IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)
	) Criminal No.: 03-632
v.	)
	) Filed: September 28, 2004
IAN P. NORRIS,	)
	)Violation: 15 U.S.C. § 1;
Defendant.	)18 U.S.C. § 371;
	)18 U.S.C. § 1512(b)(1);
	)18 U.S.C. § 1512(b)(2)(B)

SECOND SUPERSEDING INDICTMENT

COUNT ONE

The Grand Jury charges:

I

OFFENSE CHARGED

1. Ian P. Norris is hereby indicted and made a defendant on the charge stated below.

2. Beginning at least as early as late 1989 and continuing until at least May 2000, the exact dates being unknown to the Grand Jury, the defendant and co-conspirators engaged in a combination and conspiracy to suppress and eliminate competition by fixing the prices of (a) carbon current collectors; (b) carbon brushes sold to original equipment manufacturers for automotive applications; (c) traction-transit carbon brushes; (d) industrial carbon brushes for use in battery electric vehicles; (e) carbon brushes sold to original equipment manufacturers for use in consumer products; and (f) mechanical carbon products for use in pump

and compressor industries (hereinafter collectively "relevant carbon products") sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and co-conspirators was carried out in the United States for periods that varied by product market segment as set forth below:

(a) as to carbon current collectors, the price-fixing conspiracy was carried out in the United States beginning at least as early as late 1989 and continuing until at least May 2000;

(b) as to carbon brushes sold to original equipment manufacturers for automotive applications, the price-fixing conspiracy was carried out in the United States beginning at least as early as December 1993 and continuing until at least September 1998;

(c) as to traction-transit carbon brushes, the price-fixing conspiracy was carried out in the United States beginning at least as early as February 1995 and continuing until at least October 1998;

(d) as to industrial carbon brushes for use in battery electric vehicles, the price-fixing conspiracy was carried out in the United States beginning at least as early as February 1995 and continuing until at least October 1998;

(e) as to carbon brushes sold to original equipment manufacturers for use in consumer products, the price-fixing conspiracy was carried out in the United States beginning at least as early as October 1996 and continuing until at least September 1998; and

(f) as to mechanical carbon products for use in pump and compressor industries, the price-fixing conspiracy was carried out in the United States beginning at least as early as 1995 and continuing until at least January 1999.

The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant 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.

4. For purposes of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

(a) participating 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) agreeing, 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;

(c) discussing and exchanging price quotations to certain customers so as not to undercut the price of a co-conspirator; and

(d) submitting collusive, noncompetitive and rigged bids, or refraining from

submitting bids, to public transit authorities.

II

BACKGROUND

5. 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, rail engines, public transit vehicles, and consumer products. Carbon current collectors are used to transfer electrical current from wires or rails for use in vehicles that are not independently powered. Mechanical carbon products are used in pumps and compressors to contain liquids and gases in wear situations.

III

DEFENDANT AND CO-CONSPIRATORS

6. During the period 1986 until January 1998, defendant Ian P. Norris was the Chairman of the Carbon Division of The Morgan Crucible Company plc ("Morgan"), a company located and headquartered in Windsor, England. During the period January 1998 until October 2002, defendant Ian P. Norris was the Chief Executive Officer of Morgan. During the period set forth in this count, Morgan and its subsidiaries were engaged in the manufacture and sale of relevant carbon products to customers in the United States.

7. Various co-conspirators not made defendants herein participated in the offense charged herein and performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

8. During the period covered by this count, corporate conspirators sold a substantial quantity of relevant carbon products in a continuous and uninterrupted flow of interstate and foreign trade and commerce to customers located in states or countries other than the states or countries in which the relevant carbon products were produced.

9. During the period covered by this count, the activities of the defendant and co-conspirators that are the subject of this Indictment were within the flow of, and substantially affected, interstate and foreign trade and commerce.

