

EXHIBIT 5

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 TRANSHORN, LTD.,

4 Plaintiff,

5 v.

04 CIV 1178

6 UNITED TECHNOLOGIES
6 CORPORATION, et al.,,

7 Defendants.

8 -----x

9
10 January 13, 2005
10 3:40 p.m.

11 Before:

12 HON. THOMAS P. GRIESA,

13 District Judge

14 APPEARANCES

15 WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
15 Attorneys for Plaintiffs

16 BY: FRED T. ISQUITH and ALEXANDER H. SCHMIDT

17 LERACH COUGHLIN STOIA & ROBBINS LLP
17 Attorneys for Plaintiffs

18 BY: MARK SOLOMON

19 STEYER LOWENTHAL BOODROOKAS ALVAREZ & SMITH, LLP
19 Attorneys for Plaintiffs

20 BY: ALLAN STEYER

21 LOCKRIDGE GRINDAL NAUEN PLLP
21 Attorneys for Plaintiffs

22 BY: W. JOSEPH BRUCKNER

23 LAW OFFICES OF BERNARD M. GROSS, PC
23 Attorneys for Plaintiffs

24 BY: WARREN RUBIN

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1 APPEARANCES (Continued)

2 KOHN SWIFT & GRAF PC

2 Attorneys for Plaintiffs

3 BY: JOSEPH C. KOHN

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4 BRANSTETTER, KILGORE, STRANCH & JENNINGS

4 Attorneys for Plaintiff

5 BY: J. GERARD STRANCH, IV

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6 CLEARY, GOTTLIEB, STEEN & HAMILTON

6 Attorneys for Defendant Otis Elevator and United
7 Technologies

7 BY: MARK LEDDY

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8

9 SHEARMAN & STERLING, LLP

9 Attorneys for Defendants Schindler

10 BY: KENNETH M. KRAMER

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11 THELEN REID & PRIEST LLP

11 Attorneys for Defendants Kone, Inc. and Kone Corp.

12 BY: MICHAEL EVAN JAFFE and GERALD ZINGONE

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13 WEIL, GOTSHAL & MANGES LLP

13 Attorneys for Defendants THYSSEN

14 BY: CHRISTOPHER V. ROBERTS and SCOTT MARTIN

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15 GIBBONS, DEL DEO, DOLAN, GRIFFINER & VECCHIONE

15 Attorneys for Defendants THYSSENKRUPP AG

16 BY: TERRY MYERS and THOMAS R. VALEN

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1 THE COURT: To what do I owe the pleasure of your
2 company? There is a lot of company here.

3 MR. ISQUITH: Your Honor, would you --

4 THE COURT: Who wants to speak?

5 MR. ISQUITH: Fred Isquith from the Wolf Haldenstein
6 firm representing plaintiffs.

7 THE COURT: From where?

8 MR. ISQUITH: Wolf Haldenstein in New York City. You
9 appointed our firm, along with the Lerach Coughlin Stoia &
10 Robbins firm from San Diego as co-lead counsel. This is my
11 partner, Alex Schmidt.

12 We are here in part because your Honor has asked us to
13 be here, but in part because after 11 months we thought that
14 it's time to get the case started and organized and moving.

15 THE COURT: Okay.

16 MR. ISQUITH: It has been sent to your Honor, although
17 the first cases started here, our case started here. There
18 were cases filed in various districts around the country, and
19 the judicial panel on multi district litigation transferred all
20 those cases to your Honor and consolidated them for pretrial
21 purposes only a few weeks ago.

22 In the meantime, and prior to that an amended
23 complaint was filed in this district under. Your Honor's
24 orders, the other complaints are incorporated and brought
25 within.

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1 THE COURT: What's the case about?

2 MR. ISQUITH: Thank you, your Honor.

3 This is a case, an antitrust case. It deals with a
4 price fixing conspiracy within the elevator industry, elevators
5 and moving stairways and things like that, escalators and the
6 rest. The defendants are the four or five major suppliers of
7 elevators, their parts and services.

8 THE COURT: Are they domestic companies?

9 MR. ISQUITH: Some are and some are not.

10 THE COURT: Who are the companies?

11 MR. ISQUITH: I'm going to forget this.

12 MR. SOLOMON: Your Honor, Otis Elevators, which is a
13 subsidiary of United Technologies, Tycon Group, Kone and
14 Schindler and various related European affiliates.

