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FILED

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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO VENUE

UNITED STATES OF AMERICA v. MARTIN PETERSEN, Defendant.	PLEA AGREEMENT

PLEA AGREEMENT

The United States of America and Martin Petersen ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) 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) to be charged by Indictment;

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

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above 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.

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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) For the purposes of the Plea Agreement, the "relevant period" is that period beginning in or about December 2000 and continuing until in or about December 2001. During the relevant period, the defendant was Head of Marketing and Sales for the Rubber Group of Bayer AG ("Bayer"), an entity organized and existing under the laws of Germany with its principal place of business in Leverkusen, Germany. During the relevant period, Bayer was engaged in the manufacture and sale of rubber chemicals in the United States and elsewhere.

(b) During the relevant period, the defendant participated in a conspiracy with other persons and entities engaged in the manufacture and sale of rubber chemicals, the primary purpose of which was to maintain and raise the prices of certain rubber chemicals sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant participated in conversations and attended meetings with representatives of other major rubber chemical firms. During such meetings and conversations, defendant and co-conspirators agreed to raise and maintain prices of certain rubber chemicals to be sold in the United States and elsewhere.

(c) During the relevant period, rubber chemicals sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of rubber chemicals, as well as payments for rubber chemicals, traveled in interstate and foreign commerce. The business activities of Bayer and its co-conspirators in connection with the production and sale of rubber chemicals affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Rubber chemicals affected by this conspiracy were sold by one or more of the conspirators to customers located in this District.

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POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the maximum penalty that may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

(a) a term of imprisonment for three (3) years (15 U.S.C. § 1);

(b) a fine in an amount equal to the greatest of (1) $350,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of one (1) year 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)(5); 18 U.S.C. § 3583(b)(3) and (e)(3), and U.S.S.G. § 5D1.2(a)(3)).

6. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay restitution to the victims of the offense; and

(b) 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. Sentencing for the offense to be charged will be conducted pursuant to the U.S.S.G. Manual in effect on the day of sentencing, unless, as authorized by U.S.S.G. § 1B1.11, the court determines that use of the Guidelines Manual in effect on the date that the defendant is sentenced would violate the ex post facto clause of the United States Constitution. If the court makes such a determination, the court shall use the Guidelines Manual in effect on December 2001, the last date that the offense of conviction was committed. The United States and the defendant agree that, for purposes of sentencing, the appropriate volume of affected commerce attributable to the defendant is more than $15 million, pursuant to U.S.S.G. § 2R1.1(b)(2)(E). As authorized by U.S.S.G. § 1B1.8, the United States agrees that self-

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

SENTENCING AGREEMENT

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

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

10. The United States agrees to recommend that the defendant pay to the United States a criminal fine of $50,000 as part of the sentence in this case and that the fine be paid, with interest, in the following installments: within 30 days of imposition of sentencing – $5,000; at the one-year anniversary of imposition of sentence ("anniversary") – $5,000; at the two-year anniversary – $10,000; at the three-year anniversary – $10,000; at the four-year anniversary – $10,000; and at the five-year anniversary – $10,000. 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.

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

12. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 15 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 5K1.1, for a downward departure from the guidelines sentence in this case because of the defendant's substantial assistance in the government's investigations and prosecutions of violations of federal criminal law in the rubber chemicals and synthetic rubber industries. The motion will describe the nature and extent of the defendant's cooperation and recommend a downward departure from the Guidelines' fine range and term of imprisonment range in this case.

13. The defendant understands and agrees that the decision of the United States on the extent of the departure recommended by any motion filed pursuant to U.S.S.G. § 5K1.1, as described in Paragraph 12 above, is the sole and exclusive decision of the United States and that the decision will be binding on him. The defendant understands that the decision of the United States on the extent of the departure will not depend on whether convictions are obtained in any case. The defendant also understands that the Court will not be bound by any recommendation made by the United States.

14. Subject to the ongoing, full, and truthful cooperation of the defendant, as described in Paragraph 15 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and his commitment to prospective 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. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.

DEFENDANT'S COOPERATION

15. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigations of violations of federal antitrust and related criminal laws involving the manufacture or sale of rubber chemicals and any type of synthetic rubber in the United States and elsewhere, and any litigation or other

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

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

(b) making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents 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 (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

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

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial 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).

AGREEMENT BY THE UNITED STATES

16. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 15 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of sentence, the United States will 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 any antitrust conspiracy involving the manufacture or sale of rubber chemicals or any type of synthetic rubber ("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.

17. The United States agrees that when Defendant travels to the United States for interviews, grand jury appearances, or court appearances pursuant to 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 Defendant to arrest, detention, or service of process, or to prevent Defendant from departing the United States. This paragraph does not apply to Defendant' s commission of perjury (18 U.S.C. § 1621), making false statements (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 Proceeding.

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

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

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

REPRESENTATION BY COUNSEL

20. 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 knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

21. 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

22. 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 failed to provide full and truthful cooperation, as described in Paragraph 15 of this Plea Agreement, or has otherwise 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 may seek Court review of any determination made by the United States under this Paragraph to

void any of its obligations under the 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.

23. 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. Crim. P. 11(f) and Fed. R. Evid. 410.

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

ENTIRETY OF AGREEMENT

25. 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.

26. 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.

27. 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: 12/2/04

BY: _____
Martin Petersen
Defendant

_____
Henry E. Hockeimer, Esq.
Counsel for Martin Petersen
Hangley Aronchick Segal & Pudlin
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Respectfully submitted,

BY: _____
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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.

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San Francisco, CA 94102

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

Dated: December 2, 2004

Richard W. Wieking, Clerk

By: Monica Tutson, Deputy Clerk