

FILED

DEC 02 2004

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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JEANE HAMILTON (CSBN 157834)
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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO VENUE

11 UNITED STATES OF AMERICA)

12 v.)

PLEA AGREEMENT

13)
14 MARTIN PETERSEN,)

15 Defendant.)
16

17 PLEA AGREEMENT

18 The United States of America and Martin Petersen ("defendant") hereby enter into the
19 following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal
20 Procedure ("Fed. R. Crim. P."):

21 RIGHTS OF DEFENDANT

22 1. The defendant understands his rights:

23 (a) to be represented by an attorney;

24 (b) to be charged by Indictment;

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

26 (d) to have a trial by jury, at which he would be presumed not

27 guilty of the charge and the United States would have to prove every essential element of

28 the charged offense beyond a reasonable doubt for him to be found guilty;

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

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

4 (g) to appeal his conviction, if he is found guilty at trial; and

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

6
7 **AGREEMENT TO PLEAD GUILTY**
AND WAIVE CERTAIN RIGHTS

msk H/H

8 2. The defendant waives the rights set out in Paragraph 1(b)-^h(g) above. The
9 defendant agrees to have his sentence determined under the United States Sentencing Guidelines
10 ("U.S.S.G.") and waives all constitutional challenges to the validity of the U.S.S.G. The
11 defendant waives any right he may possess to have facts that determine his Guidelines fine and
12 imprisonment ranges under the U.S.S.G. (including any facts used to determine his offense level,
13 volume of commerce, any specific offense characteristic or other enhancement or adjustment, or
14 any upward departure under the U.S.S.G.) alleged in an indictment and found by a jury beyond a
15 reasonable doubt. The defendant agrees that facts that determine his Guidelines fine and
16 imprisonment ranges will be found by the court at sentencing by a preponderance of the evidence
17 and that the court may consider any reliable evidence, including hearsay, in making such
18 determinations. Further, pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment
19 and plead guilty at arraignment to a one-count Information to be filed in the United States
20 District Court for the Northern District of California. The Information will charge the defendant
21 with participating in a combination and conspiracy to suppress and eliminate competition by
22 maintaining and increasing the prices of certain rubber chemicals, to be sold in the United States
23 and elsewhere, beginning in or about December 2000 and continuing until in or about December
24 2001 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

25 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
26 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
27 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

28 ///

1 incriminating information that the defendant provides to the United States pursuant to this Plea
2 Agreement will not be used to increase the volume of affected commerce attributable to the
3 defendant or in determining the defendant's applicable sentencing guidelines range, except to the
4 extent provided in U.S.S.G. § 1B1.8(b).

5 SENTENCING AGREEMENT

6 8. The defendant understands that the sentence to be imposed on him is within the
7 sole discretion of the sentencing judge and that, pursuant to Fed. R. Crim. P. 11(c)(3)(B), he will
8 have no right to withdraw his guilty plea if the Court imposes any sentence inconsistent with any
9 recommendation contained in this Plea Agreement or any recommendation made at the time of
10 sentencing. The defendant further understands that the United States will make its
11 recommendation on any term of imprisonment at the time of sentencing.

12 9. Based on the information now known to it, the United States agrees that it will
13 make a motion, pursuant to U.S.S.G. § 3E1.1, for a downward adjustment of three levels for
14 acceptance of responsibility due to the defendant's timely notification of his intention to enter a
15 guilty plea.

16 10. The United States agrees to recommend that the defendant pay to the United
17 States a criminal fine of \$50,000 as part of the sentence in this case and that the fine be paid, with
18 interest, in the following installments: within 30 days of imposition of sentencing – \$5,000; at the
19 one-year anniversary of imposition of sentence ("anniversary") – \$5,000; at the two-year
20 anniversary – \$10,000; at the three-year anniversary – \$10,000; at the four-year anniversary –
21 \$10,000; and at the five-year anniversary – \$10,000. The defendant understands that the Court
22 will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and
23 U.S.S.G. § 5E1.3 in addition to any fine imposed.

