

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)	Filed: March 3, 2003
)	
v.)	Criminal No. 1:03 CR 81
)	
BLUESTAR METAL RECYCLING CO.,)	Violations: 15 U.S.C. § 1;
)	18 U.S.C. § 371
)	
Defendant.)	

INFORMATION

The United States of America, acting through its attorneys, charges:

COUNT ONE -- SHERMAN ANTITRUST ACT CONSPIRACY
(15 U.S.C. § 1)

I

DESCRIPTION OF THE OFFENSE

1. BLUESTAR METAL RECYCLING CO. (“BLUESTAR” or “Defendant”) is hereby made a defendant on the charge stated below.

2. Beginning at least as early as December 1993 and continuing until at least October 2001, the exact dates being unknown to the United States, the Defendant and co-conspirators entered into and engaged in a combination and conspiracy to suppress and eliminate competition by allocating suppliers in the purchase of ferrous and nonferrous scrap metal in Northeast Ohio. The charged combination and conspiracy unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

3. The combination and conspiracy consisted of a continuing agreement,

understanding and concert of action among the Defendant and co-conspirators, the substantial terms of which were to allocate suppliers in the purchase of ferrous and nonferrous scrap metal in Northeast Ohio.

II
MEANS AND METHODS OF THE CONSPIRACY

4. For the purpose of forming and carrying out the charged combination and conspiracy, the Defendant and co-conspirators did those things which they combined and conspired to do, including, among others:

- (a) participated in conversations and meetings to discuss allocating (i.e., dividing up) suppliers of ferrous and nonferrous scrap metal among themselves;
- (b) agreed, during such conversations and meetings, to allocate suppliers and not to compete against each other in the purchase of ferrous and nonferrous scrap metal; and
- (c) allocated, pursuant to such conversations and meetings, suppliers of ferrous and nonferrous scrap metal among themselves, denying such suppliers a competitive price.

III
THE DEFENDANT AND CO-CONSPIRATORS

5. At all times relevant to this Information, BLUESTAR was a corporation organized and existing under the laws of the State of Ohio, with its headquarters in Elyria, Ohio, and its principal place of business in Northeast Ohio. At all relevant times to this Information, BLUESTAR and its co-conspirators were

engaged in the purchase and sale of ferrous and nonferrous scrap metal, both inside and outside the State of Ohio, including in Northeast Ohio. At all times relevant to this Information, BLUESTAR and its co-conspirators purchased ferrous and nonferrous scrap metal and sold it to customers such as mills and foundries, sometimes processing or re-manufacturing the scrap to fit a particular customer's specifications. BLUESTAR and its co-conspirators sold the scrap metal that they purchased, or caused such scrap metal to be sold, to customers located both inside and outside the State of Ohio.

6. Various individuals, not made defendants in this Information, participated as co-conspirators in the charged combination and conspiracy and performed acts and made statements in furtherance of it.

7. Whenever this Information refers to any act, deed, or transaction of any corporation, it means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

IV TRADE AND COMMERCE

8. Ferrous and nonferrous scrap metal are residual products that have value. Typically, mills and foundries generate ferrous and nonferrous scrap metal as a by-product. In the scrap metal industry, this type of scrap is generally referred to as industrial scrap. For example, tool and die makers or stamping plants end up

with small or odd-shaped pieces of scrap that are a by-product of their manufacturing process. However, this scrap is still valuable if picked-up, sorted, and sold to mills or foundries that desire scrap metal as part of their manufacturing process. The business of scrap metal companies, such as the Defendant and its co-conspirators, generally involves placing steel collection boxes at manufacturers' sites to collect residual scrap, picking-up the residual scrap, processing the residual scrap, and reselling the scrap to customers.

9. During the period covered by this Information, the Defendant and co-conspirators: (1) purchased ferrous and nonferrous scrap metal from individuals and companies located inside and outside the State of Ohio; (2) sold or shipped ferrous and nonferrous scrap metal to individuals and companies located inside and outside the State of Ohio; and (3) caused ferrous and nonferrous scrap metal to be purchased by, or sold or shipped to, individuals and companies located inside and outside the State of Ohio. This ferrous and nonferrous scrap metal was shipped across state lines in a continuous and uninterrupted flow of interstate commerce

from its places of manufacture to locations inside and outside the State of Ohio, including in Northeast Ohio.

