PLEA AGREEMENT

Subject	Date
United States v. Howard Industries, Inc. Criminal No. 2:11cr8 KS-MTP	December 8, 2010

To	From
Frank W. Trapp, Esq. Jay T. Jorgensen, Esq. Attorneys for Howard Industries, Inc.	Gaines H. Cleveland D. Michael Hurst Assistant U.S. Attorneys

Howard Industries, Inc., Defendant herein, and Frank W. Trapp and Jay T. Jorgensen, Esqs., attorneys for Defendant, have been notified and understand and agree to the items contained herein (which plea terms are set forth in full below, the Defendant hereby waiving the provision for a separate sealed plea supplement as called by Local Rule 49.1(B)(2)):

1. **Defendant's Obligations**. If Defendant waives indictment and tenders a plea of guilty to the one-count felony information to be filed in this case, charging Defendant with conspiracy, in violation of Title 18, United States Code, Section 371, and otherwise fully performs the terms of this Agreement as set forth below;

2. **Government's Obligations**.

a. Thereafter, the United States Attorney's Office for the Southern District of Mississippi ("U.S. Attorney") will: (i) recommend that the Court accept Defendant's plea of guilty, (ii) recommend that the Court sentence the defendant as set forth below; (iii) inform the United States Probation Office and the Court of this Agreement, the nature and extent of Defendant's activities with respect to this case and all other activities of Defendant which the U.S. Attorney deems relevant to sentencing; and (iv) if requested, advise the appropriate officials of any governmental agency considering administrative action against Defendant has cooperated fully with

the U.S. Attorney's investigation and has implemented numerous corrective actions as well as a comprehensive compliance program as matters for that agency to consider before determining what administrative action, if any, to take.

3. **Count of Conviction.** It is understood that, as of the date of this Plea Agreement, Defendant and Defendant's attorneys have indicated that Defendant desires to plead guilty to the one-count felony information to be filed in this district.

4. **Sentence.** Defendant understands that the penalty for the offense charged in Count One of the information, charging a violation of Title 18, United States Code, Section 371, is a term of not less than one and not more than five years of probation and a fine up to $500,000, or twice the gross gain, whichever is greater.

5. **Stipulations.** In consideration of the foregoing and pursuant to U.S.S.G. § 6B1.4, the parties hereby stipulate as follows:

a. The parties agree that the Guidelines Manual in effect as of the date of sentencing should be used in determining Defendant's sentence. *See* U.S.S.G. § 1B1.11(a).

b. The parties agree that the base fine amount is determined based on calculation of the offense level as follows:

i. Defendant's conduct is subject to U.S.S.G. § 2L1.1, which carries a base offense level of 12. *See* U.S.S.G. § 2L1.1(a)(3).

ii. Because the conduct involved harboring (in this case, creating a false sense of security for) six or more unlawful aliens, Defendant is subject to a sentencing enhancement under U.S.S.G. § 2L1.1(b)(2).

iii. A nine-level increase is provided because the number of unlawful aliens harbored is 100 or more, U.S.S.G. § 2L1.1(b)(2)(C), thus calling for an offense level of 21, resulting in a base fine of $910,000. *See* U.S.S.G. § 8C2.4(a)(1).

c. Pursuant to U.S.S.G. § 8C2.5, the culpability score is seven determined as follows:

i. The base culpability score is five, as provided by U.S.S.G. § 8C2.5(a);

ii. A four-level increase is called for by U.S.S.G. § 8C2.5(b)(2)(B), in that the unit of the organization within which the offense was committed had more than 1,000 but fewer than 5,000 employees and an individual within high-level personnel of the unit participated in or condoned the offense;

iii. A two-level deduction is appropriate for Defendant's having fully cooperated and clearly demonstrated recognition and acceptance of responsibility pursuant to U.S.S.G. § 8C2.5(b)(g).

d. Pursuant to U.S.S.G. § 8C2.6, the appropriate multiplier range associated with a culpability score of seven is a minimum of 1.4 and a maximum of 2.8, resulting in a fine range of $1,274,000 to $2,548,000.

e. The parties agree, pursuant to Fed. R. Crim. P. 11(c)(1)(C), that a criminal fine of $2.5 million is the appropriate disposition of the felony information in this case, and Defendant agrees to pay the amount of $2.5 million fine, which amount Defendant acknowledges is in excess of the fine amount authorized by statute for the single count of conviction.

6. **This Agreement Does *Not* Bind the Court.** Except as to Paragraph 5, it is further understood that the Court, in accord with the principles of Rule 11, Federal Rules of Criminal Procedure, is not required to accept the recommendation of the U.S. Attorney, but may sentence Defendant as provided by law, and the U.S. Attorney has no other obligation in regard to sentencing than as stated in Paragraph No. 2.

10. **Breach of This Agreement and Further Crimes.** It is further understood that should Defendant fail or refuse as to any part of this plea agreement or commit any further crimes, then, at its discretion, the U.S. Attorney may treat such conduct as a breach of the Plea Agreement and Defendant's breach shall be considered sufficient grounds for the pursuit of any prosecutions which the U.S. Attorney has not sought as a result of this plea agreement, including any such prosecutions that might have been dismissed or otherwise barred by the Double Jeopardy Clause, and any federal criminal violation of which this office has knowledge. It is also understood that if the Plea Agreement is determined breached by the U.S. Attorney, then the U.S. Attorney has the discretion to rescind the Plea Agreement and, if rescinded, is not obligated to fulfill its representations, recommendations and responsibilities herein.

11. **Binding Effect On This District Only.** It is further understood that the Plea Agreement does not bind any state or local prosecuting authorities or any other federal district except as to the use of Defendant's statements voluntarily given hereunder; further, this agreement does not bind the Attorney General of the United States in regard to any matter, civil or criminal, involving the tax statutes of the United States.

