

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
)	
v.)	Case No. 15-CR-00752
)	
BRANDERBURGER & DAVIS, et al.)	Judge Matthew F. Kennelly
)	

BRANDENBURGER & DAVIS’ SENTENCING MEMORANDUM

For the last seven years, Brandenburger & Davis (“B&D or the “Company”) has been acting to right the role it played in antitrust violations in the heir location services, an industry B&D has otherwise honorably and proudly served for nearly nine decades. When the Government approached B&D regarding its investigation of alleged anti-competitive conduct, B&D immediately and fully cooperated. It dedicated significant human and financial resources to its effort to be as helpful and forthcoming as possible. It identified and produced hundreds of thousands of documents and records. It provided information well beyond the scope of the subpoena issued to it. B&D arranged and paid for its employees to be interviewed. And it assisted substantially in the Government’s case against coconspirators by providing extensive and pivotal information.

More than four years ago, in June 2016, the Company pled guilty pursuant to a Rule 11(c)(1)(C) agreement. B&D takes full responsibility for its misconduct. And it accepts the high cost of such misconduct and the ensuing charges, which have effectively shuttered the business. Since its guilty plea, B&D has become a shell of its former self. In 2018, B&D stopped taking new cases and limited its continued existence to bringing its remaining cases to completion. B&D has gone from a company of twenty-five full-time employees to a company of one full-time and

three part-time employees. It used to operate in a headquarters office of 8,900 square feet and it owned a 75,000-volume library of genealogical books, records, and research tools. B&D moved out of its office and now its few employees exclusively work remotely. Over the last few years, B&D has donated nearly all of its world-class library and office furnishings, computers, monitors, printers, and other supplies to libraries and schools. The Company will close permanently as soon as it meets its obligations to its remaining customers – and to the Government and this Court.

The sentencing hearing in this case is scheduled for August 31, 2020 at 1:30 p.m. The Government and B&D jointly recommend that the Court impose the sentence set forth in the parties' Plea Agreement: (1) imposing a criminal fine of \$890,000, payable in full within 15 days of the judgment; (2) ordering B&D to pay the special assessment of \$400; and (3) issuing no order of restitution. The Government and B&D also jointly recommend that no sentence of probation is necessary.

I. Factual Background.

In 1932, Sheldon Brandenburger founded B&D as an heir location services company. B&D identified and located lost and unknown heirs of people who had died without a will and researched and developed evidence to help heirs recover their otherwise lost property through probate court proceedings. B&D's probate research investigators were professionals – highly skilled in conducting regional and international searches, preparing genealogical charts, procuring documents to prove heirship, and verifying claims. Based in Sacramento, California, B&D enjoyed strong working relationships with genealogical researchers, reporters, correspondents, and probate attorneys across the United States and abroad. Over the course of its long history, B&D ensured that thousands of people received their rightful property.

Unfortunately, between approximately November 2003 and August 2012, some individuals at B&D conspired with individuals at another heir location services provider. The primary purpose of the conspiracy was to allocate customers and maintain prices of heir location services. Once contacted by the Government, B&D accepted responsibility for its conduct and fully cooperated in the Government's investigation.

II. The Sentencing Calculations.

B&D entered a voluntary plea of guilty to one count of conspiracy to suppress and eliminate competition by agreeing to allocate customers of heir location services, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. B&D stipulated to a volume of affected commerce of at least \$8,607,233. Prior to a departure for substantial assistance, the relevant corporate guidelines fine range, applying multipliers to volume of commerce, is \$1,377,157.28 to \$2,754,314.56.

III. B&D's Substantial Assistance Supports a Downward Departure.

When the Government determines that an organizational defendant has provided substantial assistance in the investigation or prosecution of another corporate or individual wrongdoer, as occurred here, the Government may move for a downward departure from the guidelines. The Government has indicated it will so move. (Gov. Sentencing Memo. at 6-7; PSR at ¶¶ 95-97). In determining an appropriate sentencing reduction, the court may consider but is not limited to considering the following factors: (1) the significance and usefulness of the organization's assistance, taking into consideration the Government's evaluation of such assistance, (2) the nature and extent of the organization's assistance, and the (3) the timeliness of the organization's assistance. U.S.S.G. § 8C4.1. Each of these factors support a downward departure here.

There is no question that B&D's cooperation was significant and useful. B&D shared critical information about the charged conspiracy and conspirators. B&D also provided information that was relevant to another customer allocation conspiracy in the heir location service industry, which has since been prosecuted. (PSR, Gov. Version of Offense at 2 n.1). The Government evaluates B&D's information and assistance to be "substantial." (Gov. Sentencing Memo. at 7; PSR at ¶¶ 95-97).

Additionally, the nature and extent of the Company's assistance warrants a downward departure. B&D encouraged all employees to cooperate with the investigation. It arranged for and financed individual counsel for employees. The Company also paid for employees' travel to Chicago for interviews with the Government. B&D reviewed, scanned, and produced to the Government hundreds of thousands its files, documents, and records. It took the extra step of self-identifying "hot" documents. It provided information that exceeded the scope of the subpoena the Government issued to it, which saved the Government immense time and resources. B&D provided such substantial assistance at an out-of-pocket cost of over \$1,000,000, which does not account for the extraordinary staff time and other resources that B&D dedicated to helping in the Government's investigation.

Finally, B&D's assistance to the Government was immediate. From the Government's first contact with the Company, B&D cooperated fully and completely. Accordingly, because each of the U.S.S.G. § 8C4.1 factors has been met, the Court should grant the Government's anticipated motion for downward departure and impose the agreed sentence.

IV. Other Sentencing Considerations

The fine range for an organizational defendant should be based on the seriousness of the offense and the culpability of the organization. U.S.S.G., Chapter 8, Introductory Commentary.

Here, B&D fully acknowledges and accepts responsibility for its conduct and the losses suffered by the victims of the offense.

When assessing culpability, there are four aggravating factors that courts should consider: (i) involvement in or tolerance of criminal activity, (ii) the organization's prior history; (iii) violation of an order, and (iv) the obstruction of justice. *Id.* As a Company, B&D did not tolerate the criminal activity at issue – when the Company was contacted, it immediately cooperated with the Government and provided assistance in remedying the misconduct. B&D has never been convicted before for any antitrust violation or any other criminal conduct. It has never violated any order. It has never obstructed justice.

Two factors support mitigating an organization's punishment: (i) the existence of an effective compliance and ethics program; and (ii) self-reporting, cooperation, or acceptance of responsibility. *Id.* B&D has not implemented a compliance or ethics program because it is closing its operations – it has only one remaining full-time and three part-time employees. As noted above, B&D has cooperated extensively with the Government and has accepted complete responsibility for its wrongdoing.

B&D agrees with the Government's determination that facts of this case do not warrant an order of restitution or probation. (Gov. Sentencing Memo. at 8-9).

V. Conclusion

B&D takes full responsibility for the role it played in this conspiracy. Outside of these events, which tarnished its reputation and resulted in the closure of its business, B&D provided valuable and fair heir location services to thousands of customers over the course of nine decades.

B&D joins the Government's recommended sentence and respectfully requests that the Court order B&D to pay a criminal fine in the amount of \$890,000, payable in full within 15 days

of the judgment, and a special assessment in the amount of \$400, and issue no order of restitution or probation.

Respectfully Submitted: August 24, 2020

/s/ Matthew Charles Crowl

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will serve notice of such filing upon all the parties of record.

/s/ Matthew C. Crawl