

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA)
) CASE NO. 97-0853-CR-NESBITT
v.)
) Magistrate Judge Robert L. Dubé
) (Order of Reference dated February 11,
ATLAS IRON PROCESSORS, INC.;) 1998)
et al.)
) RESPONSE OF UNITED STATES
Defendants.) TO STANDING DISCOVERY
) ORDER CONCERNING
) DEFENDANT SUNSHINE
) <u>METAL PROCESSING, INC.</u>

The United States of America ("United States"), by and through the undersigned counsel, files this discovery response for defendant Sunshine Metal Processing, Inc. ("Sunshine"). This discovery response is consistent with the Standing Discovery Order issued in this criminal case for the other defendants on or about December 2, 1997, and is numbered to correspond to that discovery order.¹

¹ On or about December 15, 1997, the United States filed its responses to the Standing Discovery Order issued on December 2, 1997, for all of the defendants in this criminal case except Sunshine. A discovery response for Sunshine was not filed at this time because Sunshine had not yet been arraigned. Although all of the defendants except Sunshine were arraigned on December 2, 1997, Sunshine was not arraigned due to issues concerning its representation in this criminal case. Thereafter, several attempts to arraign Sunshine proved unsuccessful, due to scheduling conflicts and persisting issues concerning Sunshine's representation. At the time, Sunshine was a debtor-in-possession pursuant to a voluntary Chapter 11 bankruptcy proceeding. Finally, during the Calendar Call before the Honorable Judge Nesbitt on February 11, 1998, Sunshine was arraigned. The issue of who was going to represent Sunshine permanently in this criminal case, however, remained unsettled until a provisional

- A. 1. The United States will produce, pursuant to Rule 16 and subject to the protective order entered May 26, 1998, any written or recorded statements by made by Sunshine covered under Fed. R. Crim. P. 16. The United States believes these statements are primarily in the form of statements made by counsel regarding compliance with grand jury subpoenas.
2. The United States will produce, pursuant to Rule 16 and subject to any motion for a protective order pursuant to Rule 16(d), that portion of any written record containing the substance of any relevant oral statement made by any person defined in Rule 16(a)(1)(A)(1) and (2) of the Federal Rules of Criminal Procedure in response to interrogation by any person then known-to-be a Government agent.
3. The United States will produce, pursuant to Rule 16 and subject to any motion for a protective order pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, the substance of any oral statement made by any person defined in Rule 16(a)(1)(A)(1) and (2) of the Federal Rules of Criminal Procedure in response to interrogation by a then known-to-be Government agent which the United States intends to offer in evidence at trial.

order was entered by the Honorable Judge Robert Mark on March 9, 1998, extending the representation of Marc P. Nurik to include this criminal matter. See Order dated March 9, 1998, U.S. Bankruptcy Judge Robert Mark, "Order Provisionally Extending Estate's Retention of Criminal Defense Counsel." It now appears that Marc P. Nurik will represent Sunshine in its defense of this criminal case at trial, and the United States hereby files this discovery response. Although the United States has never received notice that a "Standing Discovery Order" has, in fact, been issued relating to Sunshine; the United States files the within response consistent with the responses previously filed for the other defendants.

4. The United States will produce, pursuant to Rule 16 and subject to any motion for a protective order pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, the recorded grand jury testimony of any person defined in Rule 16(a)(1)(A)(1) and (2) of the Federal Rules of Criminal Procedure.
 5. The United States has not found a criminal record of Sunshine. The United States will notify Sunshine promptly if it uncovers any such criminal record.
 6. Books, papers, documents, etc., which the United States intends to use as evidence at trial to prove its case-in-chief, or which were obtained from or belong to Sunshine, may be inspected and copied by making an appointment with the undersigned counsel. The United States has possession of these documents and materials at its Office in Cleveland, Ohio. These materials are subject to the protective order dated May 26, 1998.
 7. There are no results or reports of physical or mental examinations, or of scientific tests or experiments, which are material to the preparation of the defense or are intended for use by the government as evidence in chief at trial.
- B. The United States requests the disclosure and production of materials enumerated as items 1, 2 and 3 of Section B of the Standing Discovery Order. This request also is made pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure.
- C. The United States is in the process of determining what, if any, information or material exists which may be favorable to the defendant on the issues of guilt or punishment within the scope of Brady or Agurs. The United States will disclose to Sunshine the substance of this information and material, if any, or make available to Sunshine for inspection and copying this

information and material, if any, now known to be covered under Brady or Agurs. The United States understands its obligation under Brady and Agurs to be a continuing one.

- D. The United States is in the process of determining the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses, within the scope of Giglio and Napue. The United States will disclose to Sunshine the substance of this information and material, if any, or make available to Sunshine this information or material for inspection and copying, if any, now known to be covered under Giglio or Napue. The United States understands its obligation under Giglio and Napue to be a continuing one.
- E. The United States will supply Sunshine with the record of prior convictions of any informant who will testify for the United States at trial.
- F. Sunshine was not identified in a photo spread or similar identification proceeding.
- G. The United States has advised its agents and officers involved in this case to preserve rough notes.
- H. The United States will advise Sunshine prior to trial of its intent, if any, to introduce during its case-in-chief additional evidence pursuant to Federal Rule of Evidence 404(b). Sunshine is hereby on notice that all evidence made available to Sunshine for inspection, as well as all statements disclosed herein or in any future discovery or discovery letter, may be introduced in the trial of this case.
- I. Sunshine is not an aggrieved person, as defined in Title 18, United States Code, Section 2510(11), of any electronic surveillance.
- J. The United States has ordered transcribed the Grand Jury testimony of all witnesses who will testify for the United States at trial.
- K. There is no contraband seized in this case.

- L. There are no vehicles, vessels, etc., involved in this case.
- M. The United States is not aware of any latent fingerprints or palm prints which have been identified by a government expert as those of any person who satisfies the standard set forth in A.2 above.
- N. The United States intends to make every possible effort in good faith to stipulate to all facts or points of law the truth and existence of which is not contested and the early resolution of which will expedite the trial.
- O. Counsel for Sunshine may contact the undersigned to arrange for a pretrial conference. Following the conference, the United States is prepared to collaborate on a written statement to the court setting forth the discovery exchanged and any stipulations reached.

The United States is aware of its continuing duty to disclose such newly-discovered additional information required by the Standing Discovery Order, Rule 16 of the Federal Rules of Criminal Procedure, materials or information covered under Brady, Agurs, Giglio, and Napue, and the obligation to assure a fair trial.

In addition to the request made above by the United States pursuant to Section B of the Standing Discovery Order and Rule 16(b) of the Federal Rules of Criminal Procedure, and in accordance with Rule 12.1, 12.2 and 12.3 of the Federal Rules of Criminal Procedure, the United States demands Notice of Alibi, Insanity and Public Authority defenses; the approximate time, date, and place of the offense is set forth in the Indictment.

Finally, the United States reminds opposing counsel that discovery is a matter addressed solely by the prosecutors in this case. Opposing counsel should address all discovery inquiries to the prosecutors, and is on notice that the United States is not bound by any statement or promise made by any agent regarding any discovery matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via Federal Express to the Office of the Clerk of Court on this 6th day of July, 1998. A copy of the foregoing was served upon counsel for Sunshine, Marc P. Nurik, via fax and Federal Express on this 6th day of July, 1998, and copies of the foregoing were served upon the other defendants via regular U.S. mail on this 6th day of July, 1998.

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