IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	Criminal No. 03-627
v.	)	
	)	Judge Marvin Katz
JACOBUS JOHAN ANTON KROEF,	)	
	)	Filed: 9/29/2003
Defendant.	)	

GOVERNMENT'S RULE 11 MEMORANDUM

The United States and Jacobus Johan Anton Kroef have entered into a plea agreement pursuant to which Jacobus Johan Anton Kroef will waive indictment and plead guilty to the captioned Information. The one-count Information charges Jacobus Johan Anton Kroef with witness tampering in violation of Title 15 U.S.C. § 1512(b)(1). The purpose of this memorandum is to provide the Court with sufficient information for acceptance of the guilty 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
STATUTE VIOLATED

A. 18 U.S.C. § 1512(b)(1)

Title 18, United States Code, Section 1512(b)(1) provides:

> Whoever . . . corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to . . . influence, delay, or prevent the testimony of any person in an official proceeding. . . is guilty of a felony.

B. The Information

The Information charges that during the period from in or about November 1999, and continuing thereafter until in or about December 2000, Jacobus Johan Anton Kroef attempted to corruptly persuade persons, whose identities are known to the Antitrust Division of the United States Department of Justice, with intent to influence their testimony in an official proceeding, that is, the federal grand jury sitting in the Eastern District of Pennsylvania, investigating, among other things, possible federal criminal antitrust violations occurring in the carbon product industry.

C. The Elements of the Offense

The elements of the offense of witness tampering, each of which the United States would be required to prove beyond a reasonable doubt at trial are:

(1) that Jacobus Johan Anton Kroef knowingly endeavored to corruptly persuade another person or other persons; and

(2) at the time Jacobus Johan Anton Kroef endeavored to corruptly persuade those other persons, he did so intending to influence their testimony in an official proceeding.

D. Maximum Penalty

The maximum penalty Jacobus Johan Anton Kroef may receive upon his conviction in this case is a term of imprisonment of 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 Jacobus Johan Anton Kroef 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)).

In addition, pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court is required to order Jacobus Johan Anton Kroef to pay a $100 special assessment upon conviction of the charged offense.

II
FACTUAL BASIS

E. Factual Basis

Had this case gone to trial, the United States wold have presented evidence to prove the following facts. It is not intended to be exhaustive in terms of details surrounding the charged offense of witness tampering.

(a) During the period 1980 until January 1998, Jacobus Johan Anton Kroef (Kroef) was employed by and held various positions with The Morgan Crucible Company plc ("Morgan"), a company located and headquartered in Windsor, England.

(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. In or about April 1999, this federal grand jury issued a subpoena duces tecum to Morganite Industries, Inc., a United States subsidiary of Morgan.

(c) In or around November 1999, Kroef attended a meeting at Morgan headquarters in Windsor, England, for the purpose of creating a materially false and fictitious "script" to be followed by those who had attended price-fixing meetings on behalf of Morgan in the event they were questioned by attorneys of the Antitrust Division or the federal grand jury. During this

meeting, Kroef and others did, in fact, draft 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.

(d) In or around September 2000, Kroef asked that a typed version of a portion of the "script" be faxed to him at his home.

(e) In or around November 2000, Kroef met with an executive of a company that had engaged in the price-fixing agreement with Morgan (CW-1). During this meeting, Kroef 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. At this meeting, Kroef told CW-1 that while Morgan had told the authorities its executives had been at meetings with competitors, Morgan also told the authorities that the meetings concerned general business issues and that no pricing discussions were held during the course of those meetings. Kroef told the executive with whom he was meeting that he would send him a summary of what Morgan's executives had told the authorities (the "script").

(f) During the November 2000 meeting, Kroef told CW-1 that he was certain that executives of 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. Kroef 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 price-fixing meetings was truthful. Kroef told CW-1 to distribute the "script" to those who had attended price-fixing meetings with Morgan; to treat the "script" confidentially, and to destroy the script after having

read and distributed it.

(g) Sometime in or around December 2000, Kroef mailed or otherwise delivered a copy of the materially false and fictitious "script" to CW-1 who, after receiving the "script," distributed it to those at his company who had attended price-fixing meetings with Morgan; told them that the "script" contained Morgan's version of what transpired at the price-fixing meetings, and told them to destroy the "script" after reading it and noting its contents.

III
JURISDICTION AND VENUE

F. JURISDICTION

Title 18 U.S.C. § 1512(h) provides for extraterritorial Federal jurisdiction over an offense under Section 1512.

G. VENUE

Title 18 U.S.C. § 1512(I) provides that a prosecution under Section 1512 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected.

IV
PLEA AGREEMENT

H. PLEA AGREEMENT

The guilty plea in this case will be entered pursuant to a plea agreement entered into between Jacobus Johan Anton Kroef and the Antitrust Division. The Plea Agreement provides that Jacobus Johan Anton Kroef will enter a plea of guilty in the Eastern District of Pennsylvania,

pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, to a one-count criminal Information charging him with witness tampering, in violation of Title 18 U.S.C. § 1512(b)(1).

Salient terms of the Plea Agreement provide as follows: First, that the United States and Jacobus Johan Anton Kroef have agreed to jointly recommend that the Court impose a sentence requiring Mr. Kroef to serve a period of incarceration in the United States of four (4) months with no period of supervised release and to pay a $20,000 criminal fine, with no requirement or obligation to pay restitution. Under the terms of the Plea Agreement, Mr. Kroef may not withdraw his guilty plea so long as the Court imposes the jointly recommended sentence.

Second, because the agreed-upon sentence is below the Guidelines sentence range applicable to Mr. Kroef's offense, the United States has agreed that, based on Mr. Kroef's past and ongoing cooperation, 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 because of the substantial assistance Mr. Kroef has provided in the government's investigation of violations of federal criminal laws in the carbon products industry. Subject to Mr. Kroef's continued cooperation, the United States also agreed to fully advise the Court and the Probation Office of the fact, manner, and extent of Mr. Kroef's cooperation, all material facts relating to his involvement in the charged offense, and all other relevant conduct. The Plea Agreement also recognizes that 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.

Third, Mr. Kroef has agreed to fully cooperate with the United States in its investigation and prosecution of violations of federal criminal laws in the carbon products industry. Subject to

Mr. Kroef's continuing cooperation, the United States has agreed not to bring further criminal charges against him for any act or offense committed prior to the date of the Plea Agreement and undertaken in connection with the antitrust investigation of the carbon products industry.

Finally, in exchange for Mr. Kroef's plea and his cooperation, the United States has agreed not to seek to remove the defendant from the United States and to grant him a nonimmigrant waiver of inadmissibility on the basis of Mr. Kroef's plea and conviction in this case.

Dated: 9/29/2003

Respectfully submitted,

/S/

LUCY P. MCCLAIN
RICHARD S. ROSENBERG
Attorneys, Antitrust Division
U.S. Department of Justice
Philadelphia Office
The Curtis Center, Suite 650W
170 S. Independence Mall West
Philadelphia, PA 19106
Tel. No. (215) 597-7401