24 11. The United States agrees to recommend that, pursuant to U.S.S.G. § 5E1.1(b), that
25 the defendant should not be ordered to pay restitution in light of the civil cases filed against
26 Bayer, the defendant's former employer, including *In Re Rubber Chemicals Antitrust Litigation*,
27 C 03-1496 MJJ, in the United States District Court, Northern District of California, which
28 potentially provide for a recovery of a multiple of actual damages.

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

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

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

9 (c) responding fully and truthfully to all inquiries of the United States in
10 connection with any Federal Proceeding, without falsely implicating any person or
11 intentionally withholding any information, subject to the penalties of making false
12 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

13 (d) otherwise voluntarily providing the United States with any material or
14 information, not requested in (a) - (c) of this paragraph, that he may have that is related to
15 any Federal Proceeding; and

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

22 **AGREEMENT BY THE UNITED STATES**

23 16. Subject to the full, truthful, and continuing cooperation of the defendant, as
24 described in Paragraph 15 of this Plea Agreement, and upon the Court's acceptance of the guilty
25 plea called for by this Plea Agreement and the imposition of sentence, the United States will not
26 bring further criminal charges against the defendant for any act or offense committed before the
27 date of this Plea Agreement that was undertaken in furtherance of any antitrust conspiracy
28 involving the manufacture or sale of rubber chemicals or any type of synthetic rubber ("Relevant

1 Offense"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind,
2 to any violation of the federal tax or securities laws, or to any crime of violence.

3 17. The United States agrees that when Defendant travels to the United States for
4 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
5 meetings with counsel in preparation therefor, the United States will take no action, based upon
6 any Relevant Offense, to subject Defendant to arrest, detention, or service of process, or to
7 prevent Defendant from departing the United States. This paragraph does not apply to
8 Defendant's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §
9 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
10 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401 - 402) in
11 connection with any testimony or information provided or requested in any Federal Proceeding.

12 18. The defendant understands that he may be subject to administrative action
13 (including removal from the United States) by the United States Immigration and Customs
14 Enforcement of the United States Department of Homeland Security ("ICE"), and that this plea
15 agreement does not control, in any way, what action, if any, ICE may take. However, the
16 Antitrust Division of the United States Department of Justice agrees that, if administrative
17 proceedings are instituted against the defendant, it will advise ICE of the fact, manner and extent
18 of the defendant's cooperation with the United States. Subject to the full and continuing
19 cooperation of the defendant, as described in Paragraph 15 of this Plea Agreement, the Antitrust
20 Division of the United States Department of Justice, in order to obtain the defendant's promised
21 cooperation and assistance, further agrees to recommend that ICE not institute removal
22 proceedings during the period of his cooperation and, if proceedings are ultimately instituted,
23 when appropriate, recommend that ICE grant deferred action status to the defendant.

24 19. Defendant understands that he may be subject to administrative action by federal,
25 state or foreign agencies other than the United States Department of Justice, Antitrust Division,
26 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in
27 no way controls whatever action, if any, other agencies may take. However, the United States
28 agrees that, if requested, it will advise the appropriate officials of any governmental agency

1 considering such administrative action of the fact, manner, and extent of the cooperation of
2 Defendant as a matter for that agency to consider before determining what administrative action,
3 if any, to take.

4 **REPRESENTATION BY COUNSEL**

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

12 **VOLUNTARY PLEA**

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

18 **VIOLATION OF PLEA AGREEMENT**

19 22. The defendant agrees that, should the United States determine in good faith, during
20 the period that any Federal Proceeding is pending, that the defendant has failed to provide full and
21 truthful cooperation, as described in Paragraph 15 of this Plea Agreement, or has otherwise
22 violated any provision of this Plea Agreement, the United States will notify the defendant or his
23 counsel in writing by personal or overnight delivery or facsimile transmission and may also notify
24 his counsel by telephone of its intention to void any of its obligations under this Plea Agreement
25 (except its obligations under this paragraph), and the defendant shall be subject to prosecution for
26 any federal crime of which the United States has knowledge including, but not limited to, the
27 substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant
28 may seek Court review of any determination made by the United States under this Paragraph to

