

Exhibit A

Volume 3

Pages 320 - 487

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
) Wednesday
) March 4, 2020
) 9:00 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

APPEARANCES:

For Direct Purchaser Plaintiffs: JOSEPH SAVERI LAW FIRM, INC.
601 California Street
Suite 1000
San Francisco, California 94108
BY: JOSEPH R. SAVERI, ESQ.
STEVEN NOEL WILLIAMS, ESQ.
JOSHUA P. DAVIS, ESQ. - of counsel
CHRISTOPHER K.L. YOUNG, ESQ.
ANUPAMA K. REDDY, ESQ.

For Plaintiff Chip-Tech, Ltd. BERGER MONTAGUE PC
1818 Market Street
Suite 3600
Philadelphia, Pennsylvania 19103
BY: ERIC L. CRAMER, ESQ.

For Plaintiff eIQ Energy, Inc.: LEVIN SEDRAN AND BERMAN
510 Walnut Street
Suite 500
Philadelphia, Pennsylvania 19106
BY: AUSTIN B. COHEN, ESQ.

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported By: Debra L. Pas, CSR 11916, CRR, RMR

Belle Ball, CSR 8785, CRR, RMR

Official Reporters - US District Court

FONTECCHIO - REDIRECT / REDDY

1 **THE COURT:** The second question is on the similar
2 lines.

3 "Will you have any financial benefit to the settlement of
4 this case?"

5 **THE WITNESS:** No, I do not.

6 **THE COURT:** Okay. Great. Thank you. I think this is
7 Question No. 4.

8 **THE CLERK:** 4.

9 **THE COURT:** Yeah. Good.

10 Okay. Careful on the way down.

11 (Witness excused)

12 **THE COURT:** And who do we have next?

13 **MR. SAVERI:** Good afternoon, Your Honor. Good
14 afternoon, members of the jury. Our next witness for the
15 plaintiffs will be Barry Lubman. And he is outside the
16 courtroom.

17 **THE COURT:** This is an in-person?

18 **MR. WILLIAMS:** He is in person, he's outside the
19 courtroom.

20 **THE COURT:** Great, yes.

21 Is he here? Oh, yes. Please, come on up.

22 **BARRY REED LUBMAN,**

23 called as a witness for the Plaintiffs, having been duly sworn,
24 testified as follows:

25 **THE CLERK:** Please be seated. Please state your full

LUBMAN - DIRECT / WILLIAMS

1 name for the Court and spell your last name.

2 **THE WITNESS:** Barry Reed Lubman, L-U-B-M-A-N.

3 (Reporter interruption)

4 **THE WITNESS:** Reed, R-E-E-D.

5 **DIRECT EXAMINATION**

6 **BY MR. WILLIAMS**

7 **Q.** Good morning, sir. How are you today?

8 **A.** Good morning.

9 **Q.** Could you please tell us where you're from?

10 **A.** I am originally from Brooklyn, New York and I now live in
11 Long Island, New York.

12 **Q.** Do you know a company called Chip-Tech?

13 **A.** Yes.

14 **Q.** Do you know a company called Pride?

15 **A.** Yes.

16 **Q.** Could you tell the jury briefly what's the relationship
17 between Chip-Tech and Pride?

18 **A.** Pride and Chip-Tech were sister companies for over 20
19 years and Chip-Tech ceased to operate in November of 2015.
20 Pride is still in business.

21 **Q.** Okay. And if you'd briefly tell the jury, how did
22 Chip-Tech come to be or the company that was Chip-Tech, how did
23 that company begin?

24 **A.** In 1984, three friends and I, childhood friends, decided
25 to open up a business. We opened up an electronic distributor.

LUBMAN - DIRECT / WILLIAMS

1 We rented a storefront in Sheepshead Bay, Brooklyn. And we
2 started a company and it's still around today, 31 years later.

3 **Q.** Who are the friends you started that with?

4 **A.** My friends Richie, Larry and Robert.

5 **Q.** Now, did there come a time when some other folks became
6 part of the business that was Chip-Tech?

7 **A.** Yes. Over the next few years, my father and my brother
8 joined the company and Robert's sister and brother joined the
9 company. And five of us are still there. My father passed
10 away in 2015. He's the only one who's not there any longer.

11 **Q.** Is it still mostly friends and family running that
12 company?

13 **A.** Yes.

14 **Q.** Can you describe, and again very briefly, over the course
15 of those years what responsibilities did you have at Chip-Tech?

