

FILED
6/9/2022

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JERRY P. WATSON

No. 22-CR-268

Judge Sara L. Ellis

PLEA AGREEMENT

1. This Plea Agreement between the UNITED STATES OF AMERICA and the defendant, JERRY P. WATSON, and his attorney, JAMES P. FIEWEGER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(B), as more fully set forth below. The parties to this Plea Agreement have agreed upon the following:

Charge in This Case

2. The Information in this case charges the defendant with entering into and engaging in a *per se* unlawful conspiracy with companies and individuals to suppress and eliminate competition by agreeing to rig bids and fix prices of commercial flooring services and products sold in the United States beginning at least as early as 2009, and continuing through at least June 22, 2017, in the Northern District of Illinois and elsewhere, in violation of the Sherman Act, Title 15, United States Code, Section 1.

3. The defendant has read the charge against him contained in the Information, and that charge has been explained fully to him by his attorneys.

4. The defendant fully understands the nature and elements of the crime with which he will be charged.

Rights of Defendant

5. The defendant understands his 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 him;
 - d. to have a trial by jury, at which he 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 him to be found guilty;
 - e. to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - f. not to be compelled to incriminate himself;
 - g. to appeal his conviction, if he is found guilty; and
 - h. to appeal the imposition of sentence against him.

Agreement to Plead Guilty and Waive Certain Rights

6. The defendant knowingly and voluntarily waives:
- a. the rights set out in subparagraphs 5(b)–(f) above;
 - b. the right to file any appeal or collateral attack, including but not limited to an application or motion under 28 U.S.C. § 2241 or § 2255, that challenges his conviction, including but not limited to any appeal or collateral attack raising any argument that (1) the statute to which he is pleading guilty is unconstitutional or (2) the admitted conduct does not fall within the scope of such statute; and

c. the right to file any appeal or collateral attack, including but not limited to an appeal under 18 U.S.C. § 3742 or an application or motion under 28 U.S.C. § 2241 or § 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the Government's Recommended Sentence (as defined in Paragraph 16 of this Plea Agreement), regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b).

d. Nothing in this Paragraph 6, however, will 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. Consistent with Federal Rule of Criminal Procedure 11(b)(1)(O), the defendant recognizes that if he is not a citizen of the United States, pleading guilty may have consequences with respect to his immigration status, including removal from the United States, denial of citizenship, and denial of admission to the United States in the future.

e. Pursuant to Federal Rule of Criminal Procedure 7(b), the defendant will waive indictment and plead guilty to a one-count Information to be filed in the United States District Court for the Northern District of Illinois.

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

factual admission of guilt to the Court in accordance with Federal Rule of Criminal Procedure 11, as set forth in Paragraph 9 of this Plea Agreement.

8. The United States agrees that at the arraignment, it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

Factual Basis for Offense Charged

9. The defendant will plead guilty because he is in fact guilty of the charge described in Paragraph 2 above. In pleading guilty, the defendant admits the following facts, and each and every fact contained in the Information, and that those facts establish his guilt beyond a reasonable doubt to the charge contained in the Information:

a. For purposes of this Plea Agreement, the “Relevant Period” is that period beginning at least as early as 2009, and continuing through at least June 22, 2017.

b. During the Relevant Period, the defendant was an owner of Commercial Carpet Consultants, Inc. (“CCC”) and its President until in or around June 2016. During the Relevant Period, CCC was a corporation organized and existing under the laws of Illinois, with its principal place of business in this District. CCC was a provider of commercial flooring services and products in the United States. Providers of commercial flooring services and products remove any preexisting flooring products at the job site, prepare the floor surface for installation, and install new flooring materials, including but not limited to carpet, wood, vinyl, tile, and laminate flooring products.

c. During the Relevant Period, Mr. David's Flooring International, LLC, was a corporation organized and existing under the laws of Delaware with a principal place of business located in this District. During the Relevant Period, PCI FlorTech, Inc., and Vortex Commercial Flooring, Inc., were corporations organized and existing under the laws of Illinois with principal places of business located in this District. Mr. David's Flooring International, LLC, PCI FlorTech, Inc., and Vortex Commercial Flooring, Inc. were providers of commercial flooring services and products in the United States.

