

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA,	.	Case No. 1:16-cr-78
	.	
Plaintiff,	.	
	.	
- v -	.	Cincinnati, Ohio
	.	Thursday, September 29, 2016
HITACHI AUTOMOTIVE	.	10:30 A.M. Hearing
SYSTEMS, LTD.,	.	
	.	
Defendant.	.	Plea Hearing
.....	.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHAEL R. BARRETT, JUDGE

APPEARANCES:

For the Plaintiff: UNITED STATES DEPARTMENT OF JUSTICE
BY: Carla M. Stern, Esq.
Antitrust Division
209 S. LaSalle Street
Suite 600
Chicago, Illinois 60604

For the Defendant: VINSON & ELKINS
BY: Matthew J. Jacobs, Esq.
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San Francisco, California 94105-0923

VINSON & ELKINS
BY: Craig P. Seebald, Esq.
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037-1701

WOOD & LAMPING, LLP
BY: Jeffrey R. Teeters, Esq.
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202

Defendant's Chief
Compliance Officer: Mr. Hiroki Tsukimori

Interpreter: Ms. Nanaka Yoshida King (ExLing)

Also Present: Special Agent C.J. Freihofer (FBI)
Brian D. Schnapp, Esq. (Vinson & Elkins)
and other interested observers

Student Extern: Rebecca Seipa

Courtroom Clerk: Barbara A. Crum

Court Reporter: Mary Ann Ranz
810 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202

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1 THURSDAY, SEPTEMBER 29, 2016

2 P R O C E E D I N G S (10:38 A.M.)

3 (MS. NANAKA KING interpreted the proceedings from English into
4 Japanese for the Corporate Defendant Representative, Mister
5 Hiroki Tsukimori.)

6 THE CLERK: Next matter on the docket is District
7 Court Case No. 1:16 CR 78: *United States of America versus*
8 *Hitachi Automotive Systems*. And we're here this morning for a
9 plea on information.

10 THE COURT: All right. Usually, the United States
11 works from that podium and the Defense works from that podium,
12 if that's okay with you guys.

13 MR. TEETERS: Yes.

14 THE COURT: Okay. And you guys want to bring up your
15 client and the interpreter? Just come on up.

16 MR. JACOBS: And good morning, Your Honor. It's Matt
17 Jacobs, Jeff Teeters and Craig Seebald on behalf of Defendant
18 Hitachi Automotive Systems, Limited, and we have our corporate
19 representative here, Chief Compliance Officer of the company,
20 Mr. Hiroki Tsukimori.

21 THE COURT: Okay. Just before we begin, though,
22 would the interpreter please introduce herself for the record
23 so we can take that down?

24 THE INTERPRETER: My name is Nanaka King.

25 THE COURT: Okay. Could you spell that for Mary Ann,

1 please?

2 THE INTERPRETER: N-A-N-A-K-A, King, K-I-N-G.

3 THE COURT: Okay. And it's my understanding that all
4 parties are agreeable to using this woman as the interpreter
5 in this case; is that correct?

6 MS. STERN: Yes, Your Honor.

7 MR. JACOBS: Yes, Your Honor.

8 THE COURT: All right. Good.

9 Defense Counsel have already introduced themselves to the
10 record. Will the United States do that, please?

11 MS. STERN: Carla Stern for the United States, and
12 C.J. Freihofer, Special Agent with the FBI.

13 THE COURT: Okay. And, ma'am, if I'm going through
14 this too fast for you to interpret, just tell me to slow down
15 anytime you want. Okay?

16 THE INTERPRETER: Yes, Your Honor. Thank you.

17 THE COURT: Okay. Good.

18 So it's my understanding that the intention here today is
19 to proceed on information. In Count 1 is a Conspiracy to
20 Restrain Trade, which basically indicates that Hitachi
21 Automotive Systems, as a corporation organized and existing
22 under the laws of Japan, with its principal place in Tokyo,
23 through its subsidiaries -- through its principals and
24 subsidiaries engaged -- or are engaged in the manufacture and
25 sale of automotive parts, and Hitachi Automotive Systems of

1 America had greater than 50 percent ownership in the related
2 period. And what the accusation is, that during this time
3 period, while they were engaged in manufacture and the sale of
4 shock absorbers to Suzuki Motor Corporation, certain
5 violations occurred.

6 MS. STERN: Yes, Your Honor. It's actually Suzuki
7 and Toyota, and the charging paragraph would be paragraph 6.

8 THE COURT: Okay. So, Counsel, do you --

9 Okay. So the allegation is that from at least the
10 mid-1990s and continuing through to and as late as the summer
11 of 2011, the Defendant, and its related entities as
12 coconspirators, entered into and engaged in combination and a
13 conspiracy to suppress and eliminate competition in the
14 automotive parts industry by agreeing to allocate markets --
15 markets of, rig bids for, and to fix, stabilize, and maintain
16 prices of shock absorbers sold to the automobile manufacturers
17 in the United States and elsewhere. Combination -- this
18 combination in the conspiracy engaged in by the Defendant,
19 related entities, was an unreasonable restraint of trade and
20 the Government alleges violation of Section 1 of the Sherman
21 Act, 15 U.S.C. 1.

