# EXHIBIT "A"

U.S. Department of Justice

Federal Bureau of Prisons

*Northeast Regional Office*

*VIA E-MAIL*

*U.S. Custom House*
*2nd & Chestnut Streets - 7th Floor*
*Philadelphia, PA. 19106*

October 26, 2010

Lucy P. McClain, Esquire
DOJ, Antitrust Division
170 S. Independence Mall West
Suite 650 West
Philadelphia, PA 19106

Re: United States v. Ian Norris
Criminal No. 03-632

Dear Ms. McClain:

Thank you for your recent inquiry concerning the Federal Bureau of Prisons (BOP) ability to provide adequate health care for federal prisoners with significant, acute or chronic medical conditions. Specifically, you have asked whether, based on the available information, the BOP can provide the necessary and appropriate care for Mr. Norris should he be designated to a federal correctional facility. Mr. Norris has been incarcerated at the Federal Detention Center in Philadelphia, Pennsylvania (FDC Philadelphia) since July 27, 2010.

I am aware of Mr. Norris's medical condition as described by the documents you provided this office, namely, letters from Dr. Alun Jones and a psychiatric report from Dr. Tom Fahy. I have also reviewed medical records for Mr. Norris kept within the Bureau's Electronic Medical Record (BEMR). The records provided by defense counsel describe Mr. Norris as having a history of prostate cancer, gout, arthritis, hypertension, obesity, hernia, MRSA infection and adjustment disorder related to the stress of his legal case. At FDC Philadelphia, Mr. Norris is currently prescribed four medications to address his high blood pressure, high cholesterol, gout symptoms and depressed mood.

The Bureau has implemented a medical care level classification system. The care level classification system is intended to enhance the Bureau's ability to manage inmate health care effectively by matching inmates with those institutions that

can best meet their medical needs, while at the same time achieving optimal use of the Bureau's health care resources.

If committed to the custody of the BOP, Mr. Norris may be reviewed for designation by the Bureau of Prisons Office of Medical Designations. At that time, a determination would be made as to the appropriate facility, either a medical referral center or a general population institution, in which to designate Mr. Norris. Medical referral centers are prisons which provide in-patient care to seriously ill inmates. The BOP has six of these centers throughout the United States. Besides providing chronic care for seriously ill inmates, these medical centers also provide hospice care for terminally ill inmates. For your reference, I have attached an outline describing the Bureau's care level criteria.

Every Bureau facility, regardless of care level, has a Health Services Department, typically staffed with a physician(s) and several mid-level providers, such as physician assistants and nurse practitioners, along with technical and administrative staff. Most Health Services Departments conduct "sick-call" four or more days per week for the entire inmate population. Each Bureau institution also contracts with medical centers in the local vicinity to provide specialized medical treatment. These medical centers offer Bureau inmates access to specialists and diagnostic tools (including MRIs and CT Scans). When medical emergencies and the need for surgical procedures arise, these outside medical centers offer the Bureau a wide range of trained medical and surgical specialists.

All inmates entering our facilities are thoroughly screened by medical staff for physical and mental health conditions, and are monitored thereafter through follow-up appointments and chronic care clinics, as necessary. A medical plan of action for an inmate would include a thorough and timely history and physical exam, per existing policies and procedures, to ascertain the mental health and medical status upon a designation and arrival to a Bureau facility. Subsequently, pending the results of this evaluation, by both mental health and medical staff; the treating Clinical Director and Chief Psychologist may formulate a plan that addresses his medical, mental health and activities of daily living issues. This plan may include assessment of the daily functioning, ie., handicap living quarters, need for a bottom bunk, ambulatory aides or bracing, pharmacy line oversight, heart healthy diet, specialty consultations including colonoscopies, etc.

Every general population institution runs a number of chronic care clinics whose purpose it is to provide routinely scheduled quality care to medically ill inmates, as well as to stay cognizant of any changes in medical conditions that may arise. If Mr. Norris is designated to a general population institution, it is likely he would be assigned to the Hypertensive, High Cholesterol and Mental Health clinics. Due to his history of prostate cancer he will also likely be assigned to the General clinic for monitoring. Inmates enrolled in chronic care clinics are seen at a minimum on a quarterly basis, and more often if medically necessary.

Based on the information provided to me and my knowledge of the Bureau's medical resources, the Bureau will be able to provide appropriate care for Mr. Norris. For your convenience, I have attached a general outline to explain how the Bureau designates prisoners with medical illnesses and to describe the medical services available within the Bureau. If I can offer any further information in this matter, please do not hesitate to contact me.

Sincerely,

Barbara J. Cadogan
Health Systems Administrator

Encl.

**OUTLINE OF BUREAU OF PRISONS CARE LEVELS AND EXAMPLES**

There are four CARE Levels in the Bureau of Prisons (BOP) medical CARE Level classification system. After initial designation and provisional care level assignment by the Designation and Sentence Computation Center (DSCC), non-provisional CARE Levels are determined by BOP clinicians. These assignments depend on treatment modalities and inmate functionality in addition to diagnostic categories such as cancer, diabetes, HIV, hepatitis.

**Q. Who are CARE Level 1 inmates and who designates them?**

- Inmates are generally healthy, but may have limited medical needs that can be easily managed by clinician evaluations every six months; and
- Inmates are less than 70 years of age.
- CARE Level 1 designations are made by the DSCC.
- **Examples:** mild asthma, diet-controlled diabetes, stable HIV patients not requiring medications.

**Q. Who are CARE Level 2 inmates and who designates them?**

- Inmates are stable outpatients who require clinician evaluation every 1 - 6 months.
- Can be managed in chronic care clinics, including for mental health issues.
- Enhanced medical resources may be required from time to time, but are not regularly necessary.
- CARE Level 2 designations are made by the DSCC.
- **Examples:** medication-controlled diabetes, epilepsy, or emphysema.

