

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|--------------------------|------------------------|
| UNITED STATES OF AMERICA |) |
| |) Criminal No. 03-628 |
| v. |) |
| |) Judge Anita B. Brody |
| F. SCOTT BROWN, |) |
| |) Filed: 9/25/2003 |
| Defendant. |) |

GOVERNMENT’S RULE 11 MEMORANDUM

The United States and F. Scott Brown have entered into a plea agreement, pursuant to which F. Scott Brown will waive indictment and plead guilty to the captioned Information. The one-count Information charges F. Scott Brown with violating 18 U.S.C. § 1512(b)(2)(B) and 18 U.S.C. § 2(a). The purpose of this memorandum is to provide the Court with sufficient information for acceptance of the plea by setting forth the violated statute, a description of the criminal Information, the terms of the Plea Agreement, and a preliminary statement of facts which support the agreement.

I
STATUTES VIOLATED

A. 18 U.S.C. § 1512(b)(2)(B) and 18 U.S.C. § 2(a)

Section 1512(b)(2)(B) of Title 18, United States Code, provides:

(b) Whoever knowingly . . . corruptly persuades another person, or attempts to do so, . . . with intent to . . . (2) cause or induce any person to . . . (B) alter, destroy, mutilate, or conceal an object with intent to impair the object’s integrity or availability for use in an official proceeding . . . shall be fined under this title or imprisoned not more than ten years, or both.

Section 2(a) of Title 18, United States Code, provides:

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

B. The Information

The Information charges F. Scott Brown with aiding and abetting an officer of The Morgan Crucible Company plc, the parent of Morganite Industries, Inc., in knowingly corruptly persuading an employee of Morgan Advanced Materials and Technology, Inc. (“MAMAT”), with intent to cause or induce the employee of MAMAT to destroy, mutilate, or conceal certain documents located within the United States in MAMAT’s custody and control, and with intent to impair the availability of those documents for use in an official proceeding, that is a federal grand jury sitting in the Eastern District of Pennsylvania, conducting a price-fixing investigation of the carbon products industry.

C. Elements of the Offense

The elements of the offense of obstruction of justice by causing or inducing another person to destroy or conceal documents with the intent to impair their availability for use in an official proceeding are:

- (1) The defendant knowingly corruptly persuaded or induced another person to destroy or conceal documents; and
- (2) At the time the defendant caused or induced another person to destroy or conceal documents, he did so intending to impair the documents’ integrity or availability for use in an official proceeding.

Pursuant to Section 2(a) of Title 18, a defendant may be found guilty of a crime even if he did not personally commit the acts constituting the crime but aided and abetted in its commission if:

- (1) The crime charged was committed by someone; and

- (2) The defendant knowingly and intentionally did an act constituting a substantial step, towards the commission of the crime.

D. Maximum Penalty

The maximum penalty F. Scott Brown may receive upon his conviction in this case is a term of imprisonment for ten (10) years; a fine in an amount of \$250,000; and a term of supervised release of three (3) years following any term of imprisonment. If F. Scott Brown violates any condition of supervised release, he could be imprisoned for the entire term of supervised release (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.”) § 5D1.2(a)(3)).

II
FACTUAL BASIS

This statement of facts is intended to be used as a factual basis for the guilty plea of F. Scott Brown. It is not intended to be exhaustive in terms of details surrounding the charged offense.

A. Background

In or about April 1999 and in or about August 2001, a federal grand jury sitting in the Eastern District of Pennsylvania and investigating a conspiracy to fix the prices of various carbon products sold in the United States and elsewhere issued subpoenas duces tecum to Morganite Industries, Inc. The scope of the subpoenas included all divisions and affiliates of Morganite Industries, Inc., that were located in the United States. At the times the subpoenas were issued, MAMAT was an affiliate of Morganite Industries, Inc. and its documents were within their scope.

F. Scott Brown was an officer of MAMAT at the time the April 1999 subpoena was

issued. In July 2001, F. Scott Brown was a member of the MAMAT Board of Directors.

B. Efforts to Aid and Abet Inducement of the Destruction of Documents

In or about May 1999 and again in or about July 2001, defendant aided and abetted an officer of The Morgan Crucible Company plc, the parent of Morganite Industries, Inc., in knowingly corruptly persuading an employee of MAMAT with intent to cause or induce the employee to destroy certain documents located within the United States in MAMAT's custody and control, and with intent to impair the availability of those documents for use by the federal grand jury sitting in the Eastern District of Pennsylvania that was conducting a price-fixing investigation of the carbon products industry, contrary to Title 18 United States Code, Section 1512(b)(2)(B) in that:

- (1) In or about May 1999, the defendant met with the officer of The Morgan Crucible Company who instructed the defendant to make sure the employee of MAMAT had no documents in his files reflecting contacts with competitors.
- (2) In or about May 1999, the defendant told the employee of MAMAT of the instruction the defendant had received from the officer of The Morgan Crucible Company.
- (3) In or about July 2001, the defendant met with the employee of MAMAT and discussed, among other things, the grand jury's investigation into price fixing in the carbon products industry.
- (4) In or about August 2001, due to his conversations with the defendant, the employee of MAMAT destroyed documents relevant to the grand jury's investigation.

III
PLEA AGREEMENT

The guilty plea in this case will be entered pursuant to a plea agreement between F. Scott Brown and the Antitrust Division. The Plea Agreement provides that F. Scott Brown will enter a plea of guilty in the Eastern District of Pennsylvania pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, to a one-count criminal Information charging him with aiding and abetting another to corruptly persuade another person to destroy documents relevant to an official proceeding in violation of 18 U.S.C. § 1512(b)(2)(B) and 18 U.S.C. § 2(a).

Pursuant to the Plea Agreement, The United States agrees that the defendant has accepted responsibility for his offense and is entitled to a two-level reduction in his offense level pursuant to U.S.S.G. §3E1.1. The United States and defendant agree that the defendant's Guidelines offense level is 10, based on the November 2000 version of the U.S.S.G. Manual, the version in effect at the time of the offense. The United States and F. Scott Brown agree to jointly recommend that the Court impose a sentence requiring the defendant to pay to the United States a criminal fine of \$20,000 payable in full before the fifteenth (15th) day after the date of judgment; a period of incarceration of six (6) months; and no period of supervised release ("the recommended sentence"). The United States and the defendant agree there shall be no substitution of community confinement, home detention or intermittent confinement for any period of imprisonment.

The United States agrees it will not object to the defendant's request that the Court make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal Minimum Security Camp to serve his sentence of imprisonment and that the defendant be released following the imposition of sentence to allow him to self-surrender to the assigned correctional facility.

Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the

imposition of the recommended sentence, the United States agrees it will not bring further criminal charges against F. Scott Brown for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the sale of mechanical carbon products or electrical carbon products or undertaken in connection with any investigation of such a conspiracy.

Dated: 9/25/2003

Respectfully submitted,

/S/

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