22 Does the United States believe that any additional parts
23 of the Information need to be read into the record at this
24 time before I ask Defense Counsel their intention?

25 MS. STERN: No, Your Honor.

1 THE COURT: Okay. Is Defense Counsel satisfied that
2 the Information can be made part of the record and further
3 reading is not necessary?

4 MR. JACOBS: We are satisfied, Your Honor. Thank
5 you.

6 THE COURT: All right. And it's also my
7 understanding that the intention is to enter a plea of guilty
8 to that information; is that correct?

9 MR. JACOBS: That is correct, Your Honor. We're also
10 prepared to waive indictment for purposes of this proceeding.

11 THE COURT: Right. We'll cover that in just a
12 minute.

13 But, first of all, I want to speak with the representative
14 of Suzuki.

15 And, Counsel, if you could pronounce his name for me, that
16 would be great.

17 MR. JACOBS: Sure. And he is the Chief Compliance
18 Officer of Hitachi Automotive Systems, Limited, and he is
19 Hiroki Tsukimori.

20 THE COURT: Okay. Mr. Mori, I'm gonna have to ask
21 you a number of questions about the company's participation in
22 the -- in the Information itself and the intent to waive
23 indictment and proceed by way of information. And to do that,
24 Ms. Crum is going to have you swear or affirm that you will
25 tell the truth under penalty of perjury.

1 Are you prepared to do that on behalf of the corporation?

2 CORPORATE REPRESENTATIVE: Yes, Your Honor.

3 THE COURT: All right. Barb?

4 MR. JACOBS: Your Honor, if I might? I apologize for
5 interrupting --

6 THE COURT: Yeah.

7 MR. JACOBS: -- his first name is Hiroki and the last
8 name is Tsukimori.

9 THE COURT: Okay. Is "Hiroki," okay when I discuss
10 the --

11 MR. JACOBS: Yes. Thank you, Your Honor.

12 THE COURT: No, thank you.

13 THE CLERK: Sir, please raise your right hand.

14 (Duly sworn by the Clerk.)

15 THE COURT: Hiroki, could you just briefly describe
16 for the record your competence or your ability to enter into
17 this plea on behalf of the corporation, discussing just
18 briefly the corporate resolution and what brought you here
19 today from a legal standpoint? And with assistance of
20 counsel, that's fine.

21 MR. JACOBS: Thank you, Your Honor. There is a --
22 has been a corporate resolution that was passed by the Board
23 of Hitachi Automotive Systems, Limited, and signed on behalf
24 of the company by Hideaki Seki, who is President and CEO of
25 the company, Your Honor.

1 THE COURT: Correct.

2 MR. JACOBS: And it points -- appoints Mr. Tsukimori,
3 in particular, as -- in his role as Chief Compliance Officer,
4 to enter this plea on behalf of the company, and Mr. Tsukimori
5 can attest that that is correct.

6 THE COURT: Okay.

7 So, Hiroki, have you received the board resolution, which
8 is Page ID No. 31 in our set of pleadings? And it appears to
9 be signed by the President and CEO and appoints you as the
10 representative in this case. Have you reviewed that?

11 CORPORATE REPRESENTATIVE: Yes, Your Honor.

12 THE COURT: To your knowledge, was that resolution
13 passed in accordance with the board rules and minutes of the
14 Hitachi Automotive Systems Company?

15 CORPORATE REPRESENTATIVE: Yes, Your Honor.

16 THE COURT: Okay. Good.

17 Now, in preparation for this meeting this morning, did you
18 receive a copy of the charges we've been referring to as the
19 Information?

20 CORPORATE REPRESENTATIVE: Yes, Your Honor.

21 THE COURT: Okay. Counsel has waived any further
22 reading of the Information, but are you familiar with that and
23 have you reviewed it with Corporate Counsel and Defense
24 Counsel?

25 CORPORATE REPRESENTATIVE: Yes, Your Honor.

1 THE COURT: Okay. When you or members of your
2 corporate organization reviewed this with your attorney, did
3 they explain to you the charge that was contained in the
4 Information document itself?

5 CORPORATE REPRESENTATIVE: Yes, Your Honor.

6 THE COURT: Okay. Did they also explain to you what
7 the ramifications or outcome of the charges could be if in
8 fact there was a conviction?

9 CORPORATE REPRESENTATIVE: Yes, Your Honor.

10 THE COURT: As part of the informed discussion as to
11 whether or not to -- or as to how to deal with the
12 information, did the corporate representative, you or other
13 people, discuss with Defense Counsel any possible defenses you
14 might having to the allegation that's levied against you in
15 this case?

16 CORPORATE REPRESENTATIVE: Yes, Your Honor.

17 THE COURT: Usually what happens in criminal matters
18 such as this is there's an exchange of information between the
19 United States Attorney's Office and Defense Counsel regarding
20 whatever evidence they think they would intend to offer in
21 support of an Information.

