

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.)	

PLAINTIFF'S FIRST SET OF INTERROGATORIES

Plaintiff, Hamilton Securities Advisory Services, Inc. ("Hamilton"), by counsel requests that Defendant, the United States of America, answer the following interrogatories pursuant to Rule 33 of the Rules of the Court of Federal Claims ("RCFC"), and basing and framing each answer in response on and upon all knowledge of Defendant and its respective officers and employees. These interrogatories are to be answered by Defendant separately, in writing and under oath within 30 days from the date of service.

INSTRUCTIONS

A. These Interrogatories call for written answers which identify all responsive documents in your possession, custody or control.

B. Where knowledge or information is requested from you, the request seeks the knowledge of your employees, officers, agents, representatives and, unless privileged, your attorneys. You are requested to provide not only such information as is in your possession, but also all information as is reasonably available. In the event you are able to provide only part of the information called for by any particular Interrogatory, please provide

all the information you are able to provide and state the reason for your inability to provide the remainder.

C. Where an Interrogatory does not specifically request a particular fact, but where such fact or facts are necessary to make the answer to said Interrogatory either comprehensible, complete or not misleading, you should include such fact or facts as part of said answer and said Interrogatory shall be deemed specifically to request such fact or facts. Each Interrogatory herein shall be regarded as continuing. Defendant must supplement its answer promptly if and when it obtains relevant information in addition to or in any way inconsistent with its prior answers or production of documents.

D. If you claim any privilege with respect to any document, please state, with respect to each such document, the date thereof, the author, the recipients, a description of its substance sufficient to show the applicability of the privilege claimed, identify all persons known by you who have seen the document, and state the nature of the privilege on which you rely.

E. Whenever you are requested to state the basis for an allegation or of a denial, you are requested to state:

1. The facts upon which the allegation is based;
2. The identity of each person from whom each such fact was derived or learned;
3. Whether the allegation is based upon any oral communications and, if so, identify each such communication;

4. Whether any documents were prepared that set forth, summarized or referred to any portion of any such communication identified in 3. above, and if so, identify each such document;

5. Whether the allegation or denial is based upon any documents and, if so, identify each such document;

6. Whether an investigation has been conducted to ascertain the veracity of the allegation or denial and, if so, further state:

a) The nature of each such investigation;

b) The identity of each person who participated in each such investigation and the dates of participation by each;

c) The identity of each person who was contacted during the investigation, the identity of each person who made each such contact, and the date and place of each such contact;

d) The results of each investigation and the identity of each document gathered during or produced in connection with each such investigation;

7. The identity of each person who is either known or believed to have any knowledge of any of the facts upon which the allegation or denial is based, and the substance of the information known or believed to be possessed by each such person.

F. To "identify" a document shall mean to state with respect thereto:

1. The name of the person who prepared it. If more than one person prepared a given document, identify each preparer and that specific portion of the given

document for which each was responsible;

2. The name of each person to whom it was addressed or distributed;
3. The name of the person who signed it or over whose name it was

issued;

4. The nature, substance, and subject matter of the document with sufficient particularity to enable it to be readily identified;

5. Its date or, if it bears no date, the date it was prepared; and

6. The physical location of the document and the name and address of its custodian.

G To "identify" a person shall mean to state with respect thereto:

1. His or her name;
2. His or her last known business address and residence address;
3. The name and last known business address of his or her employer at

the time referenced in your answer, and at the present time; and

4. The employment position held by said person with the employers identified above, and the date when each such employment began and ceased.

H. To "identify" an oral statement or communication shall mean to state with respect thereto:

1. The name of each person who participated in the communication and the name of each person who was present at the time it was made;

2. The date, and the place where the communication was made;

3. What each such person said, or if not known, the substance thereof;
and

4. The identity of each document pertaining to such oral communication.

1. A document "related to," "relating to" or "relevant to" any given subject matter means any document that constitutes, contains, embodies, identifies, states, refers to, deals with, pertains to, or in any way directly or indirectly bears upon or deals with that subject, including, without limitation, documents concerning the preparation of documents.

