

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE JAMES DONATO

IN RE CAPACITORS ANTITRUST ) No. C 14-3264 JD  
LITIGATION )  
\_\_\_\_\_) )  
IN RE CAPACITORS ANTITRUST ) No. MD 17-2801 JD  
LITIGATION (No. III) ) San Francisco, California  
Monday  
November 29, 2020  
9:00 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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## OPENING STATEMENT / SAVERI

1 Your Honor, may I proceed?

2 **THE COURT:** Yes.

3 So this will be our opening statements by the attorneys.

4 Go ahead, Mr. Saveri.

5 OPENING STATEMENT

6 **MR. SAVERI:** Late in the afternoon on February 4th,  
7 2003 Norio Kasuga exited the Shinagawa train station in Tokyo,  
8 Japan. Mr. Kasuga worked for Rubycon, a company that sold  
9 capacitors in the United States.

10 Mr. Kasuga and his boss Mr. Yamada had taken the train to  
11 Tokyo from its offices of Rubycon slightly outside Tokyo. They  
12 walked a few blocks to the Toko Hotel. The Toko Hotel is a  
13 non-descript hotel tucked away on a busy side street near the  
14 train station. It's the kind of hotel without a lobby or a  
15 restaurant. It's a non-descript place no one really pays  
16 attention to who comes and goes.

17 Mr. Kasuga went into the hotel and was directed to a  
18 conference room. There he met a number of Rubycon's  
19 competitors: Chemi-Con, Nichicon, ELNA, Sanyo, and Fujitsu.  
20 This was another price fixing meeting like the ones that had  
21 been going on for a number of years.

22 Mr. Kasuga had been told by his boss about a meeting that  
23 his boss Mr. Miyashita had attended a few days earlier in which  
24 Mr. Miyashita, who was one of the Rubycon executives chiefly  
25 responsible for overseas sales, including sales to the United

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1 States, had met with other capacitor manufacturers. And there  
2 at that meeting they had agreed to fix prices, including prices  
3 to American customers, like HP and Intel, as well as  
4 manufacturers that supplied American companies like Apple.

5 Mr. Kasuga was instructed to go to the meeting and execute  
6 the plan consistent with this understanding, and that's what he  
7 did. The meeting lasted two hours, and at the end of the  
8 meeting the members had agreed on specific steps to execute the  
9 plan.

10 Now, some version of that meeting and these communications  
11 happened dozens, if not hundreds or thousands, of times during  
12 the period from 2001 to 2013. I don't have time today and I'm  
13 not going to have time during the trial to go through each one  
14 of these meetings.

15 This case is about a conspiracy that lasted 12 years  
16 involving 22 companies and hundreds of people. For over  
17 12 years the defendants illegally conspired to reduce,  
18 eliminate, and prevent competition for capacitors.

19 Capacitors are electronic components that go into  
20 virtually every single electronic device; smartphones,  
21 televisions, you name it. Capacitors are everywhere around us  
22 all the time.

23 Whenever it was possible, the defendants agreed with each  
24 other to raise prices or to stop prices from going down. And  
25 when the market was forcing prices down, they agreed to work

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1 together to slow that down as much as possible. In so doing,  
2 the defendants broke the law and caused the plaintiffs, my  
3 clients, to pay higher prices than they should have.

4 Good afternoon. My name is Joseph Saveri, and I represent  
5 the plaintiffs in this case and I, along with my team, have the  
6 honor of representing eIQ, Chip-Tech, and the plaintiff class.  
7 The plaintiff class includes large and small purchasers of  
8 capacitors in the United States.

9 You will learn during the trial that the defendants agreed  
10 with one another to increase capacitor prices they charged to  
11 customers in the United States. They conspired to charge more  
12 for the products than they would have been able to charge if  
13 they had not conspired. The conspiracy lasted from 2002 to  
14 2013. It lasted 12 years.

15 We will prove that the defendants knew what they were  
16 doing was wrong and tried to conceal and hide their wrongdoing.

17 The plaintiffs are the purchasers of capacitors. They are  
18 American companies who all paid more than they would have if  
19 the defendants had acted legally.

