

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

| | | |
|------------------------------|---|-----------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | CASE NO. 97-0853-CR-NESBITT |
| v. |) | |
| |) | |
| ATLAS IRON PROCESSORS, INC.; |) | |
| SUNSHINE METAL PROCESSING, |) | |
| INC.; |) | |
| ANTHONY J. GIORDANO, SR.; |) | RESPONSE OF UNITED STATES |
| ANTHONY J. GIORDANO, JR.; |) | TO STANDING DISCOVERY ORDER |
| DAVID GIORDANO; and |) | CONCERNING DEFENDANT |
| RANDOLPH J. WEIL, |) | <u>RANDOLPH J. WEIL</u> |
|) |) | |
| Defendants. |) | |

The United States of America (hereinafter "United States"), by and through the undersigned counsel, files this response to the Standing Discovery Order issued in this case for Randolph J. Weil (hereinafter "defendant"). This response is numbered to correspond to that order.¹

¹ On December 11, 1997, the undersigned counsel called the Clerk of Court's office in the Southern District of Florida to find out if the Standing Discovery Order was entered in the above-captioned case since all of the defendants have not yet been arraigned, nor have all of the defendants in this matter retained counsel who have filed permanent appearances. The United States learned that the Standing Discovery Order was, in fact, issued on December 2, 1997.

- A.
1. There are no written or recorded statements made by the defendant.
 2. The defendant has not made any oral statements before or after arrest in response to interrogation by a then known-to-be government agent which the United States intends to offer at trial.
 3. See paragraph A.2 above.
 4. See paragraph A.1 above.
 5. The United States is in the process of determining if the defendant has a criminal record. If the defendant has a criminal record, the results will be forwarded to the defendant as soon as possible.
 6. Books, papers, documents, etc., which the United States intends to use as evidence at trial to prove its case-in-chief, or which were obtained from or belong to the defendant, may be inspected by making an appointment with the undersigned counsel. The United States is not in possession of any documents that belong to the defendant. The United States, however, does have in its possession documents produced by Sunshine Metal Processing, Inc. (hereinafter "Sunshine") pursuant to issued subpoenas duces tecum. All of the documents and materials produced by Sunshine are

immediately available to the defendant upon request. Subject to any protective orders filed in the above-captioned case, materials covered under Rule 16 of the Federal Rules of Criminal Procedure also are immediately available for inspection and copying by the defendant. These documents and materials presently are located in Cleveland, Ohio, at the office of the undersigned counsel, and can be made available for inspection and copying, by appointment, upon request by the defendant.

7. There are no results or reports of physical or mental examinations, or of scientific tests or experiments, which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.
- B. The United States requests the disclosure and production of materials enumerated as items 1, 2 and 3 of Section B of the Standing Discovery Order. This request also is made pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure.
- C. The United States is in the process of determining what, if any, information or material exists which may be favorable to the defendant on the issues of guilt or punishment within the scope of Brady or Agurs. The United States will disclose to the defendant the substance of this

information and material, if any, or make available to the defendant for inspection and copying this information and material, if any, now known to be covered under Brady or Agurs. The United States understands its obligation under Brady and Agurs to be a continuing one.

- D. The United States is in the process of determining the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses, within the scope of Giglio and Napue. The United States will disclose to the defendant the substance of this information and material, if any, or make available to the defendant this information or material for inspection and copying, if any, now known to be covered under Giglio or Napue. The United States understands its obligation under Giglio and Napue to be a continuing one.
- E. The United States will supply the defendant with the record of prior convictions of any informant who will testify for the United States at trial.
- F. The defendant was not identified in a photospread or similar identification proceeding.
- G. The United States has advised its agents and officers involved in this cases to preserve rough notes.

