

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

UNITED STATES OF AMERICA)
) Criminal No. 02-733
v.)
) Judge James T. Giles
MORGANITE, INC. and)
THE MORGAN CRUCIBLE) Filed: 11-04-02
COMPANY PLC)
)
Defendants.)

GOVERNMENT’S RULE 11 MEMORANDUM

The United States, Morganite, Inc. (Morganite) and The Morgan Crucible Company plc (Morgan Crucible) have entered into a plea agreement pursuant to which Morganite will waive indictment and plead guilty to Count One of the captioned Information and Morgan Crucible will waive indictment and plead guilty to Counts Two and Three of the captioned Information. The three-count Information charges Morganite with a violation of the Sherman Act, 15 U.S.C. § 1, and Morgan Crucible with two counts of obstruction of justice in violation of 18 U.S.C. § 1512(b)(1) and 18 U.S.C. § 1512(b)(2)(B). The purpose of this memorandum is to provide the Court with sufficient information to accept the pleas by setting forth the violated statutes, a description of the criminal Information, the terms of the Plea Agreement, and a preliminary statement of facts which supports the agreement.

I
STATUTE VIOLATED – COUNT ONE (MORGANITE)

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 - Count One

Count One of the Information charges Morganite with participating in a conspiracy to suppress and eliminate competition by fixing the prices of (a) current collectors sold to certain transit authorities and private customers; (b) carbon brushes sold to certain original equipment manufacturers for automotive applications; (c) carbon brushes sold to certain original equipment manufacturers for battery electric vehicle applications; and (d) carbon brushes sold to certain transit authorities (hereinafter collectively “relevant carbon products”) sold in the United States and elsewhere, beginning at least as early as January 1990 and continuing until at least May 2000, in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1)

C. Elements of the Offense (15 U.S.C. Section 1)

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 or 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 Morganite 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.

II

STATUTE VIOLATED – COUNT TWO (MORGAN CRUCIBLE)

A. 18 U.S.C. Section 1512(b)(1)

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

Whoever knowingly uses intimidation or physical force, threatens, or 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; . . . shall be fined under this title or imprisoned not more than ten years or both.

B. The Information - Count Two

Count Two of the Information charges that, beginning in or about November 2000 and continuing thereafter until in or about February 2001, Morgan Crucible knowingly attempted to corruptly persuade persons, whose identities are known to the United States Department of Justice, Antitrust Division (hereinafter “Antitrust Division”), with intent to influence their testimony in official proceedings before the grand jury sitting in the Eastern District of Pennsylvania that was investigating a conspiracy to fix the price of various carbon products sold in the United States and elsewhere.

C. Elements of the Offense (18 U.S.C. § 1512(b)(1))

The elements of a violation of 18 U.S.C. § 1512(b)(1), each of which the United States

must prove beyond a reasonable doubt at trial, are:

- (1) The defendant knowingly attempted to corruptly persuade the person identified in the Indictment as a witness; and
- (2) The defendant did so intending to influence, delay, or prevent the testimony of that person in an official proceeding.

D. Maximum Penalty

The maximum penalty Morgan Crucible may receive upon its conviction on Count Two in this case is a fine in an amount equal to the largest of: (a) \$500,000; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

III

STATUTE VIOLATED – COUNT THREE (MORGAN CRUCIBLE)

A. 18 U.S.C. Section 1512(b)(2)(B)

Section 1512(b)(2)(B) of Title 18, United States Code, provides:

Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to . . . cause or induce any person to . . . alter, destroy, mutilate, or conceal an object with intent to impair the object’s integrity or availability for use in an official proceeding; . . . shall be fined under this title or imprisoned not more than ten years or both.

B. The Information - Count Three

Count Three of the Information charges that, beginning in or about April 1999 and continuing thereafter to in or about August 2001, Morgan Crucible knowingly corruptly persuaded an employee of one of its United States subsidiaries, whose identity is known to the Antitrust Division, with intent to cause or induce that employee to destroy or conceal certain

documents located within the United States in the custody and control of the defendant's subsidiary and with intent to impair the availability of those documents for use in official proceedings before the grand jury sitting in the Eastern District of Pennsylvania that was investigating a conspiracy to fix the price of various carbon products sold in the United States and elsewhere.

