

Exhibit 18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, . Case No. 1:09-cr-149
 .
Plaintiff, . *Continued Hearing (Day 2)*
 . *Arraignment and Plea*
- v - .
 . Tuesday, November 10, 2009
ARTIC GLACIER INTERNATIONAL . 10:00 AM
INC., .
 .
Defendant. . Cincinnati, Ohio
*

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HERMAN J. WEBER, SENIOR JUDGE

For the Plaintiff: KEVIN C. CULUM, ESQ.
DONALD M. LYON, ESQ.
United States Department of Justice
Antitrust Division
Carl B. Stokes U.S. Court House
801 West Superior Avenue, 14th Floor
Cleveland, Ohio 44113-1857

For the Defendant: JOHN M. MAJORAS, ESQ.
Jones Day
325 John H. McConnell Boulevard
Suite 600
Columbus, Ohio 43215-2673

For the Petitioners: DAVID F. AXELROD, ESQ.
Axelrod LLC
250 Civic Center Drive, Suite 500
Columbus, Ohio 43215

Also present: Hugh A. Adams, Secretary, Arctic
Glacier Inc,
Laura S. Jensen, Probation Officer

Law Clerk: Amy Peters Thomas, Esq.

Courtroom Deputy: Darlene Maury

Court Reporter: Luke T. Lavin, RDR, CRR

*Proceedings recorded in stenotype;
transcript prepared by computer.*

1 Are you willing to accept the obligation to tell the truth?

2 MR. ADAMS: I am, Your Honor.

3 THE COURT: My first question then is: Have all the
4 answers you've given me on October the 27th and the discussions
5 that we had --

6 COURTROOM DEPUTY: Judge.

7 THE COURT: -- have they all been the truth?

8 MR. ADAMS: Yes, sir, they are all truthful.

9 COURTROOM DEPUTY: Judge, would you like me to swear
10 him in?

11 THE COURT: I guess maybe I should.

12 I guess I should swear you. Since you're a lawyer, you're
13 already sworn, so I didn't -- I jumped the gun.

14 Go ahead, Ms. Maury.

15 COURTROOM DEPUTY: Please stand and raise your right
16 hand.

17 (Hugh A. Adams was duly sworn by the courtroom deputy.)

18 COURTROOM DEPUTY: Thank you. Be seated.

19 THE COURT: Now I repeat my questions.

20 Have all the answers you've given over the course of our
21 relationship been the truth?

22 MR. ADAMS: Yes, they are the truth.

23 THE COURT: I know that you are a practicing lawyer.
24 Is that correct?

25 MR. ADAMS: That's correct.

1 The caption: *United States of America v. Arctic Glacier*
2 *International Inc.*, Violation, 15 U.S.C. Section 1.

3 Title: Information. Conspiracy To Restrain Trade, 15
4 U.S.C. Section 1.

5 The United States of America, acting through its attorneys,
6 charges:

7 1. Arctic Glacier International Inc. is hereby made a
8 defendant on the charge stated below.

9 Caption: Description Of The Offense.

10 Paragraph 2. Beginning January 1st, 2001, and continuing
11 until at least July 17th, 2007, the exact dates being unknown
12 to the United States, the defendant and co-conspirators entered
13 into and engaged in a conspiracy to suppress and eliminate
14 competition by allocating packaged-ice customers in
15 southeastern Michigan and the Detroit, Michigan, metropolitan
16 area. The charged conspiracy unreasonably restrained
17 interstate trade and commerce, in violation of Section 1 of the
18 Sherman Act, 15 U.S.C. Section 1.

19 The charged conspiracy consisted --

20 Paragraph 3. Excuse me, Your Honor.

21 The charged conspiracy consisted of a continuing agreement,
22 understanding, and concert of action among the defendant and
23 co-conspirators, the substantial terms of which were to
24 allocate packaged-ice customers in southeastern Michigan and
25 the Detroit, Michigan, metropolitan area.

1 Caption: II. Means And Methods Of The Conspiracy.

2 Paragraph 4. For the purposes of forming and carrying out
3 the charged conspiracy, the defendant and co-conspirators did
4 the following things, among other things:

5 (a) participated in meetings and conversations to discuss
6 packaged-ice customers in southeastern Michigan and the
7 Detroit, Michigan, metropolitan area;

8 (b) agreed during those meetings and conversations to
9 allocate packaged-ice customers in southeastern Michigan and
10 the Detroit, Michigan, metropolitan area;

11 (c) exchanged information during those meetings and
12 conversations for the purpose of monitoring and enforcing
13 adherence to the agreements to allocate customers in
14 southeastern Michigan and the Detroit, Michigan, metropolitan
15 area; and

16 (d) refrained from competing for packaged-ice customers
17 that were so allocated.

18 Caption: III. Defendant And Co-Conspirators.

19 Paragraph 5. Arctic Glacier International Inc., the
20 defendant, is a corporation organized and existing under the
21 laws of the state of Delaware and does business in multiple
22 states, with its principal place of business in St. Paul,
23 Minnesota. During the relevant period, the defendant acquired
24 various packaged-ice manufacturers doing business in Michigan.

25 Paragraph 6. Various individuals and corporations not made

1 defendants in this Information participated as co-conspirators
2 in the events charged and performed acts and made statements in
3 furtherance of it.

4 Paragraph 7. Whenever this Information refers to any act,
5 deed, or transaction of any corporation, it means that the
6 corporation engaged in the act, deed, or transaction by or
7 through its officers, employees, agents or other
8 representatives while they were actively engaged in the
9 management, direction, control, or transactions of its business
10 or affairs.

11 Caption: IV. Trade And Commerce.

12 Paragraph 8. During the period covered by this
13 Information, the defendant and co-conspirators: manufactured
14 packaged ice; (2) distributed packaged ice to retailers in
15 southeastern Michigan and the Detroit, Michigan, metropolitan
16 area; and (3) caused packaged ice to be purchased from, sold
17 to, or distributed from or to, individuals and companies
18 located inside and outside of southeastern Michigan and the
19 Detroit, Michigan, metropolitan area.

20 Paragraph 9. During the period covered by this
21 Information, substantial quantities of packaged ice
22 manufactured and sold by the defendant was shipped across state
23 lines in a continuous and uninterrupted flow of interstate
24 trade and commerce.

25 Paragraph 10. The business activities of the defendant and

1 co-conspirators that are the subject of this Information were
2 within the flow of and substantially affected interstate trade
3 and commerce.

4 Caption: Roman V. Venue.

5 Paragraph 11. The conspiracy charged in this Information
6 was formed and carried out within the Southern District of
7 Ohio, Western Division. At least one of the conspiratorial
8 meetings or discussions described above took place in
9 Cincinnati, Ohio, which is located within the Southern District
10 of Ohio. Acts in furtherance of this conspiracy were carried
11 out within the five years preceding the filing of this
12 Information, all in violation of Title 15, United States Code,
13 Section 1.

14 The Information is signed by Christine Varney, Scott
15 Hammond, Scott Watson, and myself and Marc Siegel.

16 THE COURT: Do you have any questions about this
17 information, Mr. Adams?

18 MR. ADAMS: No questions, Your Honor.

19 THE COURT: Do you understand the nature and meaning
20 of this charge?

21 MR. ADAMS: Yes, Your Honor.

22 THE COURT: Have you told your lawyer everything you
23 know about this case?

24 MR. ADAMS: I'm sorry. I didn't quite hear the
25 question.

1 However, you and the lawyers have a duty to disclose the terms
2 of any plea agreement in this case. I'm going to ask Mr. Culum
3 to display the Plea Agreement on the record. I'm going to ask
4 you to follow along, because after he has concluded his
5 presentation, I will ask you some questions about it.

6 And, Mr. Axelrod, I will give you an opportunity to comment
7 if you choose to do so.

8 MR. ADAMS: Thank you, Your Honor.

9 THE COURT: Proceed, Mr. Culum.

10 MR. CULUM: Thank you, Your Honor.

11 The Plea Agreement is entitled "*United States of America v.*
12 *Arctic Glacier International Inc.*"

13 Caption: Plea Agreement.

14 The United States of America and Arctic Glacier
15 International Inc., the defendant, a corporation organized and
16 existing under the laws of the state of Delaware, and with its
17 principal place of business in St. Paul, Minnesota, hereby
18 enter into the following Plea Agreement pursuant to United
19 States -- pursuant to Rule 11 (c) (1) (C) of the Federal Rules of
20 Criminal Procedure:

21 Caption: Rights Of Defendant.

22 Paragraph 1. The defendant understands its rights:

23 (a) to be represented by an attorney;

24 (b) to be charged by Indictment;

25 (c) as a corporation organized and existing under the laws

1 of Delaware, to decline to accept service of the Summons in
2 this case, and to contest the jurisdiction of the United States
3 to prosecute this case against it in the United States District
4 Court for the Southern District of Ohio;

5 (d) to plead not guilty to any criminal charge brought
6 against it;

7 (e) to have a trial by jury, at which it would be presumed
8 not guilty of the charge and the United States would have to
9 prove every essential element of the charged offense beyond a
10 reasonable doubt for it to be found guilty;

11 (f) to confront and cross-examine witnesses against it and
12 to subpoena witnesses in its defense at trial;

13 (g) to appeal its conviction if it is found guilty; and

14 (h) to appeal the imposition of sentence against it.

15 Caption: Agreement To Plead Guilty And Waive Certain
16 Rights.

17 Paragraph 2. The defendant knowingly and voluntarily
18 waives the rights set out -- the rights set out in paragraph
19 1(b) through (g) above. The defendant also knowingly and
20 voluntarily waives the right to file any appeal, any collateral
21 attack, or any other writ or motion, including but not limited
22 to, an appeal under 18 U.S.C. Section 3742 that challenges the
23 sentence imposed by the Court if that sentence is consistent
24 with or below the applicable Guidelines range in paragraph 8 of
25 this Plea Agreement, regardless of how the sentence is

1 determined by the Court. This agreement does not affect the
2 rights or obligations of the United States as set forth in
3 United States -- in 18 U.S.C. Section 3742. Nothing in this
4 paragraph, however, shall act as a bar to the defendant
5 perfecting any legal remedies it may otherwise have on appeal
6 or collateral attack respecting claims of ineffective
7 assistance of counsel or prosecutorial misconduct. The
8 defendant agrees that there is currently no known evidence of
9 ineffective assistance of counsel or prosecutorial misconduct.
10 Pursuant to Federal Rule of Criminal Procedure 7(b), the
11 defendant will waive indictment and plead guilty at arraignment
12 to a one-count Information to be filed in the United States
13 District Court for the Southern District of Ohio. The
14 Information will charge the defendant with participating in a
15 conspiracy to suppress and eliminate competition by agreeing
16 with or -- with one or more other packaged-ice manufacturers to
17 allocate customers in southeastern Michigan and the Detroit,
18 Michigan, metropolitan area, beginning January 1st, 2001, and
19 continuing until at least July 17th, 2007, in violation of the
20 Sherman Antitrust Act, 15 U.S.C. Section 1.

21 Paragraph 3. The defendant, pursuant to the terms of this
22 Plea Agreement, will plead guilty to the criminal charge
23 described in paragraph 2 above and will make a factual
24 admission of guilt to the Court in accordance with Federal Rule
25 of Criminal Procedure 11, as set forth in paragraph 4 below.

1 Caption. Factual Basis For Offense Charged.

2 Paragraph 4. Had this case gone to trial, the United
3 States would have presented evidence sufficient to prove the
4 following facts:

5 (a) For purposes of this Plea Agreement, the relevant
6 period is that period beginning January 1st, 2001, and
7 continuing until at least July 17th, 2007. During the relevant
8 period, the defendant was a corporation organized and existing
9 under the laws of Delaware. During the relevant period, the
10 defendant acquired various packaged-ice manufacturers doing
11 business in Michigan. During the relevant period, the
12 defendant, through its parent and subsidiary corporations,
13 collectively "Arctic Glacier," was a producer of packaged ice
14 in multiple states and was engaged in the sale of packaged ice.
15 Packaged ice is marketed for human consumption and is sold in
16 blocks and various bag sizes. During the relevant period, the
17 defendant's Michigan subsidiaries employed more than 200 full-
18 time-equivalent employees, but less than 1,000. During the
19 relevant period, Arctic Glacier's sales of packaged ice
20 affected by the conspiracy totaled 50.7 million.

21 Paragraph (b). During the relevant period, the defendant,
22 through certain of its executives and employees of its
23 subsidiary corporations and its predecessor company acquired in
24 December 2004, participated in a conspiracy to allocate
25 customers of packaged ice sold in southeastern Michigan and the

1 Detroit, Michigan, metropolitan area. In furtherance of the
2 conspiratorial activity, the defendant, through certain of its
3 executives and employees of its subsidiary corporations and
4 predecessor company acquired in December 2004, engaged in
5 discussions and attended meetings with representatives of one
6 or more other packaged-ice producers. During these discussions
7 and meetings, agreements were reached to allocate customers of
8 packaged ice in southeastern Michigan and the Detroit,
9 Michigan, metropolitan area.

10 (c) During the relevant period, packaged ice was sold by
11 one or more of the conspirator firms, and equipment and
12 supplies necessary to the production and distribution of
13 packaged ice, as well as payments for packaged ice, traveled in
14 interstate commerce. The business activities of Arctic Glacier
15 and its co-conspirator in connection with the production and
16 sale of packaged ice affected by the conspiracy were within the
17 flow of, and substantially affected, interstate trade and
18 commerce.

19 (d) Acts in furtherance of this conspiracy were carried out
20 within the Southern District of Ohio, Western Division. At
21 least one of the conspiratorial meetings or discussions
22 described above took place in Cincinnati, Ohio, which is
23 located within the Southern District of Ohio.

24 Caption: Possible Maximum Sentence.

25 Paragraph 5. The defendant understands that the statutory

1 maximum penalty which may be imposed against it upon conviction
2 for a violation of Section 1 of the Sherman Antitrust Act is a
3 fine in the amount equal to the greatest of:

4 (a) 100 million, 15 U.S.C. Section 1;

5 (b) twice the gross pecuniary gain the conspirators derived
6 from the crime, 18 U.S.C. Section 3571(c) and (d); or

7 (c) twice the gross pecuniary loss caused to the victims of
8 the crime by the conspirators, 18 U.S.C. Section 3571(c) and
9 (d).

10 Paragraph 6. In addition, the defendant understands that:

11 (a) pursuant to 18 U.S.C. Section 3561(c)(1), the Court may
12 impose a term of probation of at least one year, but not more
13 than five years;

14 Paragraph (b) pursuant to Section 8B1.1 of the United
15 States Sentencing Guidelines or 18 U.S.C. Sections 3563(b)(2)
16 or 3663(a)(3), the Court may order it to pay restitution to the
17 victims of the offense; and

18 (c) pursuant to 18 U.S.C. Section 3013(a)(2)(B), the Court
19 is required to order the defendant to pay a \$400 special
20 assessment upon conviction for the charged crime.

21 Caption: Sentencing Guidelines.

22 Paragraph 7. The defendant understands that the Sentencing
23 Guidelines are advisory, not mandatory, but that the Court must
24 consider the Guidelines in effect on the day of sentencing,
25 along with other factors set forth in 18 U.S.C. Section

1 3553(a), in determining and imposing sentence. The defendant
2 understands that the Guidelines determination will be made by
3 the Court by a preponderance of the evidence standard. The
4 defendant understands that although the Court is not ultimately
5 bound to impose a sentence within the applicable Guideline
6 range, its sentence must be reasonable based upon consideration
7 of all relevant sentencing factors set forth in 18 U.S.C.
8 Section 3553(a). Pursuant to 18 -- pursuant to United States
9 Sentencing Guideline Section 1B1.8, the United States agrees
10 that self-incriminating information that the defendant provides
11 to the United States pursuant to this Plea Agreement will not
12 be used to increase the volume of affected commerce
13 attributable to the defendant or in determining the defendant's
14 applicable Guideline range, except to the extent provided in
15 United States Sentencing Guidelines Section 1B1.8(b).

16 Sentencing Agreement.

17 Paragraph 8. Pursuant to Federal Rule of Criminal
18 Procedure 11(c)(1)(C), the United States and the defendant
19 agree that the appropriate disposition of this case is, and
20 agree to recommend jointly that the Court impose, a sentence
21 requiring the defendant to pay the United States a criminal
22 fine of \$9 million, payable in installments as set forth below,
23 with interest accruing under 18 U.S.C. Section 3612(f)(1)-(2).

24 Paragraph (a). The defendant understands that the Court
25 will order it to pay a \$400 special assessment, pursuant to 18

1 U.S.C. Section 3013(a)(2)(B), in addition to any fine imposed;
2 (b) the United States and defendant agree to recommend, in
3 the interest of justice pursuant to 18 U.S.C. Section
4 3572(d)(1), the United States Sentencing Guideline 8C3.2(b),
5 that the fine be paid in the following installments: within 30
6 days of imposition of sentencing, \$1 million plus any agreed
7 interest; at the one-year anniversary of imposition of the
8 sentence, "anniversary," \$1 million plus any accrued interest;
9 at the two-year anniversary, \$1.5 million plus any accrued
10 interest; at the three-year anniversary, \$1.5 million plus any
11 accrued interest; at the four-year anniversary, \$1.5 million
12 plus any accrued interest; and at the five-year anniversary,
13 \$2.5 million plus any accrued interest; provided, however, that
14 the defendant shall have the option at any time before the
15 five-year anniversary of prepaying any part of the remaining
16 balance plus any accrued interest then owing on the fine.

17 Paragraph 9. The parties agree that they are not aware at
18 this time of any aggravating or mitigating circumstance of a
19 kind, or to a degree, not adequately taken into consideration
20 by the United States Sentencing Commission in formulating the
21 Sentencing Guidelines justifying a departure pursuant to United
22 States Sentencing Guidelines Section 5K2.0. The parties agree
23 not to seek or support any sentence outside of the Guidelines
24 range nor any Guidelines adjustment for any reason that is not
25 set forth in this Plea Agreement.

