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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

	- - -	
UNITED STATES OF AMERICA,	.	Case No. 1:15-CR-98
	.	
Plaintiff,	.	<i>Initial Appearance, Plea and</i>
	.	<i>Sentencing on Information</i>
- vs -	.	
	.	Thursday, October 29, 2015
KAYABA INDUSTRY CO., LTD	.	9:30 a.m.
d/b/a KYB CORPORATION,	.	
	.	
Defendant.	.	Cincinnati, Ohio
. . . . .		

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MICHAEL R. BARRETT

APPEARANCES:

For the Plaintiff: CARLA M. STERN, ESQ.  
DANIEL W. GLAD, ESQ.  
U.S. Department of Justice  
Antitrust Division  
209 S. LaSalle Street  
Suite 600, Rookery Building  
Chicago, Illinois 60604

For the Defendants: LARRY A. MACKEY, ESQ.  
BRIAN R. WEIR-HARDEN, ESQ.  
Barnes & Thornburg, LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204

RALPH W. KOHNEN, ESQ.  
CAITLIN FELVUS, ESQ.  
Taft Stettinius & Hollister, LLP  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202

Also present: Hide Niiyama, Interpreter;  
Masaru Tsuboi, Defendant's Representative  
Agent C.J. Freihofer, FBI

Courtroom Deputy: Barbara A. Crum

Court Reporter: Maryann T. Maffia, RDR

## P R O C E E D I N G S

1  
2 COURTROOM DEPUTY: On the docket is District Court  
3 Case Number 1:15-CR-98: *United States of America versus*  
4 *Kayaba Industry.*

5 We're here this morning for initial appearance, a plea,  
6 and sentencing on Information.

7 Please be seated.

8 THE COURT: Yeah, sit down, guys.

9 Okay. Will counsel enter their appearances for the  
10 record? We'll begin with the United States.

11 MS. STERN: Good morning, Your Honor. Carla Stern  
12 for the United States, with my colleague Dan Glad and Special  
13 Agent C.J. Freihofer.

14 MR. KOHNEN: Your Honor, good morning. Ralph Kohnen  
15 on behalf of the defendant, with my colleague Larry  
16 Mackey.

17 MR. MACKEY: Good morning, Judge.

18 MR. KOHNEN: And also my colleague Brian Weir-Harden.

19 MR. WEIR-HARDEN: Good morning, Your Honor.

20 MR. KOHNEN: And Caitlin Felvus.

21 MS. FELVUS: Good morning.

22 THE COURT: Okay. And, Ralph, for the record, I  
23 understand that you are not requesting a formal interpreter  
24 because your client's representative is able to speak and  
25 communicate in English, but you do have somebody seated at the

1 table for assistance if that becomes necessary; is that right?

2 MR. KOHNEN: That's correct, Your Honor.

3 THE COURT: Okay. But there's no reason to swear  
4 them or anything like that?

5 MR. KOHNEN: We agree, there is no reason to do that.  
6 And the interpreter's name, which I would have difficulty  
7 pronouncing, has been given to Miss Crum.

8 THE COURT: Okay. She'll have just as much  
9 difficulty, I'm sure.

10 All right. It's my understanding, guys, that we wish to  
11 proceed by an Information this morning. Is that everybody's  
12 understanding?

13 MR. MACKEY: It is, Your Honor.

14 THE COURT: Okay. Then the first thing I'm going to  
15 need to do is to have the client-representative either work  
16 from the table or the podium, wherever you're most  
17 comfortable, so I can go through some preliminary questions.

18 MR. MACKEY: With leave of the Court, we'll sit here.

19 THE COURT: Okay. Great. Just make sure that you  
20 guys are close to a microphone.

21 As I go through this, do you mind if I call you Max, try  
22 to make things easier?

23 REPRESENTATIVE TSUBOI: Yes, sir.

24 THE COURT: But, for the record, could you please  
25 state your full name?

1 (No response.)

2 THE COURT: Please state your full name for the  
3 record.

4 REPRESENTATIVE TSUBOI: My name is Masaru Tsuboi.

5 THE COURT: Okay. And, briefly, just so we're clear,  
6 because we don't have an official interpreter, could you  
7 describe your background in English and whether or not you're  
8 having any difficulty either understanding me at this time or  
9 the advice and counsel you've gotten from your lawyers?

10 REPRESENTATIVE TSUBOI: Yes, Your Honor.

11 THE COURT: Okay. Just a little bit of background  
12 about your ability to speak English.

13 REPRESENTATIVE TSUBOI: Yes. I studied English in  
14 Japan at Japanese school, for ten years about, and I have  
15 experience in living in Texas, USA, for a couple of years.

16 THE COURT: Okay. And could you give us your job  
17 title or position within the corporation and state whether or  
18 not you have the ability to bind the corporation in this Plea  
19 Arrangement.

