

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA)
) Criminal No.: 2:11-cr-20605
 v.) Judge: Friedman, Bernard A.
) MJ: Randon, Mark A.
 ERNESTO HEINZELMANN,) Filed: 09-27-2011 At 03:07 PM
 GERSON VERÍSSIMO, AND) INDI: USA V. ERNESTO HEINZELMANN, ET
) AL (KB)
 NAOKI ADACHI,) Violation: 15 U.S.C. § 1
)
 Defendants.)

INDICTMENT

**CONSPIRACY TO RESTRAIN TRADE
IN VIOLATION OF THE SHERMAN ANTITRUST ACT
(15 U.S.C. § 1)**

The Grand Jury charges:

THE DEFENDANTS

1. The following individuals are hereby indicted and made Defendants on the charge stated below in this Indictment.

- (a) ERNESTO HEINZELMANN;
- (b) GERSON VERÍSSIMO; and
- (c) NAOKI ADACHI

DESCRIPTION OF THE OFFENSE

2. Beginning at least as early as October 14, 2004, and continuing until on or about December 31, 2007, the exact dates being unknown to the Grand Jury, the defendants, ERNESTO HEINZELMANN, GERSON VERÍSSIMO, and NAOKI ADACHI, and other co-conspirators entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices of refrigerant compressors to customers in the United States and elsewhere. The combination and conspiracy engaged in by the defendants, ERNESTO HEINZELMANN, GERSON VERÍSSIMO, and NAOKI ADACHI, and co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to fix prices by coordinating price increases of refrigerant compressors in the United States and elsewhere.

II.

MEANS AND METHODS OF THE CONSPIRACY

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

(a) personally participated and directed, authorized, or consented to the participation of subordinate employees, in meetings and conversations to discuss refrigerant compressor customers in the United States and elsewhere;

- (b) agreed, during those meetings and conversations, to coordinate price increases of refrigerant compressors in the United States and elsewhere;
- (c) exchanged information during those meetings and conversations, including information about ongoing or upcoming customer negotiations, for the purpose of monitoring and enforcing adherence to the agreement to coordinate price increases of refrigerant compressors in the United States and elsewhere;
- (d) coordinated price increases for refrigerant compressors to customers in the United States and elsewhere;
- (e) sold refrigerant compressors at collusive and noncompetitive prices to customers in the United States and elsewhere; and
- (f) accepted payment for refrigerant compressors sold at collusive and noncompetitive prices in the United States and elsewhere.

III.

BACKGROUND

5. Compressors take in low-pressure refrigerant, compress it, and then pump out a high-pressure vapor, which condenses and subsequently cools refrigeration and freezing devices. Refrigerant compressors are components of household appliances such as refrigerators and freezers, and are also components of commercial cooling and freezing devices such as water coolers, vending machines, and commercial refrigerators and freezers.

IV.

DEFENDANTS AND CO-CONSPIRATORS

6. Defendant ERNESTO HEINZELMANN is a resident of Brazil. During the period covered by this Indictment, ERNESTO HEINZELMANN was the President and Chief

Executive Officer of Empresa Brasileira de Compressores S.A. (“Embraco”). During the period covered by this Indictment, Embraco was a Brazilian company engaged in the business of producing and selling refrigerant compressors to customers in the United States and elsewhere. Embraco was a participant in the conspiracy. Defendant ERNESTO HEINZELMANN joined and participated in the conspiracy from at least as early as October 14, 2004 and continuing at least until December 31, 2007.

7. Defendant GERSON VERÍSSIMO is a resident of Brazil. During the period covered by this Indictment, GERSON VERÍSSIMO was the President of Tecumseh do Brasil, Ltda., a subsidiary of Tecumseh Products Company (“Tecumseh”). During the period covered by this Indictment, Tecumseh was a Delaware company with its principal place of business in Ann Arbor, Michigan, that was engaged in producing and selling refrigerant compressors to customers in the United States and elsewhere. Tecumseh was a participant in the conspiracy. Defendant GERSON VERÍSSIMO joined and participated in the conspiracy from at least as early as October 14, 2004 and continuing at least until December 31, 2007.

8. Defendant NAOKI ADACHI is a resident of Japan. From at least as early as May 10, 2006 and continuing at least until December 31, 2007, NAOKI ADACHI was the General Manager, Global Sales & SE Group, Refrigeration Devices Division of Panasonic Corporation (“Panasonic”). During the period covered by this Indictment, Panasonic was a Japanese company engaged in producing and selling refrigerant compressors to customers in the United States and elsewhere. Panasonic was a participant in the conspiracy. Defendant NAOKI ADACHI joined and participated in the conspiracy from at least as early as May 10, 2006 and continuing at least until December 31, 2007.

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

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

V.

TRADE AND COMMERCE

11. During the period covered by this Indictment, defendants, ERNESTO HEINZELMANN, GERSON VERÍSSIMO, NAOKI ADACHI, and their co-conspirators sold refrigerant compressors in a continuous and uninterrupted flow of interstate and foreign commerce to companies located in states and countries outside the place of origin of the shipments. In addition, substantial quantities of equipment and supplies necessary to produce and sell refrigerant compressors, as well as payments for refrigerant compressors, traveled in interstate and foreign commerce.

12. During the period covered by this Indictment, the business activities of defendants, ERNESTO HEINZELMANN, GERSON VERÍSSIMO, and NAOKI ADACHI, and their co-conspirators in connection with the production and sale of refrigerant compressors that are the subject of this Indictment were within the flow of, and substantially affected, interstate, and foreign trade and commerce.

VI.

JURISDICTION AND VENUE

13. The combination and conspiracy charged in this Indictment was carried out, in part, within the Eastern District of Michigan, Southern Division, within the five years preceding the return of this Indictment.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

Dated:

A TRUE BILL

s/GRAND JURY FOREPERSON
FOREPERSON

s/SHARIS A. POZEN
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Antitrust Division
U.S. Department of Justice

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