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UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN

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THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 10-20577

EMBRACO NORTH AMERICA,  
INCORPORATED,

Hon. Julian Abele Cook, Jr.

Defendant.

\_\_\_\_\_ /

ARRAIGNMENT / PLEA & SENTENCE

BEFORE THE HONORABLE JULIAN ABELE COOK, JR.

Detroit, Michigan • Thursday, December 16, 2010

APPEARANCES:

For the Plaintiff: MICHAEL F. WOOD  
ERIC M. MEIRING  
IAN HOFFMAN  
United States Department of Justice  
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For the Defendant: HOWARD B. IWREY  
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1 APPEARANCES: (Continued)

2

3 For the Defendant: MARK LEDDY  
4 DAVID I. GELFAND  
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6

7 KIRSTEN J. HEWITT  
8 SANFORD M. PASTROFF  
9 Whirlpool Corporation  
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10

11 Also present: DAVID H. FINK  
12 CASEY A. FRY  
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1 Detroit, Michigan

2 Thursday, December 16, 2010

3 at about 10:02 a.m.

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5 (Court, Counsel and parties present.)

6 THE CASE MANAGER: All rise.

7 The United States District Court for the Eastern

8 District of Michigan is now in session, the Honorable

9 Julian Abele Cook, Jr. presiding.

10 Please be seated.

11 Court calls Case No. 10-CR-20577, United States of

12 America vs. Embraco North America, Incorporated.

13 THE COURT: Good morning.

14 MR. WOOD: Good morning, Your Honor. Michael Wood

15 together with Ian Hoffman and Eric Meiring for the

16 Government.

17 MR. IWREY: Good morning, Your Honor. Howard Iwrey

18 of Dykema for Defendants, along with Mark Leddy of Cleary

19 Gottlieb.

20 MR. LEDDY: Good morning, Your Honor.

21 MR. IWREY: Kirsten Hewitt, who is vice president

22 and associate general counsel of Whirlpool.

23 MS. HEWITT: Good morning.

24 MR. IWREY: David Gelfand of Cleary Gottlieb.

25 MR. GELFAND: Good morning.

1 MR. IWREY: And Sanford Pastroff, who is senior  
2 counsel of Whirlpool Corporation.

3 MR. PASTROFF: Good morning.

4 THE COURT: Please be seated.

5 Just one moment. Before we proceed I want to make  
6 inquiry of the representatives from Cleary Gottlieb in the  
7 form of a disclosure. My daughter-in-law, who is Kamil  
8 Portman, now known as Kamil Cook, was an associate with  
9 Cleary Gottlieb from November of 1993 until April of 1997. I  
10 called her as soon as I got the file in order to determine  
11 whether she knew any of the named attorneys on the file. She  
12 said she did not, but I think that it is proper to ask the  
13 Cleary Gottlieb group or, for that matter, anyone  
14 representing the defense, whether they have any knowledge or  
15 any working relationship with Kamil Cook, then possibly known  
16 as Kamil Portman?

17 MR. LEDDY: No, Your Honor. I have no recollection  
18 of that name. We are a fairly large international law firm.  
19 David?

20 MR. GELFAND: I do not, Your Honor. I'm sure she  
21 did outstanding work for the firm however.

22 MR. LEDDY: I hope she had good things to say about  
23 us.

24 THE COURT: Well, you are not talking to an  
25 unbiased -- all right.

1 MR. GELFAND: Thank you for asking.

2 MR. LEDDY: Thanks, Judge.

3 THE COURT: Well, we are here today because I  
4 understand that the Defendant, Embraco North America, has  
5 expressed a desire and willingness to offer a plea of guilt.  
6 I think procedurally we need to first have an arraignment,  
7 and then after that to enter the plea and then the  
8 sentencing. Is that correct?

9 MR. WOOD: It is, Your Honor, and as part of that  
10 process I would like to make the Court aware that Mr. Fink  
11 who represented -- who was here in the Panasonic hearing last  
12 month would also like an opportunity to address the Court, so  
13 as we move forward to the Rule 11 we as the Government would  
14 like to ask the Court to afford him that opportunity.

15 THE COURT: Is it your desire and Mr. Fink's desire  
16 to speak now?

17 MR. WOOD: No, no, no. I just wanted to highlight  
18 that as an agenda item as we move forward.

19 THE COURT: All right. Ms. Hewitt, it is my  
20 understanding that you will be the representative of the  
21 Defendant?

22 MS. HEWITT: Yes, sir.

23 THE COURT: All right. Would you come forward to  
24 the lectern, please.

25 THE CASE MANAGER: Please raise your right hand.

1 Do you solemnly swear that the information you are  
2 about to give in the matter here pending will be the truth,  
3 the whole truth and nothing but the truth so help you God?

4 MS. HEWITT: Yes.

5 THE CASE MANAGER: Thank you.

6 THE COURT: Your name, please.

7 MS. HEWITT: Kirsten Hewitt.

8 THE COURT: And what is your relationship, if any,  
9 with the Defendant?

10 MS. HEWITT: I am vice president and associate  
11 general counsel of Whirlpool Corporation who is the ultimate  
12 parent company for Embraco North America.

13 THE COURT: Is it your client's desire to enter a  
14 plea of guilt today?

15 MS. HEWITT: Yes. The board for Embraco North  
16 America entered a resolution and authorized me to do that,  
17 although at the arraignment point I think we'll say we are  
18 not guilty.

19 THE COURT: Well, I'm getting to that point but I  
20 need to establish just who you are and why you are here.

21 MS. HEWITT: Thank you. Sorry.

22 THE COURT: And you do have authority to act on  
23 behalf of the corporation today?

24 MS. HEWITT: Yes, I do.

25 THE COURT: And who gave you that authority?

1 MS. HEWITT: The board of directors of Embraco  
2 North America.

3 THE COURT: Was that authority given in writing or  
4 orally?

5 MS. HEWITT: Writing.

6 THE COURT: And is the writing here?

7 MR. LEDDY: Yes, Your Honor.

8 THE COURT: Let me show you this document and ask  
9 you if this is the authority to which you have made  
10 reference?

11 MS. HEWITT: Yes, it is.

12 THE COURT: Mr. Wood, have you seen this authority?

13 MR. WOOD: Your Honor, we were just discussing  
14 that. I think we have. It is my recollection that we  
15 reviewed this earlier, yes, Your Honor.