d. During the Relevant Period, the defendant and certain other individuals at CCC participated in a conspiracy with other companies and individuals engaged in the sale of commercial flooring services and products, including Michael P. Gannon, Mr. David's Flooring International, LLC, PCI FlorTech, Inc., and Vortex Commercial Flooring, Inc., one purpose of which was to suppress and/or eliminate competition by agreeing to rig bids and/or fix prices of commercial flooring services and products sold in the United States. In furtherance of the conspiracy, the defendant attended meetings and/or participated in conversations and other communications with representatives of other companies that provide commercial flooring services and products, in order to discuss methods for rigging bids and/or fixing the prices of commercial flooring services and products. During these meetings, conversations, and other communications, the defendant and his co-conspirators agreed to rig bids and/or fix the prices of commercial flooring services and products to be sold in the United States. The defendant and his co-conspirators exchanged

pricing-related information to enable co-conspirator companies to submit complementary bids for commercial flooring services and products to potential customers, and the agreed-upon co-conspirator often won the business.

e. During the Relevant Period, in some instances, employees of general contractors made statements to the defendant about the need for additional bids, which the defendant understood to be requests to obtain complementary bids.

f. During the Relevant Period, CCC's sales of commercial flooring services and products to customers in the United States affected by the violation of 15 U.S.C. § 1 totaled at least \$3,969,850, which is attributable to the defendant.

g. During the Relevant Period, the defendant made decisions regarding bids that CCC rigged; submitted rigged bids on behalf of CCC, or caused others to submit rigged bids on behalf of CCC, in accordance with the agreement; signed bids on behalf of CCC that he knew were rigged; submitted, or directed his subordinates at CCC to submit, complementary bids at the request of other co-conspirator corporations, in accordance with the agreement; solicited, or directed his subordinates at CCC to solicit, complementary bids from other co-conspirator companies so that CCC's bid was lower than the solicited bid; provided instructions to subordinates at CCC on the methods, means, and manner to rig bids; sold and accepted payment for commercial flooring services and products through a collusive and noncompetitive process; and communicated directly with executives, principals, or managers of co-conspirator corporations for the purpose of monitoring and ensuring submission of complementary bids.

h. During the Relevant Period, CCC and its co-conspirators sold commercial flooring services and products in the United States in a continuous and uninterrupted flow of interstate trade and commerce. In addition, records and documents necessary for the sale and provision of such services and products by the co-conspirators, as well as payments and solicitations for those services and products, traveled in interstate commerce. The business activities of CCC and co-conspirators in connection with the sale and provision of commercial flooring services and products that were the subject of this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

i. Acts in furtherance of this conspiracy were carried out within the Northern District of Illinois and elsewhere. Commercial flooring services and products that were the subject of this conspiracy were sold by one or more of the conspirators to customers in this District and elsewhere.

Elements of the Offense

10. The elements of the charged offense are that:

- a. the conspiracy described in the Information existed at or about the time alleged;
- b. the defendant knowingly became a member of the conspiracy; and
- c. the conspiracy described in the Information either substantially affected interstate commerce in goods or services or occurred within the flow of interstate commerce in goods and services.

Maximum Statutory Penalties

11. The defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 10 years' imprisonment, pursuant to 15 U.S.C. § 1;

b. A maximum fine of \$1 million, or twice the gross pecuniary gain the conspirators derived from the offense, or twice the gross pecuniary loss resulting from the offense, whichever is greatest, pursuant to 15 U.S.C. § 1 and 18 U.S.C. § 3571(b) and (d); and

c. A term of supervised release of three years following any term of imprisonment, pursuant to 18 U.S.C. §§ 3559(a)(3), 3583(b)(2) and U.S.S.G. § 5D1.2(a)(2). If the defendant violates any condition of supervised release, the defendant could be required to serve up to two years in prison, pursuant to 18 U.S.C. § 3583(e)(3).

12. In addition, the defendant understands that:

a. Pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. § 3663(a)(3) or § 3583(d), the Court may order him to pay restitution to the victims of the offense; 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 Calculations

13. The defendant understands that:

a. The Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed.

b. The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence.

c. The Court will make Guidelines determinations by applying a standard of preponderance of the evidence. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

14. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specified below:

a. There is no *ex post facto* issue under the November 2021 edition of the Guidelines Manual.

b. **Offense Level Calculations**

i. The base offense level for the defendant's antitrust crime is 12, pursuant to U.S.S.G. § 2R1.1(a).

ii. Because the conduct involved the defendant's participation in an agreement to submit non-competitive bids, the base offense level is increased by one level, pursuant to U.S.S.G. § 2R1.1(b)(1).

iii. The volume of commerce done by the defendant's principal, CCC, in goods and services affected by the violation totals \$3,969,850. Therefore, pursuant to U.S.S.G. § 2R1.1(b)(2)(A), the defendant's offense level is increased by an additional two levels.

