

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA, . Wednesday, November 29, 2017
. 9:22 AM
Plaintiff, .
. **Day 13 of Jury Trial**
- v - .
. .
TOKAI KOGYO CO., LTD. . Case No. 1:16-cr-063-1
GREEN TOKAI CO., LTD., . Case No. 1:16-cr-063-2
. .
Defendants. . Cincinnati, Ohio
.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TIMOTHY S. BLACK, JUDGE, and a JURY

APPEARANCES:

For the Plaintiff: LAURA H. MANSCHRECK, ESQ.
ANDRE M. GEVEROLA, ESQ.
MATTHEW J. McCROBIE, ESQ.
CHESTER C. CHOI, ESQ.
ZORAN TASIC, ESQ.
U.S. Department of Justice
Antitrust Division
209 South LaSalle Street, Suite 600
Chicago, Illinois 60604

For the Defendants Tokai Kogyo Co., Ltd. and Green Tokai Co., Ltd.:

RALPH W. KOHNEN, ESQ. LARRY A. MACKEY, ESQ.
Taft, Stettinius & Hollister LLP NEAL A. BRACKETT, ESQ.
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Washington, DC 20006

1 APPEARANCES (Continued):

2 Also present: Daniel Bowers, Green Tokai Co., Ltd.
3 Yuichi Kimura, Tokai Kogyo Co., Ltd.
4 Helen Nissan, Paralegal, U.S. DOJ
5 Mari Reigner, Interpreter
6 Special Agent Charles Sampson, FBI

7 Law Clerk: Cristina V. Frankian, Esq.

8 Courtroom Deputy: Gail Seibert

9 Court Reporter: Luke T. Lavin, RDR, CRR
10 Potter Stewart U.S. Courthouse
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P R O C E E D I N G S

(In open court at 9:22 AM, no jury present.)

THE COURT: Good morning. We're on the record in the courtroom outside the presence of the jury. It's about 9:21. The jurors were hoping to be ready for us at 9:30.

We're still waiting on a couple jurors to appear, but I wanted to touch base with you on the record in regard to what I advised counsel of by phone, to wit, at 7:30 this morning we received a call from Juror Number 5, indicating that she was ill with stomach flu and simply incapable of coming down today, and she apologized profusely. I called you all and told each side that so you had the heads-up.

We communicated with Juror Number 13, the first alternate. He is available and is on his way to the courthouse, hopes to be here at or around 9:30.

We have some options. I would propose -- and I want to hear from you all. I would propose that we simply release Juror Number 5 and replace her with Juror Number 13, the first alternate, and instruct the jury to start their deliberations anew as if yesterday's 3:30 to 5:00 o'clock, approximately, deliberations did not occur. So I would tell them start again; select a foreperson. It can be the same person you selected yesterday, if you choose, but need not be. Having selected a foreperson, then begin your deliberations as if you're starting from square one.

1 I would propose to *voir dire* Juror Number 13 outside the
2 presence of the other jurors to simply confirm that he's not
3 discussed the case in any way with anyone and that he has not
4 formed an opinion but is prepared to go and start deliberations
5 anew with his 11 fellow jurors.

6 I suppose the other options are that the rule provides that
7 the judge, for good cause, can authorize 11 jurors only. I
8 suppose we could delay deliberations and await Juror Number 5's
9 recovery.

10 I think those are the options. My preference would be to
11 simply replace Juror Number 5 with Alternate Number 1, Juror
12 13, and instruct the newly constituted 12 jurors to go upstairs
13 and begin their deliberations anew as if their brief
14 deliberations yesterday had not occurred.

15 I'd like to hear the parties' reactions to what presents,
16 and I would propose to hear first from the government and then
17 the defense.

18 MS. MANSCHRECK: The government has no objection to
19 the Court's approach.

20 THE COURT: To substitute the alternate for Juror
21 Number 5 and instruct them to begin anew?

22 MS. MANSCHRECK: Yes, Your Honor.

23 THE COURT: And the government consents to that?

24 MS. MANSCHRECK: Yes, Your Honor.

25 THE COURT: All right.

1 What's the defendants' reaction to what presents?

2 MS. SINFELT: The defense would also like to proceed
3 with the alternate, Your Honor.

4 THE COURT: Very well. So the defense consents as
5 well to the substitution of the alternate for the ill juror; is
6 that right?

7 MR. MACKEY: Yes, Your Honor.

8 May I make one inquiry?

9 THE COURT: Yes.

10 MR. MACKEY: I'm thinking about the *voir dire* of
11 Alternate Number 1. Do you plan to do that in the presence of
12 the other members of the jury?

