UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA Plaintiff,	)	
Vs.	)	IP 06-CR-61-02-M/F
CHRIS A. BEAVER, Defendant.	)	

DEFENDANT CHRIS A. BEAVER'S OBJECTION
TO PRE-SENTENCE INVESTIGATION REPORT

Comes now the Defendant, Chris A. Beaver, by counsel, Jeffrey A. Lockwood, and submits his objections to the Pre-Sentence Report.

1. Objection to Part A, Paragraph 8.

This paragraph alleges that the Defendant entered into a conspiracy beginning in July, 2000 and continuing until May 25, 2004. As stated later in these Objections, the Defendant contends that Co-Defendant, Ricky J. Beaver's first appearance at any meeting involving other charged co-conspirators occurred in the summer of 2002. This Defendant did not have any contact with the charged co-conspirators until he attended a meeting at Butch Nuckol's horse barn in October of 2003.

2. Objection to Part A, Paragraph 10 and 11.

Paragraph 10 of the Pre-Sentence Investigation Report states that the conspiracy began in July, 2000 and continued through May 25, 2004. The paragraph further alleges that executives from competing ready mixed concrete companies, including this Defendant, met on several occasions for the purposes advancing the purposes of the

alleged conspiracy. Paragraph 10a states that a July 2000 meeting at Butch Nuckol's horse barn was attended by representatives of Beaver Materials.

The evidence in this case is that this Defendant met with other charged conspirators only once in October of 2003. The Defendant further states that the evidence of this case indicates that his cousin, Ricky J. Beaver, did not attend a meeting of the charged conspirators until 2002. The most credible evidence in this case is that Ricky J. Beaver attended two conspiratorial meetings in 2002; one at the Signature Inn and later in the same year at Butch Nuckol's horse barn. There has been no evidence presented that Ricky J. Beaver attended more than two meetings. The testimony of Price Irving is compelling in this regard because he noted the meeting in his day planner and specifically remembered meeting Ricky Beaver for the first time at that meeting. The Defendant's contention in this regard is further bolstered by the fact that none of the government witnesses alleged that Ricky Beaver had any contact or conversation concerning the price fixing conspiracy prior to 2002. A time line of the events and meetings attended by other co-conspirators shows extensive contact among all of the alleged conspirators except Ricky Beaver during the period from July, 2000 to the summer or fall of 2002. None of the government's witnesses testified to the contrary. If it is the government's contention that Ricky Beaver attended a conspiratorial meeting in 2000, but never had a conversation or meeting with any of the other co-conspirators concerning the alleged conspiracy until the year 2002, this Defendant contests the evidence upon which this conclusion could be drawn. The testimony of Price Irving and the circumstantial evidence introduced at the trial disputes this theory of the case.

3. Objection to Part A, Paragraph 12.

Paragraph 12 of the Pre-Sentence Investigation Report states that on at least one occasion, this Defendant reached out to another competitor, to-wit, Jason Mann of American Concrete, to communicate a message about what had been agreed upon at one of the horse barn meetings. This statement in the Pre-Sentence Investigation Report is totally unsupported by the evidence. The evidence at trial was that Chris Beaver said at the October, 2003 meeting that he would talk to Jason Mann. The government did not call Jason Mann and there is absolutely no evidence that any conversation or meeting ever took place between Chris Beaver and Jason Mann.

4. Objection to Part A, Paragraph 13.

This paragraph of the Pre-Sentence Investigation Report states that the Defendant spoke with "his competitors and co-conspirators on the telephone in order to check on pricing for various projects". The only testimony in this record of any conversation between Chris A. Beaver and any competitor concerning the conspiratorial agreement was the single telephone call that government witness, Scott Hughey remembered at virtually the last moment prior to trial. Mr. Hughey did not testify that he and Chris Beaver spoke about pricing on projects (plural) that Beaver and Carmel were competing for. Hughey's only testimony was that Chris Beaver told him on one occasion that Beaver Materials was abiding by the agreement.

5. Objection to Paragraph 20.

The Defendant disputes the conclusion that the volume of commerce attributable specifically to him is fifty million dollars ($50,000,000.00). The Defendant contends that the Anti-Trust Sentencing Guidelines does not attribute sales of each member of the

conspiracy to all others for purposes of determining the volume of commerce affected by the violation. USSG, Section 2R1.1, 18 USCA APP. Taking into account the time frame of the alleged conspiracy, as well as the more realistic time period following Ricky Beaver's first attendance at a conspiratorial meeting, the sales of Beaver materials during those periods, and the complete lack of evidence by the government of specific instances of prices charged by Beaver Materials in conformity with the conspiratorial agreement, the Defendant contends that a more accurate and appropriate estimation of the volume of commerce attributable to this Defendant is between one million dollars ($1,000,000.00), but no more than ten million dollars ($10,000,000.00). This results in a two level increase in the base level offense, rather than a six level increase as alleged by the government and adopted by the Probation Officer. The fifty million dollar ($50,000,000.00) figure advocated by the government would encompass literally all of the gross sales of MA-RI-AL Corporation during the period from July of 2000 through May of 2004. Not all sales made by all co-conspirators are necessarily "affected by" an illegal agreement for purposes of determining the volume of commerce attributable to a particular Defendant. The Defendant urges the proposition that the "volume of commerce" aspect of the sentencing guidelines must be individually tailored to meet the actual affect on commerce attributable to the Defendant.

