

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)	Criminal No.: 1:02-CR-697
v.)	Filed: November 14, 2002
INDUSTRIAL VALVE SALES & SERVICE, INC.)	Violation:
Defendant.)	18 U.S.C. § 371

PLEA AGREEMENT BETWEEN UNITED STATES OF AMERICA AND INDUSTRIAL VALVE SALES & SERVICE, INC.

The United States of America and Industrial Valve Sales & Service, Inc. (hereinafter "defendant"), a corporation organized and existing under the laws of Alabama, hereby enter into the following Plea Agreement pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure ("FED. R. CRIM. P.").

RIGHTS OF DEFENDANT

1. The defendant understands its rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against it;
 - (d) to have a trial by jury, at which it 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 it to be found guilty;

(e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

(f) to appeal its conviction if it is found guilty at trial; and

(g) to appeal the imposition of sentence against it.

AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS

2. The defendant waives the rights set out in Paragraph 1(b)-(f) above. Further, pursuant to FED. R. CRIM. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Northern District of Georgia. The Information will charge the defendant with participating in a conspiracy to: (a) defraud the Henry Pratt Company of Aurora, Illinois; (b) obtain money from the Henry Pratt Company by means of false and fraudulent pretenses, representations, and promises; and (c) deprive the Henry Pratt Company of its right to the honest services of its employee, which scheme and artifice to defraud was executed by and through the use of the United States mail and interstate wire communications, beginning at least as early as September 1997 and continuing through at least April 24, 1998, in violation of 18 U.S.C. § 371.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and

will make a factual admission of guilt to the Court in accordance with FED. R. CRIM. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

(a) For purposes of this Plea Agreement, the “relevant period” is that period beginning at least as early as September 1997 and continuing thereafter at least through April 24, 1998, the exact dates being unknown to the United States. During the relevant period, the defendant was a corporation organized and existing under the laws of Alabama. The defendant has its principal place of business at Highway 45 at Highway 158, Prichard, Alabama;

(b) From at least as early as 1996 until December 31, 1997, Co-Conspirator Number One (hereinafter “CC-1”) was an employee of the Henry Pratt Company and lived in Illinois. CC-1 retired from the Henry Pratt Company effective December 31, 1997, and moved to the Northern District of Georgia. The Henry Pratt Company was a manufacturer and supplier of equipment used in water and wastewater treatment plants, nuclear power plants, and other industrial installations and had its principal place of business in Aurora, Illinois;

(c) During the relevant period, in the Northern District of Georgia and elsewhere, the defendant, through an employee acting within the line and scope of his authority, and CC-1 did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree in

violation of Title 18, United States Code, Section 371 to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 1341, 1343, and 1346;

(d) It was a part and object of said conspiracy that the defendant and CC-1, having devised and intending to devise a scheme and artifice to (a) defraud the Henry Pratt Company; (b) obtain money from the Henry Pratt company by means of false and fraudulent pretenses, representations, and promises; and (c) deprive the Henry Pratt Company of its right to the honest services of CC-1, executed the scheme and artifice by and through the use of the United States mail and certain writings, signs, sounds, and signals transmitted in interstate wire communications;

(e) The Henry Pratt Company relied on CC-1 to conduct his work on the company's behalf in an honest fashion so as to benefit his employer, including his work in helping to secure equipment for resale by his company. However, as a result of the scheme and artifice to defraud, defendant paid kickbacks to CC-1 for CC-1's role in the Henry Pratt Company's purchase of equipment from defendant. These kickbacks made to CC-1 by defendant were concealed from the Henry Pratt Company;

(f) For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and CC-1 made and caused to be made the mailing of documents by means of the United States mail and made and caused to be transmitted interstate telephone calls

and facsimiles in furtherance of the aforesaid conspiracy; and

(g) Acts in furtherance of this conspiracy were carried out within the Northern District of Georgia, Atlanta Division within five years preceding this Plea Agreement.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the maximum penalty that may be imposed against it upon conviction for a violation of 18 U.S.C. § 371 is a fine in an amount equal to the greatest of:

- (a) \$500,000;
- (b) twice the gross pecuniary gain derived from the crime; or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c-d)).

6. In addition, the defendant understands that:

(a) pursuant to § 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victim of the offense, the Henry Pratt Company;

(b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is required to order the defendant to pay a \$400 special assessment upon conviction for the charged crime; and

(c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years.

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged should be conducted pursuant to the U.S.S.G. Manual in effect on the day of the sentencing.

