

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 09-20423-CIV-GOLD/MCALILEY

UNITED STATES OF AMERICA

Petitioner,

vs.

UBS AG,

Respondent.

**MOTION OF AMICUS CURIAE GOVERNMENT OF
SWITZERLAND TO FILE RESPONSE TO
PETITIONER'S JUNE 30 SUBMISSION
AND INCORPORATED MEMORANDUM OF LAW**

Amicus curiae Government of Switzerland, by and through counsel, hereby moves the Court for permission to file a short response to Petitioners' June 30 Memorandum of Law In Support of Petition to Enforce "John Doe" Summons ("Memorandum"). The response, which contains six pages of text, is attached to this motion.

MEMORANDUM OF LAW

In its order of April 13, 2009 [DE 33], this Court held that district courts have the inherent authority to allow participation by an amicus curiae where an amicus brief "would be desirable and relevant to the disposition of the case." The Court concluded that Switzerland adequately demonstrated its interest in the case and that its brief would be of assistance to the Court. In its Order on Evidentiary Hearing dated May 8, 2009 [DE 55], the Court ruled that it would accept into the record three short declarations of Swiss Government officials submitted

with Switzerland's amicus brief, on condition that they attend the hearing to be available for cross examination. Those witnesses will indeed be present for the hearing. The Court has also granted Switzerland leave to participate in the hearing in respect to its witnesses. [DE 82].

In its Order dated May 8, 2009 [DE 56] the Court directed the Petitioner to transmit the Order, with Switzerland's amicus brief, to the Office of the Attorney General, stating it was "prudent to invite the Attorney General to directly address the issue raised by the Government of Switzerland on behalf of the executive branch of the United States, including its Department of State." The Court observed that Switzerland had stated that enforcement of the John Doe summons would be inconsistent with the treaty obligations of the United States, with principles of international comity, and that the summons represented an impediment to the successful conclusion of the tax treaty negotiations.¹

The Petitioner, in its June 30 Memorandum [DE 83], devoted substantial attention to the issue of whether enforcement of the summons would violate Swiss law or the tax treaty. It presented legal arguments about Swiss law and enforcement policies, and asserted that UBS would not face criminal prosecution (*e.g.*, Petitioner's Brief, DE 83 at 27-30). It also apparently sought to imply that the pendency of this case is having no impact on efforts to revise the Swiss-U.S. tax treaty. (Petitioner's Brief, DE 33 at 31, n. 48).

The Government of Switzerland respectfully submits that it is the most authoritative source of information on Switzerland's law and enforcement policies, and on the effect of an attempted enforcement of the summons on Switzerland's sovereignty. For that reason, Switzerland proposes to submit a short reply brief responding to certain arguments of the Petitioner with respect to which the unique perspective of the Government of Switzerland is

¹ On June 9, 2009, the United States filed a response stating that the United States would not file a separate Statement of Interest [DE 76].

pertinent. Switzerland believes that the Court will find this information useful as it considers the request of the Petitioner for an order compelling enforcement of the summons. Other federal district courts have allowed amicus curiae to file reply/supplemental briefs. *See, e.g., National Wildlife Federation, Plaintiff, v. Consumers Power Company*, 657 F. Supp. 989, 992 (W.D. Mich. 1987) (“a number of electric utility companies have filed an *amicus curiae* brief and reply brief”); *State Of Ohio V. Donald Georgeoff*, 562 F. Supp. 1300 (N.D. Ohio 1983) (United States filed amicus brief and supplemental amicus brief).

CONSULTATION OF COUNSEL

Counsel for UBS has informed counsel for Switzerland that they consent to this motion, and counsel for the Petitioner has indicated that it is opposed.

Dated: July 7, 2009

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 7th, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

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SERVICE LIST

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Case No. 09-20423-GOLD/MCALILEY
United States District Court, Southern District of Florida**

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