

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)	Criminal No. 1:04 CR 521
)	
v.)	Filed: December 2, 2004
)	
)	Violation: 18 U.S.C. § 1512(c)(2)
)	
POOL FISH DISTRIBUTORS, INC.)	STATUTORY MAXIMUM
)	FINE: \$500,000

PLEA AGREEMENT

The United States of America and POOL FISH DISTRIBUTORS, INC. ("defendant"), a corporation organized and existing under the laws of the State of Arkansas, hereby enters into the following Plea Agreement pursuant to Rule 11(c)(1)(C) 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; 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)-(g) above and all jurisdictional defenses to the prosecution of this case, including any defense based on a lack of venue in this District, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in the United States District Court for the Northern District of Ohio. The defendant also waives the right to appeal the imposition of sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea Agreement. The defendant agrees to have its sentence determined under the United States Sentencing Guidelines (“U.S.S.G.”) and waives all constitutional challenges to the validity of the U.S.S.G., though both parties understand that U.S.S.G. § 8C2.1, which applies to corporations, does not include 18 U.S.C. § 1512(c)(2) as an offense to which it applies. The defendant agrees that facts that determine its fine range will be found by the court at sentencing by a preponderance of the evidence and that the court may consider any reliable evidence, including hearsay, in making such determinations. Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. 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 Ohio. The Information will charge the defendant with obstruction of justice in violation of 18 U.S.C. § 1512(c)(2) for corruptly obstructing or impeding an official proceeding, specifically a grand jury in the Northern District of Ohio which is investigating allegations of price-fixing, market allocation and other violations of federal law arising in the feeder-goldfish industry.

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 parties stipulate that the government would be able to prove the following facts beyond a reasonable doubt: :

- (a) At least as early as September 1997 and continuing until at least May 2004, POOL FISH DISTRIBUTORS was a corporation organized and existing under the laws of the State of Arkansas with its principal place of business in Lonoke, Arkansas; and during this time, POOL FISH DISTRIBUTORS produced, distributed and sold feeder goldfish throughout the United States. Feeder-goldfish are fed to other fish for food;
- (b) In or about June 2002, a federal grand jury sitting in the Eastern District of Michigan and investigating a conspiracy to commit wire fraud and mail fraud by an executive of an audio-visual company in Troy, Michigan issued a subpoena duces tecum (subpoena 1) to POOL FISH DISTRIBUTORS;

- (c) In or about June 2003, a federal grand jury sitting in the Eastern District of Arkansas and investigating allegations of price-fixing and market allocation by producers and distributors of feeder goldfish issued a second subpoena duces tecum (subpoena 2) to POOL FISH DISTRIBUTORS;
- (d) In or about March 2004, a federal grand jury sitting in the Northern District of Ohio and investigating allegations of price fixing and market allocation by producers and distributors of feeder goldfish issued a third subpoena duces tecum (subpoena 3) to POOL FISH DISTRIBUTORS; and
- (e) Beginning at least as early as June 19, 2002 and continuing thereafter until in or about May 2004, POOL FISH DISTRIBUTORS, acting through its officers, agents, and employees, did corruptly obstruct or impede an official proceeding, namely a grand jury investigating a conspiracy to commit wire fraud and mail fraud being conducted in the Eastern District of Michigan; a grand jury investigating allegations of price-fixing and market allocation by producers and distributors of feeder goldfish being conducted in the Eastern District of Arkansas; and a grand jury investigating allegations of price fixing and market allocation by producers and distributors of feeder goldfish being conducted in the Northern District of Ohio in that:
 - (i) in June 2002, POOL FISH DISTRIBUTORS had material documents in its possession that it intentionally and corruptly did not provide to a grand jury sitting in the

Eastern District of Michigan, even though those documents were required to be produced pursuant to subpoena 1 and related to possible violations of the mail and wire fraud statutes;

- (ii) in June 2003 and continuing until at least May 2004, POOL FISH DISTRIBUTORS had material documents in its possession that it intentionally and corruptly did not provide to a grand jury sitting in the Eastern District of Arkansas and a grand jury sitting in the Northern District of Ohio, even though those documents were required to be produced pursuant to subpoena 1, subpoena 2 and subpoena 3, including additional material documents related to allegations of price-fixing and market allocation in the feeder-goldfish industry; and
- (iii) as a result of the intentional failure to provide the documents called for by subpoena, the grand jury in the Northern District of Ohio was obstructed or impeded from investigating properly potential violations before one or more violations became time-barred.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the maximum penalty which may be imposed against it upon conviction for a violation of Obstruction of Justice is a fine of \$500,000.

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 any victim of the

offense;

(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;

(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; and

(d) pursuant to U.S.S.G. § 8B1.2, the Court may order the defendant as a condition of probation to remedy the harm caused by the offense and to eliminate or reduce the risk that the instant offense will cause future harm.

