

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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UNITED STATES OF AMERICA,)
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Plaintiff;)
)
vs.) Case No. 96 CR 640
)
ARCHER DANIELS MIDLAND COMPANY,) Chicago, Illinois
) October 15, 1996
Defendant.) 12:10 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RUBEN CASTILLO

APPEARANCES:

For the Plaintiff: JAMES B. BURNS, U.S. ATTORNEY, BY
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U.S. DEPARTMENT OF JUSTICE
Antitrust Division
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Court Reporter:

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Official Court Reporter
United States District Court
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1 (Proceedings heard in open court:)

2 THE CLERK: 96 CR 640, United States versus Archer
3 Daniels Midland Company.

4 THE COURT: Good afternoon.

5 MR. LASSAR: Good afternoon, Judge. Scott Lassar for
6 the United States and Jim Griffin and Phillip Warren who are
7 with the Antitrust Division of the Department of Justice.

8 MR. WARREN: Good morning.

9 MR. DANIEL: Good morning, Your Honor, Aubrey Daniel
10 and Barry Simon of Williams and Connolly for the defendant,
11 Archer Daniels Midland Company.

12 MR. LASSAR: Your Honor, we filed this information
13 this morning. We consulted with the clerk's office, and the
14 clerk's office said that the case could not be assigned to Your
15 Honor because it was not a superseding indictment, and so it's
16 a related case which had to go on the wheel, and it was
17 assigned to Judge Zagel. The clerk gave me to give to you the
18 Judge's copy of the information, which I'll tender it to the
19 Court.

20 THE COURT: Okay. As I understand it, I currently
21 have assigned to my criminal docket the cases against, for lack
22 of a better word, I will say the Japanese corporations involved
23 in this situation.

24 I do believe that this case is related to that; but in
25 any event, because of my capacity as serving as the emergency

1 judge, I do have jurisdiction to proceed. So if you wish to
2 proceed, I think we can proceed, at least that's my
3 information, and I do believe that that is appropriate.

4 How is it that the company wishes to proceed at this
5 point, given the information?

6 MR. DANIEL: Your Honor, we'd like to enter a plea
7 today and be sentenced pursuant to a plea agreement we've
8 entered into with the government.

9 THE COURT: Okay, do you have a copy of the plea
10 agreement?

11 MR. GRIFFIN: Yes. We have the plea agreement, Your
12 Honor, and the waiver of indictment.

13 THE COURT: Okay. I've been tendered a one-page
14 document labeled Waiver of Indictment in the case of United
15 States of America versus Archer Daniels Midland Company and
16 also a copy of a plea agreement that is 17 pages long.

17 Before I can accept the offer of plea of guilty and
18 waiver of indictment, I need to determine a number of things.
19 I need to determine that, in the first instance, an officer or
20 an authorized employee of the corporation has authorized this
21 plea and that an appropriate agent is here to attest to that.

22 I need to determine that the corporation has had the
23 adequate assistance of counsel; that it understands its rights
24 to be prosecuted only by way of an indictment and its trial
25 rights; that it understands the charges against it; that the

1 waiver of indictment and plea is voluntary; and that there is a
2 factual basis for the plea.

3 In this situation, who is serving as the corporate
4 representative to answer these questions?

5 MR. DANIEL: Your Honor, I'd like to introduce
6 Mr. Steven R. Mills, controller, who's been duly authorized by
7 the special committee of the corporation which was formed to
8 supervise this matter and has formally passed a resolution
9 which I've shared with counsel for the government, specifically
10 designating Mr. Mills to be the corporate representative for
11 the purpose of responding to the questions Your Honor has
12 raised.

13 THE COURT: Okay. Then Mr. Mills, if you would step
14 forward. I must place you under oath and ask you certain
15 questions about this matter.

16 Before I do so, I want you to know that if at any
17 point, you want to consult with your attorneys, just let me
18 know and we will recess these proceedings.

