

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | |
|--------------------------|-------------------------|
| UNITED STATES OF AMERICA |) |
| |) Criminal No. 01-144 |
| v. |) |
| |) Judge Stewart Dalzell |
| ANCHOR INDUSTRIAL |) |
| PRODUCTS, INC. |) Filed: 3-27-01 |
| |) |
| Defendant. |) |

GOVERNMENT’S SENTENCING MEMORANDUM

The United States and Anchor Industrial Products, Inc. (Anchor), have entered into a plea agreement, pursuant to which Anchor will waive indictment and plead guilty to the captioned Information. The one-count Information charges Anchor with a violation of the Sherman Act, 15 U.S.C. § 1.

I
STATUTE VIOLATED

A. 15 U.S.C. § 1

Section One of Title 15, United States Code, provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$10,000,000 if a corporation . . . , in the discretion of the court.

B. The Information

The Information charges the defendant with participating in a conspiracy to suppress and

eliminate competition by fixing the price of carbon cathode block sold in the United States and elsewhere in unreasonable restraint of trade and commerce beginning at least as early as February 1996 and continuing until at least December 1997.

C. Elements of the Offense

The elements of a Sherman Act offense, each of which the United States would be required to prove beyond a reasonable doubt at trial, are:

- (1) the charged conspiracy was formed, and it was in existence at or about the time alleged;
- (2) the defendant knowingly participated in the conspiracy; and
- (3) the activity which was the object of the conspiracy was within the flow of, or substantially affected, interstate commerce.

D. Maximum Penalty

The maximum penalty Anchor may receive upon its conviction in this case is a fine in an amount equal to the largest of: (a) \$10 million; (b) twice the gross pecuniary gain derived by the conspirators from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

II
THE SENTENCING GUIDELINES

The Government and Anchor agree that the following is the appropriate volume of affected commerce and the resultant United States Sentencing Guidelines fine range. The Guidelines calculation is set forth below:

Commerce

\$2,767,094 Volume of Commerce (Anchor's United States sales affected by the conspiracy)

\$553,419 Base Fine (20%)

Culpability Score

5 Base Score
2 <200 Employees
-2 Acceptance of Responsibility and Full Cooperation
5 Culpability Score

1.0 - 2.0 Multiplier

Guidelines Fine Range

\$553,419 (\$553,419 x 1.0) - \$1,106,838 (\$553,419 x 2.0)

III
GOVERNMENT'S SENTENCING RECOMMENDATION

Pursuant to the terms of the Plea Agreement entered into with Anchor, the United States recommends that the Court impose a sentence requiring Anchor to pay a Guidelines fine of \$600,000. If accepted by the Court, Anchor will pay the \$600,000 fine within seven (7) days from the date of the imposition of sentence. Defendant's total relevant U.S. commerce during the conspiratorial period was \$2,767,094. Thus, the Guidelines fine range is \$553,419 to \$1,106,838, and the agreed-upon fine of \$600,000 is within the Guidelines range.

There are several reasons why the agreed-upon fine is the appropriate disposition of this matter. Defendant is the first company to plead in this matter. While it was a participant in the conspiracy, it was not one of its organizers, leaders or major players. Defendant has been sold twice since its participation in the conspiracy ended, and the individuals responsible for its

antitrust misconduct are no longer employees of the Defendant or any of its affiliates. Defendant is presently a shell corporation which is being funded in the amount of the agreed-upon fine by current ownership who did not participate in the conspiracy and did not know, and could not reasonably have been expected to have known about Defendant's role in the conspiracy when it acquired Defendant. In addition, Defendant has waived venue and certain jurisdictional issues. Further, Defendant has already provided meaningful cooperation in this investigation and its cooperation is ongoing. For all these reasons, the Government submits that this agreed-upon fine is in the public interest and is the appropriate disposition of this case.

The United States also recommends that the Court not impose an order of restitution due to the likelihood that the victims of the conspiracy, all sophisticated aluminum companies, may institute individual or class actions seeking treble damages and attorneys fees as provided for persons harmed by violations of the antitrust laws under Section Four of the Clayton Act, 15 U.S.C. § 4. Given the remedies afforded victims of antitrust crime and the anticipated involvement of private antitrust counsel representing victims in this case, the need to fashion a restitution order is outweighed by the difficulty the Court would encounter in attempting to determine the losses suffered by all of the victims and would unduly complicate and prolong the sentencing process.

IV **CONCLUSION**

For the reasons stated above, the United States respectfully requests that the Court impose a sentence consistent with the terms of the Plea Agreement entered into between the United States and Anchor and with the recommendation of the United States that Anchor be

required to pay a criminal fine of \$600,000 within seven (7) days of the date of the imposition of sentence.

Dated: 3-27-01

Respectfully submitted,

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