16 THE COURT: Do you have any objection to its  
17 admission into the record?

18 MR. WOOD: No, Your Honor.

19 THE COURT: I will receive into evidence the  
20 proposed unanimous written consent of the directors of  
21 Embraco North America.

22 Ms. Hewitt, based on your representation and your  
23 position with the company, are you aware of the charge or  
24 charges that are presently pending against your client?

25 MS. HEWITT: Yes, I am.



1 THE COURT: And for the purpose of this hearing  
2 only how do you plead?

3 MS. HEWITT: Not guilty.

4 THE COURT: The Court will enter a plea of not  
5 guilty on behalf of the Defendant, Embraco North America,  
6 Incorporated.

7 I will during the course of this proceeding ask a  
8 number of questions of you, and as an attorney you may view  
9 these questions to be overly simplistic but I think that it  
10 be imperative that I ask these questions of you.

11 Does your client understand that it has a right to  
12 plead not guilty?

13 MS. HEWITT: Yes.

14 THE COURT: Does your client understand that it has  
15 a right to a trial by jury?

16 MS. HEWITT: Yes.

17 THE COURT: And if I accept your client's offer of  
18 guilty at any time do you know that there will be no trial  
19 and that an acceptance of this guilty plea will have the  
20 legal affect of waiving and giving up the rights of your  
21 client as to a trial?

22 MS. HEWITT: Yes.

23 THE COURT: Does your client wish to give up its  
24 right to a jury trial?

25 MS. HEWITT: Yes.

1 THE COURT: And as the counsel for the Defendant  
2 company, are you and is the company aware that it is presumed  
3 to be innocent until proven guilty?

4 MS. HEWITT: Yes.

5 THE COURT: And do you understand -- or rather does  
6 your client understand that the Government would have to  
7 prove its guilt, the company's guilt, beyond a reasonable  
8 doubt at trial?

9 MS. HEWITT: Yes.

10 THE COURT: Is your client fully aware of its right  
11 to call witnesses on its own behalf?

12 MS. HEWITT: Yes.

13 THE COURT: And to have the use of a subpoena for  
14 the purposes of obtaining the presence of witnesses?

15 MS. HEWITT: Yes.

16 THE COURT: There are a number of questions that I  
17 normally would ask the representative of a company or ask of  
18 an individual, but I believe that as an attorney that you are  
19 fully aware of the basic things such as the right of  
20 examination and cross-examination?

21 MS. HEWITT: Yes. Thank you, Your Honor.

22 THE COURT: So I will refrain from asking those  
23 questions which under the circumstances in my judgment are  
24 not necessary.

25 It is my understanding that you and the Government

1 have agreed upon a so-called Rule 11 plea agreement; is that  
2 correct?

3 MS. HEWITT: Yes, we have.

4 THE COURT: According to my record here, and I will  
5 ask you to listen carefully to see if this record -- or  
6 rather if this represents the agreement between you and the  
7 Government. Quote, pursuant to Rule 11(c)(1)(C), the Embraco  
8 Corporation will waive indictment and will plead guilty to  
9 one count of violation of Title 15, United States Code  
10 Section 1; is that correct?

11 MS. HEWITT: Yes.

12 THE COURT: It is also my understanding that you on  
13 behalf of your client and the United States Government have  
14 agreed upon a fine in the sum of \$91.8 million?

15 MS. HEWITT: Yes.

16 THE COURT: With interest accruing?

17 MS. HEWITT: Yes.

18 THE COURT: And this fine shall be paid in the  
19 following installments: Within 30 days of judgment  
20 \$16.8 million plus any accrued interest; at the first, second  
21 third, fourth and fifth anniversary of the judgment  
22 \$15 million plus any accrued interest will be paid; is that  
23 correct?

24 MS. HEWITT: Yes.

25 THE COURT: It is also my understanding that your

1 client, the Defendant in this case, will have the option of  
2 prepayment of the balance?

3 MS. HEWITT: Yes.

4 THE COURT: No term of probation is recommended by  
5 the Government; is that correct?

6 MR. WOOD: Yes, Your Honor.

7 THE COURT: Does your client also understand that  
8 it will have to pay a special assessment fee in the sum of  
9 \$400?

10 MS. HEWITT: Yes.

11 THE COURT: It is also my understanding that the  
12 parties have agreed that a downward departure on the fine  
13 pursuant to Section 8C4.1 is recommended; is that correct?

14 MS. HEWITT: Yes.

15 THE COURT: Mr. Wood, is there anything further  
16 that this Court should, in your judgment, do with regard to  
17 Ms. Hewitt?

18 MR. WOOD: No, Your Honor. One small thing, if I  
19 might. The Court did not ask the Defendant -- the Defendant  
20 representative whether it was all right to proceed by  
21 indictment -- excuse me, by information instead of  
22 indictment. I believe we filed a paper to that effect. I  
23 want to make sure that the record reflects the parties'  
24 understanding.

25 THE COURT: All right. I believe --

1 MR. WOOD: It is just a small --

2 THE COURT: I'm sorry, I interrupted you.

3 MR. WOOD: It is just a small matter.

4 THE COURT: In reciting or attempting to recite the  
5 parties' Rule 11 agreement I indicated that the Defendant  
6 corporation agreed to waive the indictment. I think the  
7 magic words of proceed by information was not used, but just  
8 to clear the record, do you have any objection to proceeding  
9 by information?

10 MS. HEWITT: No objection, Your Honor.

11 THE COURT: All right.

12 MR. WOOD: Thank you, Your Honor. Nothing more,  
13 and I appreciate the Court's indulgence.

14 THE COURT: Is it Mr. Leddy?

15 MR. LEDDY: Yes, it is, Your Honor, Mr. Leddy.

16 THE COURT: Are we prepared to offer a plea of  
17 guilt at this time? I note the Rule 11 agreement has  
18 indicated that that was the understanding of the parties; is  
19 that correct?

20 MR. LEDDY: That's correct, Your Honor.

21 THE COURT: All right. Is there anything that you  
22 on behalf of your client wish to say to the Court before  
23 imposing sentence?

24 MR. LEDDY: No, Your Honor.

25 THE COURT: Ms. Hewitt?

1 MS. HEWITT: No.

2 THE COURT: Mr. Wood?

3 MR. WOOD: Your Honor, I believe that the Court  
4 normally asks the parties, at least one of us, to put into  
5 the record a factual basis for the plea.