19 I also have to warn you, as a representative of the
20 company, that any false answers to any of my questions could
21 subject the company to further liability for either perjury or
22 the crime of false statement; and, finally, in giving truthful
23 answers to some of my questions on behalf of the company, I
24 expect that you will be waiving the corporation's right under
25 the Fifth Amendment and that some of your answers to some of my

1 questions may be incriminating on behalf of the company.

2 Do you understand what I've told you so far?

3 MR. MILLS: Yes, sir.

4 THE COURT: Then let's place you under oath.

5 (Defendant corporate representative sworn.)

6 THE COURT: And if you would again identify yourself
7 for the record by stating your name and spelling your last
8 name, please.

9 MR. MILLS: Steven R. Mills, M-i-l-l-s.

10 THE COURT: Okay. And what is your position with the
11 Archer Daniels Midland Company?

12 MR. MILLS: I'm the controller of the company.

13 THE COURT: And have you been designated by the board
14 of directors to appear here on behalf of the corporation?

15 MR. MILLS: A special committee of the board of
16 directors has designated me.

17 THE COURT: And can you tell me what the special
18 committee is?

19 MR. MILLS: The special committee is a special
20 committee of the board of directors of Archer Daniels Midland
21 Company that was assigned to oversee the proceedings in cases
22 that have come before the court.

23 THE COURT: And those cases include criminal cases
24 such as this one?

25 MR. MILLS: Yes, sir.

1 THE COURT: And how long have you yourself worked for
2 the Archer Daniels Midland Company?

3 MR. MILLS: 17 years.

4 THE COURT: Okay. And in your position as controller,
5 you're familiar with the financial situation of the company?

6 MR. MILLS: I am.

7 THE COURT: And are you able to represent here -- I
8 notice that the plea agreement is a specific plea agreement
9 that calls for the imposition of a substantial fine totalling
10 \$100 million.

11 Are you able to represent here that the corporation is
12 financially able to pay this fine pursuant to the terms of the
13 plea agreement?

14 MR. MILLS: Yes.

15 THE COURT: Okay. Then let me make sure that you
16 understand, first of all, the rights that the corporation is
17 waiving on behalf of the company.

18 In the first instance, this information that was filed
19 today charges the offenses of engaging in a conspiracy to
20 suppress and eliminate competition by fixing the price and
21 allocating the sales volumes of Lysine, L-y-s-i-n-e, offered
22 for sales to customers in the United States and elsewhere from
23 in and about June 1992 until June 27th, 1995 in violation of
24 15 USC Section 1.

25 Count 2 of this information charges the same offense

1 with regard to the product of citric acid during a period
2 ranging from January 1993 until June 27th, 1995, in violation
3 of 15 USC Section 1. In laymen's terms, this is known as the
4 offense of price fixing, antitrust price fixing. Do you
5 understand the nature of the charge?

6 MR. MILLS: Yes, I do.

7 THE COURT: And do you understand that this is what is
8 known as a felony charge; that is, a charge that would normally
9 be required to be brought by the way of an indictment brought
10 by a grand jury, and a grand jury is composed of at least 23
11 persons, 23 persons of which at least 12 of those grand jurors
12 must find that there is probable cause to believe that the
13 crime charged was committed by the corporation before the
14 corporation could be indicted.

15 The grand jury might or might not vote probable cause.
16 If the corporation waives indictment, the case proceeds against
17 the company on the U.S. Attorney's criminal information as
18 though it had been indicted. Do you understand that?

19 MR. MILLS: I do.

20 THE COURT: Now, in this case, does your signature,
21 Mr. Mills, appear on this waiver of indictment form? Can you
22 see it from here?

23 MR. MILLS: Yes, I can.

24 THE COURT: And did you go over this document with
25 Mr. Daniel before signing it?

1 MR. MILLS: I did.

2 THE COURT: And is it your desire to waive indictment
3 on behalf of the company, Archer Daniels Midland Company,
4 today?

5 MR. MILLS: It is.

6 THE COURT: And, Mr. Daniel, do you know of any reason
7 why the company should not waive indictment in this case?

8 MR. DANIEL: I do not, Your Honor.

9 THE COURT: Okay. I will enter this waiver of
10 indictment. I find that it is being done on a knowing,
11 intelligent and voluntary basis and will enter it as of today's
12 date.