SENTENCING AGREEMENT

8. Pursuant to FED. R. CRIM. P. 11(e)(1)(B), the defendant acknowledges that the United States has advised it that the United States will recommend to the Court that the appropriate amount of total restitution payable to the victim is at least \$21,400. The United States will recommend that, if the Court orders the defendant to pay restitution, the Court order the defendant to pay that restitution in full within 15 days of the imposition of sentence. The United States will further recommend to the Court that any term of probation imposed by the Court in excess of one year be terminated upon the full payment of any restitution and fine imposed by the Court on the defendant (“the recommended sentence”).

9. The United States and the defendant estimate that the net dollar amount of actual loss to the victim attributable to the defendant for the purpose of applying U.S.S.G. §§ 2B1.1(b)(1)(C) and 8C2.4(a)(3) in this case is at least \$21,400, and that no “exclusions from loss” (U.S.S.G. § 2B1.1, application note 2(D)) or “credits against loss” (U.S.S.G. § 2B1.1, application note 2(E)) are available to reduce that \$21,400 figure. The United States and the defendant recognize that the Court is not bound by that estimate. Based on the \$21,400 estimate, the United States and the defendant agree that: (1) the base offense level under the Guidelines is six (U.S.S.G. §§ 2B1.1(a), 8C2.3(a)); (2) the defendant has a specific offense

characteristic level of at least four (U.S.S.G. § 2B1.1(b)(1)(C)), for a total adjusted offense level of at least ten under U.S.S.G. § 2B1.1. Further, the United States and the defendant agree that: the base culpability score under U.S.S.G. § 8C2.5(a) is five; two points should be added under U.S.S.G. § 8C2.5(b)(4); and that the United States will maintain that one point should be deducted for acceptance of responsibility under U.S.S.G. § 8C2.5(g)(3), for a net score of six. The defendant shall be free to maintain that a two-point deduction is appropriate under U.S.S.G. § 8C2.5(g)(3), for a net score of five. The United States and the defendant agree that the base fine level for the defendant under U.S.S.G § 8C2.4(a)(3) would be at least \$21,400. Therefore, the United States and the defendant agree that the fine range for this offense under U.S.S.G. §§ 8C2.6 and 8C2.7 would be at least from \$25,680 (1.2 multiplier) to and including at least \$51,360 (2.4 multiplier), using a net score of six. If defendant successfully argues that the net score is five, the fine range would be adjusted downward accordingly. The United States will recommend that the fine should be at the lower end of the Guidelines fine range.

10. The United States will recommend that the defendant be ordered to pay any fine imposed by the Court in two equal payments, with the first installment payment due upon the entry of judgment and the remaining payment due 120 days thereafter with interest to be paid on the unpaid balance thereof under 18 U.S.C. § 3612(f).

11. Payment of the fine and special assessment and any restitution ordered in this matter shall be made by certified or cashier's check(s) payable

to the Clerk of the United States District Court for the Northern District of Georgia, U.S. Courthouse, Suite 2211, Richard B. Russell Bldg., 75 Spring Street, SW, Atlanta, Georgia 30303. A copy of the payment check(s) shall be sent to Nezida S. Davis, Chief, Atlanta Field Office, Antitrust Division, U.S. Department of Justice, Suite 1176, Richard B. Russell Building, 75 Spring Street, SW, Atlanta, Georgia 30303. Nothing in this plea agreement should be interpreted as foreclosing either the United States or the defendant from supplying either the Probation Office or the Court with information pertinent to consideration of the defendant's ability to pay restitution and a fine.

12. The defendant agrees that it will assist the United States in satisfying the Court that there exists a factual basis for its plea pursuant to Rule 11(f) of the Federal Rules of Criminal Procedure. The United States and the defendant agree that both parties may present facts to the Probation Office and to the Court to assist the Court in determining the appropriate disposition of this case. The United States and the defendant agree to request that the Court order a presentence investigation prior to the imposition of sentence.

13. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraphs 8, 9 and 10 of this Plea Agreement and impose any sentence up to the maximum provided by law. The defendant understands that, as provided in FED.R.CRIM.P. 11(e)(2), if the Court does not impose the recommended sentence contained in this Agreement, it nevertheless has no right to withdraw its plea of guilty.