22 Did you and your counsel discuss what type of information
23 had been supplied by the United States in support -- what type
24 of evidence had been supplied in support of the Information?

25 CORPORATE REPRESENTATIVE: Yes, Your Honor.

1 THE COURT: Okay. Did you also have a conversation
2 with counsel as to what the possible penalties would be if
3 there were a conviction pursuant to the Information?

4 CORPORATE REPRESENTATIVE: Yes, Your Honor.

5 THE COURT: Okay. And you've been satisfied with
6 your lawyer's advice and representation?

7 CORPORATE REPRESENTATIVE: Yes, Your Honor.

8 THE COURT: And after that conversation did you
9 decide -- you and the board decide that the appropriate way to
10 proceed was with the entering of a plea of guilty to the
11 Information?

12 CORPORATE REPRESENTATIVE: Yes, Your Honor.

13 THE COURT: Okay. We'll circle back to that in just
14 a moment, but I have to discuss with you your right to have
15 the case brought by indictment rather than information,
16 because there's two tracks it could go on.

17 CORPORATE REPRESENTATIVE: Yes, Your Honor.

18 THE COURT: Okay. A personal or corporate defendant
19 has an absolute right to demand they be indicted by a grand
20 jury, but they also have the ability to waive that right and
21 proceed by information if they think it's appropriate.

22 This means that instead of the case being presented to a
23 grand jury for indictment, the charge has been brought by
24 information. And as we go through this, I'm going to ask you
25 if you're willing to agree to that.

1 But a grand jury is a group of at least 16 people, not
2 more than 23, and, after the presentation of evidence for an
3 indictment to issue, at least 12 of them must find there's
4 probable cause to believe that a crime has been committed by
5 your corporation.

6 Do you understand that?

7 CORPORATE REPRESENTATIVE: Yes, Your Honor.

8 THE COURT: Okay. And unless you waive the right to
9 have the case proceed by a grand jury presentation and
10 information, that's the only way it can proceed. However, if
11 you waive your right to the grand jury, we will proceed
12 against the corporation on the information, just as though you
13 had been indicted; in other words, you're facing the same
14 ramifications.

15 Do you understand that?

16 CORPORATE REPRESENTATIVE: Yes, Your Honor.

17 THE COURT: Okay. And even though it's an
18 information as opposed to indictment, there are certain
19 constitutional rights that inure to the benefit of anyone so
20 charged.

21 First of all, the corporation could enter a plea of not
22 guilty and ask for a trial.

23 Do you understand that?

24 CORPORATE REPRESENTATIVE: Yes, Your Honor.

25 THE COURT: Okay. Since I'm unaware of your

1 knowledge of the American legal system, I'm sure counsel has
2 informed you, but if there is a trial, it would be a public
3 trial held in this courtroom and the issue of guilt or
4 innocence would be decided by 12 citizens selected by the
5 lawyers in the case.

6 Your lawyers would have the right to ask questions, called
7 cross-examination, of any witness that would testify against
8 the corporation.

9 CORPORATE REPRESENTATIVE: Yes.

10 THE COURT: If there were witnesses that you thought
11 could present favorable evidence on behalf of the corporation
12 and those people were properly subpoenaed, the Marshals
13 Service would compel their attendance at trial.

14 CORPORATE REPRESENTATIVE: Yes.

15 THE COURT: All right. Also, there's the absolute
16 right not to testify in a case brought by the United States
17 against an individual or corporation, which means the only way
18 that certain members of the corporation possibly would testify
19 would be if their own lawyers decided it's a smart thing to
20 do, took them through direct examination, and only then could
21 the United States cross-examination -- cross-examine those
22 people. Okay?

23 CORPORATE REPRESENTATIVE: Yes, Your Honor.

24 THE COURT: All right. Burden of proof in a criminal
25 trial is beyond a reasonable doubt. And any time we have a

1 case in this courtroom -- in other words, a civil case or
2 criminal case -- every time we take a break or a recess, I
3 explain to the jury they're not to make up their mind on what
4 they've heard up to that point in time.

5 I tell them they're not to discuss or decide the case
6 until all the evidence is completed and they've heard the
7 instruction of law at the end of the case.

8 CORPORATE REPRESENTATIVE: Yes.

9 THE COURT: In a criminal case, I go a step further,
10 and I tell them you must presume that the corporation is
11 innocent of the charges throughout the case, unless and until
12 when they're deliberating in the back room all 12 of them
13 decide the Government has met its burden and proved the case
14 beyond a reasonable doubt.

15 CORPORATE REPRESENTATIVE: Yes, Your Honor.

16 THE COURT: So, Hiroki, does the corporation wish to
17 waive its right to have the case presented to a grand jury,
18 does it wish to proceed by the Information?

