

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HAMILTON SECURITIES ADVISORY SERVICES, INC.,)	
)	
Plaintiff,)	Case No. 98-169 C
)	
v.)	(Judge Horn)
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to this Court's Order of September 8, 1999, the parties file this Joint Status Report, and state:

I. Plaintiff's Statement

Plaintiff responded to Defendant's First Set of Interrogatories and Defendant's Second Production Request on September 21, 1999. On January 5, 2000 - three and one-half months after Plaintiff served its discovery responses - Defendant first advised Plaintiff that it considered Plaintiff's responses unsatisfactory in some respects. Defendant had never expressed any dissatisfaction with Plaintiff's responses before that time. Plaintiff does not agree that its responses were deficient, but it is working with Defendant to address Defendant's requests for additional information.

On December 6, 1999, Defendant served its First Set of Requests for Admissions, its Second Set of Interrogatories and its Third Production Requests. Plaintiff timely responded to

those latter discovery requests on January 5, 2000.

Plaintiff suggests that it was somehow improper for Plaintiff to file any discovery requests. That suggestion is meritless. While Plaintiff's Motion in Limine is meritorious and should be granted, Plaintiff believed that it was prudent to try to keep the case on track in any contingency. Plaintiff accordingly filed reasonable discovery requests so as not to encounter any unnecessary delays, and it limited its discovery to requests for basic information necessary to protect its interests in this case.

Defendant has set forth below numerous reasons why it could not complete discovery within the time allowed by the Court's September 8, 1999 Order. For the most part, Plaintiff addressed those issues in its Opposition to Defendant's Motion for Enlargement of Time in Which to Respond to Plaintiff's Discovery, and we will not repeat those comments here. One matters newly raised below, deserves comment, however.

Defendant claims that Plaintiff "hindered [Defendant's] progress" in obtaining documents from the Special Master. That assertion is false.

Defendant's statements concerning the protective order and its description of Hamilton's "demands" as "obdurate", mischaracterize the discussions. It was Hamilton that offered to streamline the process in the first place by suggesting that the parties merely adopt the same protections already agreed to by the government in the enforcement action (and entered by Judge

Sporkin) and which by their terms applied to the Government. Indeed, the Special Master had indicated that he did not want his own office to be in the position of operating under two different sets of procedures depending on which government lawyer was reviewing documents. Counsel for the government initially indicated that the government would abide by the confidentiality provisions and other procedures relating to the documents in the Special Masters' custody. The government then changed its position, objecting to the reasonable restrictions concerning dissemination of Hamilton's documents to third parties. Hamilton eventually agreed to the Government's revised position because the procedures addressed some of Hamilton's concerns regarding dissemination of private information to third parties unrelated to the instant suit and not out of any concern over the possible filing of a motion to compel. (The possible filing of a motion to compel was never even raised with Plaintiff's counsel of record.) Ironically, the procedures proposed by the Government - and eventually agreed to by Hamilton - are, in our view, more cumbersome and restrictive (yet less effective) than the procedures specified in the enforcement action and proposed by Hamilton. Any wasted time was due to the government's decision not to abide by the existing procedures and to insist on a more complicated protective order.

In any event, we note that Defendant continued to have free access to Plaintiff's documents during the period of time the parties were negotiating over the protective order.

II. Defendant's Statement

1. Briefing on the "Inspection of Services" Clause

Pursuant to the September 8, 1999 order, briefing on the application of the contracts' inspection of services clause has been completed, and the parties await the Court's ruling.

2. Outstanding Discovery Requests Issued by Defendant

Defendant is awaiting Plaintiff's responses to Defendant's outstanding discovery requests, including Defendant's First Request for Admission, Second Set of Interrogatories and Third Request for Production. Those requests were due on January 5, 2000. Hamilton's counsel claims he mailed them on that date, but, as of the time of this writing, Defendant has not received them.

