

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	)	Criminal No.: 1:02-CR-355
	)	
v.	)	Filed: May 31, 2002
	)	
PUMPS, VALVES & EQUIPMENT,	)	
INC.,	)	
d/b/a THE SCRUGGS COMPANY	)	Violation:
	)	18 U.S.C. § 371
	)	
Defendant.	)	

PLEA AGREEMENT BETWEEN UNITED STATES OF AMERICA AND
PUMPS, VALVES & EQUIPMENT, INC. d/b/a THE SCRUGGS COMPANY

The United States of America and the defendant, Pumps, Valves & Equipment, Inc. d/b/a The Scruggs Company (hereinafter “PVE”), hereby enter into the following plea agreement pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure.

1. The defendant will waive indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure and voluntarily plead guilty to a one-count criminal information charging a violation of 18 U.S.C. § 371 in connection with a conspiracy 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. The conspiracy to be charged began at least as early as early 1996 and continued thereafter at least through May 26, 1998, the exact dates being unknown to the United States. The criminal information will charge the defendant with having made thirteen kickback payments, totaling approximately \$90,242.98, to a now former employee of the Henry Pratt Company in furtherance of a kickback conspiracy.

2. The defendant understands that the maximum sentence for violating 18 U.S.C. § 371 is a fine that is the greatest of \$500,000, twice the gross pecuniary gain derived from the crime, or twice the gross pecuniary loss caused to the victims of the crime (18 U.S.C. § 3571). In addition, pursuant to 18 U.S.C. § 3013(a)(2)(B), the defendant must pay a special assessment of \$400 at the time of sentencing, a form of probation may be imposed pursuant to 18 U.S.C. § 3561 for a term of one to five years, and

restitution may be ordered paid to the victim of the crime, the Henry Pratt Company. The defendant acknowledges that the United States has advised it that the United States will recommend to the Court that the appropriate amount of restitution is at least \$90,242.98. The United States will recommend that, if the Court orders the defendant to pay restitution, the Court order the defendant to pay that restitution in full within 15 days of the imposition of sentence. The United States will further recommend to the Court that any term of probation imposed by the Court in excess of one year be terminated upon the full payment of any restitution and fine imposed by the Court on the defendant.

3. The United States and the defendant agree that sentencing should be imposed in accordance with the United States Sentencing Guidelines as amended effective November 1, 2001. 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)(E) and 8C2.4(a)(3) in this case is at least \$90,242.98, 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 \$90,242.98 figure. The United States and the defendant recognize that the Court is not bound by that estimate. Based on the \$90,242.98 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), 8C2.3(a)); (2) the defendant has a specific offense characteristic level of at least eight (U.S.S.G. § 2B1.1(b)(1)(E)), for a total adjusted offense level of at least fourteen under U.S.S.G. § 2B1.1. The government will take no position as to whether a further two-point adjustment is appropriate under U.S.S.G. § 2B1.1(b)(8)(C) due to defendant’s use of a third-party front company to conceal its activity, as a two-point adjustment under U.S.S.G. § 2B1.1(b)(8)(C) would raise ex post facto issues to be resolved under U.S.S.G. § 1B1.11. Further, the United States and the defendant agree that the base culpability score under U.S.S.G. § 8C2.5(a) is five, that one point should be awarded for defendant’s having ten or more employees under U.S.S.G. § 8C2.5(b)(5), and that one point should be deducted for acceptance of responsibility under U.S.S.G. § 8C2.5(g)(3), for a net score of five. The United States and the defendant agree that the base fine level for

the defendant under U.S.S.G. § 8C2.4(a)(3) would be at least \$90,242.98.

Therefore, the United States and the defendant agree that the fine range for this offense under U.S.S.G. §§ 8C2.6, 8C2.7 would be at least from \$90,242.98 to and including at least \$180,485.96. It is the recommendation of the United States that the fine should be at the lower end of the Guidelines fine range.

The United States will recommend that the defendant be ordered to pay any fine imposed by the Court in eight equal payments, with the first installment payment due 120 days after the date of imposition of sentence and the remaining payments due at 120 day intervals thereafter. It will be the further recommendation of the United States, pursuant to 18 U.S.C. § 3612(f)(3)(A) that no interest be imposed on the unpaid balance.

4. Payment of the fine and special assessment and any restitution ordered in this matter shall be made by certified or cashier's check(s) payable to the Clerk of the United States District Court for the Northern District of Georgia, U.S. Courthouse, Suite 2211, Richard B. Russell Bldg., 75 Spring Street, SW, Atlanta, Georgia 30303. A copy of the payment check(s) shall be

sent to Nezida S. Davis, Acting Chief, Atlanta Field Office, Antitrust Division, U.S. Department of Justice, Suite 1176, Richard B. Russell

Building, 75 Spring Street, SW, Atlanta, Georgia 30303. Nothing in this plea agreement should be interpreted as foreclosing either the United States or the defendant from supplying either the Probation Office or the Court with information pertinent to consideration of the defendant's ability to pay restitution and a fine.

5. The defendant understands and agrees that the sentence recommended by the United States and the defendant shall not be binding upon the Court, and that, under this agreement, the Court retains complete discretion to impose any sentence up to the maximum provided by law. Furthermore, the defendant understands and agrees that, as provided in Rule 11(e)(2) of the Federal Rules of Criminal Procedure, if the Court does not impose the sentence recommended by the United States and the defendant, the defendant nevertheless has no right to withdraw its plea of guilty.

