IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	**Filed November 5, 2002**
	)	
v.	)	**No. 02-CR-144-K**
	)	
JIMMY ALBERT MATHESON,	)	
	)	
Defendant.	)	

PLEA AGREEMENT

Pursuant to FED. R. CRIM. P. 11(e)(1)(B), the United States of America, by the Antitrust Division of the United States Department of Justice, and the defendant, Jimmy Albert Matheson, in person and through counsel, Richard D. White, Jr., respectfully inform the Court that they have reached the following plea agreement:

(A) DEFENDANT'S OBLIGATIONS

(1) Plea

The defendant agrees to waive indictment and enter a voluntary plea of guilty at arraignment to a one-count Information to be filed in the United States District Court for the Northern District of Oklahoma (hereinafter the "Information"). The Information will charge that, beginning at least as early as May 30, 1995, and

continuing thereafter at least through December 31, 1997, the defendant did unlawfully, willfully, and knowingly participate in a conspiracy to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 1341, 1343, and 1346 by conspiring to: (a) defraud the Henry Pratt Company of Aurora, Illinois; (b) obtain money from the Henry Pratt Company by means of false and fraudulent pretenses, representations, and promises; and (c) deprive the Henry Pratt Company of its right to the honest services of its employee, which scheme and artifice to defraud was executed by and through the use of the United States mail and interstate wire communications in violation of Title 18, United States Code, Section 371. The defendant admits to being in fact guilty as charged in the Information to which he is pleading guilty.

(2) Waiver of Constitutional Rights

(a) The defendant understands that by pleading guilty, the following constitutional rights will be relinquished: the right to be indicted if proceeding by Information, the right to plead not guilty, the right to be tried by a jury, or if the defendant wishes and with the consent of the government, to be tried by a judge. At that trial, the defendant would have the right to an attorney and if the defendant could not afford an attorney, the Court would appoint one to represent the defendant. The defendant would have the right to assist in the selection of the jury. During the trial,

/S/
Defendant's Initials

the defendant would be presumed innocent and a jury would be instructed that the burden of proof is on the government to prove the defendant guilty beyond a reasonable doubt and by a unanimous verdict. The defendant would have the right to confront and cross-examine witnesses against the defendant. If desired, the defendant could testify on defendant's own behalf and present witnesses in defendant's defense. On the other hand, if the defendant did not wish to testify, that fact could not be used against defendant and a jury would be so instructed. If the defendant were found guilty after a trial, the defendant would have the right to appeal that verdict to determine if any errors had been committed during trial that would require either a new trial or a dismissal of the charges. By pleading guilty, the defendant will be giving up all of these rights. By pleading guilty, the defendant understands that questions posed to the defendant by the Court both about the rights that the defendant will be giving up and the factual basis for the defendant's plea, may have to be answered. Any statements made by the defendant during such a hearing are not, in any civil or criminal proceeding, admissible against defendant except as provided in Federal Rules of Criminal Procedure 11(e)(6).

/S/
Defendant's Initials

(b) The defendant agrees that any applicable federal statute of limitations is tolled for the period October 1, 2002 through the date of the filing of the Information in this case. The defendant states that this waiver is knowingly and voluntarily made after fully conferring with, and on the advice of, defendant's counsel, and is made for defendant's own benefit.

(c) **Appellate Waiver:**

THE DEFENDANT AGREES TO WAIVE ALL APPELLATE RIGHTS, INCLUDING ANY AND ALL COLLATERAL ATTACKS INCLUDING BUT NOT LIMITED TO THOSE PURSUED BY MEANS OF A WRIT OF HABEAS CORPUS, SAVE AND EXCEPT CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL AND ISSUES RELATING TO SENTENCING.

(3) Restitution

Pursuant to U.S.S.G. § 5E1.1, the Court can order the defendant to pay restitution to the victim of the offense for the full loss caused by the defendant's conduct set forth above and in the Information. The defendant and the United States agree that the Court's consideration of the amount of restitution shall be limited to the amounts alleged in the Information to which the defendant is pleading guilty. The defendant further agrees that any amount ordered by the Court to be paid as restitution may not be discharged, in whole or in part, in any bankruptcy proceeding.

/S/
Defendant's Initials

Because the offense of conviction occurred after April 24, 1996, restitution is mandatory without regard to the defendant's ability to pay.

(4) Special Assessment

Pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the defendant hereby agrees to pay the total amount required for the Special Monetary Assessment ($100 per felony count) to the United States District Court Clerk, before the time of the sentencing hearing or as directed by the District Court.

(5) Factual Basis and Elements

The elements that the United States must prove beyond a reasonable doubt in order to convict under Title 18, United States Code, Section 371, are as follows:

One: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, in this case, a scheme to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises;

Two: That the defendant, knowing the unlawful purpose of the plan, willfully joined in;

Three: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the methods or overt acts

/S/
Defendant's Initials

described in the Information, in this case that the defendant used the United States Postal Service by mailing, or causing to be mailed, some matter or thing for the purpose of executing the scheme to defraud; and

Four: That such "overt act" was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.

