

in many applications, including the manufacture of aerospace components, fiber optic cables, brake pads, protective clothing and body armor. DuPont produces Kevlar[®] in a variety of fiber sizes, known as denier, which is a term used to describe the weight per unit length (linear density) of a continuous filament or yarn.

3. Many aspects of the Kevlar[®] manufacturing process are very sensitive and proprietary, and are treated by the company as trade secrets. Certain information about Kevlar[®] production is also subject to technology export controls monitored by several departments of the United States government. As a result, DuPont limits physical access to Kevlar[®] production facilities and library resource materials to DuPont employees and other individuals with a need to know. Resource materials relating to Kevlar[®] production are marked “confidential.” DuPont conducts regular internal training via email announcements regarding the correct handling and non-disclosure of proprietary information, including information about Kevlar[®] production. Finally, employees with access to sensitive information about DuPont proprietary products, including Kevlar[®], are required to sign non-disclosure agreements as a condition of their employment.

4. MITCHELL was employed as an engineer and salesperson at DuPont’s Richmond-based Spruance Plant for more than twenty-five years until he was terminated for performance reasons on February 6, 2006. MITCHELL’s technical area of specialization related to Nomex[®], which is another DuPont aramid fiber product. MITCHELL’s final position at DuPont involved sales and marketing of Kevlar[®]. During his last three years at DuPont, MITCHELL had become disgruntled, and had had multiple run-ins with management. Upon his

termination, MITCHELL's supervisors reminded him of the nondisclosure provisions of his employment contract. DuPont personnel also demanded, consistent with company policy, that MITCHELL return any proprietary information, in any form, that was in his possession. MITCHELL signed an Employment Termination Statement affirming that he had returned all documents, and acknowledging his signed Employee Agreement, which provided that he would not use or divulge at any time any secret or confidential information that was the property of DuPont. However, MITCHELL's declaration to DuPont personnel that he had returned all proprietary company documents was false. In reality, MITCHELL still possessed (on his home computer, his laptop computer and several CDs) numerous DuPont computer files containing sensitive proprietary information, which he had previously obtained during his employment at the Spruance plant.

5. On March 24, about two weeks after being fired, MITCHELL met with a U.S.-based representative of Kolon Industries, Inc. (Kolon). Kolon is a Korean company that makes a product named Heracron[®] that competes in the market with DuPont's Kevlar[®] for use in a number of applications. During this and subsequent contacts with Kolon officials, MITCHELL touted his understanding of both the technology and marketing considerations associated with aramid fibers like Kevlar[®] and Heracron[®]. Approximately a year later, in March 2007, MITCHELL traveled to Korea and met with Kolon officials about becoming a paid consultant for Kolon. In April 2007, MITCHELL entered into a consulting contract with Kolon, the purpose of which was for MITCHELL to provide assistance relating to the production and marketing of Heracron[®] and other aramid fibers.

6. From the beginning of their business relationship, Kolon officials asked MITCHELL highly technical questions regarding specific aspects of DuPont's Kevlar[®]

production process. To the extent that he could, MITCHELL answered some of these questions himself. However, his limited knowledge of the Kevlar[®] production process soon forced him to seek his own technical assistance from current and retired DuPont employees. Several of these employees contacted DuPont management after receiving solicitations from MITCHELL because the information he sought was clearly proprietary. DuPont officials then relayed their concerns about the potential theft of trade secrets and export control violations to investigators with the Federal Bureau of Investigation (FBI) and the U.S. Department of Commerce (DoC).

7. On March 12, 2008, following a several month undercover investigation, special agents with the FBI and DoC executed a federal search warrant on MITCHELL's house, seizing documents and multiple computers. Forensic examination of one of MITCHELL's computer revealed the presence of multiple electronic documents containing proprietary information owned by DuPont. One such document was an Excel spreadsheet entitled "Denier Economics." The Denier Economics spreadsheet contained highly sensitive information related to DuPont's production capacity for Kevlar[®] yarn in a variety of denier types. Included in the information for each denier type were specific figures relating to annual production, unit capacity, spin speeds, and several factors relating to line efficiency (such as percentage yield and percentage up time). The Denier Economics spreadsheet was closely held and distributed to a small number of DuPont personnel on a need-to-know basis only. (MITCHELL legitimately obtained a copy while he was employed in Kevlar[®] sales so that he could better perform his sales duties.) The Denier Economics spreadsheet constituted a "trade secret" under 18 U.S.C. § 1839(3), and received protections from DuPont consistent with its value to the company.