iv. The defendant was a manager or supervisor of the criminal activity that is the subject of this Plea Agreement, and that criminal activity involved five or more participants. Therefore, the defendant's offense level is increased by an additional three levels, pursuant to U.S.S.G. § 3B1.1(b).

v. The defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the Antitrust Division and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vi. In accord with U.S.S.G. § 3E1.1(b), the defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to

allocate its resources efficiently. Therefore, as provided by U.S.S.G. § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to its determination whether the defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** Based on the facts now known to the government, the defendant's criminal history points equal zero and the defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, it is the government's position that the anticipated offense level is 15. Combined with the anticipated criminal history category of I, the anticipated advisory Sentencing Guidelines range is 18 to 24 months of imprisonment, in addition to any supervised release the Court may impose. The defendant's fine is determined by U.S.S.G. § 2R1.1(c), which prescribes a fine range from one to five percent of the volume of commerce, but not less than \$20,000. The applicable volume of commerce is \$3,969,850, resulting in a fine range of \$39,698.50 to \$198,492.50, in addition to any restitution the Court may impose.

15. The defendant and his attorneys and the government expressly acknowledge that while none of the Guidelines calculations set forth above are binding on the Court or the Probation Office, the parties have agreed pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B) that certain components of those

calculations—specifically, those set forth above in Paragraph 14(b)—are binding on the parties, and it shall be a breach of this Plea Agreement for either party to present or advocate a position inconsistent with the agreed calculations set forth in Paragraph 14.

Sentencing Agreement

16. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose a sentence within the anticipated Sentencing Guidelines Range described in Paragraph 14(d) above and that the Court impose no order of restitution (the “Government’s Recommended Sentence”). The defendant is free to argue for a lower sentence.

17. In arguing for a lower sentence, the defendant is free to ask the Court to consider the factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence; the defendant understands that the United States may oppose the defendant’s sentencing recommendation based on those factors, including any sentence that does not include a term of imprisonment. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A), in addition to any fine imposed.

18. The United States and the defendant understand that the Court retains complete discretion to accept or reject the Government's Recommended Sentence provided in Paragraph 16 of this Plea Agreement or the defendant's recommended sentence. The defendant understands that, as provided in Federal Rule of Criminal Procedure 11(c)(3)(B), if the Court does not impose either party's recommended sentence, he nevertheless has no right to withdraw his plea of guilty.

Government's Agreement

19. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the sentence, the United States agrees that it will not bring further criminal charges against the defendant for any act or offense committed before the date of signature of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the sale of commercial flooring services and products in the Northern District of Illinois and elsewhere (the "Relevant Offense"). The nonprosecution terms of this paragraph do not apply to:

- a. any acts of perjury or subornation of perjury, in violation of 18 U.S.C. §§ 1621–22; making a false statement or declaration, in violation of 18 U.S.C. §§ 1001, 1623; obstruction of justice, in violation of 18 U.S.C. § 1503 *et seq.*; contempt, in violation of 18 U.S.C. §§ 401–02; or conspiracy to commit such offenses;
- b. civil matters of any kind;
- c. any violation of the federal tax or securities laws or conspiracy to commit such offenses; or
- d. any crime of violence.

Representation by Counsel

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

Voluntary Plea

21. 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

22. The defendant agrees that, should the United States determine in good faith that the defendant has violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, or facsimile transmission and also may 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 will 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 Relevant Offense, the statute of limitations period for such offense that is not time barred on the date of signing this agreement will be tolled for the period between the date of signature of this Plea Agreement and six months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

23. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of this Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Federal Rule of Evidence 410.

Entirety of Agreement

24. 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.

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.

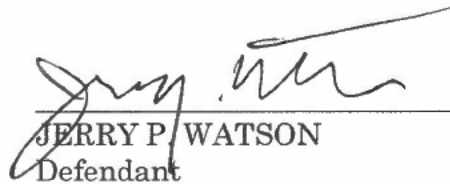
26. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

Date: 6-9-22

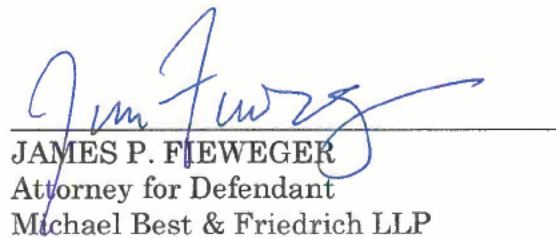
Date: June 9, 2022



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