

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

	X	
UNITED STATES OF AMERICA	:	Criminal No. 2:16-CR-00065-JLL
	:	
v.	:	Filed:
	:	
BRIAN C. STEPPIG,	:	Violation: 15 U.S.C. § 1
	:	
Defendant.	:	
	:	
	X	

PLEA AGREEMENT

The Antitrust Division of the United States Department of Justice and the defendant, BRIAN C. STEPPIG (“STEPPIG” or “defendant”) hereby enter into the following Plea Agreement (“Agreement”) pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”).

RIGHTS OF DEFENDANT

1. STEPPIG understands his rights:
 - (a) to be represented by an attorney;
 - (b) to plead not guilty to any criminal charge brought against him;
 - (c) 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;
 - (d) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;

- (e) not to be compelled to incriminate himself;
- (f) to appeal his conviction, if he is found guilty; and
- (g) to appeal the imposition of sentence against him.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. STEPPIG knowingly and voluntarily waives the rights set out in subparagraphs (a)-(g) above.

3. STEPPIG will plead guilty to the criminal charge described in Schedule A pursuant to the terms of this Agreement and will make a factual admission of guilt to this Court in accordance with Fed. R. Crim. P. 11.

UNITED STATES' AGREEMENT

4. Upon the Court's acceptance of the guilty plea called for by this Agreement, the United States will not bring further criminal charges against STEPPIG for any act or offense committed before the date of the signature of this Agreement that was in furtherance of any agreement to rig bids and allocate customers for, and to fix the price of, liquid aluminum sulfate supplied to municipalities and pulp and paper companies in the United States. 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 conspiracy to commit such offenses, or to any crime of violence.

5. It is understood that this Agreement does not bind any other federal agency or local prosecuting authority or administrative agency other than the Antitrust Division of the United States Department of Justice. However, if requested, the Antitrust Division will bring the Agreement to the attention of other prosecuting, administrative, and other agencies as a matter for such agencies to consider as appropriate.

POSSIBLE MAXIMUM PENALTIES

6. STEPPIG understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- a. a term of imprisonment for ten (10) years (15 U.S.C. § 1);
- b. a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1 and 18 U.S.C. § 3571(b) and(d));
- c. a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, he could be imprisoned up to two (2) years (18 U.S.C. § 3559(a)(3), 18 U.S.C. § 3583(b)(2) and (e)(3), and U.S.S.G. § 5D1.2(a)(2)).

7. In addition, STEPPIG understands that:

- a. pursuant to U.S.S.G § 5E1.1 or 18 U.S.C. § 3583(d), the Court may impose an order of restitution to the victims of the offense; and
- b. pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

8. STEPPIG understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing a sentence. The parties agree there is no *ex post facto* issue under the Sentencing Guidelines. STEPPIG understands that the Court will make Sentencing Guidelines determinations by a preponderance of the evidence

standard. STEPPIG understands that although the Court is not ultimately bound to impose a sentence within the applicable Sentencing 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

9. The United States and STEPPIG agree to stipulate at sentencing to the statements set forth in the attached Schedule A. This agreement to stipulate, however, cannot and does not bind the Court, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of the United States is based on the information and evidence that the United States possesses as of the date of this agreement. Thus, if the United States obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, the United States shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either the United States or STEPPIG from any other portion of this agreement, including any other stipulation. If the Court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the Court was within its discretion and authority to do so. These stipulations do not restrict the United States' right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

10. STEPPIG understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. It is understood that the Sentencing Guidelines are not binding on the Court. STEPPIG acknowledges that the entry of his guilty plea to the charged

offense authorizes the sentencing judge to impose any sentence up to and including the statutory maximum sentence. The United States cannot and does not make any promises or representations as to what sentence STEPPIG will receive. STEPPIG understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence within the agreed total Sentencing Guidelines offense level contained in Schedule A, he nevertheless has no right to withdraw his plea of guilty. The United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of STEPPIG's activities with respect to this case; and (c) all other activities of STEPPIG which the United States deems relevant to sentencing. In so doing, the United States may use any information it deems relevant, including information provided by STEPPIG both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the nature of the offense charged in the attached Indictment, the participation of STEPPIG therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of STEPPIG, and to supply any other information that the Court may require. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, STEPPIG agrees that any charges that are not time-barred by the applicable statute of limitations on the date this Agreement is signed by STEPPIG may be commenced against him, notwithstanding the expiration of the limitations period after STEPPIG signs the Agreement.

11. STEPPIG understands that this Agreement does not in any way affect or limit the right of the United States to respond to and take positions on post-sentencing motions or requests for information that relate to the reduction or modification of its sentence.

REPRESENTATION BY COUNSEL

12. STEPPIG has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. STEPPIG has thoroughly reviewed this Agreement with his attorney, and has received satisfactory explanations from his attorney concerning each paragraph of this Agreement and alternatives available to him other than entering into this Agreement. After conferring with his attorney and considering all available alternatives, STEPPIG has made a knowing and voluntary decision to enter into this Agreement.

