

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	Criminal No. 00-033
	)	
v.	)	Judge Marvin Katz
	)	
MITSUBISHI CORPORATION,	)	Violations: 15 U.S.C. § 1 and 18 U.S.C. § 2 (a)
	)	
Defendant.	)	Filed: 1-31-01

**NOTICE OF THE GOVERNMENT'S
INTENTION TO INTRODUCE EVIDENCE**

In response to Defendant's motion to exclude certain Mitsubishi documents that were created in 1990,¹ the Court issued an Order on January 24, 2001, requesting, as a matter of the order of proof, that: (1) proof of events before the alleged conspiracy period be deferred until events during the alleged conspiracy period are established; and (2) evidence of Defendant's role in aiding and abetting the alleged conspiracy be presented as early in the trial as possible. Because the Government has now established the underlying conspiracy, and the 1990 documents provide significant evidence of Defendant's plan to establish a cartel and its role in aiding and abetting the establishment of that cartel, the Government now intends to establish the admissibility of the 1990 documents through the testimony of trial witnesses.

The Government has established the existence of a price-fixing conspiracy among graphite electrode manufacturers through its first witness, Hiroshi Yamazaki. In fact, Defendant conceded the existence of the conspiracy in its opening remarks, and informed the Jury that its defense would be based on Mitsubishi's lack of participation in, or knowledge of, the conspiracy. The

¹ Defendant's motion concerned Government Exhibits GX-101 through 108.

focus of the Government's case, therefore, will now be to prove Mitsubishi's role in aiding and abetting the conspiracy, and to prove that its role was both knowing and intentional.

Much of the evidence of Mitsubishi's role in aiding and abetting the conspiracy concerns Mitsubishi's efforts to encourage the conspiracy's formation, evidence that necessarily comes from a period prior to the conspiracy period. Mitsubishi may be found guilty of aiding and abetting based solely on such efforts. See *United States v. Galiffa*, 734 F.2d 306, 309 (7th Cir. 1984). Mitsubishi's acquisition of a 50 percent ownership interest in UCAR, the world's largest graphite electrode manufacturer and the dominant U.S. company, plays a central role in this case. The 1990 documents Mitsubishi seeks to exclude were created during the period Mitsubishi analyzed the merits of that acquisition. The documents show that at least as early as 1990, Mitsubishi planned to increase graphite electrode prices by cartelizing the industry, and that it spoke to manufacturers about its plan and encouraged them to meet and collude. The documents and evidence from that period show not only that Mitsubishi sought to encourage and facilitate price cooperation among competing graphite electrode manufacturers, but that Mitsubishi believed its purchase of UCAR would facilitate collusion due to Mitsubishi's close relationship to other manufacturers.²

In its opening remarks, Mitsubishi argued that knowledge and participation in the charged aiding and abetting scheme was limited to Ichiro Fukushima and Yorizo Kimura, operating *ultra vires*. As the 1990 documents make clear, however, Mitsubishi's plan to cartelize the graphite

² Even assuming *arguendo* that Mitsubishi's investment analysis documents show nothing more than the fact that Mitsubishi expected higher prices and profits from UCAR through some form of non-collusive cooperation in the industry, this evidence is highly relevant to rebut Mitsubishi's contention that it was just a trader uninterested in higher graphite electrode prices.

electrode industry upon purchasing UCAR was well known and widely discussed within Mitsubishi and demonstrate that Kimura and Fukushima were not, contrary to Defendant's claim, off on a lark of their own. The 1990 documents are relevant to prove Mitsubishi encouraged and participated in the formation of the conspiracy, and that its efforts were knowing and intentional. Far from being irrelevant, as Mitsubishi has claimed, this evidence goes to the heart of Mitsubishi's guilt or innocence.³

Respectfully submitted,

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³ In its Memorandum in support of its motion to exclude the 1990 documents, Defendant identified the exhibits as "internal Mitsubishi documents analyzing the proposed [acquisition of UCAR]." (Defendant's Memorandum, p.4) As set forth in the Government's Memorandum in Support of its Motion In Limine To Authenticate and Admit Documents, the Government will establish the admissibility of each of the 1990 documents as either admissions or business records. Admissions may take the form of (1) statements of Defendant's employees or agents or (2) statements of individuals participating in some joint enterprise with Defendant, including joint efforts to acquire UCAR.

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CERTIFICATE OF SERVICE

This is to certify that on the 31st day of January 2001, a copy of the Notice of the Government's Intention to Introduce Evidence, has been hand-delivered to counsel of record for the defendant as follows:

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