C. Elements of the Offense (18 U.S.C. § 1512(b)(2)(B))

The elements of a violation of 18 U.S.C. § 1512(b)(2)(B), each of which the United States must prove beyond a reasonable doubt at trial, are:

- (1) The defendant knowingly corruptly persuaded the person identified in the Information to alter, destroy, mutilate, or conceal an object, and
- (2) The defendant did so intending to impair the object's integrity or availability for use in an official proceeding

D. Maximum Penalty

The maximum penalty Morgan Crucible may receive upon its conviction on Count Three in this case is a fine in an amount equal to the largest of: (a) \$500,000; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

IV
FACTUAL BASIS

This statement of facts is intended to be used as a factual basis for the guilty pleas of Morganite to Count One and Morgan Crucible to Counts Two and Three. It is not intended to be exhaustive in terms of details surrounding the charged conspiracy or obstruction of justice.

A. Count One (15 U.S.C. § 1) (Morganite)

1. Background

Carbon brushes are used to transfer electrical current in direct current motors by acting as the rubbing contacts for electrical connectors in the motors. Direct current motors are used in a variety of products including automobiles, battery electric vehicles, and public transit vehicles. Carbon collectors are used to transfer electrical current from wires or rails for use in vehicles that are not independently powered.

2. The Sherman Act Conspiracy

During the period covered by Count One of the Information, Morganite was a North Carolina corporation with its principal place of business in Dunn, North Carolina. Morganite sold relevant carbon products to various customers located in the United States.

As alleged in the Information, beginning at least as early as January 1990 and continuing until at least May 2000, Morganite and certain other competitor companies entered into and participated in a combination to suppress and eliminate competition by fixing the price of relevant carbon products sold in the United States and elsewhere. Although the conspiracy covered the period identified in the Information, the conspiracy included several product markets and was carried out in the United States for periods that varied by product market. As to the current collector market, the conspiracy was carried out in the United States at least as early as January 1990 and continued until at least May 2000. As to carbon brushes sold to original equipment manufacturers for automotive applications, the conspiracy was carried out in the United States beginning at least as early as December 1993 and continued until at least September 1998. As to carbon brushes sold to original equipment manufacturers for battery electric vehicle applications, the conspiracy was carried out in the United States beginning at

least as early as February 1995 and continued until at least September 1998. As to carbon brushes sold to transit authorities, the conspiracy was carried out in the United States beginning at least as early as February 1995 and continued until at least September 1998.

The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among Morganite and co-conspirators, the substantial terms of which were to agree to fix and maintain prices and to coordinate pricing for the sale of relevant carbon products sold in the United States and elsewhere. For purposes of forming and carrying out the charged combination and conspiracy, Morganite and co-conspirators, among other things:

- (a) participated in meetings and conversations in Europe, Mexico and Canada to discuss the prices of relevant carbon products sold in the United States and elsewhere;
- (b) agreed, during those meetings and conversations, to charge prices at certain levels and otherwise increase or maintain prices of relevant carbon products sold in the United States and elsewhere; and
- (c) discussed and exchanged price quotations to certain customers so as not to undercut the price of a competitor.

3. Interstate and Foreign Commerce

At all times during the conspiracy, the Morganite and co-conspirators sold a substantial quantity of relevant carbon products to customers located in states or countries other than the states or countries in which the those products were produced.

B. Count Two (18 U.S.C. § 1512(b)(1)) (Morgan Crucible)

During the period covered by Count Two of the Information, Morgan Crucible was a corporation organized and existing under the laws of the United Kingdom with its principal place of business in Windsor, England. Morgan Crucible was the parent company of Morganite Industries, Inc., which was the parent company of Morganite.

As alleged in Count Two of the Information, in or about April 1999, a 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. Beginning in or about November 2000 and continuing thereafter until in or about February 2001, Morgan Crucible knowingly attempted to corruptly persuade persons, whose identities are known to the Antitrust Division, with intent to influence their testimony in the grand jury's investigation. Evidence regarding Morgan Crucible's efforts to corruptly influence testimony includes:

- (1) In or around November 2000, a representative of Morgan Crucible (hereinafter "the representative") met with an officer of a co-conspirator company and discussed, among other things, the grand jury investigation taking place in the United States.
- (2) During that meeting, the representative disclosed to the co-conspirator's officer false information Morgan Crucible had provided to the authorities who were conducting the grand jury investigation in order to convince the authorities that the price-fixing meetings between and among the co-conspirators were legitimate business meetings rather than conspiratorial meetings.
- (3) During that meeting, the representative said he would send to the co-conspirator's

officer a document containing Morgan Crucible's statements to the authorities (hereinafter "script") and instructed him (a) to distribute the script to potential witnesses whom the representative identified as having attended and participated in the conspiratorial meetings and whose names Morgan Crucible had already disclosed to authorities and (b) to treat the script confidentially and to destroy it after having read and distributed it. The representative told the co-conspirator's officer that it would be in their companies' mutual and beneficial interests if the potential witnesses the representative identified all gave the same false information to the authorities conducting the grand jury investigation as Morgan Crucible had given and which was contained in the script.

