

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

D-9 THEODORE SAWCHUK,

Defendant.

CRIMINAL NO. 96-80009

HONORABLE: DENISE PAGE HOOD

VIOLATION: 15 U.S.C. § 1

OFFENSE: Sherman Act
Conspiracy

STATUTORY MAXIMUM
INCARCERATION: 3 Years

STATUTORY MAXIMUM
FINE: \$350,000

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the defendant, the attorney for the defendant, and the United States of America (hereinafter "government") agree as follows:

1. Guilty Plea
 - A. Defendant shall enter a plea of guilty to the Information.
 - B. The elements of the offense are: See Attachment A.

C. The parties stipulate to the following, which the government is prepared to prove, as an accurate factual basis for defendant's guilty plea: See Attachment B.

2. Sentence

A. Sentencing Guidelines Worksheets

The worksheets attached to this Agreement represent the joint position of the parties on the factors to be considered in calculating the appropriate sentence range under the Sentencing Guidelines promulgated under 28 U.S.C. § 994(a). The Court may accept or reject the position of the parties. If the defendant has provided false information that affects the calculation of the appropriate adjusted offense level, or if the government becomes aware, prior to the imposition of sentence, that the defendant's criminal history is more serious than appears on the attached worksheets, the government has the option of withdrawing from this Agreement. The defendant agrees that any delay resulting from such withdrawal shall be excludable delay for purposes of the Speedy Trial Act.

The parties acknowledge that the Court will determine the applicable sentencing factors at sentencing and that the Court's determination will affect the sentence range under the Sentencing Guidelines. The parties agree that all Sentencing Guidelines provisions that would affect defendant's guideline range have been identified in this Agreement (which includes the attached worksheets) and that the parties will raise no others. The government reserves the right,

however, to defend any of the Court's rulings and findings with respect to any sentencing issue on appeal or in any collateral proceeding, notwithstanding the other terms of this Agreement. The defendant will seek a downward departure only if the grounds are identified in the attached worksheets or elsewhere in this Agreement, or if the grounds did not exist prior to defendant's guilty plea.

B. Acceptance of Responsibility

Unless the government learns of new information to the contrary, the defendant will be entitled to a reduction of two levels in the adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, because the defendant will have accepted responsibility for the offense as demonstrated by the expected truthful admission of the defendant's participation in the offense.

C. Sentence Agreement

Pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, the government and the defendant agree that the appropriate offense level under the Sentencing Guidelines is a level 9. The government agrees to make no recommendation regarding incarceration, and the defendant is free to seek any sentence appropriate for a level 9 offense. Unless the Court determines that the defendant will not reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's dependents, U.S.S.G. § 5E1.2(e), a fine shall be imposed. The parties agree that a fine of \$20,000 will be imposed, payable in full within 15 days of sentencing, which is within the applicable Guidelines range.

The parties agree that calculation of double the gain or double the loss would unduly complicate or prolong the sentencing process. 18 U.S.C. § 3571(b) and (d). Therefore, the parties agree that such calculations are not appropriate for the crime to be charged. The defendant agrees that the fine is to be paid to the United States and agrees not to propose or advocate that any payment be made, or service rendered to any person, organization, institution or agency in lieu of the fine or any part of the fine. The defendant agrees that he will not, absent a written agreement with the United States, file any motion to reduce, modify or alter the fine imposed upon him by the Court so long as the fine does not exceed \$20,000, and that in no event will the defendant seek to reduce the fine to less than \$20,000. In determining the amount of the fine, the Court shall consider the expected costs to the government of any term of imprisonment, probation, or supervised release.

The Court may accept or reject this Agreement, or may defer its decision until it has an opportunity to consider the presentence report. Defendant agrees that the Court may inspect the presentence report before it accepts or rejects this Plea Agreement. If the Court rejects this Agreement, it shall afford the defendant the opportunity to withdraw the plea of guilty and advise the defendant that if the plea is not withdrawn, the sentence may be greater than the maximum provided for in this Agreement.