10. The activities of the Defendant and co-conspirators that are the subject of this Information were within the flow of, and substantially affected, interstate trade and commerce.

V
JURISDICTION AND VENUE

11. The foregoing conspiracy was formed and carried out, in part, within the Northern District of Ohio within the five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

**COUNT II – CONSPIRACY TO TRANSPORT INTERSTATE
FRAUDULENTLY OBTAINED PROPERTY AND TO COMMIT MAIL
FRAUD**
(18 U.S.C. § 371)

The United States of America further charges:

12. Paragraphs 1 and 7 are repeated, realleged and incorporated in Count II as if fully set forth in this Count.

I
THE DEFENDANT AND ITS CO-CONSPIRATOR

13. At all times relevant to this Information, BLUESTAR was a corporation organized and existing under the laws of the State of Ohio, with its headquarters in Elyria, Ohio, and its principal place of business in Northeast Ohio. At all relevant times to this Information, BLUESTAR and a co-conspirator, an

employee and officer of BLUESTAR, were engaged in the purchase and sale of ferrous and nonferrous scrap metal, both inside and outside the State of Ohio, including in Northeast Ohio. At all times relevant to this Information, BLUESTAR and a co-conspirator purchased and sold ferrous and nonferrous scrap metal for resale to customers such as mills and foundries, sometimes processing or re-manufacturing the scrap to fit a particular customer's specifications. BLUESTAR and a co-conspirator sold the scrap metal that they purchased, or caused such scrap metal to be sold, to customers located both inside and outside the State of Ohio.

14. An individual, not made a defendant in this Information, participated as a co-conspirator in the charged conspiracy and performed acts and made statements in furtherance of it.

II TRADE AND COMMERCE

15. Ferrous and nonferrous scrap metal are residual products that have value. Typically, mills and foundries generate ferrous and nonferrous scrap metal as a by-product. In the scrap metal industry, this type of scrap is generally referred to as industrial scrap. For example, tool and die makers or stamping plants end up with small or odd-shaped pieces of scrap that are a by-product of their manufacturing process. However, this scrap is still valuable if picked-up, sorted, and sold to mills or foundries that desire scrap metal as part of their manufacturing process. The business of scrap metal companies, such as the Defendant's, generally involves placing steel collection boxes at manufacturers' sites to collect residual

scrap, picking-up the residual scrap, processing the residual scrap, and reselling the scrap to customers.

16. During the period covered by this Information, the Defendant and a co-conspirator: (1) purchased ferrous and nonferrous scrap metal from individuals and companies located inside and outside the State of Ohio; (2) sold or shipped ferrous and nonferrous scrap metal to individuals and companies located inside and outside the State of Ohio; and (3) caused ferrous and nonferrous scrap metal to be purchased by, or sold or shipped to, individuals and companies located inside and outside the State of Ohio. This ferrous and nonferrous scrap metal was shipped across state lines in a continuous and uninterrupted flow of interstate commerce from its places of manufacture to locations inside and outside the State of Ohio, including in Northeast Ohio.

III DESCRIPTION OF THE OFFENSE

17. From at least as early as 1986 and continuing until at least October 2001, the exact dates being unknown to the United States, the Defendant and a co-conspirator did unlawfully, willfully, and knowingly conspire, combine, confederate and agree in violation of 18 U.S.C. § 371 to commit offenses against the United States, to wit, to violate 18 U.S.C. §§ 1341 and 2314.

18. It was a part and an object of the conspiracy that the Defendant and a co-conspirator, having devised and intending to devise a scheme or artifice to defraud, and to obtain property by means of false and fraudulent pretenses,

representations or promises from, certain of the Defendant's suppliers of ferrous and nonferrous scrap metal, and to receive payments from customers knowing the payments to be based on fraudulently obtained scrap metal that the Defendant had shipped interstate, executed the scheme or artifice by and through the use of the United States mail, in violation of 18 U.S.C. § 1341.

19. It was a further part and an object of the conspiracy that the Defendant and a co-conspirator did transport in interstate commerce goods, wares and merchandise, that is, scrap metal, of the value of \$5,000 or more, knowing the same to have been taken by fraud, in violation of 18 U.S.C. § 2314.

