

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR10-4025

STEVEN KEITH VANDEBRAKE,

TRANSCRIPT OF
PLEA TAKING

Defendant.

(from digital recording)

The Plea Taking held before the Honorable Paul A. Zoss, Chief Magistrate Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 320 Sixth Street, Sioux City, Iowa, May 4, 2010, commencing at 10:08 a.m.

APPEARANCES

For the Plaintiff: ANDRE M. GEVEROLA, ESQ.
Antitrust Division
U.S. Department of Justice
Suite 600
209 South LaSalle Street
Chicago, IL 60604

For the Defendant: FRANCIS L. GOODWIN, ESQ.
Baron, Sar, Goodwin, Gill & Lohr
750 Pierce Street
Sioux City, IA 51101

Also present: Shane Moore, U.S. Probation

Transcribed from Shelly Semmler, RMR, CRR
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1 THE COURT: Please be seated. Good morning. This is
2 the case of United States versus Steven Keith VandeBrake.
3 You're Mr. VandeBrake?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: I'm Paul Zoss, a United States magistrate
6 judge.

7 I've given you kind of a script of what I follow when
8 I do a plea hearing. You don't need to read along. It's just
9 for your convenience or reference if you want to look at it.

10 The record should reflect that the defendant appears
11 personally and is represented by his attorney Mr. F. Lee
12 Goodwin. The government is represented by United States
13 Department of Justice Trial Attorney Andre M. -- is it Geverola?

14 MR. GEVEROLA: Yes, Judge.

15 THE COURT: Mr. -- Mr. VandeBrake, I want to make sure
16 you understand everything we talk about here today. If you have
17 problems hearing or understanding anything we say, I want you to
18 just interrupt me and let me know. Will you do that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Mr. VandeBrake, on April 26, 2010, the
21 attorney general -- I guess it's assistant United States --
22 assistant attorney general filed a three-count information
23 against you charging you with three separate conspiracies to
24 suppress and eliminate competition by fixing prices and rigging
25 bids. Do you have a copy of the information?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: These charges are felony charges. You
3 have the right under the United States Constitution to insist
4 that these charges be brought against you in an indictment
5 rather than in an information.

6 An indictment is a formal charging document returned
7 by a grand jury. The grand jury is composed of at least 16 but
8 not more than 23 citizens.

9 Before a felony charge against you can go forward in
10 this court, at least 12 members of the grand jury must find that
11 there's probable cause to believe that you committed a crime and
12 then vote to return an indictment charging you with this crime.

13 If you want, you can waive your right to be charged in
14 an information -- excuse me, waive your right to be charged in
15 an indictment and agree to be charged in an information which in
16 this case is a document that is simply signed by the attorney
17 general of the United States. If you agree to be charged in an
18 information, the case will proceed against you based on the
19 information just as though you'd been indicted.

20 You've signed a form and it's been filed consenting to
21 have these charges brought against you in an information. Is
22 that what you want to do?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Mr. Goodwin, is it your understanding that
25 your client wishes to waive his right to be charged in an

1 indictment and agree to have these charges brought against him
2 in an information?

3 MR. GOODWIN: That is correct, Judge.

4 THE COURT: Mr. VandeBrake, you have the right to have
5 the information read to you in open court before we proceed
6 further, or you can waive that right. Would you like me to read
7 the information to you, or do you waive that right?

8 THE DEFENDANT: I waive that right, Your Honor.

9 THE COURT: I -- you're entitled to an initial
10 appearance. I now will advise you of certain of your
11 constitutional rights.

12 You have the right to remain silent. This means you
13 do not have to say anything to anyone even if you've already
14 given a statement to the prosecutor or to the -- to law
15 enforcement.

16 If you decide to give up your right to remain silent
17 and you make a statement, the prosecutor can use everything you
18 say against you when your case comes to court.

19 You also have the right to be represented by a lawyer
20 throughout the entire case. If you want a lawyer but can't
21 afford to hire one, I'll appoint one to represent you. If I do
22 that, the lawyer will represent you and your interests in the
23 case just as if you'd hired a lawyer yourself, but the Court
24 would pay the lawyer's fees and expenses. You wouldn't have to
25 pay anything. Do you understand these rights?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Mr. Goodwin, I understand you've been
3 retained by Mr. VandeBrake. Is that correct?

