

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JAMES DONATO

IN RE: CAPACITORS ANTITRUST) No. MD 17-2801
LITIGATION,) No. C 14-3264 JD
) San Francisco, California
) Tuesday
) March 3, 2020
) 9:00 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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1 off.

2 **OPENING STATEMENT**

3 **MR. SAVERI:** For over 12 years, the defendants
4 illegally conspired to reduce and eliminate and prevent
5 competition. They agreed with each other that they would raise
6 prices when they could. They agreed with each other to keep
7 prices as high as possible when they could. And when prices
8 were going down, they worked together to prevent that. In
9 doing so, the defendants broke the law and caused the
10 plaintiffs to pay higher prices than they otherwise would have.

11 Good morning, members of the jury. My name is Joseph
12 Saveri, and I have the honor of representing the plaintiffs in
13 this case.

14 The plaintiffs in the case are eIQ and Chip-Tech. They
15 represent a class, a class of large and small purchasers of
16 capacitors in the United States. You will learn during this
17 trial that the defendants agreed with one another to elevate
18 prices of capacitors in the United States.

19 And let me use the easel for a second.

20 (Brief pause.)

21 The defendants conspired to charge more for their products
22 than they would have been able to charge if there were not the
23 conspiracy, if there had not been honest competition.

24 The conspiracy lasted for 12 years. The conspiracy lasted
25 from 2002 through 2013.

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1 We will prove that the defendants knew what they were
2 doing was wrong and tried to conceal and hide it. These
3 companies cheated, not competed.

4 The plaintiffs in this case are the purchasers --
5 purchasers of three different types of capacitors you heard
6 about in the instructions.

7 The three different types of capacitors that are at issue
8 in this case and the subject of the conspiracy are aluminum,
9 film, and tantalum capacitors.

10 Now, the plaintiffs in this case are the purchasers of
11 capacitors, distributors and manufacturers who paid more for
12 the capacitors than they should have if there had not been a
13 conspiracy and the defendants had -- had acted legally.

14 The defendants are the companies that manufactured and
15 sold the capacitors to purchasers in the United States.

16 The defendants are the United States and Japanese
17 businesses doing business in the United States and breaking the
18 United States antitrust laws.

19 Some of the defendants are based in the United States.
20 Some of the defendants are based in the United States and owned
21 by Japanese companies. Some of the defendants are Japanese
22 companies that operate in the United States through companies
23 they own. Some of the defendants operate facilities in Asia,
24 in China, in Singapore, in Hong Kong. Some of the defendants
25 operate factories in Europe, in Germany, and some in Mexico.

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1 But all of them did business in the United States and sold
2 capacitors in the United States and are governed by United
3 States antitrust laws.

4 How did the defendants, the conspirators, violate the law?
5 By communicating with each other over the phone, via email, by
6 telephone, and in in-person meetings.

7 First, they agreed generally to limit competition on
8 prices, ensuring that their profits would be higher and making
9 sure that their customers paid too much. Then they regularly
10 met together and spoke on the phone and communicated by email.

11 The other key ingredient or part of the conspiracy was the
12 exchange of information. They did this to maintain their
13 general agreement on prices and to agree on prices for
14 particular customers -- for particular types of customers and
15 for particular parts of the world.

16 Sometimes it was the presidents of these companies that
17 met together. Sometimes it was their lower-level staff or
18 their assistants who met together carrying out the agreements
19 that their presidents made. There were many meetings and
20 communications where, as agreed, the conspirators agreed to
21 provide each other with confidential information regarding
22 their businesses, their plans, and the prices that they
23 expected to charge.

24 So we will prove in this case, one, that there was a
25 conspiracy.

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1 We will show you the key purposes and goals of the
2 conspiracy.

3 We will prove to you the scope of the conspiracy.

4 And we will prove to you the effects of the conspiracy;
5 that is, the amount of money that my clients paid that they
6 shouldn't have had to pay.

7 Now, some of the communications in this case happened
8 regularly every month. These occurred at monthly meetings
9 where the conspirators tried to reach general understandings
10 about raising prices when they could, maintaining them as much
11 as possible when they were staying the same, and doing what
12 they could to prevent prices from decreasing when the market
13 was going down.

14 Now, these monthly meetings were regular and well
15 organized. Before the meetings, the companies would all fill
16 out forms in a pre-agreed form. And these forms would contain
17 highly confidential and sensitive information. It would
18 include information about recent sales figures but also their
19 future plans for selling capacitors.

20 Sometimes the meetings would address strategies for
21 pricing on particular products, for particular types of
22 customers, and for particular customers also.

23 And as our experts will explain in this case, this is the
24 kind of information that companies that were competing with one
25 another would not exchange because they wouldn't want to give

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1 their rival, the companies that they were competing against, an
2 unfair advantage -- wouldn't want to give their competitors an
3 advantage.

4 But this is also the type of information that companies
5 that were working together, that were colluding, they would
6 share that kind of information because it would allow them to
7 monitor each other to make sure that the agreements that they
8 reached were being followed. And this was a way of avoiding
9 future competition with respect to prices.

10 So let me introduce to you some of the plaintiffs that are
11 here today. They are the class representatives, as the judge
12 talked about a few minutes ago.

13 The first is Gene Krzywinski.

14 Mr. Krzywinski, please stand up. Thank you.

15 Now, Mr. Krzywinski is the founder and CEO of a company
16 called eIQ. eIQ is a start-up technology company based in
17 San Jose, California. Currently, it has seven employees.

18 Now Mr. Krzywinski founded eIQ in 2002. And the primary
19 product of eIQ is something called a vBoost, which is used to
20 convert power generated by solar panels. This is a vBoost,
21 which Mr. Krzywinski is very proud of, you will hear.

22 As you will hear, as with most electrical products,
23 capacitors are crucial to their operation. Without capacitors,
24 a vBoost would not work.

25 Now eIQ bought capacitors from NCC through its U.S. sales

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1 subsidiary, UCC, for use in the vBoost.

2 Mr. Krzywinski will testify that the capacitor purchased
3 from NCC was one of the single most expensive components used
4 to manufacture the vBoost.

