

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	CAUSE NO. IP-06-54-CR-M
-v-)	Indianapolis, Indiana
)	March 31, 2006
BUILDER'S SUPPLY & SUPPLY CO.,)	
INC. and GUS B. NUCKOLS, III,)	
)	
Defendants)	

Before the
HONORABLE LARRY J. MCKINNEY

OFFICIAL REPORTER'S TRANSCRIPT OF
CHANGE OF PLEA PROCEEDINGS

APPEARANCES:

For the Government:

Frank J. Vondrak
Antitrust Division
U. S. Department of Justice
209 S. LaSalle Street
Chicago, IL 60604

For the Defendant:

Bose, McKinney & Evans
By: Joseph Russell
Sarah Steele Riodan
2700 First Indiana Plaza
Indianapolis, IN 46204

Court Reporter:

Glen L. Cunningham, CM
291 U.S. Courthouse
Indianapolis, IN 46204

PROCEEDINGS TAKEN BY MACHINE SHORTHAND
TRANSCRIPT PRODUCED BY COMPUTER-ASSISTED TRANSCRIPTION

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1 (Call to order of the Court, 1:30 P.M.)

2 THE COURT: You may be seated.

3 This is United States versus Builder's Concrete & Supply
4 Company and United States versus Gus Nuckols, III.

5 And so these are set for plea hearings today.

6 Mr. Russell, would you bring your client up to the lectern,
7 please.

8 MR. RUSSELL: Yes Your Honor.

9 THE COURT: Would you raise your right hand, sir.

10 (Defendant sworn)

11 THE COURT: Sir, can I have your name for the
12 record?

13 DEFENDANT NUCKOLS: Gus B. Nuckols, III.

14 THE COURT: Mr. Nuckols, we are going to do this
15 separately, once for the corporation and then once for you as
16 an individual. We are not going to try to combine them.

17 DEFENDANT NUCKOLS: Okay.

18 THE COURT: The first case we will take care of will
19 be United States versus Builder's Concrete & Supply Company.

20 Now, you are here, are you not, as a representative of
21 that company?

22 DEFENDANT NUCKOLS: Yes, sir.

23 THE COURT: And on the plea agreement -- we will
24 jump to this maybe a little out of order, but on the plea
25 agreement there is an attachment A. Are you familiar with

1 that?

2 DEFENDANT NUCKOLS: Yes.

3 THE COURT: Attachment A is signed by Gus Nuckols,

4 II.

5 DEFENDANT NUCKOLS: That's right.

6 THE COURT: It looks like -- it looks like the
7 signature says junior.

8 DEFENDANT NUCKOLS: Right.

9 THE COURT: Is that the same person?

10 DEFENDANT NUCKOLS: Yes.

11 THE COURT: Is that your father?

12 DEFENDANT NUCKOLS: Right.

13 THE COURT: And is he the only member of the board
14 of directors?

15 DEFENDANT NUCKOLS: Yes, Your Honor.

16 THE COURT: And so this resolution that is set as
17 attachment A to the plea agreement sets out the authorization
18 that you have from the company to appear here and enter this
19 plea of guilty for the company, is that right?

20 DEFENDANT NUCKOLS: Yes, Your Honor.

21 THE COURT: Okay. You were in a attendance in that
22 meeting, were you?

23 DEFENDANT NUCKOLS: Yes, Your Honor.

24 THE COURT: Well, the record will reflect, then,
25 that Mr. Gus Nuckols, III is appropriately here, having been

1 vested with the authority to enter into this plea against the
2 Builder's Concrete & Supply Company, Incorporated by a
3 meeting of the board of directors and signed by the only
4 member of the board of directors.

5 All right, the first issue for us here is the waiver of
6 the indictment and proceeding on the information in this
7 case. So throughout these proceedings here, Mr. Nuckols,
8 I'll be asking you several questions. If you don't
9 understand any of those questions you can stop and we can
10 discuss them or you can stop and consult with Mr. Russell at
11 any time. Do you understand that?

12 DEFENDANT NUCKOLS: Yes, Your Honor.

13 THE COURT: All right. We have got your name for
14 the record here. Sir, how old are you?

15 DEFENDANT NUCKOLS: Forty-five.

16 THE COURT: And what is the extent of your
17 education?

18 DEFENDANT NUCKOLS: High school, 12th grade.

19 THE COURT: You don't have any trouble reading or
20 writing the English language, do you?

21 DEFENDANT NUCKOLS: No, Your Honor.

22 THE COURT: Are you currently or have you recently
23 been under the care of a physician or psychiatrist or
24 hospitalized or treated for narcotics addiction?

25 DEFENDANT NUCKOLS: I have seen Dr. Greg Sipe, the

1 Indiana Healthcare, two or three times over the last four or
2 five years.

3 THE COURT: What Dr. Sipe's specialty?

4 DEFENDANT NUCKOLS: I started seeing him going
5 through a divorce a few years ago.

6 THE COURT: Is he a psychologist?

7 DEFENDANT NUCKOLS: Yeah.

8 THE COURT: Nothing about these events interfere
9 with your ability to understand today's proceedings?

10 DEFENDANT NUCKOLS: No, Your Honor.

11 THE COURT: Does anything about these conversations
12 or this -- these circumstances interfere with your ability to
13 communicate with your counsel?

14 DEFENDANT NUCKOLS: No, Your Honor.

15 THE COURT: Anything about those matters interfere
16 with your ability to act as a representative of Builder's
17 Concrete & Supply Company and appear today and enter a plea
18 of guilty or waiver of indictment for the corporation?

19 DEFENDANT NUCKOLS: No.

20 THE COURT: Have you been furnished with a copy of
21 the charge in this case?

22 DEFENDANT NUCKOLS: Yes, Your Honor.

23 THE COURT: You have gone over this information with
24 your counsel?

25 DEFENDANT NUCKOLS: Yes, sir.

1 THE COURT: You recognize that the charge is a
2 violation of Section 1 of the Sherman Act, 15, United States
3 Code, Section 1?

4 DEFENDANT NUCKOLS: Yes, Your Honor.

5 THE COURT: But there is the allegation that there
6 was accommodation and conspiracy engaged in by you and the
7 corporation and co-conspirators as an unreasonable restraint
8 of interstate trade and commerce in violation of that
9 section.

