

Exhibit 6

**Documents Related to Discovery of
86 Boxes of IRS/Stonehill
Documents**

Exhibit 6(a)

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86 Boxes of IRS/Stonehill
Documents**

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15 IN THE UNITED STATES DISTRICT COURT FOR THE
16 CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES,)

18 Plaintiff,)

19 v.)

20 HARRY S. STONEHILL and ROBERT P.)
21 BROOKS,)

22 Defendants.)
23)
24)
25)
26)
27)

) Civil No. 65-127 (OMP)

) **DECLARATION OF RICHARD FULTZ**

28 I, RICHARD FULTZ, hereby declare and state as follows:

29 1. I am a Field Service Special Counsel in the office of the Associate Chief Counsel
30 (International) ("ACCT") of the Internal Revenue Service ("IRS"). As part of my responsibilities,
31 I provided assistance to IRS personnel in collecting, reviewing and asserting exemptions
32 applicable in responding to the Freedom of Information Act ("FOIA") request filed by attorney
33 Robert Heggstad on behalf of the above-captioned defendants.

34 2. Within the course of my official duties, I also participated in the review of

35 Declaration of Richard Fultz

1 documents in the IRS boxes that are subject to the Court's discovery ruling made in this case
2 subsequent to the recent remand from the United States Court of Appeals for the Ninth Circuit.

3 The purpose of my review within the context of discovery was, in part, to determine if documents
4 in the boxes should be withheld based on 26 U.S.C. § 6103 (titled "Confidentiality and
5 Disclosure of Returns and Return Information") and 26 U.S.C. § 6105 (titled "Confidentiality of
6 Information Arising Under Treaty Obligations").
7

8
9 3. The "IRS boxes," as referenced in paragraph 2, above, are meant to refer to the 8
10 IRS Chief Counsel boxes (the "8 Chief Counsel boxes") and the 84 non-Chief Counsel boxes
11 (the "84 boxes") that were located by the IRS based on a FOIA request filed on behalf of the
12 defendants by Robert Heggstad. When referred to together, the 8 Chief Counsel boxes and the
13 84 boxes will be referred to as the "92 boxes."
14

15 4. Based on information and belief, the 8 IRS Chief Counsel boxes were located
16 between January and June, 2001.

17 5. The 84 boxes were located at the IRS's Washington National Records Center in
18 Suitland, Maryland ("the Records Center") in June, 2001. At that time, there was uncertainty as
19 to whether the contents of those boxes were responsive to Mr. Heggstad's FOIA request. In
20 August, 2001, I and another IRS attorney, Mae Lew, who was assisting in responding to Mr.
21 Heggstad's FOIA request, went to the Records Center and carried out a random sampling to
22 determine if there were documents in the 84 non-Chief Counsel boxes responsive to the request.
23 We made an initial determination from our random sampling that there were some responsive
24 documents in those boxes that needed to be reviewed to respond to Mr. Heggstad's FOIA
25 request.
26
27

6. Many of the 84 boxes had numbers marked on the outside indicating that they

1 may once have been part of a grouping of 86 boxes. It was ultimately discovered that there were
2 only 84 boxes in total located at the Records Center and that there were no boxes numbered "17"
3 or "83." I have never seen, nor do I have knowledge of what happened to boxes numbered 17
4 and 83, if in fact, they ever existed.

6 7. The IRS identified a small amount of additional documents that might be
7 responsive to the FOIA request filed on behalf of the defendants that were not included in the 92
8 boxes. Those documents, which would fill about one half of a regular-size copy paper box were
9 processed in post-remand discovery as "miscellaneous" documents.

11 8. During the IRS's administrative FOIA process, documents that were exempt from
12 release under FOIA and documents that had to be reviewed by other Government agencies before
13 being processed were pulled from the 92 boxes in order to allow defendants' counsel to review
14 the remaining original documents in the boxes. During the IRS's administrative FOIA process,
15 blank sheets with handwritten terms such as "6103" (indicating a document was prohibited from
16 disclosure under 26 U.S.C. § 6103) and "DOJ" (indicating that a copy of the document was sent
17 to a FOIA function at the Department of Justice), were inserted into the boxes by the IRS to
18 notify defendants' counsel that documents had been pulled during the IRS's administrative
19 review. During the IRS's administrative FOIA process, some of the subject documents pulled
20 from the boxes were placed back in the same boxes from which they were pulled but not
21 necessarily in the exact place in the box from which they were pulled. During the IRS's
22 administrative FOIA process, the remaining documents were not placed back into the boxes after
23 defendants' counsel finished his review but, instead, were set aside for further analysis under
24 FOIA or so copies could be made and sent to other agencies. During post-remand discovery, the
25 documents that were pulled from the IRS boxes during the administrative FOIA process but that
26
27
28

1 were not returned to the boxes after review by defendants' counsel, were processed with the
2 designation "A-Misc." documents.