**Q. Who are CARE Level 3 inmates and who designates them?**

- Inmates are fragile outpatients who require frequent clinical contacts to prevent hospitalization for catastrophic events.
- May require some assistance with activities of daily living, but do not need daily nursing care.
- Inmate companions may be used to provide assistance.
- Stabilization of medical or mental health conditions may require periodic hospitalization.
- **Examples:** cancer in remission less than a year, advanced HIV disease, severe mental illness in remission on medication, severe congestive heart failure, end-stage liver disease.
- **Designation of CARE Level 3 inmates is made by the BOP's Office of Medical Designation and Transportation in Washington, D.C.**

**Q. Who are CARE Level 4 inmates and who designates them?**

- Inmates require services available only at an MRC (which provide significantly enhanced medical services and limited in-patient care).
- May need daily nursing care.
- Functioning may be severely impaired and requires 24-hour skilled nursing care or nursing assistance.
- **Examples:** cancer on active treatment, dialysis, quadriplegia, stroke or head injury patients, major surgical patients, acute psychiatric illness requiring inpatient treatment, high-risk pregnancy.
- **Designation of CARE Level 4 inmates is made by the BOP's Office of Medical Designation and Transportation in Washington, D.C.**

**Q. When is the CARE Level classification process going to be implemented?**

A. It is currently in use.

**Q. What can I, as a federal judge, do in the sentencing process to assist in the designations process?**

- Until an inmate comes into the BOP and is evaluated by a health care provider, the Presentence Report (PSR) is the BOP's principal resource for initially assessing medical conditions.
- The Court can assist the BOP in this process by requesting that the PSR contain complete and current information regarding the medical and mental health status of the inmate (for example, new or additional information that may be available from the local jail or the defendant's personal physician). In order to facilitate appropriate Care Level designation, the Court should recommend that all current medical information be forwarded to the BOP at the time of sentencing.

**Q. Whom should the judges contact concerning designations for defendants from their courts?**

- The first point of contact within the BOP for defendants who do not have significant medical or mental health conditions should be the DSCC.

# EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | |
|---|---|
| UNITED STATES OF AMERICA | ) |
| | ) Criminal No.: 02-733 |
| v. | ) |
| | ) Violation: 15 U.S.C. § 1 |
| MORGANITE, INC., and | ) 18 U.S.C. § 1512(b)(1) |
| THE MORGAN CRUCIBLE | ) 18 U.S.C. § 1512(b)(2)(B) |
| COMPANY PLC | ) |
| | ) Filed: 11-04-02 |
| Defendants. | ) |

**PLEA AGREEMENT**

The United States of America and Morganite, Inc., a corporation organized and existing under the laws of the State of North Carolina, and The Morgan Crucible Company plc, a corporation organized and existing under the laws of the United Kingdom, hereby enter into the following Plea Agreement pursuant to Rule 11(e)(1)(c) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

**RIGHTS OF DEFENDANT**

1. The defendants understand their rights:

(a) to be represented by an attorney;

(b) to be charged by Indictment;

(c) as to defendant The Morgan Crucible Company plc, 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 it in the United States District Court for the Eastern District of Pennsylvania;

(d) to plead not guilty to any criminal charge brought against them;

(e) to have a trial by jury, at which they would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for them to be found guilty;

(f) to confront and cross-examine witnesses against them and to subpoena witnesses in their defense at trial;

(g) to appeal their convictions if they are found guilty at trial; and

(h) to appeal the imposition of sentence against them.

**AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS**

2. The defendants waive the rights set out in Paragraph 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case, and agree voluntarily to consent to the jurisdiction of the United States to prosecute this case against them in the United States District Court for the Eastern District of Pennsylvania. The defendants also waive the right to appeal the imposition of sentence against them, so long as the sentence imposed is consistent with the recommendation in Paragraph 10 of this Plea Agreement. Further, pursuant to Fed. R. Crim. P. 7(b), defendants will waive indictment and plead guilty at arraignment to a three-count Information to be filed in the United States District Court for the Eastern District of Pennsylvania as follows.

(a) Morganite, Inc. will plead guilty to Count One in the Information charging it with participating in a conspiracy to suppress and eliminate competition by fixing the prices of (1) current collectors sold to certain transit authorities and private customers; (2) carbon brushes sold to certain original equipment manufacturers for automotive applications; (3) carbon brushes sold to certain original equipment manufacturers for battery electric vehicle applications; and (4) carbon brushes sold to certain transit authorities (hereinafter collectively "relevant carbon products") sold in the United States and elsewhere during the period beginning at least as early as January 1990 and continuing thereafter until at least May 2000, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The charged combination and conspiracy was carried out in the

United States for periods that varied by product market segment as set forth below:

(i) as to current collectors, the price-fixing conspiracy was carried out in the United States beginning at least as early as January 1990 and continued until at least May 2000;

(ii) 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 continued until at least September 1998;

(iii) as to carbon brushes sold to original equipment manufacturers for battery electric vehicle applications, the price-fixing conspiracy was carried out in the United States beginning at least as early as February 1995 and continued until at least September 1998; and

(iv) as to carbon brushes sold to transit authorities, the price fixing conspiracy was carried out in the United States beginning at least as early as February 1995 and continued until at least September 1998;

(b) The Morgan Crucible Company plc will plead guilty to Count Two in the Information charging it with attempting to influence the testimony of witnesses in an official proceeding, in violation of 18 U.S.C. § 1512(b)(1).

(c) The Morgan Crucible Company plc will plead guilty to Count Three in the Information charging it with corruptly persuading a witness to destroy documents relevant to an official proceeding in violation of 18 U.S.C. §1512(b)(2)(B).

3. Morganite, Inc. and The Morgan Crucible Company plc, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charges 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 Paragraphs 4, 5, and 6 below.

**FACTUAL BASIS FOR OFFENSES CHARGED**

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts relating to Count One against Morganite, Inc.:

(a) For purposes of this Plea Agreement, the "relevant period" is that period beginning at least as early as January 1990 and continuing thereafter until at least May 2000. During the relevant period, Morganite, Inc. was a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Dunn, North Carolina. During the relevant period, Morganite, Inc. was a producer of relevant carbon products and was engaged in the sale of relevant carbon products in the United States and elsewhere. Carbon brushes are used to transfer electrical current in direct current motors by acting as the rubbing contacts for electrical connectors in the motors. Direct current motors are used in a variety of products including automobiles, battery electric vehicles, and public transit vehicles. Carbon current collectors are used to transfer electrical current from wires or rails for use in vehicles that are not independently powered.

