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Criminal Division
Asset Forfeiture and Money Laundering Section

Quick Release

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Money Laundering

- **Forfeiture under section 982(a)(1) is not limited to the criminal proceeds being laundered; proceeds left behind in the bank account when the money laundering offense takes place are also "involved in" the offense.**

Defendant was a public official convicted of embezzling and laundering public funds. He deposited at least $57,000 in such funds in a bank account, transferred some of the money to another bank account, and used it for personal expenses. The transfers of funds to the second bank account, which totaled $23,000, were the basis for the money laundering convictions.

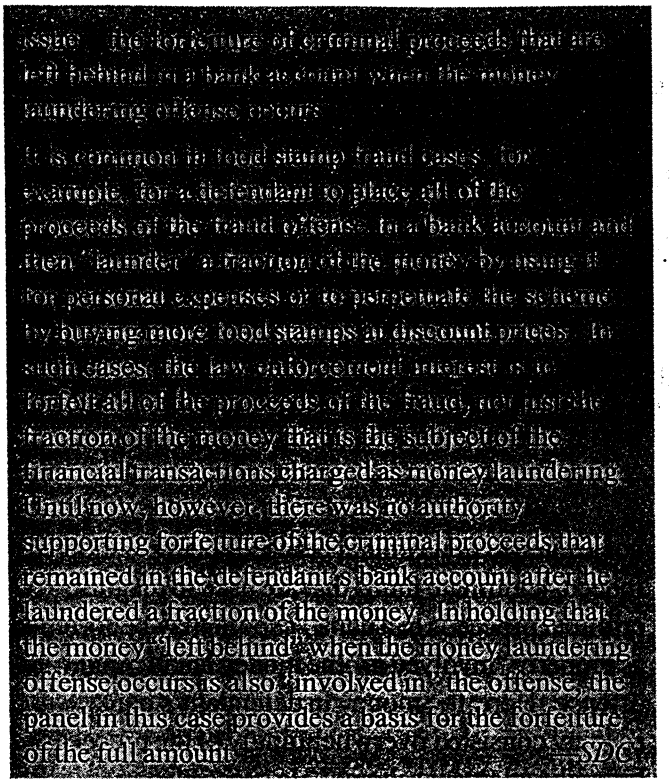
Following the conviction, the trial court ordered defendant to forfeit the entire $57,000. Defendant objected that he had been convicted of money laundering offenses involving only $23,000 and that the forfeiture was therefore limited to that amount. The Government responded that the criminal proceeds that remained in the first bank account were also "involved in" the offense within the meaning of 18 U.S.C. § 982(a)(1) and could therefore be forfeited. The **Seventh Circuit** agreed with the Government.

Money laundering forfeitures, the court held, are not limited to the criminal proceeds being laundered. Indeed, legitimate funds that are used to disguise criminal proceeds in a bank account may be forfeited as property "involved in" the money laundering offense. Here, the money in defendant's bank account consisted overwhelmingly of the proceeds of his embezzlement scheme. He succeeded in laundering a fraction of that money by moving it to a second account, but the proceeds left behind in the first account were nevertheless involved in the money laundering scheme. Thus, all of the criminal proceeds, not just the amount the defendant was convicted of moving to the second account, could be forfeited.

—SDC

United States v. Trost, ___ F.3d ___, No. 97-4204, 1998 WL 477238 (7th Cir. Aug. 17, 1998). Contact: AUSA Michael Thompson, AILS01(mthompso).

Comment. The Seventh Circuit joins three other appellate courts in holding that money laundering forfeitures are not limited to the proceeds being laundered. In the other three cases, the courts held (or noted in *dicta*) that clean money can be forfeited if it is used to conceal or disguise criminal proceeds in a bank account. *See United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997); *United States v. Bornfield*, 145 F.3d 1123 (10th Cir. 1998); *United States v. Hawkey*, 148 F.3d 920 (8th Cir. 1998). The panel in this case makes the same observation, but its holding addresses another



issue: the forfeiture of criminal proceeds that are left behind in a bank account when the money laundering offense occurs.

