

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)	Filed: August 30, 2001
)	
v.)	Criminal No. 1:01 CR 393
)	
HOWARD B. BAHM,)	Judge Nugent
)	
Defendant,)	Violations: 15 U.S.C. § 1

PLEA AGREEMENT

HOWARD B. BAHM, the Defendant, and the United States of America agree
as follows:

RIGHTS OF THE 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 any 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 at any trial and to call witnesses in his defense;
- (f) to appeal his conviction if he is found guilty at any trial; and
- (g) to appeal the imposition of any sentence against him.

WAIVER OF RIGHTS AND OFFENSE CHARGED

2. The Defendant waives the rights set out in Paragraph 1(b)-(f) above. Pursuant to Fed. R. Crim. P. 7(b), the Defendant will waive indictment and plead guilty pursuant to Fed. R. Crim. P. 11(e)(1)(B) to a four-count criminal Information to be filed in the Northern District of Ohio charging the Defendant with participating in separate continuing conspiracies to restrain competition by allocating suppliers and/or rigging bids in the purchase of ferrous and nonferrous scrap metal, each count in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. The Defendant will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11. (See Attachment, *Factual Basis For The Charged Offenses*.)

POSSIBLE MAXIMUM SENTENCE

3. The Defendant understands that the Court may impose the following statutory maximum sentence for each violation of the Sherman Antitrust Act (15 U.S.C. § 1):

- (a) a term of incarceration of three (3) years;
- (b) a fine in an amount equal to the greatest of:
 - (1) \$350,000 (15 U.S.C. § 1);
 - (2) twice the gross pecuniary gain derived from the crime (18 U.S.C. § 3571(d)); or
 - (3) twice the gross pecuniary loss caused to the victims of the crime (18 U.S.C. § 3571(d));
- (c) a term of supervised release of not more than one year following a term of imprisonment. If the Defendant violates the conditions of supervised release, the Defendant could be imprisoned for the entire term of the supervised release; and
- (d) a mandatory special assessment of \$100, pursuant to 18 U.S.C. § 3013(a)(2)(A);
- (e) a term of probation of at least one year, but not more than five years, may be imposed (18 U.S.C. § 3561(c)(1)); and
- (f) restitution may be ordered by the Court.

4. The Defendant agrees and understands that sentencing for the crimes to be charged will be under the United States Sentencing Guidelines Manual (U.S.S.G.) in effect at the time of sentencing. The sentence in this case will be imposed by the Court.

JOINT RECOMMENDATION ON SENTENCING

5. Pursuant to Fed. R. Crim. P. 11(e)(1)(B) and in an effort to assist the Court in its determination of the appropriate Guidelines range, the United States and the Defendant agree that the Defendant's combined offense level is 19, prior to any departure for substantial assistance, calculated as follows:

- (a) The base offense level applicable to the charges specified in Paragraph 2 above is level 10, pursuant to U.S.S.G. § 2R1.1(a);
- (b) Increase by one (1) level because the criminal activity involved bid rigging, pursuant to U.S.S.G. § 2R1.1(b)(1);
- (c) Increase by seven (7) levels because the amount of commerce attributable to the Defendant was more than \$100 million, pursuant to U.S.S.G. §§ 2R1.1(b)(2)(G) and 3D1.2(d);
- (d) Increase by four (4) levels because the Defendant acted as an organizer/leader in the criminal activity, pursuant to U.S.S.G. § 3B1.1(a);
- (e) Reduce by two (2) levels because the Defendant has demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct, pursuant to U.S.S.G. § 3E1.1(a); and
- (f) Reduce by one (1) level because the offense level determined prior to the operation of U.S.S.G. § 3E1.1(a) is greater than 16 and because the Defendant has provided timely assistance, pursuant to U.S.S.G.

§ 3E1.1(b).

The Defendant understands that the Guidelines range for an offense level of 19, Criminal History Category I, is a term of incarceration from 30 to 37 months.