(b) During the relevant period, Morganite, Inc., through its officers, agents and employees, participated in a conspiracy among relevant carbon products producers, the primary purpose of which was to fix the price of relevant carbon products sold to certain customers in the United States and elsewhere. In furtherance of the conspiracy, Morganite, Inc., through its officers, agents, and employees, engaged in discussions and attended meetings with representatives of other relevant carbon products producers. During these discussions and meetings, agreements were reached to fix the price of and not to undercut each other's prices of relevant carbon products to be sold to certain customers in the United States and elsewhere.

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

(d) Acts in furtherance of this conspiracy were carried out within the Eastern District of Pennsylvania. Relevant carbon products affected by this conspiracy were sold by one or more of the conspirators to customers in this District.

5. Had this case gone to trial, the United States would have presented evidence to prove the following facts relating to Count Two against The Morgan Crucible Company plc:

(a) In or about April 1999, a federal grand jury sitting in the Eastern District of Pennsylvania and investigating a conspiracy to fix the price of various carbon products sold in the United States and elsewhere issued a subpoena duces tecum to Morganite Industries, Inc., a subsidiary of defendant The Morgan Crucible Company plc.

(b) Beginning in or about November 2000 and continuing thereafter until in or about February 2001, The Morgan Crucible Company plc, acting through its officers, agents, and employees, knowingly attempted to corruptly persuade persons, whose identities are known to the United States Department of Justice, Antitrust Division ("Antitrust Division"), with intent to influence their testimony in official proceedings before the grand jury sitting in the Eastern District of Pennsylvania in that:

(i) In or around November 2000, the defendant met with an officer of a co-conspirator company, whose identity is known to the Antitrust Division, (hereinafter "CC-1") and discussed, among other things, the grand jury

investigation taking place in the United States.

(ii) During that meeting, the defendant disclosed to CC-1 false information the defendant had provided to the authorities conducting the grand jury investigation in order to convince the authorities that the price-fixing meetings between and among the co-conspirators were legitimate business meetings and not conspiratorial meetings.

(iii) During that meeting, the defendant said it would send CC-1 a document containing its statement to the authorities (hereinafter "script") and instructed him (a) to distribute the script to potential witnesses whom defendant identified as having attended and participated in the conspiratorial meetings and whose names the defendant had already disclosed to the authorities; and (b) to treat the script confidentially and to destroy it after having read and distributed it. The defendant told CC-1 that it would be in their companies' mutual and beneficial interests if the potential witnesses the defendant identified all gave the same information to the authorities conducting the grand jury investigation as the defendant had given and which was contained in the script.

(iv) Sometime in or around November 2000, the defendant mailed to CC-1 the script containing false statements regarding events that had occurred at certain conspiratorial meetings.

(v) Sometime in or around December 2000, the defendant caused CC-1 to distribute copies of the script to those persons defendant had identified to CC-1 at the November 2000 meeting, telling them that the script was defendant's version of events and instructing them to destroy the script after reading and noting its contents.

(vi) Sometime in or around February 2001, the defendant met again with CC-1. At this meeting the defendant again attempted to influence the co-conspirators to give the same false information when questioned by the authorities as the defendant had given, with the intent to convince the authorities to conclude its investigation without bringing formal charges against the defendant or the co-conspirators.

(vii) During the February 2001 meeting with CC-1, the defendant, in order to convince the co-conspirators to repeat the defendant's false statements given to the authorities conducting the grand jury investigation in the United States, told CC-1 that if the United States grand jury were allowed to go forward, the price-fixing investigation would spread to the European Union, which had become more aggressive in its investigations, and where CC-1 was a much larger competitor and would face more serious economic consequences than it would face in the United States.

6. Had this case gone to trial, the United States would have presented evidence to prove the following facts relating to Count Three against The Morgan Crucible Company plc:

(a) In or about April 1999 and in or about August 2001 a federal grand jury sitting in the Eastern District of Pennsylvania and investigating a conspiracy to fix the price of various carbon products sold in the United States and elsewhere issued subpoenas duces tecum to Morganite Industries, Inc., a subsidiary of the defendant, The Morgan Crucible Company plc. The scope of the subpoenas included all divisions and affiliates of Morganite Industries, Inc., that were located in the United States.

(b) Beginning in or about April 1999 and continuing thereafter to in or about August 2001, the defendant, The Morgan Crucible Company plc, acting through its officers,

agents, and employees, knowingly corruptly persuaded an employee of one of its United States subsidiaries, whose identity is known to the Antitrust Division (hereinafter "CC-2"), with intent to cause or induce that employee to destroy or conceal certain documents located within the United States in the custody and control of the defendant's subsidiary and with intent to impair the availability of those documents for use in official proceedings before the grand jury sitting in the Eastern District of Pennsylvania in that:

(i) In or around April 1999, the defendant telephoned CC-2 and instructed CC-2 to remove, conceal or destroy any documents that reflected any contacts with competitors.

(ii) In or around August 1999, the defendant met with CC-2 and discussed, among other things, the grand jury's investigation into price fixing in the carbon industry, and instructed CC-2 to remove, conceal or destroy any documents that reflected any contacts with competitors.

(iii) In or around July 2001, the defendant met with CC-2 and again discussed the grand jury's investigation into price fixing in the carbon industry.

(iv) In or around August 2001, the defendant caused CC-2 to destroy documents relevant to the grand jury's investigation.

**POSSIBLE MAXIMUM SENTENCES**

7. Morganite, Inc. understands that the maximum penalty which may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act (Count One of the Information) is a fine in an amount equal to the greatest of:

(a) $10 million (15 U.S.C. § 1);

(b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or

(c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

The Morgan Crucible Company plc understands that the maximum penalty which may be imposed against it upon conviction for a violation of 18 U.S.C. § 1512(b)(1) (Count Two of the Information) and for a violation of 18 U.S.C. § 1512(b)(2)(B) (Count Three of the Information) are, for each count, a fine in an amount equal to the greatest of:

(i) $500,000 (18 U.S.C. § 3571(c)(3));

(ii) twice the gross pecuniary gain the defendant derived from the crime (18 U.S.C. § 3571(c) and (d)); or

(iii) twice the gross pecuniary loss caused to the victims of the crime by the defendant (18 U.S.C. § 3571(c) and (d)).