5 You will also hear from Barry Lubman, the vice president
6 and COO of Pride Electronics, whose sister company, Chip-Tech,
7 filed the first lawsuit in this case.

8 Now, Mr. Lubman's company bought all sorts of capacitors.
9 They bought them directly from the defendants during the
10 2002-to-2013 period. Pride was originally founded in 1965.
11 And for decades, it and its sister company has sold capacitors
12 and other electric components to various types of industry,
13 like the military for automobiles, for medical devices. They
14 bought millions of dollars of capacitors from the defendants in
15 this case.

16 Here, all together, my clients purchased \$5 billion worth
17 of capacitors during the 2002 to 2013 period directly from the
18 defendants or their co-conspirators. And when they did that,
19 they paid too much. And they are seeking here to get the money
20 back that they were forced to pay.

21 Now, as you will learn, a conspiracy existed. Ten of the
22 companies have admitted to participating in a price-fixing
23 conspiracy. You will learn that the defendants agreed and
24 coordinated and communicated with each other so that they would
25 not have to compete with one another. And they did that

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1 because competition would have meant lower profits for them and
2 lower prices to their customers.

3 Now, eight of the companies were prosecuted for violating
4 the criminal laws against price-fixing in the United States and
5 pled guilty. One company turned the others in.

6 (Document displayed.)

7 So this slide shows the corporations, the corporate
8 families that have admitted to price-fixing. Each company
9 admitted that they committed acts in furtherance of the
10 conspiracy here in the Northern District of California. And
11 what the Northern District of California means is that it's
12 this area where this courthouse is located in the state.

13 Each of the companies admitted to participating in the
14 conspiracy; that is, Nippon Chemi-Con, Panasonic, Nichicon,
15 Rubycon, Sanyo, ELNA, Hitachi, NEC Tokin, Matsuo, and Holy
16 Stone. These guilty pleas mean that these companies were
17 charged with a crime. They admitted their wrongdoing and
18 negotiated a plea bargain.

19 In addition, there were two individuals who also admitted
20 participating in a price-fixing conspiracy. One was
21 Mr. Satoshi Okubo, who worked for two companies that pled
22 guilty; one was ELNA, and one was Matsuo. Another was named
23 Tokuo Tatai, who worked for the ELNA company.

24 And, again, both of these individuals were charged with a
25 crime, admitted to wrongdoing. And these individuals were

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1 incarcerated at the prison at Lompoc.

2 So in this slide, I've listed the 22 companies that
3 engaged in the conspiracy. In the right column, you will see
4 the four companies that are defendants in this case.

5 Now, if you count the rows here, you will see that it
6 totals 23. And that's because Nippon Chemi-Con and United
7 Chemi-Con are both defendants in the case and are listed
8 separately.

9 UCC, as you heard in the instructions, is a wholly owned
10 subsidiary of NCC.

11 So I've just showed you which companies were -- which
12 companies admitted to price-fixing and which individuals
13 admitted to price-fixing.

14 And these companies, the 22 companies -- 23, if you
15 separate Nippon Chemi-Con and United Chemi-Con -- are the
16 co-conspirators.

17 Now, each of these companies are large organization with
18 bosses, executives, and managers. They also have low-level
19 staff and other personnel. Many of them are located in the
20 United States but also in Japan, Taiwan, Hong Kong, Singapore,
21 England, Germany, and many other countries throughout the
22 world.

23 This lower-level staff acted like lieutenants, carrying
24 out the instructions and orders of their bosses that made these
25 agreements.

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1 Now, companies act through people. And like many of us,
2 people work for the companies that pay their salaries. And
3 that is what happened here.

4 And because this conspiracy lasted 12 years and it
5 involved this many companies, there were literally hundreds of
6 people involved in the conspiracy. And we will show you that.

7 But we start from the basic fact, the basic fact from the
8 criminal case that there was a price-fixing conspiracy and that
9 ten of the companies we sued have admitted they were involved
10 in a price-fixing conspiracy.

11 Now, because of the conspiracy, my clients, the class
12 members, paid \$427 million more for capacitors than they would
13 have paid without the price-fixing, without the companies
14 breaking the law. That was the effect of the 12-year
15 conspiracy on \$5 billion in commerce.

16 We are here asking you to require the defendants in this
17 case to give the class members the money back that they paid
18 that they shouldn't have.

19 But before we go further, let me explain what a capacitor
20 is. Capacitors are components that are incorporated in
21 virtually every electronic product, virtually every electronic
22 product that has an electrical circuit.

23 Capacitors have been an essential part of electrical
24 circuits for hundreds of years, virtually since the beginning
25 of the modern use of electricity.

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1 Now, one aspect of electrical circuits is that the
2 electricity that runs through them needs to be consistent. If
3 the electricity is not consistent, the product won't operate as
4 it should. It may malfunction, stop working, or damage other
5 parts of the product that it is included in.

6 Capacitors are used to control that flow of electricity.
7 There are capacitors in virtually every electronic product.
8 For example, they're contained in computers or mobile phones or
9 automobiles, which can contain hundreds of capacitors.

10 They're also in televisions and video game controllers and
11 medical devices, like pacemakers.

12 Now, the conspiracy in this case involved aluminum, film,
13 and tantalum capacitors. Aluminum and tantalum capacitors are
14 referred to as electrolytic capacitors.

15 Some of the companies make one type of capacitor but not
16 the others. Some companies make two but not the other. Some
17 companies make all three. But every single defendant made at
18 least one type of capacitor and participated in the conspiracy.

19 There is another type of capacitor called a ceramic
20 capacitor. In certain limited ways, ceramic capacitors can be
21 a suitable substitute for aluminum, film, and tantalum
22 capacitors.

23 Ceramic capacitors were first introduced in the 1990s.
24 And during that time, the companies that made the other types
25 of capacitors, including the defendants in this case, discussed

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1 how that was going to affect the prices for the aluminum, film,
2 and tantalum capacitors.

3 That gave them a reason to get together and conspire and
4 take the risks associated with that. And they did that to
5 shore up their profits for the products they made.