20 REPRESENTATIVE TSUBOI: My title is Executive Officer  
21 and General Manager, Legal Affairs, Kayaba Corporation.

22 THE COURT: And do you have the legal authority to  
23 bind them as it relates to the plea arrangement?

24 REPRESENTATIVE TSUBOI: Yes, Your Honor.

25 THE COURT: Okay.

1 Does the government have any dispute as to that, or are  
2 you satisfied?

3 MS. STERN: No, Your Honor. And the Corporate  
4 Resolution naming him as the representative is attached to the  
5 back of the Plea Agreement.

6 THE COURT: All right.

7 We are proceeding here on a one-count Information. And I  
8 am sure that this has been thoroughly explained to you by your  
9 attorney, but at this time, if you wish, we will read the  
10 Information in the record or, if you wish to, you can waive  
11 the formal reading of the Information into the record.

12 Counsel?

13 MR. MACKEY: Your Honor, we would waive the reading.  
14 Thank you.

15 THE COURT: Okay.

16 So, Max, have you discussed the -- do you have a copy of  
17 it in front of you, by any chance?

18 REPRESENTATIVE TSUBOI: Yes, Your Honor.

19 THE COURT: Okay. Have you discussed this with your  
20 counsel?

21 REPRESENTATIVE TSUBOI: Yes, Your Honor.

22 THE COURT: And did they explain to you what the  
23 charge was that was levied against the corporation in the  
24 Information?

25 REPRESENTATIVE TSUBOI: Yes, Your Honor.

1           THE COURT: Did they tell you what kind of  
2 information or evidence the government would attempt to use  
3 against the corporation if there were a trial in this  
4 proceeding?

5           REPRESENTATIVE TSUBOI: Yes, Your Honor.

6           THE COURT: Did you then discuss with your counsel  
7 whether or not you guys had valid defenses or whether it was  
8 smarter to negotiate a plea arrangement?

9           REPRESENTATIVE TSUBOI: Yes, Your Honor.

10          THE COURT: And based upon all that, you decided to  
11 enter into a plea arrangement; is that correct?

12          REPRESENTATIVE TSUBOI: Yes, Your Honor.

13          THE COURT: Do you think that your counsel have fully  
14 informed you of all the rights and circumstances surrounding  
15 the allegations in the Information?

16          REPRESENTATIVE TSUBOI: Yes, Your Honor.

17          THE COURT: All right. Now, first of all, the  
18 corporation has a right to be charged by an Indictment which  
19 occurs by the presenting of evidence to a grand jury by the  
20 United States Attorney's Office. In this situation, counsel  
21 have informed me that they wish to proceed by Information.  
22 Unless, on the record, you waive your right to Indictment, you  
23 may not proceed by Information.

24          What would happen in an Indictment situation is the United  
25 States would present evidence to a grand jury. If that grand

1 jury determined there was probable cause that a crime had been  
2 committed, then they would process charges against you. A  
3 grand jury is composed of at least 16 people, not more than  
4 23, and 12 of the people present must decide there is probable  
5 cause. Now, a grand jury may or may not indict you.  
6 Sometimes they actually don't, believe it or not. It doesn't  
7 happen too often, but most of the time they do.

8 But are you willing to waive the presentation of this case  
9 to a grand jury for Indictment?

10 REPRESENTATIVE TSUBOI: Yes, Your Honor.

11 THE COURT: Okay. Now, if you proceed by  
12 Information, you have the same rights as you would under an  
13 Indictment, which is you could enter a plea of not guilty,  
14 which means you could request a jury trial in this case. And  
15 I'm not sure -- do you have much experience with the United  
16 States courts in terms of the jury process?

17 REPRESENTATIVE TSUBOI: No, Your Honor.

18 THE COURT: Okay. Well, let me explain a little bit  
19 about the way it works.

20 What would happen would be, we'd bring in 12 jurors. They  
21 would be seated over here. The corporation would have the  
22 right to assistance of counsel, which obviously they have  
23 surrounding you right now. Right? All right.

24 And lawyers in criminal defense work do a number of  
25 important things. They make opening statements. They make

1 closing arguments. They would challenge the information that  
2 the United States would attempt to use against you in a  
3 courtroom, or against your corporation.

4 But I think the most important thing that defense lawyers  
5 do is: Anybody that would testify against you, they would ask  
6 them questions under oath basically to try to shake their  
7 testimony. In our legal system, we call that  
8 cross-examination. Okay? That's kind of the way it works.

9 Nobody could make anybody from the corporation testify --  
10 (The Court and the courtroom deputy confer privately.)

11 THE COURT: Good call, Crum.

12 I have to have the representative sworn in. My mistake,  
13 guys.

14 So Barb, will you administer an oath or affirmation to  
15 Max, please.

16 Better late than never.

17 (The representative was duly sworn by the courtroom  
18 deputy.)

19 REPRESENTATIVE TSUBOI: Yes.

20 THE COURT: Thank you.

21 Does the government have any problems if I ask Mr. Tsuboi  
22 if he affirms the truthfulness of the questions previously  
23 asked and answered and just continue?

