IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | Criminal No. 00-033 |
| | ) | |
| v. | ) | Judge Marvin Katz |
| | ) | |
| MITSUBISHI CORPORATION, | ) | Violations: 15 U.S.C. § 1 and 18 U.S.C. § 2 (a) |
| | ) | |
| Defendant. | ) | Filed: 02-07-01 |

**UNITED STATES PROPOSED**
**REPLACEMENT JURY INSTRUCTION**

In view of the Stipulation entered into between the United States and the defendant, the United States hereby files it proposed replacement instruction No. 6 on the Statute of Limitations and Venue, which replaces the Government's original Request No. 6.

ROBERT E. CONNOLLY
JOSEPH MUOIO
WENDY BOSTWICK NORMAN
ROGER L. CURRIER
Attorneys, Philadelphia Office
Antitrust Division
U.S. Department of Justice
The Curtis Center, Suite 650W
170 S. Independence Mall West
Philadelphia, PA 19106
Tel. No.: (215) 597-7401

**GOVERNMENT'S REQUEST NO. 6**
(Replacement)

**Statute of Limitations and Venue**

In addition to the other elements of aiding and abetting, before you can find the defendant guilty, you must find beyond a reasonable doubt that the conspiracy charged in the indictment was in existence and that some portion of it was carried out in the Eastern District of Pennsylvania within the five year period immediately preceding the return of the Indictment. The conspiracy in this case is alleged to have been in existence from on or about March 1992 to on or about June 1997. If you find that the conspiracy was in existence and that a portion of it was carried out in some way in this District after January 19, 1995, the statute of limitations will not have run and venue would be appropriate.

It is sufficient for these purposes if the United States proves beyond a reasonable doubt that price quotations which were the subject of the conspiracy were submitted or sales were made to customers within the Eastern District of Pennsylvania after January 19, 1995. The United States and the defendant have stipulated that such sales were made to Lukens Steel located in Coatesville, Pennsylvania within the period in question. By this Stipulation, the parties have agreed not to dispute such facts and that no additional evidence need be presented on the point. Coatesville is within the Eastern District.

You should understand, however, that there is no requirement that the acts or omissions which are alleged as the means and methods by which the defendant aided and abetted the conspiracy occurred after January 19, 1995. They could have occurred prior to the time the conspiracy started, such as by helping bring the conspirators together, or they could have

occurred more recently during the existence of the alleged conspiracy. This is because the time period or statute of limitations for which the defendant may be held liable for aiding and abetting, as I have just told you, is measured by that which applies to the substantive offense, the conspiracy.

**Authorities**

*United States v. Kissel*, 218 U.S. 601, 606-608 (1910).

*United States v. Northern Improvement Co.*, 814 F.2d 540, 541-544 (8th Cir.), *cert. denied*, 484 U.S. 846 (1987).

*United States v. A-A-A- Electric Co., Inc.*, 788 F.2d 242, 244-246 (4th Cir. 1986).

*United States v. Girard*, 744 F.2d 1170, 1173-1174 (5th Cir. 1984).

*United States v. Galiffa*, 734 F.2d 306, 309 (7th Cir. 1984).

*United States v. Walker*, 653 F.2d 1343, 1346-1347 (9th Cir. 1981), *cert. denied*, 455 U.S. 908 (1982).

*United States v. Barnett, 667 F.2d 835, 841 (9th Cir. 1982).*

*United States v. Campbell*, 426 F.2d 547, 553 (2nd Cir. 1970).

*United States v. Lane*, 514 F.2d 22, 26-27 (9th Cir. 1975).

*United States v. Kale*, 661 F. Supp. 724, 726 (E.D. Pa. 1987).

2 Edward J. Devitt, *et. al*, *Federal Jury Practice and Instructions*, § 51A.21 (5th ed. Supp. 2000).

American Bar Association, *Sample Jury Instructions in Criminal Antitrust Cases*, No. 67, at 185 (1984).

## CONCLUSION

The United States requests that this Court give the jury the foregoing proposed instruction.

Dated:

Respectfully submitted,

_____

ROBERT E. CONNOLLY
JOSEPH MUOIO
WENDY BOSTWICK NORMAN
ROGER L. CURRIER
Attorneys, Antitrust Division
U.S. Department of Justice
Philadelphia Office
The Curtis Center, Suite 650W
170 S. Independence Mall West
Philadelphia, PA 19106
Tel.: (215) 597-7405

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**CERTIFICATE OF SERVICE**

This is to certify that on the 7th day of February 2001, a copy of the Government's Proposed Replacement Jury Instruction has been hand delivered to counsel of record for the defendant as follows:

Theodore V. Wells, Esquire
Paul Weiss Rifkind Wharton & Garrison
Rittenhouse Hotel, Room 1306
210 West Rittenhouse Square
Philadelphia, PA 19103

ROBERT E. CONNOLLY
Attorney, Philadelphia Office
Antitrust Division
U.S. Department of Justice
The Curtis Center, Suite 650W
170 S. Independence Mall West
Philadelphia, PA 19106
Tel. No.: (215) 597-7405