D. Nonapplicability of Sentence Agreement

Any limitations on the sentence that are contained in this Agreement will not apply if the defendant is sentenced to probation and the probation is revoked, or if a Court rules that the defendant has violated any condition of supervised release that is imposed.

E. Supervised Release

If defendant is sentenced to a term of imprisonment, the defendant will be sentenced to a term of supervised release, to be served after incarceration, of not more than 1 year. 18 U.S.C. § 3583(b)(3).

F. Supervised Release Violations

The term of supervised release to which the defendant is sentenced will be a specific (i.e., a determinate) term chosen by the Court at sentencing. The combination of prison time and supervised release is permitted, by law, to exceed the maximum term of incarceration allowed under the statute that defendant is pleading guilty to violating. Violation of any condition of supervised release may result in defendant being imprisoned for the entire term of supervised release, 18 U.S.C. § 3583(e)(3), or being prosecuted for contempt of Court, 18 U.S.C. § 401(3).

G. Special Assessment

The defendant will pay a special assessment of \$50 in addition to any fine imposed. This assessment will be paid by the defendant before sentence is imposed,

and the defendant will furnish a receipt at sentencing. Payment is to be made to the United States District Court, Clerk's Office, Room 133, Federal Building and United States Courthouse, Detroit, Michigan 48226.

H. Restitution

The parties agree that, in addition to imposing a fine, the Court, pursuant to 18 U.S.C. §§ 3563(b)(2), 3583 and 3663-64, and § 5E1.1 of the Sentencing Guidelines, may order the defendant to pay restitution in an amount equal to the loss caused to any victims of the offense(s) charged in the Information. Defendant agrees to notify General Motors Corporation of his guilty plea, in addition to tendering a copy of the Plea Agreement and Information. Defendant further agrees to negotiate a settlement agreement with General Motors Corporation to resolve any damages arising out of defendant's participation in the conspiracy to suppress and eliminate competition by allocating contracts for tooling to General Motors Corporation ("the bid-rigging conspiracy.") The United States and defendant agree that this settlement should constitute full restitution to the victim of the bid-rigging conspiracy charged in the Information.

3. Cooperation

A. Truthful Information and Assistance

The defendant promises to provide truthful and complete information to the government, including a full debriefing and truthful testimony at all proceedings, criminal, civil, or administrative, including, but not limited to, grand jury

proceedings, trials, and pretrial and post-trial proceedings, concerning his and others' involvement in bid rigging in the automotive industry. The defendant agrees to cooperate in good faith, meaning that he will not only respond truthfully and completely to all questions asked, but will also volunteer all information that is reasonably related to the subjects discussed in the debriefing. In other words, the defendant may not omit facts about crimes, participants, or his involvement, and then claim not to have breached the Agreement because he was not specifically asked questions about those crimes, participants, or involvement. The defendant agrees to be available for interviews in preparation of all testimony. The defendant agrees to produce all documents (including claimed personal documents) and other materials in his possession, custody, or control requested by attorneys and agents of the United States investigating bid rigging in the automotive industry. The defendant further agrees to submit, upon request, to government-administered polygraph examinations to verify defendant's full and truthful cooperation. Any actions or statements inconsistent with continued cooperation under this Agreement including, but not limited to, criminal activity, or a statement indicating a refusal to testify, constitute a breach of this Agreement.

The defendant agrees to identify all property known to him, in which he or any other person has a legal or equitable interest, that is or was the proceeds of, or acquired with the proceeds of, the charged bid-rigging conspiracy or that was used in any manner to facilitate the bid-rigging conspiracy. The defendant also agrees to

identify the extent of any person's or entity's (including defendant's) interest in any such property.

