

ATTACHMENT

FACTUAL BASIS FOR THE CHARGED OFFENSES

The Defendant, HOWARD B. BAHM, acknowledges that he committed four violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, as alleged in the Information. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

BACKGROUND

1. At all times relevant to this Plea Agreement and the Information, HOWARD B. BAHM worked for a scrap metal company which did business in Northeast Ohio and elsewhere as Harry Rock & Company, with its headquarters and principal place of business in Cleveland, Ohio. HOWARD B. BAHM was a long-time employee of Harry Rock & Company, having begun working for the company in the 1950s. In December 1993, Harry Rock & Company was purchased by MW Acquisition Corp., an Ohio corporation, and HOWARD B. BAHM entered into a long-term employment contract with MW Acquisition Corp. In December 1993, MW Acquisition Corp. changed its name to Harry Rock & Company, an Ohio corporation. In May 1995, Harry Rock & Company again changed its name, to Harry Rock & Associates, Inc., an Ohio corporation. In July 1998, Harry Rock & Associates, Inc., merged out of existence as an Ohio corporation and into existence as a Florida corporation of the same name. For purposes of this Plea Agreement and the Information, the parties collectively refer to the companies identified above in this paragraph as "Rock."

2. At all times relevant to this Plea Agreement and the Information, HOWARD B. BAHM purchased ferrous and nonferrous scrap metal for Rock. In addition to being an employee of Rock, HOWARD B. BAHM was its president. Rock was engaged in the purchase and sale of ferrous and nonferrous scrap metal, both inside and outside the State of Ohio, including in Northeast Ohio. The scrap metal

purchased by Rock was sold to customers such as mills and foundries, both inside and outside the State of Ohio.

3. At all times relevant to this Plea Agreement and the Information: (1) Rock purchased ferrous and nonferrous scrap metal from companies and individuals located in and outside the State of Ohio; (2) Rock sold or shipped ferrous and nonferrous scrap metal to companies and individuals located in and outside the State of Ohio; and (3) Rock caused ferrous and nonferrous scrap metal to be purchased from, or to be sold to, or to be shipped from or to, companies and individuals located in and outside the State of Ohio. Substantial quantities of ferrous and nonferrous scrap metal that the Defendant bought for Rock, and which Rock sold, as well as scrap metal bought and sold by co-conspirators, were shipped across state lines in a continuous and uninterrupted flow of interstate commerce from its place of origin to locations in and outside the State of Ohio. In addition, invoices and payments related to Rock's scrap metal purchases and sales crossed state lines.

COUNT I

4. **Elements of the Offense.** HOWARD B. BAHM acknowledges that he violated Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and that the facts establish all of the elements of the offense, as follows:

- (a.) The Defendant knowingly and willfully participated in a combination and conspiracy (*i.e.*, agreement) to suppress and eliminate competition by allocating suppliers and rigging bids in the purchase of ferrous and nonferrous scrap metal in Northeast Ohio. (The Defendant's co-conspirators in Count I were other individuals and companies engaged in the purchase and sale of scrap metal, some of whom were different than those involved in the other counts.);
- (b.) The business activities of the Defendant and his co-conspirators in connection with the purchase and sale of scrap metal affected by this

conspiracy were within the flow of, and substantially affected, interstate commerce, and constituted an unreasonable restraint of trade; and

- (c.) The conspiracy charged in Count I of the Information was formed and carried out, in part, within the Northern District of Ohio within five years preceding the filing of this Plea Agreement and the Information.