6 THE COURT: Well, that is, yes, you anticipated  
7 this, yes, this is the time to do it.

8 MR. WOOD: Okay.

9 THE COURT: If this matter went to trial today  
10 what, in your judgment, would the Government be able to prove  
11 against the Defendant?

12 MR. WOOD: Your Honor, we would propose that an  
13 agreement was reached by representatives of the Defendant  
14 with competitors in or about October 14th, 2004 to raise  
15 prices to reporting target levels in the compressor market,  
16 and that thereafter until the end of December 2007 Defendant  
17 and competitors had discussions for the purpose of  
18 determining pricing targets throughout that time frame, and  
19 as a result the parties reached an agreement in violation of  
20 15 U.S.C. to fix, raise or stabilize prices and that the  
21 market or the products involved traveled in interstate  
22 commerce and had an impact in this district within the last  
23 five years, Your Honor.

24 THE COURT: Ms. Hewitt, did you hear Mr. Wood's  
25 recitation of what in his judgment the Government would be

1 able to prove against your client?

2 MS. HEWITT: Yes, I did.

3 THE COURT: Do you accept his statement as being  
4 correct?

5 MS. HEWITT: Yes.

6 THE COURT: Is there anything that which he said  
7 that you disagree with?

8 MS. HEWITT: No.

9 THE COURT: Could you please advise the Court of  
10 the grounds upon which you are offering this plea?

11 MS. HEWITT: Between October of 2004 and December  
12 of 2007 Embraco North America conspired with its compressor  
13 competitors in the light commercial and household markets to  
14 fix prices. In furtherance of that, they had discussions and  
15 meetings with competitors in violation of Section 1 of the  
16 Sherman Act.

17 THE COURT: Let me read from the presentence  
18 investigation report -- incidentally, let me ask Mr. Leddy,  
19 have you received a copy of the presentence  
20 investigation report?

21 MR. LEDDY: We have, Your Honor.

22 THE COURT: Are there any corrections or  
23 modifications to be noted?

24 MR. LEDDY: No, Your Honor. We made some  
25 corrections early on, they were accepted, and we have no

1 objection to the current draft.

2 THE COURT: Mr. Wood, are you in agreement?

3 MR. WOOD: Yes, Your Honor.

4 THE COURT: Thank you.

5 Let me read from the presentence investigation  
6 report upon which I will rely for accuracy, and specifically  
7 I read from page 4 of the presentence investigation report,  
8 paragraphs 5 through and including 8. Mr. Leddy, do you have  
9 that?

10 MR. LEDDY: I do, Your Honor.

11 THE COURT: Okay. Beginning with paragraph 5,  
12 quote, this offense involves price fixing on compressors for  
13 use in household cooling applications such as refrigerators,  
14 freezers, vending machines, water fountains and so forth.  
15 The following five companies are major suppliers in the  
16 worldwide compressor market, Embraco, Panasonic, Tecumseh,  
17 ACC and Danfoss. Embraco and Panasonic have the largest  
18 market share of household compressors sold in the United  
19 States.

20 An investigation revealed that the representatives  
21 of the five dominant companies met in Nuremberg, Germany on  
22 October 14th, 2004. At the meeting the companies all agreed  
23 to raise prices by double-digit percentages over the 2000  
24 price -- 2003 prices effective January of 2005. They also  
25 agreed to not compromise prices for volume when negotiating



1 with large appliance manufacturers, which had been a past  
2 practice.

3 Part of the agreement included to raise the prices  
4 to cover rising raw material costs and not to set prices for  
5 the large client manufacturers for a full year to cover  
6 possible future escalation of the raw material prices. The  
7 agreement was for prices in North America and Europe and  
8 included household compressors.

9 Following the meeting, parenthetically referring to  
10 October 14th of 2004, the companies had numerous meetings and  
11 conversations throughout the year to monitor the agreement.  
12 Later in 2005 there was a meeting in Frankfort, Germany to  
13 coordinate 2006 prices but Panasonic declined to attend, and  
14 the meeting focused on the European market. Embraco and  
15 Tecumseh met in the fall of 2005 and agreed on prices for the  
16 2006 United States market.

17 Beginning in May 2006 Panasonic and Embraco engaged  
18 in meetings and telephone conversations to coordinate price  
19 increases for household compressors in North America. The  
20 companies met again in September 2006 to coordinate 2007  
21 North America price increases. The two companies continued  
22 to meet through the beginning of 2007 to monitor sales and  
23 compare notes about the market, end quote.

24 Mr. Leddy, are you satisfied that I have read those  
25 paragraphs complete?

1 MR. LEDDY: Yes, Your Honor.

2 THE COURT: Mr. Wood?

3 MR. WOOD: Yes, Your Honor.

4 THE COURT: Mr. Wood, in reciting the content of  
5 the Rule 11, are you satisfied that the Defendant company can  
6 fully pay the fines that were agreed upon?

7 MR. WOOD: We are, Your Honor. And there is also  
8 an attachment to the plea agreement which is a commitment on  
9 behalf of the parent Whirlpool to satisfy the obligations of  
10 the subsidiary Embraco North America should Embraco North  
11 America not be able to meet its obligations.

12 And, Your Honor, I would like to also add that that  
13 is something that Whirlpool basically stepped up to the plate  
14 and did, Your Honor. They didn't have to do that. We asked  
15 them to do that in order to provide assurances, anticipating  
16 the Court would ask that question, and they went ahead and  
17 did this, and we think it is appropriate to bring that to the  
18 Court's attention, the willingness of the parent, this  
19 Michigan company, to do that on behalf of their subsidiary.

20 THE COURT: So there is full cooperation by  
21 Whirlpool?

22 MR. WOOD: Yes, Your Honor, indeed. The person who  
23 stands before you is actually a Whirlpool employee, Your  
24 Honor. And the -- on behalf of the Government, I would like  
25 to inform the Court that the parent company's cooperation has

1 | been nothing less than outstanding which goes to the  
2 | departure that the Court highlighted earlier and our  
3 | willingness to move forward with something that is  
4 | substantially below the bottom of the guidelines level due to  
5 | this cooperation. So in every way, shape and form that the  
6 | parent could assist us in uncovering the wrongdoing and  
7 | accepting responsibility for it, that has been done.