20 You will meet two, Mr. Gene Krzywinski and Mr. Barry  
21 Lubman. Mr. Krzywinski has a business based in San Jose.  
22 Mr. Lubman runs a family electronics business in Brooklyn,  
23 New York. Mr. Lubman has a brother, who he cares for, when he  
24 started Chip-Tech many years ago. I know Mr. Lubman was very  
25 worried about coming across the country to this trial, but he

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1 thought coming to testify in this case was important and a  
2 privilege.

3 Who are the defendants? The defendants are the companies  
4 that manufactured and sold capacitors to purchasers in the  
5 United States. They are American and Japanese companies doing  
6 business in the United States and breaking the United States  
7 laws.

8 Some of the defendants are based in the United States and  
9 owned by foreign companies. Some of the defendants are based  
10 in Japan. They own and operate their business throughout the  
11 world, including China, Singapore, Japan, and other locations.  
12 Some of the defendants operate plants in Europe or in Mexico,  
13 but all of them did business in the United States. So  
14 capacitors in the United States are governed by the United  
15 States antitrust laws.

16 Virtually none of the executives who are involved and who  
17 broke the law will be here to provide any explanation for their  
18 wrongdoing. They will not come.

19 In this trial you're going to be asked if there was a  
20 conspiracy involving 22 companies and whether the defendants  
21 here were part of that conspiracy.

22 In the next few weeks we will prove to you that there was  
23 a conspiracy, that the conspiracy had the purpose and effect of  
24 raising prices for capacitors; that it lasted for several years  
25 and it included various types of capacitors, and that the

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1 conspiracy injured the plaintiffs.

2       How did the defendants go about conspiring? There were  
3 regularly scheduled monthly meetings. At the monthly meetings,  
4 the conspirators tried to reach a consensus about raising  
5 prices when they could, maintaining prices as much as possible,  
6 or to team up against their customers to prevent prices from  
7 going down. This, you will learn, is how they avoided  
8 competition. This is how they conspired.

9       Now, the monthly meetings were regular and they were well  
10 organized. The companies would all fill out forms containing  
11 highly sensitive and confidential business information provided  
12 in advance of the meetings, including their recent sales  
13 figures and their future plans for selling capacitors.

14       The meetings at times would also address strategies for  
15 dealing with particular customers, like Apple or HP or Intel or  
16 Sony, and how to keep their prices high.

17       Who actually went to these meetings? Now, the defendant  
18 companies are large organizations with bosses and executives  
19 and managers who make the most important decisions for the  
20 companies, but they also include lower-level salespeople and  
21 other employees to work in the offices all over the world,  
22 including in California. These employees acted like  
23 lieutenants. Now, companies act through these people, and both  
24 senior and junior meetings [sic] went to the meetings and did  
25 the things necessary to further the conspiracy's goals.

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1           In this case, as you learned and as you were instructed,  
2 there were numerous guilty pleas where the defendants pleaded  
3 guilty to criminal violations of the United States antitrust  
4 laws. That's criminal liability. It does nothing to  
5 compensate the victims. That's up to you.

6           In each guilty plea the defendants stood in criminal court  
7 and admitted they committed acts in furtherance of the  
8 conspiracy, acts that occurred here in the Northern District of  
9 California, where we are today; that there was a capacitor  
10 price fixing conspiracy and that each participated in that  
11 conspiracy.

12           These guilty pleas mean that they were charged with a  
13 federal crime, they admitted their guilt, and paid a fine to  
14 the U.S. Government.

15           Two of the executives involved, including one who is an  
16 employee of the defendants sitting here today, also pled guilty  
17 to criminal price fixing charges and went to prison.

18           A number of the other individuals involved fled from the  
19 United States and refused to come to the United States to  
20 answer for their wrongdoing. That is still true today, and you  
21 will see it in this trial.

22           But here in this case you will be asked to determine their  
23 responsibility and the responsibility for the damages that they  
24 caused to purchasers in the United States.

25           Next slide please.



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1 I just showed you which companies and which people  
2 admitted to price fixing. This shows you the companies that  
3 participated in the 12-year conspiracy.

4 In this case, two of the corporate organizations that  
5 participated in the conspiracy are defendants. Those are the  
6 two in the middle of the screen. Those companies are Nippon  
7 Chemi-Con, together with its U.S. entity United Chemi-Con, and  
8 Matsuo. They, along with the other conspirators, participated  
9 in the conspiracy.

