

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

D-11 MOTORAMA ENGINEERING, INC.,

Defendant.

CRIMINAL NO. 96-80009

HON: DENISE PAGE HOOD

VIOLATION: 15 U.S.C. § 1

OFFENSE: Sherman Act
Conspiracy

STATUTORY MAXIMUM FINE
(CORPORATION): \$10,000,000

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the defendant, the attorneys for the defendant, and the United States of America (hereinafter government¹) agree as follows:

1. Guilty Plea

A. Defendant shall enter a plea of guilty to the Eighth Superseding Information.

B. The elements of the offense are: See Attachment A.

¹The word “government” in this agreement refers to the United States Attorney for the Eastern District of Michigan and the Antitrust Division of the United States Department of Justice.

C. The parties stipulate to the following, which the government is prepared to prove, as an accurate factual basis for defendant's guilty plea: See Attachment B.

2. Sentence

A. Sentencing Guidelines Worksheets

The worksheets attached to this Agreement represent the joint position of the parties on the factors to be considered in calculating the appropriate sentence range under the Sentencing Guidelines promulgated under 28 U.S.C. § 994(a). The Court may accept or reject the position of the parties. If the defendant has provided false information that affects the calculation of the appropriate adjusted offense level, or if the government becomes aware, prior to the imposition of sentence, that the defendant's criminal history is more serious than appears on the attached worksheets, the government has the option of withdrawing from this Agreement. The defendant agrees that any delay resulting from such withdrawal shall be excludable delay for purposes of the Speedy Trial Act.

The parties acknowledge that the Court will determine the applicable sentencing factors at sentencing and that the Court's determination will affect the sentence range under the Sentencing Guidelines. The parties agree that all Sentencing Guidelines provisions that would affect defendant's guideline range have been identified in this Agreement (which includes the attached worksheets) and that the parties will raise no

others. The government reserves the right, however, to defend any of the Court's rulings and findings with respect to any sentencing issue on appeal or in any collateral proceeding, notwithstanding the other terms of this Agreement. The defendant will seek a downward departure only if the grounds are identified in the attached worksheets or elsewhere in this Agreement, or if the grounds did not exist prior to defendant's guilty plea.

B. Acceptance of Responsibility

Unless the government learns of new information to the contrary, the defendant will be entitled to a reduction of one point in its culpability score, under Section 8C2.5(g) of the Sentencing Guidelines, because the defendant clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.

C. Sentence Agreement

Pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that the appropriate disposition of the crime to be charged against the defendant is a fine of \$1,100,000, which fine is within the applicable Guidelines range, and that the fine will be payable in full before the fifteenth day after the date of judgment. The parties agree that calculation of double the gain or double the loss would unduly complicate or prolong the sentencing process. 18 U.S.C. § 3571(c) and (d). Therefore, the parties agree that such calculations are not appropriate for the crime to be charged.

The defendant agrees that the fine is to be paid to the United States District Court for the Eastern District of Michigan, and agrees not to propose or advocate that any payment be made, or service rendered to any person, organization, institution or agency in lieu of the fine or any part of the fine. The defendant agrees that it will not, absent a written agreement with the government, file any motion to reduce, modify or alter the fine imposed upon it by the Court so long as the fine does not exceed \$1,100,000, and that in no event will the defendant seek to reduce the fine to less than \$1,100,000.

The Court may accept or reject this Agreement, or may defer its decision until it has an opportunity to consider the presentence report. Defendant agrees that the Court may inspect the presentence report before it accepts or rejects this Plea Agreement. If the Court rejects this Agreement, it shall afford the defendant the opportunity to withdraw the plea of guilty and advise the defendant that if the plea is not withdrawn, the sentence may be greater than the maximum provided for in this Agreement.

D. Special Assessment

The defendant will pay a special assessment of \$200 in addition to any fine imposed. This assessment will be paid by the defendant before sentence is imposed, and the defendant will furnish a receipt at sentencing. Payment is to be made to the United States District Court, Clerk's Office, Fifth Floor, United States Courthouse, Detroit, Michigan 48226.