It is common in food stamp fraud cases, for example, for a defendant to place all of the proceeds of the fraud offense in a bank account and then "launder" a fraction of the money by using it for personal expenses or to perpetuate the scheme by buying more food stamps at discount prices. In such cases, the law enforcement interest is to forfeit all of the proceeds of the fraud, not just the fraction of the money that is the subject of the financial transactions charged as money laundering. Until now, however, there was no authority supporting forfeiture of the criminal proceeds that remained in the defendant's bank account after he laundered a fraction of the money. In holding that the money "left behind" when the money laundering offense occurs is also "involved in" the offense, the panel in this case provides a basis for the forfeiture of the full amount. *SDC*

Joint and Several Liability / RICO / Gross Proceeds / Corporate Assets

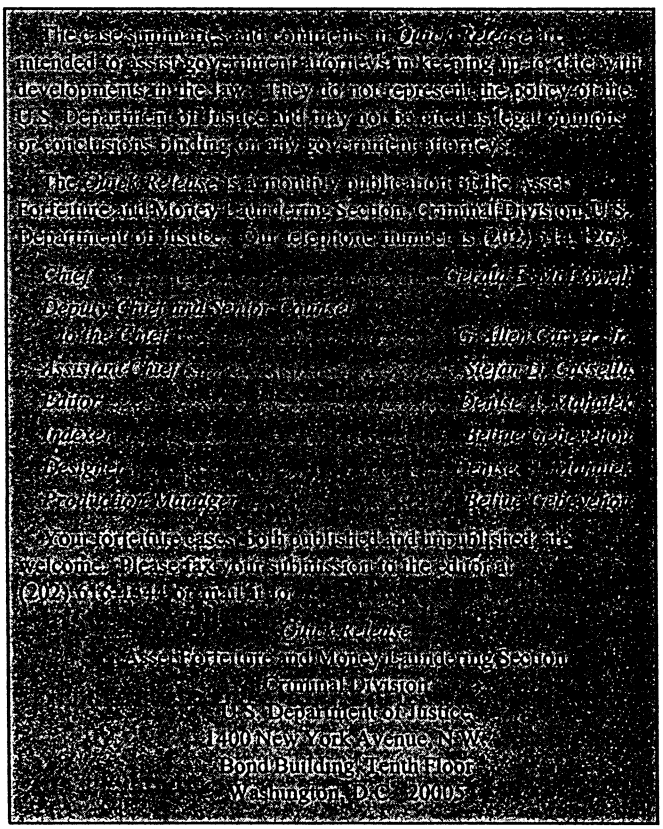
- **Each defendant is jointly and severally liable for all foreseeable proceeds of a RICO offense; the Government is not required to prove the specific portion of the proceeds for which each defendant is responsible, nor can a RICO defendant limit his liability to proceeds of the racketeering acts he was charged with committing personally.**

- **"Proceeds" is defined as "the gross receipts of the illegal activity"; forfeiture is intended to punish all those who receive income from illegal activity, not just those whose criminal activity turns a profit.**

- **Corporate form may be ignored where defendants received bribe money through non-defendant corporation.**

A jury convicted Defendants Simmons and Fisher of multiple counts of bribery and mail fraud and one violation of RICO, all in connection with a series of schemes involving the Speaker of the Missouri House of Representatives. The indictment sought forfeiture of the proceeds of the scheme under section 1963(a).

One of the racketeering schemes involved a $264,000 "lobbying fee" paid to Simmons' consulting firm by groups that would benefit from the enactment of a motor fuel tax. After the tax was enacted, Simmons paid $10,000 to the Speaker. Another scheme involved the payment of $102,000 to another Simmons firm by the likely beneficiaries of a health care reform bill. When the bill passed, Simmons paid the Speaker $41,000 for his role. Fisher acted as Simmons' partner in perpetrating at least one of these



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schemes through the corporate entities and received a salary from the corporations.

The district court held that Simmons and Fisher were jointly and severally liable for the forfeiture of $366,000, which was the gross amount paid to Simmons' firms in the course of the scheme. Simmons and Fisher challenged the forfeiture ruling on appeal. The **Eighth Circuit** affirmed.