19 CORPORATE REPRESENTATIVE: Yes, Your Honor.

20 THE COURT: Okay. Do you guys --

21 Who has the waiver?

22 MS. STERN: They do.

23 MR. JACOBS: We do, Your Honor.

24 THE COURT: Okay. So you've been handed a waiver.
25 Has counsel explained that to you?

1 (Mr. Jacobs, the corporate representative, and the
2 interpreter confer privately.)

3 (Corporate representative signing a document.)

4 CORPORATE REPRESENTATIVE: I have been explained
5 about this waiver, Your Honor.

6 THE COURT: Okay. I'm assuming that the waiver that
7 he is now signing is probably in English?

8 MR. JACOBS: It is, Your Honor.

9 THE COURT: Okay.

10 CORPORATE REPRESENTATIVE: Yes, Your Honor.

11 THE COURT: And so it has been explained to Hiroki in
12 his native language so he understands it?

13 MR. JACOBS: Your Honor, we have -- we can just take
14 a moment. We have explained the process and discussed it
15 extensively. We've not reviewed this --

16 THE COURT: That's fine.

17 MR. JACOBS: -- exact agreement. So I would just
18 suggest that we just take a moment and have Ms. King read the
19 actual document to --

20 THE COURT: Sure. You want us to cut off some
21 microphones at this time, or does it make a difference?

22 MR. JACOBS: It doesn't make a difference.

23 THE COURT: Okay.

24 MR. JACOBS: Thank you.

25 (The corporate representative and the interpreter confer

1 privately.)

2 MR. JACOBS: Your Honor, Mr. Tsukimori has now
3 reviewed the Waiver of Indictment and has signed it and we're
4 prepared to hand it up to the Court.

5 THE COURT: Okay. Please do. Thank you.

6 Okay. Hiroki, I saw you sign the document which is called
7 a Waiver of Indictment. This is in our native language, not
8 yours.

9 But based upon the conversations, is it fair for me to
10 determine that counsel has fully explained to you the meaning
11 of this Waiver of Indictment?

12 CORPORATE REPRESENTATIVE: Yes, Your Honor.

13 THE COURT: Okay. Also, this Waiver of Indictment is
14 consistent with the discussion that you and I have been having
15 about your right to proceed by grand jury and indictment,
16 versus proceeding by information. Okay?

17 CORPORATE REPRESENTATIVE: Yes, Your Honor.

18 THE COURT: All right. So at this time, on behalf of
19 the corporation, do you wish to officially waive the
20 presentation of information -- excuse me -- of evidence to a
21 grand jury in the seeking of an indictment and do you wish to
22 proceed by the Information which we've already referenced
23 which is filed with the court?

24 CORPORATE REPRESENTATIVE: Yes, Your Honor.

25 THE COURT: Does the United States believe that any

1 additional inquiry is needed of Hiroki before I accept the
2 waiver?

3 MS. STERN: No, Your Honor.

4 THE COURT: All right. I find that on behalf of the
5 corporation, pursuant to the corporate resolution which is
6 attached to the Plea Agreement, that Hiroki is the appropriate
7 corporate representative on this case, and that the
8 corporation, through Hiroki, is knowingly, intelligently and
9 voluntarily waiving the right to have the case proceed by
10 grand jury and, in fact, are instructing the Court to proceed
11 by information. Okay? So that will be made part of the
12 record.

13 Okay. Now, about ten minutes ago we had a discussion
14 about your constitutional rights, which means you have the
15 right to proceed by a jury trial even though it's an
16 Information.

17 So at this time, I will ask you how do you wish to plead
18 to the charges presented in the Information: Guilty or not
19 guilty?

20 CORPORATE REPRESENTATIVE: I wish to plead guilty.

21 THE COURT: Okay. Does the corporation understand
22 that by entering the guilty plea they're giving up those
23 constitutional rights that we've spoken about just a few
24 minutes ago?

25 CORPORATE REPRESENTATIVE: Yes, Your Honor.

1 THE COURT: Okay. Now, let's talk about the
2 violation of 15 U.S.C. 1, Restraint of Trade. I had asked you
3 earlier if the corporation and you had had conversations with
4 your counsel about the maximum possible penalties --

5 CORPORATE REPRESENTATIVE: Yes, Your Honor.

6 THE COURT: -- but I'd like to review those with you
7 for the record at this time.

8 Okay. The potential fine in this case is the greater of
9 \$100 million, or twice the pecuniary loss gained -- the
10 conspirators gained from the crime committed, or twice the
11 gross pecuniary loss caused to the victims of the crime
12 itself.

13 CORPORATE REPRESENTATIVE: Yes.

14 THE COURT: It can also include an order of
15 restitution paid to the victims of the offense.

16 Do you understand that?

17 CORPORATE REPRESENTATIVE: Yes, Your Honor.

18 THE COURT: And I could put the corporation on
19 probation anywhere from one to five years. We'll talk about
20 that in a few minutes.

21 CORPORATE REPRESENTATIVE: Yes.

22 THE COURT: Okay. Because this is a corporate plea
23 to a felony, there's a \$400 special assessment that will be
24 processed at or before the time of sentencing. Okay?

