

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) Criminal No. 00-033
)
) Judge Marvin Katz
)
v.) Violations: 15 U.S.C. § 1 and 18 U.S.C. § 2(a)
)
MITSUBISHI CORPORATION,) Filed: 02-07-01
)
Defendant.

**GOVERNMENT’S RESPONSE TO
DEFENDANT’S REQUESTS TO CHARGE**

The Government, by and through its attorneys, respectfully submits the following in response to Defendant Mitsubishi Corporation’s Requests to Charge.

Defendant’s Request No. 1 (General Requests):

Objection.

Without knowing the specific standard instruction, defendant’s Request that such instructions be given as to “trial perjury” is objected to.

Defendant’s Request No. 2 (Aiding and Abetting a Conspiracy):

No objection.

Defendant’s Request No. 3 (Conspiracy):

No objection to Paragraph 1.

The Government respectfully requests that the Court give the Government’s requested instructions on a Sherman Act conspiracy.

Defendant's Request No. 4 (Elements of Aiding and Abetting):

Objection.

That the defendant act “willfully” is not an element of an offense under 18 U.S.C. § 2(a). *Compare* 18 U.S.C. § 2(a) *with* 18 U.S.C. § 2(b).

No recent Third Circuit case requires this as an element of the offense. *See, United States v. Garth*, 188 F.3d 99, 113 (3d Cir. 1999); *United States v. Green*, 25 F.3d 206, 209 (3d Cir. 1994); *United States v. Frorup*, 93 F.2d 41, 43 (3d Cir. 1992); *United States v. Salmon*, 944 F.2d 1106, 1113 (3d Cir. 1991); *United States v. Bey*, 736 F.2d 891, 895 (3d Cir. 1984).

The Government respectfully requests that the Court give Government's Replacement Request No. 3, which fully and fairly sets forth the elements of aiding and abetting.

Defendant's Request No. 5 (Aiding, Abetting, Counseling . . .):

Objection.

By using the word “caused” this Request erroneously suggests that the jury must find that but for Mitsubishi's actions the conspiracy would not have been formed or would not have succeeded, or that Mitsubishi had to be the principle actor in the events charged. Moreover, this charge erroneously suggests that the jury must find that defendant influenced all of the conspirators to form the conspiracy. This is not the law. As the Third Circuit stated most recently in *United States v. Garth*, 188 F.3d 99, 113 (3d Cir. 1999), and cases cited therein, to support a charge of aiding and abetting, the Government must show that the defendant knew of the crime and attempted to facilitate it. That he, in some way, associated himself with the offense, that he participated in it as in something that he wished to bring about, and that he sought by his

actions to make it succeed.

The Government respectfully requests that the Court give Government's Replacement Request No. 3, which fully and fairly sets forth the elements of aiding and abetting.

Defendant's Request No. 6 (Willfully and Knowingly):

Objection.

Again, by using the word "caused," defendant introduces the concept that but for Mitsubishi's actions, the conspiracy would not have occurred. This is not the law.

Again, "willfulness" is not an element of aiding and abetting under 18 U.S.C. § 2(a).

The Government respectfully requests that the Court give the Government's Replacement Request No. 3 on Aiding and Abetting to cover the element of intent.

Defendant's Request No. 7 (Mere Presence or Mere Knowledge are Insufficient):

Objection.

This Request is incomplete and confusing. The Government requests that such instructions, if given, should be combined with the full instruction on aiding and abetting contained in the Government's Replacement Request No. 3.

Defendant's Request No. 8 (Liability of Corporation for Acts of Employees):

Objection.

Again, "willfulness" is not an element of aiding and abetting under 18 U.S.C. § 2(a). The Government respectfully requests that the Court give Government's Replacement Request No. 3 on the element of intent.

In addition, this Request is incomplete and confusing. It erroneously suggests

within its definition of scope of employment that Mitsubishi is not liable for acts by an employee that violated company policies or instructions. *See, e.g. United States v. American Radiator & Standard Sanitary Corp.*, 433 F. 2d 174, 204-05 (3d Cir.), *cert. denied*, 401 U.S. 948 (1971) (“When the act of the agent is within the scope of his employment or his apparent authority, the corporation is held legally responsible for it, although what he did may be contrary to his actual instructions and may be unlawful.”).

This Request also erroneously suggests that the jury must find that an employee must act solely with the purpose of benefitting the defendant for it to be held liable. In fact, all that is required is that the acting be at least, in part, intended to benefit the company. *See United States v. One Parcel of Land Located at 7326 Highway 45 North, Three Lakes, Oneida County, Wisconsin*, 965 F.2d 311, 316 (8th Cir. 1992).

Finally, this Request erroneously suggests that the jury must find that the act must have actually benefitted the corporation before the corporation may be held liable. In fact, actual benefit is irrelevant. *See, Standard Oil Co. v. United States*, 307 F. 2d 120, 128 (5th Cir. 1962).

The Government respectfully requests that the Court give Government Replacement Request No. 5 concerning corporate liability and Government Additional Request No. 5(a) concerning corporate knowledge.

Defendant’s Request No. 9 (Witness Immunity):

Objection.

Argumentative, slanted and overstates the normal charge given on immunized witnesses and those who have entered into plea agreements. The Government respectfully requests that the Court give Government Request No. 18.

Defendant's Request No. 10 (Interpreter):

Objection.

Irrelevant. The parties' interpreters did not disagree with any interpretation by the Court's interpreter.

Dated:

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 7th day of February 2001, a copy of the Government's Response to Defendant's Requests to Charge has been hand delivered to counsel of record for the defendant as follows:

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