

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

JUN 13 2001

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)

Criminal No.

v.)

SA 01 CR 343 OG

DANIEL RAY ROTHROCK)
_____)

PLEA AGREEMENT

The Fraud Section, Department of Justice, by its undersigned attorneys, and DANIEL RAY ROTHROCK and his attorney, Larry S. Gondelman, have entered into the following plea agreement under Federal Rule of Criminal Procedure 11(e)(1)(B).

1. Defendant Daniel Ray Rothrock agrees to plead guilty to one count of knowingly and willfully falsifying and causing to be falsified, certain books, records, and accounts of his former employer, Allied Products Corporation (Allied) in violation of the Foreign Corrupt Practices Act, Title 15, United States Code, Section 78m(b)(2)(A).

2. Defendant Rothrock shall waive indictment, venue and any applicable statute of limitations, and shall enter a plea of guilty to the Information.

Defendant Rothrock's Obligations

3. Defendant Rothrock agrees to cooperate fully with the United States and to provide truthful and complete information to the Fraud Section, Criminal Division, United States Department of Justice, and to any law enforcement agency working with the Fraud Section, said cooperation to include but not be limited to, being readily available to be interviewed, testifying

3

before the grand jury and at any trials, and providing all documents and records in his possession or under his control related in any way to the Allied Products Corporation, any of its officers, agents, or employees.

4. It is further understood by Defendant Rothrock that he must at all times provide complete and truthful information and testimony. Should it be determined that Defendant Rothrock has intentionally given materially false, incomplete, or misleading testimony or information, or has intentionally omitted any material fact, or has intentionally impeded the United States in its investigations, this agreement shall be voidable at the option of the United States, and Defendant Rothrock shall be subject to prosecution for perjury, false statements, and obstruction of justice.

5. Defendant Rothrock further agrees that should he fail to fulfill completely each of his obligations under this agreement, the United States' obligations under this agreement will be void, and the United States will be free to prosecute Defendant Rothrock for any offense that could have been prosecuted as of the date of this agreement. In any such prosecution, the United States may use as evidence any statements made by Defendant Rothrock pursuant to this agreement and any evidence derived therefrom.

The Fraud Section's Obligations

6. As part of this agreement, the Fraud Section agrees to each of the following:
 - a. This plea agreement binds only the Fraud Section, Department of Justice and the defendant; it does not bind any other government agency, United States Attorney, or United States Attorney's Office.
 - b. If the Court accepts Defendant Rothrock's plea of guilty to the Information, and

Defendant Rothrock fulfills each of the terms and conditions of this agreement, the Fraud Section agrees that it will not further prosecute Defendant Rothrock for offenses relating to his employment at Allied Products Corporation that are now known to the Fraud Section.

- c. Defendant Rothrock 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 Defendant Rothrock continues to accept responsibility for his actions, the Fraud Section will recommend that he receive the maximum applicable reduction for acceptance of responsibility under § 3E1.1 of the Sentencing Guidelines.
- d. Defendant Rothrock intends to request a sentence of probation. The government will concur with this request and shall recommend probation.
- e. The government agrees that it will not seek an upward departure from the applicable sentencing guidelines.

Punishment Range and Final Sentence

7. Defendant Rothrock understands the nature of the offense to which he is pleading guilty, and the elements thereof, including the penalties provided by law. A violation of 15 U.S.C. § 78m(b)(2)(A) carries a maximum sentence of imprisonment for a term not to exceed five (5) years, a \$250,000 fine, or both, and a mandatory special assessment of \$100. Defendant Rothrock understands that the Court may impose a term of supervised release to follow any incarceration, in accordance with Title 18, United State Code, Section 3583, and that, in this case, the authorized term of supervised release is not more than three (3) years.

Mandatory Special Assessment

8. Immediately after sentencing, Defendant Rothrock will pay to the United States District Court Clerk a special assessment in the amount of one hundred dollars (\$100) per count of conviction, as required in Title 18, United States Code, Section 3013(a)(2)(A).

Fine and Restitution

9. Defendant Rothrock understands that the Court is permitted, pursuant to Section 5E1.2(i) of the United States Sentencing Commission, Guidelines Manual, to order the defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment, term of supervised release and probation, if any are ordered.

10. Defendant Rothrock agrees that any fine or restitution imposed by the Court will be due and payable immediately.

11. Defendant Rothrock understands and acknowledges that the offense with which he will be charged is subject to the provisions and guidelines of the "Sentencing Reform Act of 1984," 18 U.S.C. §§ 3661, *et seq.* and 28 U.S.C. § 994(a).

12. Defendant Rothrock understands and acknowledges that he may receive any sentence within the statutory maximums for the offense of conviction.

