

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	Criminal No.: 03-631
v.	)	
	)	Filed: 12/12/03
ROBIN D. EMERSON,	)	
	)	Violation: 18 U.S.C. § 1512(b)(2)(B)
Defendant.	)	

**PLEA AGREEMENT**

The United States of America and Robin Emerson (“defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

**RIGHTS OF DEFENDANT**

1. The defendant understands his rights:
  - (a) to be represented by an attorney;
  - (b) as a citizen and resident of the United Kingdom, to decline to accept service of the summons in this case and to contest the jurisdiction of the United States to prosecute this case against him in the United States District Court for the Eastern District of Pennsylvania.
  - (c) to plead not guilty to any criminal charge brought against him;
  - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
  - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
  - (f) not to be compelled to incriminate himself;

- (g) to appeal his conviction, if he is found guilty at trial; and
- (h) to appeal the imposition of sentence against him.

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

2. The defendant waives the rights set out in Paragraph 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against him in the United States District Court for the Eastern District of Pennsylvania. The defendant also waives the right to appeal the imposition of the sentence against him, so long as the sentence imposed is consistent with the recommended sentence contained in Paragraph 8 of this Plea Agreement.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to Count 2 of the Indictment pending in the Eastern District of Pennsylvania, Cr. No. 03-631, which charges him with corruptly persuading another person to alter, destroy, mutilate or conceal records and documents with intent to impair their availability for use by the federal grand jury sitting in the Eastern District of Pennsylvania, in violation of Title 18 U.S.C. § 1512(b)(2)(B), and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

**FACTUAL BASIS FOR OFFENSE CHARGED**

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

- (a) During the period covered by Count 2 of the Indictment, defendant Robin Emerson was an employee of Morganite Electrical Carbon Ltd., located in Swansea, United Kingdom, which is a subsidiary of The Morgan Crucible Company plc (“Morgan”). During the period set forth in Count 2 of the Indictment, Morgan and its subsidiaries were engaged in the sale and manufacture of certain carbon products to customers in the United States.

(b) From in or about April 1999 to the present, a federal grand jury sitting in the Eastern District of Pennsylvania has been investigating, among other things, possible federal antitrust offenses in the carbon products industry.

(c) In or about April 1999 the federal grand jury sitting in the Eastern District of Pennsylvania and investigating a conspiracy to fix the price of various carbon products sold in the United States and elsewhere issued a subpoena duces tecum to Morganite Industries, Inc., a United States subsidiary of Morgan.

(d) Beginning in or about April 1999 and continuing to in or about June 1999, the defendant knowingly corruptly persuaded another person with intent to cause or induce that person to alter, destroy, mutilate or conceal records and documents with intent to impair their availability for use in an official proceeding, that is, a federal grand jury sitting in the Eastern District of Pennsylvania investigating, among other things, possible federal criminal antitrust violations occurring in the carbon products industry and committed by the defendant and others, in that:

(i) the defendant became a member of a task force which was formed for the sole purpose of searching through Morgan's business files and removing any documents or records that contained evidence of a price-fixing agreement between or among Morgan and its competitors or reflected contacts between Morgan and its competitors;

(ii) as a member of the task force described above, the defendant did, in fact, search through Morgan's business files in European locations and remove and conceal or destroy documents and records that contained evidence of a price-fixing agreement between or among Morgan and its competitors or reflected contacts between Morgan and its competitors; and

(iii) the defendant gave another member of the task force, CC-4, documents he collected which referred to the price-fixing agreement so that CC-4 could destroy those documents to make them unavailable to law enforcement authorities.

### **POSSIBLE MAXIMUM SENTENCE**

5. The defendant understands that the maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1512(b)(2)(B) is:

- (a) a term of imprisonment for ten (10) years;
- (b) a fine in an amount of \$250,000; and
- (c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant 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)).

6. In addition, the defendant understands that, pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

### **SENTENCING GUIDELINES**

7. The United States and the defendant agree and stipulate that, pursuant to U.S.S.G. § 1B1.11(b)(1), the Nov.1998 version of the U.S.S.G. Manual, the version in effect at the time of the offense, should be applied because application of a later version would lead to a higher adjusted offense level.

