UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	Criminal No. 11 Crim 095
	:	Filed:
v.		
	:	Violation: 18 U.S.C. § 371
ANDREW MARTINGANO and AMERICAN PIPE BENDING AND FABRICATION CO., INC.,	:	
Defendants.	:	

PLEA AGREEMENT

The United States of America and the defendants, ANDREW MARTINGANO ("MARTINGANO") and AMERICAN PIPE BENDING AND FABRICATION CO., INC. ("AMERICAN PIPE"), hereby enter into the following Plea Agreement ("Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.").

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

1. The defendants, MARTINGANO and AMERICAN PIPE, will waive indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure and plead guilty in the United States District Court for the Southern District of New York to a one-count Information, in the form attached, in which each is charged with one count of violating 18 U.S.C. § 371 in connection with a conspiracy to pay bribes in violation of 18

U.S.C. § 666(a)(2) and commit wire fraud under 18 U.S.C. §§ 1343 and 1346 relating to a scheme to defraud Consolidated Edison ("Con Edison") of money and to deprive Con Edison of its right to the honest and faithful services of James M. Woodason ("Woodason"), from approximately January 2009 to approximately August 2010, as described in the attached Information.

GOVERNMENT'S AGREEMENT

2. Subject to defendant MARTINGANO's and defendant AMERICAN PIPE's full compliance with the understandings specified in this Agreement, and upon the Court's acceptance of their guilty pleas called for by this Plea Agreement, the Antitrust Division of the United States Department of Justice agrees not to bring further criminal charges against MARTINGANO and AMERICAN PIPE for crimes committed prior to the date of this Agreement arising from the following activity, as specified in the attached Information, to wit: MARTINGANO's and AMERICAN PIPE's payment of a bribe in cash installments to Woodason which were paid to induce Woodason to provide favorable action with respect to the award of Con Edison industrial pipe, valve and fitting contracts to AMERICAN PIPE from approximately January 2009 to approximately August 2010. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal securities laws, or to any crime of violence.

3. It is understood that this Agreement does not bind any other federal agency or local prosecuting authority or administrative agency other than the Antitrust Division of the United States Department of Justice.

POSSIBLE MAXIMUM PENALTIES

4. MARTINGANO understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 371 is:

(a) a term of imprisonment of not more than five (5) years;

(b) a fine of not more than the greater of $250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense; or

(c) both such sentences; and

(d) a term of supervised release of no more than three (3) years following any term of imprisonment pursuant to 18 U.S.C. § 3583(b)(2) and U.S.S.G. § 5D1.2(a)(2). Pursuant to 18 U.S.C. § 3583(e)(3), if the defendant violates any condition of supervised release, he could be imprisoned up to two (2) years.

5. MARTINGANO also understands that:

(a) the Court shall impose an order of restitution, pursuant to 18 U.S.C. § 3663A and U.S.S.G. § 5E1.1; 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.

6. AMERICAN PIPE understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of 18 U.S.C. § 371 is a fine in an amount equal to the greatest of:

(a) $500,000 (18 U.S.C. §3571(c)(3)); or

(b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. §3571(c) and (d));

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

7. AMERICAN PIPE also understands that:

(a) 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;

(b) pursuant to U.S.S.G. § 8B1.1, 18 U.S.C. § 3563(b)(2) or § 3663A, the Court shall order it to pay restitution to the victim of the offense; and

(c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order AMERICAN PIPE to pay a $400 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

8. MARTINGANO and AMERICAN PIPE understand that United States Sentencing Guidelines ("Sentencing Guidelines") are advisory, not mandatory, but that the Court must consider the Sentencing 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 a sentence. MARTINGANO and AMERICAN PIPE understand that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. MARTINGANO and AMERICAN PIPE understand that although the Court is not ultimately bound to impose sentences within the applicable Sentencing Guidelines range, their sentences must be reasonable based upon considerations of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

SENTENCING AGREEMENT

9. MARTINGANO and AMERICAN PIPE stipulate and agree that, from approximately January 2009 through approximately August 2010 in connection with the conspiracy to defraud charged in the attached Information, MARTINGANO and AMERICAN PIPE provided Woodason, and Woodason accepted, approximately $45,000 in cash bribe payments and expected to provide Woodason with an additional $465,000 in cash bribe payments, for a total bribe amount of $510,000, which shall be considered as the value of the bribe payment for sentencing purposes, pursuant to U.S.S.G. §§ 2C1.1(b)(2).

