

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

UNITED STATES OF AMERICA,

Plaintiffs,

v.

Case No. 8:22-cr-130-SCB-JSS

LAWRENCE O'BRIEN,  
BRUCE LAROCHE and  
THOMAS DAILEY,

Defendants.

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**ORDER**

Before the Court is the United States' Consolidated Motion *in Limine* to Exclude Defendants' Expert Christoph Mlinarchik and to Preclude Potential Evidence and Arguments and Supporting Memorandum of Law. (Doc. 182 ). Defendants filed a response in opposition. (Doc. 198). The Motion is due to be granted in part and denied in part for the reasons that follow.

A motion *in limine* is traditionally disfavored because questions of admissibility should be dealt with at trial. *Stewart v. Hooters of America, Inc.*, No. 8:04-cv-40-T-17-MAP, 2007 WL 1752873, at \*1 (M.D. Fla. June 18, 2007). "The purpose of a motion *in limine* is to give the judge notice of a party's desire to

prevent the introduction of damaging evidence that may impact the fairness of a trial.” *Id.* “In order to exclude evidence *in limine* it must be inadmissible on all potential grounds.” *Id.* “The movant has the burden of demonstrating that the evidence is inadmissible on any relevant ground.” *Id.*

The United States has not met its burden as to all the evidence and arguments it seeks to exclude before the trial. Some issues raised in the Motion are best addressed as they arise during the trial. The Court’s rulings on the particular issues are:

**Issue I:** The United States seeks to exclude Defendants’ proffered expert in government contracting, Cristoph Mlinarchik, pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The United States does not contest Mr. Mlinarchik’s qualifications to testify as an expert; rather, it argues that his testimony will not assist the jury and that he will offer improper legal conclusions. These matters, however, are better resolved by the Court after it has heard the United States’ evidence. Thus, the Court will defer ruling on them until after the United States has presented its case-in-chief, but Mr. Mlinarchik will not be precluded from testifying in the trial.

**Issues II & III:** The United seeks to exclude from trial evidence and arguments by Defendants, relating to Count I of the Indictment, that their conduct

was justified because the prices they submitted were reasonable or warranted by market conditions, that Defendants provided an efficient or valuable service, or that Defendants lacked specific intent to restrain trade. The Court agrees with the United States that such evidence and arguments are due to be excluded as irrelevant. The conspiracy charged in Count I of the Indictment is *per se* unlawful under 15 U.S.C. §1. The United States does not have to prove that Defendants intended to violate the law, it need prove only that Defendants knowingly joined the conspiracy. “It’s a separate Federal crime for anyone to conspire or agree with someone else to do something that would be another Federal crime if it was actually carried out.” Eleventh Circuit Pattern Jury Instruction No. O13.1

**Issue IV:** The United States seeks to preclude any ancillary-restraint defense regarding Count I of the Indictment—namely, that Defendants’ practice of coordinating quotes submitted to the Army was ancillary to a separate, pro-competitive business venture. This issue will be better addressed by the Court as the evidence is adduced during trial. Only if sufficiently supported by admissible evidence may a jury consider a defense that an agreement between competitors is an ancillary restraint to a legitimate joint venture. *Texaco, Inc. v. Dagher*, 547 U.S. 1, 7 (2006). But the Court intends to instruct the jury according to the Eleventh Circuit Pattern Jury Instructions.

**Issue V:** The United States seeks to preclude Defendants from arguing they cannot be convicted of Counts Two and Three of the Indictment without a finding they intended to deprive the United States of money or property. The Court agrees that any such argument will confuse the jury about the standard of proof and, thus, it will be excluded. The Court will instruct the jury according to the Eleventh Circuit Pattern Jury Instruction regarding intent.

**Issue VI:** The United States seeks to preclude Defendants from arguing inaccurate definitions of price-fixing and bid-rigging. The Court will instruct the jury on the law. Should inaccurate definitions risk misleading the jury as to the proper legal standard for the charged Sherman Act offense, the United States may object to the definitions and argument as irrelevant, and the Court will rule accordingly.

**Issue VII:** The United States seeks to preclude the defense from offering arguments or graphical depictions that define “reasonable doubt.” The Motion is due to be granted on this issue because the Eleventh Circuit Pattern Jury Instruction sufficiently defines “reasonable doubt.” Therefore, both the defense and the United States will be precluded from arguing or presenting graphical depictions definitions of “reasonable doubt” other than that stated in the jury instructions.

**Issue VIII.** The United States seeks to preclude from trial evidence and arguments that promote or suggest jury nullification such as: (1) Defendants were unfairly targeted by the United States; (2) Defendants were ignorant of the law; (3) others were doing it; (4) consequences of a conviction; and (5) specific acts of good conduct. The Court agrees with the United States that such evidence and arguments are not permitted and, thus, they will be excluded from trial.

**Issues IX, X, & XI:** The United States seeks to preclude improper evidence and arguments that improperly use agent interview reports, that relate to discovery conducted such as the volume of documents dumped on Defendants, and that Defendants were acting under an actual or believed exercise of public authority. The Court agrees with the United States that the introduction of such evidence and argument is improper and, thus, it will be excluded from trial.

**ACCORDINGLY, it is ORDERED AND ADJUDGED:**

The United States' Consolidated Motion *in Limine* to Exclude Defendants' Expert Christoph Mlinarchik and to Preclude Potential Evidence and Arguments

(Doc. 182) is **GRANTED IN PART AND DENIED IN PART.**

**DONE AND ORDERED** at Tampa, Florida, this 11<sup>th</sup> day of August, 2023.



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SUSAN C. BUCKLEW  
United States District Judge