5. **Details of the Offense Conduct.** More specifically, beginning at least as early as December 1993, and continuing at least until October 1999, HOWARD B. BAHM engaged in numerous meetings and conversations with his co-conspirators in furtherance of their illegal agreement not to compete against each other. (At least some of the co-conspirators and suppliers victimized by the charged conduct in Count I were different than those involved in the other counts.) In short, the Defendant and his co-conspirators divided-up scrap metal suppliers between themselves and rigged bids consistent with their agreement as to which designated co-conspirator was going to buy scrap metal from a particular account. As part of their illegal agreement, HOWARD B. BAHM and his co-conspirators agreed to, and did, stay away from each other's scrap metal suppliers, denying them the benefits of free and unfettered competition and subverting the competitive process. HOWARD B. BAHM and his co-conspirators also rigged bids to particular scrap metal suppliers by discussing, and then agreeing on, who would win particular bid contracts. At times, pursuant to their agreement, intentionally low, non-competitive bids were submitted by one co-conspirator to enable another co-conspirator to win a particular bid. At other times, it was agreed that one co-conspirator would simply refrain from submitting a bid, thus enabling another co-conspirator to win that bid. In carrying out the bid-rigging aspect of their agreement, HOWARD B. BAHM and his co-conspirators sometimes exchanged with each other specific price information and agreed on the specific prices to be submitted for a particular bid.

COUNT II

6. **Elements of the Offense.** HOWARD B. BAHM acknowledges that he violated Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and that the facts establish all of the elements of the offense, as follows:

- (a.) The Defendant knowingly and willfully participated in a combination and conspiracy (*i.e.*, agreement) to suppress and eliminate competition by allocating suppliers and rigging bids in the purchase of ferrous and nonferrous scrap metal in Northeast Ohio. (The Defendant's co-conspirators in Count II were other individuals and companies engaged in the purchase and sale of scrap metal, some of whom were different than those involved in the other counts.);
- (b.) The business activities of the Defendant and his co-conspirators in connection with the purchase and sale of scrap metal affected by this conspiracy were within the flow of, and substantially affected, interstate commerce, and constituted an unreasonable restraint of trade; and
- (c.) The conspiracy charged in Count II of the Information was formed and carried out, in part, within the Northern District of Ohio within five years preceding the filing of this Plea Agreement and the Information.

7. **Details of the Offense Conduct.** More specifically, beginning at least as early as December 1993, and continuing at least until November 1999, HOWARD B. BAHM engaged in numerous meetings and conversations with his co-conspirators in furtherance of their illegal agreement not to compete against each other. (At least some of the co-conspirators and suppliers victimized by the charged conduct in Count II were different than those involved in the other counts.) In short, the Defendant and his co-conspirators divided-up scrap metal suppliers between themselves and rigged bids consistent with their agreement as to which designated co-conspirator was going to buy scrap metal from a particular account.

As part of their illegal agreement, HOWARD B. BAHM and his co-conspirators agreed to, and did, stay away from each other's scrap metal suppliers, denying them the benefits of free and unfettered competition and subverting the competitive process. HOWARD B. BAHM and his co-conspirators also rigged bids to particular scrap metal suppliers by discussing, and then agreeing on, who would win particular bid contracts. At times, pursuant to their agreement, intentionally low, non-competitive bids were submitted by one co-conspirator to enable another co-conspirator to win a particular bid. At other times, it was agreed that one co-conspirator would simply refrain from submitting a bid, thus enabling another co-conspirator to win that bid. In carrying out the bid-rigging aspect of their agreement, HOWARD B. BAHM and his co-conspirators sometimes exchanged with each other specific price information and agreed on the specific prices to be submitted for a particular bid.

COUNT III

8. **Elements of the Offense.** HOWARD B. BAHM acknowledges that he violated Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and that the facts establish all of the elements of the offense, as follows:

- (a.) The Defendant knowingly and willfully participated in a combination and conspiracy (*i.e.*, agreement) to suppress and eliminate competition by allocating suppliers and rigging bids in the purchase of ferrous and nonferrous scrap metal, principally in Northeast Ohio. (The Defendant's co-conspirators in Count III were other individuals and companies engaged in the purchase and sale of scrap metal, some of whom were different than those involved in the other counts.);
- (b.) The business activities of the Defendant and his co-conspirators in connection with the purchase and sale of scrap metal affected by this conspiracy were within the flow of, and substantially affected,

interstate commerce, and constituted an unreasonable restraint of trade; and

- (c.) The conspiracy charged in Count III of the Information was formed and carried out, in part, within the Northern District of Ohio within five years preceding the filing of this Plea Agreement and Information.

