

**FILED**

**SEP - 1 2016**

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION  
COVINGTON**

AT COVINGTON  
ROBERT R. CARR  
CLERK U.S. DISTRICT COURT

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 NISHIKAWA RUBBER CO. LTD., )  
 )  
 Defendant. )

Criminal No. *16-30-ART-CJS*

Filed:

Violation: 15 U.S.C. § 1

**BINDING PLEA AGREEMENT**

The United States of America and Nishikawa Rubber Co., Ltd. (“the defendant”), a corporation organized and existing under the laws of Japan, hereby enter into the following Plea Agreement and the Sealed Supplement to the Plea Agreement (“the Supplement”), filed separately under seal, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

**RIGHTS OF DEFENDANT**

1. The defendant understands its rights:
  - (a) to be represented by an attorney;
  - (b) to be charged by Indictment;
  - (c) as a corporation organized and existing under the laws of Japan, 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 Kentucky;
  - (d) to plead not guilty to any criminal charge brought against it;

(e) to have a trial by jury, at which it 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 it to be found guilty;

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

(g) to appeal its conviction if it is found guilty; and

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

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

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-(c). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a one-count Information to be filed in the United States District Court for the Eastern District of Kentucky. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by agreeing to allocate sales of, to rig bids for, and to fix, stabilize, and maintain the

prices of automotive body sealing products (“BSPs”) sold to Honda Motor Company, Ltd., to Toyota Motor Corporation, to Fuji Heavy Industries, Ltd. for the Subaru Legacy, and to certain of their subsidiaries and affiliates (collectively, “Automobile Manufacturers”), in the United States and elsewhere, from at least as early as January 2000 until at least September 2012, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement and the Supplement, will plead guilty to the criminal charge 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 Paragraph 4 below.

**FACTUAL BASIS FOR OFFENSE CHARGED**

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts beyond a reasonable doubt, and the defendant admits these facts:

(a) For purposes of this Plea Agreement, the “relevant period” is that period from at least as early as January 2000 until at least September 2012. During the relevant period, the defendant was a corporation organized and existing under the laws of Japan. The defendant had its principal place of business in Hiroshima, Japan, and did business in the United States through a subsidiary organized and existing under the laws of Delaware, with offices in Topeka, Indiana and Novi, Michigan. During the relevant period, the defendant was a producer of BSPs, was engaged in the sale of BSPs to Automobile Manufacturers in the United States and elsewhere, and employed more than 1,000 but less than 5,000 individuals. During the relevant period, Toyota had U.S. subsidiaries in various locations in the United States, including Erlanger, Kentucky.

BSPs consist of body-side opening seals, door-side weather-stripping, glass-run channels, trunk lids, and other smaller seals. BSPs are installed into automobiles to keep the interior dry from rain and free from wind and exterior noises. The charged conduct affected the defendant's sales of BSPs to Automobile Manufacturers in the U.S. and elsewhere until at least October 2013, which totaled approximately \$914 million.

Approximately \$236 million of these sales were of BSPs manufactured in the U.S. and then shipped to Canada for assembly into automobiles that were imported to the U.S.

(b) During the relevant period, the defendant, through its officers and employees, including high-level personnel of the defendant, participated in a conspiracy among major producers of BSPs, the primary purpose of which was to eliminate competition by agreeing to allocate sales of, to rig bids for, and to fix, stabilize and maintain the prices of BSPs sold to Automobile Manufacturers in the United States and elsewhere. In furtherance of the conspiracy, the defendant, through its officers and employees, engaged in discussions and attended meetings with representatives of other producers of BSPs to Automobile Manufacturers. During these discussions and meetings, agreements were reached to allocate sales of BSPs sold to Automobile Manufacturers, rig bids quoted to Automobile Manufacturers for BSPs, and to fix, stabilize, and maintain the prices of BSPs sold to Automobile Manufacturers in the United States and elsewhere.

(c) During the relevant period, BSPs sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of BSPs, as well as payments for BSPs, traveled in interstate and import trade and commerce. The business activities of the defendant and its co-conspirators in connection with the

production and sale of BSPs that were the subject of this conspiracy were within the flow of, and substantially affected, interstate and import trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out, at least in part, within the Eastern District of Kentucky, Northern Division.