24 MS. STERN: No, Your Honor.

25 THE COURT: Are you okay with that, Counsel?



1 MR. KOHNEN: Yes, Your Honor.

2 MR. MACKEY: Yes.

3 THE COURT: Sorry, guys.

4 All right. So what happens then, during the course of a  
5 case you have the absolute right not to testify. The only way  
6 that you would testify would be if, in fact, your attorneys  
7 thought it was a smart thing for you to do and you waived your  
8 right not to testify.

9 The burden of proof in a criminal case is beyond a  
10 reasonable doubt. Any time we have a trial in this courtroom,  
11 whether it's a civil or a criminal case, every time we take a  
12 break, I caution the jury that they are not to make up their  
13 mind until they have heard all the evidence, not to do it  
14 based upon one witness or one document, but only in  
15 consultation with each other after everything has been  
16 presented to the jury, including the instruction of law.

17 In a criminal case, I go a step further. I tell them they  
18 must presume the corporation is innocent of the accused acts  
19 unless and until they all get together in the back and decide  
20 that, in fact, the corporation is guilty and the government  
21 has met its burden of proof beyond a reasonable doubt.

22 Do you understand that?

23 REPRESENTATIVE TSUBOI: Yes, Your Honor.

24 THE COURT: Okay. Now, because of this situation, I  
25 do not know what kind of other ramifications may be involved

1 in terms of reporting to who knows who, the SEC or somebody,  
2 but I'm sure there are a number of things that might have to  
3 happen down the road.

4 Has counsel generally explained to his client the impact  
5 of what this plea arrangement might have on the corporate  
6 business model?

7 MR. MACKEY: We have, Your Honor. We've explained  
8 all collateral consequences to today's proceedings.

9 THE COURT: Okay. And I understand somebody has  
10 prepared a Waiver of Indictment; is that correct?

11 MR. MACKEY: It's before Mr. Tsuboi, sir.

12 THE COURT: Okay.

13 Sir, you understand that you do have the right to proceed  
14 by Indictment in this case. What we've talked about is  
15 proceeding by Information, and I've explained your  
16 constitutional rights under that procedure.

17 Are you willing to proceed by Information rather than  
18 Indictment?

19 REPRESENTATIVE TSUBOI: Yes, Your Honor.

20 THE COURT: Okay. Will you please then sign the  
21 document?

22 (Mr. Tsuboi signed the document.)

23 (The courtroom deputy handed the document to the Court.)

24 THE COURT: Thanks, Barb.

25 Okay. I've just been handed a document that is captioned

1 Waiver of Indictment that indicates that Kayaba is willing to  
2 proceed by Information in this matter, and it's signed by Max.

3 Is that correct?

4 REPRESENTATIVE TSUBOI: Yes, Your Honor.

5 THE COURT: All right. I'm going to accept this  
6 waiver, and I determine it's made knowingly, intelligently and  
7 voluntarily with a full understanding of the facts and  
8 circumstances surrounding the right to a trial by -- excuse  
9 me, the right to presentation by grand jury and the  
10 Information issues. All right.

11 As I indicated before, even though you're deciding to  
12 proceed by Information, you still have a right to enter a plea  
13 of guilty or not guilty to the Information.

14 How do you wish to plead to the charge in the Information,  
15 guilty or not guilty?

16 REPRESENTATIVE TSUBOI: Guilty.

17 THE COURT: Okay. I know you've indicated that your  
18 counsel have discussed some of the possible outcomes in this  
19 case, but let me review those with you for the record.

20 The one-count Information is a violation of 15 U.S.C. 1 of  
21 the Sherman Antitrust Act.

22 There is a possible fine equal to the greater of \$100  
23 million or twice the pecuniary gain that the conspirators  
24 derived from the crime --

25 That's set forth in 18 U.S.C. 3571.

1           -- or twice the pecuniary loss caused to victims, which is  
2 also set forth in 18 U.S.C. 3571.

3           There is also a possibility of probation in this  
4 particular situation. There could be an order of restitution.  
5 At any time there is a conviction of any kind in criminal  
6 court, there's a special assessment. In this case, it's \$400.

7           Now, understanding that we have a (c) (1) (C) plea  
8 arrangement, I just need to ask you for the record: Are you  
9 aware that those are the possible penalties?

10           REPRESENTATIVE TSUBOI: Yes, Your Honor.

11           THE COURT: Okay. Now, let's talk a little bit just  
12 about how sentencing works.

13           So in 1984, Congress passed the Sentencing Reform Act.  
14 The Sentencing Reform Act was intended to sort of unify  
15 various sentences across the country and to also address the  
16 appropriate sentences for certain types of cases.

17           Up until about five or six years ago, if the Probation  
18 Department had correctly calculated the sentencing range in a  
19 criminal case, a person in my position would have been  
20 obligated to impose a sentence within that range. The Supreme  
21 Court has since said that the Sentencing Guidelines are  
22 advisory; that's where they start. I have to take them into  
23 consideration, but I could consider other factors known as the  
24 18 U.S.C. 3553 factors.

25           Our Criminal Rules also provide for what are called

1 11(c)1(C) pleas in this case. In this situation, the first  
2 thing I would consider is the fact that counsel have gotten  
3 together and have agreed to what the appropriate sentence in  
4 the case would be.