4 MR. GOODWIN: That's correct, Judge.

5 THE COURT: I understand that you're here today to
6 plead guilty to the information pursuant to a plea agreement.

7 Mr. Goodwin, is that your understanding?

8 MR. GOODWIN: That is my understanding, Judge, yes.
9 There is a plea agreement that has been entered in this case.

10 THE COURT: Mr. Geverola, would you please offer the
11 plea agreement into evidence at this time.

12 MR. GEVEROLA: Yes, Your Honor. The government moves
13 to admit the plea agreement into evidence.

14 THE COURT: Are you going to be filing that under --
15 under seal or in some other way with the Court after these
16 proceedings?

17 MR. GEVEROLA: We'll be filing it but not under seal,
18 Your Honor.

19 THE COURT: Okay. The -- the -- any objection,
20 Mr. Goodwin?

21 MR. GOODWIN: No objection, Judge.

22 THE COURT: The plea agreement is admitted into
23 evidence.

24 Mr. VandeBrake, do you understand what you've been
25 charged with in this case?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Have you had the chance to talk with
3 Mr. Goodwin as much as you want about the charges?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Goodwin, do you believe your client
6 understands the charges against him?

7 MR. GOODWIN: He does, Judge.

8 THE COURT: Mr. VandeBrake, at this time I'll ask you
9 to enter pleas to the charges in Counts 1, 2, and 3, and your
10 pleas can be either guilty or not guilty. How do you plead to
11 Count 1 of the information? Guilty or not guilty?

12 THE DEFENDANT: Guilty, Your Honor.

13 THE COURT: And how do you plead to Count 2?

14 THE DEFENDANT: Guilty, Your Honor.

15 THE COURT: And how do you plead to Count 3?

16 THE DEFENDANT: Guilty, Your Honor.

17 THE COURT: Mr. VandeBrake, you have the right to have
18 a district court judge preside over any guilty plea hearing. As
19 a magistrate judge, I can preside over this plea hearing but
20 only with your voluntary consent.

21 You've signed a form which has been filed in which you
22 state that you consent to plead guilty before a magistrate
23 judge. Do you agree that I can preside over this plea hearing
24 today?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Mr. VandeBrake, I'm now going to place you
2 under oath. Would you please raise your right hand.

3 STEVEN VANDEBRAKE, DEFENDANT, SWORN

4 THE COURT: You can put your hand down.

5 THE DEFENDANT: Okay.

6 THE COURT: You're now under oath. You should tell
7 the truth because if you do not you could be prosecuted for
8 perjury or for making a false statement. In that prosecution
9 the government could use against you any statements you make
10 here under oath.

11 I'm now going to ask you some personal questions.
12 Your answers will help me decide if you're competent to plead
13 guilty at this hearing today.

14 Would you please state your full name.

15 THE DEFENDANT: Steven Keith VandeBrake.

16 THE COURT: How old are you?

17 THE DEFENDANT: Forty-four.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: Two years of college.

20 THE COURT: Have you recently consumed any alcoholic
21 beverages?

22 THE DEFENDANT: Yes, I have.

23 THE COURT: Within the last 20 hours?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. When did you last have alcohol, and

1 what did you drink?

2 THE DEFENDANT: I had a glass of wine and a gl -- and
3 a vodka martini last night.

4 THE COURT: What time was that?

5 THE DEFENDANT: Oh, five o'clock.

6 THE COURT: Are you feeling any effects from that
7 alcohol at all today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Within the past ten days, have you used
10 any illegal drugs?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Are you taking any prescription
13 medication?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: What are you taking?

16 THE DEFENDANT: I take Paxil.

17 THE COURT: And what do you take that for?

18 THE DEFENDANT: Depression.

19 THE COURT: And is that prescribed by a medical care
20 provider?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And how often do you take it?

23 THE DEFENDANT: Once a day.

24 THE COURT: And when do you take it?

25 THE DEFENDANT: In the morning.

1 THE COURT: Did you have your pill this morning?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Does that medicine when you take it
4 interfere with your ability to understand or make good
5 judgments?

