

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

	:	Criminal No. 09-134
UNITED STATES OF AMERICA	:	Filed:
v.	:	Violation: 18 U.S.C. § 371
CHRISTOPHER TRANCHINA,	:	
Defendant.	:	

PLEA AGREEMENT

The Antitrust Division of the United States Department of Justice and the defendant, Christopher Tranchina ("Tranchina"), hereby enter into the following Plea Agreement ("Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.").

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

1. Tranchina will waive indictment pursuant to Fed. R. Crim. P. 7(b) and plead guilty in the United States District Court of New Jersey to a one-count Information, in the form attached, in which he is charged with violating 18 U.S.C. § 371 for conspiring from approximately the Spring of 2001 until approximately June 2005 to defraud the United States, namely, the United States Environmental Protection Agency ("EPA"), and to commit offenses against the United States by providing and attempting to provide kickbacks to an employee of a prime contractor at the Federal Creosote Superfund Site in

Manville, New Jersey ("Federal Creosote") and by including the amount of the kickbacks in the sub-contract prices charged to the prime contractor, thereby causing the prime contractor to charge those inflated prices to the EPA and United States, in violation of 41 U.S.C. §§ 53(1) and (3).

GOVERNMENT'S AGREEMENT

2. Subject to Tranchina's full compliance with the understandings specified in this Agreement, and upon the Court's acceptance of the guilty plea called for by this Agreement, the Antitrust Division of the United States Department of Justice ("Antitrust Division") will not bring further criminal charges against Tranchina for any act or offense committed prior to the date of this Agreement that was in furtherance of a conspiracy to provide kickbacks to an employee of the prime contractor at Federal Creosote in order to influence the award of sub-contracts at the site and to include those kickbacks in the sub-contract prices charged to the prime contractor at Federal Creosote, as described in the attached Information. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax and securities laws, or to any crime of violence.

3. It is understood that this Agreement does not bind any other federal agency or local prosecuting authority or administrative agency other than the Antitrust Division.

POSSIBLE MAXIMUM PENALTIES

4. Tranchina understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 371 is:

(a) a term of imprisonment of not more than five (5) years;

(b) a fine of not more than the greater of \$250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense; or

(c) both such sentences; and

(d) a term of supervised release of no more than three (3) years following any term of imprisonment pursuant to 18 U.S.C. § 3583(b)(2) and U.S.S.G. § 5D1.2(a)(2).

Pursuant to 18 U.S.C. § 3583(e)(3), if the defendant violates any condition of supervised release, he could be imprisoned up to two (2) years.

5. Tranchina also understands that:

(a) the Court shall impose an order of restitution, pursuant to 18 U.S.C. § 3663A and U.S.S.G. § 5E1.1; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

6. Tranchina understands that the United States Sentencing Guidelines (“Sentencing Guidelines”) are advisory, not mandatory, but that the Court must consider the Sentencing Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing a sentence. Tranchina understands that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Tranchina understands that although the Court is not ultimately bound to impose a sentence within the applicable Sentencing Guidelines range, its sentence must be reasonable based upon considerations of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

SENTENCING AGREEMENT

7. The Antitrust Division and Tranchina agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this Agreement.

8. Nothing in this Agreement limits the right of the parties to (i) present to the Probation Department or the Court any facts relevant to sentencing; (ii) make any arguments regarding where within the Stipulated Sentencing Guidelines range set forth in Schedule A (or such other range as the Court may determine) Tranchina should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to 18 U.S.C. § 3553(a); and (iii) seek an appropriately adjusted Sentencing Guidelines range if it

is determined based upon new information that Tranchina's criminal history category is other than Category I. Nothing in this Agreement limits the right of the Antitrust Division to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. §3E1.1, and/or imposition of an adjustment for obstruction of justice, pursuant to U.S.S.G. §3C1.1, regardless of any stipulation set forth herein, should Tranchina move to withdraw his guilty plea once it is entered, or should it be determined that Tranchina has either (i) engaged in conduct, unknown to the Antitrust Division at the time of the signing of this Agreement, that constitutes obstruction of justice, or (ii) committed another crime after signing this Agreement.

