

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

MASAO HAYASHI
KENYA NONOYAMA

Defendants.

INDICTMENT

Case No.:

Judge

Title 15, United States Code Section 1

JUDGE CARR

3:13CR514

The Grand Jury charges:

GENERAL ALLEGATIONS

At all times material to this Indictment:

1. Company A, known to the Grand Jury, was a corporation organized and existing under the laws of Japan with its principal place of business in Osaka, Japan, and did business in the United States through subsidiaries in Franklin, Kentucky; White, Georgia; and elsewhere. Company A was a supplier of automotive anti-vibration rubber products to Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and affiliated companies (collectively "Toyota") in the United States and elsewhere.

2. MASAO HAYASHI was an employee of Company A whose job responsibilities included the sale of automotive anti-vibration rubber products to automobile manufacturers in the United States and elsewhere, including Toyota. From the late 1990s until March 2005, HAYASHI was the General Manager ("Bucho") with responsibility for sales of automotive anti-vibration rubber products to Toyota. From April 2007 until March 2009, HAYASHI was a Deputy Director ("Fuku-Honbucho") overseeing Company A's sales of automotive anti-

vibration rubber products to automobile manufacturers in the United States and elsewhere, including Toyota. From April 2009 until December 2010, HAYASHI was the President of Company A's U.S. subsidiary in Franklin, Kentucky, which sold automotive anti-vibration rubber products to automobile manufacturers in the United States and elsewhere, including Toyota.

3. KENYA NONOYAMA was an employee of Company A whose job responsibilities included the sale of automotive anti-vibration rubber products to automobile manufacturers in the United States and elsewhere, including Toyota. From the late 1990s until March 2005, NONOYAMA was a Group Leader reporting directly to HAYASHI, with responsibility for sales of automotive anti-vibration rubber products to Toyota. From April 2005 until March 2008, NONOYAMA succeeded HAYASHI as the General Manager ("Bucho") with responsibility for sales of automotive anti-vibration rubber products to Toyota. From April 2008 until March 2009, NONOYAMA was a General Manager ("Bucho") of Sales Planning and Administration, with responsibility for collecting information from sales departments and formulating strategy for sales of automotive anti-vibration rubber products to automobile manufacturers in the United States and elsewhere, including Toyota.

4. Other corporations and individuals, known and unknown to the Grand Jury, participated as co-conspirators in the offense charged in this Indictment and performed acts and made statements in furtherance of it. Whenever in this Indictment reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

5. Automotive anti-vibration rubber products are comprised primarily of rubber and metal, and are installed in automobiles to reduce engine and road vibration. Automotive anti-vibration rubber products are installed in suspension systems and engine mounts, as well as other parts of an automobile.

6. Automotive anti-vibration rubber products are typically custom-designed to fit specific automobile models or platforms, and are developed over a year in advance of an automobile model entering the market. Before ordering automotive anti-vibration rubber products for a new automobile model, Toyota typically requests pricing from suppliers, through requests for quotation ("RFQs"). In response to an RFQ, the suppliers each submit a price quote, or bid, to Toyota. When a supplier receives part orders for a particular automobile model, it typically supplies the parts for the duration of that model, which is usually four to six years.

7. In addition to RFQs, automobile manufacturers negotiate price adjustments with automotive anti-vibration rubber products suppliers by requesting annual or semi-annual price reductions ("APR"), which typically lead to reductions in the price of automotive anti-vibration rubber products. Conversely, automotive anti-vibration rubber products suppliers negotiate price adjustments with automobile manufacturers by requesting price increases to account for material cost increases ("MCI"), which typically lead to increases in the price of automotive anti-vibration rubber products.

8. Company A and co-conspirators shipped substantial quantities of automotive anti-vibration rubber products in a continuous and uninterrupted flow of interstate and foreign trade and commerce to Toyota in the United States and elsewhere. In addition, substantial quantities of equipment and supplies necessary to produce and distribute such automotive anti-vibration rubber products, as well as substantial payments for such products, traveled in interstate and

foreign trade and commerce. The business activities of the Defendants and co-conspirators in connection with the sale of automotive anti-vibration rubber products that are the subject of this Indictment were within the flow of, and substantially affected, interstate and foreign trade and commerce.