10 But we start from the basic fact, which you can see from  
11 the records of the criminal case, that there was a conspiracy  
12 here, and that ten companies we sued have admitted they were  
13 involved in the conspiracy.

14 What was the goal of this agreement to fix prices?  
15 Instead of competing with one another, the understanding was  
16 that they would coordinate with each other so that they would  
17 not compete. They wanted to raise prices when they could.

18 And what happened when their customers asked for lower  
19 prices or when the economy went down? Instead of competing  
20 with one another, which would have lowered prices, they agreed  
21 to refuse lower prices and agreed, a recent understanding, to  
22 raise prices or to keep the prices the same, at the same level.  
23 And they agreed that they would conceal it, and if asked, gave  
24 up -- give made-up stories or rationales for what they were  
25 doing.

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1           How did the plaintiffs suffer because of the conspiracy?  
2           The plaintiffs are the purchasers of capacitors from the  
3           defendants. They paid too much. How much? Because of the  
4           company's price fixing, the class members paid \$427 million  
5           more than they should have, more than they would have paid if  
6           the defendants did not break the law and fix prices.

7           Now, defendants sold more than \$5 billion in capacitors  
8           over 12 years. And if we compare what the customers would have  
9           paid without the conspiracy and what they did pay because of  
10          the conspiracy, the difference, the difference is \$427 million.

11          We're here to ask you to make the defendants give the  
12          class members their money back. We're asking you to do that by  
13          awarding the class a total of \$427 million. That is why we're  
14          here in the civil case, to refund the class members the money  
15          that they were overcharged.

16          Before we go any further, let me explain what a capacitor  
17          is. Capacitors are electronic components that are in every  
18          electronic device. They hold an electronic charge. So they  
19          have been part of electrical circuitry for at least 100 years.  
20          All electronics today have electric circuits and all electric  
21          circuits have capacitors.

22          Now, electricity runs through these circuits and the  
23          capacitors make sure that the electricity that runs through  
24          these circuits is consistent. If the electricity is not  
25          consistent, the electronics will not operate properly. They

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1 may not function, stop working, or damage other parts of the  
2 product.

3 A computer or a smartphone contains hundreds of  
4 capacitors. So do televisions and video game controllers and  
5 so do cars. Capacitors are even in medical devices that save  
6 people's lives. The conspiracy in this case involved aluminum,  
7 film and tantalum capacitors. Aluminum and tantalum capacitors  
8 are together called electrolytic capacitors.

9 Some companies make one type of capacitor but not the  
10 others. Some made two. Some made all three. Every single  
11 defendant that participated in the conspiracy made one or more  
12 of these capacitors.

13 Now, there's another type of capacitor called a ceramic  
14 capacitor, and in certain limited ways ceramic capacitors can  
15 be a substitute for aluminum, film or tantalum capacitors.

16 Now, ceramic capacitors were first introduced in the  
17 1990's. And when ceramic capacitors were first introduced, the  
18 conspirators got together to discuss how competition from  
19 ceramic capacitors might reduce the prices of aluminum, film,  
20 and tantalum capacitors. And so the popularity of ceramic  
21 capacitors gave the defendants in this case another reason to  
22 conspire.

23 Competition from ceramic capacitors made them eager to get  
24 together and risk violating the law to stop the -- to shore up  
25 their profits, to shore up their profits in an increasing

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1 market with ceramic capacitors.

2 Now, I showed you a minute ago a chart which showed who  
3 was involved in the conspiracy.

4 Now, "conspiracy" is another word for agreement or  
5 understanding to act together to achieve an illegal purpose.  
6 It's a kind of partnership between persons or corporations to  
7 do something against the law.

8 I will generally use the word "conspiracy," but that's  
9 what I mean. And we will prove to you that these companies  
10 formed and joined a conspiracy to control capacitor prices my  
11 clients purchased.

12 As I mentioned a few minutes ago, the first proof of the  
13 conspiracy that we will show you is what the defendants  
14 admitted when they pled guilty. The judge just instructed you  
15 as to this.

16 Now, the defendants are going to tell you that the  
17 conspiracy was limited or narrow. Well, the judge just  
18 instructed you what the defendants say is not true.

