

Exhibit B

Volume 2

Pages 173 - 413

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
)	Tuesday
)	November 30, 2020
_____)	9:00 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

APPEARANCES:

For Direct Purchaser Plaintiffs: JOSEPH SAVERI LAW FIRM, INC.
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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR
Official Reporter - US District Court
Computerized Transcription By Eclipse

LUBMAN - DIRECT / WILLIAMS

1 names. There will be a number of Japanese names mentioned, so
2 I'm told, and those names will be spelled out for you literally
3 so you can kind of follow along. Okay?

4 But all that will be later. Now we have -- who do we have
5 next?

6 **MR. WILLIAMS:** Mr. Barry Lubman will be the next
7 witness for the plaintiffs.

8 **THE COURT:** Okay. Let's bring him in.

9 **BARRY LUBMAN,**

10 called as a witness for the Plaintiffs, having been duly sworn,
11 testified as follows:

12 **THE WITNESS:** I do.

13 **MR. WILLIAMS:** Good morning, sir. Good afternoon, I
14 should say.

15 **THE CLERK:** Excuse me. Excuse me.

16 Please state your full name for the Court.

17 **THE WITNESS:** Barry Lubman.

18 **THE CLERK:** And spell your last name.

19 **THE WITNESS:** L-U-B-M-A-N.

20 **THE CLERK:** Thank you.

21 **MR. WILLIAMS:** Thank you.

22 May I proceed, Your Honor?

23 **THE COURT:** Please.

24

25

DIRECT EXAMINATION

BY MR. WILLIAMS

Q. How are you today, sir?

A. Good. Thank you.

Q. Where are you from?

A. I'm originally from Brooklyn, New York.

Q. And where do you live now, sir?

A. In Long Island, New York, Roslyn.

Q. What do you do for a living?

A. We sell electronic components.

Q. Who do you work for?

A. A Company by the name of Pride Light LLC.

Q. Is there some relation -- well, let me slow down.

Do you know of a company called Chip-Tech?

A. Yes.

Q. Is there some relationship between Chip-Tech and Pride?

A. Yes.

Q. What is that relationship?

A. Chip-Tech and Pride were sister companies from 1989 to 2015.

Q. How did those companies begin. Could you tell us?

A. Back in 1984 we started a company in Brooklyn in a storefront, me and three of my friends, childhood friends, and it's gone on to now.

Q. So almost 40 years later. And in Brooklyn, you were in

1 Sheepshead Bay when you started?

2 **A.** Sheepshead Bay, Brooklyn.

3 **Q.** Where are your locations today?

4 **A.** Today we are located in Lindenhurst, New York.

5 **Q.** What does your business do, sir?

6 **A.** We are a supplier of electronic components, computer
7 chips, semiconductors, capacitors, resistors, diodes,
8 transistors.

9 **Q.** As part of that business, do you buy capacitors?

10 **A.** Yes.

11 **Q.** Now, I understand you work with friends and family. Could
12 you tell us a little bit more about the company and who are the
13 people who work with you there?

14 **A.** It's a small company. It's about 14 people that work in
15 the company. It's made up of my partner Rob; his sister, who
16 is also a shareholder; my brother, who's also a shareholder.
17 My father used to work in the company.

18 I started it in 1984. I took my dad in and my brother in
19 1986. And in 2015 my dad passed away, so he's no longer with
20 us, but everyone else is still there.

21 **Q.** Now, I understand you had some concerns about coming from
22 New York to California to testify. Could you just briefly tell
23 us why you had some concerns, sir?

24 **A.** I just have a lot of things going on like everybody else.
25 My brother is going through an immune type of issue, so I've

1 been his transportation. I've been taking him back and forth
2 and -- but I'm here.

3 **Q.** Thank you.

4 What about the business? Is it going to interfere with
5 running the business for you?

6 **A.** Yes. Like all businesses today, we're very shorthanded,
7 and me being out of there three days is a lot.

8 **Q.** So I appreciate you being here today to talk to us.

9 Now, could you tell us over this time at Chip-Tech, what
10 has been your personal responsibilities at the company?

11 **A.** My major issue is buying electronic components. I source
12 from all the different companies, manufacturers, distributors.

13 **Q.** Between 2002 and 2013, did your company buy aluminum
14 capacitors?

15 **A.** Yes.

16 **Q.** Between 2002 and 2013, did your company buy tantalum
17 capacitors?

18 **A.** Yes.

19 **Q.** Between 2002 and 2013, did your company buy film
20 capacitors?

21 **A.** Yes.

22 **Q.** Who were some of the companies, if you recall, that you
23 bought aluminum capacitors from?

24 **A.** KEMET, Vishay, Chemi-Con, Rubycon, Panasonic.

