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U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff	)	
v.	)	
	)	IP 06-061-CR-04 M/F
JOHN J. BLATZHEIM, Defendant.	)	

PLEA AGREEMENT

The United States of America and John J. Blatzheim, ("the defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF 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 the 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 against him and to subpoena witnesses in his defense at trial;

(f) not to be compelled to incriminate himself;

(g) to appeal his conviction, if he is found guilty; and

(h) to appeal the imposition of sentence against him.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(c)-(g) above. The defendant will plead guilty to Count One of the Indictment in this case, which charges the defendant with participating in a conspiracy to suppress and eliminate competition by fixing the price at which ready mixed concrete was sold in the Indianapolis, Indiana metropolitan area beginning in or about July, 2000 and continuing until May 25, 2004 in violation of the Sherman Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge set forth in Count One of the Indictment and described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. The United States agrees that it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this Plea Agreement, the "Relevant Period" is that period beginning in or about July 2000, continuing until May 25, 2004. In April, 2003, the defendant began working at Builder's Concrete & Supply Co., Inc. ("Builder's"), an entity organized and

existing under the laws of Indiana with its principal place of business in Fishers, Indiana. From April, 2003 through the end of the Relevant Period and continuing to the present, the defendant has been the Executive Vice President of Builder's. During the Relevant Period, Builder's was a producer of ready mixed concrete and was engaged in the sale of ready mixed concrete in the Indianapolis, Indiana metropolitan area and elsewhere. Ready mixed concrete is a product whose ingredients include cement, aggregate (sand and gravel), water, and, at times, other additives. Ready mixed concrete is made on demand and, if necessary, is shipped to work sites by concrete mixer trucks.

(b) During the Relevant Period, the defendant participated in a conspiracy with other persons and entities engaged in the production and sale of ready mixed concrete, the primary purpose of which was to fix the price of ready mixed concrete sold in the Indianapolis, Indiana metropolitan area. In furtherance of the conspiracy, the defendant engaged in conversations and attended meetings with representatives of other ready mixed concrete producers in the Indianapolis, Indiana metropolitan area. During those meetings and conversations, the defendant and his co-conspirators reached agreements to fix the price at which ready mixed concrete was to be sold in the Indianapolis, Indiana metropolitan area.

(c) During the Relevant Period, the defendant made several telephone calls and participated in several meetings among smaller numbers of individuals to ascertain the compliance of his coconspirators with the conspiracy agreements. In addition to the defendant and his company, other individuals associated with companies other than the defendant's company participated in the conspiracy on behalf of the companies they owned or by which they were employed.

(d) During the Relevant Period, the corporate conspirators purchased substantial quantities of equipment or supplies from outside Indiana which were necessary to the production and distribution of ready mixed concrete. During the Relevant Period the business activities of the corporate conspirators in connection with the production and sale of ready mixed concrete affected by this conspiracy were within the flow of, or substantially affected, interstate trade and commerce.

(e) Acts in furtherance of this conspiracy, including the conspiratorial meetings and conversations described above, were carried out within the Southern District of Indiana. In addition, sales of ready mixed concrete affected by this conspiracy were made by one or more of the conspirators to customers within the Southern District of Indiana.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Act completed prior to June 22, 2004 is:

(a) a term of imprisonment for three (3) years (15 U.S.C. § 1);

(b) a fine in an amount equal to the greatest of: (1) $350,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of one (1) year following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned for the entire term of supervised release

(18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and Section 5D1.2(a)(3) of the United States Sentencing Guidelines ("U.S.S.G.," "Guidelines," or "Sentencing Guidelines")).

6. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a $100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands and agrees that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands and agrees that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

GOVERNMENT'S AGREEMENT

8. Upon the Court's acceptance of the defendant's plea of guilty to Count One of the Indictment in this case, the United States will move to dismiss Count Two of the Indictment against the defendant pursuant to Fed. R. Crim. P. 11(c)(1)(A) and Fed. R. Crim. P. 48(a) and move that the defendant be given credit for acceptance of responsibility pursuant to

U.S.S.G. §§ 3E1.1(a) and (b).

9. In light of civil cases filed, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order for the offense charged in Count One of the Indictment. The defendant understands that the Court will order him to pay a $100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject this Plea Agreement.

(a) If the Court rejects this Plea Agreement, then the Court shall, on the record and in open court (or, for good cause, *in camera*):

(1) Inform the parties that the Court rejects the Plea Agreement;

(2) Advise the defendant that the Court is not required to follow the Plea Agreement and give the defendant an opportunity to withdraw the plea; and

(3) Advise the defendant personally that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the defendant than the Plea Agreement contemplated.

(b) If the defendant withdraws his guilty plea, this Plea Agreement, except for paragraph 10(c), shall be rendered void.

(c) If the defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or

civil proceeding, except as otherwise provided in Fed. R. Evid. 410.

11. The defendant understands that he 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.

REPRESENTATION BY COUNSEL

12. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

13. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty to Count One of the Indictment in this case is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

ENTIRETY OF AGREEMENT

14. This Plea Agreement constitutes the entire agreement between the United States and the defendant 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 the defendant.

15. 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: 10/31/2006 Respectfully submitted,

BY: _____
JOHN J. BLATZHEIM, Defendant

BY: _____
FRANK J. VONDRAK

_____
THOMAS W. FARLOW
Counsel for John J. Blatzheim

_____
MICHAEL W. BOOMGARDEN

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JONATHAN A. EPSTEIN

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and accurate copies of the Plea Agreement and Petition to Enter a Plea of Guilty were served upon the following by hand delivery this 2nd of November, 2006:

For Defendant John J. Blatzheim:

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