19 So we're clear. Let me -- let me show you -- next,  
20 please.

21 Let me show you a portion of what was read to you. This  
22 is the portion that refers to NCC. These are some of the key  
23 parts regarding -- key parts from NCC regarding NCC's criminal  
24 conviction for violating the U.S. antitrust laws. NCC is  
25 sitting here.

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1 It says (as read):

2 During the relevant period, NCC, through its  
3 officers and employees, including high-level personnel  
4 of NCC, participated in a conspiracy among  
5 manufacturers of electrolytic capacitors" --  
6 They admit the company, through its high-level personnel,  
7 participated in the conspiracy.

8 And then it says (as read):

9 -- "the primary purpose of which was to fix  
10 prices and rig bids of certain electrolytic capacitors  
11 manufactured outside of the United States and sold in  
12 the United States and elsewhere."

13 That's what they did, and that's why we're here today.

14 And the instruction for Matsuo is virtually the same.

15 And, again, these are not the only two. As you heard, ten  
16 companies admitted they fixed prices and violated the United  
17 States antitrust laws.

18 And you will learn from the evidence in the case that the  
19 defendants met and communicated with each other many times.  
20 There are hundreds and hundreds of these communications and  
21 meetings. There are contemporaneous records of the meetings,  
22 the materials exchanged in preparation of the meetings, the  
23 notes of the meetings and other communications, and documents  
24 confirming who did what as a result of these communications.

25 From these records, there is no doubt that the

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1 communications took place in person and via email or by  
2 telephone. Some occurred in the United States, even here in  
3 San Francisco. Many of the meetings took place in Asia,  
4 including Japan, Singapore, Hong Kong and Taiwan, because  
5 that's where the persons involved in the conspiracies -- in the  
6 conspiracy were located.

7 Each of the companies that pled guilty -- stop that.

8 Each of the companies pleading guilty had significant  
9 operations in Asia. All the defendants did business in the  
10 United States and are bound by U.S. laws.

11 You will learn that these communications included meetings  
12 that were attended by the CEOs. They were attended by the  
13 managers, salesmen of the Japanese-based companies. The people  
14 who went to these meetings went because it was part of their  
15 job, part of their assignment. They represented their  
16 companies at these meetings. The companies paid for the trips.

17 And when these employees reported to the other  
18 participants in the conspiracy or reached agreements with them,  
19 they were doing so on behalf of the companies they represented.  
20 After all, it takes hundreds of people, hundreds of people to  
21 implement a conspiracy that lasted 12 years and involved  
22 22 companies. And we are here today because of two: Chemi-Con  
23 and Matsuo.

24 So what I'm showing you is a video of a list of meetings  
25 and other communications between the defendants. And where did

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1 we get these communications from? The defendants produced  
2 millions of documents during the span of this litigation. Some  
3 were in English. Many were in Japanese. We looked through  
4 these documents and identified all the instances of  
5 communication between the defendants.

6 You can stop.

7 These are the only meetings and communications that we  
8 know about. Of course, there may have been other contacts  
9 which we don't know about because the records of them were  
10 destroyed.

11 Each line is an instance of communication. Some are  
12 in-person meetings of groups of defendants. Some were  
13 one-on-one meetings in coffee shops or bars or other places.  
14 Some are telephone calls. Some are emails. We know each one  
15 of them happened because we found a record of it.

16 This also shows the date and which companies were there.  
17 And what's the red? It's a meeting where one of the companies  
18 that pled guilty attended. This is a lot. They happened  
19 continuously for years.

20 And by communicating with other members, the participants  
21 actively participated in the conspiracy. They demonstrated  
22 their commitment to its common goal and purposes, but these  
23 communications occurred not only in the monthly meetings but in  
24 more discrete ways. Sometimes they met in bars.

25 The Japanese have a word "izakaya" for the kind of pub or

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1 restaurant where Japanese businessmen go after work to eat and  
2 drink and pal around. They happened in coffee shops or on the  
3 telephone or on the golf course.

4 But the defendants did agree -- you can take this down.

5 The defendants did agree, as attendance at regularly  
6 monthly meetings shows, to meet and exchange information about  
7 capacitors, and the information exchanged was confidential and  
8 not public.

9 And when the conspirators agreed to provide this  
10 information, they did it knowing from years of participation in  
11 the conspiracy that when they provided information, that  
12 information would be provided in return; that it would go both  
13 ways. In other words, when the companies gave information to  
14 their competitors, they knew that their competitors would  
15 provide similar information back to them. That was part of the  
16 deal.