First, the appellate court ruled that the district court properly found the defendants jointly and severally liable for the proceeds of the RICO offense. Each defendant is jointly and severally liable for all foreseeable proceeds of the scheme, the court held, whether or not a given defendant personally participated in all aspects of the scheme. Thus, the Government was not required to prove the specific portion of the proceeds for which each defendant was responsible, nor was any defendant's liability limited to the proceeds of the racketeering acts he was charged with committing personally. In particular, because the actions of the other defendants with respect to each of the schemes were reasonably foreseeable to Fisher, it was not error to find him jointly and severally liable for the full $366,000 forfeiture even though he was not charged with participating in one of the schemes.

Simmons and Fisher also argued that the district court improperly refused to deduct the direct costs of their lobbying efforts (an amount they estimated at over $100,000) from the amount they were required to forfeit. The appellate court affirmed the lower court's ruling, reasoning that violators of the RICO act must forfeit property constituting, or derived from, any "proceeds" obtained from racketeering activity. Although some courts have defined "proceeds" to mean net profits (or the money received from the illegal activity minus the costs of performing the activity), "the better view" is the one defining "proceeds" as the *gross receipts* of the illegal activity. This expansive definition has the benefit of punishing, through RICO's forfeiture provisions, all convicted criminals who receive income from illegal activity, not just those whose criminal pursuits turn a profit, the court said.

Finally, Fisher argued that, because the bribes were paid to Simmons' corporations (entities in which Fisher was neither a shareholder nor a principal), he should be responsible only for the wages he received from the corporations and not for the amount of the bribes themselves. The Eighth Circuit chose to disregard the corporate legal fiction, however, and held that Fisher could not shield himself from criminal forfeiture by hiding behind the corporate form. "These corporations were used to allow Simmons and Fisher to perpetuate their bribery schemes," the court said. "In such a case defendants should not be allowed to hide behind the corporate shell of an enterprise engaged in violating the RICO statute." Because Fisher acted as Simmons' partner in the bribery schemes and received compensation, he was liable for the full proceeds of the scheme even though those proceeds were paid to a corporate entity.

—MSB

United States v. Simmons, ___ F.3d ___, Nos. 97-4025WM, 98-1070WM, and 97-4027WM, 1998 WL 476767 (8th Cir. Aug. 17, 1998).
Contact: AUSA Bruce Clark, AMOW01(bclark).

Comment. This case adds to the growing body of case law on three important issues in criminal forfeiture. With respect to the joint and several liability of the defendants notwithstanding their respective roles in the scheme, the case follows *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995), which held that the Government can collect the total amount subject to forfeiture only once, but subject to that cap, can collect from any defendant so much of that amount as was foreseeable to that defendant. *See also United States v. Cleveland*, 1997 WL 602186 (E.D. La. 1997) (same); *United States v. McCarroll*, 1996 WL 355371 at *9 (N.D. Ill. 1996) (following *Hurley*), *aff'd sub nom. United States v. Durrett*, 138 F.3d 319 (7th Cir. 1998); *United States v. Defries*, 909 F. Supp. 13, 19-20 (D.D.C. 1995) (defendants are jointly and severally liable even where the Government is able to determine precisely how much each defendant benefitted from the scheme), *rev'd on other grounds*, 129 F.3d 1293 (D.C. Cir. 1997). It is worth noting that the Eighth Circuit made no mention in this case of its

recent holding in *United States v. Van Brandin*, 115 F.3d 585 (8th Cir. 1997), that holding a minor participant who reaped little personal benefit jointly and severally liable for the full amount of proceeds may violate the Eighth Amendment.