The Grand Jury further charges:

COUNT ONE

(Conspiracy to Restrain Trade - 15 U.S.C. § 1)

9. Paragraphs 1-8 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

THE CONSPIRACY

10. Beginning as early as March 1996 and continuing until at least December 2008, the exact dates being unknown to the Grand Jury, in the Northern District of Ohio, Western Division and elsewhere, the Defendants and co-conspirators knowingly entered into and participated in a conspiracy to suppress and eliminate competition in the automotive parts industry in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The combination and conspiracy charged in this Indictment was carried out, at least in part, within the Northern District of Ohio, Western Division within the five years preceding the return of this Indictment.

OBJECT OF THE CONSPIRACY

11. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the Defendants and co-conspirators, the substantial terms of which were to suppress and eliminate competition in the automotive parts industry by

agreeing to allocate the supply of, to rig bids for, and to fix, raise, and maintain the prices of, automotive anti-vibration rubber products sold to Toyota in the United States and elsewhere.

MANNER AND MEANS OF THE CONSPIRACY

12. For the purpose of forming and carrying out the charged combination and conspiracy, the Defendants and co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) participating in meetings, conversations, and other communications to discuss the bids, price quotations, and price adjustments to be submitted to Toyota in the United States and elsewhere;
- (b) agreeing, during those meetings, conversations, and communications, to allocate among the companies the supply of certain automotive anti-vibration rubber products sold in the United States and elsewhere for Toyota vehicles including the Corolla, the Avalon, the Tacoma, the Camry, the Tundra, the Sequoia, the RAV4, the Sienna, the Venza, and the Highlander;
- (c) agreeing, during those meetings, conversations, and communications, on bids, price quotations, and price adjustments to be submitted to Toyota in the United States and elsewhere;
- (d) exchanging information on bids, price quotations, and price adjustments to be submitted to Toyota in the United States and elsewhere, in order to effectuate the agreements;
- (e) submitting bids, price quotations, and price adjustments to Toyota in the United States and elsewhere in accordance with the agreements;

- (f) selling automotive anti-vibration rubber products to Toyota in the United States and elsewhere at collusive and noncompetitive prices; and
- (g) accepting payment for automotive anti-vibration rubber products sold to Toyota in the United States and elsewhere at collusive and noncompetitive prices.

13. Pursuant to his managerial roles with Company A, MASAO HAYASHI instructed and encouraged certain of Company A's employees under his supervision, directly or indirectly, to communicate with co-conspirators at other companies in order to allocate the supply of, rig bids for, and fix, raise, and maintain the prices of, automotive anti-vibration rubber products; was aware certain employees engaged in such communications; and condoned such communications.

14. Pursuant to his managerial roles with Company A, KENYA NONOYAMA instructed and encouraged certain of Company A's employees under his supervision, directly or indirectly, to communicate with co-conspirators at other companies in order to allocate the supply of, rig bids for, and fix, raise, and maintain the prices of, automotive anti-vibration rubber products; was aware certain employees engaged in such communications; and condoned such communications.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

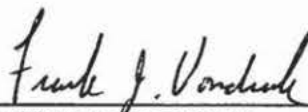
TRUE BILL

Original document – Signatures on file with the Clerk of Courts, pursuant to the E-Government Act of 2002.

United States v. Masao Hayashi, et al.



RENATA HESSE
Acting Assistant Attorney General



FRANK J. VONDRAK
Chief, Chicago Office



MARVIN N. PRICE, JR.
Director of Criminal Enforcement
Antitrust Division
U.S. Department of Justice



ANDRE M. GEVEROLA
L. HEIDI MANSCHRECK
ROBERT M. JACOBS
CHRISTINE M. O'NEILL
Trial Attorneys
U.S. Department of Justice
Antitrust Division
Chicago Office
209 S. LaSalle St., Suite 600
Chicago, IL 60604
Tel.: (312) 353-7530