1 Paragraph 10. The United States and the defendant agree
2 that the applicable Guidelines fine range exceeds the fine
3 contained in the recommended sentence set out in paragraph 8
4 above. Subject to the full and continuing cooperation of the
5 defendant as set forth in paragraph 14 of this Plea Agreement,
6 and prior to the sentencing in this case, the United States
7 agrees it will not -- that it will make a motion, pursuant to
8 United States Sentencing Guidelines Section 8C4.1, for a
9 downward departure from the Guideline fine range and will
10 request that the Court impose the recommended sentence set out
11 in paragraph 8 of this Plea Agreement because of the
12 defendant's substantial assistance in the government's
13 investigation and prosecution of the violation of federal
14 criminal law in the packaged-ice industry.

15 Paragraph 11. Subject to the ongoing, full, and truthful
16 cooperation of the defendant described in paragraph 14 of this
17 Plea Agreement, and before sentencing in this case, the United
18 States will fully advise the Court and the probation office of
19 the fact, manner, and extent of defendant's cooperation and its
20 commitment to prospective cooperation with the United States'
21 investigation and prosecutions, all material facts relating to
22 the defendant's involvement in the charged offense, and all
23 other relevant conduct.

24 Paragraph 12. The United States and the defendant
25 understand that the Court retains complete discretion to accept

1 or reject the recommended sentence.

2 (a) If the Court does not accept the recommended sentence,
3 the United States and the defendant agree that this Plea
4 Agreement, except for paragraph 12(b) below, shall be rendered
5 void.

6 (b) If the Court does not accept the recommended sentence,
7 the defendant will be free to withdraw its guilty plea, Federal
8 Rule of Criminal Procedure 11(c)(5) and (d). If the defendant
9 withdraws its plea of guilty, this Plea Agreement, the guilty
10 plea, and any statements made in the course of any proceedings
11 under Federal Rule of Criminal Procedure 11 regarding the
12 guilty plea or this Plea Agreement or made in the course of
13 plea discussion with an attorney for the government shall not
14 be admissible against the defendant in any criminal or civil
15 proceeding, except as otherwise provided in Federal Rule of
16 Evidence 410. In addition, the defendant agrees that if it
17 withdraws its guilty plea pursuant to this subparagraph of the
18 Plea Agreement, the statute of limitations period for any
19 offense referred to in paragraph 16 of this Plea Agreement
20 shall be tolled for the period between the date of the signing
21 of the Plea Agreement and the date the defendant withdrew its
22 guilty plea or for a period of 60 days after the date of the
23 signing of the Plea Agreement, whichever period is greater.

24 Paragraph 13. In light of the availability of civil causes
25 of action available pursuant to 15 U.S.C. Section 15, the

1 United States agrees that it will not seek a restitution order
2 for the offense charged in the Information.

3 Caption: Defendant's Cooperation.

4 Paragraph 14. Arctic Glacier will cooperate fully and
5 truthfully with the United States in the prosecution of this
6 case, the conduct of the current federal investigation of
7 violations of federal antitrust and related criminal laws
8 involving the sale of packaged ice in the United States, any
9 other federal investigation resulting therefrom, and any
10 litigation or other proceedings arising or resulting from any
11 such investigation to which the United States is a party. The
12 ongoing, full, and truthful cooperation of Arctic Glacier shall
13 include, but not be limited to:

14 (a) producing to the United States all non-privileged
15 documents, information, and other materials wherever located,
16 in the possession, custody, or control of Arctic Glacier,
17 requested by the United States in connection with any federal
18 proceeding;

19 (b) using its best efforts to secure the ongoing, full, and
20 truthful cooperation, as defined in paragraph 15 of this Plea
21 Agreement, of its current and former directors, officers, and
22 employees of Arctic Glacier as may be requested by the United
23 States, but excluding Keith E. Corbin, Gary D. Cooley, and
24 Frank G. Larson, including making these persons available in
25 the United States and at other mutually-agreed-upon locations,

1 at the defendant's expense, for interviews and the provision of
2 testimony in grand jury, trial, and other judicial proceedings
3 in connection with any federal proceeding.

4 Paragraph 15. The ongoing, full, and truthful cooperation
5 of each person described in paragraph 14(b) above will be
6 subject to the procedures and protections of this paragraph,
7 and shall include, but not be limited to:

8 (a) producing all non-privileged documents, including
9 claimed personal documents, and other materials, wherever
10 located, requested by attorneys and agents of the United
11 States;

12 (b) making himself or herself available for interviews, not
13 at the expense of the United States, upon the request of
14 attorneys and agents of the United States;

15 (c) responding fully and truthfully to all of the inquiries
16 of the United States in connection with any federal proceeding,
17 without falsely implicating any person or intentionally
18 withholding any information, subject to the penalties of making
19 false statements, 18 U.S.C. Section 1001, and obstruction of
20 justice, 18 U.S.C. Section 1503;

21 (d) otherwise voluntarily providing the United States with
22 any non-privileged material or information not requested in (a)
23 through (c) of this paragraph that he or she may have that is
24 related to any federal proceeding;

25 (c) when called upon to do so by the United States in

1 connection with any federal proceeding, testifying in grand
2 jury, trial, and other judicial proceedings fully, truthfully,
3 and under oath, subject to the penalties of perjury, 18 U.S.C.
4 Section 1621, making false statements or declarations in grand
5 jury or court proceedings, 18 U.S.C. Section 1623, contempt, 18
6 U.S.C. Section 401 and 402, and obstruction of justice, 18
7 U.S.C. Section 1503, et sequentes; and

8 (f) agreeing that, if the agreement not to prosecute him or
9 her in this Plea Agreement is rendered void under paragraph
10 17(c), the statute of limitations period for any relevant
11 offense as defined in paragraph 15(a) will be tolled as to him
12 or her for the period between the date of the signing of this
13 Plea Agreement and six months after the date that the United
14 States gave notice of its intent to void its obligation to that
15 person under the Plea Agreement.

16 Caption: Government's Agreement.

17 Paragraph 16. Upon acceptance of the guilty plea called
18 for by this Plea Agreement, and subject to the cooperation
19 requirements of paragraph 14 of this Plea Agreement, the United
20 States agrees that it will not bring further criminal charges
21 against Arctic Glacier for any act or offense committed before
22 the date of this Plea Agreement that was undertaken in
23 furtherance of an attempted or completed antitrust conspiracy
24 involving the sale of packaged ice in the United States or
25 undertaken in connection with any investigation of such a

1 conspiracy. The non-prosecution terms of this paragraph do not
2 apply to civil matters of any kind, to any violation of federal
3 tax or securities laws, or to any crime of violence.

4 Paragraph 17. The United States agrees to the following:

5 (a) Upon the Court's acceptance of the guilty plea called
6 for by this Plea Agreement and the imposition of its sentence,
7 and subject to the exceptions noted in paragraph 15(c), the
8 United States will not bring criminal charges against any
9 current or former director, officer, or employee of Arctic
10 Glacier for any act or offense committed before the date of
11 this Plea Agreement and while that person was acting as a
12 director, officer, or employee of Arctic Glacier that was
13 undertaken in furtherance of an antitrust conspiracy involving
14 the sale of packaged ice in the United States or undertaken in
15 connection with any investigation of such a conspiracy,
16 "relevant offense," except that the protections in this
17 paragraph shall not apply to Keith E. Corbin, Gary D. Cooley,
18 and Frank G. Larson;

19 (b) Should the United States determine that any current or
20 former director, officer, or employee of Arctic Glacier may
21 have information relevant to any federal proceeding, the United
22 States may request that person's cooperation under the terms of
23 this Plea Agreement by written request delivered to counsel for
24 the individual, with a copy to the undersigned counsel for the
25 defendant, or if the individual is not known by the United

1 States to be represented, to the undersigned counsel for the
2 defendant;

3 (c) If any person requested to provide cooperation under
4 paragraph 14(b) fails to comply with this obligation, with the
5 obligations under paragraph 15, then the terms of this Plea
6 Agreement as they pertain to that person, and the agreement not
7 to prosecute that person granted in this Plea Agreement, shall
8 be rendered void;

9 (d) Except as provided in paragraph 16(e), information
10 provided by a person described in paragraph 16(b) to the United
11 States under the terms of this Plea Agreement pertaining to any
12 relevant offense, or any information directly or indirectly
13 derived from that information, may not be used against that
14 person in a criminal case, except in a prosecution for perjury,
15 18 U.S.C. Section 1621, making a false statement or
16 declaration, 18 U.S.C. Section 1001 and 1623, or obstruction of
17 justice, 18 U.S.C. 1503, et sequentes;

18 (e) If any person who provides information to the United
19 States under this Plea Agreement fails to comply fully with the
20 obligations under paragraph 15 of this Plea Agreement, the
21 agreement in paragraph 16(d) not to use that information or any
22 information directly or indirectly derived from it against that
23 person in a criminal case shall be rendered void;

24 (f) The non-prosecution terms of this paragraph do not
25 apply to civil matters of any kind, to any violation of the

1 federal tax or securities laws, or to any crimes of violence;
2 and

3 (g) Documents provided under paragraphs 14(a) and 15(a)
4 shall be deemed responsive to outstanding grand jury subpoenas
5 issued to the defendant.

6 Paragraph 18. The United States agrees that when any
7 person travels to the United States for interviews, grand jury
8 appearances, or court appearances pursuant to this Plea
9 Agreement, or for meetings with counsel in preparation
10 therefor, the United States will take no action, based upon any
11 relevant offense, to subject such person to arrest, detention,
12 or service of process, or to prevent such person from departing
13 the United States. This paragraph does not apply to an
14 individual's commission of perjury, 18 U.S.C. Section 1621,
15 making false statements, 18 U.S.C. Section 1001, making false
16 statements or declarations in grand jury or court proceedings,
17 18 U.S.C. Section 1623, obstruction of justice, 18 U.S.C.
18 Section 1503, or contempt, 18 U.S.C. Section 401-402, in
19 connection with any testimony or information provided or
20 requested in any federal proceeding.

21 Paragraph 19. The defendant understands that it may be
22 subject to administrative action by federal or state agencies
23 other than the United States Department of Justice, Antitrust
24 Division, based upon the conviction resulting from this Plea
25 Agreement, and that this Plea Agreement in no way controls

1 whatever action, if any, other agencies may take. However, the
2 United States agrees that, if requested, it will advise the
3 appropriate officials of any governmental agency considering
4 such administrative action of the fact, manner, and extent of
5 the cooperation of Arctic Glacier as a matter for that agency
6 to consider before determining what administrative action, if
7 any, to take.

8 Caption: Representation By Counsel.

9 Paragraph 20. The defendant has been represented by
10 counsel and is fully satisfied that its attorneys have provided
11 competent legal representation. The defendant has thoroughly
12 reviewed this Plea Agreement and acknowledges that counsel has
13 advised it of the nature of the charge, any possible defenses
14 to the charge, and the nature and range of possible sentences.

15 Caption: Voluntary Plea.

16 Paragraph 21. The defendant's decision to enter into this
17 Plea Agreement and to tender a plea of guilty is freely and
18 voluntarily made and is not the result of force, threats,
19 assurances, promises, or representations other than the
20 representations contained in this Plea Agreement. The United
21 States has made no promises or representations to the defendant
22 as to whether the Court will accept or reject the
23 recommendations contained within this Plea Agreement.

24 Violation Of Plea Agreement.

25 Paragraph 22. The defendant agrees that, should the United

1 States determine in good faith, during the period that any
2 federal proceeding is pending, that Arctic Glacier has failed
3 to provide full and truthful cooperation, as described in
4 paragraph 14 of this Plea Agreement, or has otherwise violated
5 any provision of this Plea Agreement, the United States will
6 notify counsel for the defendant in writing by personal or
7 overnight delivery or facsimile transmission and may also
8 notify counsel by telephone of its intention to void any of its
9 obligations under this Plea Agreement, except its obligations
10 under this paragraph, and Arctic Glacier shall be subject to
11 prosecution for any federal crime of which the United States
12 has knowledge including, but not limited to, the substantive
13 offenses relating to the investigation resulting in this Plea
14 Agreement. The defendant agrees that, in the event that the
15 United States is released from its obligations under this Plea
16 Agreement and brings a criminal charge against Arctic Glacier
17 for any offense referred to in paragraph 14 of this Plea
18 Agreement, the statute of limitations period for such offense
19 will be tolled for the period between the date of the signing
20 of this Plea Agreement and six months after the date the United
21 States gave notice of its intent to void its obligations under
22 this Plea Agreement.

23 Paragraph 23. The defendant understands and agrees that in
24 any further prosecution of it resulting from the release of the
25 United States from its obligations under this Plea Agreement,

1 because of Arctic Glacier's violation of the Plea Agreement,
2 any document, statement, information, testimony, or evidence
3 provided by it or any individual identified by the United
4 States pursuant to paragraphs 14(b) or 15(b) to attorneys or
5 agents of the United States, federal grand juries, or courts,
6 and any leads derived therefrom, may be used against it in any
7 such further prosecution. In addition, Arctic Glacier
8 unconditionally waives its right to challenge the use of such
9 evidence in any further prosecution, notwithstanding the
10 protections of Federal Rule of Evidence 408 and Federal Rule of
11 Evidence 410.

12 Entirety Of The Agreement, caption.

13 Paragraph 24. This Plea Agreement constitutes the entire
14 agreement between the United States and the defendant
15 concerning the disposition of the criminal charge in this case.
16 The Plea Agreement cannot be modified except in writing, signed
17 by the United States and the defendant.

18 Paragraph 25. The undersigned is authorized to enter this
19 Plea Agreement on behalf of the defendant as evidenced by the
20 resolution of the board of directors of the defendant attached
21 and incorporated by reference in this Plea Agreement.

22 Paragraph 26. The undersigned attorneys for the United
23 States have been authorized by the Attorney General of the
24 United States to enter this Plea Agreement on behalf of the
25 United States.

1 The Plea Agreement, unfortunately, is not dated. It is
2 signed by Hugh Adams, corporate secretary, Arctic Glacier
3 International; John Majoras, counsel, Jones Day; signed by
4 myself, Kevin Culum.

5 THE COURT: Mr. Adams, do you have any questions about
6 this Plea Agreement?

7 MR. ADAMS: No questions, Your Honor.

8 THE COURT: Has the Plea Agreement correctly set forth
9 your agreements and the corporation's agreements that they have
10 made in this document?

11 MR. ADAMS: Yes, it does, Your Honor.

12 THE COURT: And are those representations and
13 agreements true?

14 MR. ADAMS: They are true.

15 THE COURT: I would like just a clarification. From
16 my information, it would be the 14(b) and 15, the relationship
17 between 14(b) and 15. The 14(b) discusses or mentions the
18 three defendants that I've already accepted a plea to, and I
19 just want to be sure I understand what in the world's going on
20 here, because I'm not going to -- right up front, I'm not going
21 to accept any interference with my conduct of those cases.

22 MR. CULUM: Your Honor, we use the term "carve out"
23 individuals from a plea agreement, so that those three
24 individuals could not seek the protection of this Plea
25 Agreement and we would be -- we resolved their liability

1 of the arguments he's making are appropriate for the civil
2 action in which they represent these same parties. And just
3 for the record, we would renew the arguments we made the last
4 time we met that were on the record with respect to standing
5 and with respect to the appropriate place for restitution in
6 this case.

7 THE COURT: Mr. Axelrod, you were the proponent here.
8 Any further comment?

9 MR. AXELROD: Your Honor, I think I know when it's
10 time to sit down and be quiet.

11 THE COURT: You are very wise.

12 Mr. Adams, do you have anything you wish to add at this
13 time when I ask this question: Is it fair for me to believe
14 that this decision of yours and the corporation's to plead
15 guilty is your voluntary act and deed?

16 MR. ADAMS: Yes, it is, Your Honor.

17 THE COURT: And is it fair for me to believe that
18 you're pleading guilty here today on behalf of the corporation
19 with a full understanding of the nature of the charge against
20 you and the consequences of that plea of guilty?

21 MR. ADAMS: Yes, that is all understood.

22 THE COURT: The factual basis was set forth in the
23 Plea Agreement. Do you wish to elaborate on the factual basis
24 at this time?

25 MR. ADAMS: No. We'll certainly stand by what was set

1 out in the Plea Agreement.

2 THE COURT: And do you have any additions or
3 corrections or explanations you wish to make to that factual
4 statement?

5 MR. ADAMS: None, Your Honor.

6 THE COURT: And, Mr. Majoras, does your investigation
7 into the facts of this case establish the truth of the factual
8 rendition that I believe is set forth --

9 MR. MAJORAS: Paragraph 4, Your Honor.

10 THE COURT: What page is that on? I'll refer to
11 the --

12 MR. CULUM: Page 4, Your Honor.

13 MR. MAJORAS: Page 4.

14 THE COURT: I'm sorry. I didn't --

15 MR. MAJORAS: Page 4, Your Honor.

16 THE COURT: Page 4.

17 -- at page 4, and it continues on until page 6?

18 MR. MAJORAS: Yes, Your Honor, that is consistent.

19 THE COURT: And I incorporate that as to the factual
20 basis for the plea and the charge. And you say that your
21 investigation establishes the truth of that factual basis?

22 MR. MAJORAS: Yes, sir.

23 THE COURT: Mr. Adams, is the Statement of Facts true?

24 MR. ADAMS: It is true, Your Honor.

25 THE COURT: Is it fair, then, for me to believe that

1 you are pleading guilty here today on behalf of the corporation
2 because the corporation is indeed guilty of violating Title 15,
3 United States Code, Section 1, conspiracy to restrain trade?

4 MR. ADAMS: Yes, that's correct, Your Honor.

5 THE COURT: Do you have any questions at this time
6 that we can discuss, that you want to discuss?

7 MR. ADAMS: I don't, Your Honor.

8 THE COURT: Anything further the Court should do
9 before I make my findings in the matter?

10 MR. CULUM: No, Your Honor.

11 MR. MAJORAS: No, Your Honor.

12 THE COURT: Any questions? I've asked that several
13 times. I've only asked it one or two times with you because I
14 respect your professionalism, but many times I ask that many
15 times during the course of one of these proceedings.

