

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR 16-00365-JD
)	
Elna Co., Ltd.,)	
)	
Defendant.)	
_____)	

San Francisco, California
Wednesday, October 11, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

U.S. DEPARTMENT OF JUSTICE
Antitrust Division
450 Golden Gate Avenue
Room 10-0101
San Francisco, California 94102

**BY: HOWARD J. PARKER
ASSISTANT UNITED STATES ATTORNEY**

For Defendant:

WILMER, CUTLER, PICKERING, HALE & DORR
LLP
950 Page Mill Road
Palo Alto, CA 94304

**BY: HEATHER S. TEWKSBURY, ESQUIRE
DEPUTY FEDERAL PUBLIC DEFENDER**

SPANISH INTERPRETER: **ERI MINOURA**

Reported By: Pamela A. Batalo, CSR No. 3953, RMR, FCRR
Official Reporter

1 Wednesday - October 11, 2017

3:45 p.m.

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

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4 **THE CLERK:** Calling Criminal 16-365, United States of
5 America vs. Elna Co.

6 **MR. PARKER:** Good afternoon, Your Honor. Howard
7 Parker for the United States.

8 **MS. TEWKSBURY:** Good afternoon, Your Honor. Heather
9 Tewksbury for Elna Company, Ltd I'm accompanied by the
10 corporate representative, Mr. Kenichiro Murata, and he is
11 accompanied by an interpreter, who has already been sworn in.

12 **THE COURT:** All right. The interpreter has been sworn
13 in?

14 **THE INTERPRETER:** Yes, Your Honor.

15 **THE COURT:** Back for a plea for Elna; is that right,
16 Ms. Enson?

17 **MS. TEWKSBURY:** Tewksbury, Your Honor. That's the
18 prior case.

19 **THE COURT:** Tewksbury?

20 **MS. TEWKSBURY:** Yes.

21 **THE COURT:** Okay. Who is Ms. Enson? Mr. Enson.

22 **MS. TEWKSBURY:** Mr. Enson was the attorney for Holy
23 Stone.

24 **THE COURT:** Oh. I thought it was Esson.

25 **MS. TEWKSBURY:** Enson.

1 **THE COURT:** It was Mr. Enson? I called him Mr. Esson
2 about five times.

3 **MS. TEWKSBURY:** I noticed that, Your Honor.

4 **THE COURT:** He didn't say anything. Okay. All right.
5 Would you swear the representative in, please.

6 **KENICHIRO MURATA,**

7 having been duly sworn, gave the following responses:

8 **THE COURT:** All right. Would you give me your full
9 name, Mr. Murata?

10 **MR. MURATA:** My name is Kenichiro Murata.

11 **THE COURT:** What do you do with the defendant, Elna?

12 **MR. MURATA:** I am a director and senior executive
13 officer.

14 **THE COURT:** Okay. And how are you authorized to plead
15 on behalf of Elna Company, Ltd.?

16 **MR. MURATA:** Board of directors meeting resolved that.

17 **THE COURT:** All right.

18 Ms. Tewksbury, is that the resolution attached to the Plea
19 Agreement?

20 **MS. TEWKSBURY:** That's correct. Of September 28,
21 2017, Your Honor.

22 **THE COURT:** Mr. Parker, is the Government fully
23 satisfied with the authorization?

24 **MR. PARKER:** Yes, Your Honor.

25 **THE COURT:** Okay. All right.

1 So, Mr. Murata, I understand that Elna would like to plead
2 guilty today to the antitrust offenses. In order for me to
3 decide whether I'm going to accept that plea, I need to ask you
4 a series of questions to make sure that you understand on
5 behalf of the company what the consequence of pleading guilty
6 is and also that it's being done freely and knowingly and
7 voluntarily by Elna.

8 Now, you've taken an oath to answer all my questions
9 truthfully. Please be aware that if you do not answer any of
10 the questions truthfully, both the company and you personally
11 may be charged with additional offenses above and beyond the
12 antitrust crime.

13 Do you understand that?

14 **MR. MURATA:** Yes.

15 **THE COURT:** All right. Now, if you need to ask your
16 lawyer any questions before we go forward or at any time, you
17 just let me know, and you two can have a private word. All
18 right?

19 **MR. MURATA:** Yes.