25 Now, do you understand that if I go ahead and accept the

1 plea, that I'm in the same position to deal with the
2 corporation as if you had gone to trial and had been convicted
3 of a single count. Do you understand that?

4 CORPORATE REPRESENTATIVE: Yes, Your Honor.

5 THE COURT: Okay. In addition to the penalties I've
6 just talked about, there are other potential ramifications as
7 a result of this plea, and I believe the United States --

8 If you can help me out, aren't there some restrictions in
9 terms of trade? Where is that?

10 MS. STERN: Oh, paragraph 17. Are you talking about
11 the debarment --

12 THE COURT: Yes.

13 MS. STERN: -- potential?

14 THE COURT: Yes.

15 MS. STERN: It's paragraph 17, Your Honor.

16 THE COURT: Thank you.

17 In addition to the fines, we talked about the potential
18 probationary period. Paragraph 17 indicates the corporation
19 understands it may be subject to suspension or debarment by
20 state or federal agencies other than the United States
21 Department of Justice, Antitrust Division, based on the
22 conviction of this Plea Agreement.

23 So I don't know what else might happen down the road. I
24 don't know what other agencies might be involved. I trust you
25 and counsel had a discussion as to those potentialities and

1 you're willing to go forward at this time.

2 CORPORATE REPRESENTATIVE: Yes, Your Honor.

3 THE COURT: Okay. Counsel, for the record, have you
4 had a full conversation with your client about the
5 potentiality arising in those various types of action?

6 MR. JACOBS: Yes, Your Honor.

7 THE COURT: Hiroki, are you satisfied with the advice
8 your lawyers have given you in this case?

9 CORPORATE REPRESENTATIVE: Yes, Your Honor.

10 THE COURT: Do you think you've been fully informed
11 about all the facts and circumstances on which the charge is
12 based?

13 CORPORATE REPRESENTATIVE: Yes, Your Honor.

14 THE COURT: Okay. All right. Now, typically what
15 happens is there is a presentence investigation which is
16 ordered, and I understand from counsel they've already made
17 arrangements for you to speak with somebody from the Probation
18 Department. That will be somebody that has input into writing
19 the report.

20 MR. JACOBS: Your Honor, we've arranged to meet with
21 the Probation Department this afternoon. As counsel, we will
22 subsequently make whatever other arrangements need to be made.

23 THE COURT: Right. The Probation Department will
24 also meet with the United States and get their version of what
25 happened.

1 CORPORATE REPRESENTATIVE: Yes.

2 THE COURT: In determining the appropriate punishment
3 in this case, the Probation Department will write a report to
4 that end based on our Sentencing Guidelines Manual.

5 CORPORATE REPRESENTATIVE: Yes.

6 THE COURT: Okay. Typically, if what is put together
7 by the Probation Department is done accurately and correctly
8 explains from the legal standpoint, the Court, such as me,
9 will impose a sentence within the recommendation or the
10 guideline suggested by the Probation Department.

11 Under 18 U.S.C. 3553, however, I am permitted to take into
12 consideration things other than what's contained in the
13 presentence investigation --

14 CORPORATE REPRESENTATIVE: Yes.

15 THE COURT: -- and could impose a sentence which is
16 either harsher than what's recommended or perhaps more
17 lenient, if I could adequately explain myself on the record.

18 CORPORATE REPRESENTATIVE: Yes.

19 THE COURT: In this case, though, the parties have
20 entered what's called an 11(c)(1)(C) plea, which means the
21 lawyers have gotten together, your counsel and the United
22 States, and are suggesting to me what they believe is the
23 appropriate outcome in this case, and that's paragraph 9. And
24 you've reviewed that, I'm sure.

25 The corporation's reviewed that; right?

1 CORPORATE REPRESENTATIVE: Yes, Your Honor.

2 THE COURT: Okay. Pursuant to that, they are
3 recommending a fine of not more than \$59.18 million, but at
4 least \$55.48 million --

5 CORPORATE REPRESENTATIVE: Yes.

6 THE COURT: -- payable in full before the 15th day
7 after the date of judgment.

8 And I guess that means the sentencing date; is that right,
9 Counsel?

10 MS. STERN: Yes, Your Honor.

11 THE COURT: And so, just to be clear, this means, I
12 guess, both sides will be arguing for an amount somewhere
13 between there.

14 I'm assuming the United States on the high end and Defense
15 on the low end; is that right?

16 MS. STERN: Actually, Your Honor, if you --

17 THE COURT: Did I miss something?

18 MS. STERN: -- read further, as long as the United
19 States recommends an amount within that range, Defense will
20 not oppose it.