6 THE DEFENDANT: No, sir. No, Your Honor.

7 THE COURT: How long have you been on Paxil?

8 THE DEFENDANT: Oh, boy.

9 THE COURT: More than six months?

10 THE DEFENDANT: Oh, yes, yes, sir.

11 THE COURT: Any -- anything else?

12 THE DEFENDANT: Propecia.

13 THE COURT: Okay. And does that affect your ability
14 to think or understand?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Anything else?

17 THE DEFENDANT: Allopurinol.

18 THE COURT: What's that?

19 THE DEFENDANT: It's a pill for joints so they don't
20 get swollen.

21 THE COURT: Does that interfere with your ability to
22 think or understand --

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: -- or make good judgments?

25 Anything else?

1 THE DEFENDANT: No, sir.

2 THE COURT: Other than the depression, have you
3 suffered from any other mental illness, anxiety, or anything
4 else?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Do you feel that today as you're sitting
7 here in court that your depression is interfering with your
8 ability to understand or follow -- follow what's going on or to
9 make good judgments?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you have any other physical or mental
12 problems that might make it hard for you to understand the
13 matters we'll be talking about at this hearing?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Mr. Goodwin, do you believe your client is
16 competent to plead guilty at this hearing today?

17 MR. GOODWIN: I do, Judge.

18 THE COURT: Mr. VandeBrake, I understand you've
19 retained Mr. Goodwin to be your lawyer in this case. You should
20 understand that he'll continue to represent you until your case
21 is over even if you decide to go to trial instead of pleading
22 guilty. Are you satisfied with the help you've received from
23 Mr. Goodwin?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Mr. VandeBrake, if you plead guilty,

1 you'll be giving up your one chance for a jury trial on these
2 charges, and one of the things I have to do is explain what
3 would happen in a jury trial, so that's what I'm -- I'm going to
4 do now.

5 You have the right to a speedy, public jury trial
6 before a jury of 12 people selected from a cross-section of this
7 community.

8 Your jurors would promise under oath to try this case
9 fairly and justly based only on what is submitted into evidence
10 at trial and the instructions given to them by the trial judge.
11 In this case the case has been assigned to Judge Bennett, so
12 he's likely to be the trial judge in the case.

13 Judge Bennett would tell the jury that you're presumed
14 innocent and that the presumption of innocence remains with you
15 unless and until -- and until at the end of your trial the
16 prosecution has convinced the jury of your guilt beyond a
17 reasonable doubt.

18 Judge Bennett would tell the jury that the presumption
19 of innocence alone is enough for you to be acquitted of these
20 charges.

21 Any verdict by the jury would have to be unanimous
22 which means all 12 jurors would have to agree on the verdict.

23 The prosecution would have to call its witnesses to
24 testify under oath here in court. You would have the right to
25 confront these witnesses which means your lawyer could

1 cross-examine them if he wanted to.

2 If you plead guilty, you'll be giving up your right to
3 confront the prosecution's witnesses.

4 The burden of proof would remain on the prosecution
5 throughout the trial. You would not have to put on a defense or
6 produce any evidence. However, if you wanted to, you could
7 present any relevant evidence to the jury. For example, you
8 could make witnesses come to court by having subpoenas served on
9 them. If you could not afford to pay the costs and fees
10 necessary to serve the subpoenas or get your witnesses to court,
11 the government would have to pay those costs and fees.

12 If you plead guilty, you'll be giving up your right to
13 present a defense.

14 You have the right to remain silent which means you
15 would not have to testify at your trial, although you could
16 testify if you wanted to. If you go to trial but do not
17 testify, the prosecutor would not say anything about it to the
18 jury. In fact, the judge would tell the jurors that they must
19 not hold it against you if you decide not to testify.

20 You'd have the right to appeal and the right to a free
21 lawyer to help you with your appeal if you couldn't afford one.

22 If you plead guilty, you'll be giving up your right to
23 a jury trial and all of the trial-related rights I've just
24 described to you. You also will be waiving your right to raise
25 any matters that might have helped you to defend this case

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1 including issues you could have raised in motions for discovery,
2 motions challenging the indictment or the information, motions
3 to dismiss the case, or motions to suppress evidence. If you
4 plead guilty, you'll be found guilty based upon your guilty
5 pleas just as if you'd gone to trial and a jury had found you
6 guilty.