8. In addition, the defendants understand that:

(a) pursuant to § 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G."), the Court may order them to pay restitution to the victims of their offenses;

(b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is required to order each defendant to pay a $400 special assessment upon conviction for each count in which it is charged in the Information; and

(c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years.

**SENTENCING GUIDELINES**

9. Sentencing for the offenses to be charged will be conducted pursuant to the U.S.S.G. Manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendants provide to the United States pursuant to this Plea Agreement will not be used in determining the defendants' applicable

sentencing guideline ranges, except to the extent provided in U.S.S.G. § 1B1.8(b).

**SENTENCING AGREEMENT**

10. Pursuant to Fed. R. Crim. P. 11(e)(1)(c), the United States and the defendants agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring that Morganite, Inc. pay to the United States a criminal fine of $10 million on Count One of the Information and that The Morgan Crucible Company plc pay fines of $500,000 on Count Two of the Information and $500,000 on Count Three of the Information, payable as set forth below without interest pursuant to 18 U.S.C. § 3612(f)(3)(A) ("the recommended sentence").

(a) The United States and defendants agree to recommend, in the interest of justice pursuant to 18 U.S.C. § 3572(d)(1) and U.S.S.G. § 8C3.2(b), that The Morgan Crucible Company plc pay its fines totaling $1,000,000 within ninety (90) days of imposition of sentence and that Morganite, Inc. pay its fine in the following installments: within ninety (90) days of imposition of sentence – $1,375,000 ; at the six-month anniversary of imposition of sentence ("anniversary") – $375,000; at the nine-month anniversary – $375,000; at the one-year anniversary – $375,000; at the 15-month anniversary – $500,000; at the 18-month anniversary – $500,000; at the 21-month anniversary – 500,000; at the two-year anniversary – $500,000; at the 27-month anniversary – $625,000; at the 30-month anniversary – $625,000; at the 33-month anniversary – $625,000; at the three-year anniversary – $625,000; at the 39-month anniversary – $750,000; at the 42-month anniversary – $750,000; at the 45-month anniversary – $750,000; and at the four-year anniversary – $750,000; provided, however, that the defendant shall have the option at any time before the four-year anniversary of prepaying the remaining balance then owing on the fine.

(b) Morganite, Inc. understands that the Court will order it to pay a special

assessment of $400 and The Morgan Crucible Corporation plc understands that the Court will order it to pay special assessments totaling $800, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in addition to any fine imposed.

(c) The United States will recommend, and Morganite, Inc. agrees to accept, the imposition of a term of probation that coincides with the fine payment schedule set forth above and expires at the time the last fine payment is made.

(d) The United States and the defendants jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendants at the plea and sentencing hearings, and the further disclosure described in Paragraph 12, will provide sufficient information concerning the defendants, the crimes charged in this case, and the defendants' roles in the crimes to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and the defendants will jointly request that the Court accept the defendants' guilty pleas and immediately impose sentence on the day of 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 will not void this plea agreement.

11. The United States and Morganite, Inc. agree that the applicable sentencing guidelines fine range for Count One exceeds the fine contained in the recommended sentence set out in Paragraph 10 above. The United States and Morganite, Inc. further agree that the recommended fine is appropriate, pursuant to U.S.S.G. § 8C3.3(b), due to the inability of Morganite, Inc. to pay a fine greater than that recommended without substantially jeopardizing its continued viability.

12. Subject to the ongoing, full, and truthful cooperation of the defendants described in Paragraph 15 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendants'

cooperation and their commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendants' involvement in the charged offenses, and all other conduct and facts relevant to sentencing.

13. The United States and the defendants understand that the Court retains complete discretion to accept or reject the recommended sentences provided for in Paragraph 10 of this Plea Agreement.

(a) If the Court does not accept the recommended sentences as to both defendants, the United States and the defendants agree that this Plea Agreement, except for Paragraph 13(b) below, shall be rendered void as to both defendants.

(b) If the Court does not accept the recommended sentences, the defendants will be free to withdraw their guilty pleas (Fed. R. Crim. P. 11(e)(4)). If either defendant withdraws its guilty plea, this Plea Agreement, the guilty pleas, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendants in any criminal or civil proceeding, except as otherwise provided in Fed. R. Crim. P. 11(e)(6). In addition, the defendants agree that, if they withdraw their guilty pleas pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 17 of this Plea Agreement will be tolled for the period between the date of the signing of the Plea Agreement and the date the defendants withdrew their guilty pleas or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

14. In light of the availability of civil causes of actions, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order for the price-fixing offense charged in Count One of the Information.

## DEFENDANTS' COOPERATION

15. The defendants and their subsidiaries engaged in the production or sale of electrical carbon products or mechanical carbon products (collectively, "related entities") will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the manufacture or sale of electrical carbon products or mechanical carbon products, any related witness tampering and obstruction investigation, 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 ongoing, full, and truthful cooperation of the defendants shall include, but not be limited to:

(a) producing to the United States all documents, information, and other materials, not privileged, wherever located, in the possession, custody, or control of the defendants or any of their related entities, requested by the United States in connection with any Federal Proceeding;

(b) securing the ongoing, full, and truthful cooperation, as defined in Paragraph 16 of this Plea Agreement, of Melvin Perkins, Laurence Bryce, and Edouard Thein, including making such persons available in the United States and at other mutually agreed-upon locations, at the defendants' expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding; and

(c) using their best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 16 of this Plea Agreement, of the current and former directors, officers, and employees of the defendants or any of their related entities, in addition to those specified in subparagraph (b) above, as may be requested by the United States, but excluding Ian Norris, Jacobus Kroef, Robin Emerson, and F. Scott Brown, including making these persons available in

the United States and at other mutually agreed-upon locations, at the defendants' expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