1 void any of its obligations under the Plea Agreement. The defendant agrees that, in the event that
2 the United States is released from its obligations under this Plea Agreement and brings criminal
3 charges against the defendant for any Relevant Offense, the statute of limitations period for such
4 offense will be tolled for the period between the date of the signing of this Plea Agreement and six
5 (6) months after the date the United States gave notice of its intent to void its obligations under
6 this Plea Agreement.

7 23. The defendant understands and agrees that in any further prosecution of him
8 resulting from the release of the United States from its obligations under this Plea Agreement
9 based on the defendant's violation of the Plea Agreement, any documents, statements,
10 information, testimony, or evidence provided by him to attorneys or agents of the United States,
11 federal grand juries, or courts, and any leads derived therefrom, may be used against him in any
12 such further prosecution. In addition, the defendant unconditionally waives his right to challenge
13 the use of such evidence in any such further prosecution, notwithstanding the protections of Fed.
14 R. Crim. P. 11(f) and Fed. R. Evid. 410.

15 24. The defendant agrees to and adopts as his own the factual basis contained in
16 Paragraph 4 above. In the event that the defendant breaches this Plea Agreement, the defendant
17 agrees that the Plea Agreement, including the factual statement contained in Paragraph 4 above,
18 provides a sufficient basis for any possible future extradition request that may be made for his
19 return to the United States to face charges either in the Information referenced in Paragraph 2 of
20 this Plea Agreement or in any related indictment. The defendant further agrees not to oppose or
21 contest any request for extradition by the United States to face charges either in the Information
22 referenced in Paragraph 2 of this Plea Agreement or in any related indictment.

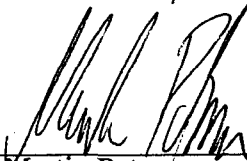
23 **ENTIRETY OF AGREEMENT**

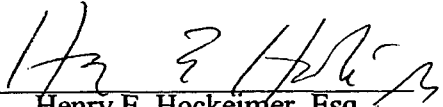
24 25. This Plea Agreement constitutes the entire agreement between the United States
25 and the defendant concerning the disposition of the criminal charge in this case. This Plea
26 Agreement cannot be modified except in writing, signed by the United States and the defendant.

27 26. The undersigned attorneys for the United States have been authorized by the
28 Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

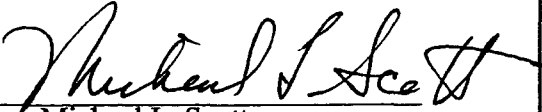
1 27. A facsimile signature shall be deemed an original signature for the purpose of
2 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of
3 executing this Plea Agreement.
4

5 DATED: 12/2/04

6
7
8 BY: 
9 Martin Petersen
 Defendant

10
11 
12 Henry E. Hockeimer, Esq.
13 Counsel for Martin Petersen
14 Hangley Aronchick Segal & Pudlin
 One Logan Square
 27th Floor
 Philadelphia, PA 19103
 Tel: (215) 496-7035

Respectfully submitted,

BY: 
 Michael L. Scott
 Jeane Hamilton
 Victor Ali
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 Antitrust Division
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 10th Floor
 San Francisco, CA 94102
 Tel: (415) 436-6660
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

USA et al,

Plaintiff,

v.

Petersen et al,

Defendant.

Case Number: CR04-00386 MJJ

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 2, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael L. Scott
U.S. Attorneys Office
450 Golden Gate Ave.
San Francisco, CA 94102

Henry Hockeimer
Hangley Aronchick Segal & Pudlin
One Logan Square, 27th Floor
Philadelphia, PA 19103

Dated: December 2, 2004

Richard W. Wicking, Clerk

By: 
Monica Tutson, Deputy Clerk