5 In this case, the United States and your lawyers have  
6 agreed that the appropriate penalty in this case is that the  
7 company pay a fine of \$62 million, to be paid within 15 days  
8 after the date of judgment.

9 Do you understand that?

10 REPRESENTATIVE TSUBOI: Yes, Your Honor.

11 THE COURT: Do you agree with that?

12 REPRESENTATIVE TSUBOI: Yes, Your Honor.

13 THE COURT: Okay. There's also no specific order of  
14 restitution. My understanding is that the recommendation is  
15 there not be a period of probation but just that the fine and  
16 special assessment of \$400 be imposed.

17 Do you understand all of that?

18 REPRESENTATIVE TSUBOI: Yes, Your Honor.

19 THE COURT: Okay. Now, here's the way a (c) (1) (C)  
20 sentencing arrangement works. Typically, what happens is, we  
21 go through the process, we order a presentence investigation,  
22 and I tell you whether or not I'm going to accept or reject  
23 the recommended sentence, because I have the authority to  
24 reject it if I think it's appropriate.

25 Just for the record, I have never rejected an agreed upon

1 sentence because I believe that counsel will always know the  
2 case better than I will.

3 In any event, in this case, a presentence investigation  
4 was conducted in anticipation of the Information.

5 I believe everybody has a copy of that report, do they  
6 not?

7 REPRESENTATIVE TSUBOI: Yes, Your Honor.

8 MR. MACKEY: Yes, Your Honor.

9 THE COURT: Okay. And basically on that, at the end  
10 of the day --

11 Are you willing to waive me reading the individual bullet  
12 points on the PSI?

13 MR. MACKEY: For the defense, we do, Your Honor.

14 MS. STERN: Yes, Your Honor.

15 THE COURT: Okay. So, at the end of the day, the  
16 fine range computation ends up with a base fine of \$64  
17 million, and a fine range of roughly \$103 million to \$207  
18 million.

19 As we know from my reading of the (c)(1)(C) Agreement, the  
20 fine in this case is anticipated to be \$62 million.

21 Are you on board with that?

22 REPRESENTATIVE TSUBOI: Yes, Your Honor.

23 THE COURT: Okay. Just for the record, I will follow  
24 the recommendation of the Probation Department -- excuse me,  
25 of counsel in this case, and proceed along those lines.

1 All right. At this time, I would ask the United States to  
2 review anything in the Plea Agreement that I've misstated,  
3 needs to be corrected for the record, or if there's anything  
4 you think needs to be pointed out on the record before we  
5 proceed any further, that would be great. Counsel?

6 MS. STERN: No, Your Honor. There is nothing that  
7 needs to be corrected at this time, and everything has been  
8 stated correctly.

9 THE COURT: Okay. Let me -- I'm just trying to  
10 remember. Was there an appellate waiver in here?

11 MS. STERN: Yes, a partial appellate waiver.

12 THE COURT: Do you remember what paragraph that is?

13 MS. STERN: It is in paragraph two.

14 THE COURT: Okay.

15 Counsel, paragraph two of the Plea Agreement contains an  
16 appellate waiver. Have you thoroughly discussed that with  
17 your client and his principals in terms of how it might limit  
18 their rights upon an appeal if one is filed?

19 MR. MACKEY: Yes, Your Honor, we did so.

20 THE COURT: Okay.

21 Max, have they explained that to you correctly so you  
22 think you understand it?

23 REPRESENTATIVE TSUBOI: Yes, Your Honor.

24 THE COURT: All right.

25 So if we turn to Page 19 of the Plea Agreement, counsel,

1 can you direct that to your client's attention, please?

2 MR. MACKEY: Yes, Your Honor.

3 THE COURT: Max, having seen the Waiver of  
4 Presentation of Indictment, that appears to be your signature  
5 on that page again. Did you sign that on behalf of the  
6 company?

7 REPRESENTATIVE TSUBOI: Yes, Your Honor.

8 THE COURT: And as the Executive Officer and General  
9 Manager of Legal Affairs, you do have the ability to bind your  
10 company to this resolution; is that correct?

11 REPRESENTATIVE TSUBOI: Yes, Your Honor.

12 THE COURT: Okay. Does this agreement contain the  
13 entire understanding that you believe you and your lawyers  
14 have reached with the United States Government?

15 REPRESENTATIVE TSUBOI: Yes, Your Honor.

16 THE COURT: Counsel, I'll ask you the same questions.

17 MR. MACKEY: It is, Your Honor.

18 THE COURT: Okay. Attached to the Plea Agreement are  
19 the Corporate Resolutions which I believe satisfy the United  
20 States that Max can do what he says he can do.

21 Is that right?

22 MS. STERN: Yes, Your Honor.

23 THE COURT: All right.

24 Now, understanding that there is a potential of a larger  
25 fine if things went the normal course, did anybody make you



1 any other promises, other than the agreed upon fine in this  
2 case, any other promises or try to influence you in any way  
3 such that the company is not voluntarily entering a plea of  
4 guilty to this one-count Information?