21 THE COURT: All right. Okay. Hiroki, here's the
22 important thing: Even though the lawyers have gotten together
23 and they've reached this agreement, this type of understanding
24 is not binding on me. I am allowed to read the presentence
25 investigation and determine whether it's appropriate. And if

1 I think it's not appropriate, we can discard the plea and
2 start from scratch; okay?

3 CORPORATE REPRESENTATIVE: Yes, Your Honor.

4 THE COURT: Okay. Just for your comfort level, if
5 you ask any lawyer that's ever practiced in front of me in
6 regard to an agreed-upon sentence, I have 100 percent of the
7 time, up to this point in time, followed the recommendation;
8 okay? All right. That is my intent. I just want you to be
9 clear on the record I don't have to.

10 CORPORATE REPRESENTATIVE: Yes, Your Honor.

11 THE COURT: Okay. Now, I indicated the Probation
12 Department was going to write a report. And starting on page
13 7 and continuing on page 8, the parties have agreed on certain
14 calculations that would typically go into a report. The
15 Probation Department does not necessarily have to follow these
16 calculations and could arrive at different numbers and
17 figures.

18 However, as with the agreed-upon fine, it's always my
19 inclination in these cases to follow the recommendations of
20 the lawyers, because I believe they have the full knowledge of
21 the facts and nuances involving the case --

22 CORPORATE REPRESENTATIVE: Yes.

23 THE COURT: -- and an understanding of a just
24 outcome.

25 CORPORATE REPRESENTATIVE: Yes, Your Honor.

1 THE COURT: Okay. I also mentioned that there was a
2 possible term of probation for the corporation.

3 CORPORATE REPRESENTATIVE: Yes.

4 THE COURT: Okay. The United States is going to
5 recommend a term of three years, which is not agreed upon by
6 the corporation; correct?

7 MS. STERN: Correct, Your Honor.

8 THE COURT: All right. So the parties will be free
9 to argue what they think the appropriate term of probation or
10 perhaps no probation should be in this case reviewed at the
11 sentencing; okay?

12 CORPORATE REPRESENTATIVE: Yes, Your Honor.

13 THE COURT: Okay. Now, if there is a term of
14 probation imposed, the corporation will be held accountable
15 for certain rules and regulations that the Probation
16 Department thinks are appropriate in this case, which most
17 assuredly would include no more antitrust violations or any
18 other type of criminal activity.

19 If, in fact, a violation is alleged and proven in a
20 hearing in this courtroom, I would then have the option of
21 imposing more conditions, fines, and sanctions --

22 CORPORATE REPRESENTATIVE: Yes.

23 THE COURT: -- okay? So there might be a compliance
24 period strictly with me for up to a period of years; okay?

25 CORPORATE REPRESENTATIVE: Yes, Your Honor.

1 THE COURT: All right. Hiroki, if you take a look at
2 page 9 and 10, it contains specific recommendations that the
3 Government would make in terms of conditions or probation.

4 I've already mentioned not committing any other crimes,
5 but the Government has also requested the period of reporting,
6 which would be once a year with the Probation Department
7 regarding compliance --

8 CORPORATE REPRESENTATIVE: Yes, Your Honor.

9 THE COURT: -- and also suggests that if there's a
10 question of compliance, they might seek to hire an independent
11 court-appointed monitor at the company's expense to deal with
12 compliance issues.

13 CORPORATE REPRESENTATIVE: Yes, Your Honor.

14 THE COURT: Okay. I just want you to know that's a
15 possible option on the table. Okay?

16 CORPORATE REPRESENTATIVE: Yes, Your Honor.

17 THE COURT: Okay. All right. Does the United States
18 have anything contained in the Plea Agreement that if I've
19 misstated they wish to correct at this time, or if you think
20 it needs to be read into the record in addition to the filed
21 document, anything you want to cover at this time?

22 MS. STERN: Just two things, and then did you want
23 Agent Freihofer to read the --

24 THE COURT: Not --

25 MS. STERN: -- actual basis?

1 THE COURT: Not until after I accept the plea.

2 MS. STERN: Okay. Just one thing about that. We
3 would like the sentencing -- and we've already talked about
4 the sentencing -- to be in February, and that would give the
5 opportunity for the company to continue cooperating and
6 implementing any compliance issues that they have so that we
7 can evaluate that.

8 THE COURT: All right. I think --

9 Did you inform Hiroki of that date, Counsel?

10 MR. JACOBS: I have not, Your Honor, although we had
11 discussed the date in general. But --

12 THE COURT: Right. Barb, what was that?

13 THE CLERK: It's February 16th, 2017, 10 A.M.

14 (Mr. Jacobs, the corporate representative, and the
15 interpreter confer privately.)

16 CORPORATE REPRESENTATIVE: February 16th.

17 THE COURT: Okay. We would plan on February 16th.
18 Understand, that's not written in stone. If you guys have a
19 problem or the United States has a problem, we can always
20 adjust the date. But that's our target date; okay?

21 MS. STERN: And just so it's clear on the record that
22 the final fine recommendation from the United States will be
23 based on our evaluation of the cooperation of the company
24 during this time period between now and February.