17 And from the type of information exchanged, you will know  
18 that there was an agreement and there was an understanding.  
19 There was something of value being exchanged and something of  
20 value being received. That shows a meeting of the minds.

21 Now, one key way you will see, as I mentioned, is the  
22 competitors getting together to provide each other and share  
23 their confidential information. Competitors do not give up  
24 that sort of information unless they know they were going to  
25 get some in return. There's no give without get.



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1           You will learn that one benefit of participating in the  
2 conspiracy was receiving information in exchange for that they  
3 provided.

4           Some of the group meetings in Japan and Asia were attended  
5 by companies that manufactured mostly aluminum and tantalum  
6 capacitors, but also film capacitors. Other meetings were held  
7 by companies that made mostly film capacitors, but also  
8 aluminum capacitors. But all of these discussions concerned  
9 capacitors sold in the United States. Other meetings occurred  
10 between companies that made all three types.

11           You will learn that even though different representatives  
12 attended different meetings and that some companies went to  
13 some meetings and not the others, or that discussions of the  
14 meetings changed depending on what was going on in the  
15 marketplace. They shared many of the same features and  
16 subjects.

17           You will learn that discussions focused on large companies  
18 who bought huge capacitors -- huge quantities of capacitors  
19 from the defendants. Some you will recognize, like Intel or  
20 HP, but also large customers or companies that manufactured for  
21 large American companies, like Apple. These companies had  
22 their factories in Japan, but also in Taiwan or Singapore or  
23 other places in Asia.

24           Now, as you will learn, during the 12-year period of the  
25 conspiracy, there were about 1,800 capacitor purchasers in the

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1 United States, and it was impractical and unnecessary for the  
2 defendants to have a discussion about each and every one of  
3 them. So the conspirators focused on the big companies.

4 They did that because the big customers were usually the  
5 strongest and the largest. And because they were the strongest  
6 and the largest, they could try to use that fact -- use the  
7 fact that they made huge purchases to try to negotiate a lower  
8 price, the best price in the purchaser's point of view. And  
9 defendants were able to agree with one another with respect to  
10 them, and the prices for the smaller companies followed.

11 So that's why you will learn that the discussions of the  
12 manufacturers, the conspirators, focused on the large  
13 customers.

14 Now, I showed you the instruction regarding Nippon  
15 Chemi-Con a few moments ago. I want to talk about Nippon  
16 Chemi-Con. NCC is a big Japanese company with worldwide  
17 operations. It is a billion-dollar public company. Its stock  
18 is traded on the Tokyo Stock Exchange.

19 Sometimes you will see that they call themselves  
20 Chemi-con, as you will see from the documents in this case.  
21 Sometimes you will see the abbreviation NCC. "N" stands for  
22 Nippon, which is the Japanese word for Japan. It comes from  
23 the Japanese "where the sun originates," and that's why some  
24 people call Japan "the land of the rising sun."

25 Now, Chemi-con is the largest capacitor company in the

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1 world. Their headquarters are in Tokyo, Japan, but they also  
2 had and have operations in the United States and in Europe.

3 Chemi-con makes all three types of capacitors: Aluminum,  
4 film and tantalum. Its executives and other representatives  
5 attended meetings to exchange information about each of the  
6 three types of capacitors, and they were one of the chief  
7 organizers of the conspiracy. They were the biggest and the  
8 most important. The conspiracy could not have happened without  
9 them.

10 You will also learn that they were ring leaders of the  
11 conspiracy. They were enforcers keeping others in line. They  
12 enforced the cartel agreements. They bullied and intimidated  
13 those who resisted or refused to participate in some cartel  
14 activities.

15 Chemi-con sold capacitors in the United States through  
16 their United States company, United Chemi-Con. They replaced  
17 the Nippon, for Japan, with the "U," for USA, for the American  
18 version of the company.

19 Now, NCC fully owns UCC and calls all the shots. UCC sold  
20 capacitors manufactured by NCC in Asia to U.S. customers. They  
21 also sold capacitors that UCC made at their factory in  
22 North Carolina.

23 UCC is what we call a wholly-owned subsidiary of NCC. NCC  
24 owns UCC totally. Everything. Lock, stock and barrel. And  
25 the money UCC makes NCC keeps for itself. That's what

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1 "wholly-owned subsidiary" means.

