

## 6.12 BUYER-SELLER RELATIONSHIP

The existence of a simple buyer-seller relationship between a defendant and another person, without more, is not sufficient to establish a conspiracy, even where the buyer intends to resell [name the goods.] The fact that a defendant may have bought [name of goods] from another person or sold [name of goods] to another person is not sufficient without more to establish that the defendant was a member of the charged conspiracy.

In considering whether a conspiracy or a simple buyer-seller relationship existed, you should consider all of the evidence, including the following factors:

- (1) Whether the transaction involved large quantities of [name of goods];
- (2) Whether the parties had a standardized way of doing business over time;
- (3) Whether the sales were on credit or on consignment;
- (4) Whether the parties had a continuing relationship;
- (5) Whether the seller had a financial stake in a resale by the buyer;
- (6) Whether the parties had an understanding that the [name of goods] would be resold.

No single factor necessarily indicates by itself that a defendant was or was not engaged in a simple buyer-seller relationship.

### COMMENT

The buyer-seller instruction is a theory of defense instruction and should be given where requested if there is evidence to support it. *United States v. Paters*, 16 F.3d 188 (7th Cir. 1994). The Seventh Circuit has discussed the importance and meaning of the instruction many times. See, e.g., *United States v. Berry*, 133 F.3d 1020 (7th Cir. 1998); *United States v. Lindsey*, 123 F.3d 978 (7th Cir. 1997); *United States v. Turner*, 93 F.3d 276 (7th Cir. 1996); *United States v. Mims*, 92 F.3d 461 (7th Cir. 1996); *United States v. Herrera*, 54 F.3d 348 (7th Cir. 1995); *United States v. Lechuga*, 994 F.2d 346 (7th Cir.)(en banc), cert. denied, 114 S. Ct. 482 (1993).

Although the Committee has listed six possible factors the jury may consider in determining whether a buyer-seller relationship existed, the list is not intended to be exhaustive. In a particular case, some or even none of the factors may be relevant and the instruction should be tailored to fit the facts of the case. See *United States v. Blankenship*, 970 F.2d 283, 286 (7th Cir. 1992).

The buyer-seller issue arises primarily in drug cases. However, as the examples in *United States v. Blankenship*, supra, illustrate, it is not limited to drug cases and may arise in a variety of conspiracy or aiding and abetting cases.

This instruction should be given immediately following the conspiracy elements instruction.