13 THE COURT: No, unless --

14 MR. MACKEY: Will you do that before?

15 THE COURT: (Nods head up and down). I'll bring Juror
16 Number 13 in and, in the presence of everybody, ask those two
17 questions.

18 MR. MACKEY: All right.

19 THE COURT: If it's clear, then I would ask that the
20 courtroom deputy get the other 11 and bring them down here.

21 MR. MACKEY: Thank you, Your Honor.

22 THE COURT: I want to be clear on the record that
23 there are no objections and that this is done with the full
24 consent of the parties.

25 Is that true of the government?

1 MS. MANSCHRECK: Yes, Your Honor.

2 THE COURT: Is that true of both defendants?

3 MS. SINFELT: Yes, on behalf of Green Tokai and Tokai
4 Kogyo.

5 MR. MACKEY: It is, Your Honor. Thank you.

6 THE COURT: Very well.

7 Well, I think we will recess until the alternate appears.
8 He's going to come to chambers here rather than enter the jury
9 room. I'll bring him out for the two-question *voir dire* and
10 then proceed as we can.

11 So we're in recess briefly while we await the arrival of
12 the alternate who, to his great credit, is scrambling to get
13 here. So we're in recess.

14 COURTROOM DEPUTY: This court is now in recess.

15 (Recess taken: 9:27 AM - 9:42 AM.)

16 THE COURT: You may all be seated.

17 We're on the record in the courtroom outside the presence
18 of the jury. Juror Number 13 has come into the courtroom.
19 He's the first alternate.

20 As I previously stated on the record, we received a call at
21 about 7:30 this morning from Juror Number 5, indicating that
22 she has come down with some sort of stomach virus and is very
23 ill and simply cannot appear today. Accordingly, we reached
24 out to Juror Number 13, caught him at home and asked him if he
25 would be able to come down to be considered as joining the

1 jury. He has arrived and is present.

2 As I indicated to counsel, we'll ask a couple of questions
3 of Juror Number 13 to make sure he's adequately situated. And
4 if he is, I'm going to bring the 11 jurors down into the
5 courtroom, tell them what has occurred, welcome Juror Number 13
6 to their presence, and I'm going to advise them that they need
7 to begin their deliberations anew as if their deliberations
8 yesterday from 3:30 to about 5:00 had not occurred. They're
9 starting all over, properly so, so that the alternate juror is
10 involved in the deliberations from the very start.

11 So that's how I intend to proceed. I've spoken with you
12 about it and have received consent from both sides.

13 So good morning, Juror Number 13.

14 JUROR NO. 13: Good morning.

15 THE COURT: Thank you for scrambling down here.

16 JUROR NO. 13: Sure.

17 THE COURT: I need to be certain that you were able to
18 follow my instructions yesterday, which were the standard
19 instructions. So I inquire whether you have discussed this
20 case with anyone.

21 JUROR NO. 13: No, I have not.

22 THE COURT: Very well. And have you managed to
23 continue to keep an open mind such that you have no
24 predetermined opinion but are prepared to go to the jury room,
25 begin deliberations from the very start as of today, listen to

1 the jurors deliberate and ultimately reach your verdict?

2 So have you managed to keep an open mind?

3 JUROR NO. 13: Yes, I have.

4 THE COURT: Do you have a predetermined opinion on the
5 appropriate verdict?

6 JUROR NO. 13: No.

7 THE COURT: You're prepared to discuss that over the
8 course of time with your fellow jurors?

9 JUROR NO. 13: Yes.

10 THE COURT: I'm prepared to excuse Juror Number 5 for
11 cause and to substitute Juror Number 13, the first alternate,
12 to bring us back to a full 12.

13 Is there anything that requires the Court's attention
14 before I proceed in that way and ask that the 11 jurors join
15 us?

16 Does the government wish to be heard in any regard as to
17 these proceedings?

18 MS. MANSCHRECK: No, Your Honor.

19 THE COURT: The defense?

20 MS. SINFELT: No, Your Honor.

21 THE COURT: Very well.

22 May we call for jury, please.

23 COURTROOM DEPUTY: All rise for the jury.

24 (Jury in at 9:48 AM.)

25 THE COURT: You may all be seated. Eleven of the

1 jurors have arrived in the courtroom at the Court's request.
2 Juror Number 13 is present as well, so we have 12 individuals
3 present in the jury box at this moment.