25 **Q.** When you say "Chemi-Con," what are you referring to?

1 A. They go by a couple of names. United Chemi-Con, Nippon
2 Chemi-Con.

3 Q. Do you see what I'm holding in my hand here, sir?

4 A. Yes. That's a large can.

5 MR. WILLIAMS: Your Honor, may I approach and just
6 show this to the witness?

7 THE COURT: Yes.

8 MR. WILLIAMS: Thank you.

9 (Whereupon item was tendered to the witness.)

10 BY MR. WILLIAMS

11 Q. Did you buy large can capacitors like that one between
12 2002 and 2013?

13 A. Yes.

14 Q. Who did you buy them from?

15 A. We bought them from Chemi-Con, KEMET, maybe Mallory also.

16 Q. And could you tell us, is the name of a manufacturer on
17 that large can you're holding?

18 A. Yes.

19 Q. What's the name of the manufacturer on that can?

20 A. Nippon Chemi-Con.

21 Q. Thank you.

22 Do you know which companies, if you can recall, did your
23 company buy tantalum capacitors from between 2002 and 2013?

24 A. There were so many companies that made the product, but I
25 would tell you AVX, KEMET, Vishay, probably Nichicon, Nippon

1 Chemi-Con. There's -- the list goes on.

2 **Q.** Do you recall which companies your company bought film
3 capacitors from between 2002 and 2013?

4 **A.** EPCOS, Wima, Panasonic. It's just hard to remember
5 exactly which companies did exactly which commodity, but we
6 used all the major manufacturers for pretty much all the lines
7 that they encompassed.

8 **Q.** Do you have any sense of how much your company spent for
9 aluminum, film and tantalum capacitors between 2002 and 2013?

10 **A.** It was definitely in the millions.

11 **Q.** Could you tell us, if you go back to the 2000s, say the
12 early 2000s, what was it like for you then to try to negotiate
13 lower capacitor prices when you were purchasing?

14 **A.** Our job is we get a requirement from a manufacturer, from
15 an OEM who's making product, and then we would take their
16 approved vendors. We would solicit a bid from those type of
17 companies, and they would come back with their quotes. And we
18 would try to be -- you know, having one compete against the
19 other and, hopefully, get them to be more aggressive on their
20 pricing. And then we would, of course, pass that on as a quote
21 to our customer.

22 **Q.** And how did that work out for you as the 2000s progressed
23 in terms of the ability to negotiate prices?

24 **A.** In early 2000 it was -- it worked very well. It was
25 aggressive. Everybody wanted the business, so you were able to

1 have one go against the other for pricing, and the outside reps
2 were very negotiable.

3 **Q.** And then what happened?

4 **A.** And then as -- in 2004, 2005, 2006, the -- it changed
5 pricing. They weren't negotiating. It just didn't seem that
6 they wanted the business as much. They give a price, it was
7 firm, and that was that.

8 **Q.** Were there from 2002 to 2013, at least some times, once in
9 a while, could you negotiate a price?

10 **A.** Yes.

11 **Q.** Generally not, though?

12 **A.** Generally not.

13 **Q.** Were you aware at any time before you became involved in
14 this lawsuit that there was a conspiracy involving capacitors?

15 **A.** No.

16 **Q.** And I want to ask you about some names and ask you if you
17 remember ever talking to, hearing from, or knowing these
18 people. Okay?

19 **A.** Yes.

20 **Q.** Do you know someone from UCC, United Chemi-Con, named
21 Larry Magoncia?

22 **A.** No.

23 **Q.** Do you recall knowing someone from United Chemi-Con named
24 Biren Patel?

25 **A.** No.

1 Q. Do you recall every hearing of anyone from United
2 Chemi-Con named Steven Watlock?

3 A. No.

4 Q. Do you recall ever hearing of anyone from United Chemi-Con
5 named Derrick Fitzpatrick?

6 A. No.

7 Q. And could you tell us why -- given your concerns, why did
8 you choose to come here and talk to us and the jury today?

9 A. Well, it's been seven years I think we've been involved
10 with this, and I had to be here. I had to see it through. And
11 I know everyone else is making it here, so I'm here.

12 Q. Thank you very much.

13 MR. WILLIAMS: No questions. We pass the witness at
14 this time, Your Honor.

15 THE COURT: Okay. Defendants.

16 CROSS-EXAMINATION

17 BY MS. BERSE:

18 Q. Good afternoon. Mr. Lubman. My name Farrah Berse, and I
19 represent United Chemi-Con.

20 You started working at Chip-Tech in around 2004 as the
21 vice-president and chief operating officer; is that correct?