9. **Details of the Offense Conduct.** More specifically, beginning at least as early as April 1997, and continuing at least until March 2000, HOWARD B. BAHM engaged in numerous meetings and conversations with his co-conspirators in furtherance of their illegal agreement not to compete against each other. (At least some of the co-conspirators and suppliers victimized by the charged conduct in Count III were different than those involved in the other counts.) In short, the Defendant and his co-conspirators divided-up scrap metal suppliers between themselves and rigged bids consistent with their agreement as to which designated co-conspirator was going to buy scrap metal from a particular account. As part of their illegal agreement, HOWARD B. BAHM and his co-conspirators agreed to, and did, stay away from each other's scrap metal suppliers, denying them the benefits of free and unfettered competition and subverting the competitive process. HOWARD B. BAHM and his co-conspirators also rigged bids to particular scrap metal suppliers by discussing, and then agreeing on, who would win particular bid contracts. At times, pursuant to their agreement, intentionally low, non-competitive bids were submitted by one co-conspirator to enable another co-conspirator to win a particular bid. At other times, it was agreed that one co-conspirator would simply refrain from submitting a bid, thus enabling another co-conspirator to win that bid. In carrying out the bid-rigging aspect of their agreement, HOWARD B. BAHM and his co-conspirators sometimes exchanged with each other specific price information and agreed on the specific prices to be submitted for a particular bid. As part of the conspiratorial conduct, a *quid pro quo*

agreement was struck whereby one of the co-conspirators agreed to sell a certain amount of scrap metal each month to another co-conspirator at a reduced price.

COUNT IV

10. **Elements of the Offense.** HOWARD B. BAHM acknowledges that he violated Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and that the facts establish all of the elements of the offense, as follows:

- (a.) The Defendant knowingly and willfully participated in a combination and conspiracy (*i.e.*, agreement) to suppress and eliminate competition by rigging a bid for the purchase of ferrous and nonferrous scrap metal in Northeast Ohio. (The Defendant's co-conspirators in Count IV were other individuals and companies engaged in the purchase and sale of scrap metal, some of whom were different than those involved in the other counts.);
- (b.) The business activities of the Defendant and his co-conspirators in connection with the purchase and sale of scrap metal affected by this conspiracy were within the flow of, and substantially affected, interstate commerce, and constituted an unreasonable restraint of trade; and
- (c.) The conspiracy charged in Count IV of the Information was formed and carried out, in part, within the Northern District of Ohio within five years preceding the filing of this Plea Agreement and Information.

11. **Details of the Offense Conduct.** More specifically, beginning at least as early as March 1995, and continuing until at least May 1997, HOWARD B. BAHM engaged in meetings and conversations with his co-conspirators in furtherance of an illegal agreement to rig a bid. (At least some of the co-conspirators and suppliers victimized by the charged conduct involved in Count IV were different than those involved in other counts.) As part of their illegal agreement, HOWARD B. BAHM and his co-conspirators agreed to, and did, rig the

bid to a prominent scrap metal supplier in Northeast Ohio. Pursuant to their illegal agreement, it was agreed that intentionally low, non-competitive bids would be submitted to enable one of the co-conspirators to be awarded the bid. In fact, intentionally low bids were submitted by co-conspirators and the bid was awarded to the agreed-upon “winner.” As part of this conspiracy, a *quid pro quo* agreement was struck whereby representatives of two scrap metal companies, including HOWARD B. BAHM for Rock, agreed to sell approximately 1000 tons of scrap metal to a co-conspirator in return for that co-conspirator’s agreement to submit the low, complementary bid.

THE DEFENDANT’S ROLE IN THE OFFENSE

12. The Defendant acknowledges that, on behalf of Rock, he was an organizer or leader in the criminal activity charged above. The criminal activity charged above affected all of Rock’s scrap metal purchases, approximately \$104 million, from December 1993 through March 2000, and required extensive planning and policing of the agreement. The criminal activity also affected nearly all of the Defendant’s co-conspirators’ scrap metal purchases.

OTHER RELEVANT CONDUCT

13. The Defendant understands that the United States and the Defendant will each have the right to provide the Court with additional details and supporting evidence pertaining to the offenses of conviction and other relevant conduct, with the understanding that the parties agree that the additional details will not affect their stipulations concerning the Sentencing Guideline computations in this Plea Agreement.

"/s/"
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