7 Mr. VandeBrake, do you understand if you plead guilty
8 you will not have a jury trial or any other trial?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: In order to convict you on these charges,
11 the prosecution would have to prove all of the elements of the
12 charges beyond a reasonable doubt to a unanimous jury.

13 Mr. Geverola, would -- this -- this is a little
14 different than what we ordinarily do in terms of the elements.
15 And I'd like you to go over the elements of the three counts
16 with the defendant and talk about your factual basis.

17 MR. GEVEROLA: Yes, Judge. To sustain each charge of
18 violating Section 1 of the Sherman Act as charged in Counts 1,
19 2, and 3 of the information, the government must prove the
20 following elements:

21 One, that the conspiracy was knowingly formed and was
22 in existence at or around the time alleged; two, that the
23 defendant knowingly became a member of the conspiracy; and,
24 three, that the conspiracy either affected interstate commerce
25 in goods or services or occurred within the flow of interstate

1 commerce in goods and services.

2 If this case were to proceed to trial, the government
3 would pr -- provide evidence that would establish the following
4 facts beyond a reasonable doubt to satisfy each of the elements
5 of the charged crimes:

6 For all three counts, the evidence would show that the
7 defendant and his co-conspirators were in the business of
8 selling ready-mix concrete within the Northern District of Iowa.
9 The three counts involve three separate conspiracies. Each
10 count involves the defendant and his company on one hand and one
11 other competitor on the other hand.

12 For Count 1 the evidence would show that beginning at
13 least as early as June 2008 and continuing until as late as
14 March 2009 the defendant and co-conspirators which include at
15 least one representative of another company knowingly entered
16 into and participated in a conspiracy to suppress and eliminate
17 competition by fixing prices and rigging bids for sales of
18 ready-mix concrete in the Northern District of Iowa.

19 The charged conspiracy consisted of an agreement among
20 the defendant and co-conspirators, the substantial terms of
21 which were to fix prices and rig bids for sales of ready-mix
22 concrete in the Northern District of Iowa.

23 The evidence would further show that during the period
24 covered by Count 1 the business activities of the defendant and
25 his co-conspirators in connection with a conspiracy that is the

1 subject of Count 1 were within the flow of and substantially
2 affected interstate commerce.

3 For Count 2 the evidence would show that beginning at
4 least as early as January 2008 and continuing until as late as
5 August 2009 the defendant and his co-conspirators which include
6 at least one representative of another company knowingly entered
7 into and participated in a conspiracy to suppress and eliminate
8 competition by fixing prices and rigging bids for sales of
9 ready-mix concrete in the Northern District of Iowa.

10 The charged conspiracy consisted of an agreement among
11 the defendant and co-conspirators, the substantial terms of
12 which were to fix prices and rig bids for sales of ready-mix
13 concrete in the Northern District of Iowa.

14 The evidence would further show that during the period
15 covered by Count 2 the business activities of the defendant and
16 his co-conspirators in connection with a conspiracy that is the
17 subject of Count 2 were within the flow of and substantially
18 affected interstate commerce.

19 For Count 3 the evidence would show that beginning at
20 least as early as January 2006 and continuing till as late as
21 August 2009 the defendant and co-conspirators which include at
22 least one representative of another company knowingly entered
23 into and participated in a conspiracy to suppress and eliminate
24 competition by fixing prices for sales of ready-mix concrete in
25 the Northern District of Iowa.

1 The charged conspiracy consisted of an agreement among
2 the defendant and co-conspirators, substantial terms of which
3 were to fix prices for sales of ready-mix concrete in the
4 Northern District of Iowa.

5 The evidence would further show that during the period
6 covered by Count 3 the business activities of the defendant and
7 his co-conspirators in connection with a conspiracy that is the
8 subject of Count 3 were within the flow of and substantially
9 affected interstate commerce.

10 THE COURT: Mr. VandeBrake, did you, as the prosecutor
11 has just outlined, knowingly join the conspiracies that he's
12 described with respect to each of the three counts of the
13 information?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And did those conspiracies affect
16 interstate commerce, or were they in the flow of interstate
17 commerce?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And was this -- were your activities in
20 this conspiracy here in the Northern District of Iowa?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And did the conspiracies -- were the
23 conspiracies formed and did they exist at about the times
24 alleged in each of the three counts of the indictment?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And do you agree that the facts that the
2 prosecutor has summarized in support of each of these counts
3 are -- are true?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Did you, in fact, commit the violations
6 that are described in each of the three counts of the
7 information?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. -- Mr. Goodwin, do you believe your
10 client understands the elements of these charges?

