

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

v.

Case: 5:14-cr-20560
Judge: O'Meara, John Corbett
MJ: Grand, David R.
Filed: 09-18-2014 At 01:55 PM
INDI USA V. UEDA ET AL (DA)

ATSUSHI UEDA,
MINORU KURISAKI, and
HIDEYUKI SAITO,

Count I: 15 U.S.C. § 1
Count II: 18 U.S.C. § 371
Count III: 18 U.S.C. § 1512(b)(2)(B)

Defendants.

_____ /

INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

1. Mitsubishi Electric Corporation ("MELCO") is a corporation organized and existing under the laws of Japan with its principal place of business in Tokyo, Japan.
2. Mitsubishi Electric Automotive America, Inc. ("MEAA") is a wholly-owned subsidiary of MELCO organized and existing under the laws of the United States with a sales office in Northville, Michigan.
3. MELCO and MEAA were engaged in the business of manufacturing and selling various automotive parts, including starter motors, alternators, and ignition coils to Ford Motor Company, General Motors LLC, Chrysler Group LLC, Fuji Heavy Industries Ltd., Nissan Motor Company Ltd., Honda Motor Company Ltd., and certain of their subsidiaries (collectively, "Automobile Manufacturers") for installation in vehicles manufactured and sold in the United States and elsewhere.

4. From at least as early as January 2000 until April 2001, ATSUSHI UEDA was employed by MELCO as General Manager of MELCO's Automotive Equipment Marketing Group. UEDA was then promoted to Senior Vice President in charge of sales and marketing and served in that capacity until at least April 2006. UEDA then served as President of MELCO's Automotive Equipment Group from April 2006 until at least April 2008. In April 2008, UEDA became an advisor at MELCO until at least February 2010.

5. From at least as early as January 2000 until September 2005, MINORU KURISAKI was Vice President of Sales and later President of MEAA. Thereafter, KURISAKI returned to Japan in October 2005, where he served as Deputy General Manager of MELCO's Automotive Equipment Marketing Division until March 2006. In April 2006, KURISAKI was promoted to General Manager and he served in that capacity until at least April 2010.

6. HIDEYUKI SAITO was employed by MELCO in its Strategic Planning Section from at least as early as January 2000 through August 2000. From later in August 2000 until August 2004, SAITO worked in the labor union within MELCO. Thereafter, SAITO rejoined MELCO's Strategic Planning Section and became Section Manager of the Strategic Planning Section from April 2006 until at least April 2010.

Background

7. Starter motors are small electric motors used in starting internal combustion engines.

8. Alternators are electromechanical devices that generate an electric current while engines are in operation.

9. Ignition coils are part of the fuel ignition system and release electric energy suddenly to ignite a fuel mixture.

10. MELCO and certain other automotive parts suppliers supplied automotive parts to certain Automobile Manufacturers for installation in vehicles manufactured and sold in the United States and elsewhere. MELCO manufactured many of the automotive parts subject to the conspiracy charged in Count One of this Indictment in the United States. MELCO and certain other automotive parts suppliers supplied automotive parts: (a) in the United States and elsewhere for installation in vehicles manufactured and sold in the United States; (b) in Japan and elsewhere for import into the United States and installation in vehicles manufactured and sold in the United States; and (c) in Japan and elsewhere for installation in vehicles manufactured in Japan and elsewhere for import into and sale in the United States.

11. When purchasing automotive parts, automobile manufacturers typically issue Requests for Quotation (“RFQs”) to automotive parts suppliers on a model-by-model basis for model specific parts. Automotive parts suppliers submit quotations, or bids, to the automobile manufacturers in response to RFQs, and the automobile manufacturers award 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. Automobile manufacturers procure parts for U.S.-manufactured vehicles in the United States and elsewhere.

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COUNT ONE – CONSPIRACY TO RESTRAIN TRADE

(15 U.S.C. § 1)

12. Each and every allegation contained in Paragraphs 1–11 of this Indictment is hereby realleged as if fully set forth in this Count.

13. Various corporations and individuals, not made defendants in this Count, participated as co-conspirators in the offense charged in this Count and performed acts and made statements in furtherance of it.

14. Whenever in this Count 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, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

15. The following individuals are hereby indicted and made Defendants in this Count:

ATSUSHI UEDA,

MINORU KURISAKI, and

HIDEYUKI SAITO.