J. Unless otherwise noted, the relevant time period shall be June 1, 1994 to the present.

DEFINITIONS

For the purposes of these Interrogatories, and Defendant's responses thereto, the following definitions shall apply:

1. **"All"** and **"any"** shall mean "any and all."
2. **"And"** shall include **"or,"** and **"or"** shall include **"and."**
3. The term **"communication"** shall mean any process, whether written, oral, electronic or otherwise, by which information or meanings are exchanged between individuals.
4. The term **"Contract 18161"** shall mean and refer to contract number DU100C000018161 between HUD and Hamilton Securities Group, including any modifications and task orders issued thereunder.
5. The term **"Contract 18505"** shall mean and refer to contract number

DU100C000018505 between HUD and Hamilton Securities Advisory Services, Inc., including any modifications and task orders issued thereunder.

6. The term "**the12/4/96 Report**" shall have the same meaning as set forth in Defined Terms section of Defendant's First Set of Interrogatories.

7. The term "**12/20/96 Report**" shall have the same meaning as set forth in Defined Terms section of Defendant's First Set of Interrogatories.

8. The word "**Documents**" shall mean and include all written, graphic or otherwise recorded matter; however produced or reproduced; including nonidentical copies, copies with notes made thereon, preliminary, intermediate, and final drafts, writings, records, and records of every kind and description; whether inscribed by hand or by mechanical, electronic, microfilm, photographic or other means; as well as phonic (such as tape recordings); or visual reproductions. It shall include all documents at any time in Defendant's possession or control without regard to whether such document was prepared by Defendant. A reference herein to any one or more of these types of documents shall be construed to include all other types of documents without limitation.

9 The terms "**HUD,**" "**Defendant,**" "**you**" or "**yours**" shall mean and include the United States Department of Housing and Urban Development and any of its components, officers, employees, agents, and representatives.

10. The term "**investigation**" shall mean any observation or study by examination and systematic inquiry.

11. "**On**" shall mean and include "**on or about**".

12. The term "**North Central Sale**" shall have the same meaning as set forth in Defined Terms section of Defendant's First Set of Interrogatories.

13. The term "**Optimization Model**" shall have the same meaning as set forth in Defined Terms section of Defendant's First Set of Interrogatories.

14. The term "**participate**" shall mean to take part in something.

15. The word "**Person**" shall mean and include any individual, partnership, joint venture, corporation, or other entity, or combination thereof, and all corporations, divisions or entities affiliated with, owned or controlled directly or indirectly by, or owning or controlling directly or indirectly any such entities. When the referenced person is an entity of any type, the term includes references to all current or former officers, directors, employees, agents, shareholders or representatives.

16. The terms "**Plaintiff,**" and "**Hamilton**" shall each mean and include the Plaintiff, Hamilton Securities Advisory Services, Inc.

17. The term "**representation**" shall mean and include any conduct or statement, expressed or implied, in regard to some past or existing fact, circumstance or state of facts pertinent to the subject matter of this lawsuit.

18. The term "**West of Mississippi Sale**" shall have the same meaning as set forth in Defined Terms section of Defendant's First Set of Interrogatories.

19. The use of the masculine gender shall include the feminine gender.

20. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the question inclusive rather than

exclusive.

21. The singular includes the plural, and vice versa.

INTERROGATORIES

1. Identify all persons with knowledge of facts on which you base your Answer and First Amended Counterclaim and for each such person state the facts relevant to this lawsuit of which he or she has knowledge.

2. Identify all persons with knowledge of facts relevant to this lawsuit and for each such person state the facts relevant to this lawsuit of which he or she has knowledge.

3. Identify each person whom you expect to call as a witness at the trial of this matter, stating as to each such person the subject matter to which he or she is expected to testify.

4. Identify each expert witness whom you may call to testify at any trial or hearing in this matter:

5. With respect to each expert witness identified in your answer to Interrogatory No. 3, set forth fully and in detail the subject matter upon which such expert will testify or opine; state the substance of all facts and opinions to which such expert is expected to testify or opine; state a summary of the grounds and/or factual basis for each such opinion; and identify each document and/or oral communication relevant to the lawsuit reviewed or relied upon by each such expert witness.