16 MR. ADAMS: I have no questions, Your Honor.

17 THE COURT: Do you have a sentencing date available?

18 COURTROOM DEPUTY: Thursday, February the 11th, at
19 10:00 o'clock.

20 THE COURT: The Court finds that the -- the Court has
21 observed the appearance of Mr. Adams in giving his answers to
22 the questions asked on behalf of the corporation, and based on
23 such observations, the answers given, and Mr. Adams'
24 representations, the Court finds that the defendant, the
25 corporation -- or that he is in full possession of his

1 faculties. He is not suffering from any apparent physical or
2 mental illness. He is not under the influence of narcotics or
3 alcohol. He understands the proceedings in which he is
4 engaged. He understands the nature and meaning of the charge
5 and the consequences of the plea of guilty, and he is aware of
6 all plea negotiations undertaken on behalf of the corporation.
7 The Court is satisfied with Mr. Adams' responses as to how he
8 pled guilty on behalf of the corporation, and the Court finds
9 that the corporation is guilty of the offense as stated of the
10 violation of Title 15 of the United States Code, Section 1.

11 The matter will be referred to the department of probation
12 for a presentence investigation and report. The matter will be
13 continued until --

14 COURTROOM DEPUTY: Thursday, February the 11th, at
15 10:00 o'clock.

16 THE COURT: -- February the 11th at 10:00 o'clock,
17 which is a Thursday, at which time the Court will receive any
18 objections to any presentence report that is prepared.

19 The probation officer will provide the parties and Mr.
20 Axelrod the timeline for the investigation today, and the
21 parties are requested and advised to abide by that timeline so
22 that we can meet the obligation of the sentencing information
23 and the obligations presented to us under Title 18, Section
24 3553, so that at the time of sentencing an appropriate sentence
25 can be provided that is sufficient but not greater than

1 necessary to satisfy the sentencing requirement of Congress in
2 that section.

3 Mr. Adams, I won't require you to post a bond.

4 MR. ADAMS: Thank you, Your Honor.

5 THE COURT: I never did that before on a corporation,
6 but I thought about it and, no, I won't do that.

7 Mr. Culum, is there anything further the Court should do at
8 this time to -- I continue the approval of the Plea Agreement
9 until such time as the sentencing date, at which time I'll have
10 the complete information so that I can evaluate the matters
11 that have been indicated today, and I will make the judgment at
12 that time as to whether to accept the Plea Agreement or not. I
13 do not represent to anyone that I have in any way, and I do not
14 intend to in any way indicate any decision that I might make as
15 to whether I would accept it or not. Understand that I will
16 inform the parties before that date so that, if my thought is
17 that I will not accept it, that the plea can be withdrawn to
18 protect the defendant.

19 However, I believe that a hearing will be necessary on the
20 objections to the presentence report before a fair
21 determination can be made and before the defendant is denied
22 the benefit of its bargain, or the United States the benefit of
23 its bargain.

24 Mr. Culum?

25 MR. CULUM: Your Honor, to ensure that we receive the

Exhibit 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA, . Case No. 1:09-cr-148
Plaintiff, .
- v - . **Arraignment and Plea**
GARY D. COOLEY, . Tuesday, October 13, 2009
Defendant. . 3:45 PM
. Cincinnati, Ohio

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HERMAN J. WEBER, SENIOR JUDGE

For the Plaintiff: KEVIN C. CULUM, ESQ.
MACHELLE L. JINDRA, ESQ.
United States Department of Justice
Antitrust Division
Carl B. Stokes U.S. Court House
801 West Superior Avenue, 14th Floor
Cleveland, Ohio 44113-1857

For the Defendant:

DOUGLAS E. GROVER, ESQ. Thompson Hine LLP 335 Madison Avenue 12th Floor New York, New York 10017-4611	STEPHEN J. BUTLER, ESQ. Thompson Hine LLP 1400 Scripps Center 312 Walnut Street Cincinnati, Ohio 45202-4089
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Also present: Laurie Cooke, Pretrial Services
Laura S. Jensen, Probation Officer

Law Clerk: Amy Peters Thomas, Esq.

Courtroom Deputy: Darlene Maury

Court Reporter: Luke T. Lavin, RDR, CRR
838 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202

*Proceedings recorded in stenotype;
transcript prepared by computer.*

P R O C E E D I N G S

(In open court at 3:45 PM.)

THE COURT: Thank you. Please be seated.

Proceed, Ms. Maury.

COURTROOM DEPUTY: Judge, on the docket this afternoon is Criminal Action 09-148, United States of America versus Gary D. Cooley. Appearing on behalf of the government is Kevin Culum and Machel Jindra. Appearing on behalf of the defense is Douglas Grover and Stephen Butler, and the defendant is present in the courtroom.

THE COURT: As I understand it, there's a motion to unseal the documents.

MR. CULUM: Yes, Your Honor.

THE COURT: The Court will grant the motion, and the documents are entered into the record of the court.

MR. CULUM: Thank you, Your Honor.

THE COURT: Proceed, Mr. Culum. We'll make the record a little more formal here. As I understand it, it's the intent of the parties to plead to an Information.

MR. CULUM: That is correct, Your Honor. The Information has been filed and now is under seal, and we've entered into a plea agreement. Mr. Cooley has been cooperating literally from the beginning, and so --

THE COURT: Let's see. Are you Mr. Cooley?

THE DEFENDANT: Yes; yes, Your Honor.

1 THE COURT: And are you represented by a lawyer?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And who is your lawyer?

4 THE DEFENDANT: Douglas Grover and Stephen Butler.

5 THE COURT: And, Mr. Grover, have you explained to
6 your client his right to have the matter considered by the
7 grand jury?

8 MR. GROVER: Yes, I have, Your Honor.

9 And before I proceed, Your Honor, I'm from New York and I
10 have submitted or attempted to submit an application
11 electronically to be admitted pro hac vice. My understanding
12 is that, because this was a sealed proceeding until moments
13 ago, that application has not been accepted yet by the Clerk's
14 office, but we will make it appropriately after this
15 proceeding.

16 MR. BUTLER: Your Honor, if necessary, Mr. Grover is
17 my partner, and I will move his admission pro hac vice for
18 purposes of this afternoon's proceedings.

19 THE COURT: All right. Thank you very much, Mr.
20 Butler.

21 Are you admitted to a district court somewhere in the big
22 wide world?

23 MR. GROVER: I certainly am, Your Honor. The Eastern
24 and Southern Districts of New York.

25 THE COURT: Thank you.

1 MR. GROVER: And in answer to Your Honor's question,
2 both Mr. Butler and I have discussed our client's right to be
3 indicted by a grand jury.

4 THE COURT: And what's your advice to your client?

5 MR. GROVER: We have advised him to waive indictment
6 and proceed in this fashion.

7 THE COURT: All right.

8 Mr. Cooley, by giving up this right to go before the grand
9 jury --

10 And please understand you cannot be required to stand trial
11 in this court until a grand jury agrees that there's probable
12 cause that you should.

13 However, you do have a right to proceed in this manner, but
14 by proceeding in this manner you do not give up any of your
15 other constitutional rights. You have the right to plead not
16 guilty. You have the right to be tried by a jury. You have a
17 right to be represented by a lawyer throughout the trial, the
18 proceedings. You have a right to face the prosecution
19 witnesses, and you have a right to compel witnesses to come in
20 and testify on your behalf. And the United States must prove
21 the charge beyond a reasonable doubt to a group of 12
22 individuals that you and I will help pick at random called the
23 jury, and they must find beyond a reasonable doubt that you did
24 certain things before the cloak of presumption of innocence is
25 taken away from you.

1 So it's important that you realize that all you're giving
2 up at this particular time in the proceeding is the right to
3 have the grand jury consider your case. And if you feel it's
4 in your own best interest to proceed in this manner, you may
5 sign the written waiver that is before you, and Mr. Grover will
6 explain the agreement to you.

7 (Mr. Grover and the defendant confer privately.)

8 THE COURT: Let the record show that the Judge has
9 observed the defendant sign the waiver here in open court.

10 Mr. Cooley, is this your signature on the agreement?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And you want to proceed in this manner, is
13 that --

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And you feel you're acting in our own best
16 interest?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: The Court will accept the waiver of
19 indictment and order the Information filed, and it will become
20 the charging document in this court.

21 Before we proceed any further, I want to be sure that you
22 understand what the Information says, so I'm going to ask Mr.
23 Culum to present the Information to the record in this case.

24 THE DEFENDANT: Okay.

25 MR. CULUM: Thank you, Your Honor.

1 The Information is entitled "United States of America v.
2 Gary D. Cooley." Caption: "Information, Conspiracy to
3 Restrain Trade, 15 U.S.C. Section 1."

4 The United States of America, acting through its attorney,
5 charges:

6 1. Gary D. Cooley is hereby made a defendant on the charge
7 stated below.

8 Roman numeral I. Heading: Description Of The Offense.

9 Paragraph 2. Beginning at least as early as June 1st,
10 2006, and continuing until at least July 17th, 2007, the exact
11 dates being unknown to the United States, the defendant and
12 co-conspirators entered into and engaged in a conspiracy to
13 suppress and eliminate competition by allocating packaged-ice
14 customers in southeastern Michigan and the Detroit, Michigan,
15 metropolitan area. The charged conspiracy unreasonably
16 restrained interstate trade and commerce, in violation of
17 Section 1 of the Sherman Act, 15 U.S.C. Section 1.

18 Paragraph 3. The charged conspiracy consisted of a
19 continuing agreement, understanding, and concert of action
20 among the defendant and co-conspirators, the substantial terms
21 of which were to allocate packaged-ice customers in
22 southeastern Michigan and the Detroit, Michigan, metropolitan
23 area.

24 Roman numeral II. Heading: Means And Methods Of The
25 Conspiracy.

1 Paragraph 4. For the purposes of forming and carrying out
2 the charged conspiracy, the defendant and co-conspirators did
3 the following things, among others:

4 (a) participated in conversations to discuss packaged-ice
5 customers in southeastern Michigan and the Detroit, Michigan,
6 metropolitan area;

7 (b) agree during those conversations to allocate packaged-
8 ice customers in southeastern Michigan and the Detroit,
9 Michigan, metropolitan area;

10 (c) exchange information during those conversations for the
11 purposes of monitoring and enforcing adherence to the
12 agreements to allocate customers in southeastern Michigan and
13 the Detroit, Michigan, metropolitan area; and

14 (d) refrain from competing for packaged-ice customers that
15 were so allocated.

16 Roman numeral III. Defendant And Co-Conspirators.

17 Paragraph 5. During the period covered by this
18 Information, the defendant was the vice president of sales and
19 marketing of Artic Glacier International Inc., which is a
20 corporation organized and existing under the laws of the state
21 of Delaware and does business in multiple states, with its
22 principal place of business in St. Paul, Minnesota.

23 Paragraph 6. Various individuals and corporations not made
24 defendants in this Information participated as co-conspirators
25 in the offense charged and performed acts and made statements

1 in furtherance of it.

2 Roman numeral IV. Caption: Trade And Commerce.

3 Paragraph 7. During the period covered by this
4 Information, the defendant and co-conspirators: (1)
5 manufactured packaged ice; (2) distributed packaged ice to
6 retailers in southeastern Michigan and the Detroit, Michigan,
7 metropolitan area; and (3) caused packaged ice to be purchased
8 from, sold to, or distributed from or to, individuals and
9 companies located inside and outside of southeastern Michigan
10 and the Detroit, Michigan, metropolitan area.

11 Paragraph 8. During the period covered by this
12 Information, substantial quantities of packaged ice
13 manufactured and sold by the defendant was shipped across state
14 lines in a continuous and uninterrupted flow of interstate
15 trade and commerce.

16 Paragraph 9. The business activities of the defendant and
17 co-conspirators that are the subject of this Information were
18 within the flow of, and substantially affected, interstate
19 trade and commerce.

20 Roman numeral V. Caption: Venue.

21 The conspiracy charged in this Information was formed and
22 carried out within the Southern District of Ohio, Western
23 Division. At least one of the conspiratorial meetings --

24 It should read "discussions," Your Honor. It was
25 "discussions," not "meetings."

1 -- described above took place in Cincinnati, Ohio, which is
2 located within the Southern District of Ohio. Acts in
3 furtherance of this conspiracy were carried out within the five
4 years preceding the filing of this Information.

5 All in violation of Title 15, United States Code, Section
6 1.

7 It is signed by the Assistant Attorney General Christine
8 Varney; the Deputy Assistant Attorney General Scott Hammond;
9 the Director of Criminal Enforcement Marc Siegel; the chief of
10 our office in Cleveland, Scott Watson; and myself, Kevin Culum.

11 THE COURT: Has Mr. Grover explained to you the
12 meaning of this --

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: -- charge?

15 THE DEFENDANT: Yes.

16 THE COURT: And are you prepared to plead to this
17 charge at this time?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And how do you plead?

20 THE DEFENDANT: I plead guilty.

21 THE COURT: Before accepting your plea of guilty, I
22 must determine that it is made voluntarily, with an
23 understanding of the nature of the charge and the consequences
24 of the plea. By offering to plead guilty, you give up certain
25 of your constitutional rights. This must be an intentional

1 giving up of rights and privileges that you now have.

2 Please understand that I need not accept your plea unless
3 satisfied of your guilt and that you fully understand your
4 rights. In order to make this determination, I must ask you
5 some questions. Before I do, it's necessary you obligate
6 yourself to tell the truth. Once having been sworn, your
7 answers to my questions will be subject to the penalties of
8 perjury, of making a false statement, or possibly contempt of
9 court if you do not answer truthfully.

10 Are you willing to accept the obligation to tell the truth?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Would you swear the witness.

13 COURTROOM DEPUTY: Mr. Cooley, please stand and raise
14 your right hand.

15 (The defendant was duly sworn by the courtroom deputy.)

16 COURTROOM DEPUTY: Thank you. Be seated.

17 THE COURT: Mr. Cooley, how much education do you
18 have?

19 THE DEFENDANT: I have a high school degree and some
20 college.

21 THE COURT: We're speaking in the English language?

22 THE DEFENDANT: Yes.

23 THE COURT: You see, the record doesn't have any eyes,
24 so I have to ask you these questions so I'm satisfied that
25 whomever reads this record will understand we're speaking in

1 English.

2 THE DEFENDANT: Okay.

3 THE COURT: Can you understand me?

4 THE DEFENDANT: Yes.

5 THE COURT: And I can understand you.

6 THE DEFENDANT: Okay.

7 THE COURT: Have you taken any narcotic drugs,
8 medicine or pills or drunk any alcoholic beverages in the past
9 24 hours?

10 THE DEFENDANT: I have not.

11 THE COURT: Mr. Grover, do you have any doubt as to
12 the defendant's competency to plead at this time?

13 MR. GROVER: No, I do not, Your Honor.

14 THE COURT: Now, we just read together the Information
15 that charges you with this violation. Do you understand the
16 nature and meaning of this charge?

17 THE DEFENDANT: I do.

18 THE COURT: Have you told your lawyer everything you
19 know about this case?

20 THE DEFENDANT: I have.

21 THE COURT: Do you believe your lawyer is fully
22 informed about the facts and circumstances on which this charge
23 is based?

24 THE DEFENDANT: I do.

25 THE COURT: Has your lawyer fully informed counsel and

1 advised you on the nature and meaning of this charge?

2 THE DEFENDANT: Yes, they have.

3 THE COURT: Now, before you can be determined guilty
4 of this charge, the United States must prove certain things
5 beyond a reasonable doubt to a group of individuals that we'll
6 select at random -- you and I will help select them -- from the
7 general public called the jury, and the jury must find beyond a
8 reasonable doubt that you did these things. They're called
9 elements.

10 The elements of this charge is that the conspiracy,
11 agreement, or understanding described in the Information --

12 And you recall we just read that together.

13 THE DEFENDANT: I do.

14 THE COURT: -- was knowingly formed and was existing
15 at or about June 1, 2006, and continuing until at least July
16 the 17th, 2007, that you knowingly became a member of the
17 conspiracy agreement or understanding as charged, and that the
18 conspiracy constituted an unreasonable restraint of interstate
19 commerce, and that the offense was carried out in part in the
20 Southern District of Ohio within five years preceding the
21 filing of the Information.

22 And the Southern District of Ohio, for your information, is
23 the southern half of Ohio. If you would draw a line from the
24 east to the west border north of Columbus, and the land south
25 of there is the Southern District of Ohio, to the river.

1 Cincinnati, Hamilton, Lebanon, Batavia are in the Southern
2 District of Ohio.

3 THE DEFENDANT: Okay.

4 THE COURT: Now, do you understand that you will admit
5 that you did all these things beyond a reasonable doubt?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Now, do you know what the maximum possible
8 penalty for this offense is?

9 THE DEFENDANT: Yes, I've been informed.

10 THE COURT: And what is it?

11 THE DEFENDANT: A term of imprisonment for ten years,
12 a fine in an amount equal to the greatest of 1 million or twice
13 the gross pecuniary gain of the conspirators derived from the
14 crime, or twice the gross pecuniary loss caused to the victims
15 of the crime by the conspirators, and a term of supervised
16 release of three years following any term of imprisonment. The
17 Court may order me to pay restitution to the victims of the
18 offense, and the Court is required to order the defendant to
19 pay a hundred dollar special assessment upon conviction of the
20 charged crime.

21 THE COURT: Now, the importance of the supervised
22 release is this, that at the time of sentencing, if you're
23 sentenced to the penitentiary, you'd also be sentenced to a
24 term of supervised release of up to three years. At the time
25 of sentencing, conditions on your conduct during the period of

1 supervised release will be set. If you should violate those
2 conditions during the term of supervised release, you could be
3 returned to the penitentiary for a period of time, and under
4 these circumstances two years. So under the worst scenario
5 from your point of view, you could serve 12 years in the
6 penitentiary.