13 Now, I've already gone over the charges with you. I
14 want to make sure that you understand on behalf of the company
15 that the company could proceed to a trial in this case and
16 would be entitled to a trial by jury on the criminal charges
17 against it.

18 Do you understand that the company would have a right
19 to plead not guilty, Mr. Mills; do you understand that?

20 MR. MILLS: I understand that.

21 THE COURT: Do you understand that if the company pled
22 not guilty, it would have a right to a speedy trial. It would
23 have a right to see and hear all the witnesses called to
24 testify against it, in addition to which, the company could use
25 the subpoena power of this Court to obtain the attendance of

1 any witnesses favorable to its defense and would certainly have
2 a right to have counsel cross-examine witnesses that were
3 called by the government. Do you understand that procedure?

4 MR. MILLS: I do understand it.

5 THE COURT: Do you understand that at the trial, I
6 would instruct the jury, if it were a jury trial, that the
7 company is presumed to be innocent, and the government is
8 required to prove by competent evidence beyond a reasonable
9 doubt before the company could be found guilty; do you
10 understand that?

11 MR. MILLS: I understand that, Your Honor.

12 THE COURT: Now, the third principle that would govern
13 the trial is that the company wouldn't have to do anything
14 during the trial. In fact, it wouldn't have to even have a
15 corporate representative testify on its behalf. And I would
16 instruct the jury that the three principles; that is, the
17 presumption of innocence, the government having the burden of
18 proof beyond a reasonable doubt, and that no inference or
19 suggestion of guilt could be drawn from the fact that the
20 company did absolutely nothing during the trial, those would be
21 the three principles that it would have to commit to operate by
22 in order to decide this case. Do you understand that?

23 MR. MILLS: I understand that.

24 THE COURT: Do you understand that the jury would have
25 to agree unanimously and would have to consider each count of

1 the indictment and, in effect, both markets separately; do you
2 understand that?

3 MR. MILLS: I understand that.

4 THE COURT: And do you understand that in addition to
5 your rights to a jury trial, you could also have what is known
6 as a bench trial; that is, a trial where I, sitting as the
7 trial judge, decide the guilt or innocence of the company if
8 you on behalf of the company, the government and I all agreed
9 to that procedure; do you understand that?

10 MR. MILLS: I understand that, Your Honor.

11 THE COURT: Now, if the case were a jury case, the
12 company would have a right to participate in the selection of
13 the jury, and prospective jurors would be called from this
14 district, and they could be excused if they were shown to be
15 biased or some other disqualification was shown, or they could
16 even be, the prospective jurors could be excused without any
17 type of showing of cause by exercising what are known in the
18 law as peremptory challenges. Do you understand those rights?

19 MR. MILLS: I understand them, Your Honor.

20 THE COURT: Do you understand that even if there were
21 a trial, whether it be a jury trial or a bench trial, and the
22 company were found guilty, the company would have a right to
23 appeal from all of the rulings that had been made prior to,
24 during the trial and even from the verdict of guilty itself.
25 Do you understand that?

1 MR. MILLS: I understand that, Your Honor.

2 THE COURT: Do you understand that if the company
3 persists in its plea of guilty this afternoon, the company will
4 be waiving all of these rights that I've just explained to you
5 that are collectively known as the company's trial rights; do
6 you understand that?

7 MR. MILLS: I understand that, Your Honor.

8 THE COURT: Do you understand that if you persist in
9 pleading guilty on behalf of the company, I will have no choice
10 but to accept your plea if I believe it's appropriate and
11 sentence you on the basis of your plea; do you understand that?

12 MR. MILLS: I understand that, Your Honor.

13 THE COURT: Now, in this case, I've been given a
14 17-page plea agreement. First of all, Mr. Mills, have any
15 promises or agreements been made to the company that are not
16 contained in this plea agreement?

17 MR. MILLS: No.

18 THE COURT: And let me then ask you if your signature
19 appears on page 17 of this plea agreement? Can you see it from
20 here?