#### **ELEMENTS OF THE OFFENSE**

5. The elements of a 15 U.S.C. § 1 violation, to which the defendant will plead guilty, are as follows:

First, a conspiracy that amounted to an unreasonable restraint of trade or commerce among the several States or with foreign nations was knowingly formed, and existed at or about the time alleged, that is, from at least as early as January 2000 until at least September 2012;

Second, that the defendant knowingly entered into the conspiracy; and

Third, that either acts taken in furtherance of the conspiracy were in the flow of interstate or foreign commerce, or the conspirators' general business activities infected by the conspiracy substantially affected interstate or foreign commerce.

#### **POSSIBLE MAXIMUM SENTENCE**

6. The defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

(a) \$100 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)).

7. In addition, the defendant understands that:

(a) 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;

(b) pursuant to § 8B1.1 of the United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) or 18 U.S.C. § 3563(b)(2) or 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and

(c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400 special assessment upon conviction for the charged crime.

#### **SENTENCING GUIDELINES**

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed. The parties agree there is no *ex post facto* issue under the November 1, 2015 Guidelines Manual. The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be

reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

### **SENTENCING AGREEMENT**

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C) and subject to the terms of this Plea Agreement, including the Supplement, the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of \$130 million, pursuant to 18 U.S.C. § 3571(d), payable in installments as set forth below without interest pursuant to 18 U.S.C. § 3612(f)(3)(A), and with no order of restitution (“the recommended sentence”). The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek at the sentencing hearing any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement.

(a) The United States and the defendant 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 fine be paid in the following installments: \$30 million within thirty (30) days of imposition of sentence; an additional \$20 million by the one-year anniversary of imposition of sentence (“anniversary”); an additional \$20 million by the two-year anniversary; an additional \$20 million by the three-year anniversary; an additional \$20 million by the four-year anniversary; and an additional \$20 million by the five-year anniversary. The defendant will have the option at any time before the five-year anniversary to pay the remaining balance of the fine. Pursuant to 18 U.S.C. § 3572(d)(3), the defendant will notify the

United States and the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

(b) The defendant understands that the Court will order it to pay a \$400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed.

(c) In light of the availability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, the United States will not recommend a restitution order for the offense charged in the Information.

(d) Both parties will recommend that no term of probation be imposed, but the defendant understands that the Court's denial of this request will not void this Plea Agreement.

(e) The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, and the further disclosure described in Paragraph 4 of the Supplement, will provide sufficient information concerning the defendant, the crime charged in this case, and the defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and defendant agree to request jointly that the Court accept the defendant's guilty plea and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by the defendant and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii), and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.



(f) The United States contends that had this case gone to trial, the United States would have presented evidence to prove that the gain derived from or the loss resulting from the charged offense is sufficient to justify a fine of \$130 million, pursuant to 18 U.S.C. § 3571(d). For purposes of this plea and sentencing only, the defendant waives its rights to contest this calculation.

10. The United States and the defendant agree that the applicable Guidelines fine range exceeds the fine contained in the recommended sentence set out in Paragraph 9 above. The United States and the defendant further agree that the recommended fine is appropriate pursuant to U.S.S.G. § 8C3.3(b) due to the inability of the defendant to pay a fine greater than that recommended without substantially jeopardizing its continued viability.

11. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 10(b) below, and the Supplement will be rendered void.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws its plea of guilty, this Plea Agreement, the Supplement, the guilty plea, 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 the Supplement, or made in the course of plea discussions with an attorney for the government will not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R.

Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of this Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 6 of the Supplement will be tolled for the period between the date of signature of this Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of signature of this Plea Agreement, whichever period is greater.

#### **GOVERNMENT'S AGREEMENT**

12. The defendant understands that it may be subject to suspension or debarment action by state or federal agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement and the Supplement in no way control what action, if any, other agencies may take. However, the Antitrust Division agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what action, if any, to take. The defendant nevertheless affirms that it wants to plead guilty regardless of any suspension or debarment consequences of its plea.

