

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA)
	) CASE NO. 97-0853-CR-NESBITT
v.)
	) Magistrate Judge Robert L. Dubé
ATLAS IRON PROCESSORS, INC.,	) (February 11, 1998, Order of Reference)
et al.,)
	) BILL OF PARTICULARS IN
Defendants.	) RESPONSE TO JOINT MOTION
	) OF DEFENDANTS ATLAS IRON
	) PROCESSORS, INC., ANTHONY
	) J. GIORDANO, SR., ANTHONY J.
	) GIORDANO, JR., AND DAVID
	) GIORDANO FOR A BILL OF
	) PARTICULARS; AND IN
	) RESPONSE TO MOTION OF
	) DEFENDANT WEIL
	) TO ADOPT MOTION OF
	) CODEFENDANTS FOR A
	) <u>BILL OF PARTICULARS</u>

Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, the United States, based upon its present belief and the information now in its possession, files this Bill of Particulars in Response to *Defendants Atlas Iron Processors, Inc., Anthony Giordano, Sr., Anthony J. Giordano, Jr., and David Giordano's Joint Motion for a Bill of Particulars ("Defendants' Motion")*. This Bill of Particulars also responds to the motion of Defendant Randolph J. Weil seeking a bill of particulars and adopting his co-defendants' request. The United States has filed a Memorandum in support of this Bill of Particulars. As detailed in this Memorandum, the defendants already have been provided with extensive discovery in this case. See Memorandum In Support Of United States' Response To Defendants Atlas Iron Processors, Inc., Anthony J. Giordano, Sr., Anthony J. Giordano, Jr., And David Giordano's Joint Motion For A Bill Of Particulars; And In Response To Motion Of Defendant Weil To Adopt Motion Of Codefendants For A Bill Of Particulars ("Memorandum Of The United States"), pp. 2-3. As fully set

forth in its attached Memorandum, a bill of particulars is not a device for discovering either the evidentiary details or legal theories of the government's case. Consequently, the United States has not followed the definitions and instructions in the "Introduction" section of Defendants' Motion. As provided by Rule 7(f), the United States reserves its right to amend this Bill at any time.

The United States responds as follows to the specifications of the defendants' motion.

SPECIFICATION

- A) With respect to paragraphs 2 and 3 of the Indictment, identify:
- 1) Each "co-conspirator", whether indicted or unindicted, alleged to have engaged in a combination and conspiracy to fix the price of scrap metal and allocate suppliers of scrap metal in Southern Florida;

RESPONSE

The defendants and co-conspirators alleged to have participated in the charged conspiracy, and their last known business or home address, are as follows:

Atlas Iron Processors, Inc.
8550 Aetna Road
Cleveland, OH 44105

3700 N. W. N. River Drive
Miami, FL 33142

Sunshine Metal Processing, Inc.
13200 Cairo Lane
Opa-Locka, FL 33054

Anthony J. Giordano, Sr.
1959 Som Center Road
Gates Mills, OH 44124

Anthony J. Giordano, Jr.
1860 Surrey Place
Gates Mills, OH 44040

David Giordano
1197 Bonnie Lane
Mayfield Heights, OH 44124

Randolph J. Weil
973 Parkside Circle North
Boca Raton, FL 33486

Sheila D. McConnell
26600 George Zeiger, Apt. #503
Beachwood, OH 44122

Henry A. "Skip" Kovinsky
196 Marine Drive
Windsor, Ontario
Canada N8B 4K3

Daniel E. Allen
5607 NW 38th Avenue
Boca Raton, FL 33496-2722

SPECIFICATION

- A) With respect to paragraphs 2 and 3 of the Indictment, identify:
- 2) The "suppliers of scrap metal" who were alleged to have been an object of the combination and conspiracy;

RESPONSE

The Indictment charges that one of the terms of the conspiracy was to allocate suppliers of scrap metal. See Indictment, ¶¶ 2 and 3. Those suppliers, whom the United States has identified at the present time, are as follows:

A-I Auto Parts
2117 S. W. 57th Avenue
Hollywood, FL 33023

All Parts of Miami
8300 N. W. 74th Street
Medley, FL 33166

Ben's/U.S. 1
640 N.W. 7 Avenue, #1085
Broward, FL

Bubba's Towing
790 N. W. 72nd Street
Opa-Locka, FL 33054

Bud's Auto Parts
3601 N. W. South River Drive
Miami, FL 33142

Danielle Auto Wrecking
4601 S. W. 36th Street
Hollywood, FL 33023

Danielle's Scrap
3700 S. W. 47th Avenue
Dane, FL 33314

Garden Street I & M, Inc.
3408 Metro Parkway
Fort Myers, FL 33916

M & L Autowrecking
4126 S. W. 47th Avenue
Fort Lauderdale, FL 33314

Rastro 74
8210 N. W. 74th Street
Medley, FL 33166

Rite Way Towing
7635 N.W. 27th Avenue
(Unknown)

Sam's Auto Parts
8511 N. W. 96th Street
Miami, FL 33136

Joe Woodward
(Address unknown)

SPECIFICATION

- A) With respect to paragraphs 2 and 3 of the Indictment, identify:
- 3) Each supplier of scrap metal affected by the alleged combination and conspiracy;

RESPONSE

Paragraphs 2 and 3 of the Indictment do not allege that any supplier of scrap metal was affected by conspiracy. A violation of Section 1 of the Sherman Act is complete when the agreement is made; an overt act in furtherance of the agreement need not be alleged or proved, nor is it required to allege or prove any effect. The defendants are sufficiently advised of the charge against them by the Indictment, the extensive discovery disclosed and made available to the defendants, and this Bill of Particulars.

To provide further explanation of the charge in the Indictment, the United States provides the following information:

The defendants are charged with having engaged in a combination and conspiracy to suppress and restrain competition in violation of Section 1 of the Sherman Act. This combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators. During the course of the conspiracy, the defendants and co-conspirators discussed various suppliers and geographic locations, including the following:

SUPPLIERS

A-1 Auto Parts
All Parts of Miami
Ben's/U.S. 1
Bubba's Towing
Bud's Auto Parts
Danielle's Auto Wrecking
Danielle's Scrap
Garden Street I & M, Inc.
M & L Autowrecking
Rastro 74
Rite Way Towing
Sam's Auto Parts
Joe Woodward

GEOGRAPHIC LOCATIONS

The Keys
Fort Lauderdale
Fort Myers
Medley
Naples
Palm Beach
South Dade

With respect to specific scrap suppliers, the defendants and co-conspirators agreed upon maximum pricing to these suppliers. With respect to suppliers in specific geographic areas, the defendants and co-conspirators agreed upon maximum pricing to suppliers in these geographic areas. The defendants and co-conspirators also agreed upon over-the-scale prices for particular grades of scrap, including, sheet metal, appliances or white goods, unprepared and prepared scrap, whole cars, and logs.

SPECIFICATION

- A) With respect to paragraphs 2 and 3 of the indictment, identify:
 - 4) When and how each defendant and co-conspirator entered such combination and conspiracy;

RESPONSE

This Specification calls for the details of the government's evidence and its legal theories, and, therefore, is beyond the scope of a Bill of Particulars. By way of further explanation, however, the United States provides the following information about five meetings which were attended by various defendants and co-conspirators, and in connection with which occurred most of the collusive communications in furtherance of the charged conspiracy:

<u>DATE</u>	<u>LOCATION</u>	<u>ATTENDEES</u>
September 21, 1992	Charcoal's restaurant Miami Lakes, FL	Anthony J. Giordano, Jr. David Giordano Henry A. Kovinsky Randolph J. Weil
October 14, 1992	La Costa D'Oro restaurant Boca Raton, FL	Anthony J. Giordano, Jr. Anthony J. Giordano, Sr. David Giordano Henry A. Kovinsky Randolph J. Weil
October 24, 1992	Sea Ranch Condo Fort Lauderdale, FL	Anthony J. Giordano, Jr. Anthony J. Giordano, Sr. Sheila D. McConnell Henry A. Kovinsky Randolph J. Weil
November 23, 1992	Don Shula's Steakhouse Hialeah, FL	Anthony J. Giordano, Jr. David Giordano Henry A. Kovinsky Randolph J. Weil
December 21, 1992	Cafe Max restaurant Pompano Beach, FL	Anthony J. Giordano, Jr. Anthony J. Giordano, Sr. Henry A. Kovinsky Randolph J. Weil