21 MR. MILLS: I can, and it does, Your Honor.

22 THE COURT: And did you read this document or a copy
23 of it before signing it?

24 MR. MILLS: I did, Your Honor.

25 THE COURT: And did you discuss it fully with the

1 company's attorneys?

2 MR. MILLS: I did.

3 THE COURT: Now, I want to go over several key
4 provisions in this plea agreement to assure myself that the
5 company understands exactly what it is offering to do here
6 today.

7 In the first instance, I'm going to refer you to
8 paragraph 2 which is on page 2. It says that the defendant,
9 and that is the company, understands that the maximum penalty
10 which may be imposed upon it for a conviction of violation of
11 the Sherman Antitrust Act is a fine in an amount equal to the
12 largest of, A, \$10 million; B, twice the gross pecuniary gain
13 derived from the crime; or, C, twice the gross pecuniary loss
14 caused to the victims of the crime, and a term of probation of
15 at least one year but not more than five years.

16 In addition, the company understands that pursuant to
17 Section 8B1.1(a)(2) of the Sentencing Guidelines, the Court
18 could order it to pay restitution to the victims of the
19 offense; and that 18 USC Section 3013(a)(2)(B) requires the
20 Court to order the company to pay a \$200 special assessment.
21 Is that your understanding, Mr. Mills, of the maximum penalty
22 that could apply in this case?

23 MR. MILLS: It is, Your Honor.

24 THE COURT: And am I correct, Mr. Lassar, in that the
25 same maximum penalty applies to count 2?

1 MR. LASSAR: Yes, Your Honor.

2 THE COURT: Okay. Now, I'm sure that you've talked
3 with the company's attorneys about the Sentencing Guidelines.
4 The Sentencing Guidelines are a law that govern any sentencing
5 determinations that the Court makes.

6 There's a provision in this plea agreement at page 6
7 that says under the Sentencing Guidelines that sentencing for
8 offenses to be charged will be conducted pursuant to the United
9 States Sentencing Guideline Manual in effect on the date of
10 sentencing. The United States and the company agree that for
11 purposes of determining the United States Sentencing Guidelines
12 sentence in this case, the volume of effective commerce
13 attributable to the company is in excess of \$100 million, both
14 in the Lysine market and in the citric acid market.

15 Pursuant to the United States Sentencing Guidelines
16 Section 1B1.8, self-incriminating information provided to the
17 United States pursuant to this plea agreement will not be used
18 to increase the volume of affected commerce attributable to the
19 company in determining the applicable Sentencing Guideline
20 range.

21 Thereafter in paragraph 8, there is a specific
22 sentencing agreement pursuant to Rule 11(e)(1)(C) of the
23 Federal Rules of Criminal Procedure, and that is as follows:
24 The United States and the company agree that the appropriate
25 disposition of the Lysine count; that is, count 1, is that both

1 the parties agree jointly to recommend that the Court impose a
2 sentence requiring the company to pay a fine pursuant to
3 federal law in the amount of \$70 million within 90 days of
4 sentencing and no term of probation.

5 It's indicated that the fine is within the guideline
6 range calculated from the defendant's volume of effective
7 commerce in the Lysine market. And thereafter, it's indicated
8 that the company understands that the Court will order it to
9 pay a \$200 special assessment pursuant to federal law.

10 In the very next paragraph, it's indicated that there
11 also is a specific sentencing agreement pursuant to the same
12 rules of criminal procedure with regard to the citric acid
13 count charged in count 2 of the information; that is, that
14 there's an agreement that the parties will recommend that the
15 Court impose a sentence requiring the company to pay a fine in
16 the amount of \$30 million along with a \$200 special assessment
17 and specifically indicated that the government will file a
18 motion under Sentencing Guideline 8C4.1 requesting that the
19 Court depart from the sentence calculated pursuant to the
20 Federal Sentencing Guidelines in view of the agreed-upon
21 sentence in count 1 as well as restitution ordered in a pending
22 civil case, 95 C 2963, MDL number 1092.