5 REPRESENTATIVE TSUBOI: No, Your Honor.

6 THE COURT: Okay. And other than the fact that,  
7 absent the agreement, the prosecution could have taken a  
8 different turn, did anybody levy any kind of force against the  
9 company so that this plea is not its own free and voluntary  
10 act?

11 REPRESENTATIVE TSUBOI: No, Your Honor.

12 THE COURT: Okay.

13 Counsel, I understand that C.J. is going to read the  
14 factual basis for the offense; is that correct?

15 MS. STERN: Yes, Your Honor.

16 THE COURT: Okay.

17 You may want to get close to a microphone; it might be  
18 easier. Thank you.

19 Just state your name, spell your last name so Maryann can  
20 take it down, even though we all know it, and give us the  
21 facts.

22 AGENT FREIHOFFER: Agent C.J. Freihofer. That's  
23 F-R-E-I-H-O-F-E-R. I'm a Special Agent with the FBI,  
24 Cincinnati.

25 Factual Basis for the Offense Charged.

1           Had this case gone to trial, the United States would have  
2 presented evidence sufficient to prove the following facts:

3           For purposes of this Plea Agreement, the relevant period  
4 is that period from at least as early as the mid-1990s and  
5 continuing until as late as December, 2012. During the  
6 relevant period, the defendant was a corporation organized and  
7 existing under the laws of Japan. The defendant had its  
8 principal place of business in Tokyo, Japan. During the  
9 relevant period, the defendant was engaged in the manufacture  
10 and sale of shock absorbers in the United States and  
11 elsewhere, and employed 5,000 or more individuals.

12           Shock absorbers are part of the suspension system on  
13 automobiles and motorcycles. They absorb and dissipate energy  
14 to help cushion vehicles on uneven roads, leading to improved  
15 ride quality and vehicle handling. Shock absorbers are also  
16 called dampers, and on motorcycles are referred to as front  
17 forks and rear cushions.

18           During the relevant period, the defendant's sales of shock  
19 absorbers that were the subject of this conspiracy affecting  
20 vehicle manufacturers in the United States, adjusted to  
21 reflect information provided to the United States pursuant to  
22 United States Sentencing Guidelines Section 1B1.8, totaled  
23 approximately \$324 million.

24           During the relevant period, the defendant, through its  
25 officers, managers and employees, including high-level

1 personnel of the defendant, participated in a conspiracy with  
2 Company A, a corporation headquartered in Japan, and Company  
3 B, a corporation headquartered in Japan, identified in  
4 Attachment A filed under seal, the primary purpose of which  
5 was to suppress and eliminate competition in the automotive  
6 parts industry by agreeing to allocate markets, rig bids for,  
7 and to fix, stabilize and maintain the prices of shock  
8 absorbers sold to vehicle manufacturers in the United States  
9 and elsewhere.

10 In furtherance of the conspiracy, the defendant, through  
11 its officers, managers and employees, engaged in discussions  
12 and attended meetings with co-conspirators employed by Company  
13 A and/or Company B. During these discussions and meetings,  
14 agreements were reached to allocate the supply of, rig bids  
15 for, and to fix, stabilize and maintain the prices of shock  
16 absorbers sold to vehicle manufacturers in the United States  
17 and elsewhere.

18 The conspiratorial meetings and conversations described  
19 above took place in the United States and elsewhere. During  
20 the relevant period, shock absorbers sold by one or more of  
21 the conspirator firms, and equipment and supplies necessary to  
22 the production and distribution of shock absorbers, as well as  
23 payments for shock absorbers, traveled in interstate and  
24 foreign commerce. The business activities of the defendant  
25 and its co-conspirators, Company A and Company B, in

1 connection with the manufacture and sale of shock absorbers  
2 that were the subject of this conspiracy, were within the flow  
3 of and substantially affected interstate trade and commerce.

4 Acts in furtherance of this conspiracy were carried out  
5 within the Southern District of Ohio. Shock absorbers that  
6 were the subject of this conspiracy were sold by one or more  
7 of the conspirators in this District.

8 THE COURT: Thank you, C.J.

9 AGENT FREIHOFER: Thank you, Your Honor.

10 THE COURT: Max, have you discussed that Statement of  
11 Facts with your lawyers and also with the principals at your  
12 company that would be aware of the facts?

13 REPRESENTATIVE TSUBOI: Yes, I did, Your Honor.

14 THE COURT: Does that mean the Statement of Facts is  
15 accurate?

16 REPRESENTATIVE TSUBOI: Yes, Your Honor.

17 THE COURT: All right. And as contained in the Plea  
18 Agreement, you had signed off on that as part of the Plea  
19 Agreement, is that correct, acknowledging the truthfulness?

20 REPRESENTATIVE TSUBOI: Yes, Your Honor.

21 THE COURT: Is there anything wrong or incorrect with  
22 the Statement of Facts as contained in the Plea Agreement just  
23 read into the record by C.J.?