#### **REPRESENTATION BY COUNSEL**

13. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and the Supplement, and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

**VOLUNTARY PLEA**

14. The defendant's decision to enter into this Plea Agreement and the Supplement, and to tender a plea of guilty, is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement and the Supplement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

**VIOLATION OF PLEA AGREEMENT**

15. The defendant agrees that, should the United States determine in good faith, during the period that the current federal investigation of violations of federal antitrust and related criminal laws involving the manufacture or sale of BSPs to Automobile Manufacturers in the United States and elsewhere, any 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 is pending, that the defendant has violated any provision of this Plea Agreement or the Supplement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, 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) or the Supplement, and the defendant will 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 and the Supplement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and the Supplement and brings criminal charges against the defendant for any offense referred to in Paragraph 6 of the Supplement, the statute of

limitations period for such offense will be tolled for the period between the date of signature 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 or the Supplement.

16. The defendant understands and agrees that in any further prosecution of it resulting from the release of the United States from its obligations under this Plea Agreement or the Supplement because of the defendant's violation of this Plea Agreement or the Supplement, any documents, statements, information, testimony, or evidence provided by it, or its current or former directors, officers, or employees, to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it. In addition, the defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

**ENTIRETY OF AGREEMENT**

17. This Plea Agreement and the Supplement constitute the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement and the Supplement cannot be modified except in writing, signed by the United States and the defendant.

18. The undersigned is authorized to enter this Plea Agreement and the Supplement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

19. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement and the Supplement on behalf of the United States.

20. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement and the Supplement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement and the Supplement.

DATED: 9/1/16

Respectfully submitted,

BY: [Handwritten Signature]

Name: Yoshitomo Fukuoka

Title: Board Member, CFO  
Nishikawa Rubber Co., Ltd.

BY: [Handwritten Signature]

Andre M. Geverola, IL Bar No. 6281457  
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L. Heidi Manschreck, NY Bar No. 4537585  
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BY: [Handwritten Signature]

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Counsel for Nishikawa Rubber Co., Ltd.

Nishikawa Rubber Co., Ltd.  
BOARD RESOLUTIONS

At the Meeting of the Board of Directors of Nishikawa Rubber Co., Ltd. held on July 19, 2016, the Board:

RESOLVED, that the execution, delivery and performance of the Binding Plea Agreement and the Sealed Supplement to the Plea Agreement between the United States Department of Justice and Nishikawa Rubber Co., Ltd. is hereby approved;

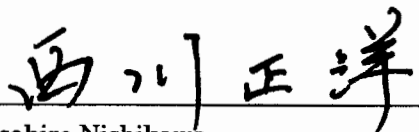
RESOLVED, that Mr. Yoshitomo Fukuoka, the Board Member and Chief Financial Officer of Nishikawa Rubber Co., Ltd., is authorized, empowered and directed to execute and deliver the Binding Plea Agreement, the Sealed Supplement to the Plea Agreement, and all other documents pertaining to the Plea Agreement in the name and on behalf of Nishikawa Rubber Co., Ltd.; and

RESOLVED, that Mr. Yoshitomo Fukuoka, the Board Member and Chief Financial Officer of Nishikawa Rubber Co., Ltd., is authorized, empowered and directed to represent Nishikawa Rubber Co., Ltd. before any court or governmental agency in order to make statements and confirmations in accordance with the Binding Plea Agreement and the Sealed Supplement to the Plea Agreement, including entering a guilty plea on behalf of Nishikawa Rubber Co., Ltd.

CERTIFICATE

I, Masahiro Nishikawa, President and Representative Director of Nishikawa Rubber Co., Ltd., a company organized and existing under the laws of Japan, do hereby certify that the foregoing resolutions adopted by the Board of Directors held in Hiroshima on July 19, 2016, are true, correct and complete and that said resolutions have not been amended, modified or repealed, and remain in full force and effect, as of the date hereof.

Signed in Hiroshima, Japan this 19th day of July, 2016 by

  
\_\_\_\_\_  
Masahiro Nishikawa  
President and Representative Director  
Nishikawa Rubber Co., Ltd.