23 Now, Mr. Mills, is that your understanding of the
24 specific sentences that have been agreed to in this case?

25 MR. MILLS: It is, Your Honor.

1 THE COURT: It's also indicated that the company will
2 cooperate with the United States -- this is paragraph 12 -- in
3 the conduct of current federal investigations concerning the
4 sale or production of any products sold by the company's
5 BioProducts Division, Animal Health and Nutrition Division,
6 Food Additives Division or Sweetener Group, as well as the
7 investigation of the acquisition of technology which is the
8 subject of pending investigations being conducted in the
9 Central District of Illinois and the Southern District of
10 Alabama and any litigation or other proceedings arising or
11 resulting from any such investigations to which the United
12 States is a party. Do you understand that?

13 MR. MILLS: I do, Your Honor.

14 THE COURT: As part of that agreement to cooperate,
15 it's indicated in paragraph 12(b) first of all, in 12(a) that
16 you will certainly produce to the government any documents,
17 materials, information that they need regarding these pending
18 investigations; but in 12(b), it specifically indicates that
19 you will provide any current director, officer or employee of
20 the defendant other than two individuals, Michael D. Andreas,
21 A N D R E A S and Terrance S. Wilson, W I L S O N. Is that
22 your understanding?

23 MR. MILLS: That is my understanding, Your Honor.

24 THE COURT: And the government agrees in paragraph 14
25 of this plea agreement in 14(a) that it will not bring any

1 criminal charges against any current director, officer or
2 employee of the company or of any of the company's subsidiaries
3 or affiliates other than Michael D. Andreas and Terrance S.
4 Wilson for any act or offense committed prior to the date of
5 this plea agreement while such a person was employed by the
6 company or any of its subsidiaries or affiliates which were
7 undertaken in furtherance of or in connection with any
8 attempted or completed antitrust conspiracy, combination or
9 scheme involving the sale or production of any product sold or
10 produced by the defendant's BioProducts Division, Animal Health
11 and Nutrition Division, Food Additives Division or Sweetener
12 Group, or for any alleged misappropriation of technology
13 committed prior to the date of this plea agreement which is the
14 subject of investigations being conducted in the Central
15 District of Illinois and Southern District of Alabama.

16 Is that your information, and is that your
17 understanding of the agreement that has been made today?

18 MR. MILLS: It is, Your Honor.

19 THE COURT: Now, has anyone, to your knowledge,
20 threatened the company in any way to cause them to plead
21 guilty?

22 MR. MILLS: Not to my knowledge, Your Honor.

23 THE COURT: And is the plea on behalf of the company
24 voluntary?

25 MR. MILLS: It is, Your Honor.

1 THE COURT: And you understand that as this plea
2 agreement is written, it is up to me as the sentencing judge to
3 decide whether or not to accept it or reject it, is that your
4 understanding?

5 MR. MILLS: It is my understanding, Your Honor.

6 THE COURT: And that if I accept it, the company
7 cannot withdraw its plea of guilty, is that your understanding?

8 MR. MILLS: It is my understanding.

9 THE COURT: And if I reject it, then all bets are off,
10 and you're back to square one in terms of negotiating with the
11 government.

12 MR. MILLS: I understand that, Your Honor.

13 THE COURT: Now, I'm going to ask the government to
14 summarize what its evidence would have been if this case had
15 proceeded to trial on the two counts contained in the
16 information.

17 I'm going to ask you, Mr. Mills, to pay close
18 attention to the summary because at the end of this summary, I
19 will ask you whether or not you disagree with any part of the
20 summary or whether or not you agree with the summary as recited
21 by the government. You may proceed.

22 MR. GRIFFIN: Your Honor, the factual basis for the
23 Lysine offense is laid out in the plea agreement; but basically
24 what it recites is that had the case gone to trial, the
25 government would have proven that the defendant company is a

1 corporation organized under the laws of the state of Delaware,
2 its principal place of business is in Decatur, Illinois, and
3 it's a major producer of Lysine, which is an amino acid feed
4 additive used in poultry and swine feed in the United States
5 and elsewhere.