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: You think you understand that charge
12 well enough, sir, or would you like for me to read it to you?

13 DEFENDANT NUCKOLS: No, we waive that, Your Honor.

14 THE COURT: Now, you understand, Mr. Nuckols, that
15 the Builder's Concrete & Supply Company, Incorporated does
16 have a constitutional right to be charged by an indictment of
17 a grand jury, but it may waive that right and consent to
18 being charged by an information?

19 DEFENDANT NUCKOLS: Yes, Your Honor.

20 THE COURT: You understand that instead of an
21 indictment that this felony charge against the corporation
22 has been brought by the United States Attorney by the filing
23 of an information?

24 DEFENDANT NUCKOLS: Yes, Your Honor.

25 THE COURT: You understand that unless you waive

1 indictment -- unless the company waives indictment it may not
2 be charged with a felony unless a grand jury finds by return
3 of an indictment that there is probable cause to believe that
4 a crime has been committed and that you committed it?

5 DEFENDANT NUCKOLS: Yes, Your Honor.

6 THE COURT: You understand if you do not waive
7 indictment the Government may present the case to the grand
8 jury and ask it to indict the Builder's Concrete & Supply
9 Company, Incorporated?

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: You understand that a grand jury is
12 composed of at least six and not more than 23 persons, and at
13 least 12 grand jurors must find there is probable cause to
14 believe it committed the crime with which it has been charged
15 before it may be indicted?

16 DEFENDANT NUCKOLS: Yes, Your Honor.

17 THE COURT: You understand a grand jury might or
18 might not indict it?

19 DEFENDANT NUCKOLS: Yes, Your Honor.

20 THE COURT: You understand if you waive indictment
21 by the grand jury this case will proceed against you on the
22 U. S. Attorney's information just as though you had been
23 indicted?

24 DEFENDANT NUCKOLS: Yes, Your Honor.

25 THE COURT: Have you discussed waiving your right to

1 indictment by the grand jury with your attorney?

2 DEFENDANT NUCKOLS: Yes, Your Honor.

3 THE COURT: Do you think you understand the right of
4 this corporation?

5 DEFENDANT NUCKOLS: Yes, Your Honor.

6 THE COURT: Have any threats or promises been made
7 to induce it to waive indictment?

8 DEFENDANT NUCKOLS: No, Your Honor.

9 THE COURT: Does the company wish to waive its right
10 to indictment by a grand jury?

11 DEFENDANT NUCKOLS: Yes, Your Honor.

12 THE COURT: Mr. Russell, any reason why it
13 shouldn't?

14 MR. RUSSELL: No, Your Honor.

15 May I approach?

16 THE COURT: Yes.

17 (Waiver executed by defendant in open court)

18 MR. RUSSELL: Your Honor, the waiver form was
19 constructed for execution by my partner, Miss Riordan, who is
20 present today. May I take this to Miss Riordan for signature?

21 THE COURT: You may.

22 (Waiver executed by Miss Riordan in open court)

23 MR. RUSSELL: May I approach, Your Honor?

24 THE COURT: Yes.

25 The record will reflect the execution of this waiver of

1 indictment by Mr. Nuckols, III on behalf of Builder's
2 Concrete & Supply, Incorporated. The Court now finds that
3 that was done voluntarily and knowingly.

4 And so we will proceed to the entry of the plea of guilty
5 to this charge.

6 First we are going to examine the plea agreement. Do you
7 have the plea agreement there in front of you, sir?

8 DEFENDANT NUCKOLS: Yes, Your Honor.

9 THE COURT: I want to go over that with you.

10 MR. RUSSELL: I have an extra copy, Your Honor.

11 THE COURT: No, what I'm looking for is not
12 something that you have, I don't think.

13 Well, shoot. In any case, you have a copy of that plea
14 agreement there in front of you with --

15 DEFENDANT NUCKOLS: Yes, Your Honor.

16 THE COURT: All right, take a look at this plea
17 agreement here. You will see as it starts out it sets out
18 generally the rights that are enjoyed by any person or
19 corporation that is charged with a crime. Now, you
20 understand that this corporation has the right to plead not
21 guilty in this case?

22 DEFENDANT NUCKOLS: Yes, Your Honor.

23 THE COURT: On a plea of not guilty, then, the
24 company would have the right to use the presumption of
25 innocence, it would have the right to counsel, it would have

1 the right to see and hear and face and cross-examine any
2 witness that would appear against you, and it would have the
3 right to use the power of the Court to subpoena any witnesses
4 that you wish to call that might be reluctant to come in and
5 testify. And you would also have the right to not take the
6 witness stand. The corporation could choose to remain
7 silent. And if it did, the fact that it chose not to have
8 anyone take the witness stand in its representative capacity
9 that couldn't be used against it at any time during the
10 course of that trial, including the deliberation of the jury.
11 Do you understand that?

12 DEFENDANT NUCKOLS: Yes, Your Honor.

13 THE COURT: You understand if the corporation were
14 to be found guilty at trial it would have the right to appeal
15 through the federal appellant process?

16 DEFENDANT NUCKOLS: Yes, Your Honor.

17 THE COURT: And if the corporation couldn't afford
18 counsel, counsel would be appointed for it. Do you
19 understand?

20 DEFENDANT NUCKOLS: Yes, Your Honor.

21 THE COURT: And you understand on a plea of not
22 guilty you would have the right to force the Government of
23 the United States to have to prove your guilt to a jury
24 beyond a reasonable doubt?

25 DEFENDANT NUCKOLS: Yes, Your Honor.

1 THE COURT: In order to be found guilty, sir, the
2 Government would have to prove three elements to a jury, each
3 of them beyond a reasonable doubt.

4 First, that an agreement, or a mutual understanding, to
5 fix the prices at which ready-mix concrete was to be sold in
6 the Indianapolis, Indiana metropolitan area.

7 Second, that the defendant in this case, the corporation,
8 voluntarily and intentionally became a party to that
9 agreement or mutual understanding.

10 And third, that that agreement or mutual understanding
11 occurred in or affected interstate commerce. Do you
12 understand that?