11 MR. GOODWIN: I do, Judge. Yes, I do.

12 THE COURT: Do you believe there's a factual basis for
13 him to plead guilty to the charges?

14 MR. GOODWIN: Yes, there is.

15 THE COURT: Do you know any possible defenses to the
16 charges you have not considered and discussed with your client?

17 MR. GOODWIN: No, Judge.

18 THE COURT: Mr. Geverola, are you satisfied with the
19 way the elements have been described for the defendant?

20 MR. GEVEROLA: Yes, Your Honor.

21 THE COURT: And do you believe there's any further
22 record that needs to be made in this hearing to establish a
23 factual basis for the defendant to plead guilty to any of these
24 three counts?

25 MR. GEVEROLA: No, Your Honor.

1 THE COURT: Mr. VandeBrake, on each count of the
2 information, you could be sent to prison for up to 10 years, you
3 could be fined up to the greater of one million dollars, twice
4 the gross pecuniary gain the conspirators derived from the
5 crime, or twice the gross pecuniary loss caused to the victims
6 of the crime by the -- the conspirators. And you could be
7 placed on supervised release for up to three years.

8 Also on each count, a special assess -- a special
9 assessment of a hundred dollars will be imposed which would --
10 which would total \$300.

11 The sentencing judge has the power to run these
12 sentences consecutively. Sentencing judge also has the power to
13 order forfeiture and restitution, although in the plea agreement
14 it states that the government is not seeking restitution.

15 Mr. VandeBrake, do you have any questions about the
16 statutory penalties?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Because you've been charged with fraud,
19 the court also could order you to provide notice of your
20 conviction to any victims of the offense. Do you understand
21 that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Mr. VandeBrake, you'll be required to
24 serve all of your sentence in some type of custody reduced only
25 by any credit for good time you may earn. You can earn a

1 reduction in your prison sentence for good time of up to about
2 15 percent of your sentence or 54 days per year.

3 So, for example, if you are sentenced to the 19 months
4 that's set out in the -- in the 11(c)(1)(C) plea agreement, then
5 if you do not get into any trouble while in prison, you could
6 earn up to, by my calculations, about 85 days off of your prison
7 sentence for good time which would reduce your time actually in
8 custody to a little bit longer than 16 months on the 19-month
9 sentence. That's if you earn all of your good-time credits.

10 Whatever sentence you receive, you never will see a
11 parole board or be paroled out of prison because there's no
12 parole in federal court. That's been abolished for a long -- a
13 long time.

14 After you've served your prison sentence, you'll be
15 placed on supervised -- you could be placed on supervised
16 release during which your conduct would be monitored by a
17 probation officer. If you violate any of the conditions of your
18 supervised release, Judge Bennett could revoke your supervised
19 release and require you to serve in prison all or part of the
20 time you otherwise would have been on supervised release.

21 As a result of this conviction, you also will lose the
22 right to vote, to serve on a jury, to hold public office, and to
23 possess -- possess firearms and ammunition.

24 Do you have any questions about good time, supervised
25 release, or anything else we've talked about so far?

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1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Mr. Goodwin, would you make sure a copy of
3 the plea agreement is in front of your client.

4 MR. GOODWIN: We have the plea agreement, Judge.

5 THE COURT: Thank you.

6 Mr. VandeBrake, have you read the entire plea
7 agreement?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Did you sign it on the last page?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Did Mr. Goodwin review the plea agreement
12 with you before you signed it?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you understand that by signing the plea
15 agreement you're agreeing to be bound by its terms and agreeing
16 that the facts recited in the plea agreement are true and
17 accurate?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: I understand that this is a plea agreement
20 providing for an agreed sentence under Federal Rule of Criminal
21 Procedure 11(c)(1)(C).

22 Mr. Geverola, is that correct?

23 MR. GEVEROLA: That's correct, Your Honor.

24 THE COURT: I think I've described or at least I
25 understand what the agreed sentence is. I think it's 19 months

1 in custody and \$100,000; is that correct?

