

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA)	Criminal No.: H-97-93
)	
v.)	Violations:
)	
MARK ALBERT MALOOF,)	15 U.S.C. §1
)	18 U.S.C. § 371
Defendant.)	filed 8/25/97

**UNITED STATES' RESPONSE TO DEFENDANT'S
MOTION FOR PRODUCTION OF ADDITIONAL
TRANSACTIONAL DATA**

The United States, through the undersigned attorney, hereby responds to the Defendant's Motion for Production of Additional Transactional Data.

In his Motion, the Defendant requests the Court to order the government to produce pursuant to Fed.R.Crim.P. 16(a)(1)(C) "all transactional data produced to the grand jury by sellers of metal building insulation ("MBI") who sold MBI in . . . Missouri, Ohio, Georgia, and Florida." Motion at 1. The government submits that the Defendant's Motion should be denied because it seeks evidence that is not relevant to the charged conspiracy.

"Relevant evidence" is defined as evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed.R.Evid. 401 (emphasis added).

In this case, the Defendant has been charged with engaging in a conspiracy to fix prices of metal building insulation sold by the Defendant and co-conspirators from their facilities in Texas. Thus, the area that is relevant to the charged conspiracy is the area where Bay Insulation's Houston branch transacted and competed for business. The transactional pricing data for this relevant area has already been produced to the Defendant. Pricing information for sales of metal building insulation laminators in Missouri, Ohio, Georgia, and Florida is outside the scope of the relevant area and is thus irrelevant to the charged conspiracy. There is no logical connection between the prices of metal building insulation sold in other parts of the country and the prices of metal building insulation in the charged conspiracy area. Moreover, the introduction of evidence of metal building insulation prices from areas of the country that are not part of the charged conspiracy area would confuse the issues and mislead the jury. See Fed.R.Evid. 403.

In conclusion, the Defendant requests material that is outside the scope of the charged conspiracy area and is therefore irrelevant to the conspiracy charged. Therefore, the Defendant's Motion should be denied.

Respectfully submitted,

/s/

MARK R. ROSMAN
Attorney-in-Charge
Florida State Bar No. 0964387
U.S. Department of Justice
Antitrust Division
1601 Elm Street, Suite 4950
Dallas, Texas 75201-4717
(214) 880-9401

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UNITED STATES OF AMERICA)
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)
 Defendant.)

ORDER

Upon consideration of the Defendant's Motion for Production of Additional Transactional Data and the response of the United States,

the Defendant's Motion is hereby DENIED.

DONE AND ENTERED THIS ____ day of _____, 1997.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the United States' Response to Defendant's Motion for Production of Additional Transactional Data was sent via Federal Express this _____ day of August, 1997, to:

J. Mark White, Esq.
White, Dunn & Booker
290 21st Street North
Suite 600
Birmingham, AL 32503

Albert C. Bowen, Esq.
Beddow, Erben & Bowen, P.A
Second Floor - 2019 Building
2019 3rd Avenue, North
Birmingham, AL 35203

George McCall Secrest, Jr., Esq.
Bennett, Secrest & Meyers, L.L.P.
333 Clay Street, Suite 3830
Houston, TX 77002

/s/
MARK R. ROSMAN
Attorney-in-Charge
Florida State Bar No. 0964387
U.S. Department of Justice
Antitrust Division
1601 Elm Street, Suite 4950
Dallas, Texas 75201-4717
(214) 880-9401