9. It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Department nor the Court is bound by the Stipulated Sentencing Guidelines range set forth in Schedule A, either as to questions of fact or as to the determination of the proper Sentencing Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Sentencing Guidelines adjustments, departures, or calculations different from those agreed to in Schedule A, or contemplates any sentence outside of the Stipulated Sentencing Guidelines range set forth in Schedule A, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

10. Moreover, this Agreement to stipulate on the part of the Antitrust Division, as set forth in the attached Schedule A, is based on the information and evidence that the Antitrust Division possesses as of the date of this Agreement. Thus, if the Antitrust

Division obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, the Antitrust Division shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either the Antitrust Division or Tranchina from any other portion of this Agreement, including any other stipulation.

11. Tranchina understands that the sentence to be imposed on him is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. Tranchina acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. The Antitrust Division cannot, and does not, make any promise or representation as to what sentence Tranchina will receive. Moreover, Tranchina understands he will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Government's Stipulated Guidelines Range or Tranchina's Stipulated Guidelines Range as set forth in Schedule A.

12. The Antitrust Division and Tranchina agree that (i) Tranchina will not appeal or otherwise litigate under 28 U.S.C. §§ 2255 and/or 2241 any sentence within or below Tranchina's Stipulated Sentencing Guidelines range set forth in Schedule A, and (ii) that the Antitrust Division will not appeal any sentence within or above the Government's Stipulated Sentencing Guidelines set forth in Schedule A. This provision is binding on the

parties even if the Court employs a Sentencing Guidelines analysis different from that set forth in this Agreement. Furthermore, it is agreed that any appeal regarding the sentence of Tranchina that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. Nothing in this paragraph shall act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct.

13. Tranchina agrees that, prior to the date of sentencing, he shall file accurate amended personal tax returns and will pay, or will enter into an agreement to pay, past taxes due and owing by him to the Internal Revenue Service for the tax years 2001 to 2005, including interest and applicable civil fraud penalties, on such terms and conditions as will be agreed on by the Internal Revenue Service and him. In addition, Tranchina will not contest the applicability of civil fraud penalties and agrees not to file any claims for refund of taxes, penalties or interest for amounts attributable to returns filed incident to this Agreement.

14. Tranchina agrees that 30 days prior to the date of sentencing he will have \$23,000 in liquid assets in an escrow account controlled by his attorney. The Antitrust Division and Tranchina agree to recommend to the Court that the funds in the escrow

account be used only to satisfy any fine or restitution that Tranchina is sentenced to pay. Tranchina acknowledges, however, that the Court may sentence him to pay a fine and restitution in excess of the amount in the escrow account. The Antitrust Division and Tranchina also agree that if the funds in the escrow account exceed the amount of fines and restitution Tranchina is sentenced to pay, they will seek the Court's permission to return the remainder to Tranchina.

15. In accordance with U.S.S.G. §§ 5E1.1(a)(2), the Antitrust Division and Tranchina agree to recommend to the Court that Tranchina be ordered to pay no less than \$138,000 in restitution to the EPA on a joint and several basis with his co-conspirators.

16. Tranchina understands that this Agreement does not in any way affect or limit the right of the Antitrust Division to respond to and take positions on post-sentencing motions or requests for information that relate to the reduction or modification of his sentence.

17. Tranchina understands and agrees that should the conviction following his plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Antitrust Division has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against him, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of

this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

REPRESENTATION BY COUNSEL

18. Tranchina has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. Tranchina has thoroughly reviewed this Agreement with his attorney, and has received satisfactory explanations from his attorney concerning each paragraph of this Agreement and alternatives available to Tranchina other than entering into this Agreement. After conferring with his attorney and considering all available alternatives, Tranchina has made a knowing and voluntary decision to enter into this Agreement.