16 **A.** When we first started, we did everything, from shipping
17 and receiving, cleaning, sweeping. Everything.

18 **Q.** Would you please tell the jury, where does Chip-Tech have
19 locations today?

20 **A.** We're located in Lindenhurst, New York. We're located
21 here in the Valley, in Texas, and in Canada.

22 **Q.** Could you tell us, between 2002 and 2013 did Chip-Tech buy
23 aluminum capacitors?

24 **A.** Yes.

25 **Q.** Did Chip-Tech buy tantalum capacitors during that time?

LUBMAN - DIRECT / WILLIAMS

1 **A.** Yes.

2 **Q.** Could you tell us who did Chip-Tech buy those -- if I
3 refer to aluminum and tantalum together as electrolytic, do you
4 understand what I mean by that?

5 **A.** Yes.

6 **Q.** Who did Chip-Tech buy electrolytic capacitors, aluminum
7 and tantalum, during that time, from 2002 to 2013?

8 **A.** We purchased from AVX, KEMET, Chemi-Con, Nichicon.
9 Rubycon, Panasonic, Sanyo. There were a lot of companies that
10 we did business with.

11 **Q.** Do you have any sense in rough numbers how much Chip-Tech
12 spent for electrolytic capacitors between 2002 and 2013?

13 **A.** It would be in the millions.

14 **Q.** Do you know what a large-can capacitor is? Have you heard
15 of that?

16 **A.** Yes.

17 **Q.** Have Chip-Tech bought those between 2002 and 2013?

18 **A.** Yes.

19 **Q.** And who did Chip-Tech buy those from?

20 **A.** I believe that would have been Nichicon and United
21 Chemi-Con. Maybe Nippon. It was not a lot of people. And
22 just hard to remember, exactly who it was. But it was
23 definitely those companies.

24 **Q.** Could you tell the jury, if we were to pick a time in the
25 2000s, say 2007, what was it like to try to negotiate lower

LUBMAN - CROSS / BERSE

1 prices from the manufacturers of the electrolytic capacitors
2 that Chip-Tech was buying?

3 **A.** In the years of 2000?

4 **Q.** Yes, sir.

5 **A.** It was, it was difficult to negotiate our pricing. And
6 that was something that we've always tried to do, being someone
7 that bought these type of products, we've always tried to have
8 one company compete against the other company.

9 **Q.** Now, are you saying there was never a single time during
10 that decade when you could get some concession on price?

11 **A.** No, not saying that.

12 **Q.** But how would you describe it? Frequent? Rare?
13 Sometimes?

14 **A.** It was rare.

15 **Q.** And one last question for you, sir. Were you aware at any
16 time before you became part of this lawsuit that there was a
17 conspiracy involving electrolytic capacitors?

18 **A.** No.

19 **MR. WILLIAMS:** Thank you. No further questions at
20 this time.

21 **THE COURT:** Okay. Pass the witness.

22 **CROSS-EXAMINATION**

23 **BY MS. BERSE**

24 **Q.** I think it's now good afternoon, Mr. Lubman.

25 **A.** Hi.

LUBMAN - CROSS / BERSE

1 Q. You started working at Chip-Tech in 2004 as the
2 vice-president and chief operating officer, is that correct?

3 A. Yes.

4 Q. And your responsibilities in that role included purchasing
5 and sales, right?

6 A. Yes.

7 Q. And that included the purchase and sales of capacitors?

8 A. Yes.

9 Q. And prior to working at Chip-Tech, you worked at a number
10 of other companies, is that fair?

11 A. Yes.

12 Q. One of those was a company called Pro Components?

13 A. Yes.

14 Q. And you were there for approximately 20 years, right?

15 A. Yes.

16 Q. And at that company, your responsibilities also included
17 purchasing and sale, and sales of capacitors, right?

18 MR. WILLIAMS: Your Honor, I object to this line,
19 violating Motion in Limine 2.

20 THE COURT: Limine 2. Just one second. Take a look
21 at that. DPP or defendants?

22 MR. WILLIAMS: DPP Motion in Limine No. 2.

23 THE COURT: Okay. What was the question?

24 (Reporter interruption)

25 THE COURT: No, I was asking counsel. What's the

1 question?

2 **MS. BERSE:** I think the question was just at his prior
3 company, whether his responsibilities included the purchase and
4 sale of capacitors.

5 **THE COURT:** Oh. That's fine. Yeah, go ahead.

6 **BY MS. BERSE**

7 **Q.** Sorry. Just so the record is clear, your job at Pro
8 Components, did that also include the purchase and sale of
9 capacitors?