2 MR. GEVEROLA: Yes, Judge.

3 THE COURT: A fine of a hundred thousand dollars.

4 MR. GEVEROLA: That's correct, Judge, plus the \$300
5 special assessment.

6 THE COURT: Plus the \$300 special assessment. Thank
7 you.

8 Mr. VandeBrake, in the plea agreement the government
9 has agreed to recommend that you be sentenced to 19 months in
10 prison, that you be fined \$100,000, and you would have to pay
11 the \$300 special assessment. If Judge Bennett agrees to this
12 sentence, then this is the sentence you will receive, and it
13 will be the total sentence you'd receive on the charges against
14 you, although you could be sentenced also to a term of
15 supervised release.

16 Isn't that correct, Mr. Geverola?

17 MR. GEVEROLA: Yes, Judge.

18 THE COURT: On the other hand, if Judge Bennett
19 decides not to impose the agreed sentence, then he'll tell you
20 that, and you'll be given a chance to withdraw your guilty
21 pleas. If you decide to withdraw your guilty pleas, then not
22 guilty pleas will be entered on these charges, and your case
23 will be scheduled for trial.

24 If you decide you do not want to withdraw your guilty
25 pleas even though Judge Bennett will not be giving you the

1 sentence agreed to in the plea agreement, then he'll go ahead
2 and sentence you, but he won't be limited to the sentence agreed
3 to in the plea agreement. He could impose any reasonable
4 sentence up to and including the statutory maximum sentence. Do
5 you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Mr. Geverola, would you please put in the
8 record any summary of the terms of the plea agreement you
9 believe is appropriate.

10 MR. GEVEROLA: Yes, Judge. In addition to the
11 agreement regarding the sentence, the government and the
12 defendant agree that the defendant will not request that he be
13 allowed to serve any part of his sentence in home detention,
14 intermittent confinement, or community confinement. The United
15 States will not object to the defendant's request that the court
16 recommend to the Bureau of Prisons that the Bureau of Prisons
17 designate that the defendant be assigned to a federal minimum
18 security camp, if possible, at Yankton, South Dakota, to serve
19 his sentence and that the defendant be released following the
20 imposition of sentence to allow him to self-surrender to the
21 assigned prison facility on a specified date no later than 45
22 days after the date of judgment.

23 The parties also agree that there exists no
24 aggravating or mitigating circumstance of a kind or to a degree
25 not adequately taken into consideration by the U.S. Sentencing

1 Commission in formulating the sentencing guidelines justifying a
2 departure pursuant to USSG section 5K2.0. The parties agree not
3 to seek or support any sentence outside of the guidelines range
4 nor any guidelines adjustment for any reason that is not set
5 forth in the plea agreement.

6 The par -- the parties further agree that the
7 recommended sentence set forth in this plea agreement is
8 reasonable.

9 In addition, the government agrees that upon the
10 court's acceptance of the guilty plea called for in the plea
11 agreement and the imposition of the recommended sentence the
12 United States will not bring further criminal charges against
13 the defendant for any act or offense committed after January 1,
14 2006, and before the date of the plea agreement that was
15 undertaken in furtherance of an antitrust conspiracy relating to
16 the manufacture or sale of ready-mix concrete in Iowa.

17 The nonprosecution agreement that I just mentioned
18 does not apply to civil matters of any kind, to any violation of
19 the federal tax or securities laws, or to any crime of violence.

20 And finally, under the plea agreement the defendant
21 has agreed to waive the following rights: The right to be
22 charged by indictment, the right to plead not guilty to any
23 criminal charge brought against him, the right to have a trial
24 by jury at which he would be presumed not guilty of the charge
25 and the United States would have to prove every essential

1 element of the charged offense beyond a reasonable doubt, the
2 right to confront and cross-examine witnesses against him and to
3 subpoena witnesses in his defense at trial, and the right not to
4 be compelled to incriminate himself, the right to appeal his
5 conviction if he is found guilty, and the right to appeal the
6 imposition of sentence against him.