6. Insofar as it pertains to the North Central Sale, state the basis for the allegation of Paragraph 5 of Defendant's First Amended Counterclaim that "Hamilton was responsible for properly conducting all phases of each auction, including but not limited to being responsible for all personnel, equipment, services and supplies in connection with those auctions." Please refer to Paragraph E of the Instructions Section of these Interrogatories for direction as to the meaning of the phrase "state the basis of an allegation" in answering this and all other interrogatories requesting you to state the basis for allegations.

7. State the basis of the allegations of Paragraph 7 of Defendant's First Amended Counterclaim that "Hamilton was responsible for determining which bids were winning bids."

8. State the basis of the allegations of Paragraph 10 of Defendant's First Amended Counterclaim that "Hamilton, either through its own personnel or its subcontractor(s), was responsible for the design and running of the Optimization Model."

9. State the basis of the allegations of Paragraph 14 of Defendant's First Amended Counterclaim that "Hamilton represented, or caused to be represented, to HUD that the selection of winning bids designated by Hamilton would yield the maximum sales proceeds to HUD, while still meeting all applicable criteria such as the floors set by the bidders."

10. With respect to the allegations of Paragraph 18 of Defendant's First Amended Counterclaim that "If only those bids that met the applicable criteria (such as the "floor") had been selected as winning bids, such bids would have generated substantially greater revenue for HUD from the West of Mississippi Sale and the North/Central Sale":
 - a. Identify the specific dollar figure that HUD alleges would have constituted the "substantially greater revenue for HUD from the West of Mississippi Sale and the North/Central Sale;" and describe in detail the basis for the calculation of such dollar figure.
 - b. Identify the person who made such calculation; the date on which such calculation was made; all documents relating to or evidencing such calculation; and all persons having knowledge of such calculation.

11. State whether HUD, anyone acting on behalf of HUD, or anyone known to HUD has made a calculation as to the amount of the “greater revenue” that HUD alleges in Paragraph 18 of Defendant’s First Amended Counterclaim would have been generated for HUD; and
 - a. Identify: the person who made such calculation; the date on which such calculation was made; all documents relating to or evidencing such calculation; and all persons having knowledge of such calculation.
 - b. State the dollar figure calculated by any such person to be the “greater revenue.”

12. State the basis of the allegations of Paragraph 25 of Defendant's First Amended Counterclaim that "By reason of Hamilton's breach, the Government has suffered damages of at least the amount conceded by Hamilton (i.e., \$3,883,551), although the Government has not completed its analysis of the amount of damages suffered;" and
 - a. Identify the specific amount of damages the Defendant alleges it suffered and describe with specificity the basis of Defendant's damages calculation; and
 - b. Identify all documents and communications related to or evidencing the Defendant's damages calculation or "analysis of the amount of damages suffered."

13. State the basis of the allegations of Paragraph 29 of Defendant's First Amended Counterclaim that "Hamilton owed HUD a duty to exercise reasonable care in performing services for HUD;" and
 - a. Identify all sources of the alleged "duty to exercise reasonable care;" and
 - b. Identify all documents and communications related to or evidencing the alleged "duty to exercise reasonable care."

14. State the basis of the allegations of Paragraph 30 of Defendant's First Amended Counterclaim that "Hamilton was negligent in that it failed to exercise reasonable care in performing its services for HUD, by acts including but not necessarily limited to those described above;" and
 - a. Identify all acts by which Defendant alleges "Hamilton was negligent . . . in performing its services for HUD;" and
 - b. Identify all documents and communications related to or evidencing all alleged "acts including but not necessarily limited to those described above" by which Defendant alleges Hamilton was negligent in performing its services for HUD."

