

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

----- X
UNITED STATES OF AMERICA :
 :
 v. : 15 U.S.C. § 1
 : (Conspiracy to Restrain Trade)
FRANK HAEUSLER, :
VOLKER HOHENSEE, and :
HARALD SAILER, :
 :
 Defendants. :
----- X

INDICTMENT

The Grand Jury charges:

The Defendants and Co-conspirators

1. The defendant, FRANK HAEUSLER, is a citizen and resident of Germany.
2. HAEUSLER was employed by Eberspaecher Climate Control Systems International Beteiligungs-GmbH (“Eberspaecher”), a German company with an office in Esslingen, Germany, as its General Manager of Sales & Marketing from at least as early as 2003 until 2007. HAEUSLER was employed by Company A, a German company with an office in Stockdorf, Germany, as Vice President of Sales from 2007 until 2008.
3. The defendant, VOLKER HOHENSEE, is a citizen of Germany residing in Canada.
4. At all times relevant to this Indictment, HOHENSEE was President of Espar Inc. (“Espar”).
5. The defendant, HARALD SAILER, is a citizen and resident of Germany.

6. At all times relevant to this Indictment, SAILER has been employed by Eberspaecher. From 2007 through the remainder of the time relevant to this Indictment, SAILER worked as Eberspaecher's General Manager of Sales & Marketing.

7. Espar is a wholly-owned North American subsidiary of Eberspaecher, organized under the laws of Illinois, with a sales office in Novi, Michigan.

8. Company B is a wholly-owned indirect North American subsidiary of Company A, and organized under the laws of Michigan, with an office in Fenton, Michigan.

9. Eberspaecher and Company A manufactured parking heaters in Germany and elsewhere and provided them to their respective subsidiaries, Espar and Company B, in the United States. Espar and Company B sold parking heaters and related products to aftermarket customers, and certain original equipment manufacturers for resale in the aftermarket, in the United States and elsewhere for installation in vehicles in the United States and elsewhere.

10. Various corporations and individuals, not made defendants in this Indictment, participated as co-conspirators in the offense charged and performed acts and made statements in furtherance of it.

11. Whenever in this Indictment reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

Background of the Offense

12. Parking heaters are devices that heat the interior compartment of a motor vehicle independent of the operation of the vehicle's engine. The two primary types of parking heaters sold by Espar and Company B are: air heaters, which work by heating interior or outside air

drawn into the heater unit, and water or “coolant” heaters, which are integrated into the engine coolant circuit and heat the engine as well as the interior compartment.

13. Parking heaters are used in a variety of commercial vehicles. Parking heaters and their components parts are sold separately, but are frequently sold in “kits” together with certain accessories that allow the purchaser to install the parking heater into an already-fabricated vehicle. The term “parking heater” as used in this Indictment includes the heaters themselves, accessories sold for use with heaters, and kits.

14. “Aftermarket” customers are customers that purchase parking heaters for installation into vehicles that have already been manufactured and sold by an original equipment manufacturer. Certain original equipment manufacturers also purchase parking heaters for resale and installation in vehicles in the aftermarket; such purchases can be referred to as “OES” (Original Equipment Service) purchases (also sometimes known as “OE aftermarket” or “OEM aftermarket” purchases).

Conspiracy to Restrain Trade

15. From at least as early as October 2007 and continuing at least until November 19, 2012 (the “relevant period”), the exact dates being unknown to the Grand Jury, in the Eastern District of Michigan and elsewhere, FRANK HAEUSLER, VOLKER HOHENSEE, and HARALD SAILER (collectively, the “Defendants”) and their co-conspirators participated in a combination and conspiracy to suppress and eliminate competition for the sale of parking heaters for commercial vehicles to aftermarket and OES customers, by agreeing to fix, stabilize, and maintain prices of parking heaters for commercial vehicles sold to aftermarket and OES customers in the United States and elsewhere. The charged conspiracy unreasonably restrained interstate and U.S. import trade and commerce in violation of Section 1 of the Sherman Act (15

U.S.C. § 1). This combination and conspiracy involved interstate and U.S. import trade and commerce.

16. The charged conspiracy consisted of a continuing agreement, understanding, and concert of action among the Defendants and their co-conspirators, the substantial terms of which were to fix, stabilize, and maintain prices of parking heaters for commercial vehicles sold to aftermarket and OES customers in the United States and elsewhere.

Manner and Means of the Conspiracy

17. For the purpose of forming and carrying out the charged combination and conspiracy, the Defendants and their co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) participating in communications, discussions, and meetings in the United States and elsewhere to discuss prices for parking heaters, including aftermarket and OES parking heaters for commercial vehicles, sold in the United States and elsewhere;
- (b) agreeing, during those conversations and meetings, to set a price floor for certain parking heater kits for commercial vehicles sold to aftermarket and OES customers in the United States and elsewhere;
- (c) agreeing, during those conversations and meetings, to coordinate the timing and amount of price increases for parking heaters for commercial vehicles sold to aftermarket and OES customers in the United States and elsewhere;
- (d) exchanging information during those conversations and meetings for the purpose of monitoring and enforcing adherence to the agreements described in subparagraphs (c) and (d) above; and

- (d) exchanging information during those conversations and meetings for the purpose of monitoring and enforcing adherence to the agreements described in subparagraphs (c) and (d) above; and
- (e) selling parking heaters for commercial vehicles to aftermarket and OES customers at collusive and non-competitive prices in the United States and elsewhere.

Trade and Commerce

18. During the relevant period covered by this Indictment, Defendants and their co-conspirators sold to aftermarket and OES customers located in various states in the United States substantial quantities of parking heaters shipped from outside the United States and from other states, in a continuous and uninterrupted flow of interstate and U.S. import trade and commerce. In addition, substantial quantities of equipment and supplies necessary to the production and distribution of parking heaters sold by Defendants and their co-conspirators, as well as payments for parking heaters sold by Defendants and their co-conspirators, traveled in interstate and U.S. import trade and commerce.

19. The business activities of the Defendants and their co-conspirators in connection with the sale of parking heaters that were the subject of the charged conspiracy were within the flow of, and substantially affected, interstate and U.S. import trade and commerce.

All in violation of Title 15, United States Code, Section 1

A TRUE BILL

GRAND JURY FOREPERSON

Dated: _____



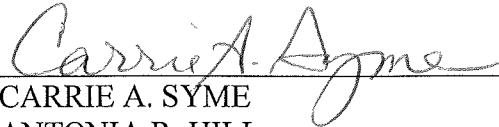
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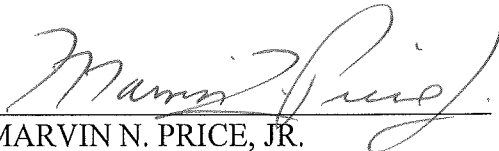
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