

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: 01/05/01

**GOVERNMENT’S MEMORANDUM REGARDING
THE USE OF JUROR QUESTIONNAIRE**

The United States does not oppose the defendant’s request that prospective jurors be asked to complete a written questionnaire as part of the jury selection process. The Government and Mitsubishi Corporation have agreed on a proposed questionnaire for the Court’s consideration.

It is the preference of the Government that the questionnaire be completed by prospective jurors on the morning of January 29, 2001. With the Courts’ permission, jury selection would begin the next morning to allow the parties the opportunity to review the completed questionnaires.

I. Preliminary Statement

While the Government does not oppose the use of a questionnaire, it does not accept the statement of the defense that there is a high degree of anti-Japanese prejudice among the juror pool in this District. Defendant provides no data to make the leap from general attitudes about economic competition between the United States and Japanese or foreign companies and the tendency to prejudge guilt against a Japanese corporation. In fact, the survey did not ask any questions of the respondents as to whether they had an anti-Japanese bias that would cause them

to pre-judge guilt in a criminal case.

Defendant claims that there is a strong anti-Japanese bias citing its survey results that:

81% of the potential jurors in this case prefer to buy United States products over Japanese-made products, and 73% prefer American-made products even if the identical Japanese-made product costs less to purchase. (Memorandum of Mitsubishi Corporation, page 1.)

It is significant that the question asked whether the respondent would prefer to buy an American made product, rather than would the respondent buy an American made product that cost more and/or was of lesser quality. While not a scientific survey, the Government notes that there is a wide spread view among consumers that they would prefer to buy goods from a local Mom & Pop hardware store, but actually go to Home Depot to buy at lower prices. In any event, as noted, the defense survey did not attempt to equate a preference for buying American with a predisposition to prejudge the guilt of a Japanese company.

Defendant also cites another aspect of its survey which it also claims demonstrates an anti-Japanese bias:

71% of the potential jurors in this case believe that people in their community would believe the United States Government over a Japanese company in a dispute between the two; 62% believe that they themselves would favor the United States Government. (Memorandum of Mitsubishi Corporation page 1).

This question does not provide any useful data because it is too general. Most disputes between the United States Government and Japanese companies involve trade issues where jurors may well prefer the United States Government's position, reflecting jurors assumption that they may have an economic interest protected by the position of the United States. These questions show no racial bias and say nothing about whether jurors would have a bias against the Mitsubishi

Corporation in a criminal case.

Finally, the Government notes that Decision Quest, which conducted the survey for the defense, has also published information on national potential juror attitudes. A copy of a 1999 Decision Quest chart entitled “I Could Not Be A Fair Juror On A Case If One Of The Parties Were A...”¹ is attached. (Attachment 1.) According to Decision Quest’s research, Asians are among the least likely group to have juror bias against them. Conversely, the United States Government ranks fairly high as a party for whom the jurors could not be fair, partly as a result of negative views potential jurors have about antitrust enforcement based on the Microsoft case.

II. General Juror Questionnaire

While the Government does not agree with the defendant’s assertion that there is a strong anti-Japanese bias in the Eastern District of Pennsylvania, it nonetheless has no objection to the use of a written questionnaire as part of the *voir dire* process. Accordingly, the parties have agreed to the proposed questionnaire. (Attachment 2.)

III. Juror Hardship Questionnaire

The Government and Mitsubishi have also submitted for the Court’s consideration a proposed juror questionnaire designed specifically to obtain information relating to potential juror hardship. (Attachment 3.)

¹ The chart appeared in the National Law Journal, November 1, 1999, page 6.

IV. Conclusion

The United States does not oppose the request of the defendant for the use of a written questionnaire as part of the *voir dire* process and has agreed with the defendant on a proposed questionnaire should the Court determine that the use of a questionnaire is appropriate.

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) Criminal No. 00-033
)
) Judge Marvin Katz
)
MITSUBISHI CORPORATION,) Violations: 15 U.S.C. § 1 and 18 U.S.C. § 2 (a)
)
) Filed: 01/05/01
Defendant.

CERTIFICATE OF SERVICE

This is to certify that on the 5th day of January 2001, a copy of the Government's Memorandum Regarding the Use of Juror Questionnaire has been mailed/faxed to counsel of record for the defendant as follows:

Theodore V. Wells, Esquire
Paul Weiss Rifkind Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064

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