13 DEFENDANT NUCKOLS: Yes, Your Honor.

14 THE COURT: Now, when you tell me that the company
15 is guilty you are telling me that an agreement, or mutual
16 understanding, to fix the price at which ready-mix concrete
17 was to be sold in the Indianapolis, Indiana metropolitan area
18 did, in fact, exist. Is that true?

19 DEFENDANT NUCKOLS: Yes, Your Honor.

20 THE COURT: And that the company knowingly; that is,
21 voluntarily and intentionally, became a party to that
22 agreement or mutual understanding. Is that true?

23 DEFENDANT NUCKOLS: Yes, Your Honor.

24 THE COURT: And you understand that that agreement,
25 or mutual understanding, occurred in or affected interstate

1 commerce?

2 DEFENDANT NUCKOLS: Yes, Your Honor.

3 THE COURT: Now, paragraph 2 of the plea agreement
4 here indicates that you recognize that you have knowingly and
5 voluntarily waived the right to jury and the rights that are
6 attendant to it. You are aware of that, aren't you?

7 DEFENDANT NUCKOLS: Yes, Your Honor.

8 THE COURT: And you are aware that you have already
9 waived the indictment in this case?

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: And you understand that the information
12 charges you with participating in a conspiracy to suppress
13 and eliminate competition by fixing the price at which
14 ready-mix concrete was sold in the Indianapolis metropolitan
15 area beginning in or about July, 2000, and continuing until
16 May, 2004, in violation of the Sherman Antitrust Act -- or
17 the Sherman Act, I'm sorry. You understand that, don't you?

18 DEFENDANT NUCKOLS: Yes, Your Honor.

19 THE COURT: Now, paragraph 4, in all of its
20 subparts, sets out those factual pieces of evidence that the
21 Government would have been able to prove to a jury in order
22 to prove that this crime had been committed by the
23 corporation beyond a reasonable doubt. You have gone over
24 those factual allegations, haven't you?

25 DEFENDANT NUCKOLS: Yes, Your Honor.

1 THE COURT: You have agreed that all of those are
2 true?

3 DEFENDANT NUCKOLS: Yes.

4 THE COURT: In fact, the Government could have
5 proven this case to a jury beyond a reasonable doubt?

6 DEFENDANT NUCKOLS: Yes, Your Honor.

7 THE COURT: Paragraph 5 indicates that you
8 understand that the statutory maximum penalty which may be
9 imposed against this corporation on conviction for a
10 violation of Section 1 of the Sherman Act completed prior to
11 June 22nd, 2004, is a fine in an amount equal to the greatest
12 of; A, 10 million dollars; B, twice the gross pecuniary gain
13 that the conspirators derived from the crime, or twice the
14 gross pecuniary loss caused to the victims of the crime by
15 the conspirators. You understand that?

16 DEFENDANT NUCKOLS: Yes, Your Honor.

17 THE COURT: Paragraph 6 says that in addition you
18 understand that pursuant to Section 8B1.1 of United States
19 Sentencing Guidelines I may order you -- or I may order this
20 corporation to pay restitution to the victims of the offense.
21 You recognize that as a possible consequence of entering a
22 plea of guilty to this charge?

23 DEFENDANT NUCKOLS: Yes, Your Honor.

24 THE COURT: And subparagraph B of paragraph 6 says
25 pursuant to 18, United States Code, Section 3313(a)(2)(B)

1 that I am required to order this company to pay a \$400
2 special assessment on conviction for the crime charged, and
3 that will be due and owing on the date of sentencing. Do you
4 understand that?

5 DEFENDANT NUCKOLS: Yes, Your Honor.

6 THE COURT: And then subparagraph C says I may
7 impose a term of probation of at least one year and not more
8 than five years on this corporation. Do you understand that?

9 DEFENDANT NUCKOLS: Yes, Your Honor.

10 THE COURT: Paragraph 7 says that you understand
11 that the Sentencing Guidelines are advisory and not
12 mandatory, but that I must consider the Guidelines in effect
13 on May 25th, 2004, along with other factors set forth in 18,
14 United States Code, Section 3553(a) in determining and
15 imposing the sentence. You understand that, don't you, sir?

16 DEFENDANT NUCKOLS: Yes, Your Honor.

17 THE COURT: You have gone over Section 3553(a) with
18 your counsel?

19 DEFENDANT NUCKOLS: Yes, Your Honor.

20 THE COURT: So you know what those factors are?

21 DEFENDANT NUCKOLS: Yes, Your Honor.

22 THE COURT: It says that you understand and agree
23 that the Guideline determination will be made by this Court
24 by a preponderance of the evidence standard. You know that,
25 don't you?

1 DEFENDANT NUCKOLS: Yes, Your Honor.

2 THE COURT: It says you further understand and agree
3 that although the Court is not ultimately bound to impose a
4 sentence within the applicable advisory Sentencing Guideline
5 range, the sentence must be reasonable based on
6 considerations of all relevant sentencing factors in 18,
7 United States Code, Section 3553(a). You know that too,
8 don't you?

9 DEFENDANT NUCKOLS: Yes, Your Honor.

10 THE COURT: Now, the paragraph goes on to say that
11 the United States agrees that self-incriminating information
12 that you provide to the United States on behalf of this
13 corporation pursuant to this plea agreement will not be used
14 to increase the volume of affected commerce attributable to
15 the defendant corporation or to determine the defendant's
16 applicable Guideline range, except to the extent provided in
17 United States Sentencing Guidelines, Section 1B1.8B. You
18 understand that, don't you?

19 DEFENDANT NUCKOLS: Yes, Your Honor.

20 THE COURT: You have gone over that section with
21 your lawyer?

22 DEFENDANT NUCKOLS: Yes, Your Honor.

23 THE COURT: Now, paragraph 8 says that pursuant to
24 the Federal Rule of Criminal Procedure 11C1.B you will
25 recommend that you -- on behalf of the corporation that the

1 corporation be sentenced to pay a fine to the United States
2 of no less than 1.5 million dollars, and the United States
3 will recommend that you be sentenced to pay a fine to the
4 United States of no more than 11.5 million, and that is
5 referred to throughout this plea agreement as the recommended
6 fine range. You are aware of that, aren't you?

