

Court File No.  
T-1588-03

FEDERAL COURT OF CANADA  
(TRIAL DIVISION)

BETWEEN

HER MAJESTY THE QUEEN

and

ROBERT P. KRASS

Accused

AGREED STATEMENT OF FACTS

I THE ACCUSED ROBERT P. KRASS

1. Robert P. Krass, ["Krass"] aged 67, is a citizen of the United States of America and resident at all material times outside Canada. Krass spent most of his career employed in various positions of responsibility by Union Carbide in its UCAR Carbon Division. In 1990, when UCAR Carbon became a joint venture of Union Carbide and Mitsubishi Corporation, Krass became the Chief Executive Officer of a new company, UCAR International Inc. ("UCAR US"). In 1995, when UCAR US became a public corporation, Krass was its Chief Executive Officer and Chairman of the Board. Krass remained in these positions until 1998 and until that time was also a very significant shareholder in the company. In his capacity as Chief Executive Officer and Chairman of the Board, Krass oversaw all business activities of UCAR US operations worldwide, including UCAR Inc. ("UCAR Canada"). UCAR Canada was wound up in the spring of 1999.

2. Throughout the relevant time period, UCAR Canada was a corporation incorporated under the laws of Ontario with its principal place of business in Welland, Ontario, and a subsidiary of UCAR US. UCAR US and its subsidiary companies (collectively "UCAR") are among the largest manufacturers of graphite electrodes in the world and are involved in the manufacture, production, distribution, sale and supply of graphite electrodes and other carbon and graphite products throughout the world, including Canada.
3. UCAR Canada sold and supplied graphite electrodes in various diameters ranging from 75mm to 750mm (3" to 30") to steel producers, foundry operators and other users of electric arc furnaces and ladle furnaces in Canada and export markets.

## II. OTHER CORPORATIONS

3. In the relevant time period, S.G.L. Canada Inc. ("SGL Canada") was a corporation incorporated under the laws of Canada with a manufacturing facility in Lachute, Quebec and a sales office in Montreal, Quebec. SGL Canada was a subsidiary of SGL Carbon Aktiengesellschaft of Germany and, together with SGL Carbon Corporation of the US, was a member of the SGL North American carbon and graphite business unit (collectively, "SGL"). SGL is also a world leader in the production, manufacture, distribution, sale and supply of graphite electrodes throughout the world, including Canada.
4. In the relevant time period, other significant participants in the manufacture, production, distribution, sale and supply of graphite electrodes in the world market included: Tokai Carbon Co. Ltd., Nippon Carbon Co. Ltd., SEC Corporation, and Mitsubishi Corporation.

### III. GRAPHITE ELECTRODES

5. Graphite electrodes are consumed primarily in the production of steel in electric arc furnaces, the steelmaking technology used by all “mini-mills”, and for steel refining in ladle furnaces. A graphite electrode conducts electric current into a furnace, where an arc is formed between the electrode tip and the scrap metal and other materials in the furnace charge. The resultant high temperature created by the arc provides the necessary heat for the metallurgical reactions taking place in the furnace. A graphite electrode is shaped in the form of a cylindrical rod with sockets at each end, permitting electrodes to be threaded together into columns. New sections are added to the electrode column as it is consumed in the furnace.
  
6. Graphite electrodes of varying lengths are produced in diameters ranging from 75 mm to 750mm. Graphite electrodes are also produced in varying grades, including regular-power, high-power and ultra-high power grades according to the furnace use. Mini-mill steel production and refining applications in Canada require high-power graphite electrodes generally ranging in diameter from 300mm to 600mm. The foundry and abrasives industries commonly, although not exclusively, use small diameter (300mm and smaller) regular grade graphite electrodes. The largest electrodes (650 mm, 700 mm and 750 mm diameters) are used in the newest electric arc steel-making furnace technology, which is not presently in operation in Canada.

### IV. THE CANADIAN MARKET FOR GRAPHITE ELECTRODES

7. In Canada and worldwide, the production and supply of graphite electrodes is concentrated. During the period between 1992 and 1997, UCAR Canada and SGL

Canada supplied over 90 percent of the Canadian market for high-power graphite electrodes.

8. Between 1992 and 1997, the Canadian steel, foundries, and abrasives industries are estimated to have consumed at least Can\$440 million of high-power graphite electrodes, or an annual average of Can\$88 million.

## V. THE AGREEMENT

9. Commencing in or about May, 1992, Krass conducted conversations and met with senior executives and employees of the other herein named graphite electrode manufacturers and/or had knowledge of and approved the participation of UCAR representatives authorized by him in such conversations or meetings. In these conversations or meetings, the companies entered into an anti-competitive conspiracy, combination, agreement or arrangement (the "Agreement") in respect of the manufacture, distribution, sale, and supply of graphite electrodes. The Agreement had the effect or result of preventing or lessening competition unduly for these products in the Canadian market and elsewhere.
10. Krass was aware in May, 1992 of the illegality of participating in agreements or arrangements in restraint of competition and consciously committed UCAR and himself to participate in this international price-fixing conspiracy of the major world producers of graphite electrodes by agreeing on behalf of all UCAR operations, including UCAR Canada, to the tenets of the conspiracy, including the price increases imposed on customers in Canada and elsewhere.
12. In furtherance of the conspiracy, Krass participated in top level meetings of all five conspirators, met at other times with fewer than the whole group, and on numerous

occasions also communicated with his co-conspirators by telephone. Krass also had knowledge of and approved the participation of UCAR representatives authorized by him in such conversations or meetings. To ensure the adherence by participants to the tenets of the Agreement, Krass reminded participants from time to time of the combined ability of UCAR and SGL to punish those who did not live up to it. Krass was a chief proponent of new price increases and the prohibition on discounting.

