

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	Criminal No. 03-806
)	
v.)	Violation: 15 U.S.C. § 1
)	
HENDRIKUS VAN WESTENBRUGGE,)	Filed: December 8, 2003
)	
Defendant.)	
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GOVERNMENT’S RULE 11 MEMORANDUM

The United States and Hendrikus van Westenbrugge (“defendant”) have entered into a Plea Agreement pursuant to which the defendant will waive indictment and plead guilty to the captioned Information which charges the defendant with a violation of the Sherman Act, 15 U.S.C. § 1. The purpose of this memorandum is to provide the Court with sufficient information to accept the plea by setting forth the violated statute, a description of the criminal Information, the terms of the Plea Agreement, and a preliminary statement of facts which supports the agreement.

I
STATUTE VIOLATED

A. 15 U.S.C. Section 1

Section One of Title 15, United States Code, provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$10,000,000 if a corporation, or, if any other person,

\$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

B. The Information

The Information charges that beginning at least as early as the second half of 1998 and continuing until as late as November 2002, the defendant's employer, JO Tankers B.V. (hereinafter "JO Tankers"), and co-conspirators engaged in a conspiracy to suppress and eliminate competition by allocating customers, rigging bids and fixing prices for contracts of affreightment for parcel tanker shipping of products to and from the United States and elsewhere. The defendant joined and participated in the charged conspiracy beginning as early as January 2001 and continuing until as late as November 2002, in unreasonable restraint of interstate and foreign trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

C. Elements of the Offense (15 U.S.C. Section 1)

The elements of a Sherman Act offense, each of which the United States must prove beyond a reasonable doubt at trial, are:

- (1) the conspiracy charged was formed, and it was in existence at or about the time alleged;
- (2) the defendant knowingly formed or participated in that conspiracy; and
- (3) the activity which was the object of the conspiracy was within the flow of, or substantially affected, interstate or foreign commerce.

D. Maximum Penalty

The maximum penalty the defendant may receive upon his conviction in this case is:
(a) a term of imprisonment for three years; (b) a fine in an amount equal to the greatest of:

(1) \$350,000; (2) twice the gross pecuniary gain derived from the crime; or (3) twice the gross pecuniary loss caused to the victims of the crime; and (c) a term of supervised release of one year following any term of imprisonment.

II **FACTUAL BASIS**

This statement of facts is intended to be used as a factual basis for the guilty plea of the defendant to the Information. It is not intended to be exhaustive in terms of details surrounding the charged conspiracy.

A. Background

Parcel tanker shipping is the ocean transport of bulk liquid chemicals, edible oils, acids and other specialty liquids. Parcel tankers are deep sea vessels equipped with compartments designed to carry shipments of various sizes. The temperature and other specifications of the compartments can be regulated according to the specific requirements of the type of liquid being transported.

B. The Charged Conspiracy

During part of the relevant period, the defendant, a citizen of the Netherlands, was Co-Managing Director of JO Tankers, a corporation organized and existing under the laws of the Netherlands with its principal place of business in Spijkenisse, the Netherlands. During the relevant period, JO Tankers was a provider of parcel tanker shipping services and was engaged in parcel tanker shipping of products to and from the United States and elsewhere.

As alleged in the Information, beginning at least as early as January 2001 and continuing until as late as November 2002, the defendant joined and participated in the charged conspiracy

among major providers of parcel tanker shipping, the substantial terms of which were to allocate customers, rig bids and fix prices for contracts of affreightment for parcel tanker shipping of products to and from the United States and elsewhere. A contract of affreightment is a contract between a customer and a parcel tanker shipping company for the transportation of bulk liquids from one port to another. A contract of affreightment typically covers multiple shipments during a certain time period and specifies the price, cargo, destinations and other terms and conditions.

During the relevant period and in furtherance of the conspiracy, the co-conspirators attended meetings and engaged in discussions in the United States and Europe concerning customers and prices of parcel tanker shipping of products to and from the United States and elsewhere. During part of the relevant period, among other acts, the defendant and a co-conspirator agreed not to compete for one another's customers either by not submitting prices or bids to certain customers, or by submitting intentionally high prices or bids to certain customers. During part of the relevant period, among other acts, the defendant and a co-conspirator also discussed and exchanged prices to certain customers so as not to undercut one another's prices.

C. Interstate and Foreign Commerce

At all times during the conspiracy, products shipped by JO Tankers, and parcel tanker shipping vessels, equipment and supplies necessary to providing such parcel tanker shipping, as well as payments for such parcel tanker shipping, traveled in interstate and foreign commerce. The activities of the defendant and his co-conspirators in connection with the parcel tanker shipping services affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

III
PLEA AGREEMENT

The defendant's guilty plea to the Information will be entered pursuant to the Plea Agreement between the defendant and the Antitrust Division. The Plea Agreement provides that the defendant will enter a plea of guilty pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.

Also pursuant to the Plea Agreement, the United States and the defendant agree to recommend jointly that the Court impose a sentence requiring the defendant to pay a fine to the United States in the amount of \$75,000 and serve a period of incarceration of three months with no period of supervised release as the appropriate disposition of the case. The fine is payable in full before the fifteenth day after the date of imposition of sentence. The United States also agrees that it will not object to the defendant's request that the Court make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal Minimum Security Camp, if possible on the East Coast of the United States, to serve his sentence of imprisonment and that the defendant be released following the imposition of sentence to allow him to self-surrender to the assigned correctional facility on a specified date.

Although the United States Sentencing Guidelines fine and incarceration ranges exceed the agreed-upon sentence, subject to the full and continuing cooperation of the defendant, as described in Paragraph 12 of his Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 5K1.1, for a downward departure from the guidelines sentence and will request that the Court impose the recommended sentence

because of the defendant's substantial assistance in the Government's ongoing investigation and prosecutions of violations of federal criminal law in the parcel tanker shipping industry.

Subject to the ongoing, full, and truthful cooperation of the defendant, 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 his 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.

The United States and the defendant will also jointly request that the Court accept the defendant's guilty plea and immediately impose sentence on the day of arraignment. Should the Court reject the agreed-upon disposition of the case, the defendant will be free to withdraw his plea.

The defendant has agreed to cooperate fully with the United States in the conduct of the present investigation of the parcel tanker shipping industry and any litigation or other proceedings resulting therefrom to which the United States is a party. Such cooperation includes, but is not limited to, the production of relevant documents under the control of the defendant and making himself available in the United States for interviews and testimony in connection with any proceeding resulting from the present investigation of the parcel tanker shipping industry to which the United States is a party.

Pursuant to the Plea Agreement, the United States agrees, subject to the continuing full cooperation of the defendant, not to bring further criminal proceedings against the defendant for any act or offense committed prior to December 2002 that was undertaken in furtherance of an antitrust conspiracy involving parcel tanker shipping.

Dated: December 8, 2003

Respectfully submitted,

_____/S/_____
ROBERT E. CONNOLLY
Chief

_____/S/_____
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CERTIFICATE OF SERVICE

This is to certify that on the 8th day of December 2003, a copy of the Government's Rule 11 Memorandum has been sent via telefax to counsel of record for the defendant as follows:

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