7 THE COURT: A couple things from that summary.
8 Mr. VandeBrake, you understand that even if the government
9 rec -- even if the judge recommends that you go to Yankton
10 there's no guarantee that that's where you'll be designated or
11 where the Bureau of Prisons will -- will take you. Do you
12 understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: You should also understand that if Judge
15 Bennett doesn't accept the deal and does his own guideline
16 calculation, he's not bound by any stipulations in the plea
17 agreement regarding the guidelines. He can do his own guideline
18 calculation. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Also, Mr. Geverola talked about the appeal
21 waiver. Ordinarily you'd have the right to appeal from what
22 happens in this case, but in this plea agreement you're waiving
23 your right to appeal from the conviction or your sentence. Do
24 you understand that in the plea agreement you're waiving your
25 right to appeal?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: As a part of that, you're also giving up
3 your right to file certain other actions challenging your
4 conviction or sentence. This is -- people get convicted and
5 when they -- after they conclude their proceedings in this
6 court, sometimes they'll file other actions they call habeas
7 corpus actions or coram nobis. There's a lot of names for them.
8 And these would include actions under 18 U.S.C. section 3742 and
9 22 U.S.C. sections 2241 and 2255. You're also giving up your
10 right to file those actions except for very limited
11 circumstances.

12 This means that you should understand after you've
13 been convicted on these charges you likely will never be able to
14 come back to court to challenge your conviction or sentence. Do
15 you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Mr. Goodwin, do you believe your client
18 understands the plea agreement?

19 MR. GOODWIN: I believe he does, Judge.

20 THE COURT: Mr. VandeBrake, do you have any questions
21 about the plea agreement?

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. VandeBrake, if you plead guilty here
24 today, I'll order a presentence investigation report which will
25 be prepared by a probation officer, Mr. Shane Moore. He's

1 seated over there. Mr. Moore will conduct a thorough
2 investigation of this case and then will prepare a draft
3 presentence investigation report.

4 You should go over the report carefully. In this
5 district it goes to the attorneys before it's submitted to the
6 judge. Be sure to point out to Mr. Goodwin if there are any
7 mistakes in the report or if anything significant is left out so
8 he should -- he can let Mr. Moore know about it and you could
9 possibly get it changed or corrected before it's finalized.

10 You shouldn't hesitate to let your lawyer know if
11 there's anything you want changed in the report. The government
12 won't hesitate, and there's no adverse consequence to -- to
13 correcting any mistakes in the report. So you should do that.

14 After the report has been finalized, you'll have a
15 sentencing hearing before Judge Bennett. At the sentencing
16 hearing, the lawyers can present witnesses and exhibits on any
17 sentencing issue, and you'll be given a chance to talk to Judge
18 Bennett directly. You have the right to make a statement at the
19 sentencing hearing.

20 During the sentencing hearing, Judge Bennett will
21 perform a calculation under the federal sentencing guidelines
22 which are guidelines issued by the United States Sentencing
23 Commission. This calculation will result in an advisory
24 guideline range which is a range of months within which the
25 sentencing commission suggests that you be sent to prison.

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1 In this case if Judge Bennett accepts the plea
2 agreement, then you'll be sentenced to the agreed sentence that
3 we've already talked about. And except for any possible
4 imposition of a term of supervised release, this will be the
5 total sentence you'll receive on the charges against you.

6 Do you have any questions about how you'd be
7 sentenced?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Has anyone forced or pressured you to
10 plead guilty or made any promises to get you to plead guilty
11 other than what's in the plea agreement?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Mr. Goodwin, if your client pleads guilty,
14 do you believe his guilty pleas would be voluntary?

15 MR. GOODWIN: I believe it is voluntary, Judge.

16 THE COURT: Do you know of any legal reason why his
17 guilty pleas should not be accepted?

18 MR. GOODWIN: No, Judge.

19 THE COURT: Do you know of anything the Court has
20 misstated or left out that could affect the validity of his
21 guilty pleas?

22 MR. GOODWIN: I know nothing that you've misstated.

23 THE COURT: Mr. Geverola, do you know of anything I've
24 left out or misstated that might affect the validity of the
25 guilty pleas?

1 MR. GEVEROLA: No, Judge.

2 THE COURT: Mr. VandeBrake, do you have any questions
3 about the matters we've discussed here today?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Do you still want to plead guilty?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Are you pleading guilty of your own free
8 will?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Are you pleading guilty because you are,
11 in fact, guilty?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: We've covered a lot of ground talking
14 about the rights and effects of this plea hearing, and I know
15 you pled guilty at the beginning of this, but I want to restate
16 and reask you those questions.