10 **A.** Yes.

11 **Q.** And is it fair to say all in all that you've had some
12 involvement with purchasing and selling capacitors for
13 approximately 35 years?

14 **A.** Yes.

15 **Q.** Have you ever heard of the Electronic Resellers
16 Association?

17 **A.** Yes.

18 **Q.** That's sometimes known as ERAI?

19 **A.** Yes.

20 **Q.** And that's a trade association of electronic companies
21 like Chip-Tech, is that right?

22 **A.** Yes.

23 **Q.** And for a period of time, Chip-Tech was actually a member
24 of that association, right?

25 **A.** Yes.

LUBMAN - CROSS / BERSE

1 Q. Now, Chip-Tech is a distributor of electronic components,
2 right?

3 MR. WILLIAMS: Your Honor --

4 THE COURT: Overruled. Go ahead.

5 THE WITNESS: Yes.

6 BY MS. BERSE

7 Q. That includes capacitors as one of those types of
8 electronic components?

9 A. Yes.

10 Q. Are you aware of how many defendants there are in this
11 action?

12 A. I'm sorry, can you repeat that?

13 Q. Do you know how many defendants there are in this action?

14 A. I believe, like, 1,800.

15 Q. I think there's about 1,800 plaintiffs.

16 On the defense side, do you know approximately how many
17 manufacturers?

18 A. Twenty-five or 30.

19 Q. And I think you named approximately seven of them that
20 Chip-Tech purchased from. Does that sound about right?

21 A. I'm really not sure.

22 Q. I think you mentioned Chip-Tech purchased from AVX, is
23 that right?

24 A. Yes.

25 Q. And KEMET?

LUBMAN - CROSS / BERSE

1 **A.** Yes.

2 **Q.** And Nichicon?

3 **A.** Yes.

4 **Q.** And Chemi-Con, you said?

5 **A.** Yes.

6 **Q.** And Rubycon?

7 **A.** Yes.

8 **Q.** And Panasonic?

9 **A.** Yes.

10 **Q.** And Sanyo?

11 **A.** I believe so.

12 **Q.** Are there any other defendants that you can think of that
13 Chip-Tech purchased from?

14 **A.** It was such a long time ago that I just don't remember who
15 we were buying it directly from, or I was buying it from one of
16 their franchise distributors or reps.

17 **Q.** Did Chip-Tech also purchase capacitors from
18 non-defendants?

19 **A.** I would imagine so.

20 **Q.** Okay. You would agree with me, would you not, that the
21 vast majority of the capacitors that Chip-Tech bought during
22 the relevant time period cost well under a dollar per unit,
23 right?

24 **A.** Are you saying on the average?

25 **Q.** In general.

LUBMAN - CROSS / BERSE

1 A. I would imagine, I would imagine so.

2 Q. And you would agree that the price is generally pretty
3 cheap for these types of capacitors because there's so much
4 competition in the market, right?

5 A. There should always be the competition in the market. I
6 don't know if at that time there was.

7 Q. You testified earlier that, I think your phrase was on
8 rare occasions (indicating quotation marks) Chip-Tech was able
9 to get price concessions, is that fair?

10 A. Yes.

11 Q. But it did happen on occasion, right?

12 A. Yes.

13 Q. Chip-Tech, for example, was able to negotiate discounts
14 with KEMET, for example?

15 A. Yes.

16 Q. And also with Panasonic?

17 A. Yes.

18 Q. Okay. And there was price competition among the different
19 capacitor manufacturers for Chip-Tech's business, right?

20 A. I believe so.

21 Q. Capacitor manufacturers would sometimes lower their
22 prices, in fact, to win Chip-Tech's business, is that fair?

23 A. Yes.

24 Q. And as part of those discussions, Chip-Tech was on
25 occasion able to negotiate a lower price, right?

LUBMAN - CROSS / BERSE

1 A. On those occasions, yes.

2 Q. Okay. Sometimes, if Chip-Tech wanted to buy a particular
3 type of capacitor, it would put out a request for a quote to a
4 number of different manufacturers, is that fair?

5 A. Yes.

6 Q. And then the various capacitor manufacturers would compete
7 on price in order to win that business?

8 A. Yes.

9 Q. During this relevant time period, Chip-Tech sometimes
10 purchased certain of its capacitors pursuant to contracts,
11 right?