6 Now, let me turn back to the story.

7 "Conspiracy" is another word for "agreement" or "scheme"
8 or "understanding" to achieve a legal purpose. It's a kind of
9 partnership between corporations or persons to do something
10 against the law. I will use the word "conspiracy" generally to
11 refer to that.

12 And we will prove to you in this case that the companies
13 that I identified formed and joined a conspiracy to control the
14 prices of aluminum, film, and tantalum capacitors.

15 And as I mentioned a few minutes ago, the first proof of
16 that conspiracy that we will show you are the guilty pleas that
17 the defendants entered into.

18 So let me show you one.

19 (Document displayed.)

20 And these are -- this is the same language that the judge
21 read to you in the preliminary instructions. And I wanted to
22 just take a moment to focus on some important aspects.

23 So this is the guilty plea of Matsuo, one of the
24 defendants in the case. And the first thing that Matsuo admits
25 to is engaging in the conspiracy.

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1 "A conspiracy to suppress and eliminate
2 competition by fixing prices and rigging bids of
3 certain electrolytic capacitors in the United States
4 and elsewhere, in violation of the Sherman Act."

5 The next part is the time.

6 "For purposes of Matsuo's Plea Agreement, the
7 relevant period is the period beginning at least as
8 early as November 2001 until in or about
9 January 2014."

10 The next paragraph is the what.

11 "During the relevant period, the defendant
12 manufactured tantalum electrolytic capacitors and was
13 engaged in the sale of such electrolytic capacitors in
14 the United States and elsewhere."

15 "Elsewhere" means that the conspiracy not only included
16 the United States, but other parts of the world.

17 The next part is the who.

18 "During the relevant period, the defendant" --
19 that's Matsuo in this case -- "through its officers
20 and employees, including high-level personnel of the
21 defendant, participated in a conspiracy among
22 manufacturers of electrolytic capacitors."

23 Next is the why, the purpose.

24 "The primary purpose of which was to fix prices
25 and rig bids of certain electrolytic capacitors sold

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1 in the United States and elsewhere."

2 The next is how.

3 "In furtherance of the conspiracy, the defendant
4 Matsuo, through its officers and employees, at times
5 engaged in discussions and attended meetings with
6 representatives of other manufacturers of electrolytic
7 capacitors."

8 And then there's the what.

9 "During certain of these discussions and
10 meetings, the conspirators agreed to fix the price
11 and/or rig bids of certain electrolytic capacitors to
12 be sold in the United States and elsewhere."

13 So from these guilty pleas -- and I'm only showing you
14 one, and you saw the others -- you know the when, the what, the
15 who, the why, the how, and the what. And we will show you
16 copious evidence that supports these conclusions.

17 Now, you will hear in this case the defendant say that
18 what we, the plaintiffs, allege isn't what they pled guilty to.

19 Now, as Judge Donato explained to you, the -- he
20 identified the burden of proof in this case. And in this case,
21 we only have to prove that what we say is more probably true
22 than not.

23 In a criminal case, which is what the guilty pleas were
24 entered into, there's a different burden of proof.

25 Now, you may have seen shows like "Law and Order" where

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1 they discuss this. In a criminal case, the Government has to
2 prove the charges beyond a reasonable doubt. And that's one of
3 our constitutional protections. But in civil cases like this
4 one, the standard is lower.

5 Now, you will hear evidence in this case that the
6 defendants met and communicated with each other many times.
7 There are at least a thousand of these communications and
8 meetings.

9 There are contemporaneous records of these meetings and
10 communications, the materials prepared in advance of the
11 meetings, the notes taken at the meetings, the reports sent
12 back to the companies by the representatives after the
13 meetings, and the documents confirming who did what based on
14 the agreements and information exchanged.

15 And from these records, it is indisputable that the
16 communications took place in person, via email, or telephone.
17 They occurred in the United States. Many of the meetings or
18 communications occurred in Asia, including Japan, Singapore,
19 Hong Kong, and Taiwan.

20 They occurred in Asia because that's where many of the
21 companies involved in the conspiracy were based. And it's also
22 where a number of the factories where capacitors are made are
23 located. Each of the companies that pled guilty have
24 significant operations in Asia.

25 By going to these meetings, as we will prove, the

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1 participants actively joined the conspiracy, a conspiracy to
2 violate U.S. antitrust laws. And they worked together to
3 achieve the conspiracy's common purposes.

4 You will learn that these meetings were attended by CEOs
5 of the companies, but also by the managers and salespeople of
6 the Japanese companies.

7 This was not some group of rogue employees. The people
8 who went to the meetings did so because it was part of their
9 job and their assignment.

10 At the meetings they represented the companies they worked
11 for. They knew the others did as well. And when they
12 exchanged information with the other representatives of the
13 companies at the meetings or reached agreements with them, they
14 were doing so on behalf of their companies. After all, it
15 takes hundreds of persons to implement and carry out a
16 conspiracy over the 12-year period for these 22 companies.

17 (Document displayed.)

18 So what I'm showing you here is a presentation, a
19 demonstrative of the contacts between the companies.

20 At the left, you'll see the number and in -- the start
21 date is when the meetings or communications occurred.

22 The third column are the attendees at the meetings. And
23 each of these entries -- each of these entries is supported and
24 documented by contemporaneous records of the meetings.

25 Now, the defendants produced millions of documents during

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1 the span of this litigation. And when we looked through them,
2 we were able to identify over a thousand meetings involving
3 these companies. And each line in this spreadsheet is an
4 instance of the communication.

5 And sometimes technology doesn't work.

6 (Laughter.)

7 **THE COURT:** On that note, are all of your monitors on?

8 (Jury panel nodding affirmatively.)

9 **MR. SAVERI:** So if you bear with me a second, I think
10 it's going now.

11 So, as I said, each of these lines is a meeting or a
12 communication between the defendants in this case. And in the
13 "Participant" column is a listing of which companies attended
14 the meetings.

15 And as you will see, not every company -- not every
16 communication involved every company. And some only involved
17 two; some involved more. Some were telephone calls. Some were
18 emails. But some were group meetings. And sometimes more than
19 one -- more than two companies got together.