17 Mr. VandeBrake, formally and for the record, how do
18 you plead to Count 1 of the information? Guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: And how do you plead to Count 2?

21 THE DEFENDANT: Guilty.

22 THE COURT: And how do you plead to Count 3?

23 THE DEFENDANT: Guilty.

24 THE COURT: The record should reflect that the
25 defendant has pled guilty to Counts 1, 2, and 3 of the

1 information.

2 I find that the defendant has waived his right to
3 indictment and has agreed to proceed by information only.

4 In addition, I find the defendant has consented to
5 proceed before a United States magistrate judge; the defendant
6 is competent; he fully understands the charges against him;
7 there's a factual basis for his pleas of guilty; he knows the
8 maximum punishment that could be imposed on the charges, and he
9 knows his jury rights and has voluntarily waived those rights.

10 I further find that the defendant's decision to plead
11 guilty was voluntary, knowing, and not the result of any force,
12 pressure, threats, or promises other than the promises made by
13 the government in the plea agreement.

14 Therefore, I find the defendant should be adjudged
15 guilty based upon his pleas of guilty.

16 I will be filing a report and recommendation some time
17 this morning recommending that the defendant's guilty pleas be
18 accepted. I've provided copies of the report and recommendation
19 to the lawyers for the parties. You both should have that.

20 The parties have 14 days to file objections to the
21 report and recommendation. If a party fails to file a timely
22 objection, the party will have waived the right to make the
23 objection.

24 After reviewing any objections, Judge Bennett may
25 accept the report and recommendation and the defendant's guilty

1 pleas by simply entering a written order doing so.

2 I hereby order a presentence investigation report.
3 The parties should pay careful attention to the deadlines
4 relating to the preparation of the report.

5 Judge Bennett will schedule a sentencing hearing in
6 this case at a later time.

7 We have to now take care of release. Any -- I
8 understand the government isn't objecting to release, and I'll
9 go ahead and sign a bond. I think I have it here.

10 I'm going to go ahead and basically have you sign a
11 bond that provides for unsupervised release. The conditions of
12 the bond are that you not violate any federal, state, or local
13 law while on release. If there's DNA that's authorized for this
14 type of matter, then you have to supply DNA. You must
15 immediately advise the Court, your attorney, and the U.S.
16 attorney or in this case the prosecutor in writing if you would
17 change your address or telephone number. You must appear in
18 court as required and surrender for service of any sentence
19 that's imposed.

20 You should understand there are serious penalties for
21 violation of the bond. You could be -- for different types of
22 violations, you could be sent to prison for up to 15 years or
23 more and fined \$250,000. You can be held in contempt of court.
24 You could be revoked and put in custody. There's just a lot of
25 bad things that could happen if you violate your bond, so I'd

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1 expect you to violate all -- or to comply with all the terms and
2 conditions of the bond. And you can go over those with
3 Mr. Goodwin.

4 This isn't my courtroom. None of the pens here work.
5 Has the defendant been processed by the marshals?

6 UNIDENTIFIED VOICE: No, Your Honor, not yet.

7 THE COURT: You have to go down to the marshal's
8 office before you go. You sign the bond. Mr. Moore will answer
9 any questions you have about it, and then you have to go down to
10 the marshal's office, and they'll fingerprint you and do that --
11 that sort of thing.

12 Do the lawyers want to make any further record?
13 Mr. Geverola?

14 MR. GEVEROLA: No, Judge.

15 THE COURT: Mr. Goodwin.

16 MR. GOODWIN: No, Judge.

17 THE COURT: Good luck to you, Mr. VandeBrake, at your
18 sentencing hearing, and we're in recess.

19 THE DEFENDANT: Thank you.

20 (The foregoing plea was
21 concluded at 10:43 a.m.)

22 CERTIFICATE

23 I certify that the foregoing is a correct transcript
24 to the best of my ability from the digital recording of
proceedings in the above-entitled matter.

25 s/ Shelly Semmler
Shelly Semmler, RMR, CRR

5-7-10
Date