With respect to the gross proceeds versus net profits issue, the court collected the cases and clearly sided with the Government's position. The leading cases on this point are the following: *United States v. Morgan*, 103 F.3d 10 (5th Cir. 1996) (gross proceeds forfeitable in drug case); *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (same in RICO money laundering case); *United States v. DeFries*, 129 F.3d 1293 (D.C. Cir. 1997) (the Government forfeits gross proceeds in RICO case; no deduction on taxes paid on salary that is subject to forfeiture); *see also* S. Rep. No. 98-225, 98th Cong., 2d Sess. 199 (1984), *reprinted in* 1984 U.S. Code Cong. & Admin. News 3182 ("the term 'proceeds' has been used [in 18 U.S.C. § 1963 and 21 U.S.C. § 853] in lieu of the term 'profits' in order to alleviate the unreasonable burden on the [G]overnment of proving net profits"); *but see United States v. Masters*, 924 F.2d 1362 (7th Cir. 1991) (RICO forfeiture limited to net profits); *United States v. Jarrett*, 133 F.3d 519 (7th Cir. 1998) (affirming calculation that gave defendants credit for cost of heroin).

Finally, the court rejected the notion that a defendant's personal liability for criminal forfeiture does not extend to payments made to a non-defendant corporation. This is consistent with several recent cases in which the court ignored the corporate form and permitted the forfeiture of corporate assets. *See United States v. BCCI Holdings (Luxembourg) S.A. (Petition of ICIC Investments)*, 795 F. Supp. 477, 479 (D.D.C. 1992) (assets of corporation that was alter ego of defendant are subject to forfeiture); *United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Banco Central Del Uruguay)*, 971 F. Supp. 27 (D.D.C. 1997) (court may disregard corporate form and order the forfeiture of *alter ego*'s assets as part of preliminary order of forfeiture based solely on information in the Government's affidavit, but *alter ego* may challenge the forfeiture in the ancillary proceeding); *see also United States v. Steward*, *infra* (when defendant's controlling interest in a corporation is forfeited, the court may appoint a trustee to conserve the corporate assets even though the corporation was not a defendant).

Appointment of Trustee / RICO

- **District court has the authority to appoint a trustee to preserve the assets of a corporation when a defendant's 100 percent interest in the corporation is forfeited.**
- **District court has the authority to approve trustee's denial of request by former officers, directors, and employees of the corporation to have their attorneys' fees reimbursed out of corporate assets because such dissipation of corporate assets would reduce value of the interest forfeited to the United States.**

Defendant owned 100 percent of the stock in an insurance company. When Defendant was convicted of RICO offenses, the court ordered the forfeiture of Defendant's interest in the corporation and appointed a trustee to preserve the corporate assets. When former officers, directors, and employees of the corporation sought indemnification for the attorneys' fees that were incurred in the course of the grand jury investigation, the trustee applied to the district court for an order approving his denial of the claims. The district court granted the order.

The threshold issue was whether the district court had jurisdiction—through its appointment of the trustee—to enter an order preserving the assets of the corporation. The court acknowledged that only Defendant's personal interest in the corporation had been forfeited. Defendant, of course, owned only the stock in the corporation, not the corporate assets.

However, the court held, section 1963(e) gives the district court the authority to appoint a trustee or "take any other action to protect the interest of the United States in the property ordered forfeited." "If corporate assets may be dissipated without any control by the court," the court reasoned, "the forfeiture of the stock will be meaningless." Therefore, the court held that it had the power to protect the value of the corporate assets.

Exercising this authority, the court looked to state law to determine if the corporation was required to indemnify the former officers, directors, and employees for the cost of their attorneys' fees. The court held that the indemnification was barred by state law and that any attempt by the former board of directors to approve such indemnification was null and void. —*SDC*

United States v. Stewart, No. CRIM-A-96-583M 1998 WL 472466 (E.D. Pa. July 24, 1998). Contact: AUSAs Linda Dale Hoffa, APAE12(lhoffa), and James Ingram, APAE12(jingram).