20 Some of these meetings occurred in coffee shops. Some
21 occurred in bars. Some occurred on the golf course. We know
22 each of them happened.

23 Now, in these conference rooms and bars and restaurants
24 and at resorts, on the golf course, these companies met and
25 conspired. And we'll prove to you that this was not by

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1 accident or by chance.

2 And when they did meet -- and we'll show you what they
3 discussed -- they discussed and exchanged information, not as
4 competitors, but as companies working together to increase
5 their profits and to elevate prices above what they should have
6 been. And by going to these meetings and communicating with
7 these other companies, the participants actively participated
8 in the conspiracy and demonstrated their commitment to the
9 conspiracy's common goal and purposes.

10 Now, you will learn that the information exchanged by the
11 company -- the conspirators was confidential and not public.
12 It was the kind of information that companies would not share
13 with each other in a competitive market for fear that their
14 rival would take advantage of it. It was also the kind of
15 information that conspirators would share so that they could
16 coordinate and work together with their competitors.

17 Now, these suspect communications occurred in a variety of
18 ways.

19 Now, the Japanese have a word, "izakaya," which is the
20 name for the kind of bar or club where Japanese businessmen go
21 after work to drink and to socialize and to talk.

22 Many of these meetings occurred at izakaya. But they also
23 occurred at other places: Coffee shops, conference rooms, on
24 the golf course. But they did agree, as this shows, to
25 regularly meet with one another. And we will prove to you,

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1 from the evidence and other communications, that the
2 conspirators sought to coordinate with each other and to
3 elevate prices.

4 Now, when the conspirators agreed to provide information,
5 they knew from their years of participating in the conspiracy
6 that they would receive information in return, that it would go
7 both ways. In other words, when the companies gave information
8 to their competitors, they knew that they would get similar
9 information back. And as we will show you, companies that are
10 competing and not cheating wouldn't do that.

11 And from the type of information exchanged -- and we will
12 show you that -- you will learn that there was an agreement,
13 there was an understanding. There was something of valuing
14 exchanged and something of value being received. And that
15 shows a meeting of the minds. And, basically, the agreement
16 was that the companies wouldn't fight with each other and they
17 would do their best to avoid price competition.

18 Let me describe some of the testimony in the case.
19 Mr. Nishizaka of Panasonic was asked about the purpose of the
20 meetings. And when we asked him, what he said is:

21 "The purpose of the discussion was to prevent
22 price reduction in general."

23 That is what the purpose of the meetings were.

24 Now, one key way you will see, as I mentioned, is the
25 conspirators getting together --

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1 You can take that down.

2 (Document removed from display.)

3 -- is the conspirators getting together to write each
4 other and share their confidential information. You will learn
5 that competitors do not give up this kind of information unless
6 they know they're getting something in return. There's no give
7 without get.

8 And you will learn the benefit of participating in this
9 conspiracy was receiving information in exchange for what they
10 closed and also an agreement to eliminate competition and to
11 raise prices.

12 Now, some of the group meetings in Japan and Asia were
13 attended by companies that manufactured mostly aluminum and
14 tantalum but also film capacitors. And other meetings were
15 held by companies that mostly manufactured film capacitors, but
16 also made aluminum capacitors. Other meetings occurred between
17 companies that manufactured all three.

18 But regardless of who or what type of company was
19 attending these meetings or communications and what product
20 they manufactured, all of these meetings concerned capacitors
21 sold in the United States.

22 And you will learn that -- you will learn that the
23 representatives -- the same representatives of each company
24 didn't attend every meeting, and that some meetings were
25 attended by some and not others, or that the discussions at the

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1 meetings changed depending on what was going on in the world at
2 the time or what the particular situations were in the market.

3 But all of the meetings, these group meetings, we'll show
4 you, shared the same features and subjects.

5 One of the features of the meetings was that they focused
6 on large customers. Some of the large customers you will
7 recognize by name. For example, Intel or HP, the Hewlett
8 Packard company. But some of the large customers are based in
9 Taiwan and other places and manufacture products for American
10 companies that you will recognize. For example, the companies
11 that Apple uses to manufacture its products abroad. And these
12 companies had their factories in Asia; in Japan, Taiwan, or
13 Singapore.

14 Now, as you will learn, there were something like 1,800
15 Direct Purchasers of capacitors in the United States during the
16 class period. And it was unnecessary for the conspirators to
17 have a discussion about each and every one of them.

18 The conspirators focused on these big companies. And they
19 did so because the big companies were the strongest and largest
20 of their customers. And because they were the strongest and
21 largest, they had the most bargaining power, the largest
22 ability to negotiate a better price.

23 And if the conspirators were able to agree regarding
24 prices to them, the prices to the smaller customers would
25 surely follow. So that is why, as you will learn, the

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1 discussions of the conspirators frequently mentioned a few
2 large buyers.

3 Next slide, please.

4 (Document displayed.)

5 Now, these are notes of a pricing strategy policy meeting
6 which occurred in February of 2003. These are notes of the
7 meeting written in Japanese by Norio Kasuga, a sales executive
8 of the Rubycon company, who will testify at the trial. And as
9 I showed you, Rubycon is one of the companies that pled guilty.

10 If you will go to the next slide.

11 (Document displayed.)

12 So as -- as Judge Donato mentioned, you will see
13 translations in this case. And this is an English translation
14 of the Japanese-language document that we prepared. Let me
15 point out a couple things about the document.

16 The meeting occurred in February of 2003, February 4th,
17 2003. And the place is a hotel in a part of Tokyo, Gotanda.
18 And the participants in the meeting are listed.

19 And Mr. Kasuga, who wrote this, used abbreviations which
20 correspond to the first letter of the company's name in
21 Japanese.

22 So in Japanese, the company we're calling Nippon Chemi-Con
23 went by Chemi-Con, and that's why it's C. Others are more
24 straightforward. E is ELNA. N is Nichicon. S is Sanyo. F is
25 Fujitsu, which was a company subsequently bought by Nichicon.