7 Do you understand?

8 THE DEFENDANT: I understand, Your Honor.

9 THE COURT: Now, the Court will impose a sentence and
10 is required by law to impose a sentence that is sufficient but
11 not greater than necessary to follow the dictates of Congress
12 set forth in Title 18, United States Code, Section 3553. One
13 of the things that we will consider during that time will be
14 the Sentencing Guidelines.

15 Now, I'm sure you have discussed the Sentencing Guidelines
16 and have considered them. And what is your information as to
17 the Sentencing Guidelines applicable to your case?

18 THE DEFENDANT: It's level 13, Your Honor, is I
19 believe what I've been informed of.

20 THE COURT: 12 to 18.

21 THE DEFENDANT: Yeah.

22 THE COURT: I mean, 12 to 18, I think, is the range
23 that's set there.

24 THE DEFENDANT: Yes. Offense level 13, 12 to 18.

25 THE COURT: All right. So that's what the Guidelines

1 would provide in your case if it turns out that those are the
2 facts justifying that range.

3 Now, please understand that that is advisory, that the
4 Court has the authority to sentence you above the Guideline
5 range or below the Guideline range.

6 And do you understand that under the Sentencing Reform Act
7 that there is no parole?

8 THE DEFENDANT: Yes, I do, Your Honor.

9 THE COURT: And do you understand that under certain
10 circumstances either you or the United States may appeal any
11 sentence imposed?

12 THE DEFENDANT: Yes, I do, Your Honor.

13 THE COURT: And do you also understand that you may
14 lose your right to vote; you will lose your right to possess a
15 firearm; you may not serve on a jury or hold public office as
16 collateral consequences of your plea?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: Now, are you an American citizen?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Now, please understand that after you are
21 sentenced you will have no right to withdraw your guilty plea.

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Now, the sentence that will be imposed in
24 your case will be determined by applying these particular
25 elements to the discussion, and it's your responsibility and my

1 responsibility to consider all information that will help us in
2 formulating a just sentence in your case. The magic words are
3 "sufficient but not greater than necessary" to accomplish these
4 purposes. And what we will consider are these: the nature and
5 circumstances of this offense and your history and
6 characteristics, the need for the sentence imposed to reflect
7 the seriousness of the offense, to promote respect for the law,
8 and to provide just punishment for the offense, to afford
9 adequate deterrence to criminal conduct generally, to protect
10 the public from further crimes you may commit, and to provide
11 you with needed educational or vocational training, medical
12 care, or other correctional treatment in the most effective
13 manner, and the kinds of sentences available and the
14 applicability of the Guidelines, which we've already discussed.

15 Now, do you realize that we will discuss all of those items
16 and that it is our duty to come up with that sentence: that is
17 sufficient but not greater than necessary?

18 THE DEFENDANT: Yes, I understand, Your Honor.

19 THE COURT: Now, since you know how the sentence will
20 be imposed and since you know the maximum sentence that can be
21 imposed, do you still wish to plead guilty?

22 THE DEFENDANT: Yes, I do, Your Honor.

23 THE COURT: Do you understand that if I accept your
24 plea of guilty, I can impose the maximum sentence?

25 THE DEFENDANT: Yes, I do, Your Honor.

1 THE COURT: And please understand that if I accept
2 your guilty plea, I may or may not place you on probation.

3 THE DEFENDANT: Yes, I do, Your Honor.

4 THE COURT: I advise you that under the Constitution
5 and laws of the United States, you have the right to plead not
6 guilty. You have the right to be tried by a jury, and at such
7 a speedy and public trial you would have the right to the
8 assistance of a lawyer, the right to confront and cross-examine
9 witnesses against you, and the right not to be compelled to
10 incriminate yourself.

11 At such trial you would be presumed innocent until such
12 time, if ever, as the United States established your guilt by
13 legal evidence beyond a reasonable doubt. At such trial you
14 would be entitled to compulsory process, to call witnesses on
15 your behalf.

16 Do you understand that if your plea of guilty here is
17 accepted, you will give up all of these rights that I have
18 mentioned?

19 THE DEFENDANT: I understand.

20 THE COURT: And do you understand that if you plead
21 guilty, there will not be a further trial of any kind in your
22 case, so that by pleading guilty, you are giving up your right
23 to a trial?

24 THE DEFENDANT: I understand.

25 THE COURT: And do you understand that if your plea of

1 guilty is accepted, the Court can impose the same penalty as
2 though you pled not guilty, stood trial, and had been convicted
3 by a jury?

4 THE DEFENDANT: I understand.

5 THE COURT: If you plead guilty, do you understand
6 that you'll also have to give up your right not to incriminate
7 yourself, since I will have to ask you questions about what you
8 did in order to satisfy me that you are guilty as charged and
9 you will have to acknowledge your guilt?

10 THE DEFENDANT: I understand.

11 THE COURT: Are you willing to give up your right to a
12 trial and the other rights I have just discussed?

13 THE DEFENDANT: Yes, I do, Your Honor.

14 THE COURT: Proper plea agreements are permissible.
15 However, you and the lawyers have a duty to disclose to the
16 record any terms of any plea agreement.

17 It is my understanding that you have entered into a plea
18 agreement in this case. Is that correct?

19 THE DEFENDANT: Yes, it is, Your Honor.

20 THE COURT: I'm going to ask Mr. Culum to display the
21 plea agreement onto the record. Please listen as he does so,
22 follow along. After he has completed his presentation, I may
23 ask you some questions about the plea agreement.

24 THE DEFENDANT: (Nods head up and down.)

25 THE COURT: Proceed, Mr. Culum.

1 MR. CULUM: Thank you, Your Honor.

2 United States of America v. Gary D. Cooley. Heading: Plea
3 Agreement.

4 The United States of America and Gary D. Cooley,
5 parentheses, defendant, hereby enter into the following plea
6 agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of
7 Criminal Procedure:

8 1. The defendant understands his rights:

9 (a) to be represented by an attorney;

10 (b) to be charged by Indictment;

11 (c) to plead not guilty to any criminal charge brought
12 against him;

13 (d) to have a trial by jury at which he would be presumed
14 not guilty of the charge and the United States would have to
15 prove every essential element of the charged offense beyond a
16 reasonable doubt for him to be found guilty;

17 (e) to confront and cross-examine witnesses against him and
18 to subpoena witnesses in his defense at trial;

19 (f) not to be compelled to incriminate himself;

20 (g) to appeal his conviction, if he is found guilty; and

21 (h) to appeal the imposition of sentence against him.

22 Title: Agreement To Plead Guilty And Waive Certain Rights.

23 Paragraph 2. The defendant knowingly and voluntarily
24 waives the rights set out in paragraphs 1(b) through (h) above.
25 The defendant also knowingly and voluntarily waives the right

1 to file any appeal, any collateral attack, or any other writ or
2 motion including, but not limited to, an appeal under 18 U.S.C.
3 Section 3742 or a motion under 28 U.S.C. Section 2241 or 2255,
4 that challenges the sentence imposed by the Court if that
5 sentence is consistent with the Guidelines calculations
6 described in paragraph 8 of this plea agreement. This
7 agreement does not affect the rights or obligations of the
8 United States as set forth in 18 U.S.C. Section 3742(b).
9 Nothing in this paragraph, however, shall act as a bar to the
10 defendant perfecting any legal remedies he may otherwise have
11 on appeal or a collateral attack respecting the claims of
12 ineffective assistance of counsel or prosecutorial misconduct.
13 Pursuant to Federal Rule of Criminal Procedure 7(b), the
14 defendant will waive indictment and plead guilty at arraignment
15 to a one-count Information to be filed in the United States
16 District Court for the Southern District of Ohio. The
17 Information will charge the defendant with participating in a
18 conspiracy to suppress and eliminate competition by agreeing
19 with other packaged-ice manufacturers to allocate customers in
20 southeastern Michigan and the Detroit, Michigan, metropolitan
21 area, beginning at least as early as June 1st, 2006, and
22 continuing until at least July 17th, 2007, in violation of the
23 Sherman Antitrust Act, 15 U.S.C. Section 1.

24 Paragraph 3. The defendant, pursuant to the terms of this
25 plea agreement, will plead guilty to the criminal charge

1 described in paragraph 2 above and will make a factual
2 admission of guilt to the Court in accordance with Federal Rule
3 of Criminal Procedure 11, as set forth in paragraph 4 below.
4 The United States agrees that, at the arraignment, it will
5 stipulate to the release of the defendant on his personal
6 recognizance, pursuant to 18 U.S.C. Section 3142, pending the
7 sentencing hearing in this case.

8 Title: Factual Basis For The Offense Charged.

9 Paragraph 4. Had this case gone to trial, the United
10 States would have presented evidence sufficient to prove the
11 following facts:

12 (a) For purposes of this plea agreement, the relevant
13 period is that period beginning at least as early as June 1st,
14 2006, and continuing until at least July 17th, 2007. During
15 the relevant period, the defendant was vice president, sales
16 and marketing, of Artic Glacier International Inc., "Artic
17 Glacier," a corporation organized and existing under the laws
18 of the state of Delaware, which does business in multiple
19 states, and with its principal place of business in St. Paul,
20 Minnesota. During the relevant period, Artic Glacier was the
21 producer of packaged ice in multiple states and was engaged in
22 the sale of packaged ice. Packaged ice is marketed as a
23 high-grade ice for human consumption and is sold in varying
24 sizes, blocks, big bags, and small bags.

25 (b) During the relevant period, the defendant resided in

1 and maintained a home office in Cincinnati, Ohio, which is
2 located in the Southern District of Ohio.

3 (c) During the relevant period, the defendant participated
4 in a conspiracy to allocate customers of packaged ice sold in
5 southeastern Michigan and the Detroit, Michigan, metropolitan
6 area. In furtherance of the conspiratorial activity, the
7 defendant engaged in discussions with representatives of other
8 packaged-ice producers. During these discussions, agreements
9 were reached to allocate customers of packaged ice to be sold
10 in southeastern Michigan and the Detroit, Michigan,
11 metropolitan area.

12 During the relevant period, Artic Glacier sales of packaged
13 ice affecting customers totaled over \$10 million.

14 (e) During the relevant period, packaged ice sold by one or
15 more of the conspirator firms, and equipment and supplies
16 necessary to the production and distribution of packaged ice,
17 as well as payments for packaged ice, traveled in interstate
18 commerce. The business activities of the defendant's employer
19 and its co-conspirators in connection with the production and
20 sale of packaged ice affected by this conspiracy were within
21 the flow of, and substantially affected, interstate trade and
22 commerce.

23 (f) Acts in furtherance of this conspiracy were carried out
24 within the Southern District of Ohio, Western Division. At
25 least one of the conspiratorial discussions described above

1 took place in Cincinnati, Ohio, which is located within the
2 Southern District of Ohio.

3 Caption: Possible Maximum Sentence.

4 Paragraph 5. The defendant understands that the statutory
5 maximum penalty which may be imposed against him upon
6 conviction for a violation of Section 1 of the Sherman Act is,
7 Antitrust Act is:

8 (a) a term of imprisonment for ten years, 15 U.S.C. Section
9 1;

10 (b) a fine in an amount equal to the greatest of (1) 1
11 million, (2) twice the gross pecuniary gain the conspirators
12 derived from the crime, or (3) twice the gross pecuniary loss
13 caused to the victims of the crime by the conspirators, 15
14 U.S.C. Section 1, 18 U.S.C. Section 3571(b) and (d); and

15 (c) a term of supervised release of three years following
16 any term of imprisonment. If the defendant violates any
17 condition of supervised release, the defendant could be
18 required to serve up to two years in prison, 18 U.S.C. Section
19 3559(a)(3), 18 U.S.C. Section 3583(b)(2) and (e)(3), and the
20 United States Sentencing Guidelines Section 5D1.2(a)(2).

21 6. In addition, the defendant understands that:

22 (a) pursuant to United States Sentencing Guideline Section
23 5E1.1 or 18 U.S.C. Section 3663(a)(2) -- (a)(3), excuse me, or
24 3583(d), the Court may order him to pay restitution to the
25 victims of the offense; and

1 (b) pursuant to 18 U.S.C. Section 3013(a)(2)(A), the Court
2 is required to order the defendant to pay a \$100 special
3 assessment upon conviction for the charged crime.

4 Title: Sentencing Guidelines.

5 Paragraph 7. The defendant understands that the Sentencing
6 Guidelines are advisory, not mandatory, but that the Court must
7 consider the Guidelines in effect on the day of sentencing,
8 along with the other factors set forth in 18 U.S.C. Section
9 3553(a), in determining and imposing sentence. The defendant
10 understands that the Guideline determinations will be made by
11 the Court by a preponderance of the evidence standard. The
12 defendant understands that although the Court is not ultimately
13 bound to impose a sentence within the absolute applicable
14 Guidelines range, its sentence must be reasonable based upon
15 consideration of all relevant sentencing factors set forth in
16 18 U.S.C. 3553(a). Pursuant to United States Sentencing
17 Guidelines Section 1B1.8, the United States agrees that self-
18 incriminating information that the defendant provides to the
19 United States pursuant to this plea agreement will not be used
20 to increase the volume of affected commerce attributable to the
21 defendant or in determining the defendant's applicable
22 Guidelines range, except to the extent provided in United
23 States Sentencing Guideline Section 1B1.8(b).

24 Paragraph 8. Pursuant to the United States Sentencing
25 Guideline Section 6B1.4, the United States and the defendant

1 enter into the following stipulations:

2 (a) The base offense level for the offense to which the
3 defendant is pleading guilty, as established by United States
4 Sentencing Guideline 2R1.1(a), is 12.

5 (b) The volume of commerce attributable to the defendant
6 within the meaning of United States Sentencing Guideline
7 Section 2R1.1(b)(2) is more than 10 million but less than \$40
8 million, which increases the offense level by four.

9 (c) For purposes of United States Sentencing Guideline
10 Section 3E1.1, a three-level reduction of the offense level for
11 defendant's acceptance of responsibility is appropriate.
12 However, should the United States obtain or receive additional
13 evidence or information prior to sentencing that, in its sole
14 discretion, it determines to be credible and materially in
15 conflict with this stipulation, then the United States shall no
16 longer be bound by this stipulation.

17 (d) Based on the foregoing, defendant's adjusted offense
18 level for the offense to which he is pleading guilty is 13.
19 The Guidelines incarceration range for offense level 13 is 12
20 to 18 months' imprisonment. The defendant's appropriate
21 Guidelines fine range is governed by Section 2R1(c)(1).

22 And evidently we made a mistake.

23 Title: Sentencing Agreement.

24 Paragraph 9. The defendant understands that the sentence
25 to be imposed on him is within the sole discretion of the

1 sentencing judge. The United States cannot and does not make
2 any promises or representations as to what sentence he will
3 receive and is free to recommend any specific sentence to the
4 Court. However, the United States will inform the probation
5 office and the Court of (a) this agreement; (b) the nature and
6 extent of the defendant's activities with respect to this case
7 and all other activities of the defendant which the United
8 States deems relevant to sentencing; and (c) the nature and
9 extent of the defendant's cooperation with the United States.
10 In so doing, the United States may use any information it deems
11 relevant, including information provided by the defendant both
12 prior and subsequent to the signing of this agreement. The
13 United States reserves the right to make any statement to the
14 Court or to the probation office concerning the nature of the
15 criminal violation charged in this Information, the
16 participation of the defendant therein, and any other facts or
17 circumstances that it deems relevant. The United States also
18 reserves the right to comment on or to correct any
19 representation made by or on behalf of the defendant, and to
20 supply any other information that the Court may require.

21 Paragraph 10. If the United States determines that the
22 defendant has provided substantial assistance in any
23 investigation or prosecution in the packaged-ice industry and
24 has otherwise fully complied with all of the terms of this plea
25 agreement, it will file a motion, pursuant to United States

1 Sentencing Guidelines Section 5K1.1, advising the sentencing
2 judge of all relevant facts pertaining to that determination
3 and requesting the Court to sentence the defendant in light of
4 the factors set forth in United States Sentencing Guideline
5 Section 5K1.1(a) (1) through (5). The defendant acknowledges
6 that the decision whether he has provided substantial
7 assistance in any investigation or prosecution of the packaged-
8 ice industry and has otherwise complied with the terms of this
9 plea agreement is within the sole discretion of the United
10 States. It is understood that, should the United States
11 determine that the defendant has not provided substantial
12 assistance in any investigation or prosecution of the
13 packaged-ice industry, or should the United States determine
14 that the defendant has violated any provision of this plea
15 agreement, such a determination will release the United States
16 from any obligation to file a motion the pursuant to United
17 States Sentencing Guideline Section 5K1.1, but will not entitle
18 the defendant to withdraw his guilty plea once it has been
19 entered. The defendant further understands that, whether or
20 not the United States files a motion pursuant to United States
21 Sentencing Guideline Section 5K1.1, the sentence to be imposed
22 on him remains within the sole discretion of the sentencing
23 judge. To enable the Court to have the benefit of all relevant
24 sentencing information, the United States may request that
25 sentencing be postponed until his cooperation is complete.

1 Paragraph 11. The parties agree that they are not aware at
2 this time of any aggravating or mitigating circumstances of any
3 kind, or to a degree, not adequately taken into consideration
4 by the United States Sentencing Commission in formulating the
5 Sentencing Guidelines justifying a departure pursuant to United
6 States Sentencing Guideline Section 5K2.0.

7 Paragraph 12. In light of the availability of civil causes
8 of actions available pursuant to 15 U.S.C. Section 15, the
9 United States agrees it will not seek a restitution order for
10 the offense charged in the Information.

11 Paragraph 13. The defendant understands that the Court
12 will order him to pay a \$100 special assessment pursuant to 18
13 U.S.C. Section 3013(a)(2)(A) in addition to any fine imposed.