Taking all of these factors into account, the volume of commerce which could be attributable to this specific Defendant would be more than one million dollars ($1,000,000.00), but not more than ten million dollars ($10,000,000.00). Most of the sales of concrete made by MA-RI-AL Corporation through Beaver Materials was for residential purposes and not involved in the alleged commercial ready mixed pricing

conspiracy. IMI, Carmel and Prairie were pouring concrete for airports and football stadiums, while MA-RI-AL and Beaver Materials were selling concrete to local contractors for small parking lots and residential driveways.

6. Objections to Part B (Sentencing Options Addressed by the Pre-Sentence Report).

The Defendant seeks and believes that he is entitled to a decrease of four levels pursuant to USSG, Section 3.B1.2(a). The Defendant's involvement in the conspiracy for which he stands conviction, fits the definition of a "minimal participant" as that term is defined under Paragraph 4 in the commentary to this section of the Sentencing Guidelines.

Chris Beaver is among the least culpable of those persons involved in the conduct of the group which was involved in the charged conspiracy. Each of the co-conspirators that testified for the government gave evidence of their extensive involvement in meetings, conversations and activities in furtherance of the conspiracy. Chris Beaver and his cousin, Ricky Beaver, attended three meetings between them. Chris Beaver attended only one.

No co-conspirator testified that Chris Beaver was guilty of any specific comment or conduct at the only meeting he attended, which affirmatively asserted his intention of pursuing the goals of the conspiracy. The only comment attributed to Chris Beaver was that he would talk to Jason Mann. There is no evidence that that conversation ever took place, let alone that it involved furtherance of the conspiracy. Neither is there any evidence in this record of any telephone conversations or individual face to face meetings between this Defendant and any of the other co-conspirators prior to the meeting he

attended in October of 2003. No conspirator, except Scott Hughey, ever even accused him of a conversation about the conspiracy.

Chris Beaver is employed in his families' business, but he is not a member of the Board of Directors. Nor is he an officer of either MA-RI-AL Corporation or Beaver Materials. The only evidence introduced at trial as to the final decision making authority for pricing, was that Allyn Beaver made those decisions.

The Defendant is subject to an increase in the offense level by two levels for making false statements to the FBI Agent who conducted his interview on May 25, 2004. Ordinarily a Defendant in Chris Beaver's position would not qualify for a two level decrease pursuant to U.S.S.G., Section 3E1.1(a). The commentary under this section and specifically Paragraph 4, provides, however, that consideration of a two level decrease may be considered by the Court under both U.S.S.G., Sections 3C1.1 and 3E1.1. The Defendant contends that this case represents one of those extraordinary cases in which the Court may and should consider a downward adjustment under Section 3E1.1.

Chris Beaver cannot escape the two offense level increase called for in U.S.S.G., Section 3C1.1. This disqualification, however, is not because he made a materially false statement to a law enforcement officer that significantly obstructed or impeded the official investigation or prosecution of the instance offense. See Paragraph 4(g). In fact, the affect of the Defendant's false statement to the FBI is more akin to the type enumerated in Paragraph 5(b), which mitigates in favor of not imposing the two level increase. This Defendant cannot escape the two level increase, however, because Paragraph 8 of the commentary, provides that since he was convicted of an obstruction

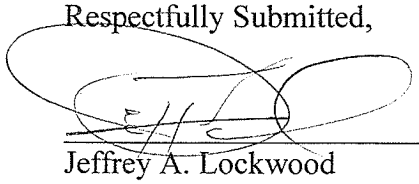
offense, coupled with a conviction for the underlying offense with respect to which the obstructive conduct occurred, the Court must impose a two level increase.

The Defendant should, however, be considered for a two level decrease pursuant to USSG, Section 3E1.1 and he should not be deprived of such consideration for the reason that he exercised his right to a trial by jury. The Defendant's defense was not based upon his denial of attendance at a conspiratorial meeting during which price fixing was discussed. Rather, the Defendant consistently denied any intent on his part to enter into and engage the conduct of the conspiracy. In other words, he contended that his mere presence at these meeting without much more, should not subject him to conviction pursuant to 15 U.S.C., Section 1. The jury has found otherwise.

The Defendant contends, nevertheless, that this case is extraordinary in that even though the Defendant continues to maintain that he not guilty of conspiring to fix prices, he has been forthcoming in admitting those acts which lead to his indictment.

The Defendant urges the Court to consider a two level decrease in his offense level pursuant to USSG, Section 3E1.1(a). Other conspirators have obtained consideration due to their cooperation with the government and admission of guilt. The Defendant should not be denied consideration of a two level decrease merely because he chose to take his case to trial.

Respectfully Submitted,

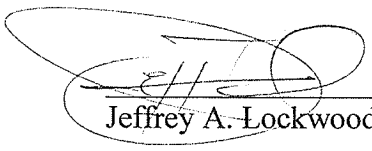


Jeffrey A. Lockwood

Prepared by:
Jeffrey A. Lockwood, #8872-48
LOCKWOOD, WILLIAMS & HAPPE
403 West 8th Street, Suite #3
Anderson, IN 46016
(765) 649-1144
(765) 649-1155 FAX

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon Frank Vondrak, Assistant United States Attorney, U.S. Department of Justice, Anti-Trust Division, Rookery Building, 209 South LaSalle Street, Suite 600, Chicago, IL 60604 and Stephanie J. Ivie, U.S. Probation Officer, 101 U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46024, on or before the date of filing.



Jeffrey A. Lockwood