

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

10-20-08  
OPEN COURT  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA

v.

Case No.: 3:08-cr-353-J-327EM  
Ct. 1: 18 U.S.C. § 1512(c)(1)

ALEXANDER G. CHISHOLM

**PLEA AGREEMENT**

The United States of America and ALEXANDER G. CHISHOLM ("defendant") 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 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; and

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

**AGREEMENT TO PLEAD GUILTY  
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily 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 him in the United States District Court for the Middle District of Florida. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with the agreed-upon Guidelines calculations in Paragraph 8 of this Plea Agreement. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. §§ 3742(b), (c). 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 Middle District of Florida. The Information will charge the defendant with corruptly altering, destroying, and concealing records and documents and attempting to do so with the intent to impair the availability of the records and documents for use in a federal grand jury investigation, in violation of 18 U.S.C. § 1512(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. The United States agrees that at the arraignment, it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

**FACTUAL BASIS FOR OFFENSE CHARGED**

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

(a) In or about April 2008, the defendant was employed by a company in Jacksonville, Florida that was engaged in the business of shipping freight by water between the United States and Puerto Rico.

(b) From in or about February 2008 to the present, a federal grand jury sitting in the Middle District of Florida, assisted by the Department of Justice, Antitrust Division and the Federal Bureau of Investigation, has been investigating, among other things, possible federal antitrust offenses in connection with freight shipments by water between the United States and Puerto Rico.

(c) On or about April 17, 2008, agents of the Federal Bureau of Investigation executed a search warrant on the defendant's employer and issued a subpoena *duces tecum* to the defendant's employer in connection with the grand jury investigation.

(d) On or about April 17, 2008, after becoming aware of the grand jury investigation, the defendant corruptly altered, destroyed, and concealed records

and documents with the intent to impair the availability of the records and documents for use in the federal investigation.

### **POSSIBLE MAXIMUM SENTENCE**

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1512(c)(1) is:

- (a) a term of imprisonment for twenty (20) years;
- (b) a fine in an amount of \$250,000; and
- (c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned for up to two (2) years (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") §5D1.2(a)(2)).

6. In addition, the defendant understands that, pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

### **SENTENCING GUIDELINES**

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, and that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard.

The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

### **SENTENCING AGREEMENT**

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree to the following Guidelines calculations ("agreed-upon Guidelines calculations"):

(a) The November 1, 2007 edition of the Guidelines applies.

(b) The controlling Guideline applicable to the sole count charged is U.S.S.G. § 2J1.2. Under U.S.S.G. § 2J1.2, the total offense level is based on the higher of application of the 2J1.2 Guideline or the 2X3.1 Guideline.

(i) Under 2J1.2:

a. The base offense level = 14;

b. Increase for destroying probative records = +2

c. Total Offense Level = 16

(ii) Under 2X3.1:

a. the total offense level is the offense level of the underlying offense (15 U.S.C. § 1) he assisted in obstructing (offense level 27) minus 6 levels

b. Total Offense Level = 21

(c) Guideline 2X3.1 applies, and the resulting offense level is 21

because 2X3.1 produces a higher sentence than that produced by application of 2J1.2.

(d) The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The parties agree not to seek or support any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree that the agreed-upon Guidelines calculations set forth in this paragraph are reasonable.

9. The United States 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 (or one such specific Camp as the defendant may request prior to his sentencing) 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 after his sentencing.

10. The United States does not oppose a two-level reduction in the defendant's adjusted offense level, based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. The United States agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the defendant's timely notification

of his intention to plead guilty. The United States may oppose any adjustment for acceptance of responsibility if the defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

11. The defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history or criminal history category could alter his offense level, if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

12. If the United States determines that the defendant has provided substantial assistance in an investigation or prosecution of others, and if he has fully complied with all of his obligations under this agreement, the United States will make a motion, pursuant to U.S.S.G. § 5K1.1, requesting the Court to sentence the defendant in light of the advisory factors set forth in § 5K1.1(a)(1)-(5) and requesting a downward departure of up to four levels. The United States shall have sole discretion in determining whether the defendant has provided such substantial assistance and, therefore, whether any motion pursuant to § 5K1.1 should be made. The United States' determination of whether the defendant has provided substantial assistance will not depend in any way on the outcome of any trial or other proceeding at which the

defendant testifies. If the United States makes such a motion, the defendant is bound by the departure level recommended by the United States. It is understood that should the United States determine that the defendant has not provided substantial assistance in an investigation or prosecution, such a determination will release the United States from any obligation to make a motion pursuant to § 5K1.1, but will not entitle the defendant to withdraw his guilty plea once it has been entered. It is understood that, even if such a motion is made, the sentence to be imposed on the defendant remains within the sole discretion of the Court.

13. The United States and the defendant agree that with respect to the calculation of the advisory Guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments as set forth in Chapters 2, 3, 4, or 5 of the Sentencing Guidelines will be raised, argued, or are in dispute. However, at the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a sentence, including a period of incarceration and a fine, at the bottom of the applicable Guidelines range.