8 |           THE COURT: Thank you. I have looked through the  
9 | presentence investigation report and have examined the  
10 | arithmetic that appears on page 7 and 8 and conclude that the  
11 | base offense level, which is shown on page 8, paragraph 38,  
12 | in the sum of 12 points is accurate.

13 |           On the following paragraph, 39, the specific  
14 | offense characteristics which have been identified pursuant  
15 | to Section 2R1.1(b)(2)(E) is another factor which brings the  
16 | total offense level of 22 to be considered by the Court.

17 |           Mr. Wood, would you apprise Ms. Hewitt in her  
18 | capacity as a representative of the Defendant corporation  
19 | what is the maximum penalty that I can impose on her client  
20 | if this matter went to trial?

21 |           MR. WOOD: Your Honor, I believe the guideline  
22 | range is 275 -- excuse me, 274,028 -- excuse me,  
23 | \$274,284,848, and the minimum guideline range is  
24 | \$137,142,424, Your Honor.

25 |           THE COURT: Ms. Hewitt, does that change your mind

1 as the representative for Embraco from offering a plea of  
2 guilt?

3 MS. HEWITT: No, sir.

4 THE COURT: I should note that the presentence  
5 investigation report which I have made reference states,  
6 quote, and I'm reading from page 9, paragraph 51, quote,  
7 after the Government's investigation was disclosed, the  
8 Defendant corporation and its representatives fully  
9 cooperated and expressed remorse for the offense. A  
10 recognition and affirmative acceptance of responsibility have  
11 been demonstrated, and pursuant to the Sentencing Guideline  
12 8C2.5G2, the culpability score is reduced by two points  
13 creating a total culpability score of eight.

14 Mr. Wood, what is the maximum fine range that I can  
15 impose upon the company?

16 MR. WOOD: \$100 million is the statutory maximum.  
17 However, the statute also provides for twice the gain and  
18 twice the loss, which is the normal path by which fines above  
19 \$100 million are assessed using the guideline analysis of  
20 volume of commerce to determine loss, Your Honor. So  
21 \$100 million is the maximum under the statute, but it can go  
22 higher depending on the Court's findings of loss.

23 THE COURT: Does that change your mind about  
24 offering a plea of guilt?

25 MS. HEWITT: No, sir.

1 THE COURT: I believe that I have explored the  
2 necessary elements of the presentence investigation report  
3 and am prepared to first accept the offer of guilt that has  
4 been offered by the Defendant corporation. I'm fully  
5 satisfied that a factual basis has been established by the  
6 Defendant company for the criminal conduct which brings it  
7 into court today. In my judgment the offer of guilt was  
8 freely and voluntarily and intelligently made by it to the  
9 Court. Moreover, I have not found any evidence of any  
10 mitigating factors that in my judgment would have adversely  
11 affected the company's ability to fully and completely  
12 understand the nature as well as the consequences of its  
13 admission of responsibility.

14 Finally, the Defendant corporation being  
15 represented by competent counsel and after consulting with  
16 its attorney has knowingly and willingly waived those rights  
17 for the purpose of a guilty plea.

18 Therefore I will accept the offer of guilt that was  
19 proffered to the Court by Ms. Hewitt who identifies herself  
20 as vice president and associate general counsel to the  
21 North American Whirlpool Corporation. Is it fair to say the  
22 parent corporation?

23 MS. HEWITT: It is the ultimate parent.

24 THE COURT: Mr. Wood, I declined to go through a  
25 lot of the questions and answers with Ms. Hewitt that I

1 normally would ask because of her knowledge and expertise and  
2 as a lawyer. Do you believe that I need to go through any  
3 further inquiry of Ms. Hewitt?

4 MR. WOOD: No, Your Honor, and thank you for  
5 asking. No. We are fully satisfied that all the criteria  
6 for Rule 11 has been met. Thank you.

7 THE COURT: Mr. Leddy, are you equally satisfied?

8 MR. LEDDY: Yes, Your Honor.

9 THE COURT: All right. Well, I'm prepared to  
10 render a decision. Is there anything that you want to say on  
11 behalf of your client?

12 MR. LEDDY: No, Your Honor.

13 THE COURT: Mr. Wood?

14 MR. WOOD: If the Court is moving on to sentencing,  
15 Your Honor?

16 THE COURT: Yes.

17 MR. WOOD: We would appreciate allowing Mr. Fink to  
18 address the Court since part of the sentence may involve  
19 restitution and the parties have agreed in the plea agreement  
20 to recommend that restitution be left to the civil case that  
21 is outstanding before Judge Cox, and I think Mr. Fink would  
22 like an opportunity to address that component of the matter  
23 with you.

24 THE COURT: All right. Any objection?

25 MR. LEDDY: No, Your Honor.

1 MS. HEWITT: No, sir.

2 THE COURT: If you want to you may have a seat and  
3 we'll call you back.

4 MR. LEDDY: Thank you, Your Honor.

5 THE COURT: Mr. Fink.

6 MR. FINK: Your Honor, first I want to thank the  
7 Court and Counsel for the opportunity to address the Court on  
8 this subject.

9 May it please the Court, David Fink. Appearing  
10 with me also is Casey Fry from my office. And I am here  
11 representing certain victims of this antitrust conspiracy.

12 As the Court may recall, I am interim lead counsel  
13 in a pending purported class action pending before Judge Cox.  
14 I say purported, the Judge has not yet -- the Court has not  
15 yet heard or considered class certification issues, but I do  
16 represent what we call the putative class under the  
17 circumstances.

18 Your Honor, as the Court is aware and as has been  
19 referenced on this record, the plea provides that in light of  
20 the availability of civil causes of actions, which  
21 potentially provide for a recovery of a multiple of actual  
22 damages, the United States agrees that it will not seek a  
23 restitution order for the officers charged in the  
24 information -- the offense charged in the information.  
25 That's paragraph 12 of the plea agreement.

1           This, of course, is the same as or very similar to  
2 the Panasonic plea agreement that the Court previously heard  
3 and we also appeared. There is, however, at least this  
4 difference, and that is since the Panasonic proceedings other  
5 things have happened, other facts have occurred, and I wanted  
6 to present the Court with that information.

7           So, first, similar to the Panasonic situation,  
8 despite the presence of this restitution language the  
9 Defendant has joined in a pending motion to dismiss before  
10 Judge Cox.