12. **Financial Obligations.** It is further understood and specifically agreed to by Defendant that, at the time of the execution of this document or at the time the plea is entered, Defendant will then and there pay over the special assessment of $100.00 per count required by Title18, United States Code, Section 3013, to the Office of the United States District Court Clerk; Defendant shall thereafter produce proof of payment to the U.S. Attorney or the U.S. Probation Office. Defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided in Section 3613.

7. **Determination of Sentencing Guidelines.** It is further understood that the United States Sentencing Guidelines are advisory only and that Defendant and Defendant's attorneys have discussed the fact that the Court must review the Guidelines in reaching a decision as to the appropriate sentence in this case, but the Court may impose a sentence other than that indicated by the Guidelines if the Court finds that another sentence would be more appropriate. Defendant specifically acknowledges that Defendant is not relying upon anyone's calculation of a particular Guideline range for the offense to which Defendant is entering this plea, and recognizes that the Court will make the final determination of the sentence and that Defendant may be sentenced up to the maximum penalties set forth above.

8. **Willingness to Fulfill.** It is further understood and specifically acknowledged by Defendant that the consideration for the action by the U.S. Attorney herein is Defendant's representation, by execution of this Plea Agreement and otherwise, that Defendant both can and will carry out the terms and conditions contained herein

9. **Limit on Further Prosecution.** It is further understood that the U.S. Attorney will seek no further criminal prosecutions of Defendant or any of its current and former officers, employees, or directors for any acts or conduct disclosed by Defendant to this Office as of the date of the Plea Agreement arising out of any event covered by the information referenced in Paragraph No. 1, if Defendant voluntarily, truthfully and completely discloses all information and knowledge that Defendant has. Should Defendant not voluntarily and completely disclose, then as to that matter, the U.S. Attorney is free to seek prosecution of Defendant. This Plea Agreement does not provide any protection against prosecution for any crimes committed by Defendant except as set forth above.

13. Waivers. Defendant, knowing and understanding all of the matters aforesaid, including the maximum possible penalty that could be imposed, and being advised of Defendant's rights to remain silent, to trial by jury, to subpoena witnesses on Defendant's own behalf, to confront the witnesses against Defendant, and to appeal the conviction and sentence, in exchange for the U.S. Attorney entering into this plea agreement and accompanying plea supplement, hereby expressly waives the following rights:

a. the right to appeal the conviction and sentence imposed in this case, or the manner in which that sentence was imposed, on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatsoever, and

b. the right to contest the conviction and sentence or the manner in which the sentence was imposed in any post-conviction proceeding, including but not limited to a motion brought under Title 28, United States Code, Section 2255, and any type of proceeding claiming double jeopardy or excessive penalty as a result of any forfeiture ordered or to be ordered in this case, and

c. any right to seek attorneys fees and/or costs under the "Hyde Amendment," Title 18, United States Code, Section 3006A, and the Defendant acknowledges that the government's position in the instant prosecution was not vexatious, frivolous, or in bad faith, and

d. all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought by Defendant or by Defendant's representative under the Freedom of Information Act, set forth at Title 5, United States Code, Section 552, or the Privacy Act of 1974, at Title 5, United States Code, Section 552a.

e. Defendant further acknowledges and agrees that any factual issues regarding the sentencing will be resolved by the sentencing judge under a preponderance of the evidence standard, and Defendant waives any right to a jury determination of these sentencing issues. Defendant further agrees that, in making its sentencing decision, the district court may consider any relevant evidence without regard to its admissibility under the rules of evidence applicable at trial.

Defendant waives these rights in exchange for the United States Attorney entering into this plea agreement.

14. Corporate Authorization

Defendant's acknowledgment of this Plea Agreement and execution of this Plea Agreement on the behalf of the corporation is attached as Exhibit A. Defendant shall provide the U.S. Attorney and the Court a certified copy of a resolution of the Board of Directors of Defendant, affirming that the Board of Directors has authority to enter in the Plea Agreement and has (1) reviewed the Information in this case and the proposed Plea Agreement or has bas been advised of the contents thereof; (2) consulted with legal counsel in the connection with the matter (3) voted to enter into the proposed Plea Agreement; (4) voted to authorize defendant to plead guilty to the charge specified in the Information; and (5) voted to authorize the corporate officer identified below to execute the Plea Agreement and all other documents necessary to carry out the provisions of the Plea Agreement. A copy of the resolution is attached as Exhibit B. Defendant agrees that a duly authorized corporate officer and a duly authorized attorney for Defendant shall appear on behalf of Defendant and enter the guilty plea and will also appear for the imposition of the sentence.

15. Complete Agreement. It is further understood that this plea agreement and the plea supplement completely reflects all promises, agreements and conditions made by and between the United States Attorney's Office for the Southern District of Mississippi and Defendant.

Defendant and Defendant's attorneys of record declare that the terms of this plea agreement have been:

1. **READ BY OR TO DEFENDANT;**
2. **EXPLAINED TO DEFENDANT BY DEFENDANT'S ATTORNEYS;**
3. **UNDERSTOOD BY DEFENDANT;**
4. **VOLUNTARILY ACCEPTED BY DEFENDANT; and**
5. **AGREED TO AND ACCEPTED BY DEFENDANT.**

WITNESS OUR SIGNATURES, as set forth below.

DONALD R. BURKHALTER
United States Attorney

GAINES H. CLEVELAND
D. MICHAEL HURST
Assistant United States Attorneys

2-22-11
Date

RICHARD A. FOLLIS
General Counsel
Howard Industries, Inc.

2-22-11
Date

FRANK W. TAPP, Esq.
JAY T. JORGENSEN, Esq.
Counsel for Defendant

2-22-11
Date