## **SENTENCING AGREEMENT**

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly 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 (15<sup>th</sup>) day after the date of judgment; a period of incarceration in the United States of five (5) months; no period of supervised release; and no restitution (“the recommended sentence”).

(a) The United States and the defendant agree to use their best efforts to schedule the defendant’s Rule 11 hearing and sentencing hearing so that they will occur on a date prior to January 30, 2004.

(b) 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.

(c) The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3 in addition to any fine imposed.

(d) 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.

(e) The United States 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 particular facility designated by the Bureau of Prisons as 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 on a specified date.

9. The United States and the defendant agree that the Guidelines sentence range exceeds the term of incarceration contained in the recommended sentence. The United States agrees that, subject to the defendant's past and continuing cooperation, as described in Paragraph 11 of this Plea Agreement, it will file a motion under U.S.S.G. § 5K1.1 for a downward departure from the Guidelines sentence range with respect to the term of incarceration and will request that the Court impose the recommended sentence set out in Paragraph 8 because of the defendant's substantial assistance in the government's investigation and prosecution of violations of federal criminal laws in the carbon products industry. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 11, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's past and ongoing cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct. Under U.S.S.C. § 1B1.8, the United States agrees that self-incriminating information previously unknown to the United States that the defendant provides under this Plea Agreement and in discussions leading to the Plea Agreement will not be used in determining the defendant's applicable Guidelines range.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 10(b) below, shall be rendered void. Neither party may withdraw from this Plea Agreement, however, based on the type or location of the correctional facility to which the defendant is assigned to serve his sentence.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(d)(2)(A)). For a period of three (3) consecutive days following such a withdrawal of the guilty plea under this subparagraph, the United States shall take no action, based upon either a Relevant Offense, as defined in Paragraph 12 below, or any actual or alleged violation of the Plea Agreement, to revoke the defendant's release on his personal recognizance, to subject the defendant to service of process, arrest, or detention, or to prevent the defendant from departing the United States. If the defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding (Fed. R. Crim. P. 11(f)), except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in Paragraph 12 below, will be tolled for the period between the date of the signing of the Plea Agreement and the date the defendant withdrew his guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

#### **DEFENDANT'S COOPERATION**

11. The defendant will fully and truthfully cooperate with the United States in the prosecution of this case, the current federal investigation and violations of federal antitrust and related criminal laws involving the manufacture or sale of carbon products, any other federal investigation resulting from the current investigation, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). This

cooperation shall include, but not be limited to:

- (a) Producing in the United States and at other mutually agreed-upon locations all documents, including claimed personal documents, and other materials in his possession, custody, or control requested by the United States;
- (b) At the request of the United States, making himself available for interviews in the United States or at other mutually-agreed upon locations, not at the expense of the United States;
- (c) 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 any information, subject to the penalties of making false statements or declarations (18 U.S.C. § 1001) or obstruction of justice (18 U.S.C. § 1503);
- (d) Otherwise voluntarily providing the United States with any materials or information not requested in (a) through (c) of this paragraph that he may have that is relevant to any Federal Proceeding; and
- (e) When called upon to do so by the United States in connection with any Federal Proceeding, testifying in trial and grand jury or other proceedings in the United States fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503).



## **GOVERNMENT'S AGREEMENT**

12. 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 will, immediately following the imposition of the defendant's sentence, move to dismiss Count One of Indictment No. 2:03-CR-00631-RBS. The United States further agrees to not bring further criminal charges against the defendant 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 carbon products or undertaken in connection with any investigation of such a conspiracy ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

13. The United States agrees that when the defendant is required to travel to the United States for interviews by the United States, grand jury appearances, or court appearances under this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action based upon any Relevant Offense, to subject the defendant to arrest, detention, service of process, or prevention from departing the United States, except where the United States has sought to void the Plea Agreement under Paragraph 17. Counsel for the United States shall provide the defendant a letter to such effect in connection with any such travel required by the United States. This paragraph does not apply to the defendant's commission of perjury (18 U.S.C. § 1621), making false statements or declarations (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. § 401-402) in connection with any testimony or information provided or requested in any Federal Proceedings.