6. The defendant agrees that it will assist the United States in satisfying the Court that there exists a factual basis for its plea pursuant to Rule 11(f) of the Federal Rules of Criminal Procedure. The defendant agrees

that it hereby waives any and all potential defenses to the aforesaid charge, including, but not limited to, advice of counsel. The United States and the defendant agree that both parties may present facts to the Probation Office and to the Court to assist the Court in determining the appropriate disposition of this case. The United States and the defendant agree to request that the Court order a presentence investigation prior to the imposition of sentence.

7. The defendant agrees that it will cooperate fully, candidly, and truthfully with the United States in the prosecution of this case, and in the conduct of any federal grand jury investigation or other federal investigations in the United States involving violations in the water or wastewater treatment industry, including the presently ongoing grand jury investigation being conducted in the Northern District of Georgia, and in any litigation or other proceedings arising or resulting from any such

investigations, whether civil or criminal, to which the United States is a party (hereinafter "Federal Proceeding"). Such cooperation shall include, but not be limited to: (a) producing to the United States all documents, information and other materials non-privileged under United States law, wherever located, in the possession, custody or control of defendant, requested by the United States in connection with any Federal Proceeding; and (b) using its best efforts to secure the ongoing, full and truthful cooperation of the current and former directors, officers or employees of defendant, as may be requested by the United States in connection with any Federal Proceeding.

8. Subject to the defendant's full and continuing cooperation, as described in paragraph seven above, acceptance of its guilty plea, imposition of sentence by the Court, and full payment by the defendant of any fine, special assessment, and restitution ordered by the Court, the United States agrees not to bring further criminal charges against the defendant or any of its current or former directors, officers or employees who were acting in such capacity on behalf of it, under the mail or wire fraud statutes (18 U.S.C. §§ 1341, 1343, 1346), the conspiracy to commit an offense against the United States statute (18 U.S.C. § 371), or any other federal criminal

statute which prohibits any act also prohibited by any of the aforesaid statutes, for any act or offense committed prior to December 5, 2001, arising out of any conspiracy, combination, or scheme to defraud the Henry Pratt Company. Should the United States determine that any current or former director, officer, or employee of the defendant may have information relevant to any government investigation of the water and wastewater treatment equipment industry, the United States may request such person's cooperation by notifying counsel for that individual in writing of the government's request for cooperation, or in the absence of such counsel, providing written request for cooperation to the individual personally. In the event that person declines to cooperate with the government's investigation when requested to: (a) make his relevant personal documents and other materials available to attorneys and agents of the United States; (b) make himself available for interviews with attorneys and agents of the United States; (c) respond fully and truthfully to all inquiries of the United States in connection with any such federal investigation, without falsely implicating any person or intentionally withholding any information; (d) cooperate in all law enforcement activities of the United States in connection with any such federal investigation; (e) otherwise give the United States access to

knowledge and information he may have relevant to any such federal investigation; or (f) when called upon to do so by the United States, testify fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621) or making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), about practices in the water or wastewater treatment industry, such person shall not have the benefit of the non-prosecution agreement of the United States contained in this paragraph. The terms of this paragraph do not apply to any crimes of violence, criminal federal securities or income tax violations, offenses related to money or anything of value offered or given to a public official, or civil matters of any kind.

9. The United States agrees that it will consider, at the appropriate point in the future, whether any cooperation furnished by the defendant by that point in time warrants the filing of a motion for a substantial assistance

departure with respect to defendant's fine under U.S.S.G. § 8C4.1 or a reduction of the defendant's fine under Fed. R. Crim. P. 35. The defendant understands that the decision whether to do so rests in the sole discretion of the United States.

10. The defendant understands and agrees that its failure to provide full and complete cooperation to the United States would be a material breach of this plea agreement, would render this plea agreement null and void, and would release the United States from its promises and commitments made in this plea agreement, including the nonprosecution commitments contained in paragraph eight above. In the event of any further prosecution of the defendant resulting from a breach of this agreement, the defendant agrees to waive its right to interpose the statute of limitations as a defense with regard to any period after the date of the plea agreement.

11. 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, as a result of the guilty

plea entered pursuant hereto, and that this plea agreement in no way controls whatever action, if any, such other agencies take. The United States, however, agrees that, if requested, it will advise the appropriate officials of any governmental agency considering administrative action against the defendant as a result of the guilty plea entered pursuant hereto of the fact, manner, and extent of the defendant's cooperation, as described herein, as a matter for such agency to consider before determining what administrative action, if any, to take with regard to the defendant.

12. The defendant agrees that it will maintain its status as active upon the records of the Secretary of State of Texas and in compliance with any State of Texas annual registration filing requirements pending the final resolution of this case and final compliance with the sentence imposed therein.

13. The United States and the defendant agree that, other than the foregoing, the United States has made no promises to, or agreements with, the defendant and that this plea agreement constitutes the entire agreement

between the United States and the defendant concerning the disposition of the criminal charges against the defendant in this case.

Agreed to this 31st day of May, 2002.

PUMPS, VALVES &
EQUIPMENT, INC., d/b/a
THE SCRUGGS COMPANY

UNITED STATES OF
AMERICA

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/S/
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