12 A. Yes.

13 Q. And those contracts included a number of terms, right?

14 A. Yes.

15 Q. Including the price?

16 A. Yes.

17 Q. Some of those contracts lasted a year, for example?

18 A. Or longer.

19 Q. Sometimes as long as five years, is that fair?

20 A. Yes.

21 Q. For example, Chip-Tech purchased capacitors from KEMET
22 under long-term contracts, right?

23 A. Yes.

24 Q. And you would agree that it's fair to say generally that
25 during the time of the contract, the price was locked in,

LUBMAN - CROSS / BERSE

1 right?

2 **A.** Not always.

3 **Q.** Okay. In fact, it is the case, though, that Chip-Tech was
4 never able to renegotiate the price of capacitors under a
5 long-term contract, isn't that correct?

6 **A.** We had a long-term contract with KEMET and KEMET reneged
7 on the contract halfway through canceling the order. And then
8 we had to negotiate to get a certain amount of product and then
9 let them cancel.

10 **Q.** But it is, in fact, the case that Chip-Tech was never able
11 to just renegotiate the price during the term of a contract, is
12 that fair?

13 **A.** Correct.

14 **Q.** Okay. And that's the same whether it was a short-term
15 contract or a long-term contract, right?

16 **A.** Yes.

17 **Q.** And one of the companies that Chip-Tech purchased
18 capacitors from is United Chemi-Con, right?

19 **A.** Yes.

20 **Q.** You're aware that United Chemi-Con purchases some
21 capacitors here in the United States, right?

22 **A.** I didn't know that.

23 **Q.** Okay. And you're aware that United Chemi-Con purchases
24 large-can capacitors, right?

25 **A.** Yes.

LUBMAN - REDIRECT / WILLIAMS

1 Q. And, in fact, Chip-Tech bought some large-can capacitors
2 from United Chemi-Con, right?

3 A. I suppose.

4 Q. Okay. There are other manufacturers that make large-can
5 capacitors, is that fair?

6 A. I believe Nichicon makes the large-can capacitors.

7 Q. How about a company called Cornell Dubilier?

8 A. Yes.

9 Q. You're aware that they're a competitor of United Chemi-Con
10 with respect to large-can capacitors, right?

11 MR. WILLIAMS: Your Honor, I object, this violates MIL
12 5.

13 THE COURT: Overruled. Go ahead.

14 THE WITNESS: I believe so.

15 BY MS. BERSE

16 Q. And Cornell Dubilier, they're not named as a defendant in
17 this case, is that correct?

18 A. I believe not.

19 MS. BERSE: Nothing further.

20 THE COURT: Okay. Any brief followup?

21 MR. WILLIAMS: Very brief, Your Honor. Thank you.

22 REDIRECT EXAMINATION

23 BY MR. WILLIAMS

24 Q. Thank you, Mr. Lubman.

25 You were asked about something called ERAI. Do you recall

LUBMAN - REDIRECT / WILLIAMS

1 that?

2 **A.** Yes.

3 **Q.** And what was that, again?

4 **A.** Electronic Resellers Association.

5 **Q.** Will you describe to us why it was that Chip-Tech joined
6 that organization?

7 **A.** They were an organization that came about because of
8 issues with bad companies, and bad product. And it was more of
9 a email type of notification that went out to everyone, letting
10 you beware of people that are selling bad product, or
11 selling -- or not paying their bills.

12 **Q.** When you talk about bad product, in the context of ERAI
13 would you tell the jury what do you mean by "bad product"?

14 **A.** It's counterfeit product that might have gotten into the
15 parts stream. People making counterfeit parts, whether it's
16 overseas and shipping it in here. And labeling it what the
17 original brand should be, but it's not.

18 **Q.** Did you go to meetings where you met with other companies
19 that were members of ERAI?

20 **A.** No, never.

21 **Q.** Did you ever receive any confidential business information
22 from any members of ERAI?

23 **A.** No, never.

24 **Q.** Did anyone in ERAI ever tell you the prices they were
25 thinking of charging their customers?

LUBMAN - REDIRECT / WILLIAMS

1 **A.** No. They were our competitors.

2 **Q.** How long did you stay involved in ERAI?

3 **A.** Overall, probably five or six years.

4 **Q.** Describe to us, how did you participate? Did you go
5 places? Were there conferences? What exactly was it that
6 Chip-Tech did in relation to ERAI?

7 **A.** They may have had conferences, but we never attended. It
8 was usually at Las Vegas shows or something like that, but we
9 never attended.

10 **Q.** You didn't go. Okay.

11 You were asked about when you purchased from UCC. Do you
12 recall -- when you would purchase from UCC, where would the
13 product come from to Chip-Tech?

