UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	IP 03-181-CR M/F
	)	
v.	)	FILED: April 16, 2004
	)	
	)	
DENNIS L. SANER	)	-01
Defendant.	)	Hon. Larry J. McKinney

PLEA AGREEMENT

The United States of America and Dennis L. Saner ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) 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 at trial; and

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

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The defendant waives the rights set out in Paragraph 1(c)-(g) above. The defendant also waives the right to appeal the imposition of sentence against him, so long as the sentence imposed is consistent with or no greater than the recommendation in Paragraph 9 of this Plea Agreement. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the defendant will plead guilty to the one-count Indictment filed in this case. That Indictment charges the defendant with participating in a conspiracy to suppress and eliminate competition by eliminating discounts on medical textbooks and fixing margins at which new textbooks were offered for sale to customers on and near the Indiana University Purdue University at Indianapolis ("IUPUI") campus beginning in or about April 2001 and continuing until approximately November 2002 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge 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.

FACTUAL BASIS FOR OFFENSE CHARGED

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

(a) For purposes of this Plea Agreement, the "relevant period" is the period beginning in or about April 2001 and continuing until approximately November 2002. During the relevant period, the defendant was the manager of a bookstore which was owned and operated by a nationwide textbook retailer and which was located in

Indianapolis, Indiana. During the relevant period, the bookstore which the defendant managed was a retailer of medical textbooks and other textbooks and was engaged in the sale of medical textbooks and other textbooks in Indianapolis, Indiana and elsewhere. Textbooks are books published by textbook publishing companies and distributed for sale to customers through various channels, including textbook stores located on and near college and university campuses. Textbooks are typically, though not exclusively, purchased by undergraduate and graduate students at colleges, universities, and other institutions of higher learning for use in conjunction with specific class requirements. Medical textbooks are textbooks that are primarily published for, and sold to, students whose studies focus on medicine, health sciences, and related fields.

(b) During the relevant period, the defendant participated in a conspiracy with others engaged in the sale of medical textbooks and other textbooks, the primary purpose of which was to suppress and eliminate competition by eliminating discounts on medical textbooks and fixing margins at which new textbooks were offered for sale to customers on and near the IUPUI campus. In furtherance of the conspiracy, the defendant engaged in a conversation and attended a meeting on April 23, 2001 with representatives of the only other major textbooks retailer serving the IUPUI campus. During this meeting and conversation, agreements were reached by the defendant and representatives of the only other major retailer of medical textbooks and other textbooks to eliminate competition by eliminating discounts on medical textbooks and increasing from 25% to 27% the profit margins at which new textbooks were offered for sale to customers on and near the IUPUI campus in Indianapolis, Indiana.

(c) During the relevant period, medical textbooks and other textbooks sold by one or more of the conspirator textbook retailers, as well as payments for medical textbooks and other textbooks, traveled in interstate commerce. The business activities of the bookstore which the defendant managed and co-conspirators in connection with the sale of medical textbooks and other textbooks affected by this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out within the Southern District of Indiana, Indianapolis Division. Medical textbooks and other textbooks affected by this conspiracy were sold by one or more of the conspirators to customers in this District.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act 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 United States Sentencing Guidelines ("U.S.S.G.") § 5D1.2(a)(3)).

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) and U.S.S.G. § 5E1.3, the Court is required to order the defendant to pay a $100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. Sentencing for the offense charged will be conducted pursuant to the U.S.S.G. Manual in effect on the day of sentencing.

SENTENCING AGREEMENT

8. The United States and the defendant agree that the Guidelines calculations relevant to the defendant are as follows: Under USSG § 2R1.1, the Base Offense Level is 10. Because the volume of commerce attributable to the defendant is at least $2 million but not greater than $2.5 million, a two-level increase under USSG § 2R1.1(b)(2)(B) is appropriate. The defendant is entitled to a two-level decrease under USSG § 3E1.1 for Acceptance of Responsibility. The United States and the defendant agree that no other adjustments under the Sentencing Guidelines are warranted in this case.

9. Pursuant to Fed R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose a sentence requiring the defendant to pay to the United States a criminal fine of $25,000, pursuant to USSG

2R1.1(c)(1), payable in full before the thirtieth (30th) day after the date of judgment with interest accruing under 18 U.S.C. § 3612(f)(1)-(2) for any portion not paid before the fifteenth day after the date of judgment; a period of incarceration of six months; and no period of supervised release ("the recommended sentence"). The United States and the defendant agree that restitution pursuant to USSG § 5E1.1 is not appropriate in this case because it would complicate or prolong the sentencing process.

10. The defendant agrees to recommend that he be sentenced pursuant to USSG § 5C1.1(c)(2), which provides for a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention, provided that at least one month is satisfied by imprisonment. The defendant will also recommend that a fine of $25,000 be imposed. 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) and U.S.S.G. § 5E1.3 in addition to any fine imposed.

11. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 13 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraphs 9 and 10 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommendation contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.

DEFENDANT'S COOPERATION

13. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the sale of medical textbooks and other textbooks in the United States, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States;

(b) making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

(d) otherwise voluntarily providing the United States with any material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. § 1503).

GOVERNMENT'S AGREEMENT

14. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of a sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the sale of medical textbooks and other textbooks in the United States ("Relevant Offense"). 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.

15. 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

16. 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

17. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty 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.

VIOLATION OF PLEA AGREEMENT

18. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to

prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

19. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

20. 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.

21. 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: April 15, 2004

Respectfully submitted,

BY: /s/
DENNIS L. SANER
Defendant

BY: /s/
FRANK J. VONDRAK

/s/
JAMES R. STREICKER
Counsel for Dennis L. Saner

/s/
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