

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

UNITED STATES OF AMERICA)
) Criminal No. 03-631
v.)
) Filed: 9/24/2003
ROBIN D. EMERSON,)
Defendant.) 18 U.S.C. § 371;
) 18 U.S.C. § 1512(b)(2)(B)

INDICTMENT

COUNT ONE

The Grand Jury charges:

1. Robin D. Emerson is hereby indicted and made a defendant on the charges stated below. During the period covered by this Indictment, defendant Robin D. Emerson was an employee or a former employee of Morganite Electrical Carbon Ltd., located in Swansea, United Kingdom, which is a subsidiary of The Morgan Crucible Company plc (“Morgan”).

2. 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 involving various types of carbon products manufactured and sold by Morgan (hereinafter “carbon products”) committed by the defendant and others. In or about April 1999 and August 2001 this federal grand jury issued subpoenas duces tecum to Morganite Industries, Inc., a United States subsidiary of Morgan.

3. From in or about April 1999, and continuing thereafter until in or about August 2001, the exact dates being unknown to the Grand Jury, the defendant,

ROBIN D. EMERSON

and unnamed co-conspirators, both known and unknown to the Grand Jury, knowingly and wilfully conspired and agreed to knowingly and wilfully commit offenses against the United States, that is: (a) to corruptly persuade and attempt to corruptly persuade other persons known to the Grand Jury with intent to influence their testimony in an official proceeding; and (b) to corruptly persuade and attempt to corruptly persuade other persons known to the Grand Jury with intent to cause or induce those other persons to alter, destroy, mutilate or conceal records and documents with the intent to impair their availability 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, contrary to Title 18, United States Code, Section 1512(b)(1) and Section 1512(b)(2)(B), respectively.

I

MANNER AND MEANS OF THE CONSPIRACY

It was part of the conspiracy that:

4. Defendant and his co-conspirators interfered with and obstructed the investigation being conducted by the United States Department of Justice, Antitrust Division, through the federal grand jury sitting in the Eastern District of Pennsylvania, in that the defendant and his co-conspirators would provide false and fictitious relevant and material information to both the federal grand jury and to the antitrust attorneys who were conducting the federal grand jury investigation into the carbon products industry.

5. The co-conspirators, with the help of the defendant, prepared a “script”

containing false material information which was to be followed by anyone questioned by either the Antitrust Division or the federal grand jury.

6. The conspirators contacted other persons who had information relevant to the investigation being conducted by the Antitrust Division and the federal grand jury and distributed the “script” to them with instructions to follow the “script” when answering questions posed by either the Antitrust Division or the federal grand jury.

7. Defendant and his co-conspirators removed, concealed or destroyed from their business files any documents which contained evidence of an anticompetitive agreement or reflected contacts between or among their competitors.

8. Defendant and his co-conspirators persuaded, directed and instructed other persons to remove, conceal or destroy any documents which contained evidence of an anticompetitive agreement or reflected contacts between or among their competitors.

II

OVERT ACTS

9. In furtherance of the conspiracy and to effect the objects of the conspiracy, the following overt acts, among others, were committed:

(a) In or about April 1999, in response to the subpoena duces tecum served on Morganite Industries, Inc., a co-conspirator (CC-1) instructed and directed employees of Morgan entities who were involved in the price-fixing agreement to remove and conceal or destroy from their files any documents and records that contained evidence of Morgan’s price-fixing agreement with its competitors or contacts between or among Morgan and its competitors.

(b) In or about April 1999, CC-1 asked a co-conspirator (CC-3) to assemble a task force, the sole purpose of which was to search through Morgan's business files and remove any documents that contained evidence of a price-fixing agreement between or among Morgan and its competitors or reflected contacts between Morgan and its competitors.

(c) In or about April 1999, CC-3 formed the task force consisting of the defendant and two additional Morgan employees (CC-4 and CC-5) who were aware of and participated in the price-fixing agreement and directed them to search Morgan's files in European locations and remove and conceal or destroy any documents that contained evidence of Morgan's price-fixing agreement with its competitors or contacts between or among Morgan and its competitors.

(d) During the period beginning in or about April 1999 and continuing to in or about June 1999, the defendant and the rest of the task force formed by CC-3 visited Morgan's facilities in Europe and removed and concealed or destroyed all of the documents and records from Morgan's files that contained evidence of Morgan's price-fixing agreement with its competitors or contacts between or among Morgan and its competitors. The defendant and the other members of the task force gave CC-4 collected documents which referred to the price-fixing agreement so that CC-4 could conceal these documents from the United States and European authorities but also so that the documents could be maintained in a concealed location in order for Morgan to continue to monitor the price-fixing agreement.