6 The government also would have proven that during
7 certain periods of time during the period June 1992 through
8 June 27, 1995, the defendant, through several of its employees,
9 participated in a conspiracy among the major Lysine producing
10 firms, and the primary terms of that conspiracy were to fix the
11 price of Lysine sold in the United States and to allocate the
12 sales volumes of Lysine sold in the United States and
13 elsewhere.

14 In furtherance of the conspiracy, several
15 representatives of the company engaged in conversations,
16 attended meetings with representatives of the other Lysine
17 producing firms, and during these conversations, agreements
18 were reached as to the prices the firms would charge for Lysine
19 in the United States and elsewhere, and also agreements were
20 reached as to the volume of Lysine each firm would sell in the
21 United States and elsewhere.

22 The conspiratorial meetings and conversations took
23 place in the United States and elsewhere, and at least one of
24 these meetings attended by representatives of the defendant
25 occurred in this district and in this division.

1 Lysine is sold by the conspirator firms in interstate
2 commerce, and the business activities of the defendant and
3 co-conspirators in connection with the production and sale of
4 Lysine were within the flow and substantially affected
5 interstate trade and commerce. That would be the factual
6 basis, Your Honor, as to count 1 of the indictment, the Lysine
7 conspiracy.

8 THE COURT: Let's stop right there for a second.
9 Mr. Mills, you've heard the statement. Do you agree with the
10 statement?

11 MR. MILLS: Well, I have no personal knowledge of
12 these facts, but the company does not dispute the facts as
13 presented.

14 THE COURT: And in your own words on behalf of the
15 company, what do you think it is that the company did here?

16 MR. MILLS: Well, it's been accused of meeting with
17 competitors and setting prices and volumes of selling Lysine.

18 THE COURT: And did the company do that?

19 MR. MILLS: Again, I don't have any personal knowledge
20 of those facts, but the company doesn't dispute the facts.

21 THE COURT: In your investigation into these matters
22 as the designee of the special committee, does it show that the
23 company did participate in these actions?

24 MR. MILLS: Yes, sir.

25 THE COURT: Okay. Let's move on to the citric acid

1 count.

2 MR. WARREN: Your Honor, on the citric acid count,
3 count 2, if this matter had gone to trial, the government would
4 have presented evidence to prove the following facts: That the
5 defendant, from as early as January 1993 through June 1995, was
6 a corporation organized and existing under the laws of the
7 state of Delaware with its principal place of business in
8 Decatur; that the defendant, throughout the relevant time
9 period, was a producer of citric acid which is a product used
10 in various food products, beverages, cosmetics, soft drinks and
11 other, a variety of other products. Throughout the relevant
12 time period, the defendant was a seller of citric acid in the
13 United States and elsewhere.

14 And, further, the government would have proved that
15 during the relevant time period, the defendant participated in
16 a conspiracy involving the major producers of citric acid. The
17 primary terms of the conspiracy were to fix the prices of
18 citric acid sold in the United States and elsewhere and to
19 allocate among citric acid producing firms the volumes of sales
20 of citric acid in the United States and elsewhere.

21 And in furtherance of the conspiracy, the defendant,
22 through its representatives, was involved in conversations and
23 meetings with representatives of the other citric acid
24 producing firms, and that agreements were reached as to prices
25 and volumes in the United States and elsewhere; and that the

1 purpose of the scheme was to restrict the output and raise the
2 price of citric acid in the United States and elsewhere; and
3 that all of this was in the flow of interstate commerce.

4 THE COURT: Okay. And Mr. Mills, as you've heard the
5 statement of the government's prosecutor, do you agree with it?

6 MR. MILLS: Well, again, I have no personal knowledge
7 of the facts, but the company does not dispute these facts.

8 THE COURT: Okay. In your investigation and the
9 investigation of the special committee, does it agree that
10 these actions did occur?

11 MR. MILLS: Yes, sir.

12 THE COURT: Okay. Let me then, in terms of trying to
13 weigh the appropriate sentence in this case, I would like to
14 hear from the government, and I'd be happy to hear from the
15 company's counsel, as to what the range of potential fines
16 were, and we can take them count by count.