16. The ongoing, full, and truthful cooperation of each person described in either Paragraph 15(b) or 15(c) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all non-privileged documents, including claimed personal documents, and other non-privileged materials, wherever located, requested by attorneys and agents of the United States;

(b) making himself or herself available for interviews in the United States and at other mutually agreed-upon locations, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

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

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United States fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 18(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 17(a) will be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

## GOVERNMENT'S AGREEMENT

17. Upon acceptance of the guilty pleas called for by this Plea Agreement and the imposition of the recommended sentences, and subject to the cooperation requirements of Paragraph 15 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the defendants or any of their related entities for any act or offense committed before the date of this Plea Agreement (a) that was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of electrical carbon products or mechanical carbon products or (b) involving contempt, obstruction, false statement, witness tampering, document destruction or perjury (including, but not limited to, any violations of 18 U.S.C. §§ 401, 402, 1001, 1503, 1505, 1512, 1621, 1622 or 1623) committed in connection with any criminal antitrust investigation of electrical carbon product or mechanical carbon product markets ("Relevant Offenses"). The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

18. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty pleas called for by this Plea Agreement and the imposition of the recommended sentences and subject to the exceptions noted in Paragraph 18(c), the United States will not bring criminal charges against any current or former director, officer, or employee of the defendants or their related entities (excluding Ian Norris,

Jacobus Kroef, Robin Emerson, and F. Scott Brown) for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of the defendants or their related entities that was undertaken in furtherance of a Relevant Offense;

(b) Should the United States determine that any current or former director, officer, or employee of the defendants or their related entities may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the defendants) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendants;

(c) If any person requested to provide cooperation under Paragraph 18(b) fails to comply with his or her obligations under Paragraph 16, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;

(d) Except as provided in Paragraph 18(e), information provided by a person described in Paragraph 18(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503) committed subsequent to the date of this Plea Agreement;

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 16 of this Plea Agreement, the agreement in Paragraph 18(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;

(f) The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence; and

(g) Documents provided under Paragraphs 15(a) and 16(a) shall be deemed responsive to outstanding grand jury subpoenas issued to Morganite Industries, Inc. or any of its related entities.

19. The United States agrees that when any person travels to the United States for interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based upon any Relevant Offense, to subject such person to arrest, detention, or service of process, or to prevent such person from departing the United States. This paragraph does not apply to an individual's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) in connection with any testimony or information provided or requested in any Federal Proceeding.

20. The defendants understand that they may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the convictions resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendants and their related entities as a matter for that agency to consider before determining what administrative action, if any, to take.

## REPRESENTATION BY COUNSEL

21. The defendants have been represented by counsel and are fully satisfied that their attorneys have provided competent legal representation. The defendants have thoroughly reviewed this Plea Agreement and acknowledge that counsel has advised them of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

## VOLUNTARY PLEA

22. The defendants' decisions to enter into this Plea Agreement and to tender pleas 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. The United States has made no promises or representations to the defendants as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

## VIOLATION OF PLEA AGREEMENT

23. The defendants agree that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that either defendant or any of their related entities have failed to provide full and truthful cooperation, as described in Paragraph 15 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendants in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendants and their related entities shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendants may seek court review of any such determination made by the United States. The defendants and their related entities agree that, in the event that the United States is released from its obligations under this Plea Agreement

and brings criminal charges against the defendants or their related entities for any offense referred to in Paragraph 17 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

24. The defendants understand and agree that in any further prosecution of them or their related entities resulting from the release of the United States from its obligations under this Plea Agreement, because of the defendants' or their related entities' violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by them, their related entities, or current or former directors, officers, or employees of them or their related entities to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against them or their related entities in any such further prosecution. In addition, the defendants unconditionally waive their right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Crim. P. 11(e)(6) and Fed. R. Evid. 410.

**ENTIRETY OF AGREEMENT**

25. This Plea Agreement constitutes the entire agreement between the United States and the defendants concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendants.

26. The undersigned are authorized to enter this Plea Agreement on behalf of the defendants as evidenced by the Resolution of the Board of Directors of the defendants attached to, and incorporated by reference in, this Plea Agreement.

27. 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.

28. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

Dated:

Respectfully submitted,

/s/
BY: _____
DAVID J. COKER
Director,
Morganite, Inc.

/s/
BY: _____
DAVID J. COKER
Company Secretary
The Morgan Crucible Company plc

/s/
BY: _____
ROBERT M. OSGOOD
SAMUEL W. SEYMOUR
ROBERT J. WIERENGA
Counsel for Morganite, Inc.
and Morgan Crucible Company plc

/s/
BY: _____
LUCY P. MCCLAIN
RICHARD S. ROSENBERG
WENDY B. NORMAN
Attorneys
U.S. Department of Justice
Antitrust Division
170 S. Independence Mall West
The Curtis Center, Suite 650 West
Philadelphia, PA 19106
Tel. No.: (215) 597-7401

# EXHIBIT "C"

%AO (Rev. 3/01) Judgment in a Crimin ~~se for~~ Organizational Defendants
Sheet 1

# UNITED STATES DISTRICT COURT

EASTERN District of PENNSYLVANIA

UNITED STATES OF AMERICA
V.
MORGANITE, INC.

**JUDGMENT IN A CRIMINAL CASE**
(For Organizational Defendants)

CASE NUMBER: 02-733-1

ROBERT M. OSGOOD, ESQ.
Defendant Organization's Attorney



**THE DEFENDANT ORGANIZATION:**

X pleaded guilty to count(s) ONE (1)

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

**ACCORDINGLY**, the court has adjudicated that the organizational defendant is guilty of the following offense(s):

| Title & Section | Nature of Offense | Date Concluded | Count Number(s) |
|---|---|---|---|
| 15:1 | DESTRUCTION OF PROPERTY, INTERSTATE COMMERCE. | 05/31/2000 | 1 |

The defendant organization is sentenced as provided in pages 2 through 6 of this judgment.

☐ The defendant organization has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

IT IS ORDERED that the defendant organization shall notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization shall notify the court and United States attorney of any material change in the organization's economic circumstances.