13. For purposes of applying the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following:

- a. Pursuant to § 2F1.1, the base offense level for this offense is level 6.
- b. Pursuant to § 2F1.1(b)(1)(A), because there was no economic loss attributable to the false books and records created by Defendant Rothrock,

there is no increase in the offense level for loss.

- c. Based on the facts known to the Fraud Section, Defendant Rothrock's criminal history points equal 0 and Defendant Rothrock's criminal history category is I.

14. The government cannot and does not make any promise or representation as to what sentence Defendant Rothrock will receive or what fines or restitution, if any, he may be ordered to pay. Defendant Rothrock understands that the sentence and the sentencing guidelines applicable to this case will be determined solely by the sentencing Court, with the assistance of the United States Probation Office, that any recommendations made by the Fraud Section are not binding on the Court or the Probation Office, and that he will not be permitted to withdraw his plea regardless of the sentence calculated by the United States Probation Office or imposed by the sentencing Court.

15. If the Fraud Section in its sole discretion determines that Defendant Rothrock has provided substantial assistance to the authorities in the investigation or prosecution of another person who has committed an offense, the Fraud Section may file with the Court a motion for a downward departure, pursuant to U.S.S.G. § 5K1.1 and/or Fed. R. Crim. P. 35.

Waiver of Appeal

16. Defendant Rothrock waives the right to appeal his conviction on any ground. Defendant Rothrock also waives the right to appeal his sentence unless: (a) the Court increases Defendant Rothrock's offense level pursuant to any Specific Offense Characteristic set forth in Chapter Two of the United States Sentencing Guidelines; (b) the Court departs upward from the applicable sentencing guideline range; (c) the Court imposes a sentence in excess of the applicable

statutory maximum sentence; or (d) the Court imposes a more limiting condition of probation or supervised release under Section 3563(b)(6) or (b)(1) than the maximum established in the guidelines range.

Further Prosecution

17. The Fraud Section agrees that, with the exception of bankruptcy fraud, internal security offenses, air piracy offenses and tax offense under Title 26, United States Code, none of which the Fraud Section is aware exist, it will not further prosecute Defendant Rothrock for offenses in the Information. This plea agreement binds only the Fraud Section, United States Department of Justice, and does not bind any United States Attorney.

Waiver of Statutory and Constitutional Rights

18. Defendant Rothrock understands that by pleading guilty he surrenders certain rights, including the following:

- a. If Defendant Rothrock persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant Rothrock has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, Defendant Rothrock, the government, and the judge all must agree that the trial be conducted by the judge without a jury.
- b. If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant Rothrock and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory

challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that Defendant Rothrock is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt.

- c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of Defendant Rothrock's guilt beyond a reasonable doubt.
- d. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against Defendant Rothrock. Defendant Rothrock would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, Defendant Rothrock could present witnesses and other evidence in his own behalf. If the witnesses for Defendant Rothrock would not appear voluntarily, he could require their attendance through the subpoena power of the court.
- e. At a trial, Defendant Rothrock would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from her refusal to testify. If Defendant Rothrock desired to do so, he could testify in his own behalf.
- f. Defendant Rothrock understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a legally constituted grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, Defendant Rothrock

knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the Information, the information process, or the fact that he has been prosecuted by way of information.

Stipulated Factual Basis for Guilty Plea

19. Defendant Rothrock knowingly, voluntarily, and truthfully admits the facts set forth in the attached Information.

20. Defendant Rothrock admits that he is guilty of the crime charged in the Information, that is, one count of knowingly and willfully falsifying and causing to be falsified, certain books, records, and accounts of his former employer, Allied Products Corporation (Allied) in violation of the Foreign Corrupt Practices Act, Title 15, United States Code, Section 78m(b)(2)(A).

21. On October 2, 2000, Allied filed a petition for reorganization in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division under Chapter 11 of the United States Bankruptcy Code.

22. In pleading guilty, Defendant Rothrock admits the following facts and admits that those facts establish his guilt beyond a reasonable doubt:

- a. Defendant Rothrock, a citizen and resident of the United States, was a Vice President of the Cooper Division of Allied Products Corporation (Allied) with responsibility for international sales.
- b. RVO Zarubezhneftestroy (Nestro) was an entity with its principal place of business in Moscow, Russia, engaged in the business of purchasing oil-field equipment for oil production associations in the Russian Republic and in the former Union of the Soviet Socialist Republic.

- c. Comco Holding, A.G. (Comco) was a Swiss company that owned various subsidiaries including Comco Handel, A.G., which owned Trading and Business Services, Ltd.
- d. Trading & Business Services, Ltd. (TBS) was an entity with places of business in Moscow, Russia; Biel, Switzerland; and Houston, Texas.
- e. The Director General of Nestro directed and/or influenced to whom Nestro contracts would be awarded.

