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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO VENUE

11 UNITED STATES OF AMERICA)

No. CR 04-0302 MJJ

12)
13 v.)

PLEA AGREEMENT

14 JAMES J. CONWAY,)

15 Defendant.)
16 _____)

17
18 **PLEA AGREEMENT**

19 The United States of America and James J. Conway (“defendant”) hereby enter into the
20 following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal
21 Procedure (“Fed. R. Crim. P.”):

22 **RIGHTS OF DEFENDANT**

23 1. The defendant understands his rights:

24 (a) to be represented by an attorney;

25 (b) to be charged by Indictment;

26 (c) to plead not guilty to any criminal charge brought against him;

27 (d) to have a trial by jury, at which he would be presumed not

28 guilty of the charge and the United States would have to prove every essential element of

1 the charged offense beyond a reasonable doubt for him to be found guilty;

2 (e) to confront and cross-examine witnesses against him and to
3 subpoena witnesses in his defense at trial;

4 (f) not to be compelled to incriminate himself;

5 (g) to appeal his conviction, if he is found guilty at trial; and

6 (h) to appeal the imposition of sentence against him.

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

9 2. The defendant waives the rights set out in Paragraph 1(b)-(g) above. The
10 defendant agrees to have his sentence determined under the United States Sentencing Guidelines
11 (“U.S.S.G.”) and waives all constitutional challenges to the validity of the U.S.S.G. The
12 defendant waives any right he may possess to have facts that determine his Guidelines fine and
13 imprisonment ranges under the U.S.S.G. (including any facts used to determine his offense level,
14 volume of commerce, any specific offense characteristic or other enhancement or adjustment, or
15 any upward departure) alleged in an indictment and found by a jury beyond a reasonable doubt.
16 The defendant agrees that facts that determine his Guidelines fine and imprisonment ranges will
17 be found by the court at sentencing by a preponderance of the evidence and that the court may
18 consider any reliable evidence, including hearsay, in making such determinations. Further,
19 pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at
20 arraignment to a one-count Information to be filed in the United States District Court for the
21 Northern District of California. The Information will charge the defendant with participating in
22 a combination and conspiracy to suppress and eliminate competition by maintaining and
23 increasing the prices of certain rubber chemicals, to be sold in the United States and elsewhere,
24 beginning in or about February 2000 and continuing until in or about December 2001 in
25 violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

26 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
27 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
28 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

1 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

4 (a) For the purposes of the Plea Agreement, the “relevant period” is that
5 period beginning in or about February 2000 and continuing until in or about December
6 2001. During the relevant period, the defendant was Executive Vice President,
7 Performance Chemicals and Elastomers, of Crompton Corporation (“Crompton”), an
8 entity organized and existing under the laws of Massachusetts and then Delaware and
9 with its principal place of business in Middlebury, Connecticut. During the relevant
10 period, Crompton was engaged in the manufacture and sale of rubber chemicals in the
11 United States and elsewhere.

12 (b) During the relevant period, the defendant participated in a conspiracy with
13 other persons and entities engaged in the manufacture and sale of rubber chemicals, the
14 primary purpose of which was to maintain and raise the prices of certain rubber
15 chemicals sold in the United States and elsewhere. In furtherance of the conspiracy, the
16 defendant participated in conversations and attended meetings with representatives of
17 other major rubber chemical firms. During such meetings and conversations, defendant
18 and co-conspirators agreed to raise and maintain prices of certain rubber chemicals to be
19 sold in the United States and elsewhere.

20 (c) During the relevant period, rubber chemicals sold by one or more of the
21 conspirator firms, and equipment and supplies necessary to the production and
22 distribution of rubber chemicals, as well as payments for rubber chemicals, traveled in
23 interstate and foreign commerce. The business activities of Crompton and its co-
24 conspirators in connection with the production and sale of rubber chemicals affected by
25 this conspiracy were within the flow of, and substantially affected, interstate and foreign
26 trade and commerce.

27 (d) Rubber chemicals affected by this conspiracy were sold by one or more of
28 the conspirators to customers located in this District.

1 **POSSIBLE MAXIMUM SENTENCE**

2 5. The defendant understands that the maximum penalty that may be imposed
3 against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

4 (a) a term of imprisonment for three (3) years (15 U.S.C. § 1);

5 (b) a fine in an amount equal to the greatest of:

6 (1) \$350,000,

7 (2) twice the gross pecuniary gain the conspirators derived from the
8 crime, or

9 (3) twice the gross pecuniary loss caused to the victims of the crime
10 by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d));
11 and

12 (c) a term of supervised release of one (1) year following any term of
13 imprisonment. If the defendant violates any condition of supervised release, the
14 defendant could be imprisoned for the entire term of supervised release (18 U.S.C.
15 § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3), and U.S.S.G. § 5D1.2(a)(3)).

16 6. In addition, the defendant understands that:

17 (a) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay restitution
18 to the victims of the offense; and

19 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court is
20 required to order the defendant to pay a \$100.00 special assessment upon conviction for
21 the charged crime.

22 **SENTENCING GUIDELINES**

23 7. Sentencing for the offense to be charged will be conducted pursuant to
24 the U.S.S.G. Manual in effect on the day of sentencing, unless, as authorized by U.S.S.G.
25 § 1B1.11, the court determines that use of the Guidelines Manual in effect on the date that the
26 defendant is sentenced would violate the ex post facto clause of the United States Constitution.
27 If the court makes such a determination, the court shall use the Guidelines Manual in effect on
28 December 2001, the last date that the offense of conviction was committed. Pursuant to

1 U.S.S.G. § 2R1.1(b)(2), the United States and the defendant agree that, for purposes of
2 sentencing, the appropriate volume of affected commerce attributable to the defendant is more
3 than \$37.5 million. As authorized by U.S.S.G. § 1B1.8, the United States agrees that self-
4 incriminating information that the defendant provides to the United States pursuant to this Plea
5 Agreement will not be used to increase the volume of affected commerce attributable to the
6 defendant or in determining the defendant's applicable sentencing guidelines range, except to the
7 extent provided in U.S.S.G. § 1B1.8(b).