24 REPRESENTATIVE TSUBOI: No, Your Honor.

25 THE COURT: Can I take it then you are offering to

1 plead guilty to the single-count Information because the  
2 corporation is, in fact, guilty of that offense?

3 REPRESENTATIVE TSUBOI: Yes, Your Honor.

4 THE COURT: Okay. In light of all the discussions  
5 we've had about the constitutional rights of the corporation,  
6 the impact of the 11(c)1(C) plea arrangement, I'll ask you for  
7 the last time: As the corporate representative of Kayaba, how  
8 does the corporation wish to plea to the single-count  
9 Information, guilty or not guilty?

10 REPRESENTATIVE TSUBOI: Guilty. Yes, sir.

11 THE COURT: Based upon my observation and appearance  
12 of the defendant's representative in the courtroom and his  
13 answers to the questions that I've been asking, I am satisfied  
14 that he does have the ability to bind the corporation; that he  
15 is in full possession of his faculties; that the corporation  
16 is fully aware of the elements of the offense; that he's not  
17 suffering from any apparent physical or mental illness; he's  
18 not under the influence of any type of controlled substance;  
19 the corporation, through their work with counsel and through  
20 the representative, understands the nature and the meaning of  
21 the charge set forth in the one-count Information; and,  
22 obviously, everybody is aware of the plea negotiations  
23 undertaken on the corporation's behalf.

24 Therefore, I find that Kayaba Corporation is fully  
25 competent and capable of entering an informed plea through its

1 corporate representative present in court today.

2 The plea of guilty is a knowing plea, it's a voluntary  
3 plea supported by an independent basis in fact which contains  
4 each of the essential elements of the offense charged in the  
5 single-count Information. And at least part of the purpose of  
6 the conspiracy resulted in shock absorbers that were  
7 distributed in the Southern District of Ohio, thus giving this  
8 Court jurisdiction.

9 All right. Counsel, we are ready to move to the  
10 sentencing phase unless somebody has any objections or  
11 anything they think needs to be placed on the record.

12 MR. MACKEY: We're ready, Your Honor. Thank you.

13 THE COURT: Okay. I've received the Sentencing  
14 Memorandum which was filed by the United States. Counsel for  
15 the defendant indicated that they did have people that may be  
16 willing to make a statement. I'm not sure if that's necessary  
17 or not, but you certainly have the right to say whatever you  
18 wish to say at this point in time before I pronounce sentence,  
19 and then the United States would have a chance to respond to  
20 anything you would say at that time.

21 What's your pleasure, Counsel?

22 MR. MACKEY: If we could, just a few minutes for  
23 Mr. Weir-Harden, and then Mr. Tsuboi very, very briefly.  
24 Thank you, Your Honor.

25 THE COURT: That's fine.

1           MR. WEIR-HARDEN: Thank you, Your Honor, for the  
2 opportunity to speak with you.

3           THE COURT: Good morning. How you doing?

4           MR. WEIR-HARDEN: I'd like to take a few moments to  
5 express some thoughts and also share some insights about KYB  
6 that I think might be important in your consideration of the  
7 Plea Agreement.

8           First, I want to say on the record that it's been an honor  
9 to represent KYB in this matter. KYB's Board of Directors and  
10 General Counsel, Maxwell Tsuboi, have demonstrated the highest  
11 level of integrity and dignity throughout the criminal  
12 investigation and the proceedings; and, for that, I commend  
13 them.

14           And I commend also the Department of Justice, specifically  
15 Carla Stern and Daniel Glad, in their fair and objective  
16 handling of the situation, and also their professionalism.

17           Your Honor, in both the defense and the Department's  
18 Sentencing Memorandum, they've made note of KYB's high level  
19 of cooperation and in developing a compliance program.  
20 However, I'd like to point out that KYB's dedication to  
21 furthering the government's investigation and also its  
22 commitment to changing its compliance program should not be  
23 overstated.

24           From the very beginning when KIC, the American affiliate,  
25 was served with a subpoena, KYB's Board of Directors committed

1 itself to changing KYB substantially and significantly.  
2 Granted, much of this would be expected of a guilty corporate  
3 defendant. However, in my humble opinion, KYB went much, much  
4 further in this case.

5 KYB's Board of Directors used the unfortunate event to  
6 rehabilitate the company, to rebuild its compliance program to  
7 be the gold standard in the auto parts industry. I think it's  
8 achieved that goal as evidenced by the Department's public  
9 acknowledgement recently that KYB, to date, is only the second  
10 company to earn credit for its compliance remediation effort.

11 So the reality, Your Honor, is that civil litigation will  
12 inevitably follow today's plea. The reality, as well, is that  
13 it will pose a substantial burden on KYB. However, it should  
14 be pointed out that KYB, through its leadership of the Board  
15 of Directors, has made a commitment and overtures to impacted  
16 customers to reach amicable and early resolutions. And the  
17 purpose is not only to reestablish customer trust and  
18 confidence, but also to preserve valuable resources that will  
19 be devoted to maintaining the compliance infrastructure and  
20 framework, as well as continued cooperation with the  
21 government.