14 Paragraph 14. The defendant understands that, as provided
15 in Federal Rule of Criminal Procedure 11(c)(3)(B), if the Court
16 does not impose a sentence consistent with either party's
17 sentencing recommendation, he nevertheless has no right to
18 withdraw his plea of guilty.

19 Title: Defendant's Cooperation.

20 Paragraph 15. The defendant will cooperate fully and
21 truthfully with the United States in prosecution of this case,
22 the conduct of the current federal investigation of violations
23 of federal antitrust and related criminal laws involving the
24 sale of packaged ice in the United States, any other federal
25 investigation resulting therefrom, and any litigation or other

1 proceedings arising or resulting from any such investigation to
2 which the United States is a party, parentheses, federal
3 proceeding. The ongoing, full, and truthful cooperation of the
4 defendant shall include, but not be limited to:

5 (a) producing all non-privileged documents, including
6 claimed personal documents, and other materials, wherever
7 located, in the possession, custody, or control of defendant,
8 requested by attorneys and agents of the United States;

9 (b) making himself available for interviews, not at the
10 expense of the United States, upon the request of attorneys and
11 agents of the United States;

12 (c) responding fully and truthfully to all inquiries of the
13 United States in connection with any federal proceeding,
14 without falsely implicating any person or intentionally
15 withholding any information, subject to the penalties of making
16 false statements, 18 U.S.C. Section 1001, and obstruction of
17 justice, 18 U.S.C. 1503, et sequentes;

18 (d) otherwise voluntarily providing the United States with
19 any non-privileged material or information, not requested in
20 (a) through (c) of this paragraph, that he may have that is
21 related to any federal proceeding; and

22 (e) when called upon to do so by the United States in
23 connection with any federal proceeding, testifying in grand
24 jury, trial, and other judicial proceedings, fully, truthfully,
25 and under oath, subject to the penalties of perjury, 18 U.S.C.

1 Section 1621, making false statements or declarations in grand
2 jury or court proceedings, 18 U.S.C. Section 1623; contempt, 18
3 U.S.C. Sections 401 and 402; and obstruction of justice, 18
4 U.S.C. 1503, et sequentes.

5 Title: Government's Agreement.

6 Paragraph 16. Subject to the full and truthful and
7 continuing cooperation of the defendant, as described in
8 paragraph 15 of this plea agreement, and upon the Court's
9 acceptance of the guilty plea called for by this plea agreement
10 and the imposition of the sentence as determined by the Court,
11 the United States will not bring further criminal charges
12 against the defendant for any act or offense committed before
13 the date of this plea agreement that was undertaken in
14 furtherance of an attempted or completed antitrust conspiracy
15 involving the sale of packaged ice or undertaken in connection
16 with any investigation of such a conspiracy, "relevant offense"
17 in parentheses. The non-prosecution terms of this paragraph do
18 not apply to civil matters of any kind, to any violation of the
19 federal tax or securities laws, or to any crime of violence.

20 Paragraph 17. The defendant understands that he may be
21 subject to administrative action by federal or state agencies
22 other than the United States Department of Justice, Antitrust
23 Division, based upon the conviction resulting from this plea
24 agreement and that this plea agreement in no way controls
25 whatever action, if any, other agencies may take. However, the

1 United States agrees that, if requested, it will advise the
2 appropriate officials of any governmental agency considering
3 such administrative action of the fact, manner, and extent of
4 the cooperation of the defendant as a matter for that agency to
5 consider before determining what administrative action, if any,
6 to take.

7 Title: Representation By Counsel.

8 Paragraph 18. The defendant has reviewed all legal and
9 factual aspects of this case with his attorney and is fully
10 satisfied with his attorney's legal representation. The
11 defendant has thoroughly reviewed this plea agreement with his
12 attorney and has received satisfactory explanations from his
13 attorney concerning each paragraph of this plea agreement and
14 alternatives available to the defendant other than entering
15 into this plea agreement. After conferring with his attorney
16 and considering all available alternatives, the defendant has
17 made a knowing and voluntary decision to enter into this plea
18 agreement.

19 Caption: Voluntary Plea.

20 Paragraph 19. The defendant's decision to enter into this
21 plea agreement and to tender a plea of guilty is freely and
22 voluntarily made and is not the result of force, threats,
23 assurances, promises, or representations other than the
24 representations contained in this plea agreement. The United
25 States has made no promises or representations to the defendant

1 as to whether the Court will accept or reject the
2 recommendations contained within this plea agreement.

3 Caption: Violation Of The Plea Agreement.

4 Paragraph 20. The defendant agrees that, should the United
5 States determine in good faith, during the period that any
6 federal proceeding is pending, that the defendant has failed to
7 provide full and truthful cooperation, as described in
8 paragraph 15 of this plea agreement, or has otherwise violated
9 any provision of this plea agreement, the United States will
10 notify the defendant or his counsel in writing by personal or
11 overnight delivery or facsimile transmission and may also
12 notify his counsel by telephone of its intention to void any of
13 its obligations under this plea agreement, except obligations
14 under this paragraph, and the defendant shall be subject to
15 prosecution for any federal crime of which the United States
16 has knowledge including, but not limited to, the substantive
17 offense relating to the investigation resulting in this plea
18 agreement. The defendant agrees that, in the event that the
19 United States is released from its obligations under this plea
20 agreement and brings criminal charges against the defendant for
21 any relevant offense, the statute of limitations period for
22 such offense shall be tolled for the period between the date of
23 the signing of this plea agreement and six months after the
24 date the United States gave notice of its intent to void its
25 obligations under this plea agreement.

1 Paragraph 21. The defendant understands and agrees that in
2 any further prosecution of him resulting from the release of
3 the United States from its obligations under this plea
4 agreement based on the defendant's violation of the plea
5 agreement, any documents, statements, information, testimony,
6 or evidence provided by him to attorneys or agents of the
7 United States, federal grand juries, or courts, and any leads
8 derived therefrom, may be used against him in any such further
9 prosecution. In addition, the defendant unconditionally waives
10 his right to challenge the use of such evidence in any such
11 further prosecution, notwithstanding the protections of Federal
12 Rule of Evidence 410.

13 Caption: Entirety Of The Agreement.

14 Paragraph 22. This agreement constitutes the entire
15 agreement between the United States and the defendant
16 concerning the disposition of the criminal charge in this case.
17 This plea agreement cannot be modified except in writing,
18 signed by the United States and the defendant.

19 Paragraph 23. The undersigned attorneys for the United
20 States have been authorized by the Attorney General of the
21 United States to enter this plea agreement on behalf of the
22 United States.

23 The plea agreement is dated September 10th, 2009, signed by
24 Mr. Cooley; his attorneys Mr. Grover and Mr. Butler; and
25 likewise by myself, Kevin Culum

1 THE COURT: Mr. Cooley, is that your signature at the
2 end of the agreement?

3 THE DEFENDANT: Yes, it is, Your Honor.

4 THE COURT: Would you read me the 22nd paragraph in
5 the agreement.

6 THE DEFENDANT: "This plea agreement constitutes the
7 entire agreement between the United States and the defendant
8 concerning the disposition of the criminal charge in this case.
9 The plea agreement cannot be modified except in writing, signed
10 by the United States and the defendant."

11 THE COURT: Have all the agreements you made in this
12 plea agreement that we've just read into the record, are they
13 all truthful?

14 THE WITNESS: Yes, they are, Your Honor.

15 THE COURT: And you intend to carry them out?

16 THE DEFENDANT: Yes, I do, Your Honor.

17 THE COURT: Do you have questions at this time?

18 THE DEFENDANT: No, I do not.

19 THE COURT: Has anyone made any promise, other than
20 the plea agreement, that induced you to plead guilty?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Aside from the plea agreement, which we
23 are discussing, has anyone, including an agent or officer of
24 any law enforcement or government entity, any lawyer, anyone,
25 any lawyer, anyone, any person, suggested that you'll receive

1 any lighter sentence or any other form of leniency if you'll
2 plead guilty?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Have any threats been made --

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: -- to induce you to plead guilty?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you have any questions at this time at
9 all? And if you're concerned about asking a question directly
10 of me, Mr. Grover or Mr. Butler, they'll be glad to ask the
11 question on your behalf.

12 THE DEFENDANT: I do not, Your Honor.

13 THE COURT: Is it fair, then, for me to believe that
14 this decision of yours to plead guilty is your voluntary act
15 and deed?

16 THE DEFENDANT: Yes, it is, Your Honor.

17 THE COURT: Is it fair for me to believe that you're
18 pleading guilty here today because you are, in fact -- or that
19 you do realize the nature of the charge against you and the
20 consequences of that plea?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now if you'll turn to page 3 of the plea
23 agreement, please.

24 Now, there is a list of the factual basis for this plea.
25 Would you please carefully review them for me, and my question

1 is: do you have any additions or corrections or statements you
2 wish to add to those statements that are contained in that
3 section of the plea agreement?

4 THE DEFENDANT: No, Your Honor. I've read these a few
5 times today prior to coming in, and I believe that they are
6 completely factual.

7 THE COURT: Mr. Grover, has your investigation into
8 the facts of this case established the truth of the basis of
9 the offense charged?

10 MR. GROVER: Yes, Your Honor.

11 THE COURT: Mr. Cooley, are the statements contained
12 there in the plea agreement the truth?

13 MR. GROVER: Yes, they are, Your Honor.

14 THE COURT: Is it fair, then, for me to believe that
15 you're pleading guilty here today because you are, in fact,
16 guilty of a violation of Title 15, Section 1, of the Sherman
17 Antitrust Act?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Is there anything further we should
20 develop into the record before I make my findings in the
21 matter, Mr. Culum?

22 MR. CULUM: No, Your Honor.

23 THE COURT: Mr. Grover, anything you wish to add to
24 the record before I make my findings in the matter?

25 MR. GROVER: No, Your Honor.

1 THE COURT: Mr. Butler, anything?

2 MR. BUTLER: No, Your Honor.

3 THE COURT: I want you to know you're welcome.

4 Mr. Cooley, any questions?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: The trial judge has observed the
7 appearance and responsiveness of Mr. Cooley, the defendant, in
8 giving his answers to the questions asked. Based on such
9 observation and the answers given, the trial judge is satisfied
10 that Mr. Cooley is in full possession of his faculties. He is
11 not suffering from any apparent physical or mental illness. He
12 is not under the influence of narcotics or alcohol. He
13 understands that his sentence will be determined pursuant to
14 18, United States Code, Section 3553, and he understands that
15 the Sentencing Reform Act Guidelines are discretionary and
16 advisory only.

17 He understands the proceeding in which he is engaged. He
18 understands the nature and meaning of the charge and the
19 consequences of his plea of guilty, and he is aware of all plea
20 negotiations undertaken on his behalf.

21 Do you have any questions at this time about the findings
22 or the proceedings?

23 THE DEFENDANT: No, I do not, Your Honor.

24 THE COURT: The trial judge therefore finds that the
25 plea has been made voluntarily, with understanding of the

1 nature of the charge and the consequence of such plea. I will
2 accept your guilty plea and enter a judgment of guilty to a
3 violation of Title 15, United States Code, Section 1, the
4 Sherman Antitrust Act.

5 The matter will be referred to the United States Department
6 of Probation for a presentence investigation. I'll reserve
7 ruling on acceptance of the plea agreement until such time as I
8 have the complete information at the time of sentencing. The
9 sentence will be set for Thursday, February the 4th, 2010, at
10 10:00 AM. Thursday, February 4, 10:00 AM, 2010.

11 The probation officer will give us a timeline on collecting
12 the information necessary to assist us in forming a sufficient
13 sentence but not greater than necessary. So it's very
14 important that we cooperate in getting this information
15 together so that you and I can discuss it at sentencing. So,
16 please, if you have any complications in that regard, follow
17 Mr. Grover's advice and get that information together as
18 quickly as we possibly can to meet the sentencing date of
19 February the 4th.

20 THE DEFENDANT: I will, Your Honor.

21 THE COURT: I have before me the report of the
22 pretrial service officer. Have you had a chance to go over
23 that report and --

24 THE DEFENDANT: Yes, I have, Your Honor.

25 THE COURT: And do you have any corrections or

1 additions you wish to make to the report?

2 THE DEFENDANT: No, I did not.

3 THE COURT: Mr. Grover?

4 MR. GROVER: Your Honor, the only correction, and I
5 don't think it has a substantive result, is that I believe that
6 the pretrial officer and Mr. Cooley's wife had difficulty
7 connecting with each other, and as a result, the pretrial
8 officer didn't ever speak to Mr. Cooley's wife. His wife is in
9 the courtroom today. And I know they exchanged phone calls and
10 then we had the federal holiday yesterday, and so that never
11 was accomplished. But the recommendation seems to be clear,
12 and it's consistent with the agreement with the government, so
13 we have no objection.

14 THE COURT: Any comment, Mr. Culum?

15 MR. CULUM: No, Your Honor.

16 THE COURT: It's extremely important that anyone that
17 is interested in you, Mr. Cooley, cooperate and get the
18 information that will assist me and you in determining a just
19 sentence in your case. So it is extremely important that
20 anyone that you feel can help us make that decision, that they
21 cooperate and give the information that you wish them to give
22 to the probation officer.

23 THE DEFENDANT: I understand, Your Honor.

24 THE COURT: The Court then will accept a
25 recommendation.

1 At this time I will set the conditions of the bond. The
2 conditions of the bond will be that you will not violate any
3 federal, state, or local law while on release, that you must
4 immediately advise the Court, defense counsel, and the U.S.
5 Attorney in writing before any change in address or telephone
6 number, that you promise to appear in court as required and
7 surrender to serve any sentence imposed, that you execute an
8 own recognizance bond, that you surrender any passport to the
9 Clerk of Courts, that you obtain no new passports, that you
10 refrain from possessing a firearm, destructive device or other
11 dangerous weapon, that you refrain from any excessive use of
12 alcohol, that you refrain from use or unlawful possession of
13 narcotic drugs or any other controlled substance unless
14 prescribed by a licensed medical practitioner.

15 And are you in a position to turn the passport over today?

16 THE DEFENDANT: Yes. I have that, Your Honor.

17 THE COURT: All right. And I'll hand you the
18 conditions of the bond. There is a section here called "Advice
19 of Penalties and Sanctions." I'm going to ask you to go over
20 them with Mr. Grover and Mr. Butler. If you accept them, then
21 you may sign the document and we'll proceed in the matter.

22 MR. GROVER: Your Honor, let the record reflect that I
23 turned over Mr. Cooley's passport to the Court Clerk.

24 THE COURT: Thank you very much, and I will accept
25 that representation for the record.

1 (Mr. Grover and the defendant confer privately.)

2 THE COURT: Mr. Cooley, do you have any questions
3 about the penalties or the sanctions?

4 THE DEFENDANT: No, I do not, Your Honor.

5 THE COURT: And do you accept the conditions of the
6 bond?

7 THE DEFENDANT: Yes, I do, Your Honor.

8 THE COURT: Is there anything further that we should
9 discuss for the record before I conclude the matter, Mr. Culum?

10 MR. CULUM: Your Honor, I'd just note at this time
11 again what I mentioned at the beginning. Mr. Cooley, in my
12 experience as a prosecutor, it's been very rare for somebody to
13 come in so quickly, and I will make a better note of it at the
14 time of his sentencing, but I wanted the Judge to know today
15 that Mr. Cooley came forward almost immediately upon beginning
16 the investigation, and it was very impressive.

17 THE COURT: Mr. Grover, anything you wish to add to
18 the record or wish the Court to do in the matter?

19 MR. GROVER: No, Your Honor, not at this time.

20 THE COURT: Mr. Butler?

21 MR. BUTLER: No, Your Honor.

22 THE COURT: The last time, today anyway, any
23 questions, Mr. Cooley?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: So be it. The defendant is ordered

1 released after processing.

2 MR. GROVER: Your Honor, the defendant has appeared
3 before the marshals already today for processing, so I take it
4 he's free to go? He's scheduled to meet with probation in the
5 morning.

6 THE COURT: If the marshals don't have him in cuffs,
7 he's ready to go.

8 MR. GROVER: Thank you.

9 COURTROOM DEPUTY: All rise. This honorable court is
10 now adjourned.

11 (Proceedings concluded at 4:45 PM.)

12 - - -

13 C E R T I F I C A T E

14 I, Luke T. Lavin, RDR, CRR, the undersigned, certify
15 that the foregoing is a correct transcript from the record of
16 proceedings in the above-entitled matter.

17

18 s/Luke T. Lavin
19 Luke T. Lavin, RDR, CRR
Official Court Reporter

20

21

22

23

24

25

Exhibit 20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, . Case No. 1:09-cr-146
Plaintiff, .
- v - . *Arraignment and Plea*
KEITH E. CORBIN, . Tuesday, October 13, 2009
Defendant. . 2:25 PM
Cincinnati, Ohio

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HERMAN J. WEBER, SENIOR JUDGE

For the Plaintiff: MACHELLE L. JINDRA, ESQ.
KEVIN C. CULUM, ESQ.
United States Department of Justice
Antitrust Division
Carl B. Stokes U.S. Court House
801 West Superior Avenue, 14th Floor
Cleveland, Ohio 44113-1857

For the Defendant:

LAWRENCE S. LUSTBERG, ESQ. MARY JILL H. DONOVAN, ESQ.
JENNIFER MARA, ESQ. Donovan Law
Gibbons PC 910 Race Street
One Gateway Center Cincinnati, Ohio 45202
Newark, New Jersey 07102-5310

Also present: Laurie Cooke, Pretrial Services
Laura S. Jensen, Probation Officer

Law Clerk: Amy Peters Thomas, Esq.

Courtroom Deputy: Darlene Maury

Court Reporter: Luke T. Lavin, RDR, CRR
838 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202

*Proceedings recorded in stenotype;
transcript prepared by computer.*

P R O C E E D I N G S

(In open court at 2:25 PM.)

THE COURT: Proceed, Ms. Maury.