2 That's why when we filed this lawsuit, we brought the case  
3 against the company in Japan, but also the company in the  
4 United States through which the Japanese executed their plans  
5 in the United States.

6 The executives, the bosses at NCC, were Japanese. Many of  
7 them held senior positions at both the Japanese company, NCC,  
8 and the American company, UCC, but the two companies operated  
9 together in an integrated fashion as one unit run from Japan or  
10 by Japanese sent to the United States.

11 You will see emails in this case from a man named Noriaki  
12 Kakizaki. His photo is on the screen. Mr. Kakizaki was a  
13 long-time executive with the Chemi-con organization. He worked  
14 for the company based in Japan, NCC, the company in the United  
15 States, UCC, and he also ran ECC, the European company.

16 Next slide, please.

17 Now, Mr. Kakizaki spent years at the company rising up  
18 through its ranks. After Hong Kong and Singapore, he went --  
19 and Europe, he went back to Illinois, where he was the head of  
20 UCC in the United States. And afterwards he went back to  
21 Japan, where he was a member of the Board of Directors of the  
22 company and reported directly to the CEO of NCC, the number one  
23 guy.

24 Next slide, please.

25 All together the company was organized and run as a global

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1 enterprise, run by the Japanese bosses. The different  
2 companies communicated with each other frequently. In  
3 particular, they communicated with each other about how they  
4 could raise prices and charge their customers more. They let  
5 each other know about their communications with the other  
6 members of the conspiracy. Mr. Kakizaki was one of those  
7 chiefly responsible.

8 And remember the guilty plea. It says NCC did this  
9 through its top executives. And as you will learn, when  
10 Mr. Kakizaki was in charge of UCC in the United States, he made  
11 decisions regarding prices based on what he knew and learned  
12 about what meetings were happening in Japan with other members  
13 of the conspiracy.

14 UCC was a company run by Japanese bosses which employed  
15 Americans as administrative staff and lower-level personnel.  
16 The Americans were not insiders. They had little management  
17 authority and, indeed, were likely only told a portion of the  
18 truth.

19 Now, the Americans may testify that they had no idea that  
20 there was a conspiracy, but the Americans weren't in charge of  
21 the business. UCC was a Japanese-run business. They might try  
22 to tell you that UCC was separate, but the evidence will show  
23 that's not true; and when you hear that evidence, you should  
24 consider whether they're telling you the truth.

25 Mr. Kakizaki is a key witness, and if he were here, you

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1 could judge with your own ears and with your own eyes whether  
2 he's telling you the truth or not; but it doesn't appear that  
3 he's going to show up, or that NCC or UCC will put up any  
4 witnesses who participated in the conspiracy and can tell you  
5 what they did or try to explain it.

6 NCC won't take responsibility itself and will instead put  
7 up some of the Americans, but the evidence will show that  
8 Mr. Kakizaki and many others were in direct contact with those  
9 who were participating in the conspiracy meetings, and Kakizaki  
10 had his own contacts with other chief executives.

11 Let me show you another example of a meeting. This was  
12 written by Norio Kasuga, the sales representative I talked to  
13 you about, who will testify at the trial.

14 And as I showed you, Rubycon was one of the companies who  
15 pled guilty. And I'm showing you the Japanese version of the  
16 document. It was written in Japanese.

17 And now let me show you the English.

18 Let me just go back for a second. Let me point out a  
19 couple things. First, this is who attended the meetings.  
20 "C" is Chemi-con. "E" is ELNA. "N" is Nichicon. "S" is  
21 Sanyo. "F" is Fujitsu. "R" is Rubycon. "M" is Matsushita,  
22 which is what Panasonic was called at the time.

23 Next slide, please.

24 This is a meeting of the working-level people involved in  
25 the conspiracy and when they met, one of the targets of the

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1 customers was a company called Foxconn. That's Company F.  
2 Foxconn is a company that manufactures products for Apple and  
3 other companies in the United States.

4 Another target was Company I, which is Intel, based in  
5 Santa Clara. You will see that the meeting also referred to  
6 HP, Hewlett Packard, Dell and IBM. And these are the large  
7 customers I described a few minutes ago.