V

JURISDICTION AND VENUE

10. The combination and conspiracy charged in this count was carried out, in part, within the Eastern District of Pennsylvania within the five years preceding the filing of this Indictment.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

COUNT TWO

The Grand Jury further charges that:

11. Each and every allegation contained in Paragraphs 1, 6 and 7 of Count One of this Indictment are here realleged with the same full force and effect as though said Paragraphs were set forth in full detail.

12. From in or about April 1999 to the present, a federal grand jury sitting in the Eastern District of Pennsylvania has been investigating, among other things, possible federal antitrust offenses involving various types of carbon products manufactured and sold by Morgan committed by the defendant and others. In or about April 1999 and August 2001, the federal grand jury issued subpoenas duces tecum to Morganite Industries, Inc., a United States subsidiary of Morgan.

13. From in or about April 1999, and continuing thereafter until in or about August 2001, the exact dates being unknown to the Grand Jury,

IAN P. NORRIS

knowingly and wilfully conspired and agreed with unnamed co-conspirators, both known and unknown to the Grand Jury, to knowingly and wilfully commit offenses against the United States, that is: (a) to corruptly persuade and attempt to corruptly persuade other persons known to the Grand Jury with intent to influence their testimony in an official proceeding; and (b) to corruptly persuade and attempt to corruptly persuade other persons known to the Grand Jury with intent to cause or induce those other persons to alter, destroy, mutilate or conceal records and documents with the intent to impair their availability for use in an official proceeding; that is, a federal grand jury sitting in the Eastern District of Pennsylvania, conducting a price-fixing

investigation of the carbon products industry, contrary to Title 18, United States Code, Section 1512(b)(1) and Section 1512(b)(2)(B), respectively.

I

MANNER AND MEANS OF THE CONSPIRACY

It was part of the conspiracy that:

14. Defendant and his co-conspirators interfered with and obstructed the investigation being conducted by the United States Department of Justice, Antitrust Division, through the federal grand jury sitting in the Eastern District of Pennsylvania, in that the defendant and his co-conspirators provided false and fictitious relevant and material information in response to the federal grand jury investigation into the carbon products industry.

15. Defendant and his co-conspirators prepared a "script" containing false material information which was to be followed by anyone questioned by either the Antitrust Division or the federal grand jury.

16. Defendant and his co-conspirators contacted other persons who had information relevant to the investigation being conducted by the Antitrust Division and the federal grand jury and distributed the "script" to them with instructions to follow the "script" when answering questions posed by either the Antitrust Division or the federal grand jury.

17. The conspirators removed, concealed or destroyed from business files any documents which contained evidence of an anticompetitive agreement or reflected contacts between or among their competitors.

18. Defendant and his co-conspirators persuaded, directed and instructed other persons to remove, conceal or destroy any documents which contained evidence of an anticompetitive agreement or reflected contacts between or among their competitors.

II

OVERT ACTS

19. In furtherance of the conspiracy and to effect the objects of the conspiracy, the following overt acts, among others, were committed:

(a) In or about April 1999, in response to the subpoena duces tecum served on Morganite Industries, Inc., the defendant instructed and directed employees of Morgan entities who were involved in the carbon products price-fixing agreement described in Count One of this Indictment to remove and conceal or destroy from their files any documents and records that contained evidence of Morgan's price-fixing agreement with its competitors or contacts between or among Morgan and its competitors.

(b) In or about April 1999, the defendant asked a co-conspirator (CC-2) to assemble a task force, the purpose of which was to search through Morgan's business files and remove any documents that contained evidence of the price-fixing agreement between or among Morgan and its competitors or reflected contacts between Morgan and its competitors.

(c) In or about April 1999, CC-2 formed the task force consisting of three Morgan employees (CC-3, CC-4 and CC-5) who were aware of and participated in the price-fixing agreement and directed them to search Morgan's files in European locations and remove and conceal or destroy any documents that contained evidence of Morgan's price-fixing agreement with its competitors or contacts between or among Morgan and its

competitors.