IV GOALS OF THE CONSPIRACY

20. The Defendant devised a scheme or artifice to defraud certain of its suppliers of ferrous and nonferrous scrap metal and deprive said suppliers of their property and proceeds therefrom. The result of this illegal scheme or artifice was the systematic and arbitrary underpayment of certain scrap metal suppliers, resulting in a windfall profit for the Defendant. This illegal scheme or artifice resulted in the Defendant's fraudulent acquisition of scrap metal, which, on numerous occasions, the Defendant then transported in interstate commerce and sold to unknowing customers (e.g., mills).

V
MEANS AND METHODS OF THE CONSPIRACY

21. The means and methods by which the conspiracy was sought to be accomplished included, among others, the following:

From at least as early as 1986 and continuing until at least October 2001 (the “relevant period”), the Defendant and a co-conspirator conspired to, and did, fraudulently underweigh scrap metal purchased from certain of the Defendant’s scrap metal suppliers. In the scrap metal industry, this practice is commonly known as “shortweighting” a supplier. During the relevant period, and at all times relevant to this Information, the Defendant instituted and engaged in a practice of reducing, by an arbitrary percentage, the weight of incoming loads of scrap metal that the Defendant purchased from certain of its suppliers. The Defendant, in the ordinary course of its business, routinely generated new weight tickets reflecting the false and fraudulent weights and destroyed the original weight tickets showing the correct amount of scrap metal actually purchased, helping to conceal the scheme or artifice to defraud. In furtherance of its scheme or artifice to defraud, the Defendant routinely sent, through the United States mail, invoices and checks to its defrauded scrap metal suppliers for the amount of scrap metal recorded on the newly generated, false weight tickets, concealing the actual amount, resulting in these suppliers getting paid less than full value for their scrap metal. The Defendant, on numerous occasions during the relevant period, transported in interstate commerce the fraudulently obtained scrap metal for sale to unknowing

customers located outside the State of Ohio, and the Defendant, through the use of the United States mail, routinely sent invoices to, or received payment from, these customers, knowing the same to have been based on scrap metal that was taken by fraud.

VI
OVERT ACTS

22. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the Northern District of Ohio, and elsewhere:

(a) On numerous occasions between early 1986 and October 2001, the Defendant, through its shortweighting scheme, fraudulently obtained scrap metal from certain of its suppliers.

(b) On numerous occasions between early 1986 and October 2001, the Defendant sent checks and invoices via the United States mail to certain of its scrap metal suppliers from its offices in Elyria, Ohio, knowing the checks and invoices falsely represented the actual amount of the scrap metal obtained by the Defendant from these suppliers.

(c) On numerous occasions between 1986 and October 2001, the Defendant did knowingly transport in interstate commerce, goods, wares and merchandise, that is, scrap metal, in excess of \$5,000, from its office in Elyria, Ohio, to unknowing customers outside the State of Ohio, knowing the same to have been taken by fraud.

(d) On numerous occasions between 1986 and October 2001, the Defendant sent invoices and other communications via the United States mail to customers located outside the State of Ohio from its offices in Elyria, Ohio, knowing the invoice figures to be based on fraudulently obtained scrap metal that the Defendant had shipped interstate.

(e) On numerous occasions between 1986 and October 2001, the Defendant received payments via the United States mail from customers located outside the State of Ohio to its offices in Elyria, Ohio, knowing the payments to be based on fraudulently obtained scrap metal that the Defendant had shipped interstate.

VII JURISDICTION AND VENUE

23. The foregoing conspiracy was formed and carried out, in part, within the Northern District of Ohio within the five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

“/s/”

R. Hewitt Pate
Acting Assistant Attorney General

“/s/”

SCOTT M. WATSON
Chief, Cleveland Field Office

“/s/”

JAMES M. GRIFFIN
Deputy Assistant Attorney General

“/s/”

RICHARD T. HAMILTON, JR.
[0042399--OH]

“/s/”

SCOTT D. HAMMOND
Director of Criminal Enforcement

Antitrust Division
U.S. Department of Justice

IAN D. HOFFMAN
[14831--IA]
SARAH L. WAGNER
[24013700--TX]
BRIAN J. STACK
[0069796--OH]
PAUL L. BINDER
[0002819--OH]

“/s/”

GREGORY A. WHITE
United States Attorney
Northern District of Ohio

Attorneys, Antitrust Division
U.S. Department of Justice
Plaza 9 Building
55 Erieview Plaza, Suite 700
Cleveland, OH 44114-1816
Tel: (216) 522-4107
Fax: (216) 522-8332
E-mail: richard.hamilton@usdoj.gov