SPECIFICATION

- A) With respect to paragraphs 2 and 3 of the Indictment, identify:
 - 5) When and how each defendant and co-conspirator withdrew from such combination and conspiracy;

RESPONSE

The Indictment alleges that, beginning at least as early as October 24, 1992, and continuing until at least until November 23, 1992, the exact dates being unknown to the grand jury, the defendants and co-conspirators engaged in a combination and conspiracy to suppress and restrain competition by fixing the price of scrap metal, and allocating suppliers of scrap metal, in southern Florida. See Indictment, ¶ 2.

By way of further explanation, the United States believes that the conspiracy alleged in the Indictment ended sometime in January, 1993.

Further information would constitute the details of the evidence and the legal theories of the prosecution and would, therefore, go beyond the proper scope and function of a Bill of Particulars.

SPECIFICATION

- A) With respect to paragraphs 2 and 3 of the Indictment, identify:
 - 6) Whether it is alleged that the defendants and co-conspirators allocated or agreed to allocate specific suppliers of scrap metal to specific defendants and co-conspirators;

RESPONSE

Yes.

SPECIFICATION

- A) With respect to paragraphs 2 and 3 of the Indictment, identify:
 - 7) Whether it is alleged defendants and co-conspirators refrained from soliciting specific suppliers of scrap metal or defendants and co-conspirators refrained from quoting prices to specific suppliers of scrap metal;

RESPONSE

Yes.

SPECIFICATION

- A) With respect to paragraphs 2 and 3 of the Indictment, identify:
- 8) Specify whether it is alleged that defendants and co-conspirators quoted non-competitive prices to suppliers of scrap metal.

RESPONSE

Yes.

SPECIFICATION

- B) With respect to paragraph 4 of the Indictment, identify:
- 1) The date, time and location of each act or event set forth in paragraph 4(a) through (j) of the indictment;

RESPONSE

See the Response of the United States to Specifications A(1), A(2), A(3), and A(4). Further information requested in this Specification constitutes the details of the evidence and the government's legal theories and, therefore, goes beyond the proper scope and function of a Bill of Particulars.

As discussed fully in the attached Memorandum, a violation of Section 1 of the Sherman Act is complete when an agreement is made; no overt act in furtherance of the conspiracy need be alleged nor proved. The defendants are sufficiently advised as to the charge against them by the Indictment and this Bill of Particulars.

SPECIFICATION

- B) With respect to paragraph 4 of the Indictment, identify:
- 2) The locations where the principal offense charged allegedly occurred;

RESPONSE

The principal offense charged in the Indictment occurred in the Southern District of Florida. The locations of meetings attended by various defendants and co-conspirators are set forth in the Response of the United States to Specification A(4). The location of the offices of defendants Atlas Iron Processors, Inc., and Sunshine Metal

Processing, Inc., are set forth in the Response of the United States to Specification A(1).

Further information requested in this Specification constitutes the details of the evidence and goes beyond the proper scope and function of a Bill of Particulars.

SPECIFICATION

B) With respect to paragraph 4 of the Indictment, identify:

- 3) The defendant(s) and/or co-conspirator(s) who were present for each of the acts or events set forth in paragraph 4(a) through (j);

RESPONSE

A list of defendants and co-conspirators is set forth in Response of the United States to Specification A(1). A list of meetings attended by various defendants and co-conspirators is set forth in Response of the United States to Specification A(4). Further information constitutes the details of the evidence and goes beyond the proper scope and function of a Bill of Particulars.

SPECIFICATION

B) With respect to paragraph 4 of the Indictment, identify:

- 4) If a defendant or co-conspirator was not present for an act or event specified in paragraphs 4(a) through (j) of the indictment identify the defendant(s) or co-conspirator(s) not present for the specified act or event;

RESPONSE

See the Response of the United States to Specification B(3). Further information constitutes the details of the evidence and goes beyond the proper scope and function of a Bill of Particulars.