7 DEFENDANT NUCKOLS: Yes, Your Honor.

8 THE COURT: You have agreed to that, isn't that
9 right?

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: Then it says once I determine the fine
12 amount both you and the Government will be free to argue as
13 to what the appropriate payment schedule should be. You are
14 aware of that?

15 DEFENDANT NUCKOLS: Yes, Your Honor.

16 THE COURT: It says the United States contends that
17 had this case gone to trial the United States would have
18 presented evidence to prove that the gain derived from, or
19 the loss resulting from the charged offense is sufficient to
20 justify a fine of 11.5 million. You know of that, don't you?

21 DEFENDANT NUCKOLS: Yes, Your Honor.

22 THE COURT: It says for purposes of this plea and
23 sentencing only the defendant corporation waives its rights
24 to contest that particular calculation. You are aware of
25 that?

1 DEFENDANT NUCKOLS: Yes, Your Honor.

2 THE COURT: And in light of the civil case filed,
3 which potentially provides for a recovery of a multiple of
4 actual damages, the United States has agreed that it will not
5 seek a restitution order for the offense charged in the
6 information. You are also aware of that?

7 DEFENDANT NUCKOLS: Yes, Your Honor.

8 THE COURT: And it says again you will owe the \$400
9 on the date of sentencing.

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: Paragraph 9 says that you and the
12 Government agree that the applicable Guideline fine range
13 exceeds the fine range recommended in the recommended fine
14 range set out in paragraph 8, and that you and the defendant
15 further agree that the recommended fine range is appropriate
16 pursuant to the Guidelines due to the inability of the
17 corporation to pay a fine greater than that recommended
18 without substantially jeopardizing its continued viability.
19 You have agreed to that, haven't you?

20 DEFENDANT NUCKOLS: I agree with the Government,
21 yes, Your Honor.

22 MR. RUSSELL: Your Honor, I believe the Court might
23 have said we agree with the defendant. The Court meant to
24 say the Government.

25 THE COURT: You agree with this statement?

1 DEFENDANT NUCKOLS: Yes, Your Honor.

2 THE COURT: Yes, I can see -- and I wouldn't want
3 the record to reflect there is an agreed fine here in this
4 case.

5 MR. RUSSELL: Thank you, Your Honor.

6 THE COURT: Paragraph 10 says there is nothing in
7 this case that would prompt them to argue that the
8 Guidelines -- that there ought to be a departure from the
9 Guidelines in this case. You understand that, don't you?

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: That you and the Government have agreed
12 not to seek or support any sentence outside the advisory
13 Guidelines range, nor any Guideline adjustment for any reason
14 that isn't set out in the plea. You understand that?

15 DEFENDANT NUCKOLS: Yes, Your Honor.

16 THE COURT: And both of you have agreed that the
17 recommended fine range set forth in the plea agreement is
18 reasonable?

19 DEFENDANT NUCKOLS: Yes.

20 THE COURT: Paragraph 12 says you recognize that
21 both you and the Government understand that I retain complete
22 discretion to accept or reject the recommended fine range
23 provided for in paragraph 8 of the plea agreement, and you
24 understand that if I do not impose a sentence consistent with
25 the recommended fine range contained in this agreement that

1 this corporation, nevertheless, will have no right to
2 withdraw its plea of guilty. You understand that?

3 DEFENDANT NUCKOLS: Yes, Your Honor.

4 THE COURT: Paragraph 13 sets out the
5 responsibilities of this corporation to cooperate in this
6 case. You are aware of those, aren't you?

7 DEFENDANT NUCKOLS: Yes, Your Honor.

8 THE COURT: And paragraph 14 sets out more
9 particularly the kinds of activities that the corporation has
10 agreed to undertake. You are aware of those, aren't you?

11 DEFENDANT NUCKOLS: Yes, Your Honor.

12 THE COURT: And paragraph 15 says that upon the
13 Government's acceptance of this guilty plea -- or upon my
14 acceptance of the guilty plea called for by the plea
15 agreement and the imposition of a sentence within the
16 recommended fine range, and subject to the cooperation
17 requirements of the plea, the Government has agreed that it
18 will not bring further criminal charges against the
19 corporation for any act or offense committed on or before the
20 date of the plea that was undertaken in furtherance of the
21 antitrust conspiracy involving the manufacture and sale of
22 ready-mix concrete in the Indianapolis, Indiana metropolitan
23 area. You are aware of that, aren't you?

24 DEFENDANT NUCKOLS: Yes, Your Honor.

25 THE COURT: You understand that that non-prosecution

1 term doesn't apply to any civil matters or federal tax or
2 security laws matters? You understand that?

3 DEFENDANT NUCKOLS: Yes, Your Honor.

4 THE COURT: Or, indeed, to any crime of violence.
5 You understand that?

6 DEFENDANT NUCKOLS: Yes, Your Honor.

7 THE COURT: Now, paragraph 16 sets out all of the
8 obligations that the Government has under this plea
9 agreement. You are aware of those, aren't you?

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: It requires cooperation from some
12 members -- or the individuals who might work for this
13 corporation. You are aware of that?

14 DEFENDANT NUCKOLS: Yes, Your Honor.

15 THE COURT: And it sets out what happens if
16 cooperation doesn't proceed as it has been agreed to?

17 DEFENDANT NUCKOLS: Yes, Your Honor.

18 THE COURT: Paragraph 17 says you understand that
19 this corporation may be subject to administrative action by
20 federal or state agencies other than the United States
21 Department of Justice, Antitrust Division, based upon the
22 conviction resulting from the plea, and that this plea in no
23 way controls whatever action those agencies may take. You
24 understand that?

25 DEFENDANT NUCKOLS: Yes, Your Honor.

1 THE COURT: But the Government has agreed that, if
2 requested, it will advise the appropriate officials of any
3 government agency concerning such administration action and
4 fact, manner, and extent of the cooperation of the defendant
5 corporation as a matter for that agency to consider before
6 determining what administrative action, if any, to take. You
7 understand that?