25 THE COURT: Understand.

1 MS. STERN: Okay. That's it.

2 THE COURT: Okay. Counsel, do you have a copy of the
3 Plea Agreement in front of you at the podium?

4 MR. JACOBS: Yes, Your Honor.

5 THE COURT: Okay. Could you direct Hiroki to page 22
6 of the Plea Agreement?

7 MR. JACOBS: Yes, Your Honor.

8 THE COURT: Okay. Now, Hiroki, on page 22, it
9 appears to be your signature on the left-hand part of the page
10 towards the top; is that correct?

11 CORPORATE REPRESENTATIVE: Yes, Your Honor.

12 THE COURT: Do you believe that this Plea Agreement
13 contains the full understanding that the corporation and your
14 lawyers have reached with the United States?

15 CORPORATE REPRESENTATIVE: Yes, Your Honor.

16 THE COURT: Counsel, do you agree with that, that
17 this contains the full understanding you've reached with the
18 United States at this time?

19 MR. JACOBS: We agree, Your Honor.

20 THE COURT: Okay. Okay. Hiroki, I talked about the
21 possible fines, about the possible ramifications with this,
22 and there's an agreed-upon sentence in this case. But I want
23 to make sure that your intention to enter a plea on behalf of
24 the corporation is still voluntary and is not based upon any
25 promise of leniency or any treatment other than what's

1 contained in the corporation [verbatim], and it is not based
2 upon any type of threats, coercion, or force from the other
3 side; it is a free, voluntary, and intentional act on behalf
4 of the corporation.

5 CORPORATE REPRESENTATIVE: Yes, Your Honor.

6 THE COURT: Okay. And you believe you're fully aware
7 of all the facts and circumstances surrounding the case;
8 right?

9 CORPORATE REPRESENTATIVE: Yes, Your Honor.

10 THE COURT: And your intent is to enter a plea of
11 guilty on behalf of the corporation to the single-count
12 Information; correct?

13 CORPORATE REPRESENTATIVE: Yes, Your Honor.

14 THE COURT: Okay. At this time then I will ask the
15 United States, I guess through Agent Freihofer, to explain the
16 facts of the case.

17 SPECIAL AGENT FREIHOFFER: Statement of Facts:

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

20 For the purposes of this Plea Agreement, the "relevant
21 period" is that period from at least the mid-1990s and
22 continuing until as late as summer of 2011. During a portion
23 of the relevant period, the Defendant was a corporation
24 organized and existing under the laws of Japan with its
25 principal place of business in Tokyo, Japan. During portions

1 of the relevant period, some of the Defendant's related
2 entities, as defined in paragraph 12 of this Plea Agreement,
3 including Defendant's predecessors in interest, were
4 corporations organized and existing under the laws of Japan.

5 During the relevant period, the Defendant and certain of
6 its related entities, as defined in paragraph 12 of this Plea
7 Agreement, were engaged in the manufacture and sale of shock
8 absorbers in the United States and elsewhere, and employed
9 5,000 or more individuals.

10 Shock absorbers are part of the suspension system on
11 automobiles. They absorb and dissipate energy to help cushion
12 vehicles on uneven roads leading to improved ride quality and
13 vehicle handling. Shock absorbers are also called dampers.
14 During the relevant period, sales of shock absorbers by the
15 Defendant and certain of its relevant related entities
16 affecting Toyota in the United States totaled approximately
17 \$102.74 million.

18 During the relevant period, the Defendant and certain of
19 its related entities, through its officers, managers and
20 employees, including their high-level personnel, participated
21 in a conspiracy with other shock absorber manufacturers, the
22 primary purpose of which was to suppress and eliminate
23 competition in the automotive parts industry by agreeing to
24 allocate markets of, rig bids for, and to fix, stabilize, and
25 maintain the prices of certain shock absorbers sold to

1 automobile manufacturers in the United States and elsewhere.

2 In furtherance of this conspiracy, the Defendant and
3 certain of its related entities, through its officers,
4 managers and employees, engaged in discussions and attended
5 meetings with coconspirators employed by other shock absorber
6 manufacturers. During these discussions and meetings,
7 agreements were reached to allocate the supply of, rig bids
8 for, and to fix, stabilize, and maintain the prices of certain
9 shock absorbers sold to automobile manufacturers in the United
10 States and elsewhere.

11 The conspiratorial meetings and conversations described
12 above took place in the United States and elsewhere. During
13 the relevant period, shock absorbers sold by one or more of
14 the conspirator firms, and equipment and supplies necessary to
15 the production and distribution of shock absorbers, as well as
16 payments for shock absorbers, traveled in interstate and
17 foreign commerce. The business activities of the Defendant
18 and its coconspirators in connection with the manufacture and
19 sale of shock absorbers that were the subject of this
20 conspiracy were within the flow of, and substantially
21 affected, interstate trade and commerce.

22 Acts in furtherance of this conspiracy were carried out in
23 the United States and elsewhere. Shock absorbers were sold by
24 one or more of its conspirators in the United States and
25 elsewhere.