E. Restitution

The parties agree that, in addition to imposing a fine, the Court, pursuant to 18 U.S.C. §§ 3563(b)(2) and 3663(a)(3), and § 8B1.1 of the Sentencing Guidelines, may order defendant to pay restitution in an amount equal to the loss caused to any victims of the offense(s) charged in the Information. The individual Shareholders of MOTORAMA ENGINEERING, INC. have assumed an obligation on the part of MOTORAMA ENGINEERING, INC. to make restitution to General Motors Corporation. Defendant agrees to notify General Motors Corporation of its guilty plea, the Plea Agreement, and of the Information. Defendant further agrees to negotiate a settlement agreement with General Motors Corporation to resolve any damages arising out of defendant's participation in the conspiracy to suppress and eliminate competition by allocating contracts for tooling for General Motors Corporation ("the bid-rigging conspiracy.") The government and the defendant agree that this settlement should constitute full restitution to the victim of the bid-rigging conspiracy charged in the Information.

3. Cooperation

A. Truthful Information and Assistance

Defendant, MOTORAMA ENGINEERING, INC., through its president and owner, Frederick Louis Watson, Jr., shall fully, truthfully, and candidly cooperate with the government in the prosecution of any individuals and corporations and in the conduct of any federal grand jury investigation or other federal investigation involving the tooling industry and in any litigation or other proceedings arising or resulting therefrom to which the government is a party. This cooperation shall include, but is not limited to providing truthful and complete information to the United States Attorney's Office, personnel of the Antitrust Division, U.S. Department of Justice, and to other law enforcement agencies, including a full debriefing and truthful testimony at all proceedings, criminal, civil, or administrative, including but not limited to, grand jury proceedings, trials, and pretrial and post-trial proceedings, concerning MOTORAMA ENGINEERING, INC., Frederick Louis Watson, Jr., and others involved in bribery, bid-rigging, and other activities related to the awarding of contracts by General Motors Corporation, Chrysler Corporation, or others to Motorama Engineering, Inc., Jedav Industries, and other competitors. The cooperation shall also include providing any and all information concerning other possible criminal conduct known by defendant and Frederick Louis Watson, Jr. The above cooperation shall also include providing the government, without the requirement

of a subpoena, documents and other items in the possession or control of MOTORAMA ENGINEERING, INC. MOTORAMA ENGINEERING, INC. shall request the full and candid cooperation in such investigations and litigation or other proceedings of all its present and former employees designated by the government, including Frederick Louis Watson, Jr., and shall use its best efforts to secure the cooperation of such employees in such investigations and litigation or other proceedings. The defendant and Frederick Louis Watson, Jr. agree to cooperate in good faith, meaning that the defendant and Frederick Louis Watson, Jr. will not only respond truthfully and completely to all questions asked, but will also volunteer all information that is reasonably related to the subjects discussed in the debriefing. In other words, the defendant and Frederick Louis Watson, Jr. may not omit facts about crimes, participants, or his or its involvement, and then claim not to have breached the agreement because he or it was not specifically asked questions about those crimes, participants, or involvement. Any actions or statements inconsistent with continued cooperation under this agreement, including but not limited to, criminal activity, or a statement indicating a refusal to testify, constitute a breach of this agreement. Frederick Louis Watson, Jr. agrees to be available for interviews in preparation of all testimony. Frederick Louis Watson, Jr. further agrees to submit, upon request, to government-administered polygraph examinations to verify defendant's and Frederick Louis Watson, Jr.'s full and truthful cooperation.

B. Use of Information Against Defendant

In exchange for defendant's agreement to cooperate with the government, as outlined above, the government agrees not to use new information that the defendant provides (pursuant to this Agreement) about its own criminal conduct against it at sentencing in this case. Such information may be revealed to the Court but may not be used against the defendant in determining defendant's sentence range, choosing a sentence within the range, or departing from the range. There shall be no such restrictions on the use of information: (1) previously known to law enforcement agencies; (2) revealed to law enforcement agencies by, or discoverable through, an independent source; (3) in a prosecution for perjury or giving a false statement; or (4) in the event there is a breach of this Agreement.

