirator firms, as well as payments therefor, traveled in interstate and foreign commerce. The business activities of the defendant and the co-conspirators in connection with the production and sale of carbon cathode block affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Activities related to the sale of substantial quantities of carbon cathode block affected by this conspiracy were conducted by one or more of the conspirator companies in the Eastern District of Pennsylvania.

POSSIBLE MAXIMUM SENTENCE

5. Anchor understands that the maximum penalty which may be imposed against it upon conviction for a violation of the Sherman Antitrust Act is a fine in

an amount equal to the largest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain derived from the crime

(18 U.S.C. § 3571(d)); or

- (c) twice the gross pecuniary loss caused to the victims of the crime

(18 U.S.C. § 3571(d)).

6. In addition, Anchor understands that:

- (a) pursuant to § 8B1.1(a)(2) of the United States Sentencing Commission Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;

- (b) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400.00 special assessment upon conviction for the charged crime; and

- (c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years.

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the U.S.S.G. manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, self-incriminating information provided to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to Anchor or in determining the applicable Guidelines range, except to the extent provided for in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Rule 11(e)(1)(C), Fed. R. Crim. P., the United States and Anchor agree that the appropriate disposition of the case is, and agree jointly to recommend that the Court impose, a sentence requiring Anchor to pay a fine to the United States in the amount of \$600,000, to impose no probation, and to pay no restitution. The United States and Anchor further agree:

(a) That, for the purposes of determining the U.S.S.G. sentence in this case, the volume of commerce attributable to Anchor is \$2,767,000 and the agreed upon fine falls within the Guidelines range;

(b) The \$600,000 fine shall be paid on the date of the imposition of sentence or within seven days thereafter;

(c) The Court will order Anchor to pay a \$400.00 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1 in addition to any fine imposed; and

(d) The Court retains complete discretion to accept or reject this plea agreement. If the Court rejects this plea agreement, it is further agreed that this agreement shall automatically convert to a plea agreement pursuant to Rule 11(e)(1)(B), Fed. R. Crim. P., and the aforementioned sentence shall be the joint recommendation of the parties, although not binding on the Court. If the Court does not accept the parties' joint recommendation pursuant to Rule 11(e)(1)(B), Fed.R.Crim.P., Anchor shall have no right to withdraw its plea. Finally, it is also agreed that the parties will not seek either an upward or a

downward departure under the Sentencing Guidelines.

9. Subject to the full and continuing cooperation of Anchor described in Paragraph 12 of this Plea Agreement, and prior to sentencing in the case, the United States will fully advise the Court of the fact, manner, and extent of Anchor's ongoing cooperation and its commitment to prospective cooperation with the United States's investigation and prosecutions. The United States may comment on the evidence and circumstances of the case, bring to the Court's attention all facts relevant to sentencing, address the Court regarding the nature and seriousness of the offense, respond to questions raised by the Court, correct inaccuracies in the presentence report or sentencing record, and rebut any statement made by or on behalf of the defendant at sentencing.

10. The United States and Anchor jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at sentencing, and the further disclosure described in Paragraph 9 of this Plea Agreement, provides sufficient information concerning the defendant, the offense charged and the defendant's role in the offense to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and Anchor will jointly request that the Court accept the defendant's guilty plea and impose sentence on the defendant on the day of arraignment, pursuant to the provisions of Rule 32(b)(1) Fed.R.Crim.P. and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence immediately based on the record provided by Anchor and the United States will not void this Plea Agreement.

11. In light of the probability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order with respect to the offense charged in the Information.

ANCHOR'S COOPERATION

12. Anchor and its affiliates (i.e., all Anchor's parents and all subsidiaries of those parents) will fully and truthfully cooperate with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of the federal antitrust and related criminal laws involving the sale or manufacture of any cathode block products used in the production of primary aluminum, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). Such cooperation shall include, but not be limited to:

(a) producing to the United States all documents, information and other materials (except documents qualified as privileged under the laws of the United States or protected under the work-product doctrine), wherever located, that are in the possession, custody or control of Anchor and its affiliates, requested by the United States in connection with any Federal Proceeding; and

(b) using their best efforts to secure the ongoing, full and truthful cooperation of all current and former directors, officers, employees and representatives of Anchor and its affiliates who may have relevant information concerning the Government's continuing investigation of the carbon cathode block

industry upon reasonable notice and request by the United States, including making such persons available in the United States and at other mutually agreed-upon locations, at Anchor's expense, for interviews and testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

GOVERNMENT'S AGREEMENT

13. Upon acceptance of the guilty plea called for by this Plea Agreement, imposition of the agreed-upon sentence, and subject to the cooperation requirements of Paragraph 12 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against Anchor or its affiliates (as defined in Paragraph 12) for any act or offense committed prior to the date of this Plea Agreement that was undertaken in furtherance of any attempted or completed antitrust conspiracy involving the sale or manufacture of any cathode block products used in the production of primary aluminum. The non-prosecution 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.

14. Anchor understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon any conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, such other agencies may take. However, the United States Department of Justice, Antitrust Division, agrees that, if requested, it will advise the appropriate officials of any government agency considering administrative action against Anchor or its

affiliates based upon any conviction resulting from this Plea Agreement, of the fact, manner, and extent of the cooperation of Anchor and its affiliates, as described herein, as a matter for such agency to consider before determining what administrative action, if any, to take with regard to Anchor or its affiliates.

REPRESENTATION BY COUNSEL

15. Anchor has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. Anchor has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

VOLUNTARY PLEA

16. Anchor's decision to enter into this Plea Agreement and Anchor's decision to tender a plea of guilty are freely and voluntarily made and are not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. There have been no promises or representations to Anchor as to whether the Court will accept or reject this Plea Agreement.

VIOLATION OF THE PLEA AGREEMENT

17. Anchor agrees that, should the United States determine in good faith, during the period any Federal Proceeding is pending, that Anchor has failed to provide full cooperation (as described in Paragraph 12 of this Plea Agreement) or has otherwise failed to comply with any of the provisions of this Plea Agreement, the United States may notify counsel for Anchor in writing by personal or overnight

delivery or facsimile transmission of its intention to void any of its obligations under this Plea Agreement (except its obligations under this Paragraph), and Anchor and its affiliates shall be subject to prosecution for the substantive offense which is the subject of the investigation of carbon cathode block resulting in this Plea Agreement.

18. The defendant understands and agrees that in any further prosecution of Anchor or its affiliates resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of this Plea Agreement, any documents, statements, information, testimony or evidence provided pursuant to Paragraph 12 of this Plea Agreement, and any leads derived therefrom, may be used against Anchor or its affiliates, in any such further prosecution. The defendant hereby unconditionally waives its right, in any such further prosecution, to move to exclude such evidence, notwithstanding the protections of Rule 11(e)(6), Fed. R. Crim. P., or any other such law. Should this Plea Agreement become void, the defendant agrees that it will waive any defense to any charges which it might otherwise have under any statute of limitations or the Speedy Trial Act from the date of the execution of this Plea Agreement.

ENTIRETY OF AGREEMENT

19. This Plea Agreement constitutes the entire agreement between the United States and Anchor concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing signed by the United States and Anchor.

20. The undersigned representative of Anchor is authorized to enter this

Plea Agreement on behalf of Anchor as evidenced by the Resolution of the Board of Directors of Anchor attached hereto and incorporated herein by reference.

21. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

22. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

Dated:

Respectfully submitted,

MARK A. DINGLEY
Vice President, Anchor
Industrial Products, Inc.

EDWARD S. PANEK
PEDRO DE LA TORRE

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