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the U.S.S.G. Manual in effect on the day of sentencing, though both parties understand that U.S.S.G. § 8C2.1, which applies to corporations, does not include 18 U.S.C. § 1512 as an offense to which it applies.

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine between \$150,000 and \$250,000, to be determined at the time of sentencing (“the recommended sentence”). Such fine will be payable in two installments as set forth below with interest accruing under 18 U.S.C. § 3612(f)(1)-(2).

(a) The defendant will pay one-half of the recommended sentence on or before the fifteenth (15th) day after the date of judgment and pay the remainder of the judgment and all accrued interest on the first anniversary

of the date of judgment;

(b) The defendant understands that the Court will order it to pay a \$400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in addition to any fine imposed;

(c) The defendant understands that the United States will request the Court to impose a term of probation, not to exceed three years, and that the Court may in fact impose such a term of probation;

(d) The defendant understands that the United States will request the Court pursuant to U.S.S.G. § 8B1.2 to order that the defendant as a condition of probation eliminate or reduce the risk that the offense will cause future harm, including implementing an antitrust compliance policy; and

(e) The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, and the further disclosure described in Paragraph 9, will provide sufficient information concerning the defendant, the crime charged in this case, and the defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and defendant agree to request jointly that the Court accept the defendant's guilty plea and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by the defendant and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.

9. Subject to the ongoing, full, and truthful cooperation of the defendant and its related entities under common control, specifically POOL AIR FREIGHT,

INC., RONNIE POOL FISHERIES, INC., POOL FAMILY LIMITED PARTNERSHIP, and POOL FISHERIES, INC., collectively known as “POOL FISHERIES,” and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant’s cooperation and its commitment to prospective cooperation with the United States’ investigation and prosecutions, all material facts relating to the defendant’s involvement in the charged offense, and all other relevant conduct.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement.

- (a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 10(b) below, shall be rendered void. The defendant agrees, however, that it may not withdraw from this Plea Agreement based on the Court imposing a term of probation.
- (b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense

referred to in Paragraph 13 of this Plea Agreement will be tolled for the period between the date of the signing of the Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

DEFENDANT'S COOPERATION

11. The defendant and POOL FISHERIES, through their current or former directors, officers, employees and agents, will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the production, distribution or sale of feeder goldfish, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation 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 and POOL FISHERIES, requested by the United States in connection with any Federal Proceeding;

(b) securing the ongoing, full, and truthful cooperation, as defined in Paragraph 12 of this Plea Agreement, of all current or former directors, officers, employees, and agents of the defendant and POOL FISHERIES, including making such persons available in Cleveland, Ohio and at other mutually agreed-upon locations, at the defendant's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

12. The ongoing, full, and truthful cooperation of each person described in Paragraph 11(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing in Cleveland, Ohio, and at other mutually agreed-upon locations all documents, including claimed personal documents, and other materials, requested by attorneys and agents of the United States;

(b) making himself or herself available for interviews in Cleveland, Ohio and at other mutually agreed-upon locations, not at the expense of the United States, 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, 1512(c));

(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 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, 1512(c)); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 14(c), the statute of limitations period for any Relevant Offense as defined in

Paragraph 14(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

13. Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, and subject to the cooperation requirements of Paragraph 11 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the defendant or POOL FISHERIES for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of any antitrust conspiracy, mail-fraud scheme or wire-fraud scheme involving the production, distribution or sale of feeder goldfish, or undertaken in connection with any investigation of such a conspiracy or scheme. 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.

14. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence and subject to the exceptions noted in Paragraph 14(c), the United States will not bring criminal charges against any current or former director, officer, employee or agent of the defendant or POOL FISHERIES for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, employee or agent of the defendant or POOL FISHERIES that was undertaken in furtherance of any antitrust conspiracy, mail-fraud scheme or wire-fraud scheme involving the production, distribution or sale of

feeder goldfish, or undertaken in connection with any investigation of such a conspiracy or scheme ("Relevant Offense");

(b) Should the United States determine that any current or former director, officer, employee or agent of the defendant or POOL FISHERIES 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 14(b) fails to comply with his or her obligations under Paragraph 12, 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 14(e), information provided by a person described in Paragraph 14(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. §§ 1503, 1512(c));

(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 12 of this Plea Agreement, the agreement in Paragraph

14(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 11(a) and 12(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant.

15. 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

16. The defendant has been represented by counsel and is fully satisfied that its attorney 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

17. 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

18. 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 11 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 13 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.

19. 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 current or former directors, officers, employees or agents 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. Evid. 410.

ENTIRETY OF AGREEMENT

20. 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.

21. 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.

DATED: 10/14/04

BY: "/s/"
DANIEL LON POOL
President, Pool Fish Distributors, Inc.

"/s/"
KEVIN C. CULUM
[3460--MT]

BY: "/s/"
DAVID J. LAING
PLATO CACHERIS
Baker & McKenzie LLP
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"/s/"
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