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: 02-01-01

GOVERNMENT'S RESPONSE TO MOTION OF DEFENDANT TO RECONSIDER ORDER ADMITTING GOVERNMENT EXHIBITS 2 AND 3

Defendant has asked the Court to reconsider its Order admitting Government Exhibits GX-2 and GX-3. Defendant's initial motion to exclude those documents was based on Fed.R.Evid. 403. The Court appears to have inadvertently admitted the documents pursuant to Rule 404(b). Defendant now seeks to exclude the documents because the Government did not provide it with the requisite notice before documents may be introduced pursuant to Rule 404(b). Because the Government did not seek admission of the documents pursuant to Rule 404(b), Defendant did not challenge their admission pursuant to Rule 404(b), and the Court already has balanced the relevance of the exhibits against any possible prejudice and found them admissible. The Court should deny Defendant's Motion.

While the Court's Order admitting GX-2 and GX-3 cited Rule 404(b), that citation appears to have been in error. The Government did not offer those documents as evidence of prior bad acts, and Defendant did not seek their exclusion in its original motion as evidence of prior bad acts. Rather, Defendant simply claimed, pursuant to Rule 403, that the documents had little, if any, relevance, and that their relevance was outweighed by the potential for waste of time and jury prejudice and confusion. (Defendant's Motion to Reconsider at p.1) In its response to Defendant's original motion, the Government showed that these documents are key evidence of Defendant's plan and intent to encourage the graphite electrode industry to collude in pricing, the

crime with which it is charged. For example, GX-3 shows that in 1991, Mitsubishi, through UCAR, wanted to price electrodes by agreement with Japanese manufacturers, and that Mitsubishi itself planned to "finalize" talks with the German manufacturer and to approach other minor manufacturers. According to the document, Mitsubishi employees told a Japanese manufacturer that, "if SIGRI, UCAR, and the Japanese manufacturers take a joint step, we can control the world market."

Defendant has argued that the graphite electrode conspiracy it is charged with aiding and abetting was formed by the presidents of UCAR and SGL, and that Mitsubishi did nothing to encourage its formation. While Defendant may argue that the gap between these Mitsubishi statements and the time in 1992 when manufacturers finally reached agreement to collude shows that Mitsubishi's efforts did not lead to the collusion, the Government will argue just the opposite. GX-3 shows that by 1991, Mitsubishi had gotten, or planned to get, the key Japanese and German manufacturers to agree to collude. What was left to succeed in its plan was to get UCAR, the company in which it had just acquired a 50 percent interest, on board. The Government's evidence will show that because Mitsubishi did not completely control UCAR, and the President of UCAR was reluctant to violate the law, it took Mitsubishi a year to do just that. Evidence from 1990, the period just prior to Defendant's acquisition of UCAR, will show that even when it decided to acquire UCAR, Mitsubishi did so with the intention to encourage and facilitate the industry-wide collusion that ultimately occurred.[1]

GX-2 and GX-3, as well as the 1990 documents relating to Mitsubishi's acquisition of UCAR, provide powerful evidence of Mitsubishi's guilt. Defendant claims that despite their

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[1] Defendant has also attempted to excluded, as irrelevant and prejudicial, the 1990 evidence showing that its acquisition of UCAR was, in part, prompted by its plan to encourage collusion.

relevance, these documents should be kept from the jury due to "the potential for waste of time and jury prejudice and confusion." (Defendant's Motion to Reconsider at p.1) In all of its Motions and Memoranda, Defendant has identified no manner in which the documents are prejudicial other than because they provide evidence of Defendant's guilt. As to its claim that admission of the documents will waste time and confuse the Jury, Defendant itself, after filing its Motion to Reconsider, has already introduced evidence of the documents' content despite its alleged concern.

Because GX-2 and GX-3 are highly relevant to the charge against the Defendant, and because the Court already has applied the requisite balancing test under Fed.R.Evid. 403 and found the documents admissible, Defendant's Motion to Reconsider should be denied.

Dated: 02-01-01

Respectfully submitted,

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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 1st day of February 2001, a copy of the Government's Response to Motion of Defendant to Reconsider Order Admitting Government Exhibits 2 and 3, 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

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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