8 DEFENDANT NUCKOLS: Yes, Your Honor.

9 THE COURT: Paragraph 18 says that you have reviewed
10 all the legal and factual matters and thoroughly reviewed the
11 plea with your lawyer and you have received a satisfactory
12 explanation. Are you satisfied with the manner in which your
13 counsel has represented you in this case?

14 DEFENDANT NUCKOLS: Yes, I am, Your Honor.

15 THE COURT: This also says that you, on behalf of
16 this corporation, are making a knowing and voluntary decision
17 to enter into this plea. Is that still true?

18 DEFENDANT NUCKOLS: Yes, Your Honor.

19 THE COURT: And paragraph 19 says that this plea is
20 not the result of force, threats, assurances, promises, or
21 representations, other than those made in this plea
22 agreement. Is that still true?

23 DEFENDANT NUCKOLS: Yes, Your Honor.

24 THE COURT: It says the United States has made no
25 promises or representations to you as to whether I will

1 accept or reject the recommendations. Is that still true?

2 DEFENDANT NUCKOLS: Yes, Your Honor.

3 THE COURT: And paragraph 20 sets out what happens
4 if the Government should prevail on the notion that you have
5 not --

6 DEFENDANT NUCKOLS: Yes, Your Honor.

7 THE COURT: I'm sorry, let me finish here.

8 That you have not cooperated, as is set out. Is that
9 right?

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: Paragraph 22 says this plea agreement
12 constitutes the entire agreement between yourself and the
13 Government. Is that still true?

14 DEFENDANT NUCKOLS: Yes, Your Honor.

15 THE COURT: All right. Then having agreed to the
16 factual background in this case, what is the plea of the
17 Builder's Concrete & Supply Company, Incorporated?

18 DEFENDANT NUCKOLS: Guilty, Your Honor.

19 THE COURT: It is the finding of the Court in the
20 case of United States of America versus Builders Concrete &
21 Supply Company, Incorporated that this corporation is fully
22 competent and capable of entering an informed plea as
23 presented to the Court by an individual who has been
24 authorized by resolution of the board of directors of
25 Builder's Concrete & Supply to enter this plea; that it is

1 aware of the nature of the charges and consequences of the
2 plea; that this plea of guilty is a knowing and voluntary
3 plea supported by an independent basis in fact containing
4 each of the essential elements of the offense. The plea is,
5 therefore, accepted and this corporation is now adjudged
6 guilty of that offense.

7 Do we have a sentencing date for the corporation, or did
8 you already tell me what that is?

9 THE CLERK: June 2nd at 2:00.

10 THE COURT: June 2nd at 2:00 o'clock.

11 You can be with us at that time, Mr. Russell?

12 MR. RUSSELL: Yes, Your Honor.

13 DEFENDANT NUCKOLS: Yes, Your Honor.

14 THE COURT: I don't generally ask the defendant. I
15 just assume he knows he will be here at that time.

16 The Government can be here at that time?

17 MR. VONDRAK: Yes, Your Honor.

18 THE COURT: So let us proceed, then, to the
19 information that includes Mr. Gus Nuckols, III.

20 So let me have your name again, sir.

21 DEFENDANT NUCKOLS: Gus B. Nuckols, III.

22 THE COURT: And again, how old are you?

23 DEFENDANT NUCKOLS: Forty-six.

24 THE COURT: And you completed high school?

25 DEFENDANT NUCKOLS: Yes, Your Honor.

1 THE COURT: You don't have any difficulty reading or
2 writing the English language?

3 DEFENDANT NUCKOLS: No.

4 THE COURT: Or communicating with your counsel?

5 DEFENDANT NUCKOLS: Yes, Your Honor.

6 THE COURT: Are you currently or have you recently
7 been under the care of a physician or psychiatrist or been
8 hospitalized or treated for narcotics addiction, other than
9 what we have spoken of?

10 DEFENDANT NUCKOLS: No, Your Honor.

11 THE COURT: Have you taken any drugs, medicine, or
12 pills, or drunk any alcoholic beverage in the past 24 hours?

13 DEFENDANT NUCKOLS: No, Your Honor.

14 THE COURT: Have you been furnished with a copy of
15 the charging information in this case?

16 DEFENDANT NUCKOLS: Yes, Your Honor.

17 THE COURT: You have gone over that with your
18 lawyer?

19 MR. RUSSELL: May we, Your Honor?

20 (Discussion outside record between counsel and defendant)

21 DEFENDANT NUCKOLS: Yes, I read this, Your Honor.

22 THE COURT: And you recognize that the information
23 will charge you with participating in a conspiracy to
24 suppress and eliminate competition by fixing the price at
25 which ready-mix concrete was sold in the Indianapolis,

1 Indiana metropolitan area beginning in or about July, 2000,
2 and continuing until May 25th, 2004, in violation of the
3 Sherman Act, 15, United States Code, Section 1?

4 DEFENDANT NUCKOLS: Yes, Your Honor.

5 THE COURT: So you think you understand this charge
6 against you, or would you like for me to read this
7 information to you?

8 DEFENDANT NUCKOLS: I understand the charge, Your
9 Honor.

10 THE COURT: Now, sir, you understand you have a
11 constitutional right to be charged by an indictment of a
12 grand jury, but you can waive that right and consent to being
13 charged by an information of the United States Attorney?

14 DEFENDANT NUCKOLS: Yes, Your Honor.

15 THE COURT: You understand instead of an indictment
16 that this felony charge has been brought against you by the
17 United States Attorney by the filing of an information?

18 DEFENDANT NUCKOLS: Yes, Your Honor.

19 THE COURT: You understand unless you waive
20 indictment you may not be charged with a felony unless a
21 grand jury finds by return of an indictment that there is
22 probable cause to believe that a crime has been committed and
23 you committed it?

24 DEFENDANT NUCKOLS: Yes, Your Honor.

25 THE COURT: You understand if you do not waive

1 indictment the Government may present the case to the grand
2 jury and ask it to indict you?

3 DEFENDANT NUCKOLS: Yes, Your Honor.

4 THE COURT: You understand that a grand jury is
5 composed of at least 16 and not more than 23 persons, and at
6 least 12 grand jurors must find there is probable cause to
7 believe you committed the crime with which you are charged
8 before you may be indicted?