4. Consequences of Violating Agreement

A. Government's Options

If the defendant fails to keep any promise in this Agreement (including any promise to cooperate), the government is relieved of any obligation not to prosecute the defendant on bid-rigging or other charges. Such charges may be brought without prior notice. In addition, if the government determines after sentence is imposed under this Agreement that the defendant's breach of the Agreement warrants further prosecution, the government will have the choice between letting the conviction under this Plea

Agreement stand or moving to vacate such conviction so that such charge(s) may be re-prosecuted as well. If the government makes its determination before sentencing, it may withdraw from the Plea Agreement in its entirety.

B. Waiver of Rights

Defendant agrees that if it fails to keep any promise made in this Agreement, defendant gives up:

(1) the right not to be placed twice in jeopardy for the offense to which the defendant entered a plea of guilty or which was dismissed under this Agreement;

(2) any right under the Constitution and laws of the United States to be charged or tried in a more speedy manner for any charge that is brought as a result of the defendant's failure to keep this Agreement;

(3) the right to be charged within the applicable statute of limitations period for any charge that is brought as a result of the defendant's failure to keep this Agreement, and on which the statute of limitations expired after defendant entered into this Agreement.

5. Waiver of Appeal Rights

Defendant agrees not to appeal or otherwise challenge the constitutionality or legality of the Sentencing Guidelines. Defendant agrees to waive its right to assert at trial or on appeal any defect or error arising from the Information, the Information process, the fact that it has been prosecuted by way of an Information, or the accuracy of any factor stipulated in the attached worksheets.

Except as otherwise provided, the defendant expressly waives the right to appeal its sentence, including any appeal right conferred by 18 U.S.C. § 3742, and the defendant further agrees not to contest its sentence in any post-conviction proceeding including, but not limited to, a proceeding under 28 U.S.C. § 2255. The defendant, however, reserves the right to appeal: (a) any punishment imposed in excess of a statutory maximum; (b) any punishment to the extent it constitutes an upward departure from the Guidelines range deemed most applicable by the sentencing court; (c) on the grounds of arithmetic errors in the Guidelines calculations; and (d) on the ground of ineffective assistance of counsel.

6. Representation of Counsel

Defendant has thoroughly reviewed all legal and factual aspects of this case with its attorneys and is fully satisfied with those attorneys' legal representation. The defendant has received explanations satisfactory from its attorneys concerning each

paragraph of this Plea Agreement, and the alternatives available to the defendant other than entering into this Agreement. After conferring with counsel, the defendant has concluded that it is in its best interest to enter into this Plea Agreement.

7. Voluntary Plea

This plea of guilty is freely and voluntarily made and not the result of force or threats or of promises or representations apart from those set forth in this Plea Agreement. There have been no representations or promises from anyone as to what sentence this Court will impose.

8. Other Promises by the Government

The government agrees that it will not prosecute the defendant for any other offenses committed prior to the date of this Agreement relating to contract allocation in the automotive industry of which it is aware at the time of defendant's guilty plea.

9. Miscellaneous

A. No Other Terms

This Agreement, together with the agreement tolling the statute of limitations (Attachment 1 to the Information), incorporates the complete understanding between the parties, and no other promises have been made by the government to the defendant or to the attorneys for the defendant. This Agreement does not prevent any governmental agency, including the Internal Revenue Service, from pursuing civil or administrative

actions against the defendant or any property. Unless an exception to this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or obligate governmental entities other than the United States Attorney's Office for the Eastern District of Michigan and the Antitrust Division of the United States Department of Justice.

B. Acceptance

This plea offer is explicitly conditioned on receipt by the Office of the United States Attorney of this fully signed Plea Agreement no later than 5:00 p.m. on

_____. It is defendant's sole and complete responsibility to provide timely delivery in order for this offer to be effectively accepted.

SAUL A. GREEN
United States Attorney
Eastern District of Michigan

FREDERICK L. WATSON, JR.
President of Motorama Engineering, Inc.

