

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
)
 v.) CR-04-46-B-W
)
JOHN P. DONAHOE,)
)
 Defendant.)

ORDER

Defendant John. P. Donahoe pleaded guilty to conspiracy to commit mail fraud, to conceal biological materials imported contrary to law, to make false statements, and to violate the Virus-Serum-Toxin Act, in violation of 18 U.S.C. § 371, § 545, § 1001, § 1341, and 21 U.S.C. § 151, and to being an accessory after the fact of smuggling, in violation of 18 U.S.C. § 3 and § 545. He is set to be sentenced either July 21 or 22, 2005.

In preparation for sentencing, Donahoe filed on March 30, 2005 a motion requesting issuance of a subpoena duces tecum and early production of documents (Docket # 24, Ex. A). The subpoena requested production of the following documents from Maine Biological Laboratories (MBL), which was Donahoe’s employer at the time he committed the offenses and is a defendant in a related matter: (1) USDA-approved Outlines of Production in effect for the year 1998 for: autogenous bacterin; autogenous vaccine; all avian influenza vaccines; FC2 vaccine; FC3 vaccine; FC4 vaccine; Chick ND vaccine; and all supplemental Outlines of Production referred to in the requested Outlines of Production; (2) all conditional and full licenses for autogenous vaccines and avian influenza vaccines manufactured by subpoenaed party; (3) production records for all avian influenza vaccine serials produced in 1998; (4) a report on the total number of serials of avian influenza vaccine produced by subpoenaed party in the

five years prior to 1999; and, (5) the Outline of Production followed and the production records maintained for the autogenous avian influenza and Newcastle disease vaccine produced for Fakieh Poultry and shipped from MBL in June and July 1999, which may include serial numbers 13065Z, 13066Z, 13067Z, and 13068Z. The motion was granted (Docket # 25) without objection from the Government on March 31, 2005. On April 1, 2005, MBL authorized its counsel to accept service of the subpoena.

On April 29, 2005, MBL filed a Motion by Non-Party to Quash or Modify Portions of Subpoena Duces Tecum (Docket # 28), arguing that disclosure of the documents “would require an unnecessary disclosure of proprietary information.” Mot. by Non-Party to Quash or Modify Portions of Subpoena Duces Tecum at 5. MBL also asserts that Donahoe “is unable to overcome the compelling concern held by MBL regarding disclosure of information” because Donahoe or his colleagues can testify about the information contained in the Outlines of Production. *Id.* at 5-6.

Donahoe argues that the documents contain information that is important to this Court’s consideration of the appropriate sentence. This Court agrees. Donahoe has a right to present at sentencing evidence he deems exculpatory or favorable. Furthermore, MBL itself has been convicted of a crime that involved the same set of circumstances, and is therefore not in a position to protest the revelation of confidential information that could relate to the scope of the crime. MBL is ordered to produce the information, which will remain confidential among the parties pending the sentencing hearing, at which time this Court will revisit the issue.

MBL’s Motion by Non-Party to Quash or Modify Portions of Subpoena Duces Tecum is DENIED.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 28th day of June, 2005

Defendant

JOHN P DONAHOE (1)

represented by **JASON M. WAITE**
ALSTON AND BIRD, LLP
601 PENNSYLVANIA AVE, NW
NORTH BUILDING, 10TH FLOOR
WASHINGTON, DC 20004-2601
Email: jwaite@alston.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

MARVIN H. GLAZIER
VAFIADES, BROUNTAS &
KOMINSKY
23 WATER STREET
P. O. BOX 919
BANGOR, ME 04401
(207) 947-6915
Email: mhg@vbk.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM R. MITCHELSON, JR.
ALSTON & BIRD, LLP
1201 WEST PEACHTREE STREET
ONE ATLANTIC CENTER
ATLANTA, GA 30309-3424
Email: mmitchelson@alston.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Interested Party

**MAINE BIOLOGICAL
LABORATORIES**

represented by **JAY P. MCCLOSKEY**
MCCLOSKEY, MINA & CUNNIFF,
LLC
27 BELLEVUE AVENUE

BANGOR, ME 04402-2088
(207) 947-3132
Email: jay.mccloskey@verizon.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

MICHAEL A. CUNNIFF
MCCLOSKEY, MINA & CUNNIFF,
LLC
12 CITY CENTER
PORTLAND, ME 04101
207-772-6805
Fax: 207-879-9374
Email: mcunniff@lawmmc.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Plaintiff

USA

represented by **GEORGE T. DILWORTH**
OFFICE OF THE U.S. ATTORNEY
DISTRICT OF MAINE
P.O. BOX 9718
PORTLAND, ME 04104-5018
(207) 780-3257
Email: George.Dilworth@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED