

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

UNITED STATES OF AMERICA) Criminal No. 1:CR-96-249
)
 v.) Judge William W. Caldwell
)
 CLARK TRUCK PARTS, INC.,) Filed 10/9/96
)
 Defendant.)

GOVERNMENT'S RULE 11 MEMORANDUM

The United States is informed that Clark Truck Parts, Inc. will waive indictment and plead guilty to the captioned information. The one-count information charges Clark Truck Parts with a violation of the Sherman Act, 15 U.S.C. § 1.

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 to be 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. Elements of the Offense

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

1. The conspiracy charged was formed and 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.

C. Maximum Penalties

The maximum penalty Clark Truck Parts may receive upon its conviction in this case is a fine of \$10 million.

II

FACTUAL BASIS

A. Background

During the period of the conspiracy, the Defense Reutilization and Marketing Service (DRMS) was responsible for the disposal of surplus military property owned by the Department of Defense. It carried out its responsibility, in part, by routinely conducting public auctions at locations throughout the United States, including the Naval Ship Parts Center in Mechanicsburg, Pennsylvania and Letterkenny Army Depot in Chambersburg, Pennsylvania.

DRMS publicized its auctions, including those at Mechanicsburg and Chambersburg, to increase the number of potential bidders. The defendant and co-conspirators were among the potential bidders who attended auctions at Mechanicsburg and Chambersburg. Potential bidders were informed that collusive bidding is unlawful. Items were auctioned by lots, which included one or more items. Bidding was open and each lot was sold to the highest responsible bidder. By selling items in this

manner, DRMS attempted to ensure disposal of surplus property at the highest possible price.

B. The Conspiracy

Beginning at least as early as 1992 and continuing until at least October 1994, representatives of Clark Truck Parts and several other companies participated in a conspiracy to rig bids for the purchase of military surplus sold at DRMS auctions in Mechanicsburg and Chambersburg. Pursuant to this scheme, the conspirators met and discussed items for sale at Mechanicsburg and Chambersburg auctions. They agreed which of them would bid for specific items of common interest and how they would allocate such items among themselves. At the auctions, the conspirators restrained from bidding against each other in an effort to minimize the prices they paid for lots they won. The conspirators sometimes solicited outsiders to participate in the allocation of specific lots in an effort to eliminate their bid competition. At times immediately after auctions, conspirators bought out co-conspirators' shares of allocated items by paying above-auction prices.

C. Interstate and Foreign Commerce

The following facts satisfy the interstate or foreign commerce requirement. Many of the items sold at DRMS auctions in Mechanicsburg and Chambersburg were transported for sale at the auction sites from locations outside of Pennsylvania. Additionally, many of the potential bidders at the auctions, including representatives of Clark Truck Parts and

co-conspirators, traveled from outside Pennsylvania to attend the auctions, then transported items they won to locations outside of Pennsylvania. Moreover, many of the items purchased by Clark Truck Parts and co-conspirators were resold to customers in other states or exported to foreign customers.

III

PLEA AGREEMENT

The guilty plea in this case will be entered pursuant to a plea agreement between the defendant and the Antitrust Division. The plea agreement provides that Clark Truck Parts will enter its guilty plea pursuant to Rule 11(e)(1)(B). The defendant has agreed to provide full cooperation in the Antitrust Division's investigation and the Antitrust Division has agreed to advise the Court of the nature and extent of its cooperation. The Antitrust Division has agreed not to prosecute further Clark Truck Parts or to prosecute Jackie L. Clark, its President, for any act or offense committed in connection with their purchase of military surplus at DRMS sales conducted prior to September 1, 1996.

Pursuant to the plea agreement, the defendant and the Antitrust Division have entered into the following stipulations. Although they recognize that the stipulations do not bind the Court, the parties believe the stipulations are appropriate. The parties agree that the volume of commerce attributable to Clark Truck Parts under the Sentencing Guidelines is \$170,000. The parties further agree that Clark Truck Parts' culpability score under the Sentencing Guidelines is five, resulting in a guideline

fine range of \$34,000 to \$68,000, but agree that \$34,000 is the appropriate fine for Clark Truck Parts.

Finally, as envisioned in the plea agreement, Clark Truck Parts and Jackie L. Clark have entered into a civil settlement with the Antitrust Division to resolve all claims the United States might have against them in connection with the offense. Pursuant to the settlement agreement, Clark Truck Parts and/or Jackie L. Clark will pay the United States \$34,000.

Respectfully submitted,

/s/

RICHARD S. ROSENBERG

/s/

BRADFORD L. GEYER

/s/

WENDY A. BOSTWICK

Attorneys, Antitrust Division
U.S. Department of Justice
Middle Atlantic Office
The Curtis Center, Suite 650W
7th & Walnut Streets
Philadelphia, PA 19106
Tel.: (215) 597-7401

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CERTIFICATE OF SERVICE

This is to certify that on the 8th day of October 1996, a copy of the Government's Rule 11 Memorandum was mailed to counsel of record for the defendant as follows:

Benjamin L. Bailey, Esquire
Bowles Rice McDavid Graff & Love
16th Floor, Commerce Square
Lee Street
P.O. Box 1386
Charleston, WV 25325-1386

/s/

RICHARD S. ROSENBERG

Attorney, Antitrust Division
U.S. Department of Justice
Middle Atlantic Office
The Curtis Center, Suite 650W
7th & Walnut Streets
Philadelphia, PA 19106
Tel.: (215) 597-7401