22 A. Yes.

23 Q. And in that role, did your responsibilities include
24 purchasing and sales?

25 A. Yes.

1 Q. And did that include the purchasing of capacitors?

2 A. Yes.

3 Q. And prior to working at Chip-Tech, you had worked at some
4 other companies; is that right?

5 A. Yes.

6 Q. One of them was a company called Pro Components?

7 A. Yes.

8 Q. In fact, you were there for about 20 years; is that right?

9 A. Yes.

10 Q. At Pro Components did your responsibilities also include
11 purchasing and sales of capacitors?

12 A. Yes.

13 Q. So is it fair to say that you've had some involvement with
14 purchasing and selling capacitors for approximately 35 years?

15 A. Yes.

16 Q. Now, Chip-Tech was a distributor of electronic components;
17 is that right?

18 A. Correct.

19 Q. And that included capacitors as one of the types of
20 electronic components?

21 A. Yes.

22 Q. Mr. Lubman, do you know approximately how many defendants
23 there are in this case?

24 A. I am not sure. I know there's a lot.

25 Q. I think I caught seven different of the defendants that

1 you mentioned that Chip-Tech purchased capacitors from in the
2 2002 to 2013 time period, but I want to make sure our lists
3 match up.

4 Is AVX one of those companies?

5 **A.** Yes.

6 **Q.** And KEMET?

7 **A.** Yes.

8 **Q.** And Nichicon?

9 **A.** Yes.

10 **Q.** And Rubycon?

11 **A.** Yes.

12 **Q.** And Panasonic?

13 **A.** Yes.

14 **Q.** And Vishay?

15 **A.** Yes.

16 **Q.** And you mentioned Chemi-Con, and does that include both
17 United Chemi-Con and Nippon Chemi-Con?

18 **A.** Yes.

19 **Q.** And are you certain that Chip-Tech purchased capacitors
20 from all seven of those defendants during the period 2002 to
21 2013?

22 **A.** Yes.

23 **Q.** And did Chip-Tech also purchase capacitors from
24 non-defendants in that time period?

25 **A.** Excuse me? Can you repeat that?

1 Q. Sure. Did Chip-Tech also purchase capacitors manufactured
2 by companies that are not defendants during that time period?

3 A. I'm not sure of all of the defendants, but we did purchase
4 from a lot of different companies.

5 Q. And just so the record is clear, Chip-Tech during that
6 time period, I didn't hear you mention defendant Matsuo as one
7 of the companies that you purchased from; is that correct?

8 A. Correct.

9 Q. Now, you would agree with me, would you not, that the vast
10 majority of the capacitors that Chip-Tech bought during that
11 2002 to 2013 time period cost well under a dollar per unit; is
12 that right?

13 A. On the most part, capacitors could be very on the low end,
14 but there are other capacitors that exceed into the higher
15 dollars. It could be \$13, \$14, \$15.

16 Q. There are capacitors that cost as little as pennies;
17 right?

18 A. Correct.

19 Q. And there are capacitors that cost maybe tens of dollars?

20 A. Yes.

21 Q. Okay. Is that fair?

22 A. Yes.

23 Q. But the vast majority that Chip-Tech purchased were those
24 that were on the lower end of the price range; is that fair?

25 A. Yes.

1 Q. Now, sometimes Chip-Tech was able to get price concessions
2 when it tried to purchase capacitors; is that right?

3 A. Yes.

4 Q. So, for example, one of the companies that Chip-Tech
5 purchased with was KEMET; right?

6 A. Yes.

7 Q. And Chip-Tech was able to negotiate discounts sometimes
8 with KEMET; right?

9 A. Yes.

10 Q. Another company that you said you purchased from was
11 Panasonic; right?

12 A. Yes.

13 Q. And sometimes Chip-Tech was able to negotiate price
14 discounts with Panasonic; correct?

15 A. Yes.

16 Q. I think you testified that there was sometimes price
17 competition among the different capacitor manufacturers for
18 Chip-Tech's business; is that fair?

19 A. Yes, it is.

20 Q. And, in fact, sometimes the manufacturers would lower
21 their prices to try to win Chip-Tech's business; is that right?

22 A. In the early stages, yes.

23 Q. And as part of those negotiations, Chip-Tech was on
24 occasion able to negotiate lower prices; right?

25 A. Yes.

1 Q. Sometimes if Chip-Tech wanted to buy a particular type of
2 capacitor, it would put out a request to a number of different
3 manufacturers; right?

4 A. Correct.

5 Q. And then the various capacitor manufacturers would compete
6 on price to try to win that business; right?

7 A. Yes.

8 Q. Now, during the relevant time period, 2002 to 2013,
9 sometimes Chip-Tech purchased certain of its capacitors
10 pursuant to a contract; is that fair?

