

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA)	CASE NO. 97-0853-CR-NESBITT
)	
v.)	
)	
ATLAS IRON PROCESSORS, INC.,)	
et al.,)	Magistrate Judge Robert L. Dubé
)	(May 7, 1998, Amended Order of Reference)
Defendants.)	
)	RESPONSE OF UNITED STATES
)	TO DEFENDANTS' JOINT
)	EMERGENCY MOTION TO
)	<u>PROHIBIT USE OF EXHIBITS</u>

With their *Emergency Motion*, the Atlas defendants seek to prohibit the United States from using at trial its exhibits numbered 107-259, 292-98, 302-18, and 331-44. The basis for the Atlas defendants' *Emergency Motion* is Magistrate Judge Dubé's *Order* of January 8, 1999, where he held, "The Government shall have until 5:00 p.m. on January 12, 1999 to provide defense counsel with machine readable data copies of all documentary exhibits it will use in the Trial Director system." The United States has fully complied with Magistrate Judge Dubé's *Order*.

On January 13, 1999, the United States gave the defendants its proposed exhibit list. The list contained exhibits numbered 1-344. The government's exhibit list consists primarily of binders of business records such as scale tickets and related summaries which are being prepared by the United States for presentation at trial. The defendants have had access to the underlying pricing documents from which these summaries are being prepared for more than a year. Moreover, these

summary exhibits are pure work product and merely organize and summarize the underlying pricing documents. In addition, the United States has given the defendants electronic copies of all the underlying documents from which the summaries will be prepared.

The exhibits which the defendants seek to suppress are not “documentary exhibits” falling within the purview of Magistrate Judge Dubé’s *Order*. The vast majority of these are summaries the United States has created from the underlying documentary exhibits and fall within Fed. R. Evid. 1006.¹ Magistrate Judge Dubé’s *Order* of January 8, 1999, required only that the United States turn over documentary exhibits to be used with Trial Director, not summaries. Indeed, nowhere does Magistrate Judge Dubé’s *Order* require that all trial exhibits be turned over to the defendants.

Of all the exhibits the Atlas defendants seek to prohibit the United States from using at trial, only five of them, numbers 302-06, are not summaries. These remaining five exhibits are the business records of scrap suppliers. These exhibits have been available to the defendants for inspection and copying since they came into the government’s possession. Moreover, these underlying records are still available to the defendants. None of these exhibits fall within the purview of Magistrate Judge Dubé’s *Order* of January 8, 1999.

¹ These summary exhibits include numbers 107-259, 292-98, 307-318, 331-334. With the exception of exhibit numbers 302-06 the summary exhibits have not yet been finally prepared. Accordingly, the defendants seek to suppress summaries that do not exist in final form.

This motion is the latest in the Atlas defendants' continuing attempts to delay the starting date of this trial. It is wholly without merit and should be denied.

Respectfully submitted,

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