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1 R is Rubycon. M is Matsushita, which, at the time, was the
2 name of the company that is now Panasonic.

3 So those were the attendees at the meeting. And as
4 indicated, Matsushita didn't attend.

5 Can you go to the next slide, please.

6 (Document displayed.)

7 And so at the beginning of the notes, Mr. Kasuga writes
8 down what the purpose was of the meeting. And it was about a
9 price strategy for capacitors.

10 And he also notes why they were getting together in
11 February -- on February 4th, 2003. And that's because, a few
12 days earlier, on January 29th, 2003, senior members of the
13 company, CEO-level individuals, persons responsible for the
14 global capacitor business, had met together and agreed that
15 they wanted to come up with a strategy for raising prices.

16 And after they did that, they told their lieutenants,
17 their more junior staff, to get together and implement the
18 agreement that they reached. And these are the notes of that
19 meeting.

20 And you'll see that the two companies that are mentioned,
21 one is Company I in the United States. That's Intel.
22 Company F is a company called Foxconn, which is one of these
23 companies that Apple and others use to manufacture their
24 products in Taiwan. And that's what the reference is to
25 Taiwan.

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1 Now, next slide, please.

2 (Document displayed.)

3 Mr. Kasuga's notes summarize the discussion in the
4 agreements were made. The first section had to do with a
5 water-based electrolytic capacitor. And it generally says that
6 the current price levels are going to be maintained. And as
7 Mr. Kasuga indicated, he understood, based on that
8 communication or what went on at that meeting, that all
9 companies agreed.

10 Then they also agreed how they were going to handle
11 negotiations with big customers. Intel and Foxconn are big
12 customers. And at the time in 2003, they were pushing very
13 hard to get lower prices. And so one of the things they had to
14 confront was what to do about that. And what they did is they
15 agreed to limit the amount of discount or how far they would go
16 down when pressed by big customers.

17 And as indicated here, they agreed that that number would
18 be 2 percent. And as Mr. Kasuga says, all companies agreed.

19 In addition, at the time, the companies were about to
20 introduce a new type of capacitor product. And it was also
21 important that the companies were able to keep prices for that
22 product high. And so what they wanted to do was to come up
23 with a pricing plan which the companies were going to share and
24 join in for this new type of capacitor product coming in the
25 market.

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1 Rubycon, Mr. Kasuga, suggested a plan. And as he said in
2 his notes:

3 "All companies agree to R's plan."

4 R is Rubycon.

5 These agreements are clear as day. This is an agreement
6 to fix, maintain, and stabilize prices in violation of United
7 States antitrust laws.

8 Now, what's also interesting about this is that you'll see
9 that it's in red. And when Mr. Kasuga took these notes, he
10 sent them to the others at Rubycon. He sent them to the people
11 responsible for Rubycon sales all over the world. He sent them
12 to others in Japan, but he also sent them to the people
13 responsible for -- at Rubycon for sales in the United States.

14 And he highlighted them in red because he wanted to make
15 sure, when those people got that email and received this
16 report, they knew about and recognized and paid attention to
17 this very important agreement.

18 Now, these discussions continued -- this is 2003. They
19 continued until -- until roughly 2013, when they were turned
20 in.

21 Let me show you the notes of another meeting which
22 occurred slightly afterwards.

23 (Document displayed.)

24 This is August 2003, a few months later. This is another
25 set of meeting minutes. There are different -- some of the

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1 same companies were there. Some of the -- some individuals
2 that we've seen in the past were there.

3 Could you show the English, please.

4 (Document displayed.)

5 So, again, we've translated it from the Japanese into
6 English. And you'll see that it's a meeting that occurred in
7 Yamanashi Prefecture in Japan. It was hosted by the Sanyo
8 company. And you will see the companies that attended the
9 meeting: NEC Tokin, ELNA, Nippon Chemi-Con, Nichicon, Rubycon,
10 Fujitsu, Matsuo, Sanyo, and ROHM.

11 Now, as you will learn, at each of these meetings, one of
12 the representatives of the company had responsibility for
13 organizing the meeting and chairing the meeting. And at this
14 meeting, it was Mr. Kato from Nichicon. And he's pretty clear
15 about what the purpose of the meetings are.

16 He says that in this section:

17 "The meeting's purpose is to exchange information
18 for each market and capacitor category in order to
19 ensure all maker's profit generation and maintenance a
20 healthy market price."

21 That was the purpose of these meetings.

22 Now, I'm not going to show you all of the meetings --
23 other parts -- all of the notes, but the other provisions of
24 this or the other parts of the minutes indicate discussions of
25 U.S. customers. For example, U.S. car companies and -- which

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1 shows that the purpose and target of these meetings was the
2 United States.

3 Would you show the next slide, please.

4 (Document displayed.)

5 Now, I talked a little bit about the kind of information
6 that was exchanged at the meetings. This is an example of one
7 of the forms that was used at the meetings. This was prepared
8 in December 2012, and this is a chart of information from the
9 Chemi-Con company. Again, that's the -- that's the name for
10 the company we're calling NCC.

11 One of the features of the meetings is, before they
12 start -- before there was a discussion, each company made a
13 presentation regarding certain confidential sales information.

14 And let me point out a couple features of this.

15 First, on the left side, it refers to different types of
16 capacitors, aluminum and tantalum, and different subtypes
17 within those categories.

18 At this time, Chemi-Con made aluminum, but not tantalum.
19 Other participants made tantalum and not aluminum. So their
20 charts looked a little bit different.

21 But what they did is they used a benchmark, and that's why
22 it's in percentages. And what they did is they reported on
23 their historic figures. And that's -- those are the columns
24 that -- on the left going up to November.

25 And you'll remember -- or you'll see that these minutes

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1 were in December. So it also includes future information, what
2 their projections were.

3 And this is -- here, Nippon Chemi-Con is reporting on its
4 projections for both volume and revenue -- that's what the
5 amount is -- for December, January, and February and the
6 following period.

7 (Brief pause.)

8 The information that was exchanged was confidential. It
9 was highly sensitive. It was past information and future
10 information.

