

UNITED STATES OF AMERICA  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA ) Case No. 97-0853-CR-Nesbitt  
 )  
 v. ) Magistrate Judge Robert L. Dubé  
 ) (February 11, 1998 Order of Reference)  
 ATLAS IRON PROCESSORS, INC. )  
 et al., )  
 ) **UNITED STATES' REPLY TO**  
 Defendants. ) **DEFENDANTS' JOINT BRIEF**  
 ) **IN OPPOSITION TO UNITED STATES'**  
 ) **MOTION IN LIMINE TO EXCLUDE**  
 ) **EVIDENCE OF REASONABLENESS**

Having read the defendants' "Joint Brief in Opposition to the United States' Motion *In Limine* to Exclude Evidence of Reasonableness," the United States believes there is little, if any, difference between the two sides' understandings of the relevant law. Both sides agree that the defendants may not argue that, even though they fixed prices, their price-fixing conspiracy was justified because they fixed prices at "reasonable" or "competitive" levels. As the Sixth Circuit held in a case previously cited by both the defendants and the United States:

A defendant cannot say, "I have entered into a price-fixing agreement, but the prices fixed are reasonable ones dictated by economic pressures." The fact that the prices were reasonable is no defense. Once the defendant admits the agreement he may say no more for it is illegal *per se*.

Continental Baking Co. v. United States, 281 F.2d 137 (6th Cir. 1960).

With respect to the United States' argument that the defendants should be precluded from introducing economic data because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury," Fed. R. Evid. 403, the defendants have not offered a response. Although the United States believes that the introduction of economic evidence may

create a substantial risk of confusing the jury with irrelevant issues, this issue need not be decided until closer to trial when the United States is made aware of the economic evidence the defendants will seek to admit and for what purposes. For this reason, the United States will ask the Court to reserve ruling on the United States' motion to preclude the defendants from introducing economic evidence until closer to trial when the Court has enough information to rule on the issue. The United States will renew its motion at that time.

Accordingly, the United States asks the Court to enter the enclosed order precluding the defendants from arguing they entered into a price-fixing agreement, but their agreement was justified because the fixed prices were "reasonable" or "competitive" and dictated by economic pressures or other events. Second, the United States asks the Court to reserve ruling on the United States' motion to preclude the defendants from introducing economic data pursuant to Fed. R. Evid. 403.

Respectfully submitted,

WILLIAM J. OBERDICK  
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By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the following:

- 1) *Motion For Leave To File Instanter Enlarged Reply Brief of United States To Memorandum of The Giordano Defendants In Opposition To Motion In Limine of the United States to Exclude From Admission At Trial All Evidence Related to Polygraph Tests and Results;*
- 2) *Order Granting Permission To United States To File Its Instanter Enlarged Reply Brief;*
- 3) *Reply Brief of United States to Memorandum of the Giordano Defendants in Opposition to Motion in Limine of the United States to Exclude from Admission at Trial All Evidence Related To Polygraph Tests and Results;*
- 4) *United States' Reply To Defendants' Joint Brief in Opposition to United States' Motion in Limine to Exclude Evidence of Reasonableness; and*
- 5) *Order Excluding Evidence The Defendants Charged "Reasonable" or "Competitive" Prices.*

were sent via Federal Express to the Office of the Clerk of Court on this 19th day of June, 1998. Copies of the above-captioned pleadings also were served upon the defendants via U.S. Mail on this 19th day of June, 1998.

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