COURTROOM DEPUTY: Judge, on the docket this
afternoon --

THE COURT: Please be seated.

MR. LUSTBERG: Thank you, Your Honor.

COURTROOM DEPUTY: -- is Criminal Action 09-146,
United States of America versus Keith Corbin. Appearing on
behalf of the government is Kevin Culum and Machel Jindra.
Appearing on behalf of the defense is Lawrence Lustberg,
Jennifer Mara, and Mary Jill Donovan, and the defendant is
present in the courtroom.

THE COURT: Mr. Culum, I have a motion here, I think
signed by you, requesting the case be unsealed.

MR. CULUM: Yes, Your Honor. And, Your Honor, Ms.
Jindra will be doing most of the talking today in Mr. Corbin's
case.

THE COURT: I'm sorry I wore you out this morning.

MR. CULUM: Well, I'm getting ready for the afternoon.

THE COURT: Oh, okay.

The Court will order the documents unsealed.

Let's see. Are you Mr. Keith Corbin?

THE DEFENDANT: Yes, sir, I am.

MR. LUSTBERG: Your Honor, do you want Mr. Corbin to

1 rise when you address him?

2 THE COURT: No. I'm sorry. This is going to be a
3 long session. And I appreciate the input of lawyers greatly;
4 however, this is basically between me and Mr. Corbin.

5 MR. LUSTBERG: No problem.

6 THE DEFENDANT: Thank you, Your Honor.

7 THE COURT: So we understand each other. And you
8 rise, go to the lecturn if you prefer, make a great speech if
9 you prefer, but you may sit there as well.

10 MR. LUSTBERG: That's what I'll do.

11 THE COURT: Mr. Corbin, are you represented by a
12 lawyer?

13 THE DEFENDANT: Yes, sir, I am.

14 THE COURT: And what's your lawyer's name?

15 THE DEFENDANT: Lawrence Lustberg.

16 THE COURT: All right, sir.

17 Mr. Lustberg, have you explained to your client his right
18 to have the matter considered by the grand jury?

19 MR. LUSTBERG: Yes, Judge.

20 THE COURT: And what's your advice to your client?

21 MR. LUSTBERG: I advised him to waive indictment and
22 to proceed by way of Information.

23 THE COURT: Did you explain to him the charge that
24 he's facing in this matter?

25 MR. LUSTBERG: I did, Judge.

1 THE COURT: Mr. Corbin, do you have any question about
2 the charge in this Information?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Just so -- we're going to read it at some
5 time during this proceeding, and we'll read it at this time.
6 So if you'll please listen as the Assistant U.S. Attorney
7 presents the charge to the record of the Court.

8 Ms. Jindra, do you want to proceed.

9 MS. JINDRA: Thank you, Your Honor.

10 United States of America, Plaintiff, versus Keith E.
11 Corbin, Defendant. The Information.

12 Heading: Conspiracy To Restrain Trade, 15 U.S.C. Section
13 1.

14 The United States of America, acting through its attorneys,
15 charges:

16 Paragraph 1: Keith E. Corbin is hereby made a defendant on
17 the charge stated below.

18 Roman numeral I. Heading: Description Of The Offense.

19 Paragraph number 2. Beginning at least as early as March
20 1st, 2005, and continuing until at least July 17th, 2007, the
21 exact dates being unknown to the United States, the defendant
22 and co-conspirators entered into and engaged in a conspiracy to
23 suppress and eliminate competition by allocating packaged-ice
24 customers in southeastern Michigan and the Detroit, Michigan,
25 metropolitan area. The charged conspiracy unreasonably

1 restrained interstate trade and commerce, in violation of
2 Section 1 of the Sherman Act, 15 U.S.C. Section 1.

3 Paragraph number 3. The charged conspiracy consisted of a
4 continuing agreement, understanding, and concert of action
5 among the defendant and co-conspirators, the substantial terms
6 of which were to allocate packaged-ice customers in
7 southeastern Michigan and the Detroit, Michigan, metropolitan
8 area.

9 Roman numeral number II. Heading: Means And Methods Of
10 The Conspiracy.

11 Paragraph number 4. For the purposes of forming and
12 carrying out the charged conspiracy, the defendant and
13 co-conspirators did the following things, among others:

14 (a) participated in conversations to discuss packaged-ice
15 customers in southeastern Michigan and the Detroit, Michigan,
16 metropolitan area;

17 (b) agreed, during those conversations, to allocate
18 packaged-ice customers in southeastern Michigan and the
19 Detroit, Michigan, metropolitan area;

20 (c) exchanged information during those conversations, for
21 the purpose of monitoring and enforcing adherence to the
22 agreements to allocate customers in southeastern Michigan and
23 the Detroit, Michigan, metropolitan area; and

24 (d) refrained from competing for packaged-ice customers
25 that were so allocated.

1 Roman numeral III. Heading: Defendant And
2 Co-Conspirators.

3 Paragraph number 5. Beginning at least as early as March
4 1st, 2005, and continuing until at least September 1st, 2006,
5 the defendant was the vice president of sales and marketing of
6 Artic Glacier International Incorporated, which is a
7 corporation organized and existing under the laws of the state
8 of Delaware and does business in multiple states, with its
9 principal place of business in St. Paul, Minnesota.

10 Paragraph number 6. Various individuals and corporations,
11 not made defendants in this Information, participated as
12 co-conspirators in the offense charged and performed acts and
13 made statements in furtherance of it.

14 Roman numeral number IV. Trade And Commerce.

15 Paragraph number 7. During the period covered by this
16 Information, the defendant and co-conspirators: (1)
17 manufactured packaged ice; (2) distributed packaged ice to
18 retailers in southeastern Michigan and the Detroit, Michigan,
19 metropolitan area; and (3) caused packaged ice to be purchased
20 from, sold to, or distributed from or to, individuals and
21 companies located inside and outside of southeastern Michigan
22 and the Detroit, Michigan, metropolitan area.

23 Paragraph number 8. During the period covered by this
24 Information, substantial quantities of packaged ice
25 manufactured and sold by the defendant was shipped across state

1 lines in a continuous and uninterrupted flow of interstate
2 trade and commerce.

3 Paragraph number 9. The business activities of the
4 defendant and co-conspirators that are the subject of this
5 Information were within the flow of, and substantially
6 affected, interstate trade and commerce.

7 Roman numeral number V. Venue.

8 Paragraph number 10. The conspiracy charged in this
9 Information was formed and carried out within the Southern
10 District of Ohio, Western Division. At least one of the
11 conspiratorial discussions described above took place in
12 Cincinnati, Ohio, which is located within the Southern District
13 of Ohio. Acts in furtherance of this conspiracy were carried
14 out within the five years proceeding the filing of this
15 Information.

16 All in violation of Title 15, United States Code, Section
17 1.

18 The Information is signed by Christine A. Varney, Assistant
19 Attorney General; Scott D. Hammond, Deputy Assistant Attorney
20 General; Marc Siegel, Director of Criminal Enforcement, all for
21 the Antitrust Division. It's also signed by Scott Watson,
22 chief of the Cleveland field office, and Kevin C. Culum, an
23 attorney with the Antitrust Division.

24 THE COURT: Mr. Corbin, do you have any questions
25 about this Information?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Has Mr. Lustberg explained it --

3 I'm sorry if you can't hear. I'll get this -- is that
4 better?

5 THE DEFENDANT: Yes, that's fine. Thank you.

6 THE COURT: Okay. Has Mr. Lustberg explained to you
7 the meaning of this charge and answered your questions
8 concerning it?

9 THE DEFENDANT: Yes, he has, Your Honor.

10 THE COURT: All right. Now, please understand that by
11 proceeding with this case without the consideration by the
12 grand jury does not void you or does not take away from you any
13 of your other constitutional rights. You still have the right
14 to plead not guilty. You have the right to be tried by a jury.
15 You have a right to be represented throughout the proceedings,
16 the trial and afterwards, by counsel. You have a right to face
17 the prosecution witnesses. You have the right to compel
18 witnesses to come in and testify as you wish, and the United
19 States must prove your guilt beyond a reasonable doubt to
20 strike away from you the cloak of presumption of innocence.

21 So please understand that all you're giving up at this time
22 in this proceeding is the right to have the matter considered
23 by the grand jury before you can be tried or handled in this
24 court.

25 Now, do you have any questions about your rights to have

1 the grand jury consider your case?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Do you feel you're acting in your own best
4 interest in this regard?

5 THE DEFENDANT: Yes, I do, Your Honor.

6 THE COURT: If it's your desire to proceed in this
7 manner and give up your right to have the grand jury consider
8 your case --

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: -- you may sign the written waiver that's
11 before you.

12 And, Mr. Lustberg, if you'll please explain it to him and
13 answer any of his questions.

14 MR. LUSTBERG: Your Honor, for the record, we've
15 reviewed this document thoroughly and he completely understands
16 it.

17 THE COURT: Let the record show I'm observing the
18 defendant Mr. Corbin sign the waiver here in open court.

19 Do you have any questions at this time about this part of
20 the proceedings?

21 THE DEFENDANT: No, sir, I don't.

22 THE COURT: And this is your signature on the
23 document?

24 THE DEFENDANT: Yes, it is.

25 THE COURT: The Court will accept the waiver of the

1 indictment and will proceed on the basis of the charge
2 contained in the Information.

3 Now that the charge in the Information has become the
4 charging document in this case, how do you plead to the charge,
5 sir?

6 THE DEFENDANT: Guilty, Your Honor.

7 THE COURT: Before accepting your plea of guilty, I
8 must determine that it is made voluntarily, with understanding
9 of the nature of the charge and the consequences of the plea.
10 By offering to plead guilty, you do give up certain of your
11 constitutional rights. This must be an intentional giving up
12 of rights and privileges that you now have.

13 Please understand that I need not accept your plea unless
14 satisfied of your guilt and that you fully understand your
15 rights. In order to make this determination, I must ask some
16 questions. Before I do, it's necessary that you obligate
17 yourself to tell the truth. Once having been sworn, your
18 answers to my questions will be subject to the penalties of
19 perjury, of making a false statement, or possibly contempt of
20 court if you do not answer truthfully.

21 Are you willing to accept the obligation to tell the truth?

22 THE DEFENDANT: Yes, I am, Your Honor.

23 THE COURT: Would you swear the witness.

24 THE DEFENDANT: I certainly will.

25 COURTROOM DEPUTY: Mr. Corbin, please stand and raise

1 your right hand.

2 (The defendant was duly sworn by the courtroom deputy.)

3 COURTROOM DEPUTY: Thank you. Be seated.

4 THE COURT: Mr. Corbin, how old are you, sir?

5 THE DEFENDANT: 74 years old.

6 THE COURT: And how much education do you have?

7 THE DEFENDANT: I finished high school.

8 THE COURT: We're conversing in the English language?

9 THE DEFENDANT: Yes.

10 THE COURT: Can you understand me?

11 THE DEFENDANT: Yes, I can, sir.

12 THE COURT: I can understand you. Have you taken any
13 narcotic drug, medicine or pills or drunk any alcoholic
14 beverages in the past 24 hours?

15 THE DEFENDANT: I've taken some drugs, Your Honor,
16 some medication.

17 THE COURT: And can you tell me what those medications
18 are, what they're for, however you want to --

19 THE DEFENDANT: I don't know the names of them. One
20 of them is Advair, and it's to help my breathing. I take a
21 pain pill because I have a serious problem with my leg and hip
22 hurting when I walk. I take another one, I have an enlarged
23 prostate, that helps hold it down so that it helps my bladder
24 get through. I take another one that helps reduce my
25 cholesterol. I have another one that -- I have a drip that I

1 have to -- nose drops. I have to take two every morning to
2 make sure that my head won't -- it will start me coughing all
3 the time.

4 I think that's it.

5 THE COURT: How did you come here this morning?

6 THE DEFENDANT: I flew here, sir.

7 THE COURT: You flew in?

8 THE DEFENDANT: From Nashville, Tennessee.

9 THE COURT: I see. Did you have any trouble making
10 that trip?

11 THE DEFENDANT: No, sir, I didn't. Just my leg
12 swelled up.

13 THE COURT: And you handled your own baggage or
14 problems and so on?

15 THE DEFENDANT: No, I had no baggage. It's just going
16 to the ticket counter and get on the plane.

17 THE COURT: You didn't get lost or anything?

18 THE DEFENDANT: I almost did in Cincinnati. I hadn't
19 been in that airport. It's huge. Besides that, I had a hard
20 time finding my attorney.

21 THE COURT: What we're trying to get at is, are you
22 able to reason and discuss this situation --

23 THE DEFENDANT: Absolutely.

24 THE COURT: -- with me?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you wish to develop the point any
2 further?

3 MS. JINDRA: No, Your Honor.

4 THE COURT: Mr. Lustberg, do you have any doubt as to
5 the competency of the defendant to plead at this time?

6 MR. LUSTBERG: No doubt whatsoever, Your Honor.

7 THE COURT: Mr. Corbin, you recall we just read
8 together the charge in this case in the Bill of Information --

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: -- just a few moments ago.

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand the nature and meaning
13 of this charge?

14 THE DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: Have you told your lawyer everything you
16 know about this case?

17 THE DEFENDANT: I have, Your Honor.

18 THE COURT: Do you believe your lawyer is fully
19 informed about the facts and circumstances on which this charge
20 is based?

21 THE DEFENDANT: Yes, I do, Your Honor.

22 THE COURT: Has your lawyer fully informed counsel and
23 advised you on the nature and meaning of the charges?

24 THE DEFENDANT: Yes, he has, Your Honor.

25 THE COURT: Now, before you can be found guilty of

1 this charge, the United States must prove to a panel of jurors
2 that we'll select at random, you and I will help select those
3 people that will judge us, and the government must prove to
4 this jury beyond a reasonable doubt certain things, or
5 elements, as we call them.

6 And the elements that the government must prove in this
7 case, and which the jury must find beyond a reasonable doubt
8 that you did, are these: that the conspiracy, agreement, or
9 understanding described in the Information --

10 And we just read that. It was this deal with the ice and
11 so forth up in Michigan.

12 -- was knowingly formed and was existing at or about the
13 time alleged in the Information, and that was, I believe, March
14 2005 to July 17th, 2007.

15 Now, when did you retire from Artic?

16 THE DEFENDANT: Actually, about two-- the latter part
17 of 2005, 2006. I stayed on their payroll, but that was part of
18 my retirement package, sir.

19 THE COURT: Were you active during that period of
20 time?

21 THE DEFENDANT: Not really. I answered questions
22 sometimes if I'd get a call, but not really, to the best of my
23 knowledge.

24 THE COURT: I see. And the next element is that you
25 knowingly became a member of the conspiracy agreement or

1 understanding as charged and that the conspiracy constituted an
2 unreasonable restraint of interstate commerce, and the offense
3 was carried out, in part, in the Southern District of Ohio
4 within five years preceding the filing of the Information.

5 Now, the Southern District of Ohio is roughly the southern
6 half of Ohio. If you draw a line just north of Columbus from
7 the east to the west border, the Southern District of Ohio lies
8 from there to the river, Ohio River. And, for example,
9 Cincinnati, Hamilton County, Butler, Hamilton city, Lebanon,
10 Clermont County, are all in the Southern District of Ohio, as
11 an example.

12 Now, do you understand that if you plead guilty, you will
13 admit beyond a reasonable doubt that you did these things?

14 THE DEFENDANT: Yes, Your Honor, I do.

15 THE COURT: Now, do you know what the maximum possible
16 penalty for this offense is?

17 THE DEFENDANT: My attorney has told me.

18 THE COURT: What is it? I'm sorry. What is it?

19 THE DEFENDANT: A term of imprisonment for ten years
20 and a fine. Do you want me to read the whole thing?

21 THE COURT: I just want you to tell me what the
22 maximum penalty is, because I've got to satisfy myself that you
23 know what it is, because I might sentence you to it.

24 THE DEFENDANT: Ten years and a million dollars' fine,
25 sir.

1 THE COURT: And there is also two times the gross
2 pecuniary loss and gain.

3 THE DEFENDANT: Yes.

4 THE COURT: There's three years of supervised release,
5 there's a hundred dollar special assessment, and there's
6 restitution.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And the importance of supervised release
9 is this, that at the time of sentencing, if you're sentenced to
10 the penitentiary, there will also be assigned a period of
11 supervised release of up to three years. At the time of
12 sentencing conditions will be placed on your conduct during the
13 time of supervised release. If you should violate those
14 conditions during the term of supervised release, you could be
15 recommitted to the penitentiary for a period of time, and I
16 believe, under the facts of this situation, as much as two
17 additional years. So under the worst set of circumstances,
18 from your point of view, you could serve as many as 12 years in
19 the penitentiary.

20 Do you have any understanding or question about that?

21 THE DEFENDANT: No. My attorney explained that to me.

22 THE COURT: I wish that the court of appeals would let
23 me accept his representation that he did, but I can't. I've
24 got to go through this.

25 THE DEFENDANT: I understand, sir.

1 THE COURT: And my problem is that I want to be sure
2 that I know that you know.

3 THE DEFENDANT: (Nods head up and down.)

4 THE COURT: And so I appreciate your comment, and I'm
5 glad your attorney did advise you of this so it isn't a
6 terrible shock to you today what we're facing.

7 THE DEFENDANT: Your Honor, I think he's totally
8 advised me of everything. We've gone over it many times.

9 THE COURT: Thank you.

10 Now, I assume that since he has, that he's also discussed
11 the Sentencing Guidelines with you?

12 THE DEFENDANT: Yes, he has, Your Honor.

13 THE COURT: Now, what did he advise you about the
14 Sentencing Guidelines?

15 THE DEFENDANT: That it was at the discretion of the
16 judge.

17 (Mr. Lustberg and the defendant confer privately.)