- (4) Sometime in or around November 2000, the representative mailed to the co-conspirator's officer the script containing false statements regarding events that had occurred at certain conspiratorial meetings.
- (5) Sometime in or around December 2000, the representative caused the co-conspirator's officer to distribute copies of the script to those persons the representative had identified at the November 2000 meeting, to tell them that the script was Morgan Crucible's version of events, and to instruct them to destroy the script after reading and noting its contents.
- (6) Sometime in or around February 2001, the representative and a high-level executive of Morgan Crucible (hereinafter collectively "the representatives") met again with the co-conspirator's officer. At this meeting the representatives again attempted to influence the co-conspirators to give the same false information

when questioned by the authorities as Morgan Crucible had given, with the intent to convince the authorities to conclude their investigation without bringing formal charges against Morgan Crucible or the co-conspirators.

- (7) During the February 2001 meeting with the co-conspirator's officer, the representatives, in order to convince the co-conspirators to repeat Morgan Crucible's false statements given to the authorities conducting the grand jury investigation in the United States, told the co-conspirator's officer that if the United States grand jury were allowed to go forward, the price-fixing investigation would spread to the European Union, which had become more aggressive in its investigations, and where the co-conspirator was a much larger competitor and would face more serious economic consequences than it would face in the United States.

C. Count Three (18 U.S.C. § 1512(b)(2)(B)) (Morgan Crucible)

As alleged in Count Three of the Information, in or about April 1999 and in or about August 2001, a 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 subpoenas duces tecum to Morganite Industries. The scope of the subpoenas included all divisions and affiliates of Morganite Industries that were located in the United States. Beginning in or about April 1999 and continuing thereafter to in or about August 2001, Morgan Crucible knowingly corruptly persuaded an employee of one of its United States subsidiaries with intent to cause or induce that employee to destroy or conceal certain documents located within the United States in the custody and control of the defendant's subsidiary and

with intent to impair the availability of those documents for use in official proceedings before the grand jury. Evidence regarding Morgan Crucible's efforts to cause or induce the employee to destroy or conceal documents includes:

- (1) In or around April 1999, a representative of Morgan Crucible¹ telephoned its subsidiary's employee and instructed its subsidiary's employee to remove, conceal, or destroy any documents that related to or reflected any contacts with competitors.
- (2) In or around August 1999, a representative of Morgan Crucible met with its subsidiary's employee and discussed, among other things, the grand jury's investigation into price fixing in the carbon industry and instructed its subsidiary's employee to remove, conceal or destroy any documents that reflected any contacts with competitors.
- (3) In or around July 2001, a representative of Morgan Crucible met with its subsidiary's employee and again discussed the grand jury's investigation into price fixing in the carbon industry.
- (4) In or around August 2001, Morgan Crucible caused its subsidiary's employee to destroy documents relevant to the grand jury's investigation.

¹ Representatives acting on Morgan Crucible's behalf as to Count Three are different than the representative acting on Morgan Crucible's behalf as to Count Two.

V
PLEA AGREEMENT

A. Morganite

Morganite’s guilty plea to Count One of the Information will be entered pursuant to the Plea Agreement between Morganite, Morgan Crucible and the Antitrust Division. The Plea Agreement provides that Morganite will enter a plea of guilty pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

Also pursuant to the Plea Agreement, the United States and Morganite agree to jointly recommend that the Court impose a sentence requiring Morganite to pay a fine to the United States in the amount of \$10 million as the appropriate disposition of the case. The fine is payable in the following 16 installments over a period of four years:

- (1) Within ninety (90) days of imposition of sentence – \$1,375,000
- (2) At the six-month anniversary of imposition of sentence (“anniversary”) – \$375,000
- (3) At the nine-month anniversary – \$375,000
- (4) At the one-year anniversary – \$375,000
- (5) At the 15-month anniversary – \$500,000
- (6) At the 18-month anniversary – \$500,000
- (7) At the 21-month anniversary – 500,000
- (8) At the two-year anniversary – \$500,000
- (9) At the 27-month anniversary – \$625,000
- (10) At the 30-month anniversary – \$625,000
- (11) At the 33-month anniversary – \$625,000
- (12) At the three-year anniversary – \$625,000

- (13) At the 39-month anniversary – \$750,000
- (14) At the 42-month anniversary – \$750,000
- (15) At the 45-month anniversary – \$750,000
- (16) At the four-year anniversary – \$750,000

Although the United States Sentencing Guidelines fine range exceeds the agreed-upon fine, the United States and Morganite agree that the recommended fine is appropriate, pursuant to U.S.S.G. § 8C3.3(b), due to the inability of Morganite, Inc. to pay a fine greater than that recommended. For the same reason, the United States and Morganite agree that interest should be waived pursuant to 18 U.S.C. § 3612(f)(3)(A). Morganite has agreed to accept the imposition of a period of probation that coincides with the fine payment schedule set forth above and that expires at the time the last payment is made. The United States and Morganite will also jointly request that the Court accept Morganite's guilty plea and immediately impose sentence on the day of arraignment. Should the Court reject the agreed-upon disposition of the case, Morganite will be free to withdraw its plea.

Morganite and its subsidiaries engaged in the production or sale of electrical carbon products or mechanical carbon products have agreed to cooperate fully with the United States in the conduct of the present investigation of the electrical carbon products and mechanical carbon products industries and any related witness tampering and obstruction investigation, 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 Morganite and its subsidiaries.

Also pursuant to the Plea Agreement, the United States agrees, subject to the continuing

full cooperation of Morganite and its subsidiaries, not to bring further criminal proceedings against Morganite or its subsidiaries for any act or offense committed prior to the date of the Plea

Agreement (a) that was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of electrical carbon products or mechanical carbon products or (b) involving contempt, obstruction, false statement, witness tampering, document destruction or perjury committed in connection with any criminal antitrust investigation of electrical carbon product or mechanical carbon product markets. Subject to their continuing cooperation, certain current or former directors, officers, and employees of Morganite and its subsidiaries identified by the United States will receive the same non-prosecution protection.

B. Morgan Crucible

Morgan Crucible's guilty pleas to Counts Two and Three will be entered pursuant to the Plea Agreement between Morganite, Morgan Crucible and the Antitrust Division. The Plea Agreement provides that Morgan Crucible will enter pleas of guilty pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

Also pursuant to the Plea Agreement, the United States and Morgan Crucible agree to jointly recommend that the Court impose a sentence requiring Morgan Crucible to pay fines to the United States in the amount of \$500,000 on Count Two and \$500,000 on Count Three as the appropriate disposition of the case. Both fines are payable within 90 days of imposition of sentence without interest pursuant to 18 U.S.C. § 3612(f)(3)(A). The United States and Morgan Crucible will also jointly request that the Court accept Morgan Crucible's guilty pleas and immediately impose sentence on the day of arraignment. Should the Court reject the agreed-

upon disposition of the case, Morgan Crucible will be free to withdraw its plea.

Morgan Crucible and its subsidiaries engaged in the production or sale of electrical carbon products or mechanical carbon products have agreed to fully cooperate with the United States in the conduct of the present investigation of the electrical carbon products and mechanical carbon products industries and any related witness tampering and obstruction investigation, 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 Morgan Crucible and its subsidiaries.

Also pursuant to the Plea Agreement, the United States agrees, subject to the continuing full cooperation of Morgan Crucible and its subsidiaries, not to bring further criminal proceedings against Morgan Crucible or its subsidiaries for any act or offense committed prior to the date of the Plea Agreement (a) that was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of electrical carbon products or mechanical carbon products or (b) involving contempt, obstruction, false statement, witness tampering, document destruction or perjury committed in connection with any criminal antitrust investigation of electrical carbon product or mechanical carbon product markets. Subject to their continuing cooperation, certain current or former directors, officers, and employees of Morgan Crucible and its subsidiaries

identified by the United States will receive the same non-prosecution protection.

Dated: 11-4-02

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

This is to certify that on the 4th day of November 2002, a copy of the Government's Rule 11 Memorandum has been hand-delivered to counsel of record for the defendant as follows:

Robert M. Osgood, Esquire
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/s/

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