15 THE COURT: There is a Japanese company, is that in
16 it?

17 MR. LEDDY: Your Honor, there are several Japanese
18 companies who make elevators. One is Fuji Tech, is not a
19 defendant in this case.

20 THE COURT: The defendants are American and European
21 companies?

22 MR. SOLOMON: That's correct, your Honor.

23 THE COURT: All right. Thank you.

24 So, what did they do?

25 MR. ISQUITH: Well, essentially, your Honor, what we
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1 charge and what investigations by government authorities have
2 tended to show, at least at the moment, is that they agreed to
3 set prices among themselves.

4 THE COURT: Did the Government bring any proceedings?

5 MR. ISQUITH: The United States government has not
6 brought a proceeding at this moment, although we do -- I don't
7 know if there is an investigation or not. I shouldn't say more
8 than that.

9 THE COURT: All right. Well, there is price fixing
10 and price fixing, so what do you say went on?

11 MR. ISQUITH: What the complaint charges, there is --
12 I don't know if there is price fixing and there is price
13 fixing, but there is certainly -- when there are agreements
14 among competitors to set prices or markets, we believe that is
15 a violation.

16 THE COURT: What form did the agreements take?

17 MR. ISQUITH: In what sense, your Honor?

18 THE COURT: I mean, did they get together at trade
19 fairs or did that -- what did they do? Or was it conscious
20 parallelism or whatever that is.

21 MR. ISQUITH: No. We charge that there were actual
22 agreements transmitted word for word, whether that was
23 orally -- well, we don't expect that we are going to find a
24 smoking gun document signed and sealed by everybody if that's
25 what you mean.

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1 THE COURT: Well, what do you have?

2 MR. ISQUITH: What we have is a charge in the European
3 Antitrust Commission of particular price fixing and bid
4 rigging.

5 THE COURT: No. Look, can you be more specific? An
6 antitrust case has got to have some specifics, doesn't it? So
7 what are your specifics?

8 You say the president of one company met with the
9 other company and divided up the market or --

10 MR. ISQUITH: No, I wouldn't want to go that far, your
11 Honor. I don't know those kinds of specifics, if you are
12 asking me when, where and when those conferences took place.

13 THE COURT: What's the basis for your complaint?

14 MR. ISQUITH: The basis of our complaint, that is why
15 we brought it, what is our good faith basis for the complaint?

16 THE COURT: Right.

17 MR. ISQUITH: Is an investigation and report in Europe
18 by the European Commission.

19 THE COURT: That doesn't mean much. What do you say
20 happened?

21 MR. ISQUITH: Your Honor, what we --

22 THE COURT: Maybe you have read the investigation. Is
23 there an investigation to read?

24 MR. SOLOMON: Your Honor, if I may interrupt.

25 MR. ISQUITH: Please.

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1 MR. SOLOMON: Be of assistance, hopefully.

2 In Europe, there is not a public document that details
3 the investigation. What we know is that the investigation is
4 ongoing. What we know is that two of the defendants have
5 admitted to antitrust violations in certain locations. What we
6 know is --

7 THE COURT: And where did that do that admitting?

8 MR. SOLOMON: The admissions have come with respect to
9 Belgium and Germany. We don't expect the conspiracy was
10 limited to Belgium and Germany.

11 THE COURT: What was admitted?

12 MR. SOLOMON: Otis and Kone --

13 THE COURT: I guess I don't have those names.

14 MR. SOLOMON: Otis, which is a subsidiary of United
15 Technologies and Kone.

16 THE COURT: How do you spell it?

17 MR. SOLOMON: K-o-n-e.

18 THE COURT: Is that a foreign company?

19 MR. SOLOMON: That's correct, your Honor.

20 THE COURT: Okay. Where is Kone located?

21 MR. SOLOMON: Kone is located both here with its U.S.
22 subsidiary and also, I believe, it's Finnish.

23 MR. LEDDY: It's a Finnish company, your Honor. Your
24 Honor, may I just intervene for one moment.

25 THE COURT: Yes. Are you --

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