4 To the members of the jury, Juror Number 5 called our
5 chambers this morning at 7:30, indicated that she was very ill
6 with significant stomach issues and she simply could not come
7 in today. I think she was motivated not to spread germs, and I
8 believe that she's sufficiently sick that I'm going to replace
9 her with the alternate. We managed to track down Juror Number
10 13 and make his day.

11 (Laughter.)

12 THE COURT: He has scrambled down here to be here
13 timely, and the Court and the community appreciate that.

14 So we now have you 12 as jurors. You need to start anew on
15 your deliberations as if the deliberations that occurred
16 between 3:30 and 5:00-ish yesterday afternoon did not happen.
17 Fortunately, this is occurring very briefly into the
18 deliberation period and a whole bunch of time is not lost.

19 But it's just like yesterday. Momentarily, you're going to
20 go to the jury room and begin your deliberations. You are to
21 select a foreperson. You're welcome to select the same person
22 you selected yesterday or select somebody else.

23 Once you've selected a foreperson, then we've got somebody
24 to be certain that everyone is heard fully in your discussions,
25 so your deliberations will begin anew.

1 Is there any juror in the box who does not understand my
2 instruction that you need to start over as if the deliberations
3 that occurred between 3:30 and 5:00 yesterday simply did not
4 happen? Raise your hand if you do not understand that.

5 (No response.)

6 THE COURT: Any of you jurors have a question about
7 how we're going to proceed?

8 (No response.)

9 THE COURT: I see no hands.

10 All right. The 12 of you are the jurors. I want you to
11 take vitamin C and stay healthy.

12 Out of respect for you, we'll rise as you leave to begin
13 your deliberations anew.

14 COURTROOM DEPUTY: All rise for the jury.

15 (Jury out at 9:51 AM.)

16 BEFORE THE COURT

17 THE COURT: You may be seated.

18 The jury has left the courtroom and gone upstairs to their
19 deliberation room. I would propose, momentarily, to simply
20 recess and we'll await communication from the jury.

21 We have phone numbers. I hope you won't disappear from the
22 courthouse, and if you do, that you'll be close by so that, if
23 we are summoned by the jury, we don't have to wait around to
24 round people up.

25 I think we're probably ready to recess and await the jury's

1 communication. Is there anything either party wishes to
2 present to the Court before we recess and await the jury's
3 communication?

4 From the government?

5 MS. MANSCHRECK: No, Your Honor.

6 THE COURT: From the defense?

7 MS. SINFELT: No, Your Honor.

8 THE COURT: Is there any attorney present that we need
9 quarantined for health purposes?

10 (Laughter.)

11 MS. SINFELT: For health purposes, or for any other
12 reason, Your Honor?

13 (Laughter.)

14 THE COURT: I want the lawyers to stay healthy too,
15 and the corporate representatives.

16 We're in recess until we hear from the jury.

17 COURTROOM DEPUTY: All rise. This court is now in
18 recess.

19 (Recess taken: 9:52 AM.)

20 AFTER RECESS

21 (In open court at 1:28 PM, no jury present.)

22 THE COURT: You may be seated. We're back on the
23 record in the open courtroom.

24 Everybody here on behalf of the government?

25 MS. MANSCHRECK: We're just waiting for Mr. Geverola,

1 but everyone else is here.

2 THE COURT: And is he en route?

3 MS. MANSCHRECK: He is.

4 THE COURT: And is everybody here on behalf of the
5 defendant?

6 MS. SINFELT: Yes, Your Honor.

7 THE COURT: We're advised the jury has a verdict. As
8 soon as we get a full complement of counsel, I'm going to call
9 for the jury to be brought to the courtroom. I'll ask if
10 there's a foreperson. I'll ask if the jury has reached
11 unanimous verdicts, whether those have been reflected on a
12 verdict formed signed by all 12 jurors. I'll ask the
13 foreperson to deliver the verdict to Ms. Seibert. I'll ask her
14 to deliver the verdict to me. I'll take a moment to review it
15 for appropriateness, and I will then publish the verdict by
16 reading it aloud.

17 I would ask, and I will ask at the time I read the verdict
18 for the parties and their lawyers to stand to receive the
19 verdict of the jury. After I have read the verdicts, I would
20 intend to poll each of the jurors to make sure that it is their
21 own individual judgment. And when the verdict is read aloud, I
22 ask and require that all persons simply receive the verdict
23 with quietude and respect. I will thank the jurors for their
24 service and release them to the jury room.