20 **THE COURT:** And as I go through the discussion with
21 you today, I will use the word "you." I am referring, of
22 course, not to you personally, Mr. Murata, but to Elna Company.
23 Do you understand that?

24 **MR. MURATA:** Yes.

25 **THE COURT:** All right. Now, have you had an

1 opportunity to see a written copy of the charge?

2 **MR. MURATA:** Yes.

3 **THE COURT:** Have you fully discussed that charge to
4 your full satisfaction with your attorney?

5 **MR. MURATA:** Yes.

6 **THE COURT:** All right.

7 Mr. Parker, would you state the charges against Elna and
8 the facts supporting the charge, please.

9 **MR. PARKER:** The Information with which Elna has been
10 charged charges the company with participating from at least as
11 early as August 2002 until in or about January 2014 in a
12 conspiracy to suppress and eliminate competition by fixing
13 prices and rigging bids of certain electrolytic capacitors in
14 the United States and elsewhere in violation of the Sherman
15 Antitrust Act, 15 U.S.C. Section 1.

16 Should this matter have gone to trial, the United States
17 would have presented evidence sufficient to prove the following
18 facts:

19 The relevant period is the period beginning at least as
20 early as August 2002 until in or about January 2014.

21 During the relevant period, the defendant was a
22 corporation organized and existing under the laws of Japan.

23 The defendant had its principal place of business in
24 Yokohama, Japan.

25 During the relevant period, the defendant manufactured

1 electrolytic capacitors and was charged in the sale -- I'm
2 sorry -- and was engaged in the sale of such electrolytic
3 capacitors in the United States and elsewhere.

4 Electrolytic capacitors are a major subcategory of
5 capacitors, fundamental components of electrical circuits used
6 primarily to store and regulate electrical current.

7 During the relevant period, anti-competitive conduct of
8 the defendant affected a volume of commerce of \$21.5 million in
9 shipments of electrolytic capacitors into the United States.

10 During the relevant period, the defendant, through its
11 officers and employees, including high-level personnel of the
12 defendant, participated in a conspiracy among manufacturers of
13 electrolytic capacitors, the primary purpose of which was to
14 fix prices and rig bids of certain electrolytic capacitors sold
15 in the United States and elsewhere.

16 In furtherance of the conspiracy, the defendant, through
17 its officers and employees, at times engaged in discussions and
18 attended meetings with representatives of other manufacturers
19 of electrolytic capacitors.

20 During certain of these discussions and meetings, the
21 conspirators agreed to fix the price and/or rig bids of certain
22 electrolytic capacitors to be sold in the United States and
23 elsewhere.

24 During the relevant period, the defendant and its
25 co-conspirators manufactured certain electrolytic capacitors

1 outside the United States and sold them in the United States or
2 for delivery to the United States.

3 During the relevant period, one or more of the conspirator
4 firms sold certain foreign manufactured electrolytic capacitors
5 outside the United States for incorporation into products that
6 were sold in or for delivery to the United States.

7 During the relevant period, certain electrolytic
8 capacitors sold by one or more of the conspirator firms
9 traveled in interstate commerce.

10 Acts in furtherance of this conspiracy were carried out
11 within the Northern District of California. Certain
12 electrolytic capacitors that were the subject of this
13 conspiracy were sold by one or more of the conspirators to
14 customers in the district.

15 Your Honor, should I also set forth the elements?

16 **THE COURT:** Not quite -- yes. Go ahead. That's fine.

17 **MR. PARKER:** The elements of the charged offense are
18 that, (a) the corporation described in the information existed
19 at or about the time alleged; (b) the defendant knowingly
20 became a member of the conspiracy; and (c) the conspiracy
21 described in the information either, one, substantially
22 affected interstate and U.S. import trade or commerce in
23 electrolytic capacitors or occurred within the flow of
24 interstate or U.S. import, trade or commerce in electrolytic
25 capacitors; or, two, had a direct substantial and reasonably

1 foreseeable effect on interstate or U.S. import, trade or
2 commerce in certain electrolytic capacitor-containing products,
3 and that effect in part gives rise to the charge in the
4 Information.

5 **THE COURT:** All right. Ms. Tewksbury, any objection
6 to the Government's statements?