3 9. For purposes of further discussion in this declaration, any reference to the 92
4 boxes is meant to include the miscellaneous and A-Misc. documents.

5
6 10. Within the course of the review of documents in the 92 boxes in response to Mr.
7 Heggstad's FOIA request and, thereafter, in post-remand discovery, the IRS discovered the
8 federal tax returns and tax return information ("third party taxpayer return information") of
9 approximately 70 third party taxpayers, *i.e.*, taxpayers other than the defendants, that were
10 considered within the definition of third party taxpayer return information under 26 U.S.C. §
11 6103. A determination was made that, pursuant to Section 6103, the United States was
12 prohibited from releasing the third party taxpayer return information in the IRS boxes relating to
13 those approximately 70 third parties.
14

15 11. Most of the approximately 70 third parties referred to in ¶ 10, above, are
16 individuals although some are entities.
17

18 12. The IRS determined that defendants had an interest in some third party entities
19 (other than those referenced in ¶ 11, above) such that there was no prohibition against releasing
20 taxpayer return information that related to those entities in post-remand discovery. Thus, that
21 information was released. Also, the IRS ultimately determined that a transactional relationship
22 between Messrs. Stonehill and Brooks and some of the third party taxpayers existed pursuant to
23 26 U.S.C. § 6103(h)(4) which resulted in additional third party information being released.
24

25 13. There are a number of documents from the 92 boxes that related to information
26 obtained pursuant to tax treaties that were withheld from production under 26 U.S.C. §§ 6105
27 and 6103(e)(7) as tax convention information. Section 6105(a) generally provides that tax
28

1 convention information shall not be disclosed and it protects information received from the treaty
2 partner. Documents and other things generated by the IRS that discuss information received
3 from a treaty partner is also generally protected from disclosure. That information may also be
4 subject to withholding under 26 U.S.C. § 6103(e)(7) which permits the IRS to withhold
5 disclosure of return information of a taxpayer if the release of the information would seriously
6 impair Federal tax administration. The United States Competent Authority, on behalf of the
7 Secretary of Treasury, determines whether or not disclosure of the treaty-obtained information to
8 the taxpayers will seriously impair Federal tax administration.
9

10
11 14. The information withheld under Sections 6105 and 6103(e)(7) related to treaty
12 obligations with the following 6 countries: Canada, Switzerland, Australia, Germany,
13 Liechtenstein and Japan.

14
15 15. The United States did not have a tax treaty with the Philippine Government until
16 1982. However, there was a small amount of information that discussed treaty negotiations with
17 the Philippine Government in the 92 boxes. (See Chief Counsel Box 6, Bates number 921).
18 The redacted part on the referenced page was withheld in discovery since the IRS considered it
19 covered by the definition of "tax convention" information under Section 6105.

20
21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed this 5th day of June, 2005


23
24 
25 Richard Fultz, Esquire
26 Field Service Special Counsel
27 IRS Office of Associate Chief
28 Counsel (International)
Washington D.C.

Exhibit 6(b)



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

October 16, 2001

CC:INTL:RFultz

Robert E. Heggestad, Esq.
Suite 600
1320 19th Street, N.W.
Washington, D.C. 20036

Dear Mr. Heggestad:

Reference: FOIA Request dated March 15, 2001

It is my understanding that you have recently made an inquiry concerning the status of our review and production of additional documents that may be responsive to your FOIA request regarding Harry S. Stonehill and Robert P. Brooks. We have located an additional 86 boxes of documents that are in storage at the IRS facility located in Suitland, Maryland. We reviewed a sample of the boxes and determined that some of them contain documents responsive to your FOIA request. We cannot be sure, however, whether every box contains responsive documents without examining the contents of each.

We are in the process of having the documents transported to the National Office (approximately twenty boxes at a time) for review so that any documents that contain either privileged material or third party taxpayer information which is prohibited from disclosure under I.R.C. § 6103, can be withheld from disclosure. This review process has already begun and will continue on a regular basis until all of the documents have been reviewed. We intend to provide you with additional documents as we complete our review. You will be contacted by Carroll Field, HQ Disclosure Office, as soon as additional documents are ready for your review. We are working as expeditiously as possible given the number of documents.

Sincerely,


Richard D. Fultz
Special Counsel (CC:INTL)

cc: Carroll Field

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