14. (a) Subject to the full and continuing cooperation of the defendant, as described in Paragraph 11 of this Plea Agreement, and upon the Court's acceptance of the defendant's

guilty plea and imposition of sentence in this case, the United States agrees not to seek to remove the defendant from the United States under Section 240 of the Immigration and Nationality Act, based upon the defendant's guilty plea and conviction in this case, should the defendant apply for or obtain admission to the United States as a nonimmigrant (hereinafter referred to as the "agreement not to seek to remove the defendant"). The agreement not to seek to remove the defendant is the equivalent of an agreement not to exclude the defendant from admission to the United States as a nonimmigrant or to deport the defendant from the United States. (Immigration and Nationality Act, § 240(e)(2));

(b) The Antitrust Division of the United States Department of Justice has consulted with the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security ("ICE"). The ICE, in consultation with the United States Department of State, has agreed to the inclusion in this Plea Agreement of this agreement not to seek to remove the defendant;

(c) So that the defendant will be able to obtain any nonimmigrant visa that he may need to travel to the United States, the ICE and the Visa Office, United States Department of State, have concurred in the granting of a nonimmigrant waiver of the defendant's inadmissibility. This waiver will remain in effect so long as this agreement not to seek to remove the defendant remains in effect. While the waiver remains in effect, the Department of State will not deny the defendant's application for a nonimmigrant visa on the basis of the defendant's guilty plea and conviction in this case, and the ICE will not deny his application for admission as a nonimmigrant on the basis of his guilty plea and conviction in this case;

(d) This agreement not to seek to remove the defendant will remain in effect so long as the defendant:

(i) acts and has acted consistently with his cooperation obligations under this Plea Agreement;

(ii) is not convicted of any felony under the laws of the United States, or any state, other than the conviction resulting from the defendant's guilty plea under this Plea Agreement or any conviction under the laws of any state resulting from conduct constituting an offense subject to this Plea Agreement; and

(iii) does not engage in any other conduct that would warrant his removal from the United States under the Immigration and Nationality Act.

The defendant understands that should the Antitrust Division become aware that the defendant has violated any of these conditions, the Antitrust Division will notify the ICE. The ICE will then determine, in consultation with the Antitrust Division, whether to rescind this agreement not to seek to remove the defendant;

(e) The defendant agrees to notify the Assistant Attorney General of the Antitrust Division should the defendant be convicted of any other felony under the laws of the United States or of any state; and

(f) Should the United States rescind this agreement not to seek to remove the defendant because of the defendant's violation of a condition of this Plea Agreement, the defendant irrevocably waives his right to contest his removal from the United States under the Immigration and Nationality Act on the basis of his guilty plea and conviction in this case, but retains his right to notice of removal proceedings.

#### **REPRESENTATION BY COUNSEL**

15. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the

defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

### **VOLUNTARY PLEA**

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

### **VIOLATION OF PLEA AGREEMENT**

17. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

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

**ENTIRETY OF AGREEMENT**

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

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

21. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: 11/17/2003

Respectfully submitted,

BY: /S/  
ROBIN D. EMERSON  
Defendant

BY: /S/  
LUCY P. MCCLAIN  
RICHARD S. ROSENBERG  
Attorneys, U.S. Department of Justice  
Antitrust Division  
170 S. Independence Mall West  
Philadelphia, PA 19106  
Tel: (215) 597-7401

BY: /S/  
MICHAEL S. KIM, ESQUIRE  
Counsel for Robin Emerson

UNITED STATES OF AMERICA )  
 )  
 v. ) Criminal No.: 03-631  
 )  
 ROBIN D. EMERSON, ) Filed:  
 )  
 Defendant. ) Violation: 18 U.S.C. § 1512(b)(2)(B)

BY:                     /S/                      
MICHAEL S. KIM, ESQUIRE  
Counsel for Robin Emerson