Defendant Organization's
Federal Employer I.D. 111098690

Defendant Organization's Principal Business Address:

MORGANITE, INC.
ONE MORGANITE DRIVE
DUNN, NORTH CAROLINA 28334

Defendant Organization's Mailing Address:

MORGANITE, INC.
ONE MORGANITE DRIVE
DUNN, NORTH CAROLINA 28334

11/04/2002
Date of Imposition of Judgment

James T. Giles
Signature of Judicial Officer

JAMES T. GILES, USDC CHIEF JUDGE
Name and Title of Judicial Officer

11/6/02
Date

Defendant
Robert M. Osgood, Esq., Deft. Atty.
Lucy P. McClain, AUSA
FLU
Probation (2)
Pretrial (2)
U.S. Marshal (2)

AO 245E (Rev. 3/01) Judgment in a Crimin. se for Organizational Defendants
Sheet 2 Probation



DEFENDANT ORGANIZATION: MORGANITE, INC.
CASE NUMBER: 02-733-1

## PROBATION

The defendant organization is hereby sentenced to probation for a term of FOUR (4) YEARS.

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant organization pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant organization shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant organization shall also comply with the additional conditions on the attached page (if indicated below).

A TRUE COPY CERTIFIED TO FROM THE RECORD
DATED : 11-2-02
ATTEST : Margaret Gallagher
DEPUTY CLERK UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

## STANDARD CONDITIONS OF SUPERVISION

1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;

2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;

4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;

5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;

6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees;

7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

AO 245E (Rev. 3/01) Judgment in a Crimi... Case for Organizational Defendants
Sheet 2A — Probation



DEFENDANT ORGANIZATION: MORGANITE, INC.
CASE NUMBER: 02-733-1

## ADDITIONAL PROBATION TERMS

Defendant, Morganite, Inc. pay its fine in the following installments: within ninety (90) days of imposition of sentence - $1,375,000; at the six-month anniversary of imposition of sentence ("anniversary") - $375,000; at the nine-month anniversary - $375,000; at the one-year anniversary - $375,000; at the 15-month anniversary - $500,000; at the 18-month anniversary - $500,000; at the 21-month anniversary - $500,000; at the two-year anniversary - $500,000; at the 27-month anniversary - $625,000; at the 30-month anniversary - $625,000; at the 33-month anniversary - $625,000; at the three-year anniversary - $625,000; at the 39-month anniversary - $750,000; at the 42-month anniversary - $750,000; at the 45-month anniversary - $750,000; and at the four-year anniversary - $750,000; provided, however, that the defendant shall have the option at any time before the four-year anniversary of prepaying the remaining balance then owing on the fine.

United States Department of Justice shall inform the probation department of defendant's compliance with the fine payment schedule set forth above.

AO 245E (Rev. 3/01) Judgment in a Criminal C... r Organizational Defendants
Sheet 3 — Criminal Monetary Penalties



DEFENDANT ORGANIZATION: MORGANITE, INC.
CASE NUMBER: 02-733-1

## CRIMINAL MONETARY PENALTIES

The defendant organization shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

| | Assessment | Fine | Restitution |
|---|---|---|---|
| TOTALS | $ 400.00 | $ 10 MILLION | $ |

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

| Name of Payee | *Total Amount of Loss | Amount of Restitution Ordered | Priority Order or Percentage of Payment |
|---|---|---|---|

| | | |
|---|---|---|
| TOTALS | $ _____ | $ _____ |

☐ If applicable, restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant organization shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

X The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:

X the interest requirement is waived for the X fine and/or ☐ restitution.

☐ the interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

AO 245E (Rev. 3/01) Judgment in a Criminal C or Organizational Defendants
Sheet 3A — Criminal Monetary Penalties



DEFENDANT ORGANIZATION: MORGANITE, INC.
CASE NUMBER: 02-733-1

## ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

Defendant, Morganite, Inc. pay its fine in the following installments: within ninety (90) days of imposition of sentence - $1,375,000; at the six-month anniversary of imposition of sentence ("anniversary") - $375,000; at the nine-month anniversary - $375,000; at the one-year anniversary - $375,000; at the 15-month anniversary - $500,000; at the 18-month anniversary - $500,000; at the 21-month anniversary - $500,000; at the two-year anniversary - $500,000; at the 27-month anniversary - $625,000; at the 30-month anniversary - $625,000; at the 33-month anniversary - $625,000; at the three-year anniversary - $625,000; at the 39-month anniversary - $750,000; at the 42-month anniversary - $750,000; at the 45-month anniversary - $750,000; and at the four-year anniversary - $750,000; provided, however, that the defendant shall have the option at any time before the four-year anniversary of prepaying the remaining balance then owing on the fine.

United States Department of Justice shall inform the probation department of defendant's compliance with the fine payment schedule set forth above.

AO 245E Rev. 3/01) Judgment in a Criminal Ca : Organizational Defendants
Sheet 4 — Schedule of Payments



DEFENDANT ORGANIZATION: MORGANITE, INC.
CASE NUMBER: 02-733-1

## SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or

B X Payment to begin immediately (may be combined with ☐ C, ☐ D, or X E below); or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E X Special instructions regarding the payment of criminal monetary penalties:

The defendant organization pay the fine in accordance with the schedule of payments set forth in the Criminal Monetary Penalties sheet of this judgment.

All criminal monetary penalties are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

☐ The defendant organization shall pay the cost of prosecution.

☐ The defendant organization shall pay the following court cost(s):

☐ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

# EXHIBIT "D"

Home Office

Extradition Section, Specialist Crime 3 ( Judicial Co-operation) 5th Floor Fry, London SW1P 4DF
Switchboard 0207 035 4848 Fax Direct Line 0044 0207 035 6985 Direct Line 0207 035 1259
E-mail bob.wood@homeoffice..gsi.gov.uk www.homeoffice.gov.uk

White & Case LLP
5 Old Broad Street
London EC2N 1DW

Our Ref CFP 01/10/11439
Your Ref
Date 23 September 2008

FAO Alistair Graham

By fax and post: 0207 532 1001

Dear Sir,

**RE: EXTRADITION OF IAN NORRIS TO THE UNITED STATES OF AMERICA**

1. Thank you for the representations submitted on behalf of Mr Norris under cover of your letter dated 18th August 2008. The Prime Minister has also passed to us your letter of 11 September. The Secretary of State has noted the contents of the latter but takes the view that her decision as to surrender must be based on those matters set forth in sections 93-96 of the Extradition Act 2003.