23. Between on or about August 8, 1991, and May 18, 1993, Defendant Rothrock knowingly and willfully violated the Foreign Corrupt Practices Act by causing Allied to fail to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of Allied's assets, to wit:

- a. On or about August 9, 1991, through a former agent, Cooper entered into a contract to sell approximately 20 workover rigs to Nestro, for a total price of approximately \$5.5 million.

- b. On August 8, 1991, the Cooper Division of Allied agreed to pay a sales commission of \$282,076 to TBS, to obtain a contract for the sale of 20 workover rigs to Nestro. The following day, August 9th, the Cooper Division obtained the workover rig contract from Nestro.
- c. In September 1992, TBS requested \$300,000 from Allied's Cooper Division, purportedly for TBS's services in connection with the award of a second workover rig contract.
- d. Thereafter, in late October 1992, Defendant Rothrock delivered to TBS for its use a draft invoice, in the amount of \$300,000, which invoice purported to be for a "consultation fee and market study". Defendant Rothrock knew that no consultation fee or market study had been or would be provided by TBS.
- e. On October 30, 1992, Defendant Rothrock received an invoice for \$300,000, similar to the one he had drafted for TBS, which purported to come from a company called "Educa" in Vienna, Austria. Defendant Rothrock knew that the Cooper Division of Allied had no contract or other business relationship with Educa, and that the invoice was, in fact, an invoice from TBS.
- f. Thereafter, following the signing of a second contract with Nestro for the provision of additional workover rigs, Defendant Rothrock caused the Cooper Division of Allied on May 18, 1993, to issue a check to Educa in the amount of \$300,000, utilizing the false invoice from Educa as supporting documentation. Defendant Rothrock knew that the Educa invoice was bogus; that Educa had provided no services to Allied; and that the entries on the books of Allied, recording the

disbursement of the \$300,000, would be false.

Hyde Amendment Waiver

24. Defendant Rothrock agrees that the position of the Fraud Section in its decision to charge him, or to pursue any charge against him, is neither vexatious, frivolous, nor in bad faith. In accord with this agreement, Defendant Rothrock waives all rights he has or may acquire under the "Hyde Amendment" to the Department of Justice's Appropriations Bill (H.R. 2267) for fiscal year 1998, including any implementing regulation or rule (collectively referred to herein as the "Hyde Amendment"), to recovery of attorney's fees and other litigation expenses related to any investigation or prosecution of the counts in the Information, and to any transactions or conduct related to, arising from or associated with his employment at Allied. Defendant Rothrock agrees that he will not file any motion, request or other cause of action, nor will he request, authorize or allow any other person to file or make any such motion, request or other cause of action on his behalf for recovery of attorney's fees and other litigation expenses.

Probation Office Access to Records

25. Defendant Rothrock understands that nothing in this plea agreement will restrict access by the United States Probation Office or the Court to information and records in the possession of the Fraud Section, including that obtained from Defendant Rothrock.

26. Defendant Rothrock agrees that if the Court does not accept his plea of guilty to the Information, this agreement shall be null and void.

27. Defendant Rothrock agrees that the running of the statute of limitations for any offense as to which the statute of limitations has not yet expired on the date of this agreement shall be tolled for a period of time beginning on the date of this agreement and continuing as long as this

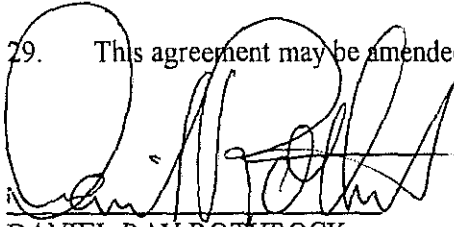
agreement remains in force, plus 60 days.

Complete Agreement

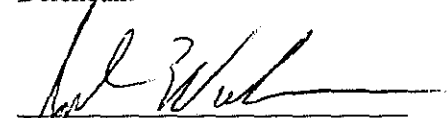
28. This Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. This agreement of 12 pages, together with a one page addendum for Defendant Rothrock and a one page addendum for his attorney, each of which is attached to this plea agreement, constitutes the entire agreement between the United States and Defendant Rothrock.

Defendant Rothrock acknowledges that no other promises, agreements, or representations exist or have been made to Defendant Rothrock or to his attorney by the Department of Justice in connection with this case. Defendant Rothrock enters this agreement and pleads guilty freely and voluntarily, without promise or benefit of any kind, other than contained herein, and without threats, force, intimidation, or coercion of any kind.

29. This agreement may be amended only by a writing signed by all parties.



DANIEL RAY ROTHROCK
Defendant

By: 

JOSEPH WALKER
Trial Attorney, Fraud Section
Criminal Division
United States
Department of Justice



LARRY S. GONDELMAN
Akin, Gump, Strauss, Hauer
& Feld, LLP
Counsel for Defendant

DATED this 24th day of May, 2001.