UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA	)	Filed: May 27, 2004
	)	
v.	)	Criminal No. 3:04CR0054
	)	
STURGIS IRON & METAL CO., INC.,	)	Judge: Allen Sharp
	)	
Defendant.	)	Violation: 18 U.S.C. § 1341

PLEA AGREEMENT

The United States of America and STURGIS IRON & METAL CO., INC. ("Defendant"), a corporation organized and existing under the laws of Michigan, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The Defendant understands its 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 it;

(d) to have a trial by jury, at which it 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 it to be found guilty;

(e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

(f) to appeal its conviction if it is found guilty at trial; and

(g) to appeal the imposition of sentence against it.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The Defendant waives the rights set out in Paragraph 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in the United States District Court for the Northern District of Indiana. Further, pursuant to Fed. R. Crim. P. 7(b), the Defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Northern District of Indiana. The Information will charge that beginning in or around January 1995 and continuing through in or around December 2000, the Defendant, for the purpose of executing and carrying out a scheme and artifice to defraud, did place in authorized depositories for mail matter to be sent and delivered by the Postal Service, from South Bend, Indiana, in the Northern District of Indiana, and other places, in violation of 18 U.S.C. § 1341.

3. The Defendant, pursuant to the terms of this Plea Agreement, will:

(a) 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.

(b) The Defendant understands that the offenses to which it is pleading guilty fall under the Guidelines promulgated by the United States Sentencing Commission under Title 28, United States Code, Section 994. The Defendant is aware that its sentence will be determined in accordance with the United States Sentencing Guidelines and this plea agreement. The Defendant agrees that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for its offense as set forth below in paragraphs 5 and 6 of this plea agreement. With that understanding, the Defendant expressly waives its right to appeal its sentence on any ground, including any

appeal right conferred by Title 18, United States Code, Section 3742. The Defendant also agrees not to contest its sentence or the manner in which it was determined on any ground in any post-conviction proceeding, including but not limited to, a proceeding under Title 28, United States Code, Section 2255. Nothing in this paragraph, however, shall act as a bar to the Defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.

(c) The Defendant will waive all rights, whether asserted directly or through a representative, to request or receive from the United States any further records, reports, or documents pertaining to the investigation or prosecution of this matter. This waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974. Further, the Defendant acknowledges that neither has it received discovery, nor was discovery required by law.

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 that period beginning in or around January 1995 and continuing through in or around December 2000. During the relevant period, the Defendant was a corporation organized and existing under the laws of Michigan. The Defendant has its principal place of business in Sturgis, Michigan, but also operated a scrap metal yard in South Bend, Indiana. During the relevant period, the Defendant acted as a scrap metal dealer, purchasing, sorting, processing and selling ferrous and nonferrous scrap metal in the United States and elsewhere. Scrap metal is a by-product of the industrial manufacturing process or is recycled from obsolete goods.

(b) During the relevant period, certain companies in Northern Indiana and Southern Michigan produced scrap metal and sold it to the Defendant.

(c) During the relevant period, the Defendant through its representatives devised and intended to devise a scheme and artifice to defraud nine of these scrap metal suppliers of money.

(d) During the relevant period, it was part of the scheme and artifice to defraud that the Defendant would collect the scrap metal from the companies, and transport it to locations in Indiana and Michigan. The Defendant would then accurately weigh the scrap and create a legitimate scale ticket. Later, representatives of the Defendant would create a false scale ticket, similar in all respects to the legitimate scale ticket, but the recorded weight was less than the actual weight. The representatives would then destroy the legitimate ticket to conceal the true weights and mail, via the Postal Service, the false scale ticket, an invoice reflecting the data from false scale ticket, and a check calculated using the data from the false scale ticket. Paying the scrap metal suppliers based on the data from the false scale tickets deprived the suppliers of the full value of their scrap metal.

(e) Beginning in or around January 1995 and continuing through in or around December 2000, the Defendant placed in authorized depositories for mail matter false scale tickets, invoices based on the false scale tickets and checks based on the false scale tickets, to be sent and delivered by the Postal Service, from South Bend, Indiana, in the Northern District of Indiana and other places, to various suppliers of scrap metal. By creating and mailing the false scale tickets and the invoices and checks based on the false tickets, the Defendant was able to deprive its suppliers of scrap metal of the full value of that scrap metal.

POSSIBLE MAXIMUM SENTENCE

5. The Defendant understands that the maximum penalty which may be imposed against it upon conviction for a violation of 18 U.S.C. § 1341 is the greatest of:

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

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

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

6. In addition, the Defendant understands that:

(a) pursuant to § 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G."), the Court shall order it to pay restitution to the victims of the offense;

(b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is required to order the Defendant to pay a $400 special assessment upon conviction for the charged crime; and

(c) 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.

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the 2000 U.S.S.G. Manual which was in effect on the last day of the offense.