2. As you are aware, Mr Norris' return for trial is sought by the United States in respect of allegations included in a second superseding indictment filed by a grand jury on 28th September 2004.

3. Count one of that indictment alleges that Mr Norris conspired with others to operate a price-fixing agreement or cartel, in violation of section 1 of the Sherman Act (15 USC #1). Counts 2 to 4 allege conspiracy to obstruct justice, witness tampering and causing a person to alter, destroy, mutilate or conceal an object with the intent to impair the object's availability for use in official proceedings, in violation of 18 USC #371, #1512(b)(1) and #1512(b)(2)(B).

4. Based upon the second superseding indictment, a warrant for Mr Norris' arrest was issued on 7 October 2004.

5. Following proceedings before District Judge Evans, the extradition case against Mr Norris was sent to the Secretary of State on 1st June 2005 for his decision as to whether Mr Norris should be extradited. Mr Norris filed representations in relation to the Secretary of State's consideration of whether, as required under section 95 of the Extradition Act 2003 ( " the 2003 Act"), there were speciality arrangements with the United States.

6. The Secretary of State concluded that there were speciality arrangements in place between the United Kingdom and the United States. Accordingly, on 29th September 2005 he ordered Mr Norris' extradition to the United States in respect of the extradition offences constituted by the conduct alleged against him, as reflected in the English law charges contained in the accompanying schedule of charges.

7. Charges 1 to 7 of that schedule set out the English law charges said to be constituted by the conduct alleged against him relating to the price-fixing allegations. Charges 8 and 9 reflected the conduct relating to the obstruction of justice matters.

8. Mr Norris appealed against the decisions of both the district judge and the Secretary of State. In relation to the Secretary of State and his consideration of speciality, he advanced no arguments in light of the decision of the High Court in Bermingham v Government of the United States of America[2006] EWHC 2000 (Admin), but instead reserved his position for the House of Lords.

9. The appeals were rejected by the High Court (Auld LJ and Field J) on 25th January 2007: Norris v Government of the United States of America [2007] EWHC 71 (Admin); [2007] 1 WLR 1730. The High Court declined to certify a point of law of general public importance in relation to speciality.

10. On 12th March 2008, the House of Lords, on appeal from the High Court, held that the making and implementation of price-fixing agreement without aggravating features was not, at the relevant time, a criminal offence in the United Kingdom. It therefore allowed Mr Norris' appeal in relation to the order to extradite him on the price-fixing allegations: Norris v Government of the United States of America [2008] UKHL 16.

11. The House of Lords remitted the case to the district judge for reconsideration of whether, as required by section 87 of the 2003 Act, Mr Norris' extradition would be incompatible with the Convention rights under the Human Rights Act 1998 in light of the fact that he could be extradited only in respect of the obstruction of justice matters.

12. On 25th July 2008 District Judge Evans concluded that the interference with Mr Norris' Article 8 rights to which the extradition would give rise was entirely proportionate, having regard to the seriousness of the obstruction of justice allegations and the legitimate aim of honouring extradition treaties.

13. Accordingly, he sent Mr Norris' case to the Secretary of State, pursuant to

section 87(3) of the 2003 Act, for her reconsideration as to whether Mr Norris should be extradited in light of the matters to which she is permitted to have regard in sections 94 to 96 of 2003 Act.

14. The Secretary of State has carefully considered the contents of the representations and examined afresh the issue of speciality in relation to section 95. However, she is not persuaded that the representations raise any clear or compelling reason for not ordering extradition.

15. Although you have contended that speciality arrangements with the United States are not effective, in that you argue that Mr Norris will be ' dealt with' (within the meaning of section 95) in the United States, by way of being sentenced on the obstruction of justice matters in a manner that also reflects the price-fixing allegations in respect of which extradition has been refused, the Secretary of State is satisfied that there are speciality arrangements in place. There is nothing to suggest that he speciality arrangements will not honoured by the US authorities. Her reasons are set out below.

16. Accordingly, the Secretary of State orders the return of Mr Norris to the United States in relation to charges 8 and 9 of the English law charges, pursuant to the request received by the United Kingdom. A fresh extradition order is enclosed.

<u>The representations and the Secretary of State's response</u>

17. The representations contend, in essence, that Mr Norris, if convicted in the United States, will be sentenced in respect of the conduct alleged in the price-fixing count in the second superseding indictment (count 1), notwithstanding that his extradition on that matter was refused by the House of Lords.

18. This contention is said to be supported by:

a. The fact that, when sentencing, US federal judges are empowered by the Federal Sentencing Guidelines to make findings of fact on the balance of probabilities in respect of unadjudicated conduct relevant to the underlying offence. The representations point, in particular to the decision of the Sixth Circuit Court of Appeals, <u>US v Garrido –Santana</u> (2004) 360 F 3d 565, in which the court held that there was no breach of speciality where an extradited defendant was sentenced for the offence for which he had been extradited in a way that took account of related, but uncharged, conduct for which extradition had not been sought.

b. The decision to issue a second superseding indictment, in which the facts relating to the price – fixing allegations have been re-pleaded in the context of the obstruction charges. It is suggested that this indicates an intention on the part of the prosecutor to invite the sentencing court to make findings (and to sentence thereon) in respect of price-fixing conduct, for which extradition was refused.

c. The evidence of John Martin Jr, filed on 21st April 2005, to the effect that any sentence for the obstruction of justice allegations will inevitably reflect, on account of the Federal Sentencing Guidelines, the 'underlying

offense' to which that obstruction related, namely the price-fixing allegations.

19. The representations also draw a comparison with the sentencing practice in England and Wales in relation to offences for which the defendant has not been convicted or which he has not admitted.

20. You will be aware from the letters of 4th August 2005 and 30th September 2005, filed in response to the representations advance by you in July and August 2005, that the United States authorities have argued that the speciality arrangements with the UK are effective, and that no instance in the history of those extradition arrangements has ever been cited where the US has been found to have violated the rule of speciality.