11 A. Yes.

12 Q. Those contracts would include a number of different terms;
13 right?

14 A. Yes.

15 Q. One of those would be the price of the capacitor; is that
16 fair?

17 A. Yes, it is.

18 Q. And sometimes these contracts lasted a year or more; is
19 that fair?

20 A. Yes.

21 Q. Sometimes they were as long as five years; is that fair?

22 A. Yes.

23 Q. And just as an example, again, one of the defendants you
24 mentioned, Chip-Tech purchased capacitors from KEMET under a
25 long-term contract; right?

1 A. Yes.

2 Q. And is it true that Chip-Tech was never able to
3 renegotiate the price during the term of a contract; correct?

4 A. Our major contract with KEMET was a five-year contract
5 for -- we were supporting a company by the name of UNICOR,
6 which is a military subcontractor. And we did give an order to
7 KEMET, and in the middle of the contract KEMET reneged on the
8 order and they broke the contract price. And that was the
9 first issue that we saw or we had.

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

13 A. Yes.

14 Q. And that was the same whether it was a long-term contract
15 or short-term contract; right?

16 A. Correct.

17 Q. Now, you mentioned United Chemi-Con as one of the
18 purchasers -- one of the manufacturers, excuse me, that
19 Chip-Tech purchased from; correct?

20 A. Yes.

21 Q. You're aware that United Chemi-Con manufactures some
22 capacitors here in the United States?

23 A. Yes.

24 Q. And you're aware that United Chemi-Con manufactures large
25 can capacitors like the one that you talked about earlier;

1 right?

2 **A.** Yes.

3 **Q.** And, in fact, Chip-Tech purchased some large can
4 capacitors from United Chemi-Con; correct?

5 **A.** Yes.

6 **Q.** Are you familiar with a company called Cornell Dubilier?

7 **A.** Yes.

8 **Q.** Are they another manufacturer that makes large can
9 capacitors?

10 **A.** Yes, they are.

11 **Q.** They're another United States company?

12 **A.** I believe so.

13 **Q.** And you're aware that they're a competitor of United
14 Chemi-Con with respect to large-can capacitors; right?

15 **MR. WILLIAMS:** Your Honor, objection. MIL 5.

16 **THE COURT:** Just a little bit more of this, but not
17 too much.

18 Go ahead. You can answer the question.

19 **THE WITNESS:** Yes.

20 **BY MS. BERSE:**

21 **Q.** Just to be clear, Cornell Dubilier that we were just
22 talking about, they're not named as a defendant in this case;
23 is that right?

24 **A.** I wouldn't know.

25 **Q.** You don't know sitting here today?

1 A. No.

2 Q. Okay.

3 THE COURT: Any brief redirect?

4 MR. WILLIAMS: Just one or two please, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. WILLIAMS

7 Q. Mr. Lubman, a moment ago you were asked whether if you
8 were able to negotiate discounts, and you said at the early
9 stages; was that correct?

10 A. Correct.

11 Q. Could you elaborate briefly? What do you mean by you
12 could negotiate discounts at the early stages?

13 A. When -- when a manufacturer gives us a list of approved
14 brands that they could use for their build, it might say on it
15 AVX, KEMET, United Chemi-Con, whatever names are on there. We
16 then go out with that same list and we send it to all of those
17 companies, and then they come back and they give us a bid for
18 what they want to offer us a price.

19 In the early stages, we might have on one item eight cents
20 from one person, six cents from another, four cents from
21 another.

22 Later, a couple years later, after I'd say 2004-2005, the
23 prices were coming in at eight cents, eight cents, eight cents,
24 .079, .081, .08. So we weren't seeing the same type of
25 competition or give in the pricing that we were seeing.

1 Q. Thank you, sir.

2 MR. WILLIAMS: No further questions, Your Honor.

3 THE COURT: Okay. Any written questions from the
4 jury?

5 (No response.)

6 THE COURT: No? Good.

7 Okay. Mr. Lubman, you can step down. Be careful on the
8 way down. It's steep.

9 (Witness excused.)

10 THE COURT: Okay. Now we're going to do the
11 deposition.

12 (Brief pause.)

13 THE CLERK: All right.

14 THE COURT: I thought this was deposition testimony.

15 MR. YOUNG: No. This was the prior sworn testimony
16 of Mr. Sato.

17 THE COURT: I said "deposition," like, eight times.

18 You need to step in and tell me so I don't feel surprised.

19 Okay? You heard me say "deposition." You need to tell me.

20 I didn't -- I don't know what you're doing until you show
21 me. So you need to tell me so I can be reasonable in my
22 presentations. Okay?

23 MR. YOUNG: Understood.

24 THE COURT: This is actually not deposition
25 testimony. It's other testimony. You don't have to worry

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

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

Tuesday, November 30, 2021