As discussed fully in the attached Memorandum, a violation of Section 1 of the Sherman Act is complete when an agreement is made; no overt act in furtherance of the conspiracy need be alleged nor proved. The defendants are sufficiently advised as to the charge against them by the Indictment and this Bill of Particulars.

SPECIFICATION

- C) With respect to paragraph 11 of the Indictment, identify:
- 1) Those co-conspirators who allegedly participated in the offense charged;

RESPONSE

See the Response of the United States to Specification B(3). Further information constitutes the details of the evidence and goes beyond the proper scope and function of a Bill of Particulars.

SPECIFICATION

- C) With respect to paragraph 11 of the Indictment, identify:
- 2) The specific acts and/or statements made by each co-conspirator deemed to have been made in furtherance of the alleged conspiracy;

RESPONSE

See the Response of the United States to Specifications A(3), A(4) and B(1) of the Bill of Particulars. Further information constitutes the details of the evidence and the government's legal theories and, therefore, goes beyond the proper scope and function of a Bill of Particulars.

As discussed fully in the attached Memorandum, a violation of Section 1 of the Sherman Act is complete when an agreement is made; no overt act in furtherance of the conspiracy need be alleged nor proved. The defendants are sufficiently advised as to the charge against them by the Indictment and this Bill of Particulars. Moreover, the defendants already have been provided with extensive discovery in this case, providing significant details relating to overt acts committed in furtherance of the conspiracy. See Memorandum Of The United States, pp. 2-3.

SPECIFICATION

- C) With respect to paragraph 11 of the Indictment, identify:
- 3) The defendant(s) who were present for any act performed or statement made by a co-conspirator deemed to have been in furtherance of the conspiracy;

RESPONSE

See the Response of the United States to Specification A(1) and (4) of the Bill of Particulars. Further information constitutes the details of the evidence and goes beyond the proper scope and function of a Bill of Particulars.

As discussed fully in the attached Memorandum, a violation of Section 1 of the Sherman Act is complete when an agreement is made; no overt act in furtherance of the conspiracy need be alleged nor proved. The defendants are sufficiently advised as to the charge against them by the Indictment and this Bill of Particulars.

SPECIFICATION

- C) With respect to paragraph 11 of the Indictment, identify:
- 4) The date, time and location of each act performed or statement made by a co-conspirator deemed to have been made in furtherance of the conspiracy;

RESPONSE

See the Response of the United States to Specification A(1) and (4) of the Bill of Particulars. Further information constitutes the details of the evidence and goes beyond the proper scope and function of a Bill of Particulars.

As discussed fully in the attached Memorandum, a violation of Section 1 of the Sherman Act is complete when an agreement is made; no overt act in furtherance of the conspiracy need be alleged nor proved. The defendants are sufficiently advised as to the charge against them by the Indictment and this Bill of Particulars. Moreover, the defendants already have been provided with extensive discovery in this case, providing significant details relating to overt acts committed in furtherance of the conspiracy. See Memorandum Of The United States, pp. 2-3.

SPECIFICATION

- C) With respect to paragraph 11 of the Indictment, identify:
- 5) The date, time and location of the last act each defendant or co-

conspirator is alleged to have committed in furtherance of the charged combination and conspiracy; and,

RESPONSE

See the Response of the United States to Specification A(1) and (5) of the Bill of Particulars. Further information constitutes the details of the evidence and gets into the government's legal theories and, therefore, goes beyond the proper scope and function of a Bill of Particulars.

As discussed fully in the attached Memorandum, a violation of Section 1 of the Sherman Act is complete when an agreement is made; no overt act in furtherance of the conspiracy need be alleged nor proved. The defendants are sufficiently advised as to the charge against them by the Indictment and this Bill of Particulars.

SPECIFICATION

- D) Identify each prior or subsequent act of any defendant which the government will seek to introduce at trial pursuant to Fed. R. Evid. 404(b).

RESPONSE

The identification of other acts evidence which the United States intends to introduce at trial is governed by Rule 404(b) of the Federal Rules of Criminal Procedure. The identification of 404(b) acts is outside the proper function and scope of a Bill of Particulars. The United States has disclosed to the defendants the general nature of the other acts evidence it presently intends to introduce against the defendants. This information was disclosed to the defendants in a letter dated January 22, 1998.

Respectfully submitted,

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