(d) During the period beginning in or about April 1999 and continuing to in or about June 1999, the task force formed by CC-2 visited Morgan's facilities in Europe and removed and concealed or destroyed all of the documents and records from Morgan's files that contained evidence of Morgan's price-fixing agreement with its competitors or contacts between or among Morgan and its competitors. The members of the task force, including CC-3, gave CC-4 collected documents which referred to the price-fixing agreement so that CC-4 could conceal these documents from the United States and European authorities but also so that the documents could be maintained in a concealed location in order for Morgan to continue to monitor the price-fixing agreement.

(e) At a Technical Committee Meeting among the co-conspirators of the price-fixing agreement, including CC-3, held in or about April 1999, CC-4 told those in attendance that Morgan had formed a task force and had removed incriminating evidence from its files. CC-4 suggested that all of the co-conspirators in the price-fixing agreement should do the same.

(f) In or about May 1999, the defendant directed a co-conspirator (CC-1) to instruct an employee of one of Morgan's United States subsidiaries to go through his business files and remove and conceal or destroy any documents that contained evidence of Morgan's price-fixing agreement with its competitors or referred to contacts between or among Morgan and its competitors. In or about August 2001, the employee destroyed documents relevant to the grand jury's investigation due to the instructions from CC-1.

(g) In or around November 1999, the defendant directed CC-3 and another co-conspirator (CC-6) to review Morgan's business records, including expense records; to identify the dates of and the persons in attendance at the price-fixing meetings Morgan had with its competitors; and to turn that information over to the defendant.

(h) In or around November 1999, the defendant directed a co-conspirator (CC-7) to create a timeline, based on the information collected by CC-3 and CC-6 and referred to in Paragraph 19(g) above, that reflected all of the meetings Morgan had with its co-conspirators in the carbon products price-fixing agreement described in Count One of this Indictment.

(i) In or around November 1999, the defendant called several of the co-conspirators, including, among others, CC-2, CC-6 and CC-7, to a meeting at Morgan's headquarters in Windsor, England, to discuss the antitrust investigation being conducted in the United States and how to deal with it. The meeting was carried out over a period of several days.

(j) During the meeting described in Paragraph 19(i), the defendant and the co-conspirators discussed possible justifications or legitimate explanations for Morgan's meetings with its competitors. The defendant and the co-conspirators agreed that they would falsely characterize their meetings with competitors as joint venture meetings rather than truthfully describe them as price discussion meetings.

(k) During the meeting described in Paragraph 19(i), the defendant and the co-conspirators agreed that they would prepare summaries of the meetings Morgan had with its competitors; that the summaries would falsely characterize the meetings as joint venture meetings; and that the summaries would purposely exclude mention of pricing discussions Morgan had with its competitors at those meetings (hereinafter referred to as the "script").

(l) During the meeting described in Paragraph 19(i), the defendant and the co-conspirators agreed that they would each follow the script when they were questioned during the course of the antitrust investigation and that the script contained the version of events that all of the employees of Morgan entities who were involved in the price-fixing conspiracy should follow when questioned during the investigation.

(m) During the meeting described in Paragraph 19(i), the defendant and the co-conspirators designated CC-6 as the "scribe" whose purpose it was to create the master version of the script.

(n) During the meeting described in Paragraph 19(i), the defendant and the co-conspirators did in fact prepare a materially false and fictitious script that intentionally omitted all references to pricing discussions that occurred at meetings held between and among Morgan and its competitors. The materially false and fictitious script was distributed to all of the price-fixing co-conspirators employed by Morgan entities.

(o) During the meeting described in Paragraph 19(i), CC-6 faxed a portion of the script to a U.S. based employee of a Morgan entity, who was involved in the price-fixing conspiracy but who was not present at the meeting, and asked the employee to approve the contents of the materially false and fictitious script. Despite the fact that the script was materially false and failed to include significant aspects of the pricing discussions held between Morgan and its competitor, the employee informed CC-6 that the script was acceptable to him as it comported with the defendant's description to him of the agreement reflected in Paragraph 19(j) above.