KEITH E. CORBETT
Assistant U.S. Attorney
Eastern District of Michigan

ROBERT S. HARRISON
Counsel for Motorama Engineering, Inc.

ERIC M. STRAUS
Assistant U.S. Attorney
Eastern District of Michigan

PLATO CACHERIS
Counsel for Motorama Engineering, Inc.

MICHAEL F. WOOD
Assistant Chief, Cleveland Field Office
Antitrust Division

JOHN F. HUNDLEY
Counsel for Motorama Engineering, Inc.

KEVIN C. CULUM
Attorney, Cleveland Field Office
Antitrust Division

BRIAN J. STACK
Attorney, Cleveland Field Office
Antitrust Division

Dated:

ELEMENTS OF OFFENSE-CORPORATE

Information: One Count - Conspiracy to suppress and restrain interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

Penalty: Corporate - The statutory maximum sentence is a fine in an amount equal to the greatest of: (1) \$10 million; (2) twice the pecuniary gain derived from the crime; or (3) twice the pecuniary loss caused to the victims of the crime. There is a mandatory special assessment of \$200. Probation and restitution may be imposed.

Elements of the Offense: The essential elements which must be proved beyond a reasonable doubt in order to establish the offense charged in the Information are as follows:

1. That the conspiracy, agreement, or understanding described in the Information, was knowingly formed, and was existing at or about the time alleged;
2. That the Defendant knowingly became a member of the conspiracy, agreement, or understanding, as charged;
3. That the alleged conspiracy constituted an unreasonable restraint of interstate commerce; and
4. That the offense was carried out, in part, in the Eastern District of Michigan within the five years preceding the filing of the Information.

FACTUAL BASIS - MOTORAMA ENGINEERING, INC.

INFORMATION

Beginning in approximately 1989 and continuing up to approximately April 1995, Frederick L. Watson, Jr., president of Motorama Engineering, Inc., entered into a conspiracy with Rick Bellestri, president of Jedav Industries, Inc., Albert Charles, an engineer for General Motors Corporation, and others to rig bids for tooling contracts offered by General Motors Corporation. Essentially, Frederick L. Watson, Jr., Rick Bellestri, Albert Charles, and their co-conspirators agreed, in advance of the bids, which co-conspirator would be the winning bidder and which would submit intentionally high, non-competitive bids to General Motors. All of the conspirator companies submitted bids. The designated winning bidder was chosen among the conspirators. Motorama Engineering was chosen as winning bidder at least twice. The total dollar amount of those two contracts was \$2,790,000. It was the responsibility of the intended low bidder to make up fictitious higher losing bid figures (dollar amounts for the other competitors). Usually all of the bid figures were delivered or faxed to Jedav Industries. Rick Bellestri, in turn, distributed these (high) bid figures to the other conspirators for later submission to General Motors.

A further part of the conspiracy was to "kickback" 5% (in cash) or 10% (by check) of the value of the awarded contract to Rick Bellestri. The conspirators were billed by real or fictitious companies on fraudulent invoices for work which was never actually

performed. The conspirators' checks were made out to the fictitious companies and either mailed or delivered to Bellestri. Bellestri had these checks either cashed at party stores or used to pay construction costs for an office building owned by Bellestri in Utica, Michigan. Frederick L. Watson, Jr. caused at least twenty-one such checks, made out to Kill & Beshke Associates, Rathsburg Associates, Wm. McKenzie Associates, Ambrose Russell Associates, and Precision Associates, to be paid by Motorama Engineering, Inc., for work awarded to it by General Motors.

To further the conspiracy, a percentage of the money received from his co-conspirators was passed on by Rick Bellestri to Albert Charles, then an employee of General Motors. This took the form of cash, fictitious loans or checks drawn on the business checking account of Jedav Industries, Inc. and made out to a motorcycle dealership in the State of Illinois. Albert Charles then purchased motorcycles, motorcycle parts and/or service from this dealership. Albert Charles continued to receive monies for his participation in the conspiracy into 1995.