22 The objective from the very beginning, Your Honor, has not  
23 simply been to appease the government or to dodge a hefty  
24 fine. The objective for KYB has been to rebuild its  
25 compliance program, to change its culture internally so as to



1 mirror its brand and its reputation.

2 The current president, Yasusuke Nakajima, states in the  
3 corporate pledge, "We will fulfill our social responsibility  
4 and strive to be a company that contributes to an abundant and  
5 vibrant society."

6 In my humble opinion, Your Honor, today KYB's efforts have  
7 reflected that commitment to social responsibility.

8 Therefore, in light of KYB's continued and ongoing  
9 cooperation with the defendant, and also willingness to accept  
10 responsibility for its actions, we ask, on behalf of KYB, that  
11 you accept the Plea Agreement and impose sentence accordingly.

12 THE COURT: Thank you, Counsel.

13 MR. WEIR-HARDEN: Thank you, Your Honor.

14 REPRESENTATIVE TSUBOI: Thank you, Your Honor, for  
15 the opportunity to speak with you today on behalf of KYB  
16 Corporation. As an Executive Officer and General Manager of  
17 Legal Affairs, I would like to take a brief moment to express  
18 the sentiments of KYB, its Board of Directors, executive  
19 officers, managers and employees.

20 KYB engaged in unethical conduct that violated U.S. law  
21 and trust of customers. KYB and its Board of Directors take  
22 full responsibility for the company's actions and willingly  
23 submit to the authority of this Court to render the  
24 appropriate punishment.

25 On behalf of KYB, I want to publicly apologize to all who

1 have been impacted by KYB's conduct.

2 First, I want to apologize to the individuals who  
3 purchased the vehicles affected by our actions.

4 Second, I want to apologize to our valued customers:  
5 Toyota, Honda, Subaru, Nissan, Kawasaki and Suzuki. KYB is  
6 fully committed to restoring the faith and confidence of its  
7 customers, and it will be proactive in rebuilding customer  
8 relationships.

9 Third, I want to apologize to the U.S. government and the  
10 American public. In this instance, we failed to live up to  
11 our reputation and, for that, we are truly sorry.

12 Lastly, KYB apologizes to its hardworking and committed  
13 employees for the negative publicity and embarrassment these  
14 proceedings have caused.

15 I can personally attest to the fact that KYB is very  
16 different company today than year ago. Since the Department  
17 of Justice investigation began, KYB has revised its compliance  
18 policies and established more robust policies and procedures.  
19 We have implemented innovative enforcement programs and  
20 training for all employees. The results, in my humble  
21 opinion, has been a change in the company culture, a change  
22 characterized by a newfound respect for compliance and the  
23 role.

24 Although the past year and half has been difficult for  
25 KYB, significant good has happened. It has been my personal

1 goal since the beginning of this investigation to establish  
2 the highest standards of legal and ethical compliance at KYB.  
3 With support of KYB's Board of Directors, we have achieved  
4 that goal and are committed to continuing to do so. We want  
5 to set the standard in our industry, and I believe we have  
6 made great strides to accomplish that objective.

7 I appreciate the Department of Justice for its fair and  
8 objective treatment of KYB during the Department's  
9 investigation. The Department assured us that if we fully  
10 cooperated with the investigation and demonstrated a  
11 commitment to implementing an effective compliance program, we  
12 would be given some level of leniency. We did so, and the  
13 Department was true to its word. It is my opinion, and that  
14 of KYB's Board of Directors, that the Plea Agreement fairly  
15 reflects KYB's level of culpability while effectively sending  
16 a message to others not to engage in the same conduct.

17 And, with that, Your Honor, KYB respectfully requests that  
18 you ratify the Plea Agreement in its current form.

19 Thank you, Your Honor.

20 THE COURT: Thank you very much.

21 Anything else, guys?

22 MR. MACKEY: Nothing for the defense. Thanks, Judge.

23 THE COURT: Carla, is there anything you wish to say  
24 on the record?

25 MS. STERN: Just a few words, Your Honor.

1           THE COURT:    Sure.

2           MS. STERN:    I do want to state in open court, as we  
3 have in our filings, that the level of KYB's cooperation from  
4 the beginning in this investigation, their commitment to  
5 continuing ongoing cooperation as our investigation continues  
6 of other conspirators, has been exemplary.  They did a quick  
7 internal investigation.  They produced relevant documents and  
8 translated those documents for us.  They produced witnesses  
9 with translators, made that accessible to us in an easy way so  
10 that we could further our investigation quickly.

11           The United States believes that the compliance program  
12 that KYB has developed is exemplary.  It contains all the  
13 hallmarks of what one would expect of a comprehensive  
14 compliance program and perhaps goes even further.

15           I did want to highlight some of the specific things that  
16 they've done.

17           They've done training, but I think they've gone further  
18 with their training and done one-on-one training with people  
19 that would be in positions that would most likely run across  
20 this kind of -- the dangers of antitrust violations.