In regard to the factual basis required by FED. R. CRIM. P. 11(f), the defendant agrees and stipulates that there is a factual basis for the plea of guilty and relieves the United States of any further obligation to adduce such evidence. The defendant agrees that it will assist the United States in satisfying the Court that there exists a factual basis for its plea of guilty, pursuant to FED. R. CRIM. P. 11(f).

The defendant admits knowingly, willfully, and intentionally committing or causing to be committed, the acts constituting the crime alleged in the Information, and confesses to the Court that the defendant is in fact guilty of such crime.

/S/
Defendant's Initials

(B) THE DEFENDANT'S COOPERATION OBLIGATIONS

The defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case, the conduct of the current federal grand jury investigation, and any other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. The defendant understands and agrees that any information that he provided or will provide to the United States may be used against him in the prosecution of this case or at sentencing, as may documentation that he has provided or will provide to the United States pursuant to grand jury subpoena or otherwise.

(C) THE GOVERNMENT'S OBLIGATIONS

Upon the Court's acceptance of the guilty plea called for by this Plea Agreement, imposition of sentence by the Court, and full payment by the defendant of any fine, special assessment, and restitution ordered by the Court, and only if the defendant fully satisfies all obligations outlined in this pleading, the government agrees:

/S/
Defendant's Initials

(1) Further Prosecution

It shall not initiate additional criminal charges under the mail or wire fraud statutes against the defendant; H E Engineered Equipment, Co., Inc. ("HEEECI"), an Oklahoma corporation; or any other current or former director, officer, or employee of HEEECI for any act or offense committed on or before October 1, 2002, that was undertaken in furtherance of the conspiracy to commit an offense against the United States (18 U.S.C. §§ 371, 1341, 1343, 1346), arising out of the conspiracy, combination, and scheme to defraud the Henry Pratt Company. 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. The defendant understands, however, that this obligation is subject to all "Limitations" set forth below and that the United States is free to prosecute the defendant, HEEECI, or any current or former director, officer, or employee of HEEECI for any illegal conduct (*i.e.*, violation of federal criminal laws) not discovered by or revealed to the government during its investigation of the above scheme to defraud the Henry Pratt Company or occurring after the date of this agreement.

(D) SENTENCE

(1) Statutory

The defendant acknowledges that the maximum statutory sentence that may be

/S/
Defendant's Initials

imposed against him upon conviction for a violation of 18 U.S.C. § 371 is five years imprisonment and/or a fine in an amount equal to the greatest of:

(a) $250,000;

(b) twice the gross pecuniary gain derived from the crime; or

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

(2) Guidelines

The defendant is aware that the sentence to be imposed shall be in conformity with the Sentencing Guidelines promulgated pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. § 3551 through § 3742, and 28 U.S.C. § 991 through § 998. The defendant is further aware that the sentence has not yet been determined by the Court, that any estimate of the likely sentence received from any source is a prediction, not a promise, and that the Court has the final discretion to impose any sentence up to the statutory maximum. Pursuant to U.S.S.G. § 6B1.4(d), the defendant further understands that all recommendations or requests by the United States pursuant to this agreement are not binding upon the Court. The Court will impose a sentence within the appropriate guideline range, unless the Court finds there is a basis for departure because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in

formulating the guidelines.

If the sentencing court should impose any sentence up to the maximum established by statute, the defendant cannot, for that reason alone, withdraw defendant's guilty plea, but will remain bound to fulfill all of defendant's obligations under this agreement.

Nothing in the plea agreement, save and except any stipulations contained herein, limits the right of the United States to present to the Court or Probation Office, either orally or in writing, any and all facts and arguments relevant to the defendant's sentence and the defendant's criminal history category, that are available to the United States at the time of sentencing. The United States reserves its full right of allocution pursuant to Rule 32(c)(3)(D) of the Federal Rules of Criminal Procedure. THE DEFENDANT FURTHER UNDERSTANDS THAT THE SENTENCE TO BE IMPOSED UPON THE DEFENDANT WILL BE DETERMINED SOLELY BY THE SENTENCING JUDGE. THE UNITED STATES CANNOT AND DOES NOT MAKE ANY PROMISE OR REPRESENTATION AS TO WHAT SENTENCE THE DEFENDANT WILL RECEIVE.

(3) Stipulations

(a) Pursuant to FED. R. CRIM. P. 11(e)(1)(B), the defendant acknowledges that the United States has advised it that the United States will

/S/
Defendant's Initials

recommend to the Court that the appropriate amount of total restitution payable to the victim is within at least the range of a minimum of $22,348 to a maximum of $27,445.60. The United States will recommend that, if the Court orders the defendant to pay restitution, then the Court order the defendant to pay that restitution in full within 15 days of the imposition of sentence.

(b) The United States and the defendant estimate that the net dollar amount of actual loss to the victim attributable to the defendant for the purpose of applying U.S.S.G. §§ 2B1.1(b)(1)(C) in this case is at least $22,348, and that no "exclusions from loss" (U.S.S.G § 2B1.1, application note 2(D)) or "credits against loss" (U.S.S.G. § 2B1.1, application note 2(E)) are available to reduce that $22,348 figure. The United States and the defendant recognize that the Court is not bound by that estimate.

