

Florida air cargo executive should be immune from DOJ price-fixing claims, lawyers say

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IN BRIEF

A Florida air cargo executive should be immune from price-fixing charges following a Miami magistrate judge's ruling to that effect last year, the executive's lawyers said in court papers Thursday.

Washington -- A Florida air cargo executive should be immune from price-fixing charges following a Miami magistrate judge's ruling to that effect last year, the executive's lawyers said in court papers Thursday.

Judge Edwin G. Torres in December said Rodrigo Hidalgo, indicted for conspiring to fix air cargo shipment prices from Colombia to Miami, was immunized by an earlier plea agreement between the Justice Department and a Chilean airline.

There was no reason to call that into question, the lawyers said.

"The government should be bound by its words and held to the agreements it makes," lawyers for Hidalgo wrote, opposing a request by DOJ lawyers for a new hearing on the issue (see [here](#)).

"The government was well aware of the issues significantly in advance of the evidentiary hearing," they said.

Hidalgo, a former executive of Florida West Airlines, was indicted in December 2010.

In a December report, Torres recommended dismissing all counts against Hidalgo, finding he was inadvertently immunized from prosecution by a January 2009 plea agreement between DOJ and LAN Cargo.

Justice Department lawyers had argued at a two-day hearing in August that the agreement wasn't intended to cover Hidalgo, only employees of LAN Cargo and its subsidiaries.

Torres's recommendations require approval from U.S. District Judge Robert Scola Jr., who is overseeing the case (see [here](#)).

Prosecutors objected to Torres's report on December 23 in sealed court documents. The response by Hidalgo's defense lawyers, which was filed publicly today, gives the first indication of those objections.

According to the filing, prosecutors said they weren't aware that Hidalgo planned to argue at the August hearing that he also was a "secret employee" of LAN Cargo while he worked at Florida West.

The DOJ lawyers objected to the finding that he was immunized by LAN Cargo's plea agreement, saying the lawyers didn't intend for it to cover Hidalgo and such a finding could have "enormous public policy implications" for future prosecutions. They requested Scola provide them an opportunity to have a new hearing to present more evidence that Hidalgo wasn't a LAN employee.

Hidalgo's lawyers, Markus & Markus in Miami, rejected the government's characterization of Hidalgo as a "secret agent," noting that the word "secret" was

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never used in the course of the two-day hearing.

“Hidalgo’s purported ‘secret’ status is irrelevant,” his lawyers said. “What matters under the plea agreement is whether Hidalgo was an employee of LAN Cargo, not whether his employment was secret.”

The executive would be unfairly prejudiced if the government were allowed a second hearing, they said.

“In the Eleventh Circuit, there needs to be a ‘valid reason’ for re-opening an evidentiary proceeding to take new evidence,” the lawyers said. “The government’s attempt to relitigate this issue ‘is the desperate ploy of a ‘never-say-die’ litigant.’”

Linked Case File(s)

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