B. Use of Information Against Defendant

In exchange for defendant's agreement to cooperate with the government, as outlined above, the government agrees not to use new information that defendant provides (pursuant to this Agreement) about his own criminal conduct against him at sentencing in this case. Such information may be revealed to the Court, but may not be used against the defendant in determining defendant's sentence range, choosing a sentence within the range, or departing from the range. There shall be no such restrictions on the use of information: (1) previously known to law enforcement agencies; (2) revealed to law enforcement agencies by, or discoverable through, an independent source; (3) in a prosecution for perjury or giving a false statement; or (4) in the event there is a breach of this Agreement.

4. Consequences of Violating Agreement

A. Government's Options

If the defendant fails to keep any promise in this Agreement (including any promise to cooperate), the government is relieved of any obligation not to prosecute the defendant on bid-rigging or other charges. Such charges may be brought without prior notice. In addition, if the government determines after sentence is imposed under this Agreement that the defendant's breach of the Agreement warrants further prosecution, the government will have the choice between

allowing the conviction under this Plea Agreement to stand or moving to vacate such conviction so that such charge(s) may be re-prosecuted as well. If the government makes its determination before sentencing, it may withdraw from the Plea Agreement in its entirety.

B. Waiver of Rights

Defendant agrees that if he fails to keep any promise made in this Agreement, defendant gives up:

(1) the right not to be placed twice in jeopardy for the offense to which the defendant entered a plea of guilty or which was dismissed under this Agreement;

(2) any right under the Constitution and laws of the United States to be charged or tried in a more speedy manner for any charge that is brought as a result of the defendant's failure to keep this Agreement; and

(3) the right to be charged within the applicable statute of limitations period for any charge that is brought as a result of the defendant's failure to keep this Agreement, and on which the statute of limitations expired after defendant entered into this Agreement.

5. Waiver of Appeal Rights

Defendant agrees not to appeal or otherwise challenge the constitutionality or legality of the Sentencing Guidelines. Defendant agrees to waive his right to assert at trial or on appeal any defect or error arising from the Information, the

Information process, the fact that he has been prosecuted by way of an Information, or the accuracy of any factor stipulated in the attached worksheets.

Except as otherwise provided, the defendant expressly waives the right to appeal his sentence, including any appeal right conferred by 18 U.S.C. § 3742, and the defendant further agrees not to contest his sentence in any post-conviction proceeding including, but not limited to, a proceeding under 28 U.S.C. § 2255. The defendant, however, reserves the right to appeal: (a) any punishment imposed in excess of a statutory maximum; (b) any punishment to the extent it constitutes an upward departure from the Guidelines range deemed most applicable by the sentencing court; (c) on the grounds of arithmetic errors in the Guidelines calculations; and (d) on the ground of ineffective assistance of counsel.

6. Representation of Counsel

Defendant has thoroughly reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with that attorney's legal representation. The defendant has received explanations satisfactory from his attorney concerning each paragraph of this Plea Agreement, and the alternatives available to the defendant other than entering into this Agreement. After conferring with counsel, the defendant has concluded that it is in his best interest to enter into this Plea Agreement.

7. Voluntary Plea

This plea of guilty is freely and voluntarily made and not the result of force or threats or of promises or representations apart from those set forth in this Plea Agreement. There have been no representations or promises from anyone as to what sentence this Court will impose.

8. Other Promises by the Government

The government agrees that it will not prosecute defendant for any other offenses committed prior to the date of this Plea Agreement relating to bid rigging in the automotive industry of which the government is aware at the time of defendant's guilty plea. This non-prosecution agreement does not apply to any crimes of violence or any violations of federal tax or securities laws.

9. Miscellaneous

A. No Other Terms

This Agreement, together with the agreement tolling the statute of limitations (Attachment 1 to the Information), incorporates the complete understanding between the parties, and no other promises have been made by the government to the defendant or to the attorney for the defendant. This Agreement does not prevent any governmental agency from pursuing civil or administrative actions against the defendant or any property. Unless an exception to this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or obligate governmental entities other than the United States Attorney's

Office for the Eastern District of Michigan and the Antitrust Division of the United States Department of Justice.