25 We have a local rule which prohibits counsel from talking

1 to jurors after a verdict is delivered, absent an order of the
2 Court to the contrary. It's my visceral response that I'm not
3 eager to let lawyers loose on cross-examining jurors as to how
4 they reached their verdict, so I am disinclined to change the
5 local rule, but if you wish to be heard on that issue, I will
6 hear you.

7 That's the procedure I would propose. All lawyers are
8 here. The government's representative is here, both the
9 defendants' representatives are here, and I think we're ready
10 for the jury.

11 But before we call for them, is there anything you want to
12 bring to my attention before I ask that they be brought to the
13 courtroom?

14 First, from the government?

15 MS. MANSCHRECK: No, Your Honor.

16 THE COURT: And from the defense?

17 MS. SINFELT: No, Your Honor.

18 THE COURT: Very well. You all acknowledge the local
19 rule that you're not to have contact with the jurors.

20 On behalf of the government; yes?

21 MS. MANSCHRECK: Yes, Your Honor.

22 THE COURT: And the defense?

23 MS. SINFELT: Yes, Your Honor.

24 THE COURT: Very well.

25 Could we call for the jury, please.

1 COURTROOM DEPUTY: All rise for the jury.

2 (Jury in at 1:32 PM.)

3 THE COURT: You may all be seated.

4 The 12 jurors have joined us in the courtroom. I am
5 advised that the jury has reached a verdict. Is there a
6 foreperson?

7 JUROR NO. 3: Yes, Your Honor.

8 THE COURT: Has the jury reached a unanimous
9 verdict --

10 JUROR NO. 3: We have.

11 THE COURT: -- as to both defendants?

12 JUROR NO. 3: We have, Your Honor.

13 THE COURT: And is the verdict form fully filled out
14 and signed by all 12?

15 JUROR NO. 3: It is, Your Honor.

16 THE COURT: Very well. If you'd be willing to deliver
17 it to Ms. Seibert, who will come to you, she'll bring it to me.
18 I'll review it and then publish it to the parties.

19 (Courtroom deputy retrieves document from Juror Number 3
20 and delivers same to the Court.)

21 THE COURT: It's fully completed. It's signed by all
22 12 jurors and it's dated today, the 29th day of November.

23 I am prepared to publish the verdict to the parties, the
24 participants, and the public. If counsel and the
25 representatives will rise to receive the verdict of the jury.

1 Verdict Form. As to the charge of violation of the Sherman
2 Antitrust Act, 15 United States Code, Section 1, we, the jury,
3 find the defendant Tokai Kogyo Co., Limited not guilty.

4 As to the charge of violation of the Sherman Antitrust Act,
5 15 United States Code, Section 1, we, the jury, find the
6 defendant Green Tokai Co., Limited not guilty.

7 You may be seated.

8 The jury has spoken. I'm going to ask each of you
9 individually whether this is your own verdict in order to
10 assure for me and the record that each of you has reached this
11 verdict as reflected in the written verdict form.

12 Juror Number 1, is this your verdict?

13 JUROR NO. 1: Yes, Your Honor.

14 THE COURT: Thank you.

15 Juror Number 2, is this your verdict?

16 JUROR NO. 2: Yes, Your Honor.

17 THE COURT: Thank you.

18 Juror Number 3, is this your verdict?

19 JUROR NO. 3: Yes, Your Honor.

20 THE COURT: Thank you.

21 Juror Number 4, is this your verdict, sir?

22 JUROR NO. 4: Yes, Your Honor.

23 THE COURT: Thank you.

24 Juror Number 7 -- excuse me, 7, is this your verdict?

25 JUROR NO. 7: Yes, Your Honor.

1 THE COURT: Thank you.

2 Juror Number 8, is this your verdict?

3 JUROR NO. 8: Yes, Your Honor.

4 THE COURT: Thank you.

5 Juror Number 9, is this your verdict?

6 JUROR NO. 9: Yes, Your Honor.

7 THE COURT: Thank you.

8 Juror Number 10, is this your verdict?

9 JUROR NO. 10: Yes, Your Honor.

10 THE COURT: Thank you.

11 Juror Number 11, is this your verdict?

12 JUROR NO. 11: Yes, Your Honor.

13 THE COURT: Very well.

14 Juror Number 12, is this your verdict?

15 JUROR NO. 12: Yes, Your Honor.

16 THE COURT: Juror Number 13, is this your verdict?

17 JUROR NO. 13: Yes, Your Honor.

18 THE COURT: Did I overlook Juror Number 6?

19 JUROR NO. 6: Yes, you did.

20 THE COURT: Please do not be offended. Is this your
21 verdict?

22 JUROR NO. 6: Yes, it is, Your Honor.

23 THE COURT: Thank you, sir.

24 The jury has been polled. The verdict form is properly
25 completed. Upon polling the individual jurors, the Court has

1 affirmed and confirmed that this is the unanimous finding of
2 the jury.

