

Price-fixing morass deepens

As lawsuits increase, many firms await outcome

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The global crackdown on alleged auto supplier price fixing has expanded again, with an additional criminal indictment issued last week and a new kind of class-action lawsuit pitting suppliers against other suppliers and the automakers.

But don't expect most of the industry to get tangled in the fray just yet, analysts and attorneys say. Even if they can prove they were overcharged, many companies will hold off on litigation until the current prosecutions and spate of lawsuits unfold -- and some may never come to court.

Last week, the **U.S. Department of Justice** Antitrust Division brought its third Asian auto supplier indictment in less than three months, this time at **U.S. District Court** in San Francisco against the Taiwan-based aftermarket headlight maker **Eagle Eyes Traffic Industrial Co. Ltd.**, its chairman and vice chairman and subsidiary **E-Lite Automotive Inc.** of Chino, Calif.

The latest aftermarket headlight indictment stems from an ongoing investigation into the market that led to criminal fines for Fontana, Calif.-based distributor **Maxzone Vehicle Lighting Corp.** and **Sabry Lee USA Inc.**, the U.S. distributor for Taiwanese producer **Sabry Lee Ltd.** Maxzone was fined \$43 million this month and Sabry Lee \$200,000 in October.

Much like in its September indictment in Detroit against Tokyo-based **Furukawa Electric Co. Ltd.**, the government alleges restraint of trade in violation of the Sherman Antitrust Act for collusion between July 2001 and September 2008 by Eagle Eyes.

Polo Shu-Sheng Hsu, the former president and CEO of Maxzone, was sentenced to serve 180 days in prison and to pay a \$25,000 criminal fine for his role in the conspiracy. Chien Chung Chen, aka Andrew Chen, the former executive vice president of Sabry Lee, pleaded guilty as well and is scheduled to be sentenced July 17.

About 25 civil lawsuits have been filed so far in Michigan, four other states and the District of Columbia alleging Furukawa and other automotive suppliers of wire harnesses and other components engaged in false and deceptive trade practices, fraudulent

concealment, violation of antitrust laws and/or unjust enrichment.

The latest is Illinois-based **Martinez Manufacturing Inc.**, a former wire harness maker that filed what appears to be the first prospective class-action suit on behalf of "direct purchasers," or customers of the colluders. All other federal lawsuits so far are on behalf of auto dealers or individual buyers who bought cars or aftermarket products from the OEMs, as indirect buyers.

Martinez's manufacturing operations were acquired in 2007 by **Thermtrol MGI Global LLC**, a subsidiary of North Canton, Ohio-based **Thermtrol Corp.** The successor company still makes automotive wire harnesses and is not part of the supplier suit -- but Thermtrol Senior Vice President Gene Lockhart said last week that could change.

"We do have ability to participate in it. We bought items from the suppliers that are listed in those court cases," said Lockhart, who had the company's purchasing department review its component orders after the Furukawa indictment.

"Our volume in that business after the purchase wasn't as high as it was before the (Thermtrol acquisition). But we buy enough that it would be worthwhile to pursue."

Martinez Manufacturing, later **MGI Manufacturing Inc.**, had around \$11 million revenue prior to the acquisition, but Lockhart said wire harness sales lost some momentum afterward with the 2008 lending market downturn and automotive industry restructuring.

Thermtrol MGI also sells harnesses and thermal components to all-terrain vehicle and recreational watercraft makers like **Polaris Industries Inc.** and **Bombardier Inc.**, so it's possible that customers outside the automotive industry were also indirectly affected by the collusion, Lockhart said.

"If I'm going to build a harness, I might buy a connector from a Furukawa or another company in these court cases. They also make harnesses, and if they're going to make sure they've got the best price in the market, then they're going to be looking at what you buy from them to make sure you can't (beat) them later," he said. "It does convolute the picture."

Supplier competition began to come under scrutiny when the **Japan Fair Trade Commission** raided Furukawa's Tokyo offices, along with those of wire harness market leader **Sumitomo Electric Industries Ltd.** and **Yazaki Corp.** Around that same time, in February 2010, FBI agents also raided **Yazaki North America Inc.** in Canton Township, **Denso Corp.** in Southfield, and **Tokai Rika Group North America** in Plymouth Township.

The FBI also sought documents in October from **Magna International Inc.**, and over the summer Justice also served a subpoena on the Troy subsidiary of French air conditioning and sensor electronics maker **Valeo Inc.** and searched **Mitsubishi Electric America Inc.**

in Northville as part of the antitrust probe.

The European Commission made unannounced visits in the summer to **Lear Corp.**, **TRW Automotive Holdings Corp.**'s occupant safety systems division, a subsidiary of **Autoliv Inc.** in Germany and a European office of **Delphi Corp.**

Delphi formed a wire harness joint venture with Furukawa in 2004, which was ended in 2010. Lear also had a joint venture, **Furukawa Lear Corp.**, which became **Furukawa Wiring Systems America Inc.** after Furukawa bought out Lear's stake in June 2010.

For its part, Lear hopes to get out of the lawsuits quickly.

The Southfield-based seating and safety systems maker, which exited federal bankruptcy in November 2009, asked the judge in that case to issue an injunction dismissing it from all the antitrust lawsuits.

Lear finished its reorganization near the end of the time period the feds are investigating - and since no one specifically alleges post-bankruptcy Lear "committed a single overt act" to further the conspiracy, the company argues the lawsuits basically amount to claims discharged by the bankruptcy.

Judge Allan Gropper in New York has yet to rule on Lear's request.

Gregory Hansel, partner at **Preti, Flaherty, Beliveau & Pachios LLP** in Maine and attorney for Martinez Manufacturing, said the company has a "sizable claim" against Lear, Furukawa and the others, but it has yet to be fully evaluated.

"But Martinez is also suing for the claims that cover the whole (prospective) class of companies," Hansel said. "That is for the total overcharge, or the difference between what the prices would have been in a competitive market and what the price was during the period of the cartel."

Federal prosecutors have said the wire harness price-fixing conspiracy lasted from at least January 2000 to January 2010. Furukawa pleaded guilty last month in Detroit and has agreed to pay \$200 million in fines in the case.

Since then, at least four automotive dealers and more than 25 individual car buyers have brought lawsuits in federal courts around the country against Furukawa, Lear, Sumitomo, **Leoni AG** and others. But OEMs and suppliers had yet to bring any civil action before Martinez Manufacturing did so.

An unnamed source familiar with the cases told *Crain's* the automakers themselves will avoid a class-action suit and may avoid litigation completely by demanding lower prices in the future to offset their overcharges.

Analysts agree.

"As expected, the OEMs are being quiet about this. It doesn't serve their purpose to be vocal. It's technically possible for them (to sue), but I don't know that it serves their purpose. They're more likely to serve their own purposes," said Ravi Shanker, vice president and lead equity analyst at **Morgan Stanley's** research unit for the North American auto parts industry.

"There's always an element of OEM-versus-supplier pricing pressure. The general perception in the industry is that this (case) gives the OEMs leverage in the future. At the next contract (negotiation), this topic could come up."

Fred Hubacker, executive managing director of turnaround firm Conway Mackenzie Inc., also suspects automakers will avoid litigation -- but may start sourcing parts away from the companies that get indicted.

"There's no value to (automakers) jumping into this," he said. "It's possible and likely that they'll use this as sourcing leverage in the future. They are not going to look favorably to future business with these suppliers."

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