DEFENDANT'S COOPERATION

14. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal grand jury investigation or other federal investigation of violations of federal criminal laws involving the water or wastewater treatment industry, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation, whether civil or criminal, to which the United States is a party (hereinafter "Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

(a) producing to the United States all documents, information, and other materials, wherever located, in the possession, custody, or control of the defendant, requested by the United States in connection with any Federal Proceeding; and

(b) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 15 of this Plea Agreement, of the current and former directors, officers, and employees of the defendant as may be requested by the United States, including making these persons available to the United States for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

15. The ongoing, full, and truthful cooperation of each person described in Paragraph 14(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, wherever located, requested by attorneys and agents of the United States;

(b) making himself or herself available for interviews, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

(d) otherwise voluntarily providing the United States with any material or information not requested in (a-c) of this paragraph that he or she may have that is related to any Federal Proceeding;

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United States fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 17(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 17(a) will be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

GOVERNMENT'S AGREEMENT

16. Upon acceptance of the guilty plea called for by this Plea Agreement, imposition of sentence by the Court, and full payment by the defendant of any fine, special assessment, and restitution ordered by the Court, and subject to the cooperation requirements of Paragraph 14 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the defendant, under the mail or wire fraud statutes (18 U.S.C. §§ 1341, 1343, 1346), for any act or offense committed prior to August 23, 2002, that was undertaken in furtherance of the conspiracy to commit an offense against the United States (18 U.S.C. § 371), arising out of the conspiracy, combination, and scheme to defraud the Henry Pratt Company. 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 to any crime of violence.

17. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement, imposition of sentence by the Court, and full payment by the defendant of any fine, special assessment, and restitution ordered by the Court, and subject to the exceptions noted in Paragraph 17(c), the United States will not bring criminal charges under the mail or wire fraud statutes (18 U.S.C. § 1341, 1343, 1346) against any current or former director, officer, or employee of the defendant for any act or offense committed prior to August 23, 2002, and while that person was acting as a director, officer, or employee of the defendant, that was undertaken in furtherance of the conspiracy to commit an offense against the United States (18 U.S.C. § 371), arising out of the conspiracy, combination, and scheme to defraud the Henry Pratt Company ("Relevant Offense");

(b) Should the United States determine that any current or former director, officer, or employee of the defendant may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendant;

(c) If any person requested to provide cooperation under Paragraph 17(b) fails to comply with his or her obligations under Paragraph 15, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;

(d) Except as provided in Paragraph 17(e), information provided by a person described in Paragraph 17(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. §§ 1501-1503);

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 15 of this Plea Agreement, the agreement in Paragraph 17(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;

(f) 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 to any crime of violence; and

(g) Documents provided under Paragraphs 14(a) and 15(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant.

18. The defendant understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

19. The defendant has been represented by counsel and is fully satisfied that its counsel has provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

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

VIOLATION OF PLEA AGREEMENT

21. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 14 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant 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 Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any offense referred to in Paragraph 16 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the period between the date of the signing of

this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

22. The defendant understands and agrees that in any further prosecution of it resulting from the release of the United States from its obligations under this Plea Agreement, because of the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by it or its current or former directors, officers, or employees to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it in any such further prosecution. In addition, the defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of FED. R. CRIM. P. 11(e)(6) and FED. R. EVID. 410.

ENTIRETY OF AGREEMENT

23. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

24. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

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

Agreed to this 14th day of November, 2002.

INDUSTRIAL VALVE SALES
& SERVICE, INC.

UNITED STATES OF
AMERICA

By: /S/ _____
Donald F. Williams
President

/S/ _____
John R. Fitzpatrick
Georgia Bar No. 262360

/S/ _____
W.A. Kimbrough, Jr., Esq.
Counsel for Industrial Valve
Sales & Service, Inc.

/S/ _____
James A. Crowell IV
Georgia Bar No. 000942

Alabama Bar No. [Redacted Text]
Appearing Pro Hac Vice Pursuant
to LCR 57.1B, N.D. GA
Turner, Onderdonk, Kimbrough
& Howell
1359 Dauphin Street
Mobile, AL 36604
Tel: (251) 432-2855
Fax: (251) 432-2863

Attorneys
Antitrust Division
U.S. Department of Justice
1176 Richard B. Russell Bldg.
75 Spring Street, S.W.
Atlanta, GA 30303
Tel: (404) 331-7100
Fax: (404) 331-7110

/S/ _____
Robert H. Hinson, Esq.
Counsel for Industrial Valve
Sales & Service, Inc.
Georgia Bar No.
The Hinson Firm, LLC
400 Colony Square, Suite 1000
1201 Peachtree Street, N.E.
Atlanta, GA 30361
Tel: (404) 817-7791
Fax: (404) 817-2486