IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	
	)	Case No. 3-03CR-189-D
vs.	)	
	)	Filed 07/14/06
DANIEL T. ROSE,	)	
	)	
Defendant.	)	

STATEMENT OF THE UNITED STATES CONCERNING RESENTENCING OF THE DEFENDANT

The United States of America, by and through its undersigned attorneys, hereby submits this statement of its position concerning resentencing of the defendant.

Defendant Daniel Rose was convicted for a violation of Section 1 of the Sherman Act and was sentenced by this Court to a 30 month term of imprisonment. That sentence was vacated on appeal by order of the U.S. Court of Appeals for the Fifth Circuit and the case was remanded for resentencing. The appellate court found that the defendant was a member of the charged conspiracy for a slightly shorter period of time than was alleged in the indictment.

Given the reduced volume of commerce attributable to the shortened conspiracy period, the defendant's offense level has been reduced and his sentencing range is now 27-33 months. However, a resentencing court may not impose a sentence greater than the original absent sufficient evidence justifying the increased sentence. See United States v. Reinhart, 442 F.3d 857, 860 (5th Cir. 2006). The government is aware of no evidence warranting an increase in the defendant's original sentence, and submits to the Court that the defendant's new sentencing range is now 27-30 months.

Despite the opportunity for a reduction of the defendant's sentence, the Court should affirm the defendant's 30 month sentence considering the defendant's culpability has not changed in light of the de minimis reduction in the volume of commerce by the Fifth Circuit. The volume of affected commerce upon which the defendant was initially sentenced was $16.1 million, which was effectively reduced on appeal to $14.6 million. That the defendant's illegal conduct affected approximately $1.5 million less choline chloride sales than was alleged at trial does nothing to affect his culpability; it merely affects the range of a permissible sentence. The fact of the matter is that the defendant actively participated, as a manager or supervisor of one or more participants, in a conspiracy to violate antitrust laws for an extended period of time. Regardless of the duration of the conspiracy or the volume of commerce, the defendant engaged in antitrust violations by his own volition.

Originally, this Court determined that the 30 month sentence was appropriate and reasonable in accordance with the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005). There is no evidence to indicate that the 30 month sentence, originally imposed, is no longer appropriate and reasonable. In order to reflect the seriousness of the crime, promote respect for antitrust laws, provide just punishment for a conviction affirmed by the Fifth Circuit, and to afford adequate deterrence to criminal conduct, the resentencing court should maintain the original 30 month sentence.

When imposing a sentence, the court must impose a sentence that is sufficient, but not greater than necessary. 18 U.S.C. § 3553(a). Among the factors to consider in determining what is sufficient are "(2) the need for the sentence imposed–(A) to reflect the seriousness of the

offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford *adequate deterrence* to criminal conduct" 18 U.S.C. § 3553(a)(2)(A)-(B) (emphasis added); see United States v. Smith, 440 F.3d 704, 707 (5th Cir. 2006) (citing United States v. Mares, 402 F.3d 511, 519 (5th Cir. 2005); United States v. Alonzo, 435 F.3d 551, 553-54 (5th Cir. 2006)). A reduction in the sentence for the defendant would reduce the deterrent effect of the antitrust laws and would minimize the seriousness of the defendant's crime, especially since the original 30 month sentence still falls within the newly determined sentencing range. It is necessary to maintain the integrity of the antitrust laws through strict application of the prescribed sentencing ranges. Furthermore, the Supreme Court in Booker held that the Sentencing Guidelines function as a benchmark for measuring the reasonableness of all sentences for criminal offenses. Booker, 543 U.S. at 233. The Supreme Court also established that any sentence within the Guidelines is afforded a rebuttable presumption of reasonableness. Id.; see also Alonzo, 435 F.3d at 554. Therefore, maintaining the original 30 month sentence would satisfy the reasonableness standard established in Booker and achieve the deterrent effect described in section 3553. Id.; see also 18 U.S.C. § 3553(a).

CONCLUSION

Even though the Fifth Circuit abbreviated the duration of the defendant's participation in the conspiracy by approximately five weeks, the reduction in the affected volume of commerce is not significant enough to warrant a reduction in the original 30 month sentence when balancing the policy justifications of section 3553(a), the reasonableness standard in Booker, and the fact that there has not been a change in the defendant's culpability. The defendant is unable

to produce compelling evidence to indicate that the original sentence is unreasonable and in need of reduction. A reduction in the sentence without compelling evidence to the contrary would lessen the deterrent effect of the antitrust laws and, therefore, be unreasonable.

July 14, 2006

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Statement of the United States Concerning Resentencing of the Defendant was mailed on the 14th day of July, 2006 to:

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