6. The Defendant understands that, pursuant to U.S.S.G. § 2R1.1(c)(1), the Court must impose a fine in the amount of one to five percent of the volume of commerce affected by the violations, but not less than \$20,000. Pursuant to U.S.S.G. §§ 2R1.1(b)(2), (c)(1) and 3D1.2(d), the United States currently is prepared to prove that the total volume of commerce affected by the charged conspiracies is approximately \$104 million. Accordingly, the Guidelines fine range is \$1,040,000 to \$5,200,000. Pursuant to Paragraph 8 below, the United States and the Defendant jointly recommend that the appropriate criminal fine in this case is \$1 million, payable within 15 days of sentencing. The Defendant agrees to pay the fine imposed by the Court to the United States and not to propose or advocate that any payment be made, or service rendered to any person, organization, institution or agency in lieu of the fine. The Defendant further agrees that he will not file any motion to reduce, modify or alter the fine imposed upon him by the Court. The Defendant agrees to pay the \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) for each count at the time of sentencing.

7. The United States and the Defendant understand that the Court retains complete discretion with respect to sentencing. The Defendant understands that the United States cannot and does not make any promise or representation as

to what sentence he will receive. The United States reserves the right to make any statements to the Court or the United States Probation Department concerning the nature of the criminal violations charged in the attached Information, the Defendant's participation therein and any other facts or circumstances that it deems relevant, to comment on or correct any representation made by or on behalf of the Defendant and to supply any other information to the Court that it may require. The Defendant understands that any stipulation or joint recommendation made by the parties is not binding on the Court. The Defendant understands that, in the event the Court refuses to consider or rejects any recommendation or request made by the Defendant concerning his sentence, the Defendant has no right to withdraw his plea of guilty, pursuant to Fed. R. Crim. P. 11(e)(1)(B).

8. Based on the Defendant's prior and promised substantial assistance in the investigation and prosecution of other corporations and individuals for violations of the federal antitrust and related criminal laws in the scrap metal industry, and subject to the full and continuing cooperation of the Defendant described in Paragraph 10 of this Plea Agreement and the fulfillment by the Defendant of all other terms and conditions of the Plea Agreement, the United States will file a Motion, pursuant to U.S.S.G. § 5K1.1, advising the sentencing Court of all relevant facts pertaining to sentencing and requesting the Court to sentence the Defendant in light of the factors set forth in U.S.S.G. § 5K1.1(a)(1)-(5), with respect to both the fine and confinement portions of the sentence. The United

States will specify for the Court the full nature, extent, significance and timeliness of the Defendant's cooperation and substantial assistance. Pursuant to U.S.S.G. § 5K1.1, the Court may, but is not required to, impose a sentence below that which otherwise would be required under the Guidelines. The Defendant understands that acceptance of the departure motion is within the complete discretion of the Court. The Defendant further understands that, in the event the Court refuses to consider or rejects the United States' departure motion, the Defendant shall have no right to withdraw his plea of guilty.

9. The United States and the Defendant agree to file a joint motion to defer sentencing until further order of the Court for the purpose of enabling the sentencing Court to have the benefit of all relevant sentencing information, including the full nature, extent, significance and timeliness of the Defendant's cooperation and substantial assistance. The Defendant understands that, in the event the Court refuses to consider or rejects the joint motion to defer sentencing, the Defendant will have no right to withdraw his plea of guilty.

DEFENDANT'S COOPERATION

10. The Defendant agrees that he will fully and truthfully cooperate with the United States in the prosecution of the charged case, the conduct of the current federal investigation of violations of the federal antitrust and related criminal laws in the scrap metal industry, any other federal investigation resulting therefrom and any litigation or other proceeding 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) The Defendant agrees to provide truthful, complete and accurate information and testimony in connection with any Federal Proceeding. The Defendant understands that if he testifies untruthfully or provides false information he can be prosecuted for perjury, making false declarations or statements or obstruction of justice.

(b) The Defendant agrees to provide all information concerning his knowledge of, and participation in, any conspiracy to allocate suppliers, territories or customers, rig bids, fix prices or otherwise restrain trade in the purchase and sale of ferrous and nonferrous scrap metal.

(c) The Defendant agrees that he will not falsely implicate any person or entity through false information or omission.

(d) The Defendant agrees to testify, without requirement of subpoena, as a witness at any grand jury, trial or other judicial proceeding when requested to do so by the United States.

