

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

UNITED STATES OF AMERICA)	
)	Criminal No. 00-129
v.)	
)	Judge Harvey Bartle, III
CARBONE OF AMERICA)	
INDUSTRIES CORP. and)	Filed: 3/13/00
MICHEL CONIGLIO,)	
)	
Defendants.)	

GOVERNMENT’S RULE 11 MEMORANDUM

The United States, Carbone of America Industries Corp. (“CAIC”), and Michel Coniglio have entered into plea agreements, pursuant to which CAIC and Michel Coniglio will waive indictment and plead guilty to the captioned Information. The one-count Information charges CAIC and Michel Coniglio with a violation of the Sherman Act, 15 U.S.C. § 1. The purpose of this memorandum is to provide the Court with sufficient information for acceptance of the pleas by setting forth the violated statute, a description of the criminal Information, the terms of the Plea Agreements, and a preliminary statement of facts which support the agreements.

I
STATUTE VIOLATED

A. 15 U.S.C. Section 1

Section One of Title 15, United States Code, provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not

exceeding three years, or by both said punishments, in the discretion of the court.

B. The Information

The Information charges CAIC and Michel Coniglio, its President and Chief Executive Officer, with participating in a conspiracy to suppress and eliminate competition by fixing the price of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere in unreasonable restraint of trade and commerce from at least as early as July 1993 and continuing until at least February 1998.

C. Elements of the Offense

The elements of a Sherman Act offense, each of which the United States must prove beyond a reasonable doubt at trial, are:

- (1) the conspiracy charged was formed, and it was in existence at or about the time alleged;
- (2) the defendants knowingly formed and participated in that conspiracy; and
- (3) the activity which was the object of the conspiracy was within the flow of, or substantially affected, interstate or foreign commerce.

D. Maximum Penalty

The maximum penalty CAIC may receive upon its conviction in this case is a fine in an amount equal to the largest of: (a) \$10 million; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

The maximum penalty Michel Coniglio may receive upon his conviction in this case is a fine in

an amount equal to the largest of: (a) \$350,000; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

II

FACTUAL BASIS

This statement of facts is intended to be used as a factual basis for the guilty pleas of CAIC and Michel Coniglio. It is not intended to be exhaustive in terms of details surrounding the charged conspiracy.

A. Background

Isostatic graphite is a fine grain carbon product with great strength and resistance to heat and chemical reaction. It is commonly used to produce among other products, electrodes for electrical discharge machinery, dies for the continuous casting of metals, and various products used in the semiconductor industry, which require its unique properties.

B. The Conspiracy

During the period covered by the Information, CAIC was a Michigan corporation with its headquarters located in Parsippany, New Jersey. CAIC manufactured and sold various forms of isostatic graphite, including non-machined and semi-machined isostatic graphite, to various customers located in the United States and foreign countries. During that same period, Michel Coniglio, as President and Chief Executive Officer of CAIC, was similarly engaged in the business of manufacturing and selling non-machined and semi-machined isostatic graphite to customers in the United States and foreign countries.

As alleged in the Information, beginning at least as early as July 1993 and continuing through to

at least February 1998, Michel Coniglio and CAIC and certain other competitor companies entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendants and co-conspirators was in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

The conspiracy consisted of a continuing agreement, understanding, and concert of action among the conspirators, the substantial terms of which were to agree to fix and maintain prices and to coordinate price increases for the sale of non-machined and semi-machined isostatic graphite in the United States and elsewhere.

For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators:

- (1) participated in meetings and conversations in the Far East, Europe, and the United States to discuss the prices and grades of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere;
- (2) agreed, during those meetings and conversations, to charge prices at certain levels and otherwise to increase and maintain prices of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere;
- (3) agreed, during those meetings and conversations, to freeze market shares of sales of non-machined and semi-machined isostatic graphite among the co-conspirators to levels then in effect at the time the conspiracy was formed;

- (4) agreed, during those meetings and conversations, to restrict their sales of non-machined and semi-machined isostatic graphite to each others' customers;
- (5) agreed, during those meetings and conversations, to eliminate discounts from the fixed price of non-machined and semi-machined isostatic graphite offered to customers in the United States and elsewhere;
- (6) agreed, during those meetings and conversations, to standardize the grades of non-machined and semi-machined isostatic graphite offered to customers in the United States and elsewhere for the purpose of facilitating the implementation of the above-described agreement; and
- (7) issued price announcements and price quotations in accordance with the agreements reached.

C. Interstate and Foreign Commerce

At all times during the conspiracy, CAIC, headquartered in Parsippany, New Jersey and operating in St. Mary's, Pennsylvania, or other conspirators from other locations, sold a substantial quantity of non-machined and semi-machined isostatic graphite to customers located in states or countries other than the states or countries in which non-machined and semi-machined isostatic graphite was produced.

III
PLEA AGREEMENTS

The guilty pleas in this case will be entered pursuant to plea agreements between CAIC, Michel Coniglio, and the Antitrust Division.