14. Subject to the ongoing, full, and truthful cooperation of the defendant described in paragraph 16 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 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.

15. The United States and the defendant understand that the Court retains complete discretion to accept or reject the agreed-upon Guidelines calculations provided for in Paragraph 8 of this Plea Agreement.

(a) If the Court does not accept the agreed-upon Guidelines calculations, the United States and the defendant agree that this Plea Agreement, except for Paragraph 15(b) below, shall be rendered void. Neither party may withdraw from this Plea Agreement, however, based on the type or location of the correctional facility to which the defendant is assigned to serve his sentence.

(b) If the Court does not accept the agreed-upon Guidelines calculations, the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws his 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. Evid. 410. In addition, the defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in Paragraph 17 below, shall be tolled for the

period between the date of the signing of the Plea Agreement and the date the defendant withdrew his guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

### **DEFENDANT'S COOPERATION**

16. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving any conspiracy to suppress and eliminate competition by allocating market shares and customers, rigging bids, and fixing prices for Puerto Rico freight services, 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 non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States;

(b) making himself available for interviews 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 *et seq.*);

(d) otherwise voluntarily providing the United States with any non-privileged 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 the grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-02), and obstruction of justice (18 U.S.C. § 1503 *et seq.*).

#### **GOVERNMENT'S AGREEMENT**

17. Subject to the full, truthful, and continuing cooperation of the defendant, as described in paragraph 16 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of 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 any conspiracy to suppress and eliminate competition by allocating market shares and customers, rigging bids, and fixing prices for Puerto Rico freight services or undertaken in connection with any investigation of such a conspiracy ("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.

18. The United States agrees that when the defendant travels to the United States for interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based upon any Relevant Offense, to subject the defendant to arrest, detention, or service of process, or to prevent the defendant from departing the United States. This paragraph does not apply to the defendant's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503, et seq.), or contempt (18 U.S.C. §§ 401 - 402) in connection with any testimony or information provided or requested in any Federal Proceeding.

19. The defendant understands that he may be subject to administrative action (including removal from the United States) by the United States Department of Homeland Security ("DHS") based upon the conviction resulting from this Plea Agreement, and that this plea agreement does not control, in any way, what action, if any, DHS may take. However, the United States agrees that, if administrative proceedings are instituted against the defendant based upon the conviction resulting from this Plea Agreement, it will advise DHS of the fact, manner and extent of the defendant's cooperation with the United States. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 16 of this Plea Agreement, the United States, in order to obtain the defendant's promised cooperation and assistance, further agrees to recommend that DHS not institute removal proceedings during the period of his cooperation and, if proceedings are ultimately instituted, when appropriate,

recommend that DHS grant deferred action status to the defendant.

20. 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. 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**

21. 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**

22. 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**

23. 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 16 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.

24. 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 Fed. R. Evid. 410.


ENTIRETY OF AGREEMENT

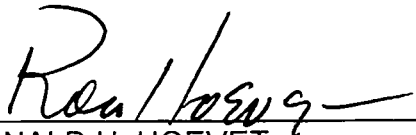
25. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.


26. 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.

27. 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.

DATED this 29<sup>th</sup> day of September, 2008.

BY:   
\_\_\_\_\_  
ALEXANDER G. CHISHOLM  
Defendant

  
\_\_\_\_\_  
RONALD H. HOEVET  
CELIA HOWES  
Counsel for defendant  
Alexander G. Chisholm

BY:   
\_\_\_\_\_  
JOHN F. TERZAKEN  
BRENT SNYDER  
FINNUALA M. KELLEHER  
MICHAEL L. WHITLOCK  
Trial Attorneys, Antitrust Division  
U.S. Department of Justice  
450 5<sup>th</sup> Street NW, Suite 11300  
Washington DC, 20530



ENTIRETY OF AGREEMENT

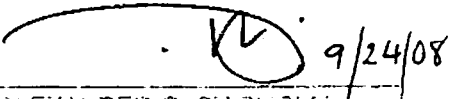
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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

BY:

  
\_\_\_\_\_  
ALEXANDER G. CHISHOLM  
Defendant

\_\_\_\_\_  
RONALD H. HOEVELT  
CELIA HOWES  
Counsel for defendant  
Alexander G. Chisholm

BY:

\_\_\_\_\_  
JOHN F. TERZAKEN  
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FINNIALA M. KELLEHER  
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Trial Attorneys, Antitrust Division  
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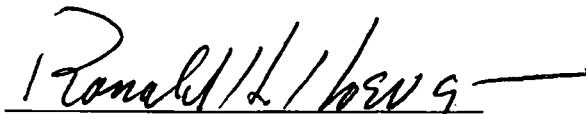
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DATED this 24<sup>TH</sup> day of September 2008.

BY: \_\_\_\_\_  
ALEXANDER G. CHISHOLM  
Defendant



RONALD H. HOEVET  
CELIA HOWES  
Counsel for defendant  
Alexander G. Chisholm

BY: \_\_\_\_\_  
JOHN F. TERZAKEN  
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