Conspiracy to Restrain Trade

16. From at least as early as January 2000 and continuing until at least February 2010, the exact dates being unknown to the Grand Jury, in the Eastern District of Michigan and elsewhere, MINORU KURISAKI, HIDEYUKI SAITO, ATSUSHI UEDA, (collectively, the “Defendants”) and their co-conspirators participated in a combination and conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to allocate the supply of, rig bids for, and fix, stabilize, and maintain the prices of, automotive parts sold to Automobile Manufacturers in the United States and elsewhere. The combination and conspiracy engaged in

by the Defendants and their 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. This combination and conspiracy involved interstate trade and commerce and import trade and commerce.

17. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the Defendants and their co-conspirators, the substantial terms of which were to allocate the supply of, rig bids for, and fix, stabilize, and maintain the prices of, certain automotive products, including starter motors, alternators, and ignition coils sold to Automobile Manufacturers in the United States and elsewhere.

18. ATSUSHI UEDA, MINORU KURISAKI, and HIDEYUKI SAITO joined and participated in the conspiracy from at least as early as 2000 and continuing until at least 2010.

Manner and Means of the Conspiracy

19. For purposes of forming and carrying out the charged combination and conspiracy, the Defendants and their 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 Automobile Manufacturers in the United States and elsewhere;

b. agreeing, during those meetings, conversations, and communications, on bids and price quotations to be submitted to Automobile Manufacturers in the United States and elsewhere;

c. agreeing, during those meetings, conversations, and communications, to allocate the supply of automotive parts sold to Automobile Manufacturers 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, price quotations, and price adjustments to Automobile Manufacturers in the United States and elsewhere in accordance with the agreements reached;

f. selling automotive parts to Automobile Manufacturers in the United States and elsewhere at collusive and noncompetitive prices;

g. accepting payment for automotive parts sold to Automobile Manufacturers in the United States and elsewhere at collusive and noncompetitive prices;

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

i. employing measures to keep their conduct secret, including using code names and destroying conspiratorial documents.

Trade and Commerce

20. During the period covered by this Count, the Defendants and their co-conspirators sold to Automobile Manufacturers in the United States and elsewhere substantial quantities of automotive parts manufactured in the United States and shipped from other states, and manufactured outside the United States and shipped to the United States, all in a continuous and

uninterrupted flow of interstate and import trade and commerce. In addition, substantial quantities of equipment and supplies necessary to the production and distribution of automotive parts by MELCO and its co-conspirators, as well as payments for automotive parts sold by MELCO and its co-conspirators, traveled in interstate and import trade and commerce. The business activities of the Defendants and their co-conspirators in connection with the production and sale of automotive parts that were the subject of the charged conspiracy were within the flow of, and substantially affected, interstate and import trade and commerce.

Jurisdiction and Venue

21. The combination and conspiracy charged in this Count was carried out, at least in part, in the Eastern District of Michigan and continued 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 TWO – CONSPIRACY TO OBSTRUCT JUSTICE

(18 U.S.C. §§ 1512(b)(2)(B), 1512(c), and 1519, in violation of 18 U.S.C. § 371)

The Grand Jury further charges that:

22. Each and every allegation contained in Paragraphs 1–11 of this Indictment is hereby realleged as if fully set forth in this Count.

Introduction

23. On or about July 27, 2007, the then-President of MELCO e-mailed employees of MELCO, including all employees in the Automotive Equipment Group, alerting them to the fact that the United States was investigating MELCO regarding potential violations of antitrust laws relating to Dynamic Random Access Memory (DRAM).

24. From in or about February 2010 to the present, a federal grand jury sitting in the Eastern District of Michigan has been investigating, among other things, potential federal antitrust offenses involving the sale of automotive parts manufactured and sold by numerous automotive parts suppliers and individuals employed by those suppliers. As part of the Grand Jury's investigation, subpoenas were issued, documents and evidence were gathered, and witnesses testified.

25. On or about February 23, 2010, the Federal Bureau of Investigation (“FBI”) conducted search warrants at numerous automotive parts suppliers, including a direct competitor of MELCO, which is also a co-conspirator in Count One of this Indictment (“CC-1”), investigating possible federal antitrust offenses involving the sale of automotive parts manufactured and sold by numerous automobile manufacturers. On or about that same day, February 23, 2010, the federal grand jury sitting in the Eastern District of Michigan issued subpoenas duces tecum to a competitor of MELCO, among other automotive parts suppliers.

26. On or about July 19, 2011, the FBI conducted search warrants at numerous automotive parts suppliers, including MEAA's sales office in Northville, Michigan, investigating possible federal antitrust offenses involving the sale of automotive parts manufactured and sold by numerous automobile manufacturers. On or about that same day, July 19, 2011, the federal grand jury sitting in the Eastern District of Michigan issued subpoenas duces tecum to MELCO, among other automotive parts suppliers.