14 **A.** I'm not sure. I'm not sure if it shipped in from overseas
15 to their United States facility --

16 **Q.** Uh-huh.

17 **A.** -- and then it would ship to us. I'm not sure exactly.

18 **Q.** You were also asked about sporadic competition that you
19 might have been able to get in the 2000s. And I'd like to ask
20 you first, did you view that as a frequent thing or as a rare
21 thing, that you got the manufacturers to make price concessions
22 to you in the 2000s?

23 **A.** In -- prior to 2000?

24 **Q.** In the 2000s.

25 **A.** I would say, from the late '90s to 2000, 2001, we used to

LUBMAN - REDIRECT / WILLIAMS

1 go to the franchise distributors that sold the manufacturers'
2 parts, they were the representatives. And we would give them
3 one, two, or three different manufacturers that we could use
4 for any given part. And they would go to the factories and try
5 to get us the best price at that time. And more often than
6 not, we would get very, very aggressive price breaks.

7 **Q.** When you say "the factories," do you mean to say the
8 manufacturers?

9 **A.** Correct.

10 **Q.** And what you're telling us now is in the late '90s into
11 2000, you were able to secure price discounts?

12 **A.** Yes.

13 **Q.** Did that change in the 2000s, in the experience you had,
14 trying to get better prices?

15 **A.** Yes.

16 **Q.** Could you tell us how? Could you please tell the jury?

17 **A.** Prior, when we were going to the distributors, and they
18 were battling with the manufacturers for better price, we
19 happened to be able to get on any given item more aggressive
20 pricing. They would price-break for us. One would try to beat
21 the other.

22 And now, more in the 2000s, when they would go in to get
23 pricing or we went directly to the manufacturer for better
24 pricing, they pretty much stood pat where they were at.

25 **MR. WILLIAMS:** Thank you, sir. I have no further

LUBMAN - REDIRECT / WILLIAMS

1 questions.

2 **THE COURT:** Okay. Any questions from the jury?

3 (No response)

4 **THE COURT:** All right. Great. Please, be careful on
5 your way down, it's a little bit steep.

6 **THE WITNESS:** Thank you.

7 (Witness excused)

8 **THE COURT:** Who's next, Mr. Williams?

9 **MR. WILLIAMS:** The next presentation by the plaintiffs
10 will be the videotaped testimony of Mr. Mitsuohori.

11 **THE COURT:** Okay. Now, ladies and gentlemen of the
12 jury, you'll remember, I gave you a jury instruction on
13 deposition testimony. This was testimony under oath, just like
14 here in court, but it was recorded in question-and-answer form
15 before the trial. And you should treat this testimony insofar
16 as you can as if it were right here with a living, human,
17 breathing person.

18 Now, to make this a little bit easier because the -- I
19 believe, the witness is speaking in Japanese, is that right?

20 **MR. WILLIAMS:** The original testimony is in Japanese.

21 **THE COURT:** But he's speaking in Japanese?

22 **MR. WILLIAMS:** Yes.

23 **THE COURT:** Yes. Okay. So what you're going to hear
24 is the real-time English translation that the lawyers in the
25 room heard as the deposition was being taken. So, it will

LUBMAN - REDIRECT / WILLIAMS

1 sound dubbed, but it's not. It was not an after-the-fact
2 translation. It happened as the questions and answers were
3 going on in the exam.

4 And to make it a little bit clearer and easier, you won't
5 hear the Japanese part, you'll hear only the English part. And
6 I believe you'll also see a scrolling translation at the
7 bottom. So you'll see the words actually typed out as the
8 translation goes on. Okay?

9 And remember the other jury instruction, it's the
10 translation that is the evidence. Okay?

11 But you'll have an opportunity to see the witness, and do
12 any evaluation you want to make based on your impressions about
13 the witness's demeanor, and how he or she looks on camera and
14 so on. Okay?

15 All right. And here comes your photo.

16 (Document distributed to the Jury)

17 **KAZUHIKO MITSUHORI, PLAINTIFFS' WITNESS**

18 **BY VIDEOTAPED DEPOSITION**

19 (Time noted: 12:22 p.m.)

20 **MR. SKOLKY:** Objection, Your Honor, 802.

21 **THE COURT:** What?

22 **MR. SKOLKY:** Objection to Rule 802.

23 **THE COURT:** Oh. Overruled. Continue.

24 (Playing of the videotaped deposition was resumed in
25 open court at 12:33 p.m.)

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

Wednesday, March 4, 2020