7 **MS. TEWKSBURY:** No, Your Honor.

8 **THE COURT:** Okay. Mr. Murata, you have heard the
9 charge against Elna and the facts that the United States
10 believes supports that charge. Do you understand all of that?

11 **MR. MURATA:** Yes.

12 **THE COURT:** All right. Where is the signed Plea
13 Agreement? Can you hand the signature page, please.

14 Mr. Murata, you are being shown the signature page of the
15 Plea Agreement. Is that your signature on behalf of the
16 Defendant Elna?

17 **MR. MURATA:** Yes.

18 **THE COURT:** All right. And before you signed the Plea
19 Agreement on behalf of Elna, do you believe that Elna had a
20 full and complete understanding of each and every term in the
21 Plea Agreement?

22 **MR. MURATA:** Yes.

23 **THE COURT:** And do you believe Elna had a full
24 opportunity to discuss each and every term in the Plea
25 Agreement with its attorneys?

1 **MR. MURATA:** Yes.

2 **THE COURT:** And thinking about the advice and legal
3 representation that Elna has received in this case, has the
4 company been fully satisfied with its lawyers?

5 **MR. MURATA:** Yes.

6 **THE COURT:** Does that Plea Agreement that you signed
7 on behalf of Elna represent the company's full and complete
8 understanding with the Government, meaning there are no
9 unwritten or side deals that the company believes it has
10 reached? Is that right?

11 **MR. MURATA:** Yes.

12 **THE COURT:** Okay. Ms. Tewksbury, you have shared with
13 your client all of the Government's formal plea offers?

14 **MS. TEWKSBURY:** Yes, Your Honor, I did.

15 **THE COURT:** All right. Mr. Murata, has anybody
16 attempted in any way to force Elna or otherwise threatened Elna
17 in connection with pleading guilty today?

18 **MR. MURATA:** No.

19 **THE COURT:** Has anyone made any promises or assurances
20 to Elna of any kind, other than the terms of your Plea
21 Agreement, to try to convince it to plead guilty today?

22 **MR. MURATA:** No.

23 **THE COURT:** Is Elna pleading guilty today of its own
24 free will because it is, as a matter of fact, guilty of the
25 charged offense?

1 **MR. MURATA:** Yes.

2 **THE COURT:** All right. Now, let me tell you some of
3 the rights that the company will be giving up if I accept the
4 guilty plea.

5 The rights that Elna will be giving up include the right
6 to plead not guilty to any offense charged against it; the
7 right to a trial by a jury of 12 citizens of this district
8 selected at random who would presume the company's innocence
9 and to convict you, would all 12 have to agree that the
10 Government has proven the company's guilt beyond a reasonable
11 doubt; the right to appear at trial, to present evidence,
12 cross-examine witnesses and confront witnesses and compel the
13 attendance of witnesses; and the right, if a trial were to
14 happen, to be represented by counsel.

15 Do you understand that by pleading guilty today, if I
16 accept that plea, Elna will have given up all of those rights
17 related to a trial, and there will, in fact, be no trial, and
18 the company will have given up all of its rights to a trial.

19 Do you understand all of that?

20 **MR. MURATA:** Yes.

21 **THE COURT:** And do you also understand that your Plea
22 Agreement contains a waiver which says that you are giving up
23 your right to appeal or attack the sentence that I may end up
24 imposing in this case if that sentence is consistent with or
25 below the sentence recommended in the Plea Agreement,

1 regardless of how I determine that sentence, except that you
2 are retaining your right to perfect any legal remedies that you
3 may have on appeal or collateral attack based on any claim that
4 your lawyer was ineffective or on prosecutorial misconduct.

5 Do you understand all of that?

6 **MR. MURATA:** Yes.

7 **THE COURT:** Have you discussed these waivers with your
8 attorney?

9 **MR. MURATA:** Yes.

10 **THE COURT:** Are you making these waivers voluntarily
11 and freely today?

12 **MR. MURATA:** Yes.

13 **THE COURT:** All right. Mr. Parker, what are the
14 maximum possible penalties faced by the defendant and any
15 mandatory minimums, please.