11           THE COURT: The Defendant referring to Panasonic or  
12 referring to --

13           MR. FINK: No, I'm sorry. Embraco North America,  
14 Whirlpool, Embraco.

15           THE COURT: Okay.

16           MR. FINK: They have joined in the motion to  
17 dismiss, Panasonic also did but I am not here about  
18 Panasonic. I didn't mean to confuse the Court with that. I  
19 apologize. Now, since the time that we were here and, of  
20 course, counsel for Whirlpool was present during those  
21 proceedings, Whirlpool has provided some disclosure to  
22 Judge Cox as a component of a part of a reply brief which was  
23 filed earlier this week, and in a moment I will provide the  
24 Court -- actually I think I can do that now. I will provide  
25 the Court with a copy of their reply brief, and also I will



1 make sure that -- I provide this only to point out a few  
2 notations in the reply.

3 Now, it should be noted that before that reply  
4 brief was filed we filed a response brief, and in our  
5 response brief before Judge Cox, our response to their motion  
6 to dismiss, on behalf of the victims of this conspiracy we  
7 argued that the plea agreement was inconsistent with  
8 positions that they were taking before Judge Cox. So in  
9 their reply brief they do provide some acknowledgment, most  
10 notably in footnote one, the -- in here it is both  
11 defendants, and that's both Panasonic and Embraco North  
12 America, the footnote says no longer asserts a Twombly  
13 argument with respect to claims between January 1st, 2007 and  
14 December 31st, 2007. At the end of that footnote they  
15 indicate thus without withdrawing any other arguments they  
16 join in Section 2 of this brief only with respect to claims  
17 before June 2004 and after December 31st, 2007.

18 Now, there is a little bit of uncertainty because  
19 in footnote four they say that they are no longer asserting  
20 the challenge only with respect to 2007. In other words,  
21 they are not talking about the period going all the way back  
22 to June of 2004.

23 Now, the greater concern we -- I should say, Your  
24 Honor, our concern is that while that is a disclosure we  
25 believe it is an inadequate disclosure and it is not a

1 disclosure consistent with the plea they are making before  
2 this Court. Most specifically at page 7 of the brief,  
3 argument number two, they argue that the -- I'm sorry, I  
4 apologize, Your Honor. Page 9 of the brief, argument number  
5 three -- oops, let's get this right, Your Honor. Just once.  
6 I will go to page 12. I'm sorry. I had the wrong copy.

7           On page 12 of the brief they continue their  
8 argument that the statute of limitation bars recovery for any  
9 claims accruing before February 25th, 2005. Now, in the plea  
10 agreement they accept responsibility for a conspiracy that  
11 begins October 14th, 2004. Don't pay restitution because  
12 that can be recovered in a civil matter, but as to the period  
13 from October 14th -- at least from October 14th, 2004 to  
14 February 25th, 2005 they are continuing to assert a statute  
15 of limitations defense to say that they don't have to provide  
16 compensation for that period.

17           Now, they also make some other technical arguments.  
18 They make -- I apologize, I was referring to the wrong  
19 sections there for a moment, but they make the argument that  
20 the Foreign Trade Antitrust Improvement Act bars claims.  
21 They make the argument -- or rather strange interpretation, I  
22 believe, of Illinois Brick that they have no liability at all  
23 based on the allegations of the complaint, but our greater  
24 concern is simply the lack of full disclosure to Judge Cox,  
25 and particularly, of course, with the section I referred to

1 for the period before February of 2005.

2 We have a suggestion, the last time we were before  
3 the Court I realized the Court asked appropriately what did  
4 we think made sense in terms of justice. If we are objecting  
5 to the Court we should provide the Court with a suggested  
6 remedy, and we would. We believe that this Court should  
7 defer determination on the matter pending before this Court  
8 for a two-week period, and during that two-week period that  
9 Whirlpool, Embraco will have the opportunity to, if they  
10 choose, provide a more complete disclosure to Judge Cox  
11 regarding the responsibility they have admitted to in this  
12 Court.

13 And if this Court then concludes that they have  
14 made proper disclosure, we wouldn't object to a plea being  
15 entered, but under these circumstances we are concerned  
16 especially where Whirlpool is being sentenced substantially  
17 below the sentencing guidelines because of their apparent  
18 cooperation with the Government, we are concerned that that  
19 cooperation is not playing out in the context of the civil  
20 proceeding for which they obtained a pass on restitution.

21 So, Your Honor, we hope the Court will consider  
22 this, and we don't want to interfere with the process, we  
23 appreciate the incredible efforts of the Government in going  
24 forward with this, and we do appreciate all the work that has  
25 been done, and we don't second guess generally the Government

1 in terms of what they believe to be a fair sentence and a  
2 fair agreement, we are only concerned that an assumption or a  
3 fact that is assumed by the Government in their agreement may  
4 not, in fact, be correct. We do not believe that at this  
5 point Whirlpool has stepped up to accept their civil  
6 responsibilities.

7 THE COURT: Well, in the Panasonic case I denied  
8 that request. Why should I give you a different result?

9 MR. FINK: Well, for two reasons. One,  
10 respectfully, I don't believe that the victims have indicated  
11 that they agree with the determination made in the Panasonic  
12 case, but, secondly, because here we have something that  
13 frankly is even, I believe, worse than no disclosure. They  
14 take a plea agreement, which we have called the Court -- to  
15 the attention of the trial court, the civil court -- in the  
16 civil proceeding, I mean, and we believe that they have  
17 represented incorrectly to the court the scope of that plea,  
18 the scope of what they have agreed to.

19 THE COURT: Is that intentional?

20 MR. FINK: I can't speak to that. I don't think it  
21 would be fair for me to suggest that I have any idea whether  
22 it was intentional. I certainly have respect for counsel and  
23 for their integrity, so I don't think it was intentional. I  
24 just think it should be corrected. My concern is simply for  
25 the rights of the victims. My concern is not or nor is it

1 intended to be a suggestion that Whirlpool, that the  
2 Defendants, I should say Embraco, suffer more, just that they  
3 do what they agreed to do.

4 THE COURT: All right. Mr. Leddy, do you wish to  
5 respond?

6 MR. LEDDY: Yes, Your Honor. Thank you, Your  
7 Honor. Several points, Your Honor.

8 First, I think Your Honor's question about the  
9 Panasonic ruling is the right question. One month ago  
10 yesterday you heard a similar argument looking for the same  
11 end, the same goal, from Mr. Fink in the Panasonic hearing.

