

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

UNITED STATES OF AMERICA)	
)	Criminal No. 99-244
v.)	
)	Filed: 6/16/99
ROBERT J. KOEHLER,)	
)	Judge Ronald L. Buckwalter
Defendant.)	

PLEA AGREEMENT

Pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”), Robert J. Koehler (“defendant”) and the United States of America hereby enter into this Plea Agreement.

RIGHTS OF DEFENDANT

1. The defendant understands his right:
 - (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 him guilty beyond a reasonable doubt;
 - (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) as a citizen and resident of the Federal Republic of Germany, 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;

- (h) to appeal his conviction, if he is found guilty at trial; and
- (i) 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 Paragraphs 1(b)-(h) 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 such sentence is consistent with this Plea Agreement. Further, pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a one-count Information. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of graphite electrodes sold in the United States and elsewhere, beginning at least as early as July 1992 and continuing until at least June 1997, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant in his capacity as Chief Executive Officer and Chairman of the Executive Committee of SGL Carbon Aktiengesellschaft ("SGL AG") is, and throughout the relevant time period was, engaged in the manufacture and sale of graphite electrodes to customers in the United States and elsewhere. Graphite electrodes are large columns used to conduct electricity primarily in electric arc furnace steel making in the United States and elsewhere.

4. 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 5 below. The United States and the defendant agree to provide the Court, prior to arraignment, with sufficient information concerning the defendant, the crime charged in this case, and the defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court pursuant to 18 U.S.C. § 3553. The United States agrees that at the arraignment, it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

FACTUAL BASIS FOR OFFENSE CHARGED

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

(a) For purposes of this Plea Agreement, the "relevant period" is that period beginning at least as early as July 1992 and continuing until at least June 1997.

Throughout the relevant period, the defendant was Chief Executive Officer and Chairman of the Executive Committee of SGL AG (and its predecessor, Sigr Great Lakes Carbon GmbH), an entity organized and existing under the laws of Germany and with its principal place of business in Wiesbaden, Germany. During the relevant period, SGL AG and its subsidiary SGL Carbon Corporation ("SGL CC"), were manufacturers and sellers of graphite electrodes 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 graphite electrodes, the primary purpose of which was to fix the price and allocate the volume of graphite

electrodes sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant engaged in conversations and attended meetings with representatives of the other major graphite electrode producing firms. During such meetings and conversations, agreements were reached as to the prices the firms would charge for, and the volumes the firms would sell of, graphite electrodes in the United States and elsewhere.

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

(d) Substantial quantities of graphite electrodes affected by this conspiracy were sold by one or more of the conspirator companies to customers in the Eastern District of Pennsylvania.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the maximum penalty which may be imposed against him upon conviction for a violation 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 derived from the crime, or (3) twice the pecuniary loss caused to the victims of the crime (15 U.S.C. § 1; 18 U.S.C. § 3571(a), (b), and (d)); and

(c) a term of supervised release of one (1) year following any term of imprisonment. If the defendant violates the conditions 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)).

7. In addition, the defendant understands that:

(a) pursuant to United States Sentencing Guidelines (U.S.S.G.) § 5E1.1.(a)(2), 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

8. Sentencing for the offense to be charged will be conducted pursuant to the United States Sentencing Guidelines Manual in effect on the day of sentencing.

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(e)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to jointly recommend that the Court impose, pursuant to 18 U.S.C. § 3571(d), a sentence requiring the defendant to pay a fine to the United States in the amount of \$10 million to be paid in six installments as described below (the payment of which shall be guaranteed by SGL AG (which the United States stipulates is permissible under German law) as provided for in the plea agreement with SGL AG (Exhibit A)), to pay no restitution and to serve no term of imprisonment, probation, community confinement or home detention. 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. The defendant and the United States further agree that for purposes of determining the U.S.S.G. sentence in this case, the volume of affected United States commerce attributable to the

defendant's principal is in excess of \$400 million. The \$10 million fine will be payable as follows:

(a) the first payment in the amount of \$1 million will be due within ninety (90) days from the date of imposition of sentence;

(b) thereafter, the defendant shall make 5 payments, each on the yearly anniversary of the date of sentencing, according to the following schedule: \$1 million on the first anniversary of the date of sentencing; \$2 million on the second anniversary of the date of sentencing; \$2 million on the third anniversary of the date of sentencing; \$2 million on the fourth anniversary of the date of sentencing; and \$2 million on the fifth anniversary of the date of sentencing; and

(c) pursuant to 18 U.S.C. § 3612(f)(3)(A), interest shall be waived due to the defendant's inability to pay.

10. The United States and the defendant understand that the imposition of a sentence which includes no term of imprisonment, probation, community confinement or home detention, as required by the terms of this Plea Agreement, will require the Court to depart from the sentencing range proscribed by the applicable United States Sentencing Guidelines. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 13 of this Plea Agreement, and prior to sentencing in this case, the United States will move, pursuant to U.S.S.G. § 5K1.1, that the Court depart from the Guidelines sentence in this case and that the Court impose the agreed-upon sentence set out in Paragraph 9 of this Plea Agreement because of the defendant's substantial assistance to the investigation of other individuals and corporations for violations of federal criminal laws in the graphite electrode industry. The United States will fully advise the Court of the fact, manner, extent and value of the defendant's cooperation with

the United States' investigation and prosecutions, all facts relating to the defendant's involvement in the charged offense and all other relevant conduct. Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information, which the defendant provides pursuant to this Plea Agreement or pursuant to the pre-Plea Agreement proffer interview, will not be used in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

11. This Plea Agreement is not binding on the Court. The United States and the defendant understand that the Court retains complete discretion to accept or reject the agreed-upon sentence provided for in Paragraph 9 of this Plea Agreement.