Defendant is engaged in discussions with Plaintiff over the sufficiency of Plaintiff's answers to Defendant's First Set of Interrogatories. Hamilton apparently complains (see above) that Defendant did not complain sooner about the inadequacies in Hamilton's answers. But that was because most of the particular answers about which Defendant complains are ones as to which Defendant needed to examine the available voluminous documents first, before it could fully assess the sufficiency of Hamilton's answers. For example, as to most of the subject interrogatories, Hamilton merely directed Defendant to examine the documents in the custody of the Special Master and to find the answers for itself. Defendant could not finally determine the sufficiency of such responses until we examined the Special Master's documents

to see what answers they revealed. Once that review was finished (or nearly finished), Defendant determined which of Hamilton's responses in that regard were insufficient and we contacted Hamilton's lawyers to ask for better responses. The reasons why the review of the Special Master's documents took so long are discussed below.

3. Status of Defendant's Discovery Regarding Documents.

The September 8, 1999, order directed Defendant to conduct discovery on documents that are available through the Special Master, the agency, and the Department of Justice. Since September 8, 1999, Defendant has devoted a great deal of time to reviewing such documents to locate documents that are needed by Defendant with regard to the issues that presently are in dispute in this case. Defendant believes that it has located the large majority of the key documents meeting those criteria. However, for the reasons stated below, the document review process is not quite finished (although it is almost finished).

The September 8, 1999, order also directed Defendant to provide a detailed explanation if discovery is not complete. To the extent that the process of reviewing documents has not quite been completed (although it is almost complete), it is because of several unique circumstances that have made the document review much more time-consuming than expected.

First, not only is the entire universe of documents to be searched extraordinarily voluminous (overall, numbering in the millions of pages), but in many instances, Defendant has found

that pertinent documents are unusually difficult to locate. A number of the issues in this case involve only one or a few narrow aspects of very complicated and large transactions that spanned a long period of time, generated voluminous documents, and involved numerous people, many of whom apparently kept voluminous (but often disorganized) files. Each of those person's files could contain relevant materials. But the documents about the aspects relevant to this case, in many instances, are scattered among thousands or hundreds of thousands of pages of irrelevant documents in each file. The task of locating relevant documents within the universe of millions of pages has been immense and even more difficult than expected.

Second, the document review process was elongated because of unique document-custody requirements imposed by the Special Master, who allegedly has custody of all of Hamilton's documents.¹ For example, the Special Master would not allow any original documents to leave his office, even for photocopying. Thus, the relevant documents that Defendant located had to be copied by the Special Master's staff. Apparently because of their staffing and equipment limitations, they took much longer to finish copying documents than the outside copy services that Defendant ordinarily would have used. Once the Special Master finished copying the originals, those copies were recopied by a

¹We realize that the Special Master's office has only been carrying out its duty of preserving the integrity of the documents in his case. Thus, we do not criticize the Special Master's office, which has been cooperative and helpful.

copy service for distribution to the parties. This process delayed Defendant's actual receipt of copies by well over a month, until December 30, 1999. This delay has substantially slowed Defendant in its ability to analyze the documents and ready them for use in its case.

Third, many of the agency's documents have been more difficult and time-consuming to review than in the typical case. In the ordinary case, Defendant would ask those agency personnel who were involved in the subject transactions to search their files for relevant documents. Typically they would be able to do so in the most efficient manner that the files would permit because of their familiarity with their own records. That generally has not been possible in this case. Many of the key agency personnel who were involved in the subject transactions have left Government service. Also, many of the agency's documents were taken into custody by HUD's Office of Inspector General as part of a continuing investigation. Thus, the voluminous agency files have had to be reviewed by Defendant's personnel who are examining them "cold," without prior familiarity with where in those files relevant documents are likely to be located. This also has slowed the process of document review much more than expected.