21           They developed an anonymous reporting system.

22           They have been proactive in monitoring and auditing their  
23 employees, including requiring prior approval when there is  
24 any competitor contacts and certifications that all bid prices  
25 were independently determined.

1           And they've also done something that is very difficult for  
2 corporations, very difficult for any entity, which is to  
3 discipline people that have violated the rules, and they have  
4 done so.

5           The United States has also filed a motion for a departure  
6 in this case down to the 62-million-dollar fine that's agreed  
7 upon. And, as you know, one of the factors in the Guidelines  
8 is the United States' assessment of the evaluation of the  
9 cooperation of the substantial assistance. We believe that  
10 KYB has provided full, substantial and timely cooperation that  
11 has been significant, and provided useful assistance in the  
12 United States' ongoing investigation. KYB's cooperation has  
13 been extensive, and they provided credible information against  
14 both corporate and individual co-conspirators and  
15 significantly advanced our investigation.

16           Therefore, the United States joins with KYB in  
17 recommending that the Court accept the Plea Agreement as it  
18 is.

19           Thank you, Your Honor.

20           THE COURT: Thank you.

21           Anything else before I pronounce sentence in this case?

22           MR. MACKEY: Nothing for the defense.

23           THE COURT: All right. I believe, as all counsel are  
24 aware, it's my duty to impose a sentence which is sufficient  
25 but not greater than necessary to comply with the provisions

1 set forth in 18 U.S.C. 3553, which include the nature and  
2 circumstances of the offense, the characteristics of the  
3 offender, and whatever type of other punishment is necessary  
4 and appropriate.

5 While this case did involve a conspiracy between the  
6 mid-1990s and 2012 and it did involve high-level personnel  
7 within the corporation who handle the shock absorbers'  
8 noncompetitive and collective bids, reduced competition  
9 aspects fully described in the Statement of Facts, I note the  
10 corporation has no history of misconduct. KYB has instituted  
11 changes in its business practice. It appears to be conducting  
12 business in an ethical fashion. I find that the government's  
13 request for a departure is warranted based upon all the facts  
14 and circumstances that are placed before me at this time.

15 Therefore, KYB shall pay a total fine of \$62 million. And  
16 while this figure is below the Guideline fine range, I believe  
17 it's appropriate and reflects the defendant corporation's  
18 efforts following the disclosure of the investigation against  
19 them and the reference to ensure such violations do not occur  
20 in the future.

21 So I find it's a reasonable fine, it does serve as a  
22 punishment and deterrence, but does not cripple the  
23 corporation in its business affairs.

24 Also, a special assessment of \$400 is owing and due  
25 immediately.

1           The fine itself, the \$62 million, is to be paid within 15  
2 days.

3           Carla, I believe the United States is satisfied that they  
4 have the resources, and you've informed them of the mechanics  
5 of how this takes place?

6           MS. STERN: Yes, Your Honor.

7           THE COURT: Okay. Good enough.

8           The special assessment is owing and due.

9           So I believe that that sentence, based upon everything  
10 that's in front of me, comports with what's set forth in 18  
11 U.S.C. 3553.

12           And even though it's an agreed upon sentence, there are  
13 certain appellate rights that are always preserved.

14           As counsel sits here today and you know you wish to appeal  
15 the sentence, then Miss Crum will start the paperwork  
16 immediately. Thoughts?

17           MR. MACKEY: We have been so advised and would  
18 acknowledge that. Thank you, Judge.

19           THE COURT: As you know, you'll have 14 days from the  
20 date of the entry in this case to perfect an appeal if that is  
21 your wish at that time.

22           All right. So based upon everything that's in front of  
23 me, I think the sentence is fair and reasonable under all the  
24 appropriate sentencing factors, the input of counsel in the  
25 form of Sentencing Memorandums, the Probation Department in

1 the form of the PSI, and all the comments and statements I've  
2 heard here on the record.

3 Anything else, guys?

4 MS. STERN: Just for the record, Your Honor, no  
5 probation has been ordered?

6 THE COURT: I didn't mention that. But yes, there  
7 was a possible period of probation in this case, which I think  
8 I may have mentioned when I went through the possible  
9 sentences. But based upon the recommendation of everybody  
10 involved in this case, a period of probation is not necessary.  
11 All right.

12 MS. STERN: And the final would be the restitution  
13 element. No restitution ordered in this case?

14 THE COURT: I mean, it's -- I think it's understood  
15 that if I don't order it, it can't happen. I did not say  
16 restitution, but the Plea Agreement does indicate no  
17 restitution beyond the specific 62-million-dollar fine.  
18 That's in paragraph nine, and I agree with that.

19 Anything else, guys?

20 MR. MACKEY: Nothing else. Thank you, Judge.

21 THE COURT: Thank you for your professionalism and  
22 cooperation. Thanks, everybody.

23 We'll stand in recess.

24 COURTROOM DEPUTY: Court is now adjourned.

25 (The proceedings concluded at 10:10 a.m.)



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C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM  
THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

S/MARYANN T. MAFFIA, RDR

Official Court Reporter