12 THE COURT: Excuse me. Mr. Fink, if you would have  
13 a seat please.

14 MR. FINK: I'm sorry, yes. Thank you.

15 MR. LEDDY: And you rejected his request. We think  
16 that was the right decision then, and we think it is the  
17 right decision today to reject his request of the Court  
18 today. We think it would be inconsistent with the Panasonic  
19 ruling and fundamentally unfair to Embraco for there to be  
20 inconsistent rulings.

21 Second point, Your Honor, Judge Cox is fully aware  
22 of the plea agreement.

23 THE COURT: He's fully aware?

24 MR. LEDDY: He's fully aware of the plea agreement.  
25 He can certainly read the plea agreement and read what we are

1 pleading to. There is no lack of disclosure, no intentional  
2 or unintentional lack of disclosure. Everything is on the  
3 public record, Your Honor.

4 With respect to my third point, Your Honor, there  
5 is nothing inconsistent with our plea today and to our motion  
6 with respect to the statute of limitations. Just because you  
7 are pleading guilty to a certain period in the criminal case  
8 does not mean we forfeit our rights in the civil arena to  
9 move for dismissal of part of the complaint based upon the  
10 statute of limitations. So there is no failure to  
11 disclosure, there's no inconsistencies. We stepped up, Your  
12 Honor, and took care of any possible inconsistencies by  
13 withdrawing from our motion to dismiss on 12(b)(6) ground,  
14 that is failure to state a claim, we withdrew that part of  
15 the motion that referred to 2007 as result of our decision to  
16 plead guilty. So, Your Honor, if anything, we have gone  
17 beyond, I think, the appropriate behavior. We have withdrawn  
18 the part of the motion. There is full disclosure.

19 The plea agreement is a matter of public record,  
20 and we respectfully ask the Court today to accept our plea of  
21 guilty as it accepted Panasonic. The company has been  
22 through a lot, Your Honor, in the last 20 months. As  
23 Mr. Wood said, we cooperated fully with the government. We  
24 provided a lot of cooperation in terms of documents, and we  
25 accepted responsibility early on for this problem, and we

1 would like to put this chapter behind us. There is no  
2 reason, Your Honor, in our view to delay sentencing today  
3 because of Mr. Fink's rather novel, if I can put it that way,  
4 proposal for the Court to suspend a criminal proceeding so an  
5 event in a civil case could take place.

6 And again, Your Honor, finally, his ultimate,  
7 ultimate objective is to try to get restitution from this  
8 Court for any period for which he does not recover in the  
9 civil case, and that mixture of the criminal and civil  
10 proceedings is inappropriate. There is adequate remedies for  
11 these Plaintiffs. They are entitled to treble damages, joint  
12 and several liability and attorney fees. That's why 53 cases  
13 have been filed against our client, joined in a class action  
14 by excellent lawyers, dozens of them, pursuing their  
15 victims -- rather their clients' rights. There is no reason  
16 to delay this proceeding and to interfere with that robust  
17 proceeding in front of Judge Cox.

18 THE COURT: All right. Thank you.

19 MR. LEDDY: Thank you, Your Honor.

20 THE COURT: Mr. Wood.

21 MR. WOOD: Thank you, Your Honor. We would join  
22 with Mr. Leddy in the first part of his assessment that -- in  
23 fact, we would join with Mr. Leddy in all of his remarks but  
24 in particular the first part where he reminded the Court of  
25 what happened in Panasonic and that it was an appropriate

1 result.

2 I would like to spend a minute approaching it from  
3 a slightly different perspective. First, I confess to having  
4 almost zero knowledge of this whole realm and the terms of  
5 art even used in the pleadings, a lot of them are lost on me,  
6 I don't know what a Twombly argument is, Judge, but I think  
7 that that actually reflects the wisdom of the Court's  
8 decision in the Panasonic case. In that proceeding the Court  
9 elected to maintain the integrity of the criminal case as  
10 separate from the civil case, and what's changed here is that  
11 Mr. Fink has come in and instead of asking the Court to  
12 suspend its decision on restitution for some indefinite time  
13 until the civil case is resolved and at which point he would  
14 come back to the Court if he was unhappy with what he got  
15 there, he has now asked for a more specific remedy, and that  
16 is to have a limited time by which counsel could file  
17 something in Judge Cox's courtroom.

18 It does have the benefit of being limited, I will  
19 grant him that, unfortunately it also has many more problems  
20 from our perspective. It actually requires this Court to get  
21 involved in the specifics of that case. I know Mr. Fink has  
22 said, you know, he wants to provide them with an opportunity  
23 to file something, but I'm not sure what that means. What I  
24 think that means is that he wants you to order them to file  
25 something in Judge Cox's courtroom before you will make a



1 decision on restitution. That, in our view, is an  
2 impermissible linking of the two proceedings.

3 We, from the criminal side, place great store in  
4 the certainty and the separateness of criminal cases.  
5 There's a variety of reasons why we think this is  
6 appropriate. After speaking last time on the Panasonic case  
7 I happened to go back and started chatting with my colleagues  
8 who are much smarter than I am, and they started telling me  
9 all the reasons why they thought it was appropriate to keep  
10 it separate, you know, everything from there is a process for  
11 handling restitution and it is not to defer to a civil case  
12 out there. Imagine what precedent this would set, Judge, as  
13 another example? If you were to do this what would prevent  
14 every single criminal plea where there is a possible civil  
15 damage action from being held up pending some civil suit?  
16 Not just an antitrust, every single tort, every single  
17 assault, every single business matter that ends up --  
18 securities fraud, anything that ends up on the criminal side  
19 here is often subject to civil cases.

20 What the precedent would set here, in my opinion,  
21 would cripple the criminal justice system. I don't think  
22 that that's, you know, Mr. Leddy called this a novel approach  
23 from Mr. Fink. I would call it a disastrous one, Judge, and  
24 I would urge the Court very strongly to not go down this road  
25 for all kinds of reasons such as what I have suggested.