(p) Sometime after January 2000, to prepare themselves for questioning during the course of the investigation, the Morgan co-conspirators engaged in a "rehearsal" at which they were questioned and cross-examined on their recollection of the materially false and fictitious information contained in the script.

(q) Sometime during or soon after the "rehearsal" referred to in Paragraph 19(p) above, the defendant expressed his concern that certain employees involved in meetings with competitors would tell the truth to authorities. After discussing his concern with CC-2, the defendant implemented a plan to separate those employees from the company before they were questioned, either by placing them into retirement or making them consultants, so that they could not be forced to testify in the investigation.

(r) Sometime after January 2000, the defendant asked CC-2 to prepare an early retirement package for CC-3 because CC-3 had failed to withstand the questioning and cross-examination of the " rehearsal" and needed to be removed from Morgan before he had an opportunity to be questioned by authorities conducting the antitrust investigation.

(s) Sometime after January 2000, CC-3 retired from Morgan.

(t) In or around September 2000, CC-2 asked CC-6 to type a portion of the handwritten script he prepared during the meeting described in Paragraph 19(i) above and to fax the script to CC-2.

(u) In or around November 2000, CC-2 met with an individual (CW-1) who was an executive of a company that had engaged in the price-fixing agreement with Morgan.

(v) During the meeting described in Paragraph 19(u) above, CC-2 told CW-1, among other things, that the United States was conducting an antitrust investigation into the

carbon brushes industry and that Morgan was having difficulty with the United States investigation in that it found itself to be the focus of the investigation.

(w) During the meeting described in Paragraph 19(u) above, CC-2 told CW-1 that while Morgan told the authorities that its executives had been at meetings with its competitors, Morgan also told the authorities that the meetings concerned general business issues and that no pricing discussions were held during the course of the meetings. CC-2 further told CW-1 that he would send CW-1 a summary of what Morgan's executives had told the authorities (the script).

(x) During the meeting described in Paragraph 19(u) above, CC-2 told CW-1 that he was certain that executives at CW-1's company who participated in the price-fixing meetings would be interrogated by the United States because Morgan had disclosed their names to the United States during the course of the investigation. CC-2 further told CW-1 that if the recollection of those who attended the meetings with Morgan was the same as or close to the script, it would help convince the United States that Morgan's version of what transpired at the meetings was truthful and would ultimately benefit both Morgan and the company for which CW-1 worked.

(y) During the meeting described in Paragraph 19(u) above, CC-2 told CW-1 to distribute the script to potential witnesses whom CC-2 identified as having attended and participated in the price-fixing meetings and whose names Morgan had already disclosed to the authorities; to treat the script confidentially; and to destroy the script after having read and distributed it.

(z) Sometime in or around December 2000, CC-2 mailed or otherwise delivered to CW-1 the materially false and fictitious script and caused CW-1 to mail or

otherwise deliver photocopies of the script to certain of CW-1's co-workers whom CC-2 identified as having participated in the price-fixing agreement and having attended price-fixing meetings with Morgan.

(aa) On or about February 26, 2001, the defendant and CC-2 met with CW-1 and another individual at the Heathrow Airport. During the meeting the defendant discussed with CW-1 the grand jury investigation being conducted by the Antitrust Division. The defendant told CW-1 that Morgan had a problem in the United States and that they all needed to be very careful.

(bb) At the meeting referred to in Paragraph 19(aa) above, the defendant told CW-1 that CW-1 needed to make sure that his employees told the same story as Morgan when they were questioned by the government authorities so that both Morgan and CW-1's company could escape prosecution in the United States antitrust investigation. The defendant told CW-1 that he knew CW-1's company was aware of the story Morgan had told the authorities.

