

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 1:04Cr194(GBL)
	)	Filed April 29, 2004
CARTWRIGHT INTERNATIONAL	)	Violation: 15 U.S.C. § 1
VAN LINES, INC.	)	
	)	
	)	
Defendant.	)	

PLEA AGREEMENT

The United States of America, defendant Cartwright International Van Lines, Inc. (“CARTWRIGHT”) and defendant’s counsel have entered into an agreement pursuant to Federal Rules of Criminal Procedure 11(a)(1) and 11(c)(1)(B).

The terms of the agreement are as follows:

**1. Offense and Maximum Penalties**

The defendant agrees to waive indictment and plead guilty to a criminal information charging the defendant with conspiracy to restrain trade, in violation of 15 U.S.C. § 1.

The defendant understands that the maximum penalty which may be imposed upon conviction for a violation of 15 U.S.C. § 1 is a fine equal to the greatest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or

(c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

In addition, the defendant understands that:

(a) pursuant to § 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines"), 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) and U.S.S.G. § 8E1.1, the Court is required to order the defendant to pay a \$400 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.

## **2. Factual Basis for the Plea**

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt for the offense charged beyond a reasonable doubt. The statement of facts constitutes a stipulation of facts for purposes of U.S.S.G. § 1B1.2.

## **3. Assistance and Advice of Counsel**

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of a criminal defendant include:

- (a) the right to plead not guilty and to persist in that plea;
- (b) the right to a jury trial;
- (c) the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- (d) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

#### **4. Role of the Court and the Probation Office**

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximums, described in Paragraph 1, and that the Court will determine the defendant's actual sentence in accordance with the Sentencing Guidelines and accompanying Policy Statements. The defendant understands that the Court has not yet determined a sentence and that any estimate of the probable sentencing range under the Sentencing Guidelines the defendant may have received from its counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw its guilty plea based upon the actual sentence imposed by the Court.

The United States and the defendant jointly submit that this plea agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, will provide sufficient information concerning the

defendant, the crime charged in this case, and the defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 6 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 the recommended sentence contained in this plea agreement, it nevertheless has no right to withdraw its plea of guilty. The defendant further understands that the Court is free to impose a term of probation and that neither party may withdraw from this plea agreement based on the imposition of a term of probation.

#### **5. Waivers of Appeal and Collateral Attack**

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. In exchange for the concessions made by the United States in this plea agreement, however, the defendant knowingly waives the right to appeal any sentence or the manner in which that sentence was determined on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, provided that the sentence imposed does not exceed the maximum fine (\$500,000) permitted by the Sentencing Guidelines as calculated in Paragraph 6. U.S.S.G. §§ 2R1.1(d)(1) and 8C2.4(b). This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant further waives its right to and agrees not to attack collaterally its guilty plea or the sentence imposed, by writ of coram nobis, or by any

other means, on any ground whatsoever, including claimed immunity under the Shipping Act of 1984, 46 app. U.S.C. §§ 1701-19. The defendant further agrees not to file any claim under 18 U.S.C. § 3006A.

## **6. Sentencing Agreement**

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly, that the Court impose a sentence requiring the defendant to pay to the United States a criminal fine for the charged conduct relating to the movement of ITGBL shipments of military household goods from Germany to the United States during the summer cycle of 2002. The parties recommend the following fine:

\$250,000 – agreed upon in recognition of –

(A) \$250,000 is within the Sentencing Guideline's fine range of \$250,000 – \$500,000 for the offense charged (calculated based on 20% of \$1,568,274, the volume of commerce attributable to the defendant for Code 4 ITGBL shipments from Germany to the United States in 12 channels during the summer cycle 2002, see U.S.S.G. §§ 2R1.1(d)(1) and 8C2.4(b); and a culpability score of 4 (5 plus 1 point for organization of more than 10 employees under U.S.S.G. § 8C2.5(b)(5), minus 2 points for acceptance of responsibility under U.S.S.G. § 8C2.5(g)(2)); and a multiplier range of 0.8 to 1.6 pursuant to U.S.S.G. § 8C2.6.