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the Defendant to pay to the United States a criminal fine of $206,000, half ($103,000) to be payable in full before the fifteenth (15th) day after the date of judgment. The other half ($103,000), plus interest as calculated by 18 U.S.C. § 3612(f), to be payable on the one-year anniversary of the due date of first half of the payment. The United States and the Defendant also agree that they will recommend, as the appropriate disposition of

this case, that the Court impose a sentence requiring the Defendant to pay full restitution to all the victims of its crime. The parties have also agreed that they will recommend to the Court that the victims of the Defendant (Pirod, Garphyttan Wire and Centennial Steel) who were previously compensated in a civil settlement for the behavior that is subject of this plea agreement have already received full restitution. The parties have stipulated and agree to recommend to the Court the additional victims are owed, collectively, $59,509.35.

(a) The Defendant understands that the Court will order it to pay a $400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in addition to any fine imposed.

(b) Neither party will recommend a term of probation, but the Defendant understands that the Court is free to impose a term of probation.

9. Subject to the ongoing, full, and truthful cooperation of the Defendant described in Paragraph 12 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 and its commitment to prospective 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.

10. The United States and the Defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the Defendant agree that this Plea Agreement, except for Paragraph 10(b) below, shall be rendered void. Neither party may withdraw from the plea agreement based on the imposition of a term of probation.

(b) If the Court does not accept the recommended sentence, the Defendant

will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5)). If the Defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the Defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Crim. P. 11(f). In addition, the Defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 14 of this Plea Agreement will be tolled for the period between the date of the signing of the Plea Agreement and the date the Defendant withdrew its guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

11. The Defendant shall give notice of its conviction and sentence to all the victims of the offense as specified in the presentence report. The form of the notice shall be approved by the U.S. Probation Officer and the Court. The Defendant shall bear the costs associated with the mailing of the notice.

DEFENDANT'S COOPERATION

12. 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 shortweighing and related criminal laws involving the purchase or sale of scrap metal 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 to the United States all documents, information, and other materials, wherever located, in the possession, custody, or control of the 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, as defined in Paragraph 13 of this Plea Agreement, of the current directors, officers, and employees of the Defendant as may be requested by the United States, including making these persons available, at the Defendant's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

13. The ongoing, full, and truthful cooperation of each person described in Paragraph 12(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, requested by attorneys and agents of the United States;

(b) making himself or herself 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 or she may have that is related to any Federal Proceeding;

(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); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 15(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 15(a) will be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

GOVERNMENT'S AGREEMENT

14. Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, and subject to the cooperation requirements of Paragraph 12 of this Plea Agreement, the United States agrees that it 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 a scheme or artifice to defraud by shortweighing scrap metal in Indiana and Michigan. The nonprosecution terms of this paragraph do not apply to civil matters of any kind; to any violation of the federal antitrust, tax or securities laws; or to any crime of violence.

15. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence and subject to the exceptions noted in Paragraph 15(c), the United States will not bring criminal charges against any current director, officer, or employee of the Defendant for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of the Defendant that was undertaken in furtherance of a scheme or artifice to defraud by shortweighing scrap metal in Indiana and Michigan ("Relevant Offense");

(b) Should the United States determine that any current director, officer, or employee of the Defendant may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the Defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the Defendant;

(c) If any person requested to provide cooperation under Paragraph 15(b) fails to comply with his or her obligations under Paragraph 13, then the terms of this Plea Agreement as they pertain solely to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;

(d) Except as provided in Paragraph 15(e), information provided by a person described in Paragraph 15(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503);

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 13 of this Plea Agreement, the agreement in Paragraph 15(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;

(f) The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal antitrust, tax or securities laws, or to any crime of violence; and;

(g) Documents provided under Paragraphs 12(a) and 13(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the Defendant.

16. 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, 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. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the Defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

17. The Defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The Defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

18. 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 attached letter from Western District of Michigan Assistant United States Attorney Mark Courtade, and the Sturgis Cooperation Agreement, which is filed separately with the Court. 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. The Defendant agrees to waive any objection it might have as to venue due to the fact that some of the mailings were made from outside the Northern District of Indiana.

VIOLATION OF PLEA AGREEMENT

19. 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 12 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the Defendant in writing by personal or overnight delivery or facsimile transmission and may also notify 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 offense referred to in Paragraph 14 of this Plea Agreement, 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.

20. The Defendant understands and agrees that in any further prosecution of it resulting from the release of the United States from its obligations under this Plea Agreement, because of the Defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by it, or current directors, officers, or employees of it to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it in any such further prosecution. In addition, the Defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

21. This Plea Agreement, the attached letter from Western District of Michigan Assistant United States Attorney Mark Courtade (Ex. 1), and the Sturgis Cooperation Agreement, which is filed separately with the Court (Ex. 2), constitute 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.

22. The undersigned is authorized to enter this Plea Agreement on behalf of the Defendant as evidenced by the Resolution of the Board of Directors of the Defendant attached to, and incorporated by reference in, this Plea Agreement.

23. 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.

24. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

Agreed to and signed this 14th day of May 2004.

/s/
Ralph Levin
President
Sturgis Iron & Metal Co., Inc.

/s/
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Karl Barnickol, Esq.
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