13. The Agreement continued from about May 1992 until at least June 1997. Its principal terms were:
  - (a) to fix and maintain prices and to coordinate price increases for the sale of graphite electrodes in Canada and elsewhere; and
  - (b) to discuss and share among the parties to the Agreement information about the volume of sales of graphite electrodes made or to be made by each of them in Canada and elsewhere.
  
14. At meetings subsequent to the initial meeting of May 1992, the Agreement was confirmed, adjusted and maintained. At such meetings the parties further agreed and implemented additional terms to:
  - (a) charge prices of graphite electrodes at certain levels and otherwise to increase and maintain prices in Canada and elsewhere;
  - (b) eliminate discounts from the fixed selling price in Canada and elsewhere;
  - (c) allocate among themselves the approximate volume of graphite electrodes to be sold by each corporate conspirator in Canada and elsewhere;

- (d) divide markets among themselves, on a region-by-region basis, and in each region designate a company to fix the price that others in that region would follow;
  - (d) restrict their graphite electrode production capacity and restrict non-conspirator companies' access to certain electrode manufacturing technology;
  - (e) employ methods to conceal the Agreement including the use of code names;
  - (f) exchange sales and customer information for the purpose of monitoring and enforcing the Agreement; and
  - (g) issue price announcements and price quotations in accordance with the agreements reached.
15. Knowledge of the Agreement, meetings and discussions as aforesaid was kept confidential by the participants and limited to certain senior executives of their organizations. In order to ensure this, "code names" for the participants were established, documents destroyed, and few notes were retained.
16. The said meetings included "working" discussions at which the participants would meet to discuss the implementation of the Agreement or to resolve specific price, marketing, supply or production issues.
17. For the purpose of giving effect to the Agreement regarding the prices to be charged in Canada and the policies to be implemented regarding the prohibition on discounting to customers, UCAR US gave to UCAR Canada and UCAR Canada did implement directives, instructions or intimations of policy it received from UCAR US so that a regime of uniform pricing between UCAR Canada and SGL Canada existed in Canada.

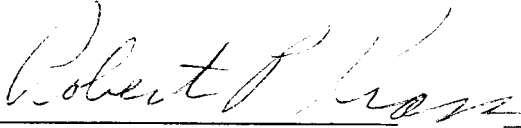
18. Throughout the period of the conspiracy and in order to implement the said directives, UCAR Canada and, at or about the same time, SGL Canada announced several identical prices and implementation dates for their 350mm to 600mm diameter graphite electrodes commencing in July 1992 with an announced price of \$2645 per metric tonne and continuing until at least June 1997.

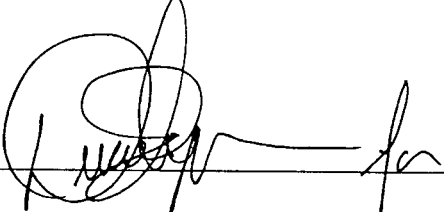
## VI. OTHER CONSIDERATIONS

19. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner of Competition ("Commissioner") has conducted and continues to conduct an extensive inquiry into the carbon and graphite products industry in Canada. Krass has already cooperated and has promised to continue to cooperate with the Commissioner in this inquiry.
20. The decision by Krass to appear, to submit to the jurisdiction of the Canadian Courts in entering a plea of guilty and to cooperate fully with the Commissioner in this inquiry has saved considerable costs of further investigation, extradition and trial which would otherwise have been incurred by the Government of Canada.
21. Because of the complex nature of the industry, its international ramifications and jurisdictional considerations, this cooperation has assisted and will assist in the investigation of other individuals and corporations for violations of the *Competition Act* in relation to the manufacture, production, distribution, sale and supply of graphite electrodes.

VII. CONCLUSION

- 22. The accused admits the above facts, except where otherwise indicated, pursuant to section 655 of the *Criminal Code*.
- 23. The accused acknowledges that with respect to the Agreement alleged in the indictment, all the constituent elements of an indictable offence under subsection 45(1)(c) of the *Competition Act* have been established.
- 24. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.

  
\_\_\_\_\_

  
\_\_\_\_\_ for

Robert P. Krass

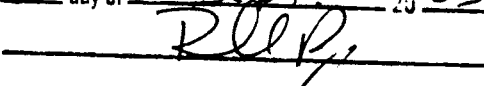
The Attorney General of Canada by

*June 24*....., 2003

his counsel, D.D. Graham Reynolds, Q.C.

*July 30<sup>th</sup>*....., 2003

I HEREBY CERTIFY that the above document is a true copy of the  
original issued out of / filed in the Court on the 4<sup>th</sup>  
day of September A.D. 20 03  
Dated this 4<sup>th</sup> day of Sept. 20 03

  
\_\_\_\_\_  
Ron Paquin  
Registry Officer  
Agent du greffe



Court file No.

FEDERAL COURT OF CANADA  
(Trial Division)

---

HER MAJESTY THE QUEEN

- and -

ROBERT P. KRASS

Accused

---

AGREED STATEMENT OF FACTS

---

D.D. Graham Reynolds, Q.C.  
Duane E. Schippers  
for the Attorney General of Canada  
Department of Justice  
Ontario Regional Office  
Exchange Tower  
130 King Street West  
Toronto, Ontario M5X 1K6  
Telephone: (416) 952-6807  
Fax: (416) 973-8253

---