16 **MR. PARKER:** The statutory maximum penalty that may be
17 imposed against Elna upon conviction for a violation of
18 Section 1 of the Sherman Antitrust Act is a fine in an amount
19 equal to the greatest of (a) \$100 million; (b) twice the gross
20 pecuniary gain the conspirators derived from the crime; or (c)
21 twice the gross pecuniary loss caused to the victims of the
22 crime by the conspirators.

23 In addition, the Court may impose a term of probation of
24 at least one year but not more than five years.

25 The Court may order Elna to pay restitution to the victims

1 of the offense, and the Court is required to order the
2 defendant to pay a \$400 special assessment upon conviction of
3 the charged crimes.

4 **THE COURT:** Any objection to that statement,
5 Ms. Tewksbury?

6 **MS. TEWKSBURY:** No, Your Honor.

7 **THE COURT:** Mr. Murata, do you understand that the
8 Government and your lawyer agree that the maximum possible
9 penalty provided by law for the offense that Elna intends to
10 plead guilty to today is a fine in an amount equal to the
11 greatest of \$100 million or twice the gross pecuniary gain
12 derived from the crime or twice the gross pecuniary loss caused
13 to the victims of the crime? Do you understand that?

14 **MR. MURATA:** Yes.

15 **THE COURT:** Do you understand that I may also impose
16 up to five years of probation, restitution to the victims of
17 the offense, and a \$400 mandatory special assessment?

18 **MR. MURATA:** Yes.

19 **THE COURT:** When it comes time to sentence Elna, do
20 you understand that I will consider something called the
21 Sentencing Guidelines, and I will calculate what is called a
22 Guidelines range, consider that range, and possible departures
23 from that range and other sentencing factors that Congress
24 mandates me to consider. Do you understand all of that?

25 **MR. MURATA:** Yes.

1 **THE COURT:** Do you understand that the Sentencing
2 Guidelines are purely advisory and do not bind the Court in any
3 way?

4 **MR. MURATA:** Yes.

5 **THE COURT:** Have you talked with your attorney about
6 how these advisory guidelines might apply to this case and to
7 Elna?

8 **MR. MURATA:** Yes.

9 **THE COURT:** All right.

10 Now, as I understand it, the Government has recommended --
11 has agreed to recommend as your sentence a criminal fine of
12 3.825 million without interest and payable in six installments
13 over a five-year time period as described in paragraph 9 of the
14 Plea Agreement; no order of restitution; a \$400 special
15 assessment; and a five-year term of probation.

16 Do you understand that those are merely recommendations
17 and that I may reject those recommendations and you will not
18 and Elna will not be permitted to withdraw its plea of guilty?
19 Do you understand that?

20 **MR. MURATA:** Yes.

21 **THE COURT:** All right. Do you also understand that
22 when I get to the point of deciding your sentence, I will have
23 some additional information available to me that I don't have
24 now, and that -- which means that any estimate or calculation
25 of what Elna's sentence might be, anything that your lawyer may

1 have told you about that or anybody else or anything you
2 personally or the company personally has come up with on its
3 own may not be accurate? In other words, the sentence I impose
4 may be different from anything you have in mind from whatever
5 source.

6 Do you understand that Elna will not be allowed to
7 withdraw its plea of guilty if, in fact, there is a difference
8 between what you expect and what I ultimately impose as the
9 sentence?

10 **MR. MURATA:** Yes.

11 **THE COURT:** All right. Now, Mr. Parker, what are the
12 essential terms of the Plea Agreement, please?

13 **MR. PARKER:** As the Court just described, this is a
14 Rule 11(c)(1)(B) agreement. The United States agrees that it
15 will recommend a fine of \$3.825 million payable in six
16 installments over five years without interest; the defendant
17 agrees that it will not present evidence or argument in
18 opposition to the Government's recommendation; a \$400 special
19 assessment; no order of restitution; a five-year term of
20 probation with certain jointly-recommended terms regarding a
21 corporate compliance program. A term is the requirement on the
22 defendant of full and truthful continuing cooperation.

23 Subject to such cooperation and with certain other
24 limitations, the Government promises that it will not bring
25 further charges against Elna or certain affiliated companies

1 and will not bring certain charges against current -- I'm
2 sorry -- will not bring further charges against current
3 employees, officers, and directors with the exception of one
4 individual who has already been charged.

5 **THE COURT:** All right. Any objections,
6 Ms. Tewksbury's, to the Government's statements?