(cc) At the meeting referred to in Paragraph 19(aa) above, the defendant told CW-1 that the only way for Morgan and CW-1's company to get out of the investigation was if everyone who was questioned by the authorities gave the same testimony because by doing so the authorities would be convinced that they and Morgan were telling the truth about the meetings they had together. The defendant told CW-1 that there was a high probability that the United States investigation would be closed if everyone's recollection of the meetings was the same.

(dd) At the meeting referred to in Paragraph 19(aa) above, the defendant told CW-1 that one way to handle the concern that employees involved in meetings with

competitors would tell the truth to authorities was to separate them from the company before they were questioned, either by placing them into retirement or making them consultants, so that they could not be forced to testify by their employer. The defendant told CW-1 that Morgan had adopted this approach and suggested that CW-1 do the same.

(ee) At the meeting referred to in Paragraph 19(aa) above, the defendant told CW-1 that it was important to keep the United States investigation from spilling over into Europe; that there was a new generation of law administrators in Europe who had learned much from the Americans and who would apply the same system of investigation in the carbon brush industry as the United States; and that it was in their common interest to stop the investigation before it reached Europe. The defendant told CW-1 that the only way to stop the investigation was for everyone who was questioned by the authorities to give the same testimony.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

COUNT THREE

The Grand Jury further charges that:

20. Each and every allegation contained in Paragraphs 1, 6, 12, and 19(g) through 19(ee) of this Indictment are here realleged with the same full force and effect as though said Paragraphs were set forth in full detail.

21. During the period in or around November 1999 until on or about February 26, 2001, the exact dates being unknown to the Grand Jury, defendant

IAN P. NORRIS

corruptly persuaded and attempted to corruptly persuade persons, whose identities are known to

the Grand Jury, with intent to influence their testimony in an official proceeding, that is the federal grand jury sitting in the Eastern District of Pennsylvania investigating, among other things, possible federal criminal antitrust violations occurring in the carbon products industry and committed by the defendant and others.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1512(b)(1).

COUNT FOUR

The Grand Jury further charges:

22. Each and every allegation contained in Paragraphs 1, 6, 12, 19(a) through 19(d) and 19(f) of this Indictment are here realleged with the same full force and effect as though said Paragraphs was set forth in full detail.

23. During the period in or about April 1999, until in or about August 2001, the exact dates being unknown to the Grand Jury, defendant

IAN P. NORRIS

knowingly corruptly persuaded other persons, whose identities are known to the Grand Jury, with intent to cause or induce those persons to alter, destroy, mutilate or conceal records and documents, with intent to impair their availability for use in an official proceeding, that is the federal grand jury sitting in the Eastern District of Pennsylvania investigating, among other things, possible federal criminal antitrust violations occurring in the carbon products industry and committed by the defendant and others.

IN VIOLATION OF TITLE 18 UNITED STATES CODE, SECTION 1512(b)(2)(B).

NOTICE OF ADDITIONAL FACTORS

The Grand Jury further charges that:

24. In committing the offense charged in Count One of this Indictment, defendant

IAN P. NORRIS

(a) Committed an offense in which the conduct involved participation in an agreement to submit noncompetitive bids, as described in U.S.S.G. § 2R1.1(b)(1);

(b) Committed an offense in which the volume of commerce attributable to the defendant's employer in goods and services affected by the conspiracy was more than $100 million, as described in U.S.S.G. § 2R1.1(b)(2)(G); and

(c) Committed an offense in which the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of, and in connection with, the investigation or prosecution of the offense or relevant conduct, as described in U.S.S.G. § 3C1.1.

25. In committing the offenses charged in Count One, Count Two, Count Three and Count Four of this Indictment, defendant IAN P. NORRIS committed an offense in which the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, as described in U.S.S.G. §3B1.1(a).

A TRUE BILL:

/S/
FOREPERSON

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Assistant Attorney General

/S/
JAMES M. GRIFFIN
Deputy Assistant Attorney General

/S/
SCOTT D. HAMMOND
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