VOLUNTARY PLEA

13. STEPPIG's decision to enter into this 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 Agreement. The United States has made no promises or representations to STEPPIG as to whether the Court will accept or reject the recommendations contained within this Agreement.

VIOLATION OF PLEA AGREEMENT

14. STEPPIG agrees that, should the United States determine in good faith that he has violated any provision of this Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, facsimile transmission, or electronic mail, and may also notify counsel by telephone of its intention to void any of its obligations under this Agreement (except its obligations under this paragraph), and STEPPIG 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 Agreement. STEPPIG agrees that, in the event that the United States is released from its obligations under this Agreement and brings criminal charges against him for any offense referred to in Paragraph

1 of this Agreement, the statute of limitations period for such offense shall be tolled for the period between the date of the signing of this Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Agreement.

15. STEPPIG understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Agreement based on his violation of the 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, STEPPIG unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

16. This Agreement constitutes the entire agreement between the United States and STEPPIG concerning the disposition of the criminal charge contained in this case. This Agreement cannot be modified except in writing, signed by the parties.

17. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Agreement on behalf of the United States.

Respectfully submitted,

Dated: *December 28, 2017*


BRIAN C. STEPPIG


J. BRUCE MAFFEO, ESQ.
Counsel for BRIAN C. STEPPIG


PATRICIA L. JANNACO
MARY ANNE F. CARNIVAL
FRANK A. CAVANAGH
Trial Attorneys, Antitrust Division
United States Department of Justice
26 Federal Plaza, Suite 3630
New York, New York 10278
Tel: (212) 335-8034
Email: patricia.jannaco@usdoj.gov

PLEA AGREEMENT WITH BRIAN C. STEPPIG

Schedule A

The United States and STEPPIG agree to stipulate to the following:

1. From approximately 2005 to February 2011, STEPPIG knowingly joined and participated in a conspiracy to eliminate and suppress competition by agreeing to rig bids and allocate customers for, and to fix, stabilize, and maintain the price of liquid aluminum sulfate to municipalities and pulp and paper companies in the United States, in violation of Section One of the Sherman Act, 15 U.S.C. § 1.

2. The United States and STEPPIG recognize that the United States Sentencing Guidelines (“U.S.S.G.” or “Sentencing Guidelines”) are not binding on the Court. The United States and STEPPIG nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence STEPPIG in accordance with those stipulations.

3. The version of the Sentencing Guidelines effective November 1, 2016 applies in this case.

4. The offense with which STEPPIG is charged is a violation of 15 U.S.C. § 1. The applicable guideline for that offense is U.S.S.G. § 2R1.1, which carries a Base Offense Level of 12.

5. Specific Offense Characteristic U.S.S.G. § 2R1.1(b)(1) applies in that the conduct involved an agreement to submit noncompetitive bids. The offense level is therefore increased by 1 level.

6. Specific Offense Characteristic U.S.S.G. § 2R1.1(b)(2) does not apply because the volume of commerce attributable to STEPPIG is less than \$1 million.

7. The adjusted offense level is 13.

8. As of the date of this Agreement, STEPPIG has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if STEPPIG's acceptance of responsibility continues through the date of sentencing. *See* U.S.S.G. § 3E1.1(a).

9. In accordance with the above, the parties agree that the total Sentencing Guidelines offense level applicable to STEPPIG is 11 (the "agreed total Sentencing Guidelines offense level").

10. The parties agree that a sentence within the Sentencing Guidelines range that results from the agreed total Sentencing Guidelines offense level is reasonable. The United States agrees not to oppose a sentence of probation.

11. The United States agrees not to oppose STEPPIG's anticipated request for a downward mitigating role adjustment of 3 levels pursuant to U.S.S.G. § 3B1.2. The parties agree that, should the Court grant STEPPIG's request for a 3-level mitigating role adjustment, the total offense level applicable to STEPPIG would be 8.

12. In light of the availability of civil causes of action, in the District of New Jersey and elsewhere, which potentially provide for a recovery of a multiple of actual damages, the United States and STEPPIG agree that any sentencing recommendation either party may make to the Court will not include an order of restitution for the offense charged in the Indictment.

13. STEPPIG knowingly and voluntarily, except as noted below in this paragraph, 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. § 2255, which challenges the sentence imposed by the Court if that sentence falls within or below the Sentencing Guidelines range that results from the agreed total Sentencing Guidelines offense

level of 11. The United States' agreement not to oppose a sentence of probation or STEPPIG's anticipated request for a downward mitigating role adjustment of 3 levels pursuant to U.S.S.G. § 3B1.2 in paragraphs 10 and 11 does not preclude the United States from defending on appeal a sentence greater than probation, a denial in whole or in part of a downward mitigating role adjustment, or any other aspect of the sentencing if STEPPIG appeals his sentence. The United States will not file any appeal, motion, or writ which challenges the sentence imposed by the Court if that sentence falls within or above the Sentencing Guidelines range that results from the agreed total Sentencing Guidelines offense level of 11. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the Court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Sentencing Guidelines analysis different from that stipulated to herein. Furthermore, if the Court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the Court erred in doing so.