17 MR. GRIFFIN: Your Honor, as to count 1 of the
18 indictment, the Lysine count, the government has calculated the
19 guideline fine range to be 54 million to 108 million.

20 THE COURT: Okay. And that would be using any of the
21 three methods allowed by the Sentencing Guidelines?

22 MR. GRIFFIN: Yes, Your Honor. Under the -- we began
23 with the base fine calculated under 2R1.1, which results in \$30
24 million. We then calculated the culpability score pursuant to
25 Chapter 8 of the Sentencing Guidelines, and that culpability

1 score calculation resulted in a culpability score of 9 as to
2 the Lysine count, which results in multipliers of 1.8 to 3.6.
3 And multiplying the 30 million by 1.8 and 3.6, we calculated a
4 fine range of \$54 million to \$108 million.

5 THE COURT: And what's the government's position as to
6 what the factors are that the Court should consider in weighing
7 whether or not the \$70 million fine for the Lysine market is in
8 fact an appropriate fine?

9 MR. GRIFFIN: Your Honor, it is a fine that is within
10 the guideline range. It is a fine that adequately reflects the
11 culpability of the company and acts as a deterrent to others,
12 and it reflects the company's acceptance of responsibility for
13 its actions.

14 THE COURT: And I take it the company has been
15 cooperating in the investigation at this point?

16 MR. GRIFFIN: At this point, the company has agreed to
17 cooperate in the investigation in Lysine.

18 THE COURT: Okay. Mr. Daniel, anything you want to
19 add?

20 MR. DANIEL: No, Your Honor. We don't disagree with
21 anything Mr. Griffin has said.

22 THE COURT: Okay, then let's go on to count 2, and
23 that is the citric acid count and what the range of potential
24 fines would have been and the reason why the government has
25 moved to have me depart from that range.

1 MR. WARREN: Your Honor, following the same
2 methodology described by Mr. Griffin, the relevant affected
3 commerce for the period of time charged in the information is
4 \$350 million which results in a base fine level of \$70 million.
5 The culpability score calculated under the guidelines is 8,
6 resulting in minimum and maximum multipliers of 1.6 through
7 3.2, and that results in a fine range of 112 million to \$224
8 million.

9 The government hasn't concluded its investigation of
10 the violation charged in count 2 and isn't in a position to
11 state with precision what the exact terms of the conspiracy
12 charged or the amount of overcharge or gain was in that
13 violation; but for purposes of this case, the government and
14 the defendant have agreed that the charged term of the
15 conspiracy is the appropriate one, and that for purposes of
16 sentencing in this case, the fine calculated under 18 USC 3571
17 would be more than \$30 million.

18 The government is moving for a downward departure, and
19 that is based on substantial cooperation provided in connection
20 with the ongoing investigation of the violation charged in
21 count 2.

22 THE COURT: Okay. Now, I do want to tell you that I
23 have received a letter. I think it relates to the case that's
24 pending before Judge Mihm in the High Fructose Corn Syrup
25 antitrust litigation. The letter is signed by Michael J. Freed

1 who represents to the Court, and I will show you a copy of this
2 letter in case you haven't seen it. Have you seen the letter?

3 MR. GRIFFIN: We have not seen it, Your Honor.

4 MR. DANIEL: I have not, Your Honor.

5 THE COURT: Why don't you both take a look at this
6 letter.

7 What I'd like you to do is just take a minute to take
8 a look at the letter, and then just tell me your position with
9 regard to this letter and whether or not it should delay
10 proceeding at this point.

11 MR. DANIEL: I've read the letter. I think it should
12 have no impact on these proceedings whatsoever.

13 THE COURT: Okay. What's the government's position?

14 MR. LASSAR: Judge, we don't think it should impact
15 this proceeding here either.

16 THE COURT: Okay. Well, as I understand it, this
17 letter basically is concerned about the effects that this plea
18 will have on the pending civil litigation. I don't see an
19 adverse effect resulting from this plea. If anything, I can
20 see an argument being made that it might be helpful for
21 purposes of resolving that particular piece of litigation, and
22 so I will not allow the letter to have any impact on any
23 decision that I make at this point in time.