3 Members of the jury, on behalf of the Court and the
4 community and the parties involved in this action, I want to
5 express our appreciation from deep within our heart and soul.
6 We talked about this early on, that we live in a free country
7 where, when someone faces a criminal charge, there's no
8 emperor, no king, no judge makes the decision. We ask 12
9 ordinary citizens to walk away from their lives briefly and
10 bring their collective common sense and wisdom to the courtroom
11 and render verdicts fairly, without bias, prejudice or
12 sympathy, based on the evidence and the law.

13 I watched you throughout this proceeding and you were on
14 task, and it wasn't easy. I hope maybe some of you learned a
15 little bit of Japanese. I learned the word "hai." But you
16 have discharged your duty with professionalism, and I want you
17 to know that the thanks I express on behalf of the parties, the
18 Court, and the community are not perfunctory.

19 I told you I think jury service is a sacrifice required by
20 democracy. I'm confident that it's a sacrifice and that all of
21 you were inconvenienced to some certain degree by being taken
22 away from your normal lives and brought to this magnificent
23 courtroom to listen to weeks of testimony. I want you to take
24 pride in what you have accomplished. I think your service as
25 jurors offers you a remarkable opportunity to participate in

1 the free governance of this country and to make critical
2 decisions for the people involved. So from the depths of my
3 heart and on behalf of the Court and the community, thank you.

4 I'm going to release you momentarily. I'm going to make
5 you walk back up those stairs one more time so you'll always
6 remember me.

7 (Laughter.)

8 THE COURT: I will come up as quickly as I can. You
9 do not need to stay for me. But I do want the opportunity to
10 come up and talk with any of you who are able to remain.
11 You're free to talk to anyone you choose now; you're free not
12 to talk to anyone you choose.

13 We have an order in this court that the lawyers are not
14 permitted to communicate with you unless I give them
15 permission, and I have not because I don't want you badgered or
16 cross-examined or to feel any pressure as people inquire. I
17 want you to take faith in what you've done collectively. And
18 so for the final time, on behalf of the Court and the community
19 and the participants, thank you for your work.

20 I'm going to release you momentarily to go upstairs, gather
21 your gear, and depart. I'll be up as soon as I can, and it
22 will be promptly. But as you depart the courtroom, I'm going
23 to step down and, on behalf of the Court and the community,
24 shake each of your hands.

25 Is there anything required from either side before I

1 discharge the jury?

2 From the government?

3 MS. MANSCHRECK: No, Your Honor.

4 THE COURT: From the defense?

5 MS. SINFELT: No, Your Honor.

6 THE COURT: Out of respect for you jurors, we will
7 rise as you leave.

8 COURTROOM DEPUTY: All rise for the jury.

9 THE COURT: And if the jury would approach. If you
10 want a fist bump, a fist bump.

11 (Laughter.)

12 (Jury out at 1:42 PM.)

13 BEFORE THE COURT

14 THE COURT: You may be seated.

15 The jury has been discharged and left the room. I believe
16 we are prepared to adjourn unless there is anything that
17 requires my attention.

18 Is there anything from the government?

19 MS. MANSCHRECK: No, Your Honor.

20 THE COURT: From the defense?

21 MS. SINFELT: No, Your Honor.

22 THE COURT: Well, it pains me to say this, but you
23 lawyers did an extraordinary job on both sides, and I will miss
24 you.

25 MS. SINFELT: Even Mr. Kohnen?

1 THE COURT: Even Mr. Kohnen.

2 And although I don't get a chance to say this often, you
3 are free to go. Godspeed.

4 MR. MACKEY: Thank you.

5 THE COURT: We're in recess.

6 COURTROOM DEPUTY: This court is now adjourned.

7 (Proceedings concluded at 1:43 PM.)

8 - - -

9 C E R T I F I C A T E

10 I, Luke T. Lavin, RDR, CRR, the undersigned, certify
11 that the foregoing is a correct transcript from the record of
12 proceedings in the above-entitled matter.

13

14 s/Luke T. Lavin
15 Luke T. Lavin
16 Official Court Reporter

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