18 THE DEFENDANT: According to the Guidelines, 12 to 18
19 months, but there were certain concessions.

20 THE COURT: In other words, that you've worked out the
21 mathematics and it's 12 to 18 months, from your information?

22 THE DEFENDANT: Yes. My attorney worked it out.

23 THE COURT: I see. All right.

24 And are you aware that there is no parole in the Sentencing
25 Reform Act available to you in this type of situation?

1 THE DEFENDANT: I do, Your Honor.

2 THE COURT: And do you understand that the Sentencing
3 Guidelines are just advisory?

4 THE DEFENDANT: I do.

5 THE COURT: That despite the Sentencing Guidelines
6 that they suggested, that I can impose a sentence that is more
7 severe or less severe than the Guidelines?

8 THE DEFENDANT: My attorney so advised me of that
9 today, and I understand that totally. It's your decision, Your
10 Honor.

11 THE COURT: And you understand that under certain
12 circumstances, either you or the United States may appeal the
13 sentence imposed?

14 THE DEFENDANT: Under certain circumstances, yes, sir.

15 THE COURT: And that you may also lose your right to
16 vote. I know you'll lose your right to possess firearms, serve
17 on jury duty, or hold public office.

18 THE DEFENDANT: My attorney advised me of all these
19 facts, sir.

20 THE COURT: Now, are you an American citizen?

21 THE DEFENDANT: Yes, sir, I am.

22 THE COURT: And please understand that after you are
23 sentenced, you have no right to withdraw your guilty plea; that
24 after you are sentenced, you have no right to withdraw your
25 guilty plea.

1 THE DEFENDANT: I understand that, Your Honor.

2 THE COURT: Now, do you understand that if I accept
3 your plea of guilty, I could impose a maximum penalty?

4 THE DEFENDANT: Yes, sir, I certainly do.

5 THE COURT: Now, since you know the maximum penalty,
6 do you still wish to plead guilty?

7 THE DEFENDANT: Yes, sir, I do.

8 THE COURT: Do you understand that if I accept your
9 plea of guilty, I may or may not place you on probation?

10 THE DEFENDANT: Yes, sir, I totally understand that.

11 THE COURT: I advise you that, under the Constitution
12 and laws of the United States, you have the right to plead not
13 guilty. You have the right to be tried by a jury, and at such
14 a speedy and public trial you would have the right to the
15 assistance of a lawyer, the right to confront and cross-examine
16 witnesses against you, and the right not to be compelled to
17 incriminate yourself. At such trial you would be presumed
18 innocent until such time, if ever, as the government
19 established your guilt by legal evidence beyond a reasonable
20 doubt. At such trial you would be entitled to compulsory
21 process, to call witnesses on your behalf.

22 Do you understand that if you plead guilty, you give up all
23 these rights that I have mentioned?

24 THE DEFENDANT: Yes, Your Honor, I do. My attorney
25 explained it to me.

1 THE COURT: Do you understand that if you plead
2 guilty, there will not be a further trial of any kind in your
3 case, so that by pleading guilty you are giving up the right to
4 a trial?

5 THE DEFENDANT: Yes, Your Honor, I do.

6 THE COURT: Do you understand that if your plea of
7 guilty is accepted, the judge can impose the same penalty as
8 though you pled not guilty, stood trial, and had been convicted
9 by a jury?

10 THE DEFENDANT: Yes, Your Honor, I understand that.

11 THE COURT: If you plead guilty, do you understand
12 that you'll also have to give up your right not to incriminate
13 yourself, since I'll have to ask you questions about what you
14 did in order to satisfy me that you are guilty as charged, and
15 you will have to acknowledge your guilt?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: Are you willing to give up your right to a
18 trial and the other rights we've just discussed?

19 THE DEFENDANT: Yes, Your Honor, I am.

20 THE COURT: Proper plea agreements are permissible.
21 However, you and the lawyers have a duty to explain the plea
22 agreement to the record. I'm going to ask the Assistant U.S.
23 Attorney to present the plea agreement to the record. Please
24 follow along as she does so. I may ask you some questions
25 about it after she's concluded.

1 Ms. Jindra.

2 MR. CULUM: Thank you, Your Honor.

3 United States of America, Plaintiff, versus Keith E.
4 Corbin, Defendant. Plea Agreement.

5 The United States of America and Keith E. Corbin,
6 defendant, hereby enter into the following plea agreement
7 pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal
8 Procedure:

9 Heading: Rights Of Defendant.

10 The defendant understands his rights:

11 (a) to be represented by an attorney;

12 (b) to be charged by Indictment;

13 (c) to plead not guilty to any criminal charge brought
14 against him;

15 (d) to have a trial by jury, at which he would be presumed
16 not guilty of the charge and the United States would have to
17 prove every essential element of the charged offense beyond a
18 reasonable doubt for him to be found guilty;

19 (e) to confront and cross-examine witnesses against him and
20 to subpoena witnesses in his defense at trial;

21 (f) not to be compelled to incriminate himself;

22 (g) to appeal his conviction, if he is found guilty; and

23 (h) to appeal the imposition of sentence against him.

24 Heading: Agreement To Plead Guilty And Waive Certain
25 Rights.

1 Paragraph number 2. The defendant knowingly and
2 voluntarily waives the rights set out in paragraphs 1(b)
3 through (h) above. The defendant also knowingly and
4 voluntarily waives the right to file any appeal, any collateral
5 attack, or any other writ or motion including, but not limited
6 to, an appeal under 18 U.S.C. Section 3742 or a motion under 28
7 U.S.C. Section 2241 or 2255, that challenges the sentence
8 imposed by the Court if that sentence is inconsistent with the
9 Guideline calculations described in paragraph 8 of this plea
10 agreement. This agreement does not affect the rights or
11 obligations of the United States as set forth in 18 U.S.C.
12 Section 3742(b). Nothing in this paragraph, however, shall act
13 as a bar to the defendant perfecting any legal remedies he may
14 otherwise have on appeal or collateral attack respecting claims
15 of ineffective assistance of counsel or prosecutorial
16 misconduct. Pursuant to Federal Rules of Criminal Procedure
17 7(b), the defendant will waive indictment and plead guilty at
18 arraignment to a one-count Information to be filed in the
19 United States District Court for the Southern District of Ohio.
20 The Information will charge the defendant with participating in
21 a conspiracy to suppress and eliminate competition by agreeing
22 with other packaged-ice manufacturers to allocate customers in
23 southeastern Michigan and the Detroit, Michigan, metropolitan
24 area, beginning at least as early as March 1st, 2005, and
25 continuing until at least July 17th, 2007, in violation of the

1 Sherman Antitrust Act, 15 U.S.C. Section 1.

2 Paragraph number 3. The defendant, pursuant to the terms
3 of this plea agreement, will plead guilty to the criminal
4 charge described in paragraph 2 above and will make a factual
5 admission of guilt to the Court in accordance with Federal Rule
6 of Criminal Procedure 11, as set forth in paragraph 4 below.
7 The United States agrees that, at the arraignment, it will
8 stipulate to the release of the defendant on his personal
9 recognizance, pursuant to 18 U.S.C. Section 3142, pending the
10 sentencing hearing in this case.

11 Heading: Factual Basis For Offense Charged.

12 Paragraph number 4. Had this case gone to trial, the
13 United States would have presented evidence sufficient to prove
14 the following facts:

15 (a) For purposes of this plea agreement, the relevant
16 period is that period beginning at least as early as March 1st,
17 2005, and continuing until at least July 17th, 2007. During
18 the relevant period, from March 1st, 2005, until September 1st,
19 2006, the defendant served as vice president of sales and
20 marketing of Artic Glacier International Inc., in parentheses
21 "Artic Glacier," a corporation organized and existing under the
22 laws of the state of Delaware and with its principal place of
23 business in St. Paul, Minnesota. During the relevant period,
24 after September 1st, 2006, the defendant served as a consultant
25 to Artic Glacier. During the relevant period, Artic Glacier

1 was a producer of packaged ice in multiple states and was
2 engaged in the sale of packaged ice. Packaged ice is marketed
3 as a high-grade ice for human consumption and is sold in
4 varying sizes, blocks, big bags, and small bags.

5 (b) During the relevant period, the defendant participated
6 in a conspiracy to allocate customers of packaged ice sold in
7 southeastern Michigan and the Detroit, Michigan, metropolitan
8 area. In furtherance of the conspiratorial activity, the
9 defendant engaged in discussions with representatives of other
10 packaged-ice producers. During these discussions, agreements
11 were reached to allocate customers of packaged ice to be sold
12 in southeastern Michigan and the Detroit, Michigan,
13 metropolitan area.

14 (c) During the relevant period, Artic Glacier's sales of
15 packaged ice affecting customers totaled over \$10 million.

16 (d) During the relevant period, packaged ice sold by one or
17 more of the conspirator firms, and equipment and supplies
18 necessary to the production and distribution of packaged ice,
19 as well as payments for packaged ice, traveled in interstate
20 commerce. The business activities of the defendant's employer
21 and its co-conspirators in connection with the production and
22 sale of packaged ice affected by this conspiracy were within
23 the flow of, and substantially affected, interstate trade and
24 commerce.

25 (e) Acts in furtherance of this conspiracy were carried out

1 within the Southern District of Ohio, Western Division. At
2 least one of the conspiratorial discussions described above
3 took place in Cincinnati, Ohio, which is located within the
4 Southern District of Ohio.

5 Heading: Possible Maximum Sentence.

6 Paragraph number 5. The defendant understands that the
7 statutory maximum penalty which may be imposed against him upon
8 conviction for a violation of Section 1 of the Sherman
9 Antitrust Act is:

10 (a) a term of imprisonment for ten years, 15 U.S.C. Section
11 1;

12 (b) a fine in an amount equal to the greatest of \$1 million
13 or twice the pecuniary gain the conspirators derived from the
14 crime or twice the gross pecuniary loss caused to the victims
15 of the crime by the conspirators, 15 U.S.C. Section 1, 18
16 U.S.C. Section 3571(b) and (d); and

17 (c) a term of supervised release of three years following
18 any term of imprisonment. If the defendant violates any
19 condition of supervised release, the defendant could be
20 required to serve up to two years in prison, 18 U.S.C. Section
21 3559(a)(3), 18 U.S.C. Section 3583(b)(2) and (e)(3), and United
22 States Sentencing Guideline, "U.S.S.G.," "Sentencing
23 Guidelines" or "Guidelines," Section 5D1.2(a)(2).

24 Paragraph number 6. In addition, the defendant understands
25 that:

1 (a) pursuant to U.S.S.G. Section 5E1.1 or 18 U.S.C. Section
2 3663(a)(3) or 3583(d), the Court may order him to pay
3 restitution to the victims of the offense; and

4 (b) pursuant to 18 U.S.C. Section 3013(a)(2)(A), the Court
5 is required to order the defendant to pay a \$100 special
6 assessment upon conviction for the charged crime.

7 Heading: Sentencing Guidelines.

8 Paragraph number 7. The defendant understands that the
9 Sentencing Guidelines are advisory, not mandatory, but that the
10 Court must consider the Guidelines in effect on the day of
11 sentencing, along with other factors set forth in 18 U.S.C.
12 Section 3553(a), in determining and imposing a sentence. The
13 defendant understands that the Guidelines determinations will
14 be made by the Court by a preponderance of the evidence
15 standard. The defendant understands that although the Court is
16 not ultimately bound to impose a sentence within the applicable
17 Guidelines range, its sentence must be reasonable based upon
18 consideration of all relevant sentencing factors set forth in
19 18 U.S.C. Section 3553(a). Pursuant to U.S.S.G. Section 1B1.8,
20 the United States agrees that self-incriminating information
21 that the defendant provides to the United States pursuant to
22 this plea agreement will not be used to increase the volume of
23 affected commerce attributable to the defendant or in
24 determining the defendant's applicable Guidelines range, except
25 to the extent provided in U.S.S.G. Section 1B1.8(b).

1 Paragraph number 8. Pursuant to U.S.S.G. Section 6B1.4,
2 the United States and the defendant enter into the following
3 stipulation:

4 (a) The base offense level for the offense to which the
5 defendant is pleading guilty, as established by U.S.S.G.
6 Section 2R1.1(a), is 12.

7 (b) The volume of commerce attributable to the defendant
8 within the meaning of U.S.S.G. Section 2R1.1(b) (2) is more than
9 \$10 million, but less than \$40 million, which increases the
10 offense level by four.

11 (c) For purposes of U.S.S.G. Section 3E1.1, a three-level
12 reduction of the offense level for the defendant's acceptance
13 of responsibility is appropriate. However, should the United
14 States obtain or receive additional evidence or information
15 prior to sentencing that, in its sole discretion, it determines
16 to be credible and materially in conflict with this
17 stipulation, then the United States shall no longer be bound by
18 this stipulation.

19 (d) Based on the foregoing, defendant's adjusted offense
20 level for the offense to which he is pleading guilty is 13.
21 The Guidelines incarceration range for offense level 13 is 12
22 to 18 months' imprisonment. The defendant's appropriate
23 Guidelines fine range is governed by Section 2R1(c) (1).

24 And unfortunately, there's an error there.

25 THE COURT: I didn't bring it up this time.

1 MS. JINDRA: Well, it should read section 2R1(c)(1).

2 Heading: Sentencing Agreement.

3 Paragraph number 9. The defendant understands that the
4 sentence to be imposed on him is within the sole discretion of
5 the sentencing judge. The United States cannot and does not
6 make any promises or representations as to what sentence he
7 will receive, and is free to recommend any specific sentence to
8 the Court. However, the United States will inform the
9 probation office and the Court of (a) this agreement; (b) the
10 nature and extent of the defendant's activities with respect to
11 this case and all other activities of the defendant which the
12 United States deems relevant to the sentencing; and (c) the
13 nature and extent of the defendant's cooperation with the
14 United States. In so doing, the United States may use any
15 information it deems relevant, including information provided
16 by the defendant both prior and subsequent to the signing of
17 this agreement. The United States reserves the right to make
18 any statement to the Court or the probation office concerning
19 the nature of the criminal violation charged in the
20 Information, the participation of the defendant therein, and
21 any other facts or circumstances that it deems relevant. The
22 United States also reserves the right to comment on or to
23 correct any representation made on or behalf of the
24 defendant -- I'm sorry, made by or on behalf of the defendant,
25 and to supply any other information that the Court may require.

1 Paragraph number 10. The United States understands that
2 the defendant may move for a downward departure for health
3 reasons, based on U.S.S.G. 5H1.4. The United States reserves
4 the right to oppose such a motion. Before moving for such a
5 downward departure, the defendant agrees to notify the United
6 States 60 days in advance of sentencing of his desire to do so.
7 He further agrees to waive all physician-patient
8 communications, including all medical examinations performed on
9 him in the last four years, and to submit to an independent
10 physical examination that will be performed for the benefit of
11 the United States and this Court.

12 Paragraph number 11. If the United States determines that
13 the defendant has provided substantial assistance in any
14 investigation or prosecution in the packaged-ice industry, and
15 has otherwise fully complied with all of the terms of this plea
16 agreement, it will file a motion, pursuant to U.S.S.G. Section
17 5K1.1, advising the sentencing judge of all relevant facts
18 pertaining to that determination and requesting the Court to
19 sentence the defendant in light of the factors set forth in
20 U.S.S.G. Section 5K1.1(a)(1) through (5). The defendant
21 acknowledges that the decision whether he has provided
22 substantial assistance in any investigation or prosecution of
23 the packaged-ice industry and has otherwise complied with the
24 terms of the plea agreement is within the sole discretion of
25 the United States. It is understood that, should the United

1 States determine that the defendant has not provided
2 substantial assistance in any investigation or prosecution of
3 the packaged-ice industry, or should the United States
4 determine that the defendant has violated any provision of this
5 plea agreement, such a determination will release the United
6 States from any obligation to file a motion pursuant to
7 U.S.S.G. Section 5K1.1, but will not entitle the defendant to
8 withdraw his guilty plea once it has been entered. The
9 defendant further understands that, whether or not the United
10 States files a motion pursuant to U.S.S.G. Section 5K1.1, the
11 sentence to be imposed on him remains within the sole
12 discretion of the sentencing judge. To enable the Court to
13 have the full benefit of all relevant sentencing information,
14 the United States may request that sentencing be postponed
15 until the defendant's cooperation is complete.

16 Paragraph number 12. The parties agree that they are not
17 aware at this time of any aggravating or mitigating
18 circumstances of a kind, or to a degree, not adequately taken
19 into consideration by the U.S. Sentencing Commission in
20 formulating the Sentencing Guidelines justifying a departure
21 pursuant to U.S.S.G. Section 5K2.0.

22 Paragraph number 13. In light of the availability of civil
23 causes of action available pursuant to 15 U.S.C. Section 15,
24 the United States agrees that it will not seek a restitution
25 order for the offense charged in the Information.

1 Paragraph number 14. The defendant understands that the
2 Court will order him to pay a \$100 special assessment pursuant
3 to 18 U.S.C. Section 3013(a)(2)(A) in addition to any fine
4 imposed.

5 Paragraph number 15. The defendant understands that, as
6 provided in Federal Rules of Criminal Procedure 11(c)(3)(B), if
7 the Court does not impose a sentence consistent with either
8 party's sentencing recommendation, he nevertheless has no right
9 to withdraw his plea of guilty.