11 Now, as I mentioned, the communications in Asia mainly
12 involved Japanese companies and their representatives. And the
13 meetings there, logically, took place in Japanese.

14 Now, nonetheless, AVX and KEMET -- nonetheless,
15 information from AVX and KEMET was discussed and exchanged.
16 How did that happen? Through the companies in Japan that
17 maintained the strongest relationships with AVX and KEMET.

18 As it happens, that was the NEC Tokin company. And in
19 particular, Tomohiro Date, who you'll hear about. He was one
20 of the ring leaders of the conspiracy.

21 Let me show you some deposition testimony.

22 Now, this is from the deposition of Mr. Imai of ELNA. And
23 as I mentioned a few minutes ago, the companies -- the practice
24 was -- the agreement was that the companies would take turns
25 being the organizing company. And the organizing company did

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1 things like making arrangements for the room or the resort or
2 the golf course. They booked the location. They arranged for
3 refreshments. But one of the key jobs was to make sure that
4 the companies attending received the information that was part
5 of the agreement.

6 And as Mr. Imai testified, parts of his job when he served
7 as the organizing company for the -- for the MK meeting --
8 you'll learn that MK is the Japanese abbreviation for "market
9 research." Some of the meetings were called MK meetings.

10 He acknowledges that one of his -- the jobs, as the
11 organizing company, was to make sure that the companies -- all
12 the companies attending received the information.

13 The next slide, please.

14 (Document displayed.)

15 Now, Mr. Imai also testified that it was typical that
16 NEC Tokin provided information from AVX and KEMET at these
17 meetings. And the reference to NEC is a reference to NEC Tokin
18 company.

19 And so we will show you that Mr. Date, from NEC Tokin, was
20 a frequent attendee at the meetings and communicated outside
21 the meetings and exchanged confidential information and reached
22 agreements on prices with competitors.

23 We'll also show you that Mr. Date met in Japan with
24 representatives of AVX and KEMET. You will also see that
25 shortly after the meetings between Mr. Date and AVX and KEMET,

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1 that when you look at the minutes of the group meetings,
2 NEC Tokin was discussing and disclosing AVX and KEMET's
3 confidential information.

4 Would you put up the next slide, please.

5 (Document displayed.)

6 Now, we also took the deposition of another executive from
7 ELNA whose name was Shin Kinoshita. And he talks about this
8 information.

9 And he confirms that, one, information regarding AVX was
10 disclosed at this meeting; and that, two, the companies that
11 were receiving that information found it important and useful
12 in making their business decisions, including prices.

13 So despite the fact that AVX wasn't inside the room
14 speaking in Japanese, their information was very much part of
15 the exchange of information at the Japanese meetings.

16 In addition, we will show you that AVX and KEMET were
17 frequently communicating with each other and coordinating their
18 own efforts regarding prices.

19 Next slide, please.

20 (Document displayed.)

21 This is an email from a Mr. Ravi who worked for AVX in the
22 United States. And we know that because his email address
23 indicates AVX U.S. And this happened in April of 2004. And he
24 reports on some discussions he had at a business meeting.

25 And the first is a discussion of KEMET. And he reports

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1 that when he -- when he met and communicated with KEMET, they
2 reported to him what their pricing plans were in the future,
3 that prices were going up 5 to 15 percent. That's
4 price-fixing.

5 And he also indicates that he was also meeting another
6 company, Vishay, and that he was going to go out and have a
7 couple of beers. And he talks about it being a social hour,
8 but you can tell from the email that it wasn't just social
9 interaction that was on his mind.

10 This kind of behavior is collusion. It's not competing.
11 This is price-fixing.

12 Now, you will also learn that AVX met with the Chem-Con
13 company. Now -- excuse me. The Chemi-Con company had an
14 entity in Japan, where its headquarters were located, which
15 went by the initials NCC, Nippon Chemi-Con. They also had a
16 wholly owned subsidiary in the United States called UCC. They
17 also had a subsidiary in Europe called ECC, Europe Chemi-Con.

18 And at a meeting between AVX and NCC, they discussed how
19 they would arrange to work together and not to compete against
20 each other.

21 And as it happens, NCC was represented by one of its
22 company's board of directors, a very senior executive, as well
23 as the CEO of UCC and NCC -- excuse me, UCC and ECC -- which
24 happened to be the same person -- and also AVX's top
25 executives.

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1 And at that time, both companies had plans to sell
2 capacitors in the United States. But what they discussed at
3 the meeting was the fact that they want to get along and not
4 hurt each other through competition.

5 Now, AVX also met with Japanese manufacturers in Europe
6 and in Japan. AVX met with KEMET in places throughout the
7 world. As I said, AVX met with NEC Tokin frequently in Japan.
8 And at those meetings, they exchanged information.

9 Now, you'll hear testimony from a gentleman named Peter
10 Collis, who was one of the people running AVX's global sales.
11 He went at least once a year to Japan, and he communicated with
12 many Japanese companies there.

13 You will also hear testimony from AVX salespeople who met
14 with Sanyo, KEMET, NEC Tokin, Hitachi, Rubycon, regarding
15 U.S. purchasers. And in addition, as we will prove, there were
16 dozens of communications between AVX and KEMET.

17 These occurred in the United States where the two
18 companies are headquartered but also in various parts of the
19 world, including Mexico. Also, we will prove that the
20 companies involved in the conspiracy knew what they were doing
21 was illegal. They knew it was price-fixing. They knew it was
22 not permitted. And we will prove that by showing you the
23 evidence of the steps the companies took to conceal their
24 activity.

25 You can tell that from the numerous emails that say

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1 something like "destroy after reading."

2 As you will learn, this is conduct to cover up and conceal
3 what they did, which is proof that they knew what they were
4 doing was wrong.

5 Could you put up the next slide, please.

6 (Document displayed.)

7 Now, this is an internal Rubycon email in May of 2008.

8 And you will learn that 2008 was a period where a lot of these
9 communications happened because of what was going on in the
10 world at the time.