## **7. Administrative Action**

The defendant 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 the conviction resulting from this plea agreement, and that this plea agreement in no way controls whatever action, if any, other agencies may take. The United States agrees, however, that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact,

manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

**8. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of four hundred dollars (\$400.00), pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in addition to any fine.

**9. Payment of Monetary Penalties**

The United States and the defendant agree to recommend, in the interest of justice pursuant to 18 U.S.C. § 3572(d)(1) and U.S.S.G. § 8C3.2(b), that the fine be paid in the following installments: within thirty (30) days of imposition of sentence – \$50,000 (plus any accrued interest); at the three-month anniversary of imposition of sentence (“anniversary”) – \$50,000 (plus any accrued interest); at the six-month anniversary – \$50,000 (plus any accrued interest); at the nine-month anniversary – \$50,000 (plus any accrued interest); at the one-year anniversary – \$50,000 (plus any accrued interest); provided, however, that the defendant shall have the option at any time before the one-year anniversary of prepaying the remaining balance (plus any accrued interest) then owing on the fine. Furthermore, if requested, the defendant agrees to provide all of its financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor’s examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

## **10. Immunity from Further Prosecution**

Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, and subject to the cooperation requirements of Paragraph 11 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the defendant or its current officers, directors, and employees for any act or offense committed in furtherance of any antitrust conspiracy involving the transportation of military household goods before the date of signature of this plea agreement. With respect to current officers, directors, and employees, this nonprosecution agreement applies to them only for acts committed while acting as an officer, director, or employee of the defendant. 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.

## **11. Defendant's Cooperation**

The defendant agrees to 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 transportation of military household goods, 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"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

- (a) using its best efforts to secure the ongoing, full, and truthful cooperation of its current officers, directors, and employees, including making such persons available, at the defendant's expense, for debriefing and pre-trial conferences, interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.
- (b) providing all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control, including those materials in the possession of any related entity or affiliate, relating directly or indirectly to all areas of inquiry and investigation;
- (c) defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the United States, and that the United States will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence; and
- (d) nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

**12. Use of Information Provided by the Defendant Under This Agreement**

Pursuant to U.S.S.G. § 1B1.8, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's Sentencing Guidelines' fine range. Nothing in this plea agreement, however, restricts the Court's or the Probation Office's access to information and records in the possession of the



United States. Nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony, or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

**13. Defendant Must Provide Full, Complete and Truthful Cooperation**

This plea agreement is not conditioned upon charges being brought against any other entity or the result of any other proceeding against any other entity. This plea agreement is not conditioned upon the outcome of any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

**14. Breach of the Plea Agreement and Remedies**

The defendant agrees that, if the United States determines, in good faith, during the period that any Federal Proceeding is pending, that the defendant violated any provision of this plea agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify 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 offense referred to in paragraph 10 of this plea agreement, 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 gives notice of its intent to void its obligations under this plea agreement. The defendant may seek Court review of any determination made by the United States under this Paragraph to void any of its obligations under the Plea Agreement.

15. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and its counsel acknowledge that no threats, promises or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

The undersigned is authorized to enter this plea agreement on behalf of the defendant and its current employees as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this plea agreement.

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.

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.

By: \_\_\_\_\_ /s/  
Hays Gorey, Jr.  
Daniel L. Zelenko  
Mark W. Pletcher  
Trial Attorneys Antitrust Division  
United States Department of Justice

\_\_\_\_\_ /s/  
John Klein  
Assistant United States Attorney  
Eastern District of Virginia

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. The defendant has passed the attached resolution of its Board of Directors permitting me to enter into this agreement on its behalf. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 04/29/04

/s/

Harold D. Murry, Jr., Esq.  
Michael J. Barta, Esq. VSB #30706  
Counsel and Corporate Representative for Defendant Cartwright  
International Van Lines