1     Instead, maintain the integrity of the criminal case and let  
2     the civil side do their work.

3             If the Court finds that the restitution is  
4     appropriate here the Court has handled this dozens of  
5     thousands -- probably hundreds, thousands of times before, it  
6     is not to defer and create some hybrid over in the civil side  
7     by asking these guys to go over and file something and then  
8     hope that what they file is okay with Mr. Fink. I mean,  
9     there is no problem for us as a practical matter. Assume you  
10    do this, they file something in a week and-a-half and it is  
11    inadequate in Mr. Fink's view, what are we going to do, are  
12    we going to have another hearing here where we talk about the  
13    merits of what they filed and we start going through again  
14    Twombly arguments or something like that? Who is going to  
15    decide this? Are we going to have Judge Cox in here trying  
16    to give us an opinion on whether the filing of Embraco was  
17    appropriate?

18            Again, this is a procedural, practical and  
19    legalistic nightmare, Judge, and we very strongly urge the  
20    Court to maintain the integrity of this case. If the Court  
21    wants to have restitution, order restitution. We don't think  
22    it is a wise way to go. We think that the complications, it  
23    will be incredibly difficult. I don't even think Mr. Fink  
24    wants the Court to engage in restitution. He would rather  
25    have a crack at it in the civil side and then somehow hope to

1 backstop that effort here. That's what I think is going on  
2 here, Judge, and I think it would require you to issue a  
3 ruling that is both dangerous and disastrous from our  
4 perspective.

5 We ask that the Court uphold the plea agreement in  
6 its entirety and reject the suggestion that restitution be  
7 delayed.

8 THE COURT: All right. Thank you. Mr. Fink.

9 MR. FINK: First, Your Honor, I must say that I  
10 don't agree with Mr. Leddy's assessment of my ultimate  
11 objective. The objective of my clients is not to obtain  
12 restitution. The ultimate objective of my clients, while he  
13 may have inferred that, I don't try to infer what his  
14 purposes are, but what we seek, what my clients seek, is not  
15 restitution but consistency in the representations made by a  
16 party in two different courts in the same building. They  
17 come to this Court and acknowledge a set of facts and go to  
18 another court and deny them, so in that context we just think  
19 there is right and wrong.

20 And as far as precedent, I understand the concern  
21 and I understand the concerns expressed by the Government.  
22 Most of those concerns apply much more rationally to what we  
23 requested for relief with respect to Panasonic. Yes, with  
24 respect to Panasonic we suggested, and this Court chose to  
25 reject an approach in which the plea would be held in

1 abeyance for an extended period of time until the civil  
2 action was resolved, that could be a long time before that  
3 action was resolved, and then this Court revisit restitution  
4 at that point. We are not asking that now. We are not  
5 talking about restitution. We are talking about the truth,  
6 so I don't think it is a danger to the civil justice and  
7 criminal justice systems. I don't think it crosses them over  
8 to say that people need -- that if you make a representation  
9 in one court for which you get some consideration that in  
10 another court, in this case in the same building, that you  
11 should take the same or consistent position.

12 THE COURT: Mr. Wood argued in part that the remedy  
13 that you were suggesting would cause this Court to cross an  
14 impermissible line between civil and criminal and would do  
15 injustice to both cases.

16 MR. FINK: And if it were true that we were asking  
17 this Court to tell Judge Cox what to do that would be an  
18 impermissible line. All we are saying is in reviewing the  
19 sentence, in determining whether to accept the proposed  
20 sentence, we believe it is legitimate for this Court to look  
21 at the behavior of the Defendant, and nothing seems more  
22 relevant than the behavior of the Defendant in honoring the  
23 terms of an agreement that the Defendant made in this Court  
24 for its sentencing purposes. That's not crossing into the  
25 civil realm. It is looking at their representations and how

1 they honor their representations.

2 And I agree, if we had to come in here and argue  
3 about Twombly, that would not be a logical and certainly not  
4 a pleasant proceeding in which this Court second guesses a  
5 determination by another court. That's not what I'm looking  
6 at or that's not what we are asking for. What we are asking  
7 is that this Court -- I probably shouldn't use the word  
8 second guess but I will use it, that this Court only second  
9 guess the behavior of the Defendant. The Defendant says we  
10 are honorable and we will do the following. They don't need  
11 relief because the following is going to occur. If that's  
12 the case then they should be consistent, and we don't believe  
13 that the position they have taken and the actions they have  
14 taken into the civil action are consistent.

15 To some extent they are a little more consistent  
16 than what Panasonic had done by the time they were here,  
17 absolutely, because they have admitted to 2007, but they are  
18 still taking the position that they don't have to provide any  
19 restitution -- now I'm calling it restitution only because  
20 that was the tradeoff between what the Government saw and  
21 what the Government has obtained, but they don't have to  
22 provide any compensation, which would be the proper term, I  
23 guess, that they don't have to provide any compensation for  
24 the period before February 25th, 2005. I don't think that  
25 crosses between civil and criminal. I think that's just

1 about a criminal defendant doing what a criminal defendant  
2 says they will do.

3 THE COURT: All right. Anything else?

4 MR. FINK: No. Thank you, Your Honor.

5 THE COURT: Thank you. The record clearly  
6 incorporates the arguments that were recently submitted to  
7 the Court orally by Mr. David Fink. I will not attempt to  
8 recapture those comments at this point.

9 I believe that Mr. Fink's request must be denied  
10 for several reasons. One, contrary to his belief it is my  
11 conclusion that to grant his request under the present  
12 circumstances would impermissibly fuse a civil case with a  
13 criminal case. Each case has its own boundaries, and I  
14 believe that to incorporate Mr. Fink's request would, at the  
15 very least, bend those boundaries, if not encroach upon them.

16 I heard similar arguments by Mr. Fink several weeks  
17 ago when the issue involved the Panasonic corporation.  
18 Mr. Fink, being the very extremely and able lawyer that he  
19 is, presented many of the arguments then as he did today, but  
20 I must be consistent and will be consistent by denying his  
21 request at this time. I do not believe that he has advanced  
22 a sufficient basis for disparity between the Panasonic  
23 situation and the Embraco situation here today. I see no  
24 reason to grant his request and believe that justice will  
25 prevail despite the request of Mr. Fink.

1           Is there anything further at this point before we  
2 impose sentence, Mr. Wood?

3           MR. WOOD: Nothing from the Government.

4           MR. LEDDY: No, Your Honor. Thank you.

5           THE COURT: All right. Come back to the lectern,  
6 please.

7           The Defendant, Embraco North America, Incorporated  
8 is before the Court today for its involvement in a conspiracy  
9 to set prices on household and light commercial cooling  
10 applications. Significantly there is no known prior  
11 misconduct by the Defendant corporation. It has been  
12 represented today by the Government, an allegation that has  
13 not been challenged by the Embraco Company, that it has fully  
14 cooperated with the Government and provided the Government  
15 with necessary information and documentations.

