



OFFICE OF THE
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

October 7, 1977

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Rex B. Hawks, Esquire
Clerk, United States District Court
for the Western District of Oklahoma
United States Courthouse, Room 3210
Oklahoma City, Oklahoma 73102

Re: Securities and Exchange Commission v. Haswell, No. 77-0408-B

Dear Mr. Hawks:

Enclosed for filing with this Court in the above-captioned action are an original and one copy of the Motion of the Securities and Exchange Commission to Defer Oral Argument Pending Resolution of the Order of the Court to Show Cause Dated October 5, 1977, or Alternatively, for Leave of the Court to Raise and Discuss Certain Matters in Subsequent Proceedings Herein, and a memorandum in support thereof. Also enclosed for filing is a notice of appearance of additional counsel for the Commission in this action.

Sincerely,

James H. Schropp
Assistant General Counsel

Enclosures

cc: Thomas J. Kenan, Esquire
Robert C. Bailey, Esquire

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ANDREW J. HASWELL, JR.,

Defendant.

No. 77-0408-B

MOTION OF THE SECURITIES AND EXCHANGE COMMISSION TO DEFER ORAL ARGUMENT PENDING RESOLUTION OF THE ORDER OF THE COURT TO SHOW CAUSE DATED OCTOBER 5, 1977, OR ALTERNATIVELY, FOR LEAVE OF THE COURT TO RAISE AND DISCUSS CERTAIN MATTERS IN SUBSEQUENT PROCEEDINGS HEREIN

The Securities and Exchange Commission respectfully moves this Court to defer oral argument in this matter, now scheduled to occur on October 12, 1977, pending resolution of the order of the Court to show cause entered by the Court on October 5, 1977. Alternatively, the Commission moves for leave of the Court to raise and discuss certain matters in subsequent proceedings herein.

In support of this motion, the Court is respectfully referred to the memorandum filed herewith.

Respectfully submitted,

HARVEY L. PITT
General Counsel

JAMES H. SCHROPP
Assistant General Counsel

Securities and Exchange Commission
Washington, D.C. 20549
Telephone (202) 376-7170

Dated: October 7, 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ANDREW J. HASWELL, JR.,

Defendant.

No. 77-0408-B

MEMORANDUM IN SUPPORT OF THE MOTION OF THE SECURITIES AND EXCHANGE COMMISSION TO DEFER ORAL ARGUMENT PENDING RESOLUTION OF THE ORDER OF THE COURT TO SHOW CAUSE DATED OCTOBER 5, 1977, OR ALTERNATIVELY, FOR LEAVE OF THE COURT TO RAISE AND DISCUSS CERTAIN MATTERS IN SUBSEQUENT PROCEEDINGS HEREIN

Trial in this matter was held on September 8 and 9, 1977. At the close of the trial, the Court directed the plaintiff Securities and Exchange Commission ("Commission") to file Proposed Findings of Fact, Conclusions of Law and Supporting Brief ("Proposed Findings") on or before September 23, 1977, and further directed defendant Andrew J. Haswell to file a reply on or before September 30, 1977. The Court also scheduled oral argument for 10:00 a.m. on Wednesday, October 12, 1977.

The Commission filed its Proposed Findings on September 23, 1977. On October 3, 1977, defendant Haswell filed his reply and a motion to strike pages 37 through 43 of the Commission's Proposed Findings. On October 5, 1977, the Court entered an Order directing the Commission's attorneys "individually and separately" to answer defendant Haswell's motion to strike, "with regard to plaintiff's statements and allegations therein and as to why the Alexander letter was so attached." The Court's Order further directed the Commission's attorneys "to show cause why the Court should not cite each of them for contempt of court."

As matters now stand, therefore, the Commission must appear on Wednesday, October 12, 1977, to argue the merits of the principal

issues involved in this action under circumstances that indicate that the Court has raised serious questions as to the propriety of the Commission's attaching a letter from then Commissioner of the Internal Revenue Service Donald C. Alexander to then Chairman of the Commission Roderick M. Hills, dated July 27, 1976 ("Alexander letter"), and discussing that letter in its Proposed Findings. Presumably, the Court's order thus would also call into question any attempt by the Commission's attorneys to raise the Alexander letter in their oral argument to the Court, or to base any part of their argument with respect to the law involved in this case on the Alexander letter.

For reasons that will be fully set forth in our response to the Court's Order to Show Cause, which the Court has directed the Commission's attorneys to file by October 25, 1977, we do not believe that the Commission's attorneys erred or acted improperly in any way in attaching the Alexander letter to the Proposed Findings or in discussing the significance of the Alexander letter with respect to the legal issues involved in this action. As indicated in the Commission's Proposed Findings at page 37, note 2, the Alexander letter was attached not as evidence with respect to any disputed fact, but for whatever significance it may have concerning the questions of law presented in this action. We submit, however, that it would be inappropriate to require the Commission's attorneys to proceed to file a memorandum in reply to defendant Haswell's brief and to participate in oral argument while the questions which Haswell and the Court have raised regarding these matters are unresolved. Were it not for the Court's Order to Show Cause, the Commission's attorneys would expect to raise and discuss the significance of the Alexander letter both in its reply memorandum and in oral argument. The Court's order to show cause will have an obvious inhibiting effect on the ability of the Commission's attorneys vigorously and effectively to prosecute this case.

Accordingly, for the reasons stated above, the Commission respectfully moves the Court to defer oral argument in this action pending resolution of the order of the Court to show cause dated October 5, 1977.

Alternatively, should the Court deny the Commission's motion to defer oral argument in this matter, the Commission respectfully moves the Court for permission to raise the Alexander letter both in the Commission's reply memorandum and in the oral argument, without such actions being deemed by the Court to be in any way in contempt of the Court or contrary to the intendment of the Court's order of October 5, 1977.

Respectfully submitted,

HARVEY L. PITT
General Counsel

JAMES H. SCHROPP
Assistant General Counsel

Securities and Exchange Commission
Washington, D.C. 20549
Telephone (202) 376-7170

Dated: October 7, 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ANDREW J. HASWELL, JR.,

Defendant.

No. 77-0408-B

NOTICE OF APPEARANCE OF COUNSEL

The Clerk of the Court is respectfully requested to note the appearance of the undersigned attorneys as additional counsel for the plaintiff Securities and Exchange Commission in this matter.

Respectfully submitted,

HARVEY L. PITT
General Counsel

JAMES H. SCHROPP
Assistant General Counsel

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Dated: October 7, 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ANDREW J. HASWELL, JR.,

Defendant.

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No. 77-0408-B
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CERTIFICATE OF SERVICE

I certify that copies of the Motion of the Securities and Exchange Commission to Defer Oral Argument Pending Resolution of the Order of the Court to Show Cause Dated October 5, 1977, or Alternatively, for Leave of the Court to Raise and Discuss Certain Matters in Subsequent Proceedings Herein and papers filed in support thereof have been served on this date on counsel for the defendant in this action as follows:

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Robert C. Bailey, Esquire
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Dated: October 7, 1977