7 **MS. TEWKSBURY:** No, Your Honor.

8 **THE COURT:** Mr. Murata, I'm getting to the point where
9 I'm going to ask for Elna's plea. Have you understood
10 everything that we've discussed today?

11 **MR. MURATA:** Yes.

12 **THE COURT:** Is there anything you want to talk about
13 with your lawyer before we go forward?

14 **MR. MURATA:** No. I don't have anything in particular.

15 **THE COURT:** All right. How then does Elna Company,
16 Ltd., plead to the offense charged in the Information dated
17 August 22, 2016, which alleges a violation of Section 1 of the
18 Sherman Antitrust Act, 15 United States Code Section 1, guilty
19 or not guilty?

20 **MR. MURATA:** Guilty.

21 **THE COURT:** All right. It's the Court's finding that
22 the defendant, Elna Company, Ltd., through its authorized
23 representative, is fully competent and capable of entering an
24 informed plea.

25 The defendant is aware of the nature and factual basis of

1 the charge against it and the consequences of pleading guilty,
2 and the company's's plea of guilty is a knowing and voluntary
3 plea supported by an independent basis in fact containing each
4 of the essential elements of the charged crime.

5 So I'm going to accept the plea and defendant, Elna
6 Company, Ltd., is now adjudged guilty of the charged offense.

7 So I am going to refer this to the Probation Office for a
8 Presentence Report on the organizational defendant to help me
9 decide what Elna's sentence will be.

10 Mr. Murata, you and the company will be asked to give
11 information by the Probation Office to put in that report. You
12 will have an opportunity to have your lawyer present on each
13 and every communication that the Probation Office wants to have
14 with Elna, and at the end of that process, you will get, along
15 with the Court and the United States, a copy, written copy, of
16 the proposed recommendations and findings with respect to
17 sentencing that the Probation Office puts together.

18 You will have an opportunity to review those with your
19 lawyer and then make any objections or comments to me that you
20 would like me to take into account when we get to the time of
21 sentencing.

22 Which will be -- same date, Ms. Clark?

23 **THE CLERK:** Yes.

24 **THE COURT:** What date was that?

25 **THE CLERK:** January 24th, 2018.

1 **THE COURT:** All right. So sentencing will be
2 January 24th, 2018 at 10:00 a.m.

3 Counsel, so two weeks before that date, submit your
4 Sentencing Memorandum. If you're perfectly fine with what
5 Probation has to say, that's fine, just let me know; otherwise,
6 make any comments or objections you would like. And then one
7 week after that, which is one week after the hearing, you can
8 react to each other's memorandum and say anything else you'd
9 like to say.

10 Trial is vacated. Did I set you for trial?

11 **MS. TEWKSBURY:** You did.

12 **THE COURT:** Trial is vacated. Anything else?

13 **MR. PARKER:** Nothing more, Your Honor.

14 **THE COURT:** How many criminal defendants are left?

15 **MR. PARKER:** Currently charged is Matsuo, which is on
16 for a hearing October 25th, and I think those are all the
17 corporations who are currently charged.

18 **THE COURT:** Yes. Just Matsuo? That's it?

19 **MR. PARKER:** And I'm sorry, Your Honor. And also
20 Nichicon is charged. And they have -- charged by Information.

21 **THE COURT:** Charged by Information?

22 **MR. PARKER:** They have been charged by Information.

23 **THE COURT:** So there are two remaining charged
24 criminal defendants; is that right?

25 **MR. PARKER:** That's correct, Your Honor.

1 **MS. TEWKSBURY:** Corporate criminal.

2 **MR. PARKER:** Corporate defendants. There are a number
3 of individuals that have been charged and they have not
4 appeared.

5 **THE COURT:** You're not likely to see them, I take it.

6 **MR. PARKER:** We'll try, Your Honor.

7 **THE COURT:** Anything else I can help you with?

8 **MS. TEWKSBURY:** No. Thank you, Your Honor.

9 **THE COURT:** Okay. Thanks very much.

10 (Proceedings adjourned at 4:08 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Wednesday, October 18, 2017

Pamela A. Batalo

Pamela A. Batalo, CSR No. 3593, RMR, FCRR
U.S. Court Reporter