(e) At a Technical Committee Meeting among the co-conspirators of the

price-fixing agreement, including the defendant, held in or about April 1999, CC-4 told those in attendance that Morgan had formed a task force and had removed incriminating evidence from its files. CC-4 suggested that all of the co-conspirators in the price-fixing agreement should do the same.

(f) In or about May 1999, a co-conspirator (CC-1) directed another co-conspirator (CC-2) to instruct an employee of one of Morgan's United States subsidiaries to go through his business files and remove and conceal or destroy any documents that contained evidence of Morgan's price-fixing agreement with its competitors or referred to contacts between or among Morgan and its competitors. In or about August 2001, the employee destroyed documents relevant to the Grand Jury's investigation due to these instructions from CC-2.

(g) In or around November 1999, CC-1 directed the defendant and another co-conspirator (CC-6) to review Morgan's business records, including expense records; to identify the dates of and the persons in attendance at the price-fixing meetings Morgan had with its competitors; and to turn that information over to CC-1.

(h) In or around November 1999, CC-1 directed a co-conspirator (CC-7) to create a timeline, based on the information collected by the defendant and CC-6 and referred to in Paragraph 9(g) above, that reflected all of the meetings Morgan had with its co-conspirators in the price-fixing agreement.

(i) In or around November 1999, CC-1 called several of the co-conspirators, including, among others, CC-3, CC-6 and CC-7 to a meeting at Morgan's headquarters in Windsor, England, to discuss the antitrust investigation being conducted in the United States and how to deal with it. The meeting was carried out over a period of several days.

(j) During the meeting described in Paragraph 9(i), the co-conspirators discussed possible justifications or legitimate explanations for Morgan's meetings with its competitors. The co-conspirators agreed that they would falsely characterize their meetings with competitors as joint venture meetings rather than truthfully describe them as price discussion meetings.

(k) During the meeting described in Paragraph 9(i), the co-conspirators agreed that they would prepare summaries of the meetings Morgan had with its competitors; that the summaries would falsely characterize the meetings as joint venture meetings; and that the summaries would purposely exclude mention of pricing discussions Morgan had with its competitors at those meetings (hereinafter referred to as the "script").

(l) During the meeting described in Paragraph 9(i), the co-conspirators agreed that they would each follow the script when they were questioned during the course of the antitrust investigation and that the script contained the version of events that all of the employees of Morgan entities who were involved in the price-fixing conspiracy should follow when questioned during the investigation.

(m) During the meeting described in Paragraph 9(i), the co-conspirators designated CC-6 as the "scribe" whose purpose it was to create the master version of the script.

(n) During the meeting described in Paragraph 9(i), the co-conspirators, with the help of the defendant, did in fact prepare a materially false and fictitious script that intentionally omitted all references to pricing discussions that occurred at meetings held between and among Morgan and its competitors. The materially false and fictitious

script was distributed to all of the price-fixing co-conspirators employed by Morgan entities.

(o) During the meeting described in Paragraph 9(g), CC-6 faxed a portion of the script to a U.S. based employee (CC-8) of a Morgan entity, who was involved in the price-fixing conspiracy but who was not present at the meeting, and asked CC-8 to approve the contents of the materially false and fictitious script. Despite the fact that the script was materially false and failed to include significant aspects of the pricing discussions held between Morgan and its competitor, CC-8 informed CC-6 that the script was acceptable to him as it comported with CC-1's description to him of the agreement reflected in Paragraph 9(j) above.

(p) Sometime after January 2000, to prepare themselves for questioning during the course of the investigation, the Morgan co-conspirators engaged in a "rehearsal" at which they were questioned and cross-examined on their recollection of the materially false and fictitious information contained in the script.

(q) Sometime during or soon after the "rehearsal" referred to in Paragraph 9(p) above, CC-1 expressed his concern that certain employees involved in meetings with competitors would tell the truth to authorities. After discussing this concern with CC-3, CC-1 implemented a plan to separate those employees from the company before they were questioned, either by placing them into retirement or making them consultants, so that they could not be forced to testify in the investigation.

(r) Sometime after January 2000, CC-1 asked CC-3 to prepare an early retirement package for the defendant because he failed to withstand the questioning and cross-examination of the "rehearsal" and needed to be removed from Morgan before he had an opportunity to be questioned by authorities conducting the antitrust investigation.

(s) Sometime after January 2000, the defendant retired from Morgan.

(t) In or around September 2000, CC-3 asked CC-6 to type a portion of the handwritten script he prepared during the meeting described in Paragraph 9(i) above and to fax the script to CC-3.

(u) In or around November 2000, CC-3 met with an individual (CW-1) who was an executive of a company that had engaged in the price-fixing agreement with Morgan.