8 And so at this time new contracts were coming up. And in  
9 the past the customers had driven a hard bargain, and the  
10 capacitor companies had competed with one another and prices  
11 went down, and the companies wanted to prevent that.

12 So what did they do? This summarizes the agreements. It  
13 says that the parties agree not to -- next page, please. Let's  
14 just skip.

15 It says that the parties agreed not to negotiate any  
16 prices less than 2 percent lower than the current price for all  
17 customers big and small.

18 This means when a company like Foxconn set to lower  
19 prices, the defendants agreed that they would fix the discount  
20 at a maximum of 2 percent. This is an agreement to fix,  
21 maintain and stabilize prices. It violates the U.S. antitrust  
22 laws. And it says "All companies agreed." If that's not price  
23 fixing, I don't know what is.

24 And, also, at this meeting Rubycon made a proposal for  
25 fixing the price of a new product they would bring into the

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1 market, and they talked about the prices that the companies  
2 would sell at and the plan that Rubycon had.

3 And, again, Mr. Kasuga wrote (as read):

4 "All companies agreed to Rubycon's plan."

5 Again, this is clear as day.

6 And meetings like this happened again and again and  
7 continued throughout the entire period of the conspiracy.

8 And I only have a limited time right now, but at the  
9 meetings the companies also discussed other products, and let  
10 me show you that.

11 This is an example of the pre-printed form that defendants  
12 exchanged at their meetings. This is the one for this meeting  
13 from Chemi-con, and it happened in December of 2012. You can  
14 see who else was at the meeting.

15 Go back.

16 Chemi-con, ELNA, Matsuo, NEC, Rubycon, and Holy Stone.

17 And there was a discussion of prices. And they -- at this  
18 meeting they not only -- they reported their past quantities,  
19 but also their amount, which is revenue. From that you can  
20 easily calculate the prices.

21 And as you can see, the meeting was in December of 2012.  
22 And so they reported information for January and February in  
23 the second half of -- well, they reported information for  
24 January and February. That's future. So they are disclosing  
25 what their future plans are for sales and for prices.



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1 Now, there were other meetings involving the U.S.-based  
2 companies. Many of those meetings happened in Japan as well,  
3 but they also happened throughout the world, including in  
4 San Francisco.

5 The meetings between AVX and KEMET, which were based in  
6 the United States, happened in the United States and in Mexico,  
7 but also in Asia and Europe. Because the companies were  
8 largely American, they took place in English. And also AVX met  
9 with employees of the Japanese companies in Japan, so places  
10 like London or Paris.

11 There were also meetings in Taiwan, where KEMET and many  
12 of the Japanese-based companies had offices, and the companies  
13 frequently met there and discussed prices.

14 Nonetheless, information from AVX and KEMET was discussed  
15 and exchanged in Japan with the Japanese. How did that happen?  
16 Some companies served as a link between the Americans and the  
17 Japanese.

18 NEC TOKIN was a Japanese company that had a strong  
19 relationship with AVX and KEMET. And there was an individual  
20 at NEC TOKIN, his name was Mr. Date, and he took information  
21 from the Americas back to the Japanese for many years. He also  
22 communicated information from the Japanese meetings to AVX and  
23 KEMET.

24 Now, Mr. Date won't come to the United States. He won't  
25 testify. But you'll hear from Mr. Sato, who worked for

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1 Mr. Date for a number of years, and he will testify that AVX  
2 contacted NEC TOKIN to get NEC TOKIN to raise prices.

3 Next slide, please.

4 Now, AVX had an executive named William King, who went to  
5 Japan sometime, and he went to a meeting in Japan with  
6 Mr. Date.

7 Next slide, please.

8 That's Mr. King and a representative from Hitachi. And  
9 then when he went back to the company, AVX in South Carolina  
10 where he worked, he reported on the meeting. And what did he  
11 call this meeting? The Tantalum Mafia.

12 Now, "Mafia" is another word for an organized  
13 organization, group, to commit a crime. Imagine being part of  
14 an organization that calls itself the Tantalum Mafia.

15 So -- you can put that down.

16 So the last step will be our proof of the damages caused.  
17 You will hear from an expert named Dr. Jim McClave, and he's an  
18 expert statistician and, in particular, the kind of statistics  
19 called econometrics. Econometrics is necessary to calculate  
20 damages in an antitrust case.