10 Heading: Defendant's Cooperation.

11 Paragraph number 16. The defendant will cooperate fully
12 and truthfully with the United States in the prosecution of
13 this case, the conduct of the current federal investigation of
14 violations of federal antitrust and related criminal laws
15 involving the sale of packaged ice in the United States, any
16 other federal investigation resulting therefrom, and any
17 litigation or other proceedings arising or resulting from any
18 such investigation to which the United States is a party, in
19 parentheses, "federal proceeding." The ongoing, full, and
20 truthful cooperation of the defendant shall include, but not be
21 limited to:

22 (a) producing all non-privileged documents, including
23 claimed personal documents, and other materials, wherever
24 located, in the possession, custody, or control of the
25 defendant, requested by attorneys and agents of the United

1 States;

2 (b) making himself available for interviews, not at the
3 expense of the United States, upon the request of attorneys and
4 agents of the United States;

5 (c) responding fully and truthfully to all inquiries of the
6 United States in connection with any federal proceeding,
7 without falsely implicating any person or intentionally
8 withholding any information, subject to the penalties of making
9 false statements, 18 U.S.C. Section 1001, and obstruction of
10 justice, 18 U.S.C. Section 1503;

11 (d) otherwise voluntarily providing the United States with
12 any non-privileged material or information, not requested in
13 (a) through (c) of this paragraph, that he may have that is
14 related to any federal proceeding; and

15 (e) when called upon to do so by the United States in
16 connection with any federal proceeding, testifying in grand
17 jury, trial, and other judicial proceedings, fully, truthfully,
18 and under oath, subject to the penalties of perjury, 18 U.S.C.
19 Section 1621; making false statements or declarations in grand
20 jury or court proceedings, 18 U.S.C. Section 1623; contempt, 18
21 U.S.C. Sections 401 through 402; and obstruction of justice, 18
22 U.S.C. Section 1503.

23 Heading: Government's Agreement.

24 Paragraph number 17. Subject to the full, truthful, and
25 continuing cooperation of the defendant, as described in

1 paragraph 16 of this plea agreement, and upon the Court's
2 acceptance of the guilty plea called for by this plea agreement
3 and the imposition of the sentence as determined by the Court,
4 the United States will not bring further criminal charges
5 against the defendant for any act or offense committed before
6 the date of this plea agreement that was undertaken in
7 furtherance of an attempted or completed antitrust conspiracy
8 involving the sale of packaged ice or undertaken in connection
9 with any investigation of such a conspiracy, in parentheses,
10 "relevant offense." The non-prosecution terms of this
11 paragraph do not apply to civil matters of any kind, to any
12 violation of the federal tax or securities laws, or to any
13 crime of violence.

14 Paragraph number 18. The defendant understands that he may
15 be subject to administrative action by federal or state
16 agencies other than the United States Department of Justice,
17 Antitrust Division, based upon the conviction resulting from
18 this plea agreement, and that this plea agreement in no way
19 controls whatever action, if any, other agencies may take.
20 However, the United States agrees that, if requested, it will
21 advise the appropriate officials of any governmental agency
22 considering such administrative action of the fact, manner, and
23 extent of the cooperation of the defendant as a matter for that
24 agency to consider before determining what administrative
25 action, if any, to take.

1 Heading: Representation By Counsel.

2 Paragraph number 19. The defendant has reviewed all legal
3 and factual aspects of this case with his attorney and is fully
4 satisfied with his attorney's legal representation. The
5 defendant has thoroughly reviewed this plea agreement with his
6 attorney and has received satisfactory explanations from his
7 attorney concerning each paragraph of this plea agreement and
8 alternatives available to the defendant other than entering
9 into this plea agreement. After conferring with his attorney
10 and considering all available alternatives, the defendant has
11 made a knowing and voluntary decision to enter into this plea
12 agreement.

13 Heading: Voluntary Plea.

14 Paragraph number 20. The defendant's decision to enter
15 into this plea agreement and to tender a plea of guilty is
16 freely and voluntarily made and is not the result of force,
17 threats, assurances, promises, or representations other than
18 the representations contained in this plea agreement. The
19 United States has made no promises or representations to the
20 defendant as to whether the Court will accept or reject the
21 recommendations contained within this plea agreement.

22 Heading: Violation Of Plea Agreement.

23 Paragraph number 21. The defendant agrees that, should the
24 United States determine in good faith, during the period that
25 any federal proceeding is pending, that the defendant has

1 failed to provide full and truthful cooperation, as described
2 in paragraph 16 of this plea agreement, or has otherwise
3 violated any provision of this plea agreement, the United
4 States will notify the defendant or his counsel in writing by
5 personal or overnight delivery or facsimile transmission and
6 may also notify his counsel by telephone of its intention to
7 void any of its obligations under this plea agreement, except
8 its obligations under this paragraph, and the defendant shall
9 be subject to prosecution for any federal crime of which the
10 United States has knowledge including, but not limited to, the
11 substantive offenses relating to the investigation resulting in
12 this plea agreement. The defendant agrees that, in the event
13 that the United States is released from its obligations under
14 this plea agreement and brings criminal charges against the
15 defendant for any relevant offense, the statute of limitations
16 period for such offense shall be tolled for the period between
17 the date of the signing of this plea agreement and six months
18 after the date the United States gave notice of its intent to
19 void its obligations under this plea agreement.

20 Paragraph number 22. The defendant understands and agrees
21 that in any further prosecution of him resulting from the
22 release of the United States from its obligation under the plea
23 agreement based on the defendant's violation of the plea
24 agreement, any documents, statements, information, testimony,
25 or evidence provided by him to attorneys or agents of the

1 United States, federal grand juries, or courts, and any leads
2 derived therefrom, may be used against him in any such further
3 prosecution. In addition, the defendant unconditionally waives
4 his right to challenge the use of such evidence in any such
5 further prosecution, notwithstanding the protections of Federal
6 Rules of Evidence 410.

7 Heading: Entirety of Agreement.

8 Paragraph number 23. This plea agreement constitutes the
9 entire agreement between the United States and the defendant
10 concerning the disposition of the criminal charge in this case.
11 This plea agreement cannot be modified except in writing,
12 signed by the United States and the defendant.

13 Paragraph number 24. The undersigned attorneys for the
14 United States have been authorized by the Attorney General for
15 the United States to enter this plea on behalf of the United
16 States.

17 The plea agreement signature is dated October 5th, 2009.
18 It's signed by Keith E. Corbin, Defendant, and attorney
19 Lawrence Lustberg, Esquire. It's also signed by Kevin Culum of
20 the U.S. Department of Justice, Antitrust Division.

21 THE COURT: Mr. Corbin, is that your signature at the
22 end of the agreement?

23 THE DEFENDANT: Yes, it is.

24 THE COURT: Would you read me the 23rd paragraph of
25 the agreement.

1 THE DEFENDANT: "This plea agreement constitutes the
2 entire agreement between the United States and the defendant
3 concerning the disposition of the criminal charge in this case.
4 The plea agreement cannot be modified except in writing, signed
5 by the United States and the defendant."

6 THE COURT: Is that true --

7 THE DEFENDANT: Yes, it is.

8 THE COURT: -- what you just read?

9 THE DEFENDANT: Yes, it is.

10 THE COURT: In fact, have all the agreements you made
11 in this plea agreement been the truth?

12 THE DEFENDANT: Yes, they have, Your Honor.

13 THE COURT: Do you have any questions about this plea
14 agreement?

15 THE DEFENDANT: No, I don't, Your Honor.

16 THE COURT: Now, in addition to the Sentencing
17 Guidelines computation that we've discussed and is set forth in
18 the plea agreement, we're also bound to follow the information
19 provided us by the Congress of the United States in determining
20 a sentence in your case, and those elements are set forth in
21 Title 18, Section 3553(a), of the Sentencing Guidelines -- or
22 of the United States Code. And it's our duty, yours and mine,
23 to determine a sentence that is sufficient but not greater than
24 necessary, to follow the suggestions contained in this statute.

25 And the suggestions that we must consider in fashioning a

1 sufficient but not greater than necessary sentence are these:
2 the nature and circumstances of the offense, your history and
3 characteristics, the need for the sentence imposed to reflect
4 the seriousness of the offense, to promote respect for the law,
5 and to provide just punishment for the offense, to afford
6 adequate deterrence to criminal conduct generally, to protect
7 the public from further crimes you may commit, to provide you
8 with needed educational or vocational training, medical care,
9 or other correctional treatment in the most effective manner,
10 the kinds of sentences available, and the Sentencing Guidelines
11 that we've discussed rather fully.

12 Now, at the time of sentencing I'll receive all available
13 information that will help us determine a just sentence in your
14 case, so it's very important that you give me all the
15 information at sentencing that can possibly make that
16 determination more accurate than we can possibly be. And it's
17 our responsibility, yours and mine, to make that determination.

18 Now, has anyone made any promise to you, other than the
19 plea agreement, that induced you to plead guilty?

20 THE DEFENDANT: No, sir, Your Honor.

21 THE COURT: Aside from the plea agreement, which we
22 just discussed, has any person, including an officer or agent
23 of any governmental agency, any lawyer, any person, suggested
24 to you in any way that you'll receive a lighter sentence or any
25 other form of leniency if you plead guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have any threats been made --

3 THE DEFENDANT: No, sir.

4 THE COURT: -- that induced you to plead guilty?

5 THE DEFENDANT: No, sir, they haven't.

6 THE COURT: Is it fair, then, for me to believe that
7 this decision of yours to plead guilty is your voluntary act
8 and deed?

9 THE DEFENDANT: Yes, Your Honor, it is.

10 THE COURT: And is it fair for me to believe that
11 you're pleading guilty here today with a full understanding of
12 the charge against you and the consequences of that plea of
13 guilty?

14 THE DEFENDANT: Yes, Your Honor, it is.

15 THE COURT: Now let's refer back to page 3 of the plea
16 agreement. Now, there's set forth the factual basis of this
17 offense. Would you please review that very carefully.

18 Are there any additions or corrections or suggestions or
19 explanations you wish to make to those facts set forth?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: I mean, take your time. There's no rush.

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. Lustberg, has your investigation into
24 the facts of this case established the truth of those
25 statements?

1 MR. LUSTBERG: Yes, Your Honor.

2 THE COURT: Mr. Corbin --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- are these facts set forth here in this
5 plea agreement that we've just discussed --

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: -- the truth?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Are they true?

10 THE DEFENDANT: Yes, they are.

11 THE COURT: Is it fair, then, for me to believe that
12 you're pleading guilty here today because you are, in fact,
13 guilty --

14 THE DEFENDANT: Yes, I am.

15 THE COURT: -- of a violation of Title 15, Section 1,
16 of the Sherman Antitrust Act?

17 THE DEFENDANT: Yes, sir, I am.

18 THE COURT: Is there anything else you wish me to
19 discuss with the defendant before I make my findings in the
20 matter, Ms. Jindra?

21 MS. JINDRA: No, Your Honor. Thank you.

22 THE COURT: Mr. Lustberg, anything you wish to place
23 on the record?

24 MR. LUSTBERG: No, Your Honor. Thank you very much.

25 THE COURT: Mr. Corbin, any questions at this time?

1 THE DEFENDANT: No, sir. You've been very explicit.
2 Thank you.

3 THE COURT: The trial judge has observed the
4 appearance and responsiveness of Mr. Corbin, the defendant, in
5 giving his answers to the questions asked. Based on such
6 observation and the answers given, the Court is satisfied that
7 the defendant is in full possession of his faculties.

8 He is suffering from some illnesses that are apparent. I
9 don't see them at this point in time, but I take your word that
10 you are suffering from these maladies.

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: But that does not affect the determination
13 at this time, and it does not affect your reason, your ability
14 to reason.

15 THE DEFENDANT: Correct.

16 THE COURT: That you're not under the influence of
17 narcotics or alcohol.

18 THE DEFENDANT: No, sir.

19 THE COURT: That you understand that Title 18, United
20 States Code, Section 3553 controls the way we will pronounce a
21 sentence in this case, and that includes the Sentencing
22 Guidelines, which are discretionary.

23 THE DEFENDANT: Yes, sir, I do.

24 THE COURT: That you understand the proceedings in
25 which you are engaged, that you understand the nature and

1 meaning of the charge and the consequences of the plea of
2 guilty, and that you are aware of all plea negotiations
3 undertaken on your behalf.

4 THE DEFENDANT: Yes, Your Honor, I am.

5 THE COURT: Do you have any questions at this time?

6 THE DEFENDANT: No, sir, I don't.

7 THE COURT: The trial judge therefore finds that the
8 plea has been made voluntarily, with understanding of the
9 nature of the charge and the consequence of such plea. I will
10 accept your guilty plea and enter a judgment of guilty to a
11 violation of Title 15, United States Code, Section 1, the
12 Sherman Antitrust Act.

13 The matter will be referred to the United States Department
14 of Probation for a presentence report. The Court will reserve
15 ruling on the plea agreement until after all the information is
16 assembled, and the Court can make that determination at
17 sentencing.

18 The matter will be continued for sentencing until Tuesday,
19 February the 2nd, 2010, at 10:00 AM. February 2nd, 2010, at
20 10:00 AM.

21 The probation officer will provide us with a timeline so
22 that we can collect all the information that we need to make a
23 just sentence in your case.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Please assist in any way you can, and

1 please present to me at sentencing any information that will
2 assist us in pronouncing a just sentence --

3 THE DEFENDANT: I will, Your Honor.

4 THE COURT: -- in your case. And please, if we run
5 out of time on the timeline, why, please draw it to our
6 attention. Mr. Lustberg and Ms. Jindra can draw that to my
7 attention and we can adjust it, but let's try to meet that
8 sentencing date if we possibly can.

9 MR. LUSTBERG: Yes, sir.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, do you have any questions at this
12 time?

13 THE DEFENDANT: No, sir, I don't.

14 THE COURT: I understand that there has been a bond
15 report provided to the parties. Is that correct?

16 MS. JINDRA: Yes, Your Honor. We've reviewed that.

17 MR. LUSTBERG: Yes, Judge.

18 THE COURT: Have you had a chance to look at the
19 information contained in the bond report? And, please, if
20 there are any corrections, please point them out to me. I'd
21 appreciate it.

22 MR. LUSTBERG: Judge, we have reviewed it and it's
23 accurate. Thank you, Your Honor.

24 THE COURT: Any comment on the report at this time?

25 MS. JINDRA: No, Your Honor. We have reviewed it. We

1 don't have any comments.

2 THE COURT: Any comment on the report?

3 MR. LUSTBERG: No, Judge. We would urge the Court to
4 accept their recommendation.

5 THE COURT: Well, the Court will accept the
6 recommendation, and I believe it also comports with the plea
7 agreement in the matter, and I will therefore set those
8 conditions of the bond at this time.

9 And there is a part of this document that is the advice on
10 penalties and sanctions, and I am going to ask you to review
11 them with Mr. Lustberg and if you have any questions about it.
12 If you accept them, why, then sign the document and we'll
13 proceed.

14 The conditions are that you shall not violate any federal,
15 state, or local law while on release, that you must immediately
16 advise the Court, defense counsel, and the U.S. Attorney in
17 writing before any change in address or telephone number, that
18 you promise to appear in court as required and to surrender to
19 serve any sentence imposed, that you execute your own
20 recognizance bond, that you obtain no new passport.

21 And it's my understanding that your passport has expired.

22 THE DEFENDANT: Yes, Your Honor, it has.

23 THE COURT: And you make that representation to me
24 under oath?

25 THE DEFENDANT: Yes, I do, Your Honor.

1 THE COURT: That you refrain from possessing a
2 firearm, destructive device, or other dangerous weapon, that
3 you refrain from any excessive use of alcohol, that you refrain
4 from the use or unlawful possession of narcotic drugs or other
5 controlled substances unless prescribed by a licensed medical
6 practitioner.

7 MR. LUSTBERG: Judge, if I may, I just realized when
8 Your Honor said that that there is one issue, which is Mr.
9 Corbin has been a hunter and he has firearms in his home. We
10 will endeavor within the next week, if that's okay with the
11 Court, for him to sell those or otherwise dispose of them so
12 they won't be in his home. He's not a risk of any violation.

13 THE COURT: If he can put them out of his possession,
14 that's all that's required.

15 MR. LUSTBERG: All right. I just wanted to make sure.
16 It just may take a day or two to accomplish that.

17 THE COURT: The problem being that I don't want him to
18 commit another federal crime --

19 MR. LUSTBERG: No.

20 THE COURT: -- before we get started in this.

21 MR. LUSTBERG: No, I don't think we have to worry
22 about that, Your Honor.

23 THE DEFENDANT: Larry discussed that with me. That
24 won't take place.

25 THE COURT: All right. Well, I appreciate that. And

1 it is a problem, and it is a situation that is difficult
2 sometimes to carry out.

3 I'll hand you these papers, and if you'll go over them.

4 And then, Mr. Lustberg, if you'll explain the advice and
5 penalty section, why, we'll proceed to further conclude the
6 matter.

7 (Mr. Lustberg and the defendant confer privately.)

8 MR. LUSTBERG: Your Honor, I've explained the
9 penalties and the sanctions section of the order setting
10 conditions of release to Mr. Corbin. He has executed that
11 document, and I'll hand it back to the Court.

12 THE COURT: Thank you.

13 Let the record show that the Court observed Mr. Corbin
14 signing the document here in open court.

15 And I'll ask you to acknowledge to me that that is your
16 signature and you accept the conditions.

17 THE DEFENDANT: Yes, it is, Your Honor. Yes, Your
18 Honor.

19 THE COURT: Do you have any questions at this time,
20 sir?

21 THE DEFENDANT: No, sir, not -- I don't, Your Honor.

22 THE COURT: Is there anything further the United
23 States wants to do or wants the Court to do in this matter?

24 MS. JINDRA: No. Thank you, Your Honor.

25 MR. LUSTBERG: Nothing further, Judge. Thank you very

1 much for your courtesy.

2 THE COURT: The last time, any questions?

3 THE DEFENDANT: No, sir, Your Honor. I appreciate how
4 kind you've been to me.

5 THE COURT: Okay.

6 The defendant is ordered released after processing, and the
7 matter is continued until February the 2nd at 10:00 o'clock,
8 2010.

9 MR. LUSTBERG: Thank you, Your Honor.

10 MS. JINDRA: Thanks, Your Honor.

11 COURTROOM DEPUTY: All rise. This honorable court is
12 now in recess.

13 (Proceedings concluded at 3:35 PM.)

14 - - -

15 C E R T I F I C A T E

16 I, Luke T. Lavin, RDR, CRR, the undersigned, certify
17 that the foregoing is a correct transcript from the record of
18 proceedings in the above-entitled matter.

19

20 s/Luke T. Lavin
21 Luke T. Lavin, RDR, CRR
22 Official Court Reporter

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