

Ans

9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

HITOSHI HIRANO,

Defendant.

Case:2:14-cr-20293

Judge: Edmunds, Nancy G.

MJ: Komives, Paul J.

Filed: 05-22-2014 At 02:48 PM

IND USA v. HIRANO (dat)

Count 1: 15 U.S.C. § 1

(Conspiracy to Restrain Trade)

Count 2: 18 U.S.C. § 1512(b)(2)(B)

(Obstruction of Justice)

INDICTMENT

The Grand Jury charges:

The Defendant and Co-conspirators

At all times relevant to this Indictment:

1. The defendant, HITOSHI HIRANO, was a citizen of Japan.
2. HIRANO was employed by Tokai Rika Co., Ltd. ("Tokai Rika") as General Manager of Sales Division 1 from at least as early as January 2003 until at least 2005. In 2005, HIRANO was promoted to Director of Sales Division 1, and in 2009, HIRANO was promoted to Executive Managing Director of Sales Division 1, where he served until at least February 2010.
3. Tokai Rika was a Japanese company with its principal place of business in Nagoya, Japan.
4. Sales Division 1 of Tokai Rika was responsible for the sale of automotive parts to Toyota Motor Corporation ("TMC") and Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") (collectively, "Toyota").

5. Tokai Rika was engaged in the business of manufacturing and selling automotive parts, including heater control panels, to Toyota for installation in vehicles manufactured and sold in the United States and elsewhere.

6. Tokai Rika supplies automotive parts to Toyota in the United States through a subsidiary, Tokai Rika of America, Inc. ("TRAM"), located in Plymouth, Michigan.

7. Various corporations and individuals, not made defendants in this Indictment, participated as co-conspirators in the offenses charged herein and performed acts and made statements in furtherance thereof. Whenever this Indictment refers to any act, deed, or transaction of any company, it means that the company 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.

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COUNT I – CONSPIRACY TO RESTRAIN TRADE
(15 U.S.C. § 1)

8. Each and every allegation contained in Paragraphs 1–7 of this Indictment is hereby realleged as if fully set forth in this Count.

Background of the Offense

During the period covered by this Count:

9. HIRANO and his co-conspirators supplied heater control panels to Toyota for installation in vehicles manufactured and sold in the United States and elsewhere.

10. HIRANO and his co-conspirators manufactured and supplied heater control panels (a) in the United States for installation in vehicles manufactured and sold in the United States, (b) in Japan for export to the United States and installation in vehicles manufactured and sold in the United States, and (c) in Japan for installation in vehicles manufactured in Japan for export to and sale in the United States.

11. Heater control panels are located in the center console of an automobile and control the temperature of the passenger compartment of a vehicle. Heater control panels differ by function and design for a particular vehicle model. Examples include automatic heater control panels, which maintain the temperature within the vehicle to a designated temperature point, and manual heater control panels, which regulate the temperature through manual controls operated by vehicle occupants.

12. When purchasing heater control panels, Toyota issues Requests for Quotation (“RFQs”) to automotive parts suppliers, typically on a model-by-model basis. Automotive parts suppliers submit quotations, or bids, to Toyota in response to RFQs. Toyota awards the business to the selected automotive parts supplier for the lifespan of the model, which is usually four to six years. Typically, the bidding process for a particular model begins approximately three years

prior to the start of production of the model that is the subject of the RFQ. Toyota procures parts for U.S.-manufactured vehicles both in Japan and the United States.

Conspiracy to Restrain Trade

13. From at least as early as October 2003 and continuing until at least February 2010, the exact dates being unknown to the Grand Jury, in the Eastern District of Michigan and elsewhere, HIRANO and his co-conspirators participated in a combination and conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of, heater control panels sold to Toyota in the United States and elsewhere. The combination and conspiracy engaged in by HIRANO and his co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

14. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among HIRANO and his co-conspirators, the substantial terms of which were to rig bids for, and to fix, stabilize, and maintain the prices of, heater control panels sold to Toyota in the United States and elsewhere.

Manner and Means of the Conspiracy

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

- a. participating in, and directing, authorizing, or consenting to the participation of subordinate employees in, meetings, conversations, and communications in the United States and Japan to discuss the bids and price quotations to be submitted to Toyota in the United States and elsewhere;

b. agreeing, and directing, authorizing, or consenting to subordinate employees agreeing, during those meetings, conversations, and communications, on bids and price quotations to be submitted to Toyota in the United States and elsewhere;

c. agreeing, and directing, authorizing, or consenting to subordinate employees agreeing, during those meetings, conversations, and communications, to allocate the supply of heater control panels sold to Toyota in the United States and elsewhere on a model-by-model basis;

d. approving collusive and noncompetitive prices agreed upon by subordinates during those meetings, conversations, and communications in the United States and elsewhere;

e. submitting bids and price quotations to Toyota in the United States and elsewhere in accordance with the agreements reached;

f. selling heater control panels to Toyota in the United States and elsewhere at collusive and noncompetitive prices;

g. accepting payment for heater control panels sold to Toyota in the United States and elsewhere at collusive and noncompetitive prices; and

h. engaging in meetings, conversations, and communications in Japan and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme.

Trade and Commerce

16. During the period covered by this Count, HIRANO and his co-conspirators sold to Toyota, located in various states in the United States, substantial quantities of heater control panels manufactured in the United States and shipped from outside the United States and from

other states in a continuous and uninterrupted flow of interstate and foreign trade and commerce. In addition, substantial quantities of equipment and supplies necessary to the production and distribution of heater control panels by Tokai Rika and its co-conspirators, as well as payments for heater control panels sold by Tokai Rika and his co-conspirators, traveled in interstate and foreign trade and commerce. The business activities of HIRANO and his co-conspirators in connection with the production and sale of heater control panels that were the subject of the charged conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

Jurisdiction and Venue

17. The combination and conspiracy charged in this Count was carried out, at least in part, within the Eastern District of Michigan within the five years preceding the filing of this Indictment.

All in violation of Title 15, United States Code, Section 1.

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COUNT II - OBSTRUCTION OF JUSTICE
(18 U.S.C. § 1512(b)(2)(B))

The Grand Jury further charges:

18. Each and every allegation contained in Paragraphs 1–7 of this Indictment is hereby realleged as if fully set forth in this Count.

19. In or about February 2010, HIRANO and other employees of Tokai Rika became aware that TRAM was the subject of a criminal investigation in the United States. Specifically, HIRANO and other employees of Tokai Rika learned that the Federal Bureau of Investigation had executed a search warrant on TRAM offices in Plymouth, Michigan.

20. In or about February 2010, HIRANO knowingly and corruptly persuaded, and attempted to persuade, employees of Tokai Rika, to destroy objects, namely paper documents, and delete electronic data that may contain evidence of antitrust crimes in the United States and elsewhere, with the intent to cause and induce the employees to alter, destroy, mutilate, and conceal said objects, with intent to impair the objects' integrity and availability for use in an official proceeding, to wit: an investigation by a federal grand jury in the Eastern District of Michigan of possible federal criminal violations in the automotive parts industry committed by Tokai Rika and others, in violation of Title 18, United States Code, Section 1512(b)(2)(B).

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Jurisdiction and Venue

21. Title 18, United States Code, Section 1512(h) provides for extraterritorial federal jurisdiction of the offense charged in this Count.

All in violation of Title 18, United States Code, Section 1512(b)(2)(B).

A TRUE BILL.

s/Grand Jury Foreperson
Grand Jury Foreperson

Dated: 5/22/14

s/Brent C. Snyder
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Deputy Assistant Attorney General
Antitrust Division
United States Department of Justice

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