(v) During the meeting described in Paragraph 9(u) above, CC-3 told CW-1, among other things, that the United States was conducting an antitrust investigation into the carbon brushes industry and that Morgan was having difficulty with the United States investigation in that it found itself to be the focus of the investigation.

(w) During the meeting described in Paragraph 9(u) above, CC-3 told CW-1 that while Morgan told the authorities that its executives had been at meetings with its competitors, Morgan also told the authorities that the meetings concerned general business issues and that no pricing discussions were held during the course of the meetings. CC-3 further told CW-1 that he would send CW-1 a summary of what Morgan's executives had told the authorities (the script).

(x) During the meeting described in Paragraph 9(u) above, CC-3 told CW-1 that he was certain that executives at CW-1's company who participated in the price-fixing meetings would be interrogated by the United States because Morgan had disclosed their names to the United States during the course of the investigation. CC-3 further told CW-1 that if the recollection of those who attended the meetings with Morgan was the same as or close to the script, it would help convince the United States that Morgan's version of what transpired at the meetings was truthful and would ultimately benefit both Morgan and the

company for which CW-1 worked.

(y) During the meeting described in Paragraph 9(u) above, CC-3 told CW-1 to distribute the script to potential witnesses whom CC-3 identified as having attended and participated in the price-fixing meetings and whose names Morgan had already disclosed to the authorities; to treat the script confidentially, and to destroy the script after having read and distributed it.

(z) Sometime in or around December 2000, CC-3 mailed or otherwise delivered to CW-1 the materially false and fictitious script and caused CW-1 to mail or otherwise deliver photocopies of the script to certain of CW-1's co-workers whom CC-3 identified as having participated in the price-fixing agreement and having attended price-fixing meetings with Morgan.

(aa) On or about February 26, 2001, CC-1 and CC-3 met with CW-1 and another individual at the Heathrow Airport. During the meeting CC-1 discussed with CW-1 the Grand Jury investigation being conducted by the Antitrust Division. CC-1 told CW-1 that Morgan had a problem in the United States and that they all needed to be very careful.

(bb) At the meeting referred to in Paragraph 9(aa) above, CC-1 told CW-1 that CW-1 needed to make sure that his employees told the same story as Morgan when they were questioned by the government authorities so that both Morgan and CW-1's company could escape prosecution in the United States antitrust investigation. CC-1 told CW-1 that he knew CW-1's company was aware of the story Morgan had told the authorities.

(cc) At the meeting referred to in Paragraph 9(aa) above, CC-1 told CW-1 that the only way for Morgan and CW-1's company to get out of the investigation

was if everyone who was questioned by the authorities gave the same testimony because by doing so the authorities would be convinced that they and Morgan were telling the truth about the meetings they had together. CC-1 told CW-1 that there was a high probability that the United States investigation would be closed if everyone's recollection of the meetings was the same.

(dd) At the meeting referred to in Paragraph 9(aa) above, CC-1 told CW-1 that one way to handle the concern that employees involved in meetings with competitors would tell the truth to authorities was to separate them from the company before they were questioned, either by placing them into retirement or making them consultants, so that they could not be forced to testify by their employer. CC-1 told CW-1 that Morgan had adopted this approach and suggested that CW-1 do the same.

(ee) At the meeting referred to in Paragraph 9(aa) above, CC-1 told CW-1 that it was important to keep the United States investigation from spilling over into Europe; that there was a new generation of law administrators in Europe who had learned much from the Americans and who would apply the same system of investigation in the carbon brush industry as the United States; and that it was in their common interest to stop the investigation before it reached Europe. CC-1 told CW-1 that the only way to stop the

investigation was for everyone who was questioned by the authorities to give the same testimony.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

COUNT TWO

The Grand Jury further charges that:

10. Each and every allegation contained in Paragraphs 1 and 2 of Count One of this Indictment are here realleged with the same full force and effect as though said Paragraphs were set forth in full detail.

11. Beginning in or about April 1999 and continuing to in or about June 1999, the exact dates being unknown to the Grand Jury, the defendant

ROBIN D. EMERSON

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:

(a) the defendant became a member of a task force which was formed for the sole purpose of searching through Morgan's business files to remove and conceal or destroy 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;

(b) as a member of the task force described above, the defendant did, in fact, search through Morgan's business files in European locations and collect, remove, destroy, and conceal 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 to prevent their availability for use by the grand jury; and

(c) 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 conceal those documents from the

United States and European authorities but also so that the documents could be maintained in a concealed location in order for Morgan to continue to monitor the price-fixing agreement.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1512(b)(2)(B).

A TRUE BILL:

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FOREPERSON

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