A. CAIC

The Plea Agreement between CAIC and the United States provides that CAIC 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 the company with participating in a conspiracy to restrict competition by fixing the price of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere from at least as early as July 1993 and continuing until at least February 1998, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

Also pursuant to the Plea Agreement, the United States and CAIC agree to jointly recommend that the Court impose a sentence requiring CAIC to pay a fine to the United States in the amount of \$7.15 million as an appropriate disposition of the case. The fine is due and payable in full within fifteen (15) days of the date of the imposition of sentence. The United States and CAIC will also jointly request that the Court accept CAIC's guilty plea and immediately impose sentence on the day of arraignment. Should the Court reject the agreed-upon disposition of the case, CAIC will be free to withdraw its plea.

CAIC, its parents, subsidiaries, and its parents' subsidiaries have agreed to fully cooperate with the United States in the conduct of the present investigation of the non-machined and semi-machined isostatic graphite and other graphite or carbon products industry and any litigation or other proceedings to which the United States is a party resulting therefrom. Such cooperation includes, but is not limited to, the production of relevant documents under the control of CAIC and its parents, subsidiaries, and its parents' subsidiaries. CAIC must also use its best efforts to secure, in connection with the present investigation and any litigation resulting therefrom, the full and truthful cooperation of current directors,

officers, and employees of CAIC, including its parents, subsidiaries, and its parents' subsidiaries, with relevant information who are identified by the United States. Such cooperation includes testifying truthfully in trial and grand jury proceedings.

Also pursuant to the Plea Agreement, the United States agrees, subject to the continuing full cooperation of CAIC and its parents, subsidiaries, and parents' subsidiaries, not to bring further criminal proceedings against CAIC or its parents, subsidiaries, or parents' subsidiaries for any act or offense committed prior to the date of the Plea Agreement undertaken in connection with any antitrust conspiracy involving the sale or manufacture of non-machined and semi-machined isostatic graphite or other graphite or carbon products. Subject to their continuing cooperation, directors, officers, and employees of CAIC and its parents, subsidiaries, and parents' subsidiaries (other than Michel Coniglio, CAIC's President and Chief Executive Officer, with whom the United States has entered into a separate plea agreement) will receive the same non-prosecution protection.

B. Michel Coniglio

The Plea Agreement provides that Michel Coniglio 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 participating in a conspiracy to restrict competition by fixing the price of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere from at least as early as July 1993 and continuing until at least February 1998, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

Additionally, as part of the Plea Agreement, Michel Coniglio will abandon his United States permanent residence status without the need for any proceedings in the United States Immigration

Court. Under the terms of the Plea Agreement, Michel Coniglio's loss of permanent resident status will take effect upon the entry of judgment in this case, and he will be required to surrender his permanent resident card (INS Form I-551) upon entry of judgment and depart from the United States no more than seven (7) days thereafter.

Pursuant to the Plea Agreement, the United States and Michel Coniglio agree to jointly recommend that the Court impose a sentence requiring Mr. Coniglio to pay a fine to the United States in the amount of \$100,000, as an appropriate disposition of the case. Mr. Coniglio's fine is due and payable in full within fifteen (15) days of the date of the imposition of sentence. The agreed-upon fine is below the minimum fine required by the United States Sentencing Guidelines fine range. However, the United States intends to make a motion for a downward departure from the Sentencing Guidelines pursuant to U.S.S.G. § 5K1.1 based on the defendant's prior and promised substantial assistance in the investigation and prosecution of other individuals and corporations for violations of the federal criminal antitrust laws. Under the terms of the Plea Agreement, the United States will fully advise the Court of the fact, manner, and extent of Michel Coniglio's ongoing cooperation and his commitment to prospective cooperation with the United States investigation and prosecutions, all facts relating to his involvement in the charged offense, and all other relevant conduct. The decision to file a motion pursuant to U.S.S.G. § 5K1.1 is within the sole discretion of the United States, subject to its obligation to act in good faith.

Michel Coniglio has agreed to fully cooperate with the United States in the conduct of the present investigation of the non-machined and semi-machined isostatic graphite or other graphite or carbon products. Such cooperation includes, but is not limited to, the production of relevant documents

under his control, making himself available upon reasonable notice, not at the expense of the United States, for interviews in the United States and at other mutually agreed-upon locations, and responding fully and truthfully to all inquiries of the United States in connection with any federal proceeding, without falsely implicating any person or intentionally withholding information. Such cooperation also includes testifying truthfully in trial and grand jury proceedings.

Subject to the continuing cooperation of Michel Coniglio, the United States also agreed not to bring further criminal proceedings against Michel Coniglio for any act or offense committed prior to the date of the Plea Agreement undertaken in connection with any antitrust conspiracy involving the sale or manufacture of non-machined and semi-machined isostatic graphite or other graphite or carbon products.

Dated:

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 13 day of March 2000, a copy of the Government's Rule 11 Memorandum has been faxed and mailed to counsel of record for the defendants as follows:

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