9 DEFENDANT NUCKOLS: Yes, Your Honor.

10 THE COURT: You understand a grand jury might or
11 might not indict you?

12 DEFENDANT NUCKOLS: Yes, Your Honor.

13 THE COURT: You understand if you waive indictment
14 by the grand jury the case will proceed against you on the
15 United States Attorney's information just as though you had
16 been indicted?

17 DEFENDANT NUCKOLS: Yes, Your Honor.

18 (Waiver executed by defendant in open court)

19 MR. RUSSELL: Your Honor, the defendant and I have
20 fully executed all four copies. May I approach?

21 THE COURT: Yes.

22 All right, the Court finds that the defendant, Gus
23 Nuckols, III, has knowingly and voluntarily made this waiver
24 of indictment here in open court.

25 DEFENDANT NUCKOLS: Yes, Your Honor.

1 THE COURT: I'll proceed, then, to take your plea
2 here, Mr. Nuckols.

3 You have entered into a plea agreement with the United
4 States, isn't that true?

5 DEFENDANT NUCKOLS: Yes, Your Honor.

6 THE COURT: Do you have a copy of it there in front
7 of you?

8 DEFENDANT NUCKOLS: Yes, Your Honor.

9 THE COURT: And it says there in the first paragraph
10 that you recognize that you have the right to plead not
11 guilty, and on a plea of not guilty, then, you have the right
12 to force the government of the United States to have to prove
13 your guilt to a jury beyond a reasonable doubt. You know
14 that, don't you?

15 DEFENDANT NUCKOLS: Yes, Your Honor.

16 THE COURT: You understand also that during the
17 course of that trial you would have the right to the
18 presumption of innocence, the right to counsel, the right to
19 see and hear and face and cross-examine any witness that
20 would appear against you, and you would have the right to
21 remain silent. That is, you would not have to take the
22 witness stand if you didn't want to, and if you chose not to
23 take the witness stand, the fact that you chose not to take
24 the witness stand couldn't be used against you at any time
25 during the course of that trial, including the deliberation

1 the jury.

2 DEFENDANT NUCKOLS: Yes, Your Honor.

3 THE COURT: You understand also if you wished to
4 have witnesses appear and testify in your behalf you would
5 have the right to subpoena those witnesses and have the Court
6 compel their presence and testimony here in court?

7 DEFENDANT NUCKOLS: Yes, Your Honor.

8 THE COURT: You understand if you were to be found
9 guilty at trial you would have the right to appeal through
10 the federal appellate process, and if you couldn't afford
11 counsel, counsel would be appointed for you?

12 DEFENDANT NUCKOLS: Yes, Your Honor.

13 THE COURT: You understand when you plead guilty you
14 have waived the right to trial and you have waived all those
15 rights as I have outlined for you, and you understand if
16 there is no trial, there is no appeal from trial?

17 DEFENDANT NUCKOLS: Yes, Your Honor.

18 THE COURT: Paragraph 2 here sets out again that you
19 understand that you have waived those matters, and it also
20 says that you will waive indictment, which you now have done.
21 You understand that too, don't you?

22 DEFENDANT NUCKOLS: Yes, Your Honor.

23 THE COURT: And you understand that the information
24 charges you with participating in a conspiracy to suppress
25 and eliminate competition by fixing the price at which

1 ready-mix concrete was sold in the Indianapolis, Indiana
2 metropolitan area beginning on or about July, 2000, and
3 continuing until May 25th, 2004? You understand that?

4 DEFENDANT NUCKOLS: Yes, Your Honor.

5 THE COURT: You understand that you cannot be found
6 guilty of that charge unless the Government can prove each of
7 these three elements beyond a reasonable doubt?

8 First, that an agreement existed for the purpose of
9 fixing the price at which ready-mix concrete was sold in the
10 Indianapolis, Indiana metropolitan area. You understand
11 that?

12 DEFENDANT NUCKOLS: Yes, Your Honor.

13 THE COURT: Second, that you knowingly; that is,
14 voluntarily and intentionally became a party to that
15 agreement or mutual understanding. You understand that?

16 DEFENDANT NUCKOLS: Yes, Your Honor.

17 THE COURT: The third, that agreement or mutual
18 understanding occurred in or affected interstate commerce.
19 You understand that?

20 DEFENDANT NUCKOLS: Yes, Your Honor.

21 THE COURT: When you tell me you are guilty, sir,
22 you are telling me that the agreement, or mutual
23 understanding to fix the price at which ready-mix concrete
24 was sold in the Indianapolis, Indiana metropolitan area
25 during that period of time did, in fact, exist. Is that

1 true?

2 DEFENDANT NUCKOLS: That's correct, Your Honor.

3 THE COURT: And did you knowingly; that is,
4 voluntarily and intentionally, become a party to that
5 agreement?

6 DEFENDANT NUCKOLS: Yes, Your Honor.

7 THE COURT: And you understand that that agreement,
8 or mutual understanding, occurred in or affected interstate
9 commerce?

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: All right. Paragraph 3 says, as you
12 know, that pursuant to this plea agreement that you would
13 plead guilty to this charge today that is described in
14 paragraph 2 and you would make a factual admission of guilt
15 to the Court as set forth here in paragraph 4. And the
16 United States has agreed that it will stipulate to the
17 release of yourself on your own personal recognizance after
18 the Court accepts this plea pending the sentencing hearing in
19 this case. You are aware of that, aren't you?

20 DEFENDANT NUCKOLS: Yes, Your Honor.

21 THE COURT: And you have gone over these factors set
22 out in paragraph 4 and agreed that these are the factors that
23 the Government could prove to a jury beyond a reasonable
24 doubt that would provide the factual basis for this plea?

25 DEFENDANT NUCKOLS: They are true, Your Honor.

1 THE COURT: Okay. You have gone over those with
2 your lawyer and agreed to that?

3 DEFENDANT NUCKOLS: Yes, Your Honor.

4 THE COURT: Paragraph 5 says you understand that the
5 statutory maximum penalty which may be imposed against you on
6 a conviction for a violation of Section 1 of the Sherman Act
7 completed prior to June 22nd, 2004, is a term of imprisonment
8 for three years, a fine in an amount equal to the greatest of
9 \$350,000 or twice the gross pecuniary gain the conspirators
10 derived from the crime; or three, twice the gross pecuniary
11 loss caused to the victims of the crime by the conspiracy.
12 You understand that, sir?