21 Now, Dr. McClave is an expert statistician, and he  
22 literally wrote the book on this subject. And using his  
23 expertise in statistics and econometrics, Dr. McClave analyzed  
24 the data showing each capacitor's sales transaction in the  
25 United States that was available from the defendants. He used

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1 it to determine that the defendants elevated prices of  
2 capacitors and he determined how much they charged as a result.

3 Dr. McClave will show you that the defendants elevated the  
4 prices for aluminum, film and tantalum capacitors for 12 years.  
5 He did that based on a review of 7 million transactions which  
6 showed who sold what capacitors to whom and at what price.

7 Now, defendants say he just put everything in a blender  
8 and mixed it. He didn't put anything in a blender. That's  
9 ridiculous. He took all the data from the defendants and  
10 analyzed it.

11 As a statistician, he built something called a multiple  
12 regression analysis, which is what statisticians do. And with  
13 this model, which he checked and double checked, he found that  
14 the conspiracy raised capacitor prices higher than they would  
15 have been if the conspiracy hadn't happened.

16 Dr. McClave will show you and explain to you how he built  
17 his model and how he tested his model. And after building his  
18 model and testing it for accuracy, Dr. McClave measured the  
19 amount that some of my clients who purchased the capacitors  
20 from defendants were overcharged, and he calculated for each  
21 type of capacitor for aluminum, film, and tantalum.

22 Now, you may hear from the other side's experts, and they  
23 criticize Dr. McClave; but Dr. McClave listened to that  
24 criticism, and he tested his analysis based on that criticism.  
25 And when he did it, that test confirmed his analysis yet again.

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1           You will learn, as I mentioned a few minutes ago, that my  
2 clients purchased billions of dollars of capacitors during the  
3 class period, the period of time of the conspiracy.

4           You will also learn the calculations that Dr. McClave did.  
5 And there was some complexity to the statistics, but the math  
6 is quite simple really.

7           First he figured out what the defendants charged for the  
8 capacitors during the period of the conspiracy, and then he  
9 figured out what the price would have been had there not been a  
10 conspiracy. And when you compare those two and you calculate  
11 the difference, that shows you how much my clients were  
12 overcharged, how much they paid if there had not been a  
13 conspiracy.

14           **THE COURT:** Mr. Saveri, you're running into overtime.

15           **MR. SAVERI:** I'm just winding up.

16           **THE COURT:** You can wrap it up, but be quick, please.

17           **MR. SAVERI:** If you would put up the last slide,  
18 please.

19           And this shows that calculation. When you add them all up  
20 for aluminum, film and tantalum, you get \$427 million -- excuse  
21 me, \$427,530,613. That's the amount that the defendants  
22 overcharged their customers during the 12-year period of the  
23 conspiracy, and we will prove to you that the defendants  
24 overcharged plaintiffs that amount.

25           Ladies and gentlemen, thank you for your time. We are

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1 going to prove that the defendants, together with their  
2 co-conspirators, conspired to fix the prices of capacitors in  
3 the United States. They did that by agreeing to exchange  
4 confidential information regarding prices. They did that so  
5 that other companies would know their intentions. They did it  
6 to coordinate their activities and to avoid companies reducing  
7 prices. They did it to keep their profits high and make sure  
8 that customers paid more than they should have, and plaintiffs'  
9 money damages will fix that consequence of the harm to the  
10 plaintiffs.

11 At the end of the trial --

12 **THE COURT:** Mr. Saveri, 30 seconds, please.

13 **MR. SAVERI:** At the end of the case, I will have  
14 another opportunity to speak to you, and at the time we are  
15 going to ask you for a verdict on behalf of plaintiffs.  
16 427 million are warranted in this case, and we will ask you for  
17 a verdict in that amount.

18 Thank you very much.

19 **THE COURT:** Okay. Stretch for a minute, and then  
20 we'll hear from the defendants.

21 (Brief pause.)

22 **THE COURT:** Who is starting for the defendants?

23 **MR. FINZI:** That's me, Your Honor, NCC. May I  
24 proceed, Your Honor?

25 **THE COURT:** Of course, please.

CERTIFICATE OF REPORTER

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

*Debra L. Pas*

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Debra L. Pas, CSR 11916, CRR, RMR, RPR

Monday, November 29, 2021