(e) The Defendant agrees to make himself available, at his expense and upon reasonable notice, for interviews and document review as may be required by the United States at the office of the Antitrust Division in Cleveland, Ohio.

(f) The Defendant agrees to provide, without requirement of

subpoena, all documents or other items under his control or which may come under his control, requested by the United States in connection with any Federal Proceeding.

(g) The Defendant understands that interviews and testimony pursuant to this Paragraph shall be subject to the penalties of perjury (18 U.S.C. § 1621), making a false declaration in any grand jury or court proceeding (18 U.S.C. § 1623), making a false statement to a government agent (18 U.S.C. § 1001) or obstruction of justice (18 U.S.C. § 1503). The Defendant understands that the United States may use his testimony or other information provided by him in any subsequent prosecution against him for perjury (18 U.S.C. § 1621), making a false statement in any grand jury or court proceeding (18 U.S.C. § 1623), making a false statement to a government agent (18 U.S.C. § 1001) or obstruction of justice (18 U.S.C. § 1503).

THE UNITED STATES' AGREEMENT

11. Subject to the full, truthful, candid and continuing cooperation of the Defendant, as described above in Paragraph 10, and the fulfillment of all of the other terms and conditions of this Plea Agreement, the United States agrees not to bring further criminal charges against the Defendant 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 purchase of ferrous or nonferrous scrap metal. The agreement described in this

Paragraph does not apply to any violation of federal tax or securities laws, any civil matter of any kind or to any crime of violence.

WAIVER OF RIGHT TO APPEAL SENTENCE

12. In addition to the waiver of rights provided in Paragraphs 1 and 2 of this Plea Agreement, the Defendant expressly waives his right to appeal his sentence on any ground, including any appeal rights conferred under 18 U.S.C. § 3742, except to the extent that the sentence imposed by the Court exceeds the maximum authorized under the Sentencing Guidelines for the Defendant's total adjusted offense level of 19, Criminal History Category I. The Defendant further waives any right to challenge his conviction or sentence through any post-conviction collateral attack, including, but not limited to, a proceeding under 28 U.S.C. § 2255.

REPRESENTATION OF COUNSEL

13. The Defendant has thoroughly reviewed all legal and factual aspects of this case with his counsel and is fully satisfied with his counsels' legal representation. The Defendant has received explanations satisfactory to him from his counsel concerning each paragraph of this Plea Agreement, and the alternatives available to the Defendant other than entering into this Plea Agreement. After conferring with counsel, the Defendant has concluded that it is in his best interest to enter into this Plea Agreement and to waive the rights set out above in Paragraphs 1(b)-(f), 2 and 12.

VOLUNTARY PLEA

14. The plea of guilty is freely and voluntarily made and not the result of force or threats, or of promises or representations apart from those set forth in this Plea Agreement. There have been no representations or promises from anyone as to what sentence this Court will impose.

VIOLATION OF PLEA AGREEMENT

15. During the period that any Federal Proceeding is pending, the Defendant agrees that should he fail to provide full, truthful, candid and continuing cooperation or otherwise violate any other provision of this Plea Agreement, the United States, in its sole discretion, may void any of its obligations under this Plea Agreement, and the Defendant shall be subject to prosecution for any federal crime of which the United States has knowledge, including, but not limited to, perjury, obstruction of justice and any substantive offense arising from this investigation or any Federal Proceeding. Any such prosecution may be based upon any information provided by the Defendant during the course of his cooperation, and this information and any leads derived from this information may be used as evidence against him. Should this Plea Agreement become void, the Defendant agrees to waive any defense to any charge which he might otherwise have under any statute of limitations or the Speedy Trial Act from the date of the execution of the Plea Agreement.

ENTIRETY OF AGREEMENT

16. This Plea Agreement constitutes the entire agreement between the United States and the Defendant concerning the disposition of the charges in this case. This Plea Agreement cannot be modified other than in writing signed by the parties.

AGREED TO AND SIGNED this 17th day of August, 2001.

"/s/"
Howard B. Bahm

"/s/"
Richard M. Kerger, Esq.
Attorney for Howard B. Bahm

"/s/"
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