

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

June 2001 Grand Jury

UNITED STATES OF AMERICA,	)	FILED: March 19, 2002
	)	
Plaintiff,	)	CR 02-281
	)	
v.	)	<u>I N D I C T M E N T</u>
	)	
TOHO CARBON FIBERS, INC.,	)	[18 U.S.C. § 1503:
TOHO TENAX CO., LTD.,	)	Obstruction of Justice]
f.k.a. Toho Rayon Co., Ltd., and	)	
JINNOSUKE TAKEDA,	)	
	)	
Defendants.	)	
	)	

The Grand Jury charges:

I. DESCRIPTION OF THE OFFENSE

1. The following corporations and individual are hereby indicted and made defendants on the charge stated below:

- (a) TOHO CARBON FIBERS, INC.;
- (b) TOHO TENAX CO., LTD. (formerly known as TOHO RAYON CO., LTD.);
- and
- (c) JINNOSUKE TAKEDA.

2. From in or about January 1999 and continuing thereafter, a grand jury and its

successor grand juries (hereinafter “the grand jury”), all of which had been duly impaneled and sworn in the United States District Court for the Central District of California, were engaged in the due administration of justice in that they were conducting an official investigation (hereinafter “the grand jury investigation”) of the carbon fiber and carbon fiber prepreg industries. The purpose of the grand jury investigation is to determine whether companies involved in the manufacture, distribution, and sale of carbon fiber and carbon fiber prepreg, including Defendants TOHO CARBON FIBERS, INC. and TOHO TENAX CO., LTD., had violated or were violating Section 1 of the Sherman Act (Title 15, United States Code, Section 1) and related federal criminal laws that prohibit price collusion among or between competing sellers of goods or services in the United States and elsewhere. Central to the grand jury investigation is an examination of pricing actions by, and contacts and communications concerning price increases, price floors and the exchange of price information among and between executives of, companies that compete in the manufacture, distribution and sale of carbon fiber and carbon fiber prepreg.

3. On or about January 29, 1999, in furtherance of the grand jury investigation, special agents of the Federal Bureau of Investigation served TOHO CARBON FIBERS, INC. with a subpoena duces tecum dated January 28, 1999 (hereinafter “the subpoena”), issued on behalf of the grand jury, and commanding TOHO CARBON FIBERS, INC. to produce all responsive documents as defined in the subpoena.

4. In or about February 1999, the exact dates being unknown to the Grand Jury, the defendants, knowing of the grand jury investigation, withheld, concealed, and removed from the territorial United States, and endeavored to withhold, conceal, and remove from the territorial United States, certain existing records whose production was commanded by the subpoena in

order to prevent the production of these records to the grand jury. In taking these actions, the defendants corruptly influenced, obstructed, and impeded and endeavored to influence, obstruct, and impede the due administration of justice before the grand jury, all in violation of Title 18, United States Code, Section 1503.

5. Specifically, on or about January 29, 1999, after being served with the subpoena, a senior executive of TOHO CARBON FIBERS, INC. (hereinafter "Toho USA executive") transmitted a copy of the subpoena via facsimile machine to his TOHO TENAX CO., LTD. superior in Japan.

6. In or about February 1999, the exact dates being unknown to the Grand Jury, the Toho USA executive along with a TOHO TENAX CO., LTD. executive (hereinafter "Toho Tenax executive"), who had just arrived from Japan, reviewed documents at TOHO CARBON FIBERS, INC.'s offices in California to determine which documents were responsive to the subpoena. The Toho USA executive identified several documents responsive to the subpoena and revealing pricing actions by, and contacts and communications concerning price increases, price floors and the exchange of price information among and between executives of, companies that compete in the manufacture, distribution and sale of carbon fiber (hereinafter the "subpoenaed documents"). The Toho USA executive discussed a plan to transport the subpoenaed documents from the United States to Japan to conceal them from the grand jury with JINNOSUKE TAKEDA, a senior executive at TOHO TENAX CO., LTD., who was the Toho USA executive's primary contact at TOHO TENAX CO., LTD., with regard to matters having to do with the subpoena and the grand jury investigation. TAKEDA communicated to the Toho USA executive TOHO TENAX CO., LTD.'s concurrence with the plan. TAKEDA also suggested a means to transport the subpoenaed documents from the United States to Japan and urged the Toho USA executive to take steps designed to keep United States law enforcement

officers from learning of the plan. The Toho USA executive also discussed the plan with the Toho Tenax executive in the United States and with his assistance sent the subpoenaed documents via Federal Express to the headquarters of TOHO TENAX CO., LTD. in Tokyo, Japan, for the purpose of preventing the subpoenaed documents' production to the grand jury.

7. In or about March 2000, law enforcement agents of the Government of Japan searched the headquarters of TOHO TENAX CO., LTD. in Tokyo, Japan and discovered the subpoenaed documents in the office of a TOHO TENAX CO., LTD. employee in Tokyo.

II. RELEVANT PARTIES AND ENTITIES

8. Defendant TOHO CARBON FIBERS, INC. is a North Carolina corporation established in 1992, with its principal office in Menlo Park, California. During the period covered in this Indictment, it was a wholly-owned subsidiary of, and the exclusive distributor in the United States of carbon fiber manufactured by, TOHO TENAX CO., LTD.

9. Defendant TOHO TENAX CO., LTD., formerly known as TOHO RAYON CO., LTD., is a Japanese corporation headquartered in Tokyo, Japan, established on July 1, 1950 as TOHO RAYON CO., LTD. and renamed TOHO TENAX CO., LTD. on July 1, 2001. During the period covered by this Indictment, it exported to the United States carbon fiber that it manufactured in Japan.

10. Defendant JINNOSUKE TAKEDA is a Japanese national residing in Japan. During the period covered by this Indictment, he was Assistant to the President (Special Assignments) and Managing Director of TOHO TENAX CO., LTD.

11. Whenever this Indictment refers to any act, deed, or transaction of any corporation, it means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively

engaged in the management, direction, control, or transaction of its business or affairs.

III. **JURISDICTION AND VENUE**

12. The offense charged in this Indictment occurred in and was intended to affect the federal grand jury proceeding in the Central District of California and occurred within the five years preceding the return of this Indictment.

Dated: March 19, 2002

A TRUE BILL

/s/
[REDACTED TEXT]
Foreperson

_____/s/
CHARLES A. JAMES
Assistant Attorney General

_____/s/
LISA M. PHELAN
Chief, National Criminal Enforcement
Section

_____/s/
JAMES M. GRIFFIN
Deputy Assistant Attorney General

_____/s/
NANCY H. MCMILLEN

_____/s/
SCOTT D. HAMMOND
Director of Criminal Enforcement

_____/s/
REGINALD K. TOM

Antitrust Division
U.S. Department of Justice

_____/s/
JAMES J. FREDRICKS

_____/s/
CHRISTINE J. LEE

_____/s/
DAVID BOLING
Attorneys
Antitrust Division
U.S. Department of Justice

_____/s/
JOHN S. GORDON
United States Attorney