

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
2006 NOV 22 PM 2:55
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MA-RI-AL CORPORATION, d/b/a)
BEAVER MATERIALS CORP;)
CHRIS A. BEAVER;)
RICKY J. BEAVER a/k/a)
RICK BEAVER;)
JOHN BLATZAHEIM)
Defendants.)

CAUSE NO. IP. 06-CR-61-01
06-CR-61-02/
06-CR-61-03

DEFENDANTS MOTION FOR A JUDGMENT OF
ACQUITTAL PURSUANT TO FEDERAL RULE
OF CRIMINAL PROCEDURE 29(c)

Comes now the defendants, by counsel, and file with the court their Motion for Judgment of Acquittal pursuant to Federal Rule of Criminal Procedure 29(c). In support of this motion the defendants would state to the court as follows:

1. That at the close of the Government's evidence the defendants filed with the court their Motion Pursuant to Federal Rule of Criminal Procedure Rule 29(a), which motion was denied by the court on November 15, 2006.

2. That on November 16, 2006, this matter was presented to the jury who returned their verdicts of guilty against the defendants in the afternoon of November 16, 2006.

3. That the motion now before the court, after the verdicts of the jury requires the court to determine if the evidence is

insufficient to sustain a conviction. The court, again, is required to view the evidence in the light most favorable to the prosecution. United States v. Hach, 162 F.3d 937,942 (7th Cir. 1998).

4. The issues in this case must be viewed to see if any rational trier of fact in this case, the jury, could have found the essential elements of the crime were not proven beyond a reasonable doubt.

5. It is the position of the defendants that there is no reasonable basis in the record for the jury's verdict. At one point in cross examination of Richard Haehl (TR.p184) of the daily copy, Mr. Haehl stated:

~~"I knew there was an attempt to have an agreement."~~

Which would indicate that no agreement had taken place to violate the *Sherman Act*.

6. In the cross examination of Gus Nuckols (TR.p.83) of the daily copy, when discussing the first meeting at his horse barn, Mr. Nuckols states:

Line 20 Q: "Now you indicated that in your meeting of 2000 that you had this kind of general conversation and you have no specific recollection of Chris or Rick Beaver being there."

A: No.

Mr. Nuckols was also asked about a number of other public

meetings he attended where none of the Beavers were present. It was also the position of Mr. Nuckols that at the second meeting attended by Mr. Rick Beaver, he said very little, if anything.

7. In the testimony of Mr. Hughey and Mr. Irving, both believed that when they left the meetings at both the horse barn and the Signature Inn, that there was an agreement among competitors, yet they could point to very little that either Chris or Rick Beaver said at these meetings which would show they did nothing more than came to the meetings.

8. The evidence presented by Allyn Beaver, the President of Beaver Materials was that he was the only person in the company that could set prices and that he was at none of these meetings.

WHEREFORE, Defendants pray that the court grant this motion for judgment of acquittal of all the defendants, or in the alternative, grant the defendants a new trial.

Respectfully submitted,



JAMES H. VOYLES



JEFFREY LOCKWOOD


ATTORNEYS FOR MA-RI-AL CORPORATION,
d/b/a BEAVER MATERIALS CORP.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by U.S. Mail, postage prepaid, upon the following counsel, on the date of filing:

Frank J. Vondrak
U.S. Department of Justice
Antitrust Division
209 S. LaSalle St., Suite 600
Chicago, IL 60604

Thomas Farlow
Locke Reynolds LLP
201 N. Illinois Street, Suite 1000
P.O. Box 44961
Indianapolis, IN 46244-0961



JAMES H. VOYLES

JAMES H. VOYLES #631-49
VOYLES, ZAHN, PAUL, HOGAN AND MERRIMAN
700 Jefferson Plaza
One Virginia Avenue
Indianapolis, Indiana 46204
(317) 632-4463

Jeffrey Lockwood #8872-48
Eisele, Lockwood & Williams
200 E. 11th Street, Suite 100A
Anderson, Indiana 46016