27. The following individuals are hereby indicted and made Defendants in this Count:

MINORU KURISAKI, and

HIDEYUKI SAITO.

The Conspiracy to Obstruct Justice

28. From in or about September 2007, and continuing thereafter until in or about March 2010, the exact dates being unknown to the grand jury, MINORU KURISAKI and HIDEYUKI SAITO, knowingly conspired and agreed, together and with each other, and with other unnamed co-conspirators, both known and unknown to the grand jury, to knowingly commit offenses against the United States, that is:

a. to corruptly persuade or attempt to corruptly persuade other persons with intent to cause or induce those other persons to destroy or conceal records and documents with the intent to impair their integrity and availability for use in an official proceeding; that is, a federal grand jury sitting in the Eastern District of Michigan, conducting an investigation into potential violations of U.S. antitrust laws in the automotive parts industry, in violation of Title 18, United States Code, Section 1512(b)(2)(B);

b. to corruptly destroy or conceal records, documents, or other objects, or attempted to do so, with the intent to impair the object's integrity or availability for use in

an official proceeding; that is, a federal grand jury sitting in the Eastern District of Michigan, conducting an investigation into potential violations of U.S. antitrust laws in the automotive parts industry, in violation of Title 18, United States Code, Section 1512(c)(1); and

c. to destroy, conceal, or cover up any record, document, or tangible object with the intent to impede, obstruct, and influence the investigation and proper administration of any matter within the jurisdiction of any department or agency of the United States, and in relation to and in contemplation of such matter and case; that is, an investigation within the jurisdiction of the United States Department of Justice and the FBI, in violation of 18, United States Code, 1519.

Manner and Means of the Conspiracy

29. It was part of the conspiracy that both in contemplation of, and with actual knowledge of the investigations described above:

a. KURISAKI, SAITO, and other co-conspirators, in contemplation of an investigation by the United States Department of Justice, persuaded, directed, and instructed other persons to remove, conceal, discard, or destroy records or documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors in order to prevent the availability of those records or documents for use in any such investigation.

b. KURISAKI, SAITO, and other co-conspirators persuaded, directed, and instructed other persons to remove, conceal, discard, or destroy any records or documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors in order to prevent the United

States Department of Justice and this federal grand jury from receiving or reviewing such evidence in the course of the investigation.

c. In or about February and March 2010, after learning through internet news articles that the FBI issued search warrants at their competitor and fellow co-conspirator in Count One of this Indictment, SAITO and other co-conspirators destroyed e-mail communications and other electronic documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors in order to prevent the FBI and this federal grand jury from receiving or reviewing such evidence in the course of the investigation.

d. In or about February and March 2010, after learning through internet news articles that the FBI issued search warrants at their competitor and fellow co-conspirator in Count One of this Indictment, SAITO and other co-conspirators concealed, discarded, or destroyed from business files documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors in order to prevent the United States Department of Justice and this federal grand jury from receiving or reviewing such evidence in the course of the investigation.

e. The co-conspirators succeeded in deleting and destroying substantial amounts of electronic and hardcopy evidence relevant to the United States Department of Justice investigation and this federal grand jury investigation.

Overt Acts

30. In furtherance of the conspiracy and to effect the objects of the conspiracy, KURISAKI, SAITO, and others, both known and unknown to the grand jury, committed the following overt acts, among others, in the Eastern District of Michigan, and elsewhere:

a. In or about September 25, 2007, in response to the United States Department of Justice's investigation into potential violations of antitrust laws relating to DRAM, KURISAKI directed employees of MELCO who were involved in the conspiracy described in Count One of this Indictment to remove and conceal, or destroy from their files any documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors.

b. Beginning in or about September 2007 and continuing until at least March 2010, the co-conspirators put KURISAKI's directions into effect by routinely identifying, isolating, concealing, and discarding documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors. Some examples of the conduct included:

i. A chain of internal e-mail communications between the co-conspirators, dated between April 8, 2008 and May 21, 2008, reported on contacts between MELCO and its competitor regarding a price-fixing agreement targeting sales of starters and alternators to Toyota Motor Corporation and instructed recipients to, "Handle securely, Discard After Reading;"

ii. A chain of internal e-mail communications between the co-conspirators, including SAITO, dated between April 9, 2009 and May 8, 2009, reported on contacts between or among MELCO and its competitor regarding a price-fixing agreement targeting sales of alternators to Ford Motor Company and instructed recipients, "Company secret / Handle with care"; and "After reading the following, please destroy this";

iii. An internal e-mail communication between the co-conspirators, including SAITO, dated August 21, 2009, transmitted password-protected notes of a telephone call between MELCO and its competitor regarding a price-fixing agreement targeting sales of ignition coils to General Motors;

iv. A spreadsheet created in approximately 2005 and systematically updated until approximately February 2010 by the co-conspirators, which recorded the results of the conspiracy charged in Count One of this Indictment affecting sales of starter motors, alternators, and ignition coils sold to Automobile Manufacturers and was maintained in a password-protected electronic file and stored on a computer server to which only the employees of MELCO's Strategic Planning Group, including SAITO, had access.