8. Analysis of MITCHELL's computers further showed that on September 5, 2007, MITCHELL emailed a portion of the contents of the Denier Economics spreadsheet to an official with Kolon.

9. Following the execution of the search warrant, MITCHELL agreed to become a cooperator for the government during its ongoing investigation relating to possible attempted theft of trade secrets and violations of export control laws. Under the direction and supervision of federal investigators, MITCHELL made numerous recorded telephone conversations and exchanged emails with Kolon employees. On several occasions MITCHELL specifically informed his direct supervisor at Kolon that the technical information they sought, which related to the details of polymerization and spinning of Kevlar[®], involved confidential, proprietary "trade secrets" owned by DuPont. MITCHELL warned the Kolon official of the possible legal consequences, including civil suits and criminal prosecution, to everyone involved should they be discovered by DuPont or law enforcement authorities. MITCHELL agreed to put Kolon officials in contact with a "disgruntled" senior scientist with DuPont, whom he had supposedly recently recruited, who could provide them with the information they sought.

10. On August 26, 2008, MITCHELL, along with another cooperator playing the role of a disgruntled senior scientist from DuPont, met with three Kolon employees in a room at the Doubletree Hotel near the Richmond International airport. The meeting was conducted under the supervision of federal agents, who recorded it on audio and videotape. During the hotel meeting the cooperator demonstrated his engineering bona fides by answering several technical questions from the Kolon employees regarding the Kevlar[®] production process. The cooperator stated his willingness to assist Kolon, but emphasized that the information they sought was highly sensitive "trade secret" information owned by DuPont, and that the need for secrecy was critical. The

cooperator noted that the price for the information they sought would be commensurate with its sensitivity and value. The Kolon officials appeared pleased with the meeting, and upon its conclusion spoke of following-up to discuss the matter further.

11. Several months passed without a follow-up meeting with Kolon officials regarding the discussion that took place in the Doubletree Hotel. During this time MITCHELL had become embroiled in a pay dispute with Kolon officials. On November 25, 2008, MITCHELL sent an email to several Kolon employees. In that email, which the defendant sent without the knowledge or permission of investigators, MITCHELL told Kolon employees that he had recorded the meeting at the Doubletree Hotel, and that if Kolon did not pay him \$20,000 in additional salary he would turn over the tape to DuPont and government authorities.

12. The Government continued to investigate Kolon officials after MITCHELL sent his email on November 25, 2008. That investigation included an attempt by the "disgruntled" senior scientist to make contact with Kolon officials for follow-up discussions relating to information they sought during the Doubletree Hotel meeting.

13. ~~Regarding relevant conduct, the parties agree to recommend that the Court use a figure of \$220,000. This figure represents the approximate legal and administrative expenses incurred by DuPont relating to MITCHELL's case up until February 3, 2009, which was the date DuPont filed a parallel civil complaint against Kolon. The \$220,000 figure reflects expenses that were not solely and primarily incurred to aid the criminal investigation and prosecution in this case. A loss amount relating to the value of the information contained in the Denier Economics spreadsheet has yet to be finalized by experts for DuPont.~~

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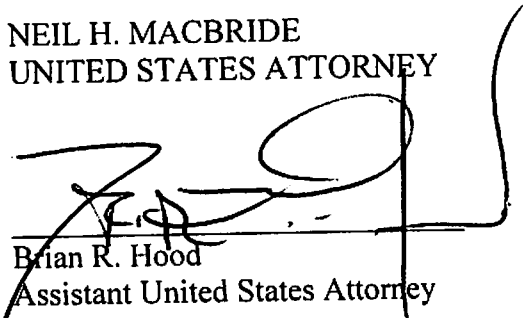
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14. As part of his guilty plea, the defendant acknowledges that he did the above-described acts voluntarily and intentionally, and not because of accident or mistake, and that he further knew his actions were illegal at the time.

Respectfully submitted,

NEIL H. MACBRIDE
UNITED STATES ATTORNEY

By:




Brian R. Hood
Assistant United States Attorney

I agree that the above facts are true to the best of my knowledge.


MICHAEL DAVID MITCHELL
Defendant

I am counsel for Defendant. To my knowledge, his decision to agree to this Statement of Facts is an informed and voluntary decision


William J. Dinkin, Esquire
Counsel for Defendant