

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

EL-SHIFA PHARMACEUTICAL	)	
INDUSTRIES COMPANY, and	)	
SALAH EL DIN AHMED MOHAMMED IDRIS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 1:01CV00731 (RWR)
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE A  
SUPPLEMENTAL COMPLAINT AND MEMORANDUM  
OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Plaintiffs El-Shifa Pharmaceutical Industries Company and Salah El-Din Ahmed Mohammed Idris respectfully submit this motion, pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, for leave to file a supplemental complaint. A copy of the proposed pleading is attached as Exhibit A.

1. Plaintiff Salah Idris is the principal owner of the El-Shifa pharmaceutical plant. *See* Complaint ¶¶ 2-3. The United States destroyed the plant on August 20, 1998 in retaliation for the terrorist bombing of the United States embassies in Kenya and Tanzania earlier that month. *See id.* ¶¶ 21-22. Administration officials originally justified the selection of the plant as a target on the ground that it produced no commercial products, was involved in the production of chemical weapons, and was owned by a Sudanese government-controlled corporation linked to Osama bin Laden. *See id.* ¶¶ 25-48. The press quickly debunked each of these justifications: they discovered that the El-Shifa plant produced medicines for humans and veterinary drugs for animals; that the plant was small and lacked the sophisticated equipment needed to produce

chemical weapons; and that it was owned not by the Sudanese government but rather by a private individual, Mr. Idris. *See id.* ¶¶ 49-54.

2. In response to these revelations in the press, unidentified U.S. government officials told reporters that Mr. Idris had business dealings with terrorists and was a “front man or agent for [Osama] bin Laden.” Complaint ¶ 66 (quotation omitted). These accusations were false and were made with a reckless disregard for the truth in an attempt to defend the attack on the El-Shifa plant. *See id.* ¶¶ 104-05. Accordingly, Mr. Idris has sued, among other things, for a declaration that he was defamed by United States Government officials. *See id.* ¶¶ 101-07.

3. On September 21, 2004, Richard A. Clarke published the second edition of his book *Against All Enemies*. As the book reveals, Mr. Clarke served in the Clinton Administration as the National Coordinator for Security, Infrastructure Protection, and Counter-Terrorism, and in that capacity he was involved in the decision to destroy the El-Shifa pharmaceutical plant on August 20, 1998.

4. In his book Mr. Clarke states that “[t]he intelligence I had seen never implicated Mr. Idris in any investment by the Sudan Military Industry Commission nor in any involvement with Osama bin Laden nor any terrorist activities.” Richard A. Clarke, *Against all Enemies* 189 (2d ed. 2004).

5. Plaintiffs believe that, as the National Coordinator for Counter-Terrorism in 1998, Mr. Clarke would have been aware of any intelligence connecting Mr. Idris with terrorism or Osama bin Laden. As a consequence, they also believe that the Government officials who accused Mr. Idris of being connected with terrorism and bin Laden lacked any basis for these accusations and that the Government may be forced to admit this in light of the statement in Mr.

Clarke's book. Accordingly, plaintiffs seek leave to supplement their complaint to add allegations concerning Mr. Clarke's book.

6. The Federal Rules permit the filing of supplemental pleadings based upon facts that occur after submission of the original pleading:

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.

Fed. R. Civ. P. 15(d). Although the decision whether to permit supplemental pleadings is committed to the discretion of the trial court, that discretion must be exercised liberally. As this Court has observed, "leave to file a supplemental pleading should be freely permitted when the supplemental facts connect it to the original pleading." *Aftergood v. Cent. Intelligence Agency*, 225 F. Supp. 2d 27, 30 (D.D.C. 2002) (quoting *Quarantino v. Tiffany & Co.*, 71 F.3d 58, 66 (2d Cir. 1995)). See generally 6A Charles Alan Wright *et al.*, *Federal Practice & Procedure* § 1510 (2d ed. 1990).

7. The proposed supplemental complaint should be permitted because it alleges facts that occurred after the original complaint was filed and that are connected to the allegations in the original complaint. The supplemental complaint is based upon an event, the publication of the second edition of Mr. Clarke's book in September of last year, that occurred more than three years after the original complaint was filed in April 2001. In addition, the supplemental complaint contains allegations closely connected to the original complaint: by showing that the U.S. Government lacked any intelligence connecting Mr. Idris with Osama bin Laden or terrorism, the supplemental complaint provides specific support for the original complaint's allegation that U.S. Government officials acted with a reckless disregard for the truth. See Complaint ¶¶ 104-05. For these reasons alone, leave to file the supplemental complaint should

be granted. *See Gillihan v. Shillinger*, 872 F.2d 935, 941 (10th Cir. 1989) (“Since the plaintiff’s motion was made promptly and concerned subsequently occurring facts relating to his original claim for deprivation of property without due process, the court should have granted it.”); *see also United States v. Hicks*, 283 F.3d 380, 386 (D.C. Cir. 2002) (citing *Gillihan* with favor).

8. This conclusion is supported by considerations of judicial economy. Mr. Idris believes that the supplement complaint will force the Government to admit that Mr. Clarke would have been aware of any intelligence showing Mr. Idris’ involvement in terrorism in the possession of the U.S. Government, that Mr. Clarke was not aware of any such intelligence, and that the officials who accused Mr. Idris of such involvement therefore made these accusations without any factual support. In this way, Mr. Idris hopes to establish at the pleadings stage that U.S. Government officials acted with a reckless disregard for the truth when they defamed Mr. Idris and thereby avoid a potentially complicated inquiry into the issue of actual malice.

9. The absence of any prejudice to the Government also supports granting leave to file the proposed supplemental complaint. *See, e.g., Quaratino*, 71 F.3d at 66 (noting that leave to file supplemental pleadings is “normally granted, especially when the opposing party is not prejudiced by the supplemental pleading”). Because the Government has not yet answered the original complaint, filing the supplemental complaint proposed here will not cause any delay in the proceedings, and the Government will not be unfairly deprived of the opportunity to present any facts or arguments. Nor will the Government’s pending motion to dismiss the complaint be affected: that motion presents purely legal issues not implicated by the factual allegations contained in the proposed supplemental complaint.

10. On January 11, 2005, plaintiffs’ counsel informed defendant’s counsel, Paul Figley, of this motion. Defendant takes no position on this motion.

WHEREFORE plaintiffs' motion for leave to file a supplemental complaint should be granted.

Dated: January 11, 2005

Respectfully submitted,

\_\_\_\_\_  
/s/

Stephen J. Brogan (No. 939082)  
Timothy J. Finn (No. 963751)  
Daniel H. Bromberg (No. 442716)  
JONES DAY  
51 Louisiana Ave., N.W.  
Washington, D.C. 20001  
Telephone: (202) 879-3939

*Attorneys for Plaintiffs El-Shifa  
Pharmaceutical Industries Company and  
Salah El Din Ahmed Mohammed Idris*

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2005, I caused a true and correct copy of the foregoing Plaintiffs' Motion for Leave to File a Supplemental Complaint and Memorandum of Points and Authorities in Support Thereof and the accompanying proposed order to be served via United States mail, first class, postage pre-paid, upon the following individuals:

Kenneth L. Wainstein  
U.S. Attorney for the District of  
Columbia  
Judiciary Center Building  
555 4<sup>th</sup> Street, N.W.  
Washington, D.C. 20001

Paul Figley, Esq.  
Deputy Director, FTCA Staff  
Torts Branch, Civil Division  
U.S. Department of Justice  
P. O. Box 888  
Ben Franklin Station  
Washington, DC 20044

\_\_\_\_\_  
/s/  
Daniel H. Bromberg