

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA	)	
	)	Case No. 97-0853-CR-Middlebrooks
v.	)	
	)	Magistrate Dubé
ATLAS IRON PROCESSORS, INC.,	)	(Amended order of reference dated May 7, 1998)
et al.,	)	
	)	
Defendants.	)	<b>REPLY OF UNITED STATES TO</b>
	)	<b>ATLAS DEFENDANTS' JOINT</b>
	)	<b>MEMORANDUM IN OPPOSITION TO</b>
	)	<b>THE GOVERNMENT'S MOTIONS</b>
	)	<b>REQUESTING AN ORDER</b>
	)	<b>REQUIRING DEFENDANTS TO</b>
	)	<b>PRODUCE (1) DOCUMENTS AND</b>
	)	<b>TANGIBLE OBJECTS PURSUANT TO</b>
	)	<b>THE STANDING DISCOVERY ORDER</b>
	)	<b>AND FED. R. CRIM. P. 16(b)(1)(A),</b>
	)	<b>AND (2) REPORTS OR RESULTS</b>
	)	<b>MADE BY EXPERT WITNESSES</b>
	)	<b>(INCLUDING ECONOMIC EXPERTS)</b>
	)	<b>PURSUANT TO THE STANDING</b>
	)	<b>DISCOVERY ORDER AND</b>
	)	<b><u>FED. R. CRIM. P. 16(b)(1)(B)</u></b>

The United States files this Reply to the Atlas defendants' (Atlas Iron Processors, Inc., Anthony J. Giordano, Sr., Anthony J. Giordano, Jr., David Giordano) *Joint Memorandum in Opposition to the Government's Motions Requesting an Order Requiring Defendants to Produce (1) Documents and Tangible Objects Pursuant to the Standing Discovery Order and Fed. R. Crim. P. 16(b)(1)(A), and (2) Reports or Results Made by Expert Witnesses (Including Economic Experts) Pursuant to the Standing Discovery Order and Fed. R. Crim. P. 16(b)(1)(B)*. The Atlas defendants combined their response to two separate government motions. For the convenience of the

Court, the United States will combine its reply to the Atlas defendants' combined responses into one filing.

I. AS PART OF THEIR RECIPROCAL DISCOVERY OBLIGATIONS,  
THE ATLAS DEFENDANTS ARE REQUIRED TO PRODUCE  
DOCUMENTS AND TANGIBLE OBJECTS THEY INTEND  
TO USE AS EVIDENCE IN CHIEF AT THE TRIAL OF THIS MATTER

After sifting through the Atlas defendants' rhetoric, the Atlas defendants offer just one justification for not meeting their discovery obligation to produce documents and tangible objects pursuant to Fed. R. Crim. P. 16(b)(1)(A): the Atlas defendants do not believe the United States has complied with Rule 16 and the Standing Discovery Order. Quite simply, the Atlas defendants are wrong. The United States has met its discovery obligations. The Atlas defendants filed (and defendant Randolph J. Weil adopted) a Rule 16 motion of their own. In the United States' response to that motion, titled *Response of United States Opposing Defendants' Joint Motion to Suppress the Government's Introduction of Documentary Evidence and Tangible Things*, the United States outlines the steps it has taken to comply with its Rule 16 and Standing Discovery Order discovery obligations and highlights the failings in the defendants' motion. Rather than reproduce the arguments in the United States' Response, the government adopts those arguments *in toto* for the purposes of this reply. Suffice it to say, the defendants wildly exaggerate the number of documents they must review to prepare their defense.

For the above mentioned reasons, the United States respectfully requests that the Court order the Atlas defendants to produce for the government any expert's reports or results of tests as soon as any Atlas defendant decides to use expert testimony in its case in chief.

II. THE ATLAS DEFENDANTS HAVE AN OBLIGATION TO DISCLOSE  
EXPERT REPORTS AS SOON AS THEY ARE OBTAINED UNDER THE  
STANDING DISCOVERY ORDER, FED. R. CRIM. P. 16(b)(1)(B) AND  
16(b)(1)(C)

With regard to Fed. R. Crim. P. 16(b)(1)(C) and the Standing Discovery Order, the Atlas defendants stipulate that "at this time" they do not intend to introduce any testimony under Fed. R. Evid.

702, 703, or 705, and, therefore, presently have no summaries of expert testimony. For this reason, they argue, the government's motion is moot.

If the defendants had stipulated unequivocally that they will not attempt to present expert testimony (including expert economic testimony) in their case, the United States would agree that its motion is moot.<sup>1</sup> The defendants have not, however, made such a stipulation. The defendants have only gone so far as to say that “at this time” they do not intend to introduce expert testimony. Because they reserve their rights to change their minds, this motion is very much relevant. It is self evident that the defendants cannot produce a summary of their expert's testimony if they do not intend to call an expert. The United States seeks only an order requiring each Atlas defendant to produce to the United States a summary of their expert's testimony if and when that defendant decides to use an expert witness.

With regard to Fed. R. Evid. 16(b)(1)(B), the Atlas defendants argue the government's request pursuant to this Rule and the Standing Discovery Order for the disclosure of any results or reports is misplaced because the language, “[a]ny results or reports of physical or mental examinations and of scientific test or experiments made in connection with this case,” does not cover other expert testimony (including expert economic testimony). While it is true the Rule and the Standing Discovery Order do not specifically mention expert (including economic) testimony, it stands to reason that because expert economic testimony is used so seldomly in criminal cases, the drafters of the Rule and the Standing Discovery Order did not bother to include language which would rarely be of use. On the other hand, the spirit of the Rule and the Standing Discovery Order — mutual disclosure of expert witnesses who would be otherwise unavailable to the prosecution or the defense — seems to naturally encompass expert economic testimony. More important, pre-trial disclosure of expert material will allow the United States to conduct an efficient voir dire of the defendants' expert and avoid unnecessary delay at

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<sup>1</sup> The United States has stipulated both orally and in writing that it does not intend to use expert testimony (including expert economic testimony) in its case in chief. It reiterates its stipulation here.

trial.<sup>2</sup> Only the Court can resolve this issue, but the United States believes its interpretation of the Rule is the most logical.

For the above mentioned reasons, the United States respectfully requests that the Court order the Atlas defendants to produce to the United States a summary of any expert testimony (including economic experts) and the copies of any expert's results or reports as soon as any Atlas defendant decides to use expert testimony in its case in chief.

Respectfully submitted,

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<sup>2</sup> Voir dire of an economic expert would be necessary because in antitrust cases where expert economic testimony is proffered, "The Court must decide if the proffered testimony is based upon valid economic, statistical or econometric methodologies and reasoning that can properly be applied to the facts of this case." State of Ohio v. Louis Trauth Dairy, Inc., 925 F. Supp. 1247, 1252 (S.D. Ohio 1996).