- H. The United States will advise the defendant prior to trial of its intent, if any, to introduce during its case in chief additional evidence pursuant to Federal Rule of Evidence 404(b). The defendant is hereby on notice that all evidence made available to the defendant for inspection, as well as all statements disclosed herein or in any future discovery or discovery letter, may be introduced in the trial of this case.
- I. The defendant is not an aggrieved person, as defined in Title 18, United States Code, Section 2510(11), of any electronic surveillance.
- J. The United States has ordered transcribed the Grand Jury testimony of all witnesses who will testify for the United States at trial.
- K. There is no contraband seized in this case.
- L. There are no vehicles, vessels, etc., involved in this case.
- M. The United States is aware of no latent fingerprints or palm prints which have been identified by a government expert as those of the defendant.
- N. The United States intends to make every possible effort in good faith to stipulate to all facts or points of law the truth and existence of which is not contested and the early resolution of which will expedite the trial.
- O. Counsel for the defendant may contact the undersigned to arrange for a pretrial conference. Following the conference, the United States is prepared to collaborate on a written statement to the Court setting forth the discovery exchanged and any stipulations reached.

The United States is aware of its continuing duty to disclose such newly discovered additional information required by the Standing Discovery Order, Rule 16 of the Federal Rules of Criminal Procedure, materials or information covered under Brady, Agurs, Giglio, and Napue, and the obligation to assure a fair trial.

In addition to the request made above by the United States pursuant to Section B of the Standing discovery Order and Rule 16(b) of the Federal Rules of Criminal Procedure, and in accordance with Rule 12.1, 12.2 and 12.3 of the Federal Rules of Criminal Procedure, the United States demands Notice of Alibi, Insanity and Public Authority defenses; the approximate time, date, and place of the offense is set forth in the Indictment.

Respectfully submitted,

WILLIAM J. OBERDICK
Acting Chief
Cleveland Field Office

By: RICHARD T. HAMILTON, JR.
Court I.D. No. A5500338

PAUL A. BINDER
Court I.D. No. A5500339

IAN D. HOFFMAN
Court I.D. No. A5500343

Trial Attorneys,
U.S. Department of Justice
Antitrust Division
Plaza 9 Building
55 Erieview Plaza, Suite 700
Cleveland, OH 44114-1816
Phone:(216) 522-4107
FAX: (216) 522-8332

CERTIFICATE OF SERVICE

I hereby certify that copies of the following:

- 1) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT ATLAS IRON PROCESSORS, INC.;
- 2) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT ANTHONY J. GIORDANO, SR.;
- 3) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT ANTHONY J. GIORDANO, JR.;
- 4) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT DAVID GIORDANO; AND
- 5) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT RANDOLPH J. WEIL.

were sent Federal Express to the Office of the Clerk of Court on this 15th day of December, 1997. Copies of the above-captioned pleadings were also served upon the defendants via regular U.S. mail on this 15th day of December, 1997.

Benedict P. Kuehne, Esq.
Sale & Kuehne
Nationsbank Tower, Suite 3550
100 Southeast 2nd Street
Miami, FL 33131-2154

Ralph E. Cascarilla, Esq.
Walter & Haverfield
1300 Terminal Tower
Cleveland, OH 44113-2253

Robert C. Josefsberg, Esq.
Podhurst, Orseck, Josefsberg,
Eaton, Meadow, Olin & Manos, L.P.A.
City National Bank Building
25 West Flagler Street
Miami, FL 33130-1780

Patrick M. McLaughlin, Esq.
Mansour, Gavin, Gerlack &
Perwin, P.A.
55 Public Square, Suite 800
2150 Illuminating Building
Cleveland, OH 44113-1994

William T. Doyle, Esq.
2000 Standard Building
Cleveland, OH 44113-1701

WILLIAM J. OBERDICK
Acting Chief
Cleveland Field Office

RICHARD T. HAMILTON, JR.
Court I.D. No. A5500338

Trial Attorney,
U.S. Department of Justice
Antitrust Division
Plaza 9 Building
55 Erieview Plaza, Suite 700
Cleveland, OH 44114-1816
Phone:(216) 522-4107
FAX: (216) 522-8332