24 Is there anything else, Mr. Lassar, that you want me
25 to put into the record? I have gone through the provisions of

1 the plea agreement that I felt were important to go over, but
2 if there's anything else, I'd be happy to put that into the
3 record.

4 MR. LASSAR: No, there isn't, Judge.

5 THE COURT: Okay. Then, Mr. Mills, on behalf of
6 Archer Daniels Midland Company, what is the company's plea to
7 counts 1 and 2 in the information?

8 MR. MILLS: Guilty, Your Honor.

9 THE COURT: Since the company acknowledges that it is,
10 in fact, guilty as charged in counts 1 and 2 of the information
11 and it has freely waived indictment, had the assistance of able
12 counsel, knows its rights to a trial, knows what the maximum
13 possible punishment is, I find that the company is knowingly,
14 intelligently and voluntarily pleading guilty. I'll accept the
15 plea of guilty, enter judgment of guilty on your plea.

16 As I understand it, both sides have requested that the
17 Court waive the ordering of a presentence investigation, and so
18 we will go then immediately into sentencing allocution. I'll
19 allow the government to proceed first on anything you want to
20 say with regard to whether this sentence is appropriate. I'll
21 then hear from the company's attorneys, and then we will
22 proceed to sentencing. If you want to waive allocution, that's
23 up to you.

24 MR. LASSAR: Judge, I think we've already stated the
25 reasons why we thought the fine was appropriate.

1 THE COURT: Okay.

2 MR. DANIEL: We will waive allocution as well, Judge.

3 THE COURT: Okay. Well, I will tell you, I will not
4 at this point upset the apple cart. I believe that the fines
5 are more than appropriate.

6 It's not a good day for corporate America when a plea
7 like this takes place. I'm hopeful that this black day will be
8 overcome by the new behavior of the Archer Daniels Midland
9 Company; that is, the behavior of cooperating with the
10 government in its investigation. I think that is the correct
11 action that the special committee is taking in this case, and I
12 recognize it.

13 I know that some will say that this fine is not high
14 enough. I'm very aware of that. But I believe that both sides
15 have been ably represented, that this is a fine that's been
16 negotiated at arm's length by able attorneys, that this fine
17 has been approved at the highest levels of both government and
18 the company, and I believe that the fine certainly serves as a
19 deterrent to any company that might still be out there thinking
20 that this type of behavior is acceptable.

21 It simply is not acceptable. For any company to
22 engage in price fixing is a sad day for corporate America
23 because ultimately the consuming public are the victims of
24 these type of conspiracies. I'm hopeful that the fine, and I
25 know in my heart that the fine will deter other companies.

1 And so for that reason, I will approve the \$70 million
2 fine on count 1, along with the \$200 special assessment, as
3 well as the \$30 million fine on count 2, the citric acid count,
4 along with the \$200 special assessment.

5 I understand that the reason why that fine is not as
6 significant as count 1 is because of the overall status of the
7 company in this investigation, the overall impact of the civil
8 litigation that is out there; but I do believe if no message
9 went out today than the simple message of today's proceeding is
10 that no American company is above the law, and if a hundred
11 million dollars doesn't send that message, then I don't think
12 there's a number on God's earth that I can set that would send
13 that message, and so that will be the sentence of the Court.

14 MR. LASSAR: Your Honor, the sentence should include
15 that the fine should be paid by January 14th, 1997 pursuant to
16 the plea agreement.

17 THE COURT: Our judgment and commitment order will
18 reflect that. Thank you very much.

19 MR. LASSAR: Thank you, Judge.

20 (Which were all the proceedings heard.)

21 CERTIFICATE

22 I certify that the foregoing is a correct transcript from
23 the record of proceedings in the above-entitled matter.

24 Kathleen M. Fennell
Kathleen M. Fennell
25 Official Court Reporter

10-17-96
Date