11 There was the Lehman bankruptcy. The demand for products
12 went down. But also, afterwards, the economy turned around.
13 Prices start started to go up. And you'll see a lot of
14 evidence about the efforts of the companies to stop the prices
15 going down in 2008 and turning it around and trying to raise
16 prices in 2009.

17 So this is an internal email from Mr. Miyashita, and he
18 reports on a meeting that he had with five companies shortly
19 before he wrote the email. And the five companies are Nippon
20 Chemi-Con, ELNA, Hitachi, Nichicon, Rubycon.

21 And he notes in the beginning of the email the purpose of
22 the meeting. He says:

23 "A price restoration meeting was held today
24 between five of the companies within the industry."

25 And you will learn that "price restoration" means raising

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1 prices.

2 Next slide, please.

3 (Document displayed.)

4 And then he also describes the agreement that was reached
5 and how it was going to be implemented. It will proceed in a
6 top-down manner; that means from the senior executives making
7 an agreement, and then a junior sales manager's meeting will be
8 conducted separately to implement and to effectuate the
9 agreement.

10 But then he closes his email with the note, "Please
11 discard after reading." That's because they were price-fixing.

12 Now, defendants may argue in this case that there was no
13 conspiracy because they can identify a few isolated moments
14 where one company negotiated a lower price or tried to take a
15 little business from one of the other companies.

16 But the fact there are some points in time where that
17 happened doesn't mean that there was no conspiracy or that the
18 conspiracy was not effective.

19 We allege a global conspiracy over a 12-year period, and
20 we will show that you that conspiracy generally elevated
21 prices. That doesn't mean that prices never went down or that
22 one participant tried to get a little more business from time
23 to time by lowering its prices to a particular customer.

24 In fact, sometimes cheaters cheat. And they try to take
25 advantage of their agreement to their own benefit.

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1 But, in fact, that's why the companies met regularly, to
2 meet every month and to make sure that companies were following
3 the agreement and to make sure that they were taking steps to
4 monitor what the other companies were doing, and to make sure
5 no one was cheating.

6 In addition, we are going to be presenting to you
7 testimony from experts. And the experts will show you that the
8 information exchanged was anticompetitive and that it was the
9 method the defendants used to raise prices.

10 Now, economists that have looked at this subject have
11 looked at it many times. And when they did that, they learned
12 or concluded that there are ways to distinguish communications
13 which are consistent with competition and those which are
14 inconsistent with competition or, in other words, consistent
15 with collusion; to distinguish between communications which, on
16 one hand, are competitive and, on the other, communications
17 which are not.

18 You will hear testimony from an expert economist named
19 Dr. Hal Singer. Singer is an economist with a PhD from Johns
20 Hopkins University. His expertise as an economist is in
21 antitrust economics and the study of competition and
22 competitive markets.

23 He is the kind of economist who studies competition and
24 collusion and price-fixing. He is an expert at how some types
25 of communications are consistent with competition and some

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1 which are consistent -- inconsistent with competition but
2 consistent with collusion.

3 He's also an expert on determining the effects of an
4 antitrust conspiracy. He will explain from the perspective of
5 an economist how competition should work and what happens when
6 it doesn't.

7 Now, economics focuses on incentives. For example, how
8 does a company choose to set its prices? Singer studies the
9 workings of industries, including companies that compete with
10 each other.

11 Now, economists are like detectives. And just like a
12 detective uses -- or solves a case with tools or clues,
13 economists do something similar with economic tools and
14 economic data. And by applying these tools, they can do useful
15 things --

16 **THE COURT:** Mr. Saveri, it's been over an hour. How
17 much longer do you have?

18 **MR. SAVERI:** I'll probably be done in ten minutes.

19 **THE COURT:** Okay. Thank you. Just checking in. Go
20 ahead.

21 **MR. SAVERI:** I'm sorry.

22 (Brief pause.)

23 **MR. SAVERI:** So we asked Dr. Singer to apply the tools
24 of an economist here.

25 Could you put up the next slide.

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1 (Document displayed.)

2 And what he did was he applied qualitative criteria
3 regarding cartel investigation that are recognized in his field
4 of economics. And, in particular, he looked to identify
5 communications that had certain characteristics that economists
6 identify as consistent with collusion or, in other words,
7 inconsistent with competition. And one was the sharing -- or
8 is the sharing of price or output information. The other is
9 current monitoring or future planning.

10 And Dr. Singer, using that criteria, examined the records
11 in this case and he found dozens, if not hundreds, of meetings
12 and communication that, consistent with this economic criteria,
13 showed acts consistent with conspiracy.

14 For example, the information exchanges were about price
15 and input -- excuse me, price and the cost of inputs. The
16 information that was exchanged wasn't only about the past, but
17 it was about the future. And the information was not
18 summarized or aggregated.

19 So the companies exchanged the information directly
20 between them as opposed to between a third party.

21 Even one instance of communication like that is
22 anticompetitive. Genuine competitors don't provide their
23 competitors with that type of information. Genuine competitors
24 don't provide the competitors with the smallest details
25 regarding their business; not yearly, not monthly, not weekly,

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1 and certainly not future information.

2 And as we will show you, the records in this case show
3 that these communications are not the activity of companies
4 competing with one another but they, instead, are the acts of
5 companies united in an agreement to raise their profits and to
6 raise their prices to their customers.

7 Now, Dr. Singer will explain that one of the key features
8 of the conspiracy was the agreement and understanding to enter
9 into this information exchange. And the fact that it was
10 reciprocal meant that the companies knew that they were
11 receiving information when they were providing it.

12 And Dr. Singer concludes that companies that are competing
13 with one another do not do that. And the evidence will show
14 that these types of communications occurred hundreds of times.

15 The last step in our proof of analysis will be the proof
16 of the effect of the conspiracy on prices and the damages
17 caused by defendants when they violated the antitrust laws.

18 My clients purchased billions of dollars of capacitors
19 during the period. On this subject, you'll hear from an expert
20 whose name is Jim McClave. Dr. McClave is an expert
21 statistician and, in particular, a -- the type of statistician
22 that focuses on antitrust cases and antitrust economics.
23 Dr. McClave literally wrote the book on this subject.