10. The United States and MARTINGANO agree and stipulate that the combined adjusted offense level applicable to the offense charged in the attached Information is level 23 (46-57 months) ("Stipulated Guidelines Range"), which is derived from the following calculations:

(a) Pursuant to U.S.S.G. §2C1.1(a)(2), the base offense level for the charged conspiracy is 12.

(b) Pursuant to U.S.S.G. §2C1.1(b)(2) and §2B1.1(b)(1)(H), an additional fourteen-level (14) increase is appropriate because the value of the bribe payment obtained and to be obtained by Woodason is more than $400,000 but less than $1,000,000;

(c) Pursuant to U.S.S.G. §3E1.1, assuming MARTINGANO pleads guilty by March 31, 2011 and clearly demonstrates acceptance of responsibility through his allocution and subsequent conduct prior to the imposition of a sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. §3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional one-level reduction is warranted, pursuant to U.S.S.G. §3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

11. The United States and MARTINGANO agree and stipulate that the fine range for MARTINGANO for the offense charged in the Information is from $10,000 to $100,000 (level 23), pursuant to U.S.S.G. §§5E1.2(b) and (c)(3).

12. The United States and AMERICAN PIPE agree and stipulate that the fine range for AMERICAN PIPE for the offense charged in the Information is from $3,700,000 to $7,400,000, calculated as follows:

(a) Pursuant to U.S.S.G. §8C2.3, the offense level for the charged conspiracy is 26, which is calculated from the base offense level of 12 (pursuant to U.S.S.G. §2C1.1(a)(2)) plus an additional fourteen-level increase is appropriate because the value of the bribe payment obtained and to be obtained by Woodason is more than $400,000 but less than $1,000,000 (pursuant to U.S.S.G. §2C1.1(b)(2) and §2B1.1(b)(1)(H));

(b) Pursuant to U.S.S.G. §8C2.4(a), §2C1.1(d)(1), and §8C2.4(d), the base fine is $3,700,000;

(c) Pursuant to U.S.S.G. §8C2.5, AMERICAN PIPE has a culpability score of 5, calculated as follows: The base level is 5 pursuant to U.S.S.G. §8C2.5(a), with a one-point increase pursuant to U.S.S.G. §8C2.5(b)(5) because the organization had 10 or more employees and an individual within substantial authority personnel participated in the offense, and a one-point deduction pursuant to U.S.S.G. §8C2.5(g) provided that the organization clearly demonstrates recognition and affirmative acceptance of responsibility for its criminal conduct;

(d) Pursuant to U.S.S.G. §8C2.6, a culpability score of 5 leads to a minimum multiplier of 1.0 and a maximum multiplier of 2.0; and

(e) Pursuant to U.S.S.G. §8C2.7(a) and §8C2.7(b), the fine range is $3,700,000 to $7,400,000.

13. Nothing in this agreement limits the right of the parties to (i) present to the Probation Department or the Court any facts relevant to sentencing; (ii) make any arguments regarding where within the Stipulated Guidelines Ranges (or such other range as the Court may determine) the defendants should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to 18 U.S.C. § 3553(a); and (iii) seek an appropriately adjusted Sentencing Guidelines Range if it is determined based upon new information that the defendants' criminal history category is other than Category I. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. §3E1.1, and/or imposition of an adjustment for obstruction of justice, pursuant to U.S.S.G. §3C1.1, regardless of any stipulation set forth above, should the defendants move to withdraw their guilty plea once it is entered, or should it be determined that the defendants have either (i) engaged in conduct, unknown to the Antitrust Division of the Department of Justice at the time of the signing of this Agreement, that constitutes obstruction of justice, or (ii) committed another crime after signing this agreement.

14. It is understood that pursuant to Sentencing Guidelines §6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to

above, or contemplates any sentence outside of the Stipulated Guidelines Range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

15. MARTINGANO and AMERICAN PIPE understand that the sentences to be imposed on them are determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. MARTINGANO and AMERICAN PIPE acknowledge that the entry of their guilty pleas to the charged offense authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. The United States cannot, and does not, make any promise or representation as to what sentences MARTINGANO and AMERICAN PIPE will receive. Moreover, MARTINGANO and AMERICAN PIPE understand they will have no right to withdraw their pleas of guilty should the sentence imposed by the Court be outside the Stipulated Guidelines Ranges set forth above.