B. Acceptance

This plea offer is explicitly conditioned on receipt by the Office of the United States Attorney of this fully signed Plea Agreement no later than 5:00 p.m. on _____ . It is defendant's sole and complete responsibility to provide timely delivery in order for this offer to be effectively accepted.

SAUL A. GREEN
United States Attorney

THEODORE SAWCHUK

KEITH E. CORBETT
Assistant U.S. Attorney
Eastern District of Michigan

DENNIS CLARK
Counsel for Theodore Sawchuk

ERIC M. STRAUS
Assistant U.S. Attorney

MICHAEL F. WOOD
Assistant Chief, Cleveland Field Office
Antitrust Division

KEVIN C. CULUM
Attorney, Cleveland Field Office
Antitrust Division

Dated:

ELEMENTS OF OFFENSE

Information: One Count - Conspiracy to suppress and restrain interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

Penalty: Individual - The statutory maximum sentence is a fine in an amount equal to the greatest of: (1) \$350,000; (2) twice the pecuniary gain derived from the crime; or (3) twice the pecuniary loss caused to the victims; or imprisonment not exceeding three years, or both, in the discretion of the Court. A mandatory special assessment of \$50. Probation and restitution may be imposed.

Elements of the Offense:

The essential elements which must be proved beyond a reasonable doubt in order to establish the offense charged in the Information are as follows:

1. That the conspiracy, agreement, or understanding described in the Information, was knowingly formed, and was existing at or about the time alleged;
2. That the Defendant knowingly became a member of the conspiracy, agreement, or understanding, as charged;
3. That the alleged conspiracy constituted an unreasonable restraint of interstate commerce; and
4. That the offense was carried out, in part, in the Eastern District of Michigan within the five years preceding the filing of the Information.

**FACTUAL BASIS - THEODORE SAWCHUK
INFORMATION**

Beginning in approximately 1989 and continuing up to approximately April 1995, Theodore Sawchuk, President of SA-GO Industries, Inc., entered into a conspiracy with Rick Bellestri, president of Jedav Industries, Inc., Albert Charles, an engineer for General Motors Corporation, and others to rig bids for tooling contracts offered by General Motors. Essentially, Theodore Sawchuk, Rick Bellestri, Albert Charles, and their co-conspirators agreed, in advance of the bids, which co-conspirator would be the winning bidder and which would submit intentionally high, non-competitive bids to General Motors. All of the conspirators submitted bids. The designated winning bidder was rotated among the conspirators. It was the responsibility of the intended low bidder to prepare fictitious higher losing bid figures (dollar amounts for the other competitors). Usually, all of the bid figures were delivered or faxed to Jedav Industries. Rick Bellestri, in turn, distributed these (high) bid figures to the other conspirators for later submission to General Motors.

A further part of the conspiracy was to "kickback" 5% (in cash) or 10% (by check) of the value of the awarded contract to Rick Bellestri. The conspirators were billed by real or fictitious companies on fraudulent invoices for work which was never actually performed. The conspirators' checks were made out to the fictitious companies and either mailed or delivered to Bellestri. Bellestri had these checks either cashed at party stores or used to pay construction costs for an office building owned by Bellestri in

Utica, Michigan. Theodore Sawchuk caused at least one such check, made out to Niagara Engineering, to be paid by SA-GO Industries, Inc., for work awarded to it by General Motors.

A percentage of the money received from his conspirators was passed on by Rick Bellestri to Albert Charles in order to compensate Charles for his role in the conspiracy. This took the form of cash, fictitious loans or checks drawn on the business checking account of Jedav Industries, Inc. made out to a motorcycle dealership in the State of Illinois. Albert Charles then purchased motorcycles, motorcycle parts and/or service from this dealership. Albert Charles continued to receive monies for his participation in the conspiracy into 1995.