8 **SENTENCING AGREEMENT**

9 8. The defendant understands that the sentence to be imposed on him is within the
10 sole discretion of the sentencing judge and that, pursuant to Fed. R. Crim. P. 11(c)(3)(B), he will
11 have no right to withdraw his guilty plea if the Court imposes any sentence inconsistent with the
12 recommendation contained in this Plea Agreement or any recommendation made at the time of
13 sentencing.

14 9. Based on the information now known to it, the United States agrees that it will
15 make a motion, pursuant to U.S.S.G. § 3E1.1, for a downward adjustment of three levels for
16 acceptance of responsibility due to the defendant's timely notification of his intention to enter a
17 guilty plea.

18 10. The defendant understands that the Court will order him to pay a \$100 special
19 assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3 in addition to any fine
20 imposed.

21 11. Pursuant to Fed R. Crim. P. 11(c)(1)(B), the United States agrees that if, in its
22 sole and exclusive judgment, it decides that the defendant has cooperated fully and truthfully,
23 provided substantial assistance to law enforcement authorities within the meaning of U.S.S.G.
24 § 5K1.1 in any federal antitrust investigation involving any product sold by Crompton and its
25 predecessors and subsidiaries, and otherwise complied fully with this Agreement, it will file with
26 the Court a motion, pursuant to U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553. The motion will
27 describe the nature and extent of the defendant's cooperation and recommend a downward
28 departure from the Guidelines' fine and term of imprisonment in this case.

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

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

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

14 **AGREEMENT BY THE UNITED STATES**

15 15. Subject to the full, truthful, and continuing cooperation of the defendant, as
16 described in Paragraph 14 of this Plea Agreement, and upon the Court's acceptance of the guilty
17 plea called for by this Plea Agreement and the imposition of sentence, the United States will not
18 bring further criminal charges against the defendant for any act or offense committed before the
19 date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy
20 involving the manufacture or sale of rubber chemicals ("Relevant Offense"). The
21 nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation
22 of the federal tax or securities laws, or to any crime of violence.

23 **REPRESENTATION BY COUNSEL**

24 16. The defendant has reviewed all legal and factual aspects of this case with his
25 attorney and is fully satisfied with his attorney's legal representation. The defendant has
26 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory
27 explanations from his attorney concerning each paragraph of this Plea Agreement and
28 alternatives available to the defendant other than entering into this Plea Agreement. After

1 conferring with his attorney and considering all available alternatives, the defendant has made a
2 knowing and voluntary decision to enter into this Plea Agreement.

3 **VOLUNTARY PLEA**

4 17. The defendant's decision to enter into this Plea Agreement and to tender a plea of
5 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
6 or representations other than the representations contained in this Plea Agreement and the James
7 J. Conway Cooperation Agreement, filed separately with the Court. The United States has made
8 no promises or representations to the defendant as to whether the Court will accept or reject the
9 recommendations contained within this Plea Agreement.

10 **VIOLATION OF PLEA AGREEMENT**

11 18. The defendant agrees that, should the United States determine in good faith,
12 during the period that any Federal Proceeding is pending, that the defendant has failed to provide
13 full and truthful cooperation, as described in Paragraph 14 of this Plea Agreement, or has
14 otherwise violated any provision of this Plea Agreement, the United States will notify the
15 defendant or his counsel in writing by personal or overnight delivery or facsimile transmission
16 and may also notify his counsel by telephone of its intention to void any of its obligations under
17 this Plea Agreement (except its obligations under this paragraph), and the defendant shall be
18 subject to prosecution for any federal crime of which the United States has knowledge including,
19 but not limited to, the substantive offenses relating to the investigation resulting in this Plea
20 Agreement. The defendant may seek Court review of any determination made by the United
21 States under this Paragraph to void any of its obligations under the Plea Agreement. The
22 defendant agrees that, in the event that the United States is released from its obligations under
23 this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense,
24 the statute of limitations period for such offense will be tolled for the period between the date of
25 the signing of this Plea Agreement and six (6) months after the date the United States gave
26 notice of its intent to void its obligations under this Plea Agreement.

27 19. The defendant understands and agrees that in any further prosecution of him
28 resulting from the release of the United States from its obligations under this Plea Agreement

1 based on the defendant's violation of the Plea Agreement, any documents, statements,
2 information, testimony, or evidence provided by him to attorneys or agents of the United States,
3 federal grand juries, or courts, and any leads derived therefrom, may be used against him in any
4 such further prosecution. In addition, the defendant unconditionally waives his right to
5 challenge the use of such evidence in any such further prosecution, notwithstanding the
6 protections of Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.

7 **ENTIRETY OF AGREEMENT**

8 20. This Plea Agreement and the James J. Conway Cooperation Agreement
9 constitutes the entire agreement between the United States and the defendant concerning the
10 disposition of the criminal charge in this case. This Plea Agreement cannot be modified except
11 in writing, signed by the United States and the defendant.

12 21. The undersigned attorneys for the United States have been authorized by the
13 Attorney General of the United States to enter this Plea Agreement on behalf of the United
14 States.

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

18
19 DATED: September 24, 2004

20 Respectfully submitted,

21
22 BY: /s/
23 James J. Conway
24 Defendant

25 BY: /s/
26 Michael L. Scott
27 Jeane Hamilton
28 Victor Ali
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