13 DEFENDANT NUCKOLS: Yes, Your Honor.

14 THE COURT: Paragraph C says another possible
15 consequence of this plea is a term of supervised release of
16 one year following any term of imprisonment. You understand
17 supervised release to be that period of time after you might
18 have served some time in prison and during which time your
19 conduct would be regulated by a list of rules, and if you
20 violate any of those rules you could find yourself back here
21 in court looking at more time in prison?

22 DEFENDANT NUCKOLS: Yes, Your Honor.

23 THE COURT: Paragraph 6 says in addition you
24 understand that I may order you to pay restitution to the
25 victims of the offense. You know that, don't you?

1 DEFENDANT NUCKOLS: Yes, Your Honor.

2 THE COURT: You understand you will owe \$100 on the
3 date of sentencing?

4 DEFENDANT NUCKOLS: Yes, Your Honor.

5 THE COURT: Paragraph 7 says you understand that the
6 Sentencing Guidelines are advisory and not mandatory, but
7 that I must consider the Guidelines in effect on May 25th,
8 2004, along with the other factors set forth in 18, United
9 States Code, Section 3553(a) in determining and imposing
10 sentence. You are aware of that, aren't you?

11 DEFENDANT NUCKOLS: Yes, Your Honor.

12 THE COURT: You have gone over 18, United States
13 Code, Section 3553(a) with your lawyer?

14 DEFENDANT NUCKOLS: Yes, Your Honor.

15 THE COURT: It says further that you understand and
16 agree that the Guidelines determination will be made by me by
17 a preponderance of the evidence standard. You understand
18 that?

19 DEFENDANT NUCKOLS: Yes, Your Honor.

20 THE COURT: It says you understand and agree that
21 although I am not ultimately bound to impose a sentence
22 within the applicable Guideline range, the sentence must be
23 reasonable based on consideration of all the relevant
24 sentencing factors set forth in 18, United States Code,
25 Section 3553(a). You understand that too, don't you?

1 DEFENDANT NUCKOLS: Yes, Your Honor.

2 THE COURT: And this paragraph 7 also says that the
3 United States has agreed that self-incriminating information
4 that you provide to the United States pursuant to the plea
5 agreement will not be used to increase the volume of the
6 affect of commerce attributable to you or to determine your
7 applicable Guideline range, except to the extent provided
8 under these Guidelines. You understand that?

9 DEFENDANT NUCKOLS: Yes, Your Honor.

10 THE COURT: Paragraph 8 sets out the application of
11 the Guidelines that you and the Government have agreed to.
12 You understand that, don't you?

13 DEFENDANT NUCKOLS: Yes, Your Honor.

14 THE COURT: You understand that prior to any
15 sentencing, sir, you will have the opportunity to look at a
16 presentence investigative report that would be prepared by
17 the Probation Department?

18 DEFENDANT NUCKOLS: Yes, Your Honor.

19 THE COURT: As a part of the probation officer's
20 responsibility there will be a Guideline calculation made.
21 That is, there will be a number that represents the crime and
22 another number that represents your criminal history, and the
23 higher those numbers are the more months these Guidelines
24 will recommend that you serve.

25 DEFENDANT NUCKOLS: Yes, Your Honor.

1 THE COURT: So that within this plea it is in your
2 best interest to keep the Guideline numbers as low as
3 possible. You understand that?

4 DEFENDANT NUCKOLS: Yes, Your Honor.

5 THE COURT: Paragraph 9 says that the United States
6 agrees to recommend as the appropriate disposition of this
7 case that I impose a sentence within the applicable Guideline
8 range requiring you to pay to the United States a criminal
9 fine of \$50,000, payable in full before the 15th day after
10 the date of judgment, serve a period of incarceration of 21
11 months, and serve a period of supervised release, I assume,
12 of a year. I don't think it says. You understand that?

13 DEFENDANT NUCKOLS: Yes, Your Honor.

14 THE COURT: And that you recommend as the
15 appropriate disposition in the case that I impose a sentence
16 below the applicable Guideline range based on 18, United
17 States Code, Section 3553(a). You understand that?

18 DEFENDANT NUCKOLS: Yes, Your Honor.

19 THE COURT: And you will then have -- then the
20 Government will oppose your recommendation. You understand
21 that?

22 DEFENDANT NUCKOLS: Yes, Your Honor.

23 THE COURT: And then in light of the civil cases
24 filed, which potentially provide for a recovery of a multiple
25 of actual damages, the United States has agreed that it will

1 not seek a restitution order for the offense charged in the
2 information. You are aware of that, aren't you?

3 DEFENDANT NUCKOLS: Yes, Your Honor.

4 THE COURT: And again it says you understand you
5 will owe the \$100 on the date of sentencing.

6 DEFENDANT NUCKOLS: Yes, Your Honor.

7 THE COURT: Paragraph 10 sets out the nature of the
8 cooperation that you have agreed to. You understand that?

9 DEFENDANT NUCKOLS: Yes, Your Honor.

10 THE COURT: And paragraph 10 says that you and the
11 Government understand that I retain complete discretion to
12 accept or reject the recommended sentence in paragraph 9, and
13 you understand that if I do not impose the sentence
14 consistent with the recommendations contained in the
15 agreement that you will not have the right to withdraw your
16 plea of guilty. Do you understand that?

17 DEFENDANT NUCKOLS: Yes, Your Honor.

18 THE COURT: Paragraph 12 sets out the nature of your
19 obligations on cooperation. You are familiar with those,
20 aren't you?

21 DEFENDANT NUCKOLS: Yes, Your Honor.

22 THE COURT: And paragraph 13 says that subject to
23 your full, truthful, and continuing cooperation, and upon my
24 acceptance of your guilty plea called for in the plea
25 agreement and in the imposition of sentence, the United

1 States will not bring further criminal charges against you
2 for any act or offense committed before the date of the plea
3 agreement that was undertaken in furtherance of an antitrust
4 conspiracy involving the manufacture and sale of ready-mix
5 concrete in the Indianapolis, Indiana metropolitan area. You
6 are aware of that, aren't you?

