UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Criminal No: H-92-152**
	)	
JOHN J. JOHNSON,	)	**(filed 2/15/94)**
	)	
Defendant.	)	

GOVERNMENT'S MOTION IN LIMINE TO EXCLUDE
ECONOMIC COERCION AS A DEFENSE

Pursuant to Fed. R. Crim. P. 12(b), and for the reasons set forth in the accompanying Memorandum, the government, through its attorneys, hereby moves this Court to enter an Order excluding any evidence or argument regarding economic coercion as a defense.

Respectfully submitted,

"/s/"
JANE E. PHILLIPS

"/s/"
JOAN E. MARSHALL

"/s/"
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MEMORANDUM IN SUPPORT OF GOVERNMENT'S MOTION IN LIMINE TO EXCLUDE ECONOMIC COERCION AS A DEFENSE

The government submits this memorandum in support of its motion in limine to exclude any evidence or argument of economic coercion as a defense. The government anticipates that the defendant may attempt to assert economic coercion as a defense. The government requests a pre-trial ruling excluding evidence or argument concerning economic coercion as a defense.

Agreements or understandings not to compete on terms such as price or output constitute per se restrictions in violation of the Sherman Act, 15 U.S.C. §1. National Collegiate Athletic Assoc. v. Board of Regents, 468 U.S. 85, 109 (1984). No elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement. National Society of Professional Engineers v. United States, 435 U.S. 679, 692 (1978). Because per se agreements are illegal regardless of any justification of reasonableness, defenses proffering a justification for the alleged conspiracy are impermissible and should

be excluded. United States v. All Star Industries, 962 F.2d 465, 475 n.21 (5th Cir.), cert. denied, 113 S. Ct. 377 (1992) (it is no defense that a per se illegal price fixing agreement did not have anticompetitive effects or that the defendant's motive was benevolent) (citations omitted). Consequently, evidence or argument designed to advance an impermissible defense should be excluded.

Economic coercion or business compulsion is present only when an individual is deprived of his free will and judgment. Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co., 245 F. Supp. 889, 894 (N.D. Ill. 1965). "Many years of participation in a conspiracy cannot be justified on grounds of coercion without a showing that harm resulted from attempts to throw off the illegal yoke." Id. at 896.

The defendant may attempt to assert as a defense that he was forced by his co-conspirators to engage in the bid rigging conspiracy, and that he had no choice but to succumb to alleged threats of some sort. Such a defense is impermissible. Economic coercion is not a legal defense to a Section 1 charge or to any criminal prosecution. See United States v. Paramount Pictures, Inc., 334 U.S. 131, 161 (1948) ("acquiescence in an illegal scheme is as much a violation of the Sherman Act as the creation and promotion of one"); Duplan Corp. v. Deering Milliken, Inc., 594 F.2d 979, 982 (4th Cir. 1979), cert. denied, 444 U.S. 1015 (1980) (the fact that a co-conspirator's motive was different from or in conflict with his co-conspirators was immaterial); Garshman v. Universal Resources Holding, Inc., 625 F. Supp. 737, 742 (D. N.J. 1986) ("[e]conomic coercion is not a viable defense to a charge of horizontal price fixing") (citations omitted).

CONCLUSION

Based upon the foregoing, the United States respectfully requests that this Court exclude any evidence or argument of economic coercion as a defense.

Respectfully submitted,

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ORDER

HAVING DULY CONSIDERED the Government's Motion In Limine To Exclude Economic Coercion As A Defense IT IS HEREBY ORDERED that any evidence or argument of economic coercion should be excluded.

DONE AND ENTERED THIS __ day of _____, 1994.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Motion In Limine to Exclude Economic Coercion As A Defense, Memorandum in Support of the Government's Motion In Limine to Exclude Economic Coercion As A Defense and proposed Order was sent by certified mail this __ th day of January 1994, to

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