

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA)	
)	CASE NO. 97-0853-CR-NESBITT
v.)	
)	
ATLAS IRON PROCESSORS, INC.,)	MOTION OF THE UNITED STATES
et al.,)	REQUESTING ADVANCE NOTICE
)	<u>OF A FIRM TRIAL DATE</u>
)	
Defendants.)	

**I
INTRODUCTION**

The United States has received the *Scheduling Order For Jury Trial And Calendar Call*, dated January 19, 1998, and signed by the Honorable Judge Lenore C. Nesbitt. (Hereafter referred to as "Order") This Order sets the above-captioned criminal case for trial for the two-week period commencing February 9, 1998. This Order provides further that counsel shall report to a call of the calendar at 1:00 p.m. on February 9, 1998. To date, there have been no pre-trial conferences, nor has there been any substantive motion practice. No time has run under the Speedy Trial Act because one of the defendants, Sunshine Metal Processing, Inc. ("Sunshine") has not yet been arraigned. The United States anticipates, conservatively, that the trial in this matter will last two weeks.

The prosecutors for the United States Department of Justice, Antitrust Division (hereafter "United States") have conferred with the U.S. Attorney's Office in the Southern District of Florida to discuss the import of this Order, including the possibility that this case may be tried during the two-week calendar schedule beginning February 9, 1998. In substance, we were told that, although the likelihood of going

forward with a trial in this matter within the two-week calendar schedule spelled out in the Order is very small, the government nevertheless should be prepared to go forward with its case within this two-week period.

II **ARGUMENT**

The United States and all parties will meet for our initial pre-trial status conference on February 9, 1998. The United States can be prepared to go forward with its case-in-chief during the two-week calendar schedule set forth in the Order, provided that the trial is not set to begin before February 16, 1998. Although the United States could be prepared to go forward with its case during the week of February 9, 1998, the United States urges this Court to provide the parties with at least one week of advance notice of a firm trial date, so that the United States can accommodate its logistical needs. Accordingly, if the trial in this matter is going to begin sometime during the week of February 9, 1998, the United States respectfully requests that this Court provide all of the parties with at least one week's advance notice of a firm trial date. Although this request may deviate from local practice, the United States' request is rooted in the problems and expenses inherent in the government's setting up a trial situs in Miami.

In prosecuting this case in Miami, the United States will have to do the following: (1) ship from Cleveland to Miami all of the evidence which may be introduced at trial by either the prosecution or the defense (including approximately 250-300 boxes of documents and materials) and make suitable arrangements for storage and access to such documents and materials; (2) arrange for the travel and lodging of government witnesses (most of whom reside outside the Southern District of Florida, and some

of whom reside outside the United States); (3) arrange for lodging in Miami to accommodate the entire trial team, all of whom will be sent from Cleveland to Miami; and (4) arrange for lodging and send the entire support staff (paralegals, secretaries, consultants, etc.) from Cleveland to Miami.

In addition, the United States will have to ship to Miami and install all necessary supporting equipment, including computers, copiers, fax machines, and such other equipment as may be necessary to support the trial staff. Typically, the trial shops set up by the Antitrust Division in venues other than our home district (i.e., in venues other than the Northern District of Ohio) have required the installation of additional telephone lines. All of the government's trial equipment will be installed at the local hotel where the trial team is lodged. Based on our office's past experience, it generally takes a minimum of at least one week to find a hotel that can accommodate the government's trial needs, including the installation of equipment.

Meeting accommodation of the government's logistical needs requires great time and expense. The United States' request for a firm trial date and at least one week's advance notice is intended to save the United States the burden and expense of having to "ship its case" to Miami more than once. By giving the United States at least one week advance notice of a firm trial date, the government can avoid unnecessary, duplicative, costly, and time-consuming effort, all of which, ultimately, is borne by public.

In addition to the logistical problems mentioned above, a problem exists in that one of the defendants, Sunshine, has not yet been arraigned. Sunshine's availability to be arraigned has been hampered by its counsel's trial schedule and Sunshine's status as a debtor-in-possession in a pending Chapter 11 bankruptcy proceeding. Sunshine is scheduled to be arraigned on January 29, 1998, but an issue remains as to whether Sunshine's counsel will be allowed to continue to represent Sunshine without

having filed a notice of permanent appearance. This issue will not be resolved until, at the earliest, January 29, 1998.

Although there have been no substantive motions filed by either party, the United States intends to file a motion seeking to disqualify counsel for Anthony J. Giordano, Jr., Ralph E. Cascarilla. This motion to disqualify Mr. Cascarilla will be filed the week of February 2, 1998. If the court were to decide in the government's favor on this issue, a trial date for the week of February 9, 1998, is problematic.

Finally, the United States will file substantive motions in limine addressing potential trial issues. The United States also has been put on notice that at least some of the defendants intend to introduce at trial evidence relating to polygraph tests and results. The United States will file appropriate motions objecting to the introduction any such evidence, which may necessitate a Daubert hearing. If a Daubert hearing is required, the United States would have to call additional witnesses, which would take at least one week of preparation.

III CONCLUSION

Accordingly, if the trial in this matter is going to begin the week of February 9, 1998, the United States respectfully requests that this Court grant the instant Motion and enter an order providing the United States, and all parties, with at least one week advance notice of a firm trial date. The United States is available to discuss the substance of this motion with the Court and other parties via a pre-trial, telephone conference, if the Court needs more information or clarification of the government's request.

Respectfully submitted,

WILLIAM J. OBERDICK
Acting Chief
Cleveland Field Office

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

PAUL L. 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) MOTION OF THE UNITED STATES REQUESTING ADVANCE NOTICE OF A FIRM TRIAL DATE.

were sent Federal Express to the Office of the Clerk of Court on this 27th day of January, 1998. Copies of the above-captioned pleading were also served upon the defendants via regular U.S. mail on this 27th day of January, 1998.

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,

Patrick M. McLaughlin, Esq.
McLaughlin & McCaffrey, L.L.P.

Eaton, Meadow, Olin &
1801 East Ninth Street
City National Bank Building
Suite 800
25 West Flagler Street
Miami, FL 33130-1780

Ohio Savings Plaza, Suite 740
Cleveland, OH 44114-3103

Perwin, P.A.

Marc S. Nurik, Esq.
NationsBank Building
One Financial Plaza, Suite 2612
Ft. Lauderdale, FL 33394

Roberto Martinez, Esq.
Colson, Hicks, Eidson, Colson,
Matthews, Martinez & Mendoza, P.A.
First Union Financial Center,
47th Floor
200 South Biscayne Boulevard
Miami, FL 33131-2351

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