7 DEFENDANT NUCKOLS: Yes, Your Honor.

8 THE COURT: It says further in paragraph 14 that you
9 understand that you may be subject to administrative action,
10 and that this plea agreement in no way controls whatever the
11 actions that any of those agencies might take. You
12 understand that?

13 DEFENDANT NUCKOLS: Yes, Your Honor.

14 THE COURT: But in the face of those administrative
15 agencies' actions the Government has agreed to appear and let
16 that agency know of your -- of the fact, manner, and extent
17 of your cooperation as a matter for that agency to consider.
18 You understand that?

19 DEFENDANT NUCKOLS: Yes, Your Honor.

20 THE COURT: Paragraph 15 says that you and your
21 counsel have gone over all these things and that you
22 conferred with him and decided this is the appropriate way to
23 proceed in this case. Are you fully satisfied with his
24 representation in this case?

25 DEFENDANT NUCKOLS: Yes, Your Honor.

1 THE COURT: Paragraph 16 says that the decision to
2 enter into this plea agreement and tender a plea is freely
3 and voluntarily made and not the result of force, threats,
4 assurances, promises, or representations, other than those
5 made in the plea agreement. Is that still true?

6 DEFENDANT NUCKOLS: It is voluntary, Your Honor.

7 THE COURT: Okay. Again, it says the Government has
8 made no promises or representations as to whether I will
9 accept or reject the recommendations. You understand that?

10 DEFENDANT NUCKOLS: Yes, Your Honor.

11 THE COURT: Paragraph 17 sets out what happens if
12 the Government thinks you haven't cooperated with this
13 agreement. You understand that, don't you?

14 DEFENDANT NUCKOLS: Yes, Your Honor.

15 THE COURT: Paragraph 19 says this plea agreement is
16 the complete and only plea agreement that exists between you
17 and the Government. Is that still true?

18 DEFENDANT NUCKOLS: Yes, Your Honor.

19 THE COURT: Is this your signature there on page 12?

20 DEFENDANT NUCKOLS: Yes, it is, Your Honor.

21 THE COURT: And yours too, Mr. Russell?

22 MR. RUSSELL: Yes, Your Honor.

23 THE COURT: You understand, sir, that the crime to
24 which you are pleading guilty is a felony offense, and if
25 your plea is accepted you would be adjudged guilty of that

1 offense, and that adjudication may deprive you of valuable
2 civil rights, such as the right to vote, the right to hold
3 public office, the right to serve on a jury, and the right to
4 possess any kind of firearm?

5 DEFENDANT NUCKOLS: I do, Your Honor.

6 THE COURT: And so, Mr. Nuckols, having agreed to
7 the factual basis provided in paragraph 4 and its
8 subparagraphs, how do you plead to this charge?

9 DEFENDANT NUCKOLS: Guilty, Your Honor.

10 THE COURT: It is now the finding of the Court in
11 the case of United States versus Gus B. Nuckols, III that the
12 defendant is fully competent and capable of entering an
13 informed plea, that he is aware of the nature of the charges
14 and the consequences of the plea, that the plea of guilty is
15 a knowing and voluntary plea supported by an independent
16 basis in fact containing each of the essential elements of
17 the offense, and the plea is, therefore, accepted. The
18 defendant is now adjudged guilty of that offense.

19 We set the sentencing date for -- what was the other one?

20 THE CLERK: June 2nd.

21 THE COURT: June 2nd. It was at what time?

22 THE CLERK: 2:00 o'clock.

23 THE COURT: We will set this at 3:00 o'clock. I
24 recognize that the Government may want to -- I think it is in
25 the plea -- may want to postpone that sentencing pending all

1 your cooperation being complete.

2 DEFENDANT NUCKOLS: Yes, Your Honor.

3 THE COURT: You understand you have the right to be
4 sentenced within -- what is it, 90 days?

5 Is it 90 days?

6 PROBATION OFFICER: Seventy-four days, Your Honor.

7 THE COURT: Seventy-four days. You have the right
8 to be sentenced within 74 days. You may waive that right.

9 DEFENDANT NUCKOLS: Yes, Your Honor.

10 THE COURT: And you now waive that right,
11 considering --

12 DEFENDANT NUCKOLS: Yes, we wish to waive it, Your
13 Honor.

14 THE COURT: We will set it on that day in question,
15 and we will await further instruction from you as to whether
16 or not that is the appropriate time and date.

17 All right, you have not been before any other judicial
18 officers, is that true?

19 MR. RUSSELL: No, Your Honor, he has not.

20 THE COURT: No, it is not true; or yes, it is true?

21 MR. RUSSELL: Yes, it is true. And, no, he has not,
22 Your Honor.

23 THE COURT: Okay. I have an order that sets the
24 conditions of release. I noted in the plea agreement that
25 the Government's recommendation will be that you be released

1 on your own recognizance.

2 Does the probation officer have any reason to dispute
3 that agreement?

4 THE PROBATION OFFICER: I'm sorry, sir?

5 THE COURT: Do you have any reason to disagree with
6 the Government and the defendant in this case on conditions
7 of release?

8 THE PROBATION OFFICER: No.

9 THE COURT: Well, I have here the conditions of
10 release with the usual constrictions that you surrender any
11 passport, that you are restricted to the Southern District
12 unless you are preapproved by the Pre-Trial Services, and
13 these are all the usual ones. There is nothing extraordinary
14 in there. I'm going to sign this order and you will consult
15 with the soon-to-be retired probation officer over there.

16 MR. RUSSELL: Thank you, Your Honor.

17 He is too young to retire.

18 THE COURT: Yes, he is too young to retire, but
19 despite that he has some notion that he has earned it.

20 And so, is there anything else we need to do today?

21 MR. RUSSELL: No, Your Honor.

22 THE COURT: All right. Thank you very much.

23 (The Court adjourned at 2:20 P.M.)
24
25

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE
MATTER.



GLEN I. CUNNINGHAM
OFFICIAL COURT REPORTER



DATE