VOLUNTARY PLEA

19. Tranchina hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, Tranchina waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Antitrust Division has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83 (1963), other than information establishing the factual innocence of Tranchina, and impeachment material pursuant to Giglio v. United States, 405 U.S. 150 (1972), that have not already been produced as of the date of the signing of this Agreement.

20. Tranchina's decision to enter into this 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 Agreement. The Antitrust Division has made no promises or representations to Tranchina as to whether the Court will accept or reject the recommendations contained within this Agreement.

ENTIRETY OF AGREEMENT

21. This Agreement constitutes the entire agreement between the Antitrust Division and Tranchina concerning the disposition of the charges contained in the attached Information. The Antitrust Division has made no other promises to or agreements with Tranchina. This Agreement cannot be modified except in writing, signed by the Antitrust Division and Tranchina.

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


Dated: February 26, 2009



CHRISTOPHER TRANCHINA



DAVID A. SCHWARTZ, ESQ.
Counsel for Christopher Tranchina



JEFFREY D. MARTINO



ELIZABETH PREWITT



HELEN CHRISTODOULOU

Attorneys, Department of Justice
Antitrust Division
26 Federal Plaza, Room 3630
New York, NY 10278
Phone: (212) 264-0653

SCHEDULE A

1. The Antitrust Division and Tranchina recognize that the United States Sentencing Guidelines are not binding upon the Court. The Antitrust Division and Tranchina nevertheless agree to the stipulations set forth below.

2. The version of the Sentencing Guidelines effective on the date of sentencing applies in this case. The applicable guideline is U.S.S.G. § 2B4.1(a). Under the current Sentencing Guidelines, this guideline carries a Base Offense Level of 8.

3. Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(1)(F) applies. This Specific Offense Characteristic results in an increase of 10 levels (loss of more than \$120,000 but less than \$200,000), bringing Tranchina's Offense Level to a Level of 18.

4. The parties do not agree as to the applicability of U.S.S.G. § 3B1.2(b), and both sides reserve the right to argue their respective positions at sentencing. The Antitrust Division's position is that Tranchina was not a minor participant in the criminal scheme and that a deduction for mitigating role pursuant to U.S.S.G. § 3B1.2(b) is not warranted. Tranchina's position is that he may have been a minor participant and that a two-level deduction pursuant to U.S.S.G. § 3B1.2(b) may be appropriate.

5. Assuming that Tranchina demonstrates a recognition and affirmative acceptance of personal responsibility for the offense charged through his allocution and subsequent conduct prior to the imposition of a sentence, a 2-level reduction will be warranted pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming Tranchina has accepted

responsibility as described in the previous sentence, an additional 1-point reduction in his offense level is warranted, pursuant to U.S.S.G. § 3E1.1(b), if Tranchina's offense level under the Sentencing Guidelines prior to the operation of U.S.S.G. § 3E1.1(a) is 16 or greater, because Tranchina gave timely notice of his intention to enter a plea of guilty, thereby permitting the Antitrust Division to avoid preparing for trial and permitting the Court to allocate their resources efficiently.

6. In accordance with the above, (a) if the Court finds that Tranchina was a minor participant in the criminal scheme, Tranchina agrees that the total Sentencing Guidelines offense level applicable to Tranchina will be 13 (12-18 months; \$3,000 to \$30,000 fine) ("Tranchina's Stipulated Sentencing Guidelines Range"), and that (b) if the Court finds that Tranchina was not a minor participant in the criminal scheme, the parties agree that the total Sentencing Guidelines offense level applicable to Tranchina will be 15 (18-24 months; \$4,000 to \$40,000 fine) ("the Government's Stipulated Sentencing Guidelines Range"), (collectively, "the Stipulated Sentencing Guidelines range").