

UNITED STATES OF AMERICA )  
 )  
 v. ) CASE NO. 97-0853-CR-Middlebrooks  
 )  
 ) Magistrate Judge Robert L. Dubé  
 ATLAS IRON PROCESSORS, INC., ) (Amended order of reference dated May 7, 1998)  
 et al., )  
 )  
 ) **MEMORANDUM IN SUPPORT OF**  
 ) **UNITED STATES' PROPOSED**  
 ) **FINAL JURY INSTRUCTION 22**  
 Defendants. )

The conspiracy charged in the Indictment includes two different types of conduct, an agreement to fix prices and an agreement to allocate customers. It is not necessary for the government to prove that the conspiracy charged in the Indictment includes both types of conduct. It would be sufficient if the Government proves beyond a reasonable doubt a conspiracy to commit one of the types of conduct charged in the Indictment, but, in that event, in order to return a verdict of guilty, you must unanimously agree upon which of the types of conduct was the subject of the conspiracy entered into by a particular Defendant. If you cannot agree in that manner, you must find the Defendant not guilty of the conspiracy charged.

As authority for this paragraph, the United States cited the Manual of Model Criminal Jury Instructions for the District Courts of the Eight Circuit, 5.06F; United States v. Miller, 471 U.S. 130, 135-38 (1985); United States v. Muelbl, 739 F.2d 1175, 1178-84 (7th Cir. 1984); and United States v. Kramer, 711 F.2d 789, 797 (7th Cir. 1983).

Additional research reveals the final paragraph of United States' proposed Final Jury Instruction 22 is supported by Eleventh Circuit case law, namely, United States v. Adkinson, 135 F.3d 1363, 1377-78 (11<sup>th</sup> Cir. 1988).

Respectfully submitted,

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