/S/

Defendant's Initials

(c) Based on the $22,348 minimum estimate, the United States and the defendant agree that: (1) the base offense level under the Guidelines is six (U.S.S.G. §§ 2B1.1(a)); (2) the defendant has a specific offense characteristic level of at least four (U.S.S.G. § 2B1.1(b)(1)(C)), for a total adjusted offense level of at least ten under U.S.S.G. § 2B1.1, less two points for acceptance of responsibility under U.S.S.G. § 3E1.1(a) for a net score of eight. The United States and the defendant agree that a net score of eight would yield a sentencing range of 0-6 months, if the defendant is in the Criminal History I category.

(d) The United States and the defendant agree that the fine range for the defendant under U.S.S.G. § 5E1.2 is a minimum of $1,000 to a maximum of $10,000.

(e) It will be the recommendation of the United States that the Court impose a sentence of a fine and restitution on the defendant as previously described, together with a period of incarceration as the Court shall deem appropriate. It will also be the recommendation of the United States that following any such period of incarceration that the Court shall impose, the Court also impose a period of supervised release of two years under U.S.S.G § 5D1.1(b), which shall be terminated on the payment in full of such fine and restitution as the Court shall order.

(f) Pursuant to U.S.S.G. § 6B1.4(d), it is understood that neither the

/S/
Defendant's Initials

Court nor the United States Probation Office is bound by the foregoing stipulations, either as to questions of fact or as to determination of the correct sentencing guidelines to apply to the facts.

(g) Having been fully apprised by defense counsel of the defendant's right to seek compensation pursuant to Public Law 105-119, the defendant **WAIVES** any and all such right, and stipulates that the defendant is not a "prevailing party" in connection with this case.

(E) LIMITATIONS

This Plea Agreement shall be binding and enforceable upon the United States of America, Antitrust Division of the United States Department of Justice, but in no way limits, binds or otherwise affects the rights, powers, duties or obligations of any state or local law enforcement agency, administrative or regulatory authorities, civil or administrative enforcement, collection, bankruptcy, adversary proceedings or suits which have been or may be filed by any governmental entity, including without limitation, the Internal Revenue Service, the Tax Division of the Department of Justice, and the trustee in bankruptcy.

Neither the defendant, nor any current or former director, officer, or employee of HEEECI shall have the benefit of the non-prosecution protections of paragraph (C)(1) hereof if they fail to cooperate fully, completely, and truthfully with the United

/S/
Defendant's Initials

States in the course of its investigation of the above-described scheme to defraud the Henry Pratt Company and any legal proceeding resulting therefrom to which the United States is a party.

(F) BREACH OF AGREEMENT

In the event either party believes the other has failed to fulfill any obligations under this agreement, then the complaining party shall, in its discretion, have the option of petitioning the Court to be relieved of its obligations herein. Whether or not a party has completely fulfilled all of its obligations under this agreement shall be determined by the Court in an appropriate proceeding at which any disclosures and documents provided by either party shall be admissible and at which the complaining party shall be required to establish any breach by a preponderance of the evidence. The defendant hereby **WAIVES** all FED. R. CRIM. P. 32(e) rights to withdraw from defendant's plea and this agreement, save and except for the limited reasons outlined above in this paragraph.

In the event that the defendant, after entry of a plea of guilty, unsuccessfully attempts to withdraw defendant's plea of guilty, the United States may continue to enforce the agreement but will no longer be bound by any provision in this agreement regarding acceptance of responsibility, if such provisions are included herein. This provision will not have any continued vitality if it is determined by the Court that the

/S/
Defendant's Initials

United States acted in bad faith to bring about the attempted withdrawal of plea.

(G) CONCLUSION

No agreements, representations, or understandings have been made between the parties in this case, other than those which are explicitly set forth in this Plea Agreement and none will be entered into unless executed in writing and signed by all of the parties.

/S/
Defendant's Initials

Agreed to this 1st day of November, 2002.

DEFENDANT	UNITED STATES OF AMERICA
By: /S/	/S/
Jimmy Albert Matheson	John R. Fitzpatrick Georgia Bar No. 262360
/S/	/S/
Richard D. White, Jr., Esq. Counsel for Defendant Oklahoma Bar No. 9549	James A. Crowell IV Georgia Bar No. 000942
Barber & Bartz Park Centre 525 S. Main Street Suite 800 Tulsa, OK 74103-4511 Tel: (918) 599-7755 Fax: (918) 599-7755	Attorneys Antitrust Division U.S. Department of Justice 1176 Richard B. Russell Bldg. 75 Spring Street, S.W. Atlanta, GA 30303 Tel: (404) 331-7100 Fax: (404) 331-7110

/S/
Defendant's Initials

I have read this agreement and carefully reviewed every part of it with my attorney. I understand it and voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines which may apply to my case. No other promises or inducements have been made to me, other than those contained in this pleading. In addition, no one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

/S/ DATED November 1, 2002
Jimmy Albert Matheson

/S/
Defendant's Initials