c. In or about February 2010, SAITO directed MELCO employees who were involved in the conspiracy described in Count One of this Indictment to remove and conceal or destroy from their files any records and documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors.

d. On or about February 25, 2010, SAITO sent an e-mail communication to MELCO employees who were involved in the conspiracy described in Count One of this Indictment, alerting them to the United States' investigation into potential violations of antitrust law in the automotive parts industry. In the e-mail communication, SAITO directed the recipients to "take appropriate measures regarding the top-secret materials" and to treat his email as "to be destroyed after reading / forwarding prohibited" and to "please explain this orally to related persons."

e. In or about February 2010, in Northville, Michigan, in response to SAITO's direction to destroy documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors, a MEAA employee, CC-2, who also participated in the conspiracy described in Count One of this Indictment, searched for e-mail communications that contained the phrase "destroy after reading" or that described the conspiracy charged in Count One of this Indictment, and deleted said e-mail communications from his computer.

f. In or about February 2010, SAITO verbally directed his subordinates, CC-3 and CC-4, in MELCO's Strategic Planning Group who also participated in the conspiracy described in Count One of this Indictment, to search MELCO's Automotive Equipment Group sales headquarters for any records and documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors and move them to a private conference room.

g. In or about February 2010, SAITO instructed CC-3 and CC-4 to review the documents and records in the private conference room described in Paragraph 30.f. for information on the results of the conspiracy charged in Count One of this Indictment affecting sales of starter motors, alternators, and ignition coils sold to Automobile Manufacturers; update the spreadsheet described in Paragraph 30.b.iv. with that information; conceal the spreadsheet; and then remove and destroy any records and documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors.

h. From in or about February 2010 until March 2010, SAITO, CC-3, and CC-3 collected records and documents that contained evidence of antitrust crimes in the

United States and elsewhere, or reflected contacts between or among their competitors. SAITO, CC-3, and CC-4 placed said documents and record in a shredding vendor's bins, and then the vendor removed the bins and destroyed the documents and records.

i. In or about March 2010, KURISAKI directed CC-2 to remove and conceal, or destroy from his files in the United States any records and documents that contained evidence of antitrust crimes in the United States and elsewhere, or reflected contacts between or among their competitors.

j. In or about March 2010, in response to KURISAKI's direction to remove or destroy documents and records, CC-2, in Northville, Michigan, located additional e-mail communications that contained evidence of the conspiracy charged in Count One of this Indictment, and then deleted said e-mail communications.

Jurisdiction and Venue

31. The conspiracy charged in this Count was carried out, at least in part, in the Eastern District of Michigan and continued within the five years preceding the filing of this Indictment. The official proceeding intended to be affected by the conspiracy charged in this Count was in the Eastern District of Michigan.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

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

The Grand Jury further charges:

32. Each and every allegation contained in paragraphs 1 through 11 of Count One and 23 through 26 of Count Two are realleged and reasserted here as if fully set forth in this Count.

33. HIDEYUKI SAITO and other MELCO executives and employees became aware that CC-1 was a potential subject of a criminal investigation in the United States. Specifically, SAITO and other MELCO executives and employees became aware that the FBI executed a search warrant on CC-1, among other automotive parts manufacturers.

34. In or about February 2010, HIDEYUKI SAITO knowingly and corruptly persuaded, and attempted to persuade, other employees of MELCO, to destroy or conceal 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 executives 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 MELCO and others, in violation of Title 18, United States Code, Section 1512(b)(2)(B).

Jurisdiction and Venue

35. Under 18 U.S.C. § 1512(h) there is extraterritorial Federal jurisdiction over the offense charged in this Count. The official proceeding intended to be affected by the conduct charged in this Count was in the Eastern District of Michigan.

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: _____

s/Brent C. Snyder

Brent C. Snyder

Deputy Assistant Attorney General

Antitrust Division

United States Department of Justice

s/Lisa M. Phelan

Lisa M. Phelan

Chief, Washington Criminal 1 Section

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