Fourth, Hamilton itself hindered our progress. What should have been an easily resolved question over how to protect appropriate trade secret or other confidential information contained in the documents held by the Special Master turned into

an elongated dispute with Hamilton. Only when we were on the verge of filing a Motion to Compel did Hamilton relent in its obdurate demands and agree to entry of a standard protective order. By then, we had spent much time debating the issue with Hamilton and preparing what turned out to be an unnecessary Motion to Compel (which we then did not need to file). But for Hamilton's conduct, those wasted hours would have been available to us to spend reviewing documents.

Hamilton's response to this point (see above) is deceptive. Hamilton claims that the Defendant had "free access" to the documents, but that is a misleading half-truth. Hamilton refused to allow the Defendant to obtain copies of any documents whatsoever unless it agreed to be bound by the same restrictions on disclosure as were imposed in the district court action, Gaffney vs. Hamilton. But the restrictions on disclosure of documents in that district court case were not appropriate for this case, and the Defendant found that it could not agree to them.² Nor did such restrictions apply to documents produced by Hamilton (whether through the Special Master or otherwise) in response to discovery in the present case. Rather, the Defendant insisted on the much more typical type of protective order for

²The district court case is action to enforce an Inspector General's ("IG") administrative subpoena issued to Hamilton as part of an IG investigation. The district court entered orders to prevent disclosure of documents to any non-Government personnel. That may be appropriate in some circumstances for documents obtained by subpoena as part of a formal investigation, but it is not appropriate as a blanket restriction for each and every document produced to the Government in discovery in a civil lawsuit.

civil lawsuits (which Hamilton eventually agreed to). The Defendant made that demand by September 28, 1999. Hamilton refused it and continued to do so until about October 21, 1999. In the interim, the Defendant engaged in lengthy discussions with Hamilton's counsel designated to handle such matters, the Defendant proposed a variety of protective orders (which Hamilton rejected), and prepared a draft motion to compel. Only when the Defendant's lawyer informed Hamilton's lawyer that it appeared a motion to compel would be necessary, did Hamilton finally relent and agree to the protective order that this Court eventually issued. Had Hamilton agreed to that when the Defendant first proffered it, many more hours would have been available to the Defendant for review of documents instead of wrangling with opposing counsel.

Another reason for the delay in completing review of documents is that, on or about December 8, 1999, Hamilton served extensive discovery requests upon Defendant, including Hamilton's First Set of Interrogatories and First Request for Production. These discovery requests were unexpected, given Hamilton's repeated comments that it did not believe that any discovery was needed in this case. Defendant has devoted considerable time and attention to responding to these discovery requests; work on those responses is continuing. This has taken away considerable amounts of the time and resources that Defendant otherwise would have spent on its own review of documents. Indeed, the timing of Hamilton's discovery requests--served on December 8, 1999--had a

particularly damaging impact on Defendant's ability to proceed with its document review. Because of the ensuing holiday season, much of the Defendant's counsel's support staff has been on leave for much of the time, leaving few additional resources to bring to bear.

4. Further Discovery

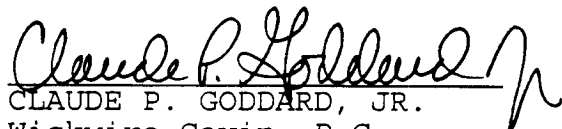
Once Defendant completes its review of documents, it will be ready to begin depositions. It is very difficult to predict how many depositions will be needed until a number of the early depositions are completed and Defendant can assess the testimony given. For now, however, Defendant notes that Plaintiff's answers to interrogatories name at least 18 Hamilton personnel who allegedly were involved in key issues in this case, in addition to a number of non-party witnesses. Defendant suggests that depositions proceed, and that the parties report to the Court in about 90 days as to the status of discovery.

Defendant has filed a motion for enlargement of time to respond to Hamilton's discovery requests which were served on December 8, 1999.

(CONTINUED ON NEXT PAGE)

Dated: January 7, 2000

Respectfully submitted,



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CERTIFICATE OF SERVICE

I declare, under penalty of perjury, that on the _____
day of January, 2000, a copy of the foregoing JOINT STATUS REPORT
was served upon:

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by sending the same by fax and by first-class U.S. Mail.