16. The United States, MARTINGANO and AMERICAN PIPE agree that (i) MARTINGANO and AMERICAN PIPE will not appeal or otherwise litigate under 28 U.S.C. §§ 2255 and/or 2241 any sentence within or below the Stipulated Guidelines Ranges as set forth in this Agreement, and (ii) that the United States will not appeal any sentence within or above the Stipulated Guidelines Ranges as set forth above. This provision is binding on the parties even if the Court employs a Sentencing Guidelines analysis different from that set forth in this Agreement. Furthermore, it is agreed that any

appeal regarding the sentences of MARTINGANO and AMERICAN PIPE that are not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) this Agreement.

17. MARTINGANO and AMERICAN PIPE agree that 30 days prior to the date of sentencing they will have $100,000 in liquid assets in an escrow account controlled by their attorneys. The United States and MARTINGANO and AMERICAN PIPE agree to recommend to the Court that the funds in the escrow account be used only to satisfy any fine or restitution that MARTINGANO and AMERICAN PIPE are sentenced to pay. MARTINGANO and AMERICAN PIPE acknowledge, however, that the Court may sentence them to pay fines and restitution in excess of the amount in the escrow account. The United States, MARTINGANO and AMERICAN PIPE also agree that if the funds in the escrow account exceed the amount of fines and restitution MARTINGANO and AMERICAN PIPE are sentenced to pay, they will seek the Court's permission to return the remainder to MARTINGANO and AMERICAN PIPE.

18. MARTINGANO and AMERICAN PIPE agree to recommend to the Court that they be ordered to pay no less than $45,000 in restitution to Con Edison immediately.

19. MARTINGANO and AMERICAN PIPE understand that this Agreement does not in any way affect or limit the right of the United States to respond to and take positions on post-sentencing motions or requests for information that relate to reduction or modification of their sentences.

20. MARTINGANO and AMERICAN PIPE understand and agree that should a conviction following their pleas of guilty pursuant to this Agreement be vacated for any reason, any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against them, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

REPRESENTATION BY COUNSEL

21. MARTINGANO and AMERICAN PIPE have reviewed all legal and factual aspects of this case with their attorneys and are fully satisfied with their attorneys' legal representation. MARTINGANO and AMERICAN PIPE have thoroughly reviewed this Agreement with their attorneys, and have received satisfactory explanations from their attorneys concerning each paragraph of this Agreement and alternatives available to MARTINGANO and AMERICAN PIPE other than entering into this Agreement. After conferring with their attorneys and considering all available alternatives, MARTINGANO and AMERICAN PIPE have made knowing and voluntary decisions to enter into this Agreement.

VOLUNTARY PLEA

22. MARTINGANO and AMERICAN PIPE hereby acknowledge that they have accepted this Agreement and decided to plead guilty because they are in fact guilty. By entering these pleas of guilty, MARTINGANO and AMERICAN PIPE waive any and all right to withdraw their pleas or to attack their convictions, either on direct appeal or collaterally, on the ground that the United States has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendants, and impeachment material pursuant to Giglio v. United States, 405 U.S. 150 (1972), that have not already been produced as of the date of the signing of this Agreement.

23. MARTINGANO's and AMERICAN PIPE's decisions to enter into this Agreement and to tender pleas 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 Agreement. The United States has made no promises or representations to MARTINGANO or AMERICAN PIPE as to whether the Court will accept or reject the recommendations contained within this Agreement.

ENTIRETY OF AGREEMENT

24. This Agreement constitutes the entire agreement between the United States and defendants MARTINGANO and AMERICAN PIPE concerning the disposition of the charge contained in the attached Information. The United States has made no other promises to or agreements with MARTINGANO or AMERICAN PIPE. This Agreement cannot be modified except in writing, signed by the United States, MARTINGANO and AMERICAN PIPE.

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

Dated: 2/1/11

ANDREW MARTINGANO
For himself and for AMERICAN PIPE BENDING AND FABRICATION

ELIZABETH PREWITT

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