15. State the basis of the allegations of Paragraph 31 of Defendant's First Amended Counterclaim that "Hamilton, which in the course of its business, was to supply information for the guidance of HUD in connection with the auctions described above, supplied to HUD, or caused to be supplied to HUD, false information about which group of bids would yield maximum sales proceeds while meeting all applicable criteria, including bidders' 'floors,' and Hamilton failed to exercise reasonable care or competence in obtaining or communicating such information;" and
- a. Identify with specificity all facts on which Defendant relies in alleging that "in the course of its business, [Hamilton] was to supply information for the guidance of HUD in connection with the auctions described above;"
 - b. Identify with specificity all "false information" HUD alleges Hamilton supplied to HUD, or caused to be supplied to HUD; and
 - c. Describe with specificity the standard of care that Defendant alleges Hamilton failed to meet in failing to "exercise reasonable care or competence in obtaining or communicating" information to HUD.

16. Identify all persons who received a copy of the 12/4/96 Report or the 12/20/96 Report; or who became aware of the matters disclosed in such reports, during the time period of November 1996 through October 17, 1997; and for each such person identified:
 - a. State the date on which he or she received a copy of the report or information;
 - b. Identify the person who provided a copy of the report or information disclosed in such reports to each person identified as having received a copy of such report or information;
 - c. Describe the substance of the information conveyed to such person;
 - d. Describe any actions the person took on the basis of having received the report or information; and
 - e. Identify all documents and communications relating to or evidencing the receipt by any person of a copy of the 12/4/96 or 12/20/96 Reports or of information disclosed in such Reports during the period November 1996 through October 17, 1997.

17. State whether HUD, or anyone acting on behalf of HUD, conducted any investigation of the matters disclosed in the 12/4/96 and 12/20/96

Reports, and, if so:

- a. Describe in detail the investigation and its results;
- b. Identify the persons who conducted or participated in any way in the investigation; and
- c. Identify all documents and communications relating to or evidencing such investigation.

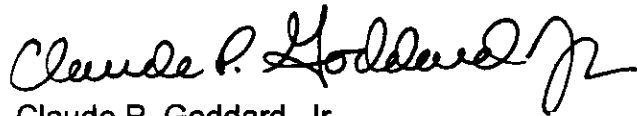
18. Describe in detail HUD's role in the West of Mississippi and North Central Sales; and
- a. State whether HUD, Hamilton or some other person was ultimately responsible for such loan sales and state in detail all facts on which you base your answer;
 - a. Identify all specific matters on which HUD had decision making authority or responsibility with respect to each sale;
 - b. Identify the persons who made decisions on each matter as to which HUD had decision making authority or responsibility with respect to each sale;
 - c. Identify all documents and communications relating to or evidencing decisions on each matter as to which HUD had decision making authority or responsibility with respect to each sale;
 - d. Identify all specific matters on which HUD did not have decision making authority or responsibility with respect to each sale; identify the person who had decision making authority on such matters; and identify all documents and communications relating to or evidencing decisions on such matters; and
 - e. Identify all persons who were present in the bid room during any portion of the bid selection process.

- f. Identify all persons who participated in any way in, or who had any responsibility for, the West of Mississippi and North Central Sales and describe the nature of each such person's participation or responsibility.

19. Identify the person within HUD who determined the winning bidders on the West of Mississippi and North Central Sales; and
 - a. Identify all information on which such person relied or to which such person referred in determining the winning bidders on such sales;
 - b. Identify all documents provided to or on which such person relied in determining the winning bidders; and
 - c. Identify all persons with knowledge of the basis on which HUD determined the winning bidders on the West of Mississippi and North Central Sales.

20. Identify each person who provided factual information used in answering the above interrogatories, and for each such person; identify the interrogatories about which he or she provided information.

Respectfully submitted,



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Dated: December 8, 1999

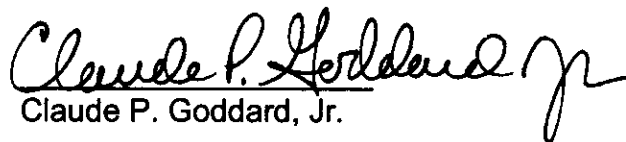
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Certificate of Service

The undersigned certifies he caused a copy of the foregoing Plaintiff's First Set of Interrogatories to be served on the following government counsel by hand on December 8, 1999:

David J. Gottesman
Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice
Washington, D.C. 20005

Attn: Classification Unit
8th Floor, L Street Building


Claude P. Goddard, Jr.