

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES *ex rel.* )  
ERVIN AND ASSOCIATES, INC., )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action No. 1:96-CV-1258 (LFO)  
 )  
THE HAMILTON SECURITIES GROUP, )  
INC., )  
 )  
Defendants. )

**CONSENT MOTION OF THE HAMILTON SECURITIES GROUP, INC. AND  
HAMILTON SECURITIES ADVISORY SERVICES, INC. FOR LEAVE TO  
FILE SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION  
TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Defendants The Hamilton Securities Group, Inc. and Hamilton Securities Advisory Services, Inc. (collectively "Hamilton"), by counsel, hereby move this Honorable Court for leave to file the attached supplemental memorandum in support of Hamilton's motion to dismiss or, in the alternative, for summary judgment. The grounds for Hamilton's request are as follows:

1. Hamilton's supplemental memorandum sets forth statements made by counsel for the relator, Ervin & Associates, or counsel for the government at hearings before The Honorable Stanley Sporkin in this matter. Significantly, while the statements from the Court transcripts are relevant to the issues already put before the Court in Hamilton's initial memorandum of points and authorities filed on September 25, 2000, Hamilton is not attempting to add any additional legal arguments.

2. Hamilton could not, in the exercise of reasonable diligence, obtain from the Court transcripts in time to include this information in the initial memorandum of points and authorities or in its reply brief. The transcripts were the last material to be unsealed in this case (via a September 13, 2000 Order). When Hamilton sought to obtain them shortly after the Order unsealing them was signed, we were advised by court reporters that the tapes had never been transcribed. Hamilton finally received all of the transcripts after filing its reply brief.

3. Plaintiff filed its complaint on June 6, 1996, and the file remained sealed until April 2000 (and the transcripts remained sealed until mid-September 2000). The Honorable Stanley Sporkin conducted more than a dozen hearings before the case was unsealed. Hamilton was not present at those hearing and did not have access to the transcripts until just recently. Counsel for the government and Ervin & Associates were present at those hearings and comments they made are relevant to Hamilton's motion to dismiss or, in the alternative, for summary judgment.

4. The Honorable Louis F. Oberdorfer is now presiding over this matter. Therefore, Hamilton's Supplemental Memorandum will assist the Court in its understanding of representations previously made by the government and Ervin in this matter.

5. The Court has scheduled a hearing on Hamilton's motion to dismiss or, in the alternative, for summary judgment for January 31, 2001. The brief additions contained in Hamilton's Supplemental Memorandum, which do not raise any new legal arguments, should not affect the hearing date. The relator will have nearly four full weeks to respond to the Supplemental Memorandum. In any event, the Supplemental Memorandum con-

tains statements that should come as no surprise to the plaintiff: most of the statements were made by plaintiff's counsel in open Court.

6. "There is no reason to deny amendment when the trial judge believes it would be in the interests of justice to permit it. The use of discretion seems especially appropriate if the adverse parties will not be prejudiced by the amendment, or if the amendment is necessary to ensure that the case is adjudicated fairly and justly or if it will help resolve the litigation at an early date." Wright & Miller, *Federal Practice and Procedures*, § 1194 (1990). Courts in the D.C. Circuit regularly accept supplemental memorandum on motions under such circumstances. See, e.g., *Whitehead v. Paramount Picture Corp.*, 2000 U.S. App. LEXIS 11717 \*1, \*2 (D.C. Cir. 2000)(noting consideration of various motions, including supplements to motions for summary reversal); *Wooten v. Premier Yachts, Inc.*, 2000 U.S. App. LEXIS 11680 \*1, \*1 (D.C. Cir. 2000)(noting the Court's consideration of a supplement to a reply to a motion to dismiss); *MCI Telecom. Corp. v. FCC*, 1997 U.S. App. LEXIS 41382 \*1, \*4 (D.C. Cir. 1997)(noting consideration of supplements to motion for a stay); *Jones v. D.C. Redevelopment Land Agency*, 499 F.2d 502, 509 n.21 (D.C. Cir. 1974); *Andrx Pharms. v. Friedman*, 83 F. Supp.2d 179, 187 (D.D.C. 2000) (granting defendant's motion to supplement its response to plaintiff's motion to dismiss counterclaim). The *Whitehead*, *Wooten* and *MCI Telecom* opinions are attached at Tab A for the Court's convenience.

7. Counsel for Hamilton sought plaintiff's consent for the relief requested herein and plaintiff's counsel, Wayne Travell, consented to Hamilton's request provided that Ervin may file a supplemental response, if necessary.

For the reasons set forth herein and as evident from the attached Supplemental Memorandum, Hamilton respectfully requests leave to file its Supplemental Memorandum in support of its Motion to Dismiss or, in the Alternative, for Summary Judgment.

Respectfully submitted,

By: \_\_\_\_\_  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion of the Hamilton Securities Group, Inc. and Hamilton Securities Advisory Services, Inc. for Leave to File Supplemental Memorandum in support of Its Motion to Dismiss or, in the Alternative, for Summary Judgment was sent by hand delivery, via courier service on this 8<sup>th</sup> day of January, 2001 to:

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