16           As I believe that pursuant to Section 8C4.1 of the  
17 sentencing guidelines that an appropriate departure from the  
18 fine range would be appropriate. As noted earlier, the  
19 parties have agreed upon a fine in the sum of \$91.8 million  
20 which is to be paid in installments over a five-year period.  
21 The question is as to whether restitution would be  
22 appropriate, but I believe that under the current sentencing  
23 guidelines that determining losses at this stage of the  
24 proceeding would be -- would complicate matters and  
25 unnecessarily prolong the sentencing process.

1 I do note that the record will support that a  
2 number of persons who have identified themselves as victims  
3 have filed a lawsuit in this court, and that case is  
4 currently pending in front of another judge, and thus the  
5 Court will enter the following decision: Pursuant to the  
6 Sentencing Reform Act of 1984, this Court, after considering  
7 the sentencing guidelines and those factors as set forth in  
8 Section 3553 subparagraph (a) of Title 18, directs the  
9 Defendant corporation, Embraco North America, Incorporated,  
10 to pay a fine in the sum of \$91.8 million with interest to  
11 accrue. This fine shall be paid in the following  
12 installments: \$16.8 million plus accrued interest within  
13 30 days of the judgment; \$15 million plus accrued interest by  
14 the each -- by the first, second, third, fourth and fifth  
15 anniversaries of the judgment. It should also be authorized  
16 for Embraco to prepay the balance if it deems it to be  
17 appropriate and necessary. And finally Embraco shall pay the  
18 special assessment in the sum of \$400 as a special assessment  
19 to be paid immediately, and that concludes my decisions.

20 Mr. Wood.

21 MR. WOOD: Thank you, Your Honor. Nothing more  
22 from the Government.

23 THE COURT: I do want to ask a question.

24 MR. WOOD: I'm sorry.

25 THE COURT: No, that's all right. Mr. Wood, are



1 | there any objections to the sentence that have not been  
2 | previously raised?

3 | MR. WOOD: No, none from the Government, Your  
4 | Honor.

5 | MR. LEDDY: No, Your Honor.

6 | THE COURT: I do want to advise Ms. Hewitt that as  
7 | the representative of the Defendant corporation your client  
8 | has a right to appeal this conviction if you as its  
9 | representative believe that the guilty plea was unlawful or  
10 | involuntary or there is some other fundamental defect in  
11 | these proceedings that was not waived by your client's guilty  
12 | plea. You also have the statutory right to appeal the  
13 | sentence under certain circumstances if you believe that it  
14 | was rendered contrary to law.

15 | Furthermore, you should be aware that any notice of  
16 | appeal with the exceptions must be filed by your client  
17 | within a period of ten days from the entry of the judgment in  
18 | your case.

19 | Incidentally, Mr. Wood, is there any waiver of  
20 | appellate rights by the Defendant?

21 | MR. WOOD: There is, Your Honor. In paragraph -- I  
22 | believe in paragraph 2 of the plea agreement discusses this,  
23 | Your Honor, and it is a limited waiver consistent with what  
24 | the Court just enunciated.

25 | THE COURT: Would you please state that waiver on

1 the record, please?

2 MR. WOOD: Sure. The defendant knowingly,  
3 voluntarily waives the rights set forth in paragraph 1 above,  
4 which was what you enunciated earlier, Your Honor. The  
5 Defendant also knowingly and voluntarily waives the right to  
6 file any appeal of any collateral attack or any other writ or  
7 motion including, but not limited to, an appeal under  
8 18 U.S.C. Section 3742, that challenges the sentence imposed  
9 by the Court if that sentence is consistent with or below the  
10 recommended sentence in paragraph 8 regardless of how the  
11 sentence is determined by the Court. This agreement does not  
12 affect their rights or obligations of the United States as  
13 set forth in 18 U.S.C. Section 3742. Nothing in this  
14 paragraph, however, shall act as a bar to the Defendant  
15 perfecting any legal remedies it may otherwise have on appeal  
16 or collateral attack respecting claims of ineffective  
17 assistance of counsel or prosecutorial misconduct, which the  
18 Court just referenced. The Defendant agrees that there is  
19 no -- that there is currently no known evidence of  
20 ineffective assistance of counsel or prosecutorial  
21 misconduct. I believe that's it, Your Honor.

22 THE COURT: Mr. Leddy, was that read correctly?

23 MR. LEDDY: Yes, it was, Your Honor.

24 THE COURT: All right. Ms. Hewitt, do you  
25 understand that Mr. Wood just said?

1 MS. HEWITT: Yes, sir.

2 THE COURT: Is that inconsistent with your  
3 communication with your client?

4 MS. HEWITT: It is consistent.

5 THE COURT: In waiving your right -- your client's  
6 right of appeal your client, I hope, is aware that the  
7 waivers are generally not enforceable, however, if your  
8 client believes that such waiver is enforceable -- rather is  
9 not enforceable I recommend that you present this argument to  
10 the United States Court of Appeals for the Sixth Circuit and  
11 if appropriate to the United States Supreme Court.

12 Finally, if your client, I hope this is not true,  
13 is not able to pay the cost of appeal I suppose we are all in  
14 trouble. If your client is unable to pay the cost of appeal  
15 it may apply for leave to appeal and file in forma pauperis.  
16 We'll leave it at that point. All right. Is there anything  
17 else that we need to talk about?

18 MR. WOOD: No, Your Honor.

19 THE COURT: Mr. Leddy?

20 MR. LEDDY: No, Your Honor.

21 THE COURT: Ms. Hewitt?

22 MS. HEWITT: No, sir.

23 THE COURT: All right. Thank you.

24 MS. HEWITT: Thank you.

25 MR. IWREY: Thank you.

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MR. LEDDY: Thank you.

MR. WOOD: Thank you.

THE CASE MANAGER: Court is adjourned.

(Proceedings concluded at 11:12 a.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of THE UNITED STATES OF AMERICA vs. EMBRACO NORTH AMERICA, INCORPORATED, Case No. 10-20577, on Thursday, December 16, 2010.

s/Robert L. Smith  
Robert L. Smith, CSR 5098  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: 12/28/2010  
Detroit, Michigan