1 THE COURT: Thank you, C.J.

2 SPECIAL AGENT FREIHOFER: You're welcome.

3 THE COURT: Hiroki, I had already asked you if you
4 signed off on the Plea Agreement. That Statement of Facts is
5 contained in the Plea Agreement itself.

6 So I'll ask you on the record: Is what the Agent just
7 read into the record correct?

8 CORPORATE REPRESENTATIVE: Yes, Your Honor, it's
9 correct.

10 THE COURT: Does the corporation believe that it's
11 incorrect or incomplete in any way?

12 CORPORATE REPRESENTATIVE: No, it does not.

13 THE COURT: May I take it then that the reason you're
14 offering to plead guilty to the single-count Information is
15 because Hitachi did in fact commit the offense charged in that
16 and as explained in the Statement of Facts?

17 CORPORATE REPRESENTATIVE: Yes, Your Honor.

18 THE COURT: Okay. In light of all the discussions
19 we've had about your right to proceed by a grand jury and
20 indictment as opposed to information, about your right to ask
21 for a jury trial in this case, I'll ask you for the final time
22 how you wish to plead to the charge in Count 1 of the
23 Information on behalf of the corporation: Guilty or not
24 guilty?

25 CORPORATE REPRESENTATIVE: Yes, Your Honor,

1 [Verbatim].

2 THE COURT: Okay. Based upon my observations of
3 Hiroki in court today, his responsiveness to the questions
4 I've been asking, and based upon the corporate resolution
5 which is attached to the Plea Agreement, I believe that he is
6 competent to enter this plea on behalf of the corporation.
7 The corporation understands the proceedings in which we're all
8 engaged today, and understands the nature and the meaning of
9 the charge that is spelled out in the one-count Information,
10 and also is aware of the potential consequences of the plea
11 based upon the negotiations which were undertaken and resulted
12 in a Plea Agreement which is on file in this case.

13 Therefore, I find that Hiroki, on behalf of the
14 corporation, is fully competent and capable of entering an
15 informed plea. The guilty plea is a knowing plea, it's a
16 voluntary plea, it's supported by an independent basis in fact
17 which contains each of the essential elements of the offenses
18 that were charged in the Information and occurring in this
19 jurisdiction.

20 I further find that the corporation has knowingly,
21 intelligently waived its right to proceed by grand jury, has
22 voluntarily entered into a plea of the Information which is on
23 file in this case.

24 So at this time what I'll do is, I'll accept the plea so
25 it's part of the record.

1 I will withhold actually making a finding of guilty,
2 Hiroki, until the Presentence Investigation comes back, I tell
3 you guys where I am on the recommended sentence, and then
4 we'll proceed at that time.

5 Is that okay?

6 CORPORATE REPRESENTATIVE: Yes, Your Honor.

7 THE COURT: Okay. So, anything on behalf of the
8 United States at this time before we stand in recess?

9 MS. STERN: No, Your Honor.

10 THE COURT: Okay. So we have a sentencing date.
11 Let's try to keep it, if we can, but I understand if some type
12 of emergency or contingencies arise.

13 Counsel will be in touch with the United States to discuss
14 portions of the Plea Agreement which the Government raised in
15 their discussion with me, and we'll stand in recess and see
16 you guys --

17 Oh, one thing I forgot to say, and your counsel would know
18 this, Hiroki. But when they write the Plea Agreement -- when
19 they write the Presentence Investigation, there may be things
20 that the Probation Department puts in there that maybe your
21 side objects to or possibly the United States objects to.
22 Oftentimes, lawyers can call the author of the presentence
23 investigation and resolve those issues, and sometimes they
24 can't. And if they cannot, then both sides have the right to
25 file formal objections. And depending on the complexity of

1 those objections, they usually deal with them immediately
2 preceding the sentencing in this case. But once they're filed
3 and I think it needs more attention than that, I'll call
4 counsel and we'll figure out how to deal with it.

5 Is that fair, guys?

6 MS. STERN: It's good.

7 MR. JACOBS: Yes, Your Honor.

8 CORPORATE REPRESENTATIVE: Yes, Your Honor.

9 THE COURT: Okay. So, obviously, you need to be in
10 touch with your lawyers and follow their advice in this
11 situation. All right?

12 CORPORATE REPRESENTATIVE: Yes, Your Honor.

13 THE COURT: Good.

14 All right. Anything else at this time then?

15 MS. STERN: No, Your Honor.

16 THE COURT: Barb, is there anything else?

17 THE CLERK: No.

18 THE COURT: Okay. So we'll stand in recess. And
19 whenever the PSI is done, it's done. It will be sent out to
20 both sides in draft form, and then we'll get a revised copy
21 and we'll see what happens. Okay? All right? Fair enough.

22 Thanks, everybody.

23 MR. JACOBS: Thank you, Your Honor.

24 THE CLERK: We'll recess until 1:30. (11:26 A.M.)

25 PROCEEDINGS CONCLUDED

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C E R T I F I C A T E

I, Mary Ann Ranz, the undersigned, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Mary Ann Ranz
Official Court Reporter