

No. 18-486

IN THE
Supreme Court of the United States

TOSHIBA CORPORATION,

Petitioner,

v.

AUTOMOTIVE INDUSTRIES PENSION
TRUST FUND, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF THE MINISTRY OF ECONOMY,
TRADE AND INDUSTRY OF JAPAN
AS *AMICUS CURIAE* IN SUPPORT
OF PETITIONER**

KENNETH ULRICH
Counsel of Record
WILLIAM C. MEYERS
TAKAYUKI ONO
GOLDBERG KOHN LTD.
55 East Monroe Street, Suite 3300
Chicago, Illinois 60603
(312) 201-4000
kenneth.ulrich@goldbergekohn.com

Counsel for Amicus Curiae

284581



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

INTEREST OF THE AMICUS¹

The defendant in this case is a Japanese company which has been subjected to claims for monetary damages for untrue disclosures made in Japan. The Ministry of Economy, Trade and Industry of Japan has significant economic, political, and legal interests in ensuring that companies based in Japan comply with the Japanese legal system, and that Japanese companies running businesses elsewhere comply with “reasonable” jurisdictional requirements of other nations.

SUMMARY OF THE ARGUMENT

The Ministry of Economy, Trade and Industry of Japan hopes that the United States Supreme Court will accept the defendant’s petition and examine this case cautiously giving due consideration to the large effect that the decision will have on Japan.

ARGUMENT

The decision of the Court of Appeals for the Ninth Circuit affirms that the Securities Exchange Act applies to a foreign company whose stock is used as the underlying stock for an unsponsored American Depositary Receipt (“ADR”) on the condition that the ADR is traded in the United States, even if the company is not listed on

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae, or its counsel, made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

an American exchange and is not involved at all in the issuance of the ADR or transactions related to it.

If this decision is accepted, there is a risk that Japanese companies and stakeholders could be put at a great disadvantage by being subjected to damage claims for huge sums of money in a form that cannot be at all anticipated, regardless of whether or not they are involved at all in the issuance of the ADR or transactions related to it.

In the United States, there are many issuances and transactions involving unsponsored ADRs of companies listed on Japanese exchanges, in a form that the Japanese companies are not involved. Therefore, the effect of this decision on the Japanese companies, stakeholders and economy is extremely large.

Respectfully Submitted,

KENNETH ULRICH

Counsel of Record

WILLIAM C. MEYERS

TAKAYUKI ONO

GOLDBERG KOHN LTD.

55 East Monroe Street, Suite 3300

Chicago, Illinois 60603

(312) 201-4000

kenneth.ulrich@goldbergkohn.com

Counsel for Amicus Curiae