21. The Secretary of State is of a similar view that there is nothing to justify any general conclusion that the United States would not adhere to the speciality protection contained in Article 18 of the 2003 US/UK Treaty, and which, by virtue of Article 23(3), applies to this request (although the 1972 Treaty otherwise continues to apply).

22. That was the clear conclusion reached by the High Court in Welsh and Thrasher v Secretary of State for the Home Department and Government of the United States [2006] EWHC 158 (Admin) where it rejected the contention that the US habitually violated the spirit and purpose of the speciality rule. It noted that no decision had been cited to it in which any US court had expressed itself in a way which suggested or could suggest an allegation of disregard for the speciality rule as they interpret it (paragraph 36). It further noted that the US courts regard adherence to the speciality rule as a matter of international comity and respect for foreign relations embodied in the relevant treaty arrangements.

23. The United States authorities further argue that the application of the Federal Sentencing Guidelines is not inconsistent with Article XII of the Extradition Treaty between the UK and the US (the protection formerly contained in Article XII of the 1972 Treaty is replicated in Article 18 of the 2003 Treaty: Ahmad v Government of United States [2006] EWHC [2927] (Admin) at para 12 per Laws LJ), and that they do not of themselves give rise to a violation of the rule of speciality.

24. They assert in the letter of 4th August 2005 that when a defendant is sentenced for an offence, he is not being punished, when regard is had to other relevant conduct, for crimes for which he has not been convicted but rather his sentence is adjusted because of the manner in which he committed the instant offence.

25. The Secretary of State must reach her own view as to whether the sentencing practice of the United States violates the speciality rule. In her view, it does not. Mr Norris will not, it seems to her, be sentenced or otherwise 'dealt with', if convicted on any of the obstruction of justice charges, in respect of the price-fixing allegations. He will only be sentenced for the obstruction of justice charges, even if such a sentence may have regard to other conduct relevant to those charges.

26. She considers that this practice, far from violating the principles of speciality, respects such principles. That was also the clear conclusion reached by the High Court in Welsh

paragraphs 145 to 149), in which the High Court concluded that the US practice of regarding conduct underpinning offences for which extradition has been refused (or in respect of which there has been no conviction) as capable of aggravating the sentence for the extradited offence did not breach the rule of speciality (see, in particular, paragraphs 105, 136-147 of Welsh and Thrasher; paragraph 147 of Bermingham).

27. The High Court also considered that the fact that such a practice did not mirror sentencing practice in the United Kingdom did not indicate a breach of speciality: paragraphs 112/113 of Welsh and Thrasher; paragraph 147 of Bermingham. The Secretary of State further notes that the High Court considered both the application of the Federal Sentencing Guidelines and the case of US v Garrido-Santana to which you have referred.

28. It follows that the fact that the second superseding indictment re-pleads, for the purposes of sentencing, the price-fixing allegation in the context of the obstruction of justice offences, and the likelihood that the Guidelines will permit the sentencing court (as a matter of discretion) to pay regard to the price-fixing allegations do not, in the view of the Secretary of State, establish a lack of speciality arrangements.

29. For these reasons, the Secretary of State concludes that there are speciality arrangements in place, as required by section 95. Accordingly, she orders the return of Mr Norris in relation to the obstruction of justice charges.

30. Mr Norris has the right within 14 days to give notice of appeal against the Secretary of State's decision (the giving of notice of appeal within 14 days requires the filing and service of the appellant's notice within these 14 days). Under the Extradition Act 2003, these 14 days start with the day on which the Secretary of State informs you of her decision. If Mr Norris intends to appeal, please note the Practice Direction supplementing Part 52 of the Civil Procedure Rules which governs extradition appeals and which requires that any papers filed at the High Court must also be served upon the Home Office and the Crown Prosecution Service. We should therefore be obliged if you would notify Julian Gibbs here at the Home Office as to whether there is to be an appeal; and, in that event, if you would comply with the Practice Direction. Please note that the provisions in this paragraph also apply to an appeal under section 103 against the District Judge.

31. A copy of this letter is being sent to Jason Carter at the US Embassy in London.

Yours faithfully

BOB WOOD

E.R.

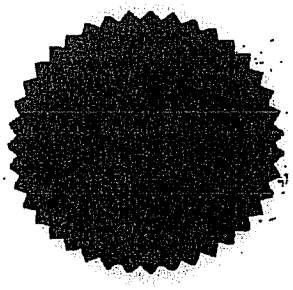
**ORDER FOR EXTRADITION PURSUANT TO SECTION 93(4) OF THE EXTRADITION ACT 2003**

Under section 93(4) of the Extradition Act 2003, the Secretary of State hereby orders the extradition of Ian Norris to the United States of America, being a territory designated for the purposes of Part 2 of that Act, for offences listed in the attached schedule.

Date: 22 September 2008

Signed: West of Spithead

Parliamentary Under-Secretary of State



E.R.

Schedule of charges

Ian Norris is accused of conduct which, had it occurred in the United Kingdom, would have constituted the following offences:

That Ian Norris:

1. Between the 1st day of April 1999 and the 31st day of May 2000 conspired together with executives, employees and officers of the companies Morganite, Morgan Advanced Materials and Technology Inc., La Carbone Lorraine of Paris, Schunk Kohlenstofftechnik GmbH and Hoffman Electrokohle and other persons unknown to pervert the course of public justice, namely the process of a criminal investigation.

2. On a day between the 1st day of April 1999 and the 31st day of May 2000 with intent to pervert the course of public justice did a series of acts which had a tendency to pervert the course of public justice in that he –

i) Directed an employee of Morgan to prepare false and misleading material to be provided to a judicial investigation.

ii) Encouraged executives, officers and employees of Morgan, Morganite, Morgan Advanced Materials and Technology Inc., La Carbone Lorraine of Paris, Schunk Kohlenstofftechnik GmbH and Hoffman Electrokohle to provide false and misleading evidence to a judicial investigation.

iii) Concealed, destroyed or removed information relevant and material to the judicial investigation.

Within the jurisdiction of the United States of America.