24 Statistics allows us to determine whether the defendants
25 elevated their prices and make that determination a scientific

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1 way. Dr. McClave's field, econometrics, involves applying
2 economics -- excuse me, applying statistics in an economic
3 setting and doing that sort of analysis.

4 First, Dr. McClave will conclude that the conspiracy
5 elevated the prices of aluminum, film, and tantalum capacitors.
6 He did that by looking at over 7 million transactions. He
7 looked at all the data we had regarding the transactions in
8 which the defendants sold -- built or delivered capacitors in
9 the United States.

10 He concluded, based on that analysis, that the conspiracy,
11 in fact, raised capacitor prices higher than they would have
12 been if it hadn't been for defendants' illegal conduct.

13 (Document displayed.)

14 Now, second, Dr. McClave measured the amount by which my
15 clients were overcharged. And he did a calculation -- and I'll
16 take a moment to go through each, but we're looking at aluminum
17 first. He did it for each type of capacitor: Aluminum, film,
18 and tantalum.

19 Dr. McClave's analysis is complex. He applied the factors
20 that econometricians or statisticians have identified for
21 determining whether a conspiracy has had an impact on prices.
22 The test Dr. McClave performed confirmed that analysis. He was
23 able to isolate the effects of the conspiracy from other market
24 conditions. And he tested it in dozens of ways, which we will
25 show you.

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1 Now, you may hear from the other side's experts. They
2 criticize Dr. McClave, but they never do the analysis to
3 support their criticisms.

4 Dr. McClave listened to the criticism. And what did he
5 do? He tested his analysis again. And he looked at each of
6 the factors and he, like switches, turned them off and on and
7 tried to determine how that would affect his model and his
8 calculation. And when he did that, that exercise confirmed his
9 conclusions.

10 You will learn, as I've indicated, that my clients
11 purchased over \$5 billion in capacitors during the class
12 period. You will also learn the calculations Dr. McClave
13 performed to determine the amount of damages caused.

14 There is some complexity to the math. But in some ways,
15 it is really quite simple. The first thing he did is to -- is
16 using the sales data, determine what the actual price was that
17 the defendants charged for the capacitors. And he did that by
18 looking at all the prices in the data over the period of the
19 conspiracy.

20 And we've shown that with the red line on this chart.
21 Those are the prices of aluminum capacitors during the relevant
22 period.

23 And then using his methodology, which I described, he
24 determined what the prices would have been without the
25 conspiracy. And that's the blue line.

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1 And the blue line is lower than the red line, which means
2 that the prices that would have been charged if there hadn't
3 been the conspiracy are lower than what were actually charged.
4 And then Dr. McClave did a calculation of the difference. And
5 the difference is the shaded red part, which is the difference
6 between what they paid and the lower price they should have
7 paid.

8 And so for aluminum capacitors, he determined that my
9 clients were overcharged approximately a little over
10 \$240 million for aluminum capacitors. He calculated an
11 overcharge, a general overcharge over this period of
12 8.9 percent.

13 And then he did it for film. And for film, the total
14 overcharge is a little under \$22 million. And the overcharge
15 percentage for that entire period is 6.6 percent.

16 **MR. SAVERI:** And then he did it for tantalum. And he
17 calculated that the overcharges for tantalum are a little under
18 \$165 million. And an average overcharge of 7 percent.

19 Next slide, please.

20 (Document displayed)

21 **MR. FINZI:** So then Dr. McClave added it all up. And
22 this shows you his addition. He did it by each capacitor type.
23 He shows the revenue for each capacitor type during the class
24 period. And as I said, the total is a little over, a little
25 over \$5,392,273,311.

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1 And then applying those overcharges, he calculated what
2 the damages are. And the damages Dr. McClave calculates are
3 \$427 million -- excuse me, \$427,530,613. Those are the damages
4 to my clients in this case.

5 Members of the jury, thank you very much for your time.

6 We are going to prove in this case that these defendants,
7 together with their co-conspirators, agreed with each other to
8 restrain, prevent, and eliminate competition. They agreed to
9 do so with the purpose and effect of raising and stabilizing
10 prices of capacitors in the United States. They did that by
11 agreeing to exchange confidential information. And they did
12 that so that the other companies would know their plans and
13 intent.

14 Why did they do it? To avoid reducing prices. They did
15 it to keep their prices high, and to make sure their customers,
16 my clients, paid more than they should.

17 Plaintiffs' money damages will fix the consequences of
18 this harm.

19 At the end of the trial, after you hear all the evidence
20 in this case, I'm confident that you will conclude that the
21 defendants agreed to share their confidential information, and
22 agreed to restrain competition, and elevate prices to my
23 clients in the United States.

24 The antitrust laws are designed to protect competition.
25 As it happens here, the defendants destroyed competition.

PROCEEDINGS

1 They destroyed competition when they agreed to exchange
2 this information and they agreed to coordinate on prices. They
3 did that when they agreed to share their plans with the others.
4 They did it when they tried to avoid companies reducing prices.
5 They did it to keep their profits high, to make sure my clients
6 paid more than they should have.

7 It is time for them to compensate those that were injured
8 by this.

9 At the end of the case I will have another opportunity to
10 speak to you. And at that time, we are going to ask for a
11 significant verdict to compensate my clients for the damage
12 that's been caused. Substantial damages are warranted in this
13 case. And we will ask for a verdict in that amount.

14 Thank you very much.

15 **THE COURT:** All right. We're going to take our
16 afternoon break a little bit earlier than usual, but we'll take
17 25 minutes -- or 20 minutes, 20 minutes and then we'll hear
18 from the defendants.

19 **THE CLERK:** All rise.

20 (Jury excused)

21 (Recess taken from 12:05 p.m. to 12:31 p.m.)

22 (The following proceedings were held outside of the
23 presence of the Jury)

24 **THE CLERK:** All rise. This court is now in session,
25 the Honorable Judge Donato presiding.

CERTIFICATE OF REPORTER

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

Debra L. Pas

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

Belle Ball

Belle Ball, CSR 8785, CRR, RMR, RPR

Tuesday, March 3, 2020