(a) If the Court does not impose the aforesaid agreed-upon sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 11(b) below, shall be rendered null and void; and

(b) If the Court does not impose the agreed-upon disposition, the defendant will be free to withdraw his plea of guilty (Fed. R. Crim. P. 11(e)(4)), and to depart the United States and, if the defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea and any statements made in connection with or in furtherance of the plea or of this Plea Agreement, or in the course of discussions leading to the plea or Plea Agreement, shall not be admissible against the defendant SGL AG, Sigri Great Lakes Carbon GmbH, or their subsidiaries, officers or employees thereof in any criminal or civil proceeding (Fed. R. Crim. P. 11(e)(6)).

12. Subject to the cooperation of the defendant, as described in Paragraph 13 below, the United States and the defendant will jointly request that the Court accept the defendant's guilty plea and immediately impose sentence at arraignment pursuant to the provisions of Fed. R. Crim.

P. 32(b)(1) and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence immediately based upon the record provided by the defendant and the United States will not void this Plea Agreement.

DEFENDANT'S COOPERATION

13. The defendant will fully and truthfully cooperate 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 in the manufacture and sale of graphite and carbon products, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The full and truthful cooperation of the defendant 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 the possession, custody or control of the defendant requested by attorneys and agents of the United States except for documents privileged under United States law;

(b) making himself available on reasonable notice, not at the expense of the United States, for interviews in the United States, and at other mutually agreed-upon locations, 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;

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

(e) when called upon to do so by the United States, 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), obstruction of justice (18 U.S.C. § 1503) and contempt (18 U.S.C. §§ 401 - 402), in connection with any such Federal Proceeding.

GOVERNMENT'S AGREEMENT

14. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the defendant's guilty plea and imposition of sentence in this case and acceptance of the guilty plea of SGL AG and imposition of the sentence called for by the separate plea agreement with SGL AG (Exhibit A), the United States agrees not to bring further criminal charges against the defendant for any act or offense committed prior to the date of this Plea Agreement, which was undertaken in furtherance of, or in connection with, any attempted or completed antitrust conspiracy, combination or scheme involving the manufacture or sale of graphite and carbon products or in connection with any investigation thereof. The non-prosecution term of this paragraph does not apply to civil liability of any kind to the United States, to any violations of the federal tax or securities laws, or to any crime of violence.

15. The United States agrees that when the defendant is required by the United States to travel to the United States for interviews, court appearances, or grand jury appearances pursuant

to this Plea Agreement or meeting with counsel in preparation thereof, the United States will take no action, based upon any offense subject to this Plea Agreement, to subject the defendant to arrest, service of process or prevention from departing the United States. This paragraph does not apply to the defendant's commission of perjury (18 U.S.C. § 1621), making a false statement or declaration 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 provided in trial, grand jury or other judicial proceedings in the United States.

16. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 13 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 non-immigrant (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 non-immigrant or to deport the defendant from the United States. (Immigration and Nationality Act, § 240(e)(2)).

17. The Antitrust Division of the United States Department of Justice has consulted with the Immigration and Naturalization Service of the United States Department of Justice ("INS"). The INS, 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.

18. So that the defendant will be able to obtain any non-immigrant visa that he may need to travel to the United States, the INS and the Visa Office, United States Department of

State, have concurred in the granting of a non-immigrant 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 non-immigrant visa on the basis of the defendant's guilty plea and conviction in this case, and the INS will not deny his application for admission as a non-immigrant on the basis of his guilty plea and conviction in this case.

19. This agreement not to seek to remove the defendant will remain in effect so long as the defendant:

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

(b) 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

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

20. 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 INS. The INS will then determine, in consultation with the Antitrust Division, whether to rescind this agreement not to seek to remove the defendant.

21. 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.

22. 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 on the basis of his guilty plea and conviction in this case, but retains his right to notice of removal proceedings.

REPRESENTATION OF COUNSEL

23. 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 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 deliberate and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

24. The defendant's decision to enter into this Plea Agreement and his decision to tender a plea of guilty are freely and voluntarily made and are not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. There have been 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

25. The defendant agrees that should the United States determine in good faith, during the period of time that any Federal Proceeding is pending, that the defendant has failed to provide his full cooperation (as described in Paragraph 13 of this Plea Agreement) or otherwise has

violated any other provision of this Plea Agreement, the United States may, by notifying the defendant in writing and counsel by telephone, 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, obstruction of justice and the substantive offenses subject to the investigation resulting in this Plea Agreement. The defendant may seek Court review of any such determination by the United States.

26. 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, because of 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, and the defendant hereby unconditionally waives his right, in any such further prosecution, to move to exclude such evidence, notwithstanding the protections of Rule 11(e)(6), Fed. R. Crim. P., or any other such similar law. The defendant does not waive any right he may have to exclude such evidence under the Constitution of the United States.

ENTIRETY OF AGREEMENT

27. Simultaneously with the execution of this Plea Agreement, the United States and SGL AG will enter into a separate plea agreement, a copy of which is attached hereto as Exhibit A. This Plea Agreement, the plea agreement with SGL AG, and the attached Pre-Agreement Proffer Letter (Exhibit B), constitute all of the agreements between the United States and the defendant concerning the disposition of the criminal charges in this case. This

Plea Agreement cannot be modified other than in writing signed by the United States and the defendant.

28. The defendant acknowledges and agrees that this Plea Agreement may be filed and become a part of the record in this case.

29. 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.

30. 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.

DATED:

Respectfully submitted,

ROBERT J. KOEHLER
Defendant

WENDY BOSTWICK NORMAN
LUCY P. MCCLAIN
JOSEPH MUOIO, JR.
ROGER L. CURRIER

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