

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

UNITED STATES OF AMERICA) Criminal No. 00-033
)
) Judge Marvin Katz
)
v.)
)
MITSUBISHI CORPORATION,) Violations: 15 U.S.C. § 1 and 18 U.S.C. § 2 (a)
)
)
Defendant.) Filed: 02-05-01

**UNITED STATES PROPOSED REPLACEMENT
AND ADDITIONAL JURY INSTRUCTIONS**

The United States, pursuant to Fed.R.Crim. P.30, hereby files the following:

1. Government Request No. 3 (Replacement), Aiding and Abetting: Elements of the Offense, which replaces the Government’s original Request No. 3;
2. Government Request No. 5 (Replacement), Corporations Act Through Employees and Agents, which replaces the Government’s original request; and
3. Government Request No. 5(a), Corporate Knowledge, which is an additional Request.

The United States requests this Court to give the attached instructions to the jury in addition to those already filed by the United States and the Court’s standard instructions.

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. 3

(Replacement)

Aiding and Abetting: Elements of the Offense

Aiding and abetting is not a separate offense. The statute simply makes those who aid and abet a crime punishable as principals--as if they had committed the crime itself.

Thus, a person may violate the law even though he or she did not do every act constituting the substantive offense or even, in fact, if he or she was incapable of committing the substantive offense, if that person "aided and abetted" the commission of the offense. Further, there is no requirement that the defendant know all the particulars of the substantive offense, in this case the antitrust conspiracy, to be guilty of aiding and abetting.

A corporation, such as the defendant, may be found guilty of aiding and abetting. Further, one may aid and abet an antitrust conspiracy just as one may aid and abet other offenses. That is the charge in this case, that Mitsubishi Corporation aided and abetted a price-fixing conspiracy in violation of Section One of the Sherman Act.

I will explain the elements of the substantive offense, conspiracy in violation of Section One of the Sherman Act, later to you. Now, I wish to explain the elements of aiding and abetting.

In order to find the defendant guilty of aiding and abetting, it is necessary for you to find, beyond a reasonable doubt, that the substantive crime, that is, the conspiracy in violation of Section One of the Sherman Act was committed, and that the defendant knew of the crime and acted with specific intent to attempt to facilitate it. That is, that the defendant in some way associated itself with the crime, and that it participated in it as something it wished to bring about or have succeed.

You should understand that mere knowledge on the part of the defendant that a crime is being committed or is about to be committed is not sufficient for you to find that the defendant aided or abetted the commission of that crime.

Authorities

Nye and Nissin v. United States, 336 U.S. 613, 618-620 (1949).

United States v. Garth, 188 F.3d 99, 113 (3d Cir. 1999).

United States v. Green, 25 F.3d 206, 209 (3d Cir. 1994).

United States v. Frorup, 93 F.2d 41, 43 (3d Cir. 1992).

United States v. Portac, Inc., 869 F.2d 1288, 1293 (9th Cir. 1989), *cert. denied*, 498 U.S. 845 (1990).

United States v. Galiffa, 734, F.2d 306, 312 (7th Cir. 1984).

United States V. Bey, 736 F.2d 891, 895 (3d Cir. 1984).

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

United States v. Tokoph, 514, F.2d 597, 602 (10th Cir. 1975).

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

GOVERNMENT'S REQUEST NO. 5

(Replacement)

Corporations Act Through Employees and Agents

Under the law, a corporation is a person, but it can only act through its agents--such as its directors, officers, employees, or others acting on its behalf. A corporation is legally bound by the acts and the statements of its agents or employees done or made within the scope of their employment or their actual or apparent authority.

Acts done within the scope of employment are acts performed on behalf of a corporation and directly related to the performance of the duties the agent or employee has general authority to perform. Apparent authority is the authority that outsiders could reasonably assume the agent or employee would have, judging from his position with the company, the responsibilities entrusted to him or his office, and the circumstances surrounding his conduct.

To summarize, in order for a corporation to be legally responsible for the acts or statements of its employees or agents, you must find that the employee or agent was acting on behalf of the corporation within the scope of his employment or his actual or apparent authority.

If you conclude that an employee or agent of the defendant corporation, acting on behalf of the corporation and within the scope of his employment or apparent authority, engaged in acts constituting aiding and abetting as charged in the Indictment, then it is no defense that the defendant had instructed its employees or agents, either orally or in writing, not to engage in such conduct or to otherwise comply with the law.

A corporation is entitled to the same fair trial as a private individual. It is entitled to the same presumption of innocence as private individuals, and it may be found guilty only if the

evidence establishes such guilt beyond a reasonable doubt. All persons, including corporations, stand equal before the law.

Authorities

American Bar Association, *Sample Jury Instructions in Criminal Antitrust Cases*, No. 15, at 51 (1984).

United States v. Portac, Inc., 869 F.2d 1288, 1293 (9th Cir. 1989), *cert. denied*, 498 U.S. 845 (1990).

United States v. Basic Const. Co., 711 F.2d 570, 573 (4th Cir.), *cert. denied*, 464 U.S. 956 (1983).

United States v. Koppers Co., 652 F.2d 290, 298 (2nd Cir.), *cert. denied*, 454 U.S. 1083 (1981).

United States v. American Radiator & Standard Sanitary Corp., 433 F.2d 174, 204-205 (3rd Cir. 1970), *cert. denied*, 401 U.S. 948 (1971).

GOVERNMENT’S REQUEST NO. 5(a)

Corporate Knowledge

One of the elements which the Government must prove beyond a reasonable doubt to convict the defendant of aiding and abetting is that it knew of the existence of the price-fixing conspiracy charged in the Indictment.

A corporation can gain knowledge of such facts only through its employees and agents acting within the scope of their employment. If you find beyond a reasonable doubt that employees or agents of the defendant acting within the scope of their employment knew of the conspiracy, then the sum of all of their knowledge is imputed to the defendant. Put another way, the defendant’s knowledge is the totality of what all of its employees and agents knew of the conspiracy within the scope of their employment.

Authorities

United States v. Bank of New England, N.A., 821 F.2d 844, 855-856 (1st Cir.), *cert. denied*, 484 U.S. 943 (1987).

Steere Tank Lines, Inc. v. United States, 330 F.2d 719, 722 (5th Cir. 1963).

United States v. T.I.M.E.-D.C., Inc., 381 F. Supp. 730, 738 (W.D. W.Va. 1974).

CONCLUSION

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

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

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: 02-05-01
Defendant.

CERTIFICATE OF SERVICE

This is to certify that on the 5th day of February 2001, a copy of the Government's Proposed Replacement and Additional Jury Instructions 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