Comment: In a subsequent unpublished decision in the same case, the district court ruled that the defendant could not contest the forfeiture of the insurance company by having his *alter ego* corporation file a claim in the ancillary proceeding. Because the claimant corporation was the defendant's *alter ego*, the court held, it lacked standing to file a claim under 18 U.S.C. § 1963(l)(2). *United States v. Stewart*, No. 96-583 (E.D. Pa. Aug. 10, 1998). Contact: AUSAs Linda Dale Hoffa, APAE12(lhoffa), and James Ingram, APAE12(jingram). —*SDC*

Ancillary Proceeding / Standing

- **District court rules that there was an abundance of evidence to show that the title holder of a ranch on which an important Mafioso figure lived was just a straw owner, and the court denied the title holder's third-party petition for the property filed under the RICO statute.**

- **Straw owner has standing to contest the forfeiture of property held in his name and for which he ostensibly paid his own money, but his claim fails on the merits if he cannot prove that he was the true owner of the property.**

Defendant was convicted of RICO violations and his interest in certain real property was forfeited. The property, however, was titled in the name of a third party, James Hickey, who had purchased it in 1993 for $900,000. Hickey filed a third-party petition claiming ownership. The Government argued that Hickey was a straw owner without Article III standing to file a claim.

The court ruled that Hickey had standing to contest the forfeiture of property held in his name and for which he had ostensibly paid his own money. However, the court found that Hickey was merely a straw owner for Defendant and thus could not satisfy the requirements of 18 U.S.C. § 1963(l)(6).

In ruling on the merits of the claim, the court found the following facts to be persuasive. Defendant was a *consigliere* in the Genovese Crime Family. He lived on the property with his family, kept his horses there and exercised dominion and control over it. He paid no rent to Hickey. An elaborate security system, fit for a gangster, was installed. Moreover, when Hickey purchased the property, it was evident from statements he made at the time that he was buying it for someone else. Finally, Hickey and Defendant were involved in some complex financial arrangements which suggested, however obliquely, that Defendant had the means to reimburse Hickey for the purchase price of the property.

The court explained that the effect of a verdict of

forfeiture is simply to put the Government into the shoes of the criminal defendant, succeeding to whatever interest, if any, the defendant had in the property. A third the evidence. The third party was not bound by the forfeiture verdict since he was not a party to the criminal case, but, in this case, Hickey failed to meet his burden of showing that he was the true owner of the property. —*BB*

United States v. Ida, ___ F. Supp. 2d ___, No. S1-96-Crim-430 (LAK), 1998 WL 429869 (S.D.N.Y. July 27, 1998).

Ancillary Proceeding / Standing

■ Shareholders lack standing to contest the forfeiture of corporate assets.

A local sheriff and several other individual defendants were convicted of mail fraud, money laundering, and money laundering conspiracy, all arising out of the operation of a privately-owned prison facility. The corporate owner of the prison was also convicted and ordered to forfeit its assets. Nine purported shareholders of the corporation filed ancillary claims under 21 U.S.C. § 853(n) challenging the validity of the preliminary order of forfeiture. In a memorandum order, the district court granted the Government's motion to dismiss for lack of standing.

The Government contended that under Louisiana law, the property of the corporation is not the property of the individual shareholders; thus, Claimants had no legal interest in the corporate assets lacked standing to assert ancillary claims. Claimants argued that the forfeiture statutes must be construed expansively to protect the "interests" of innocent claimants. Though conceding that the corporation was a separate legal entity, Claimants argued that they were ultimately the beneficial owners of the assets and thus should be accorded standing. The district court, however, rejected this argument, finding that under state law the shareholders had no legal interest in the assets of the corporation. Accordingly, the court denied their request for an ancillary hearing. The shareholders' remedy, the court said, would be to bring a derivative action against the officers and directors of the corporation for mismanagement of the corporate assets. —*JRP*

United States v. East Carroll Correctional Systems, Inc., ___F. Supp. 2d ___, No. 3:96-30005-0, 1998 WL 480663 (W.D. La. July 22, 1998). Contact: AUSA Rick Willis, ALAWL01(rwillis).

Rule 60(b) Motion / Collateral Estoppel

■ A defendant who has already challenged a criminal forfeiture unsuccessfully under section 2255 may not raise the same challenge to a parallel civil forfeiture of the same property Rule 60(b).

Defendant pled guilty to drug trafficking and, as part of his plea agreement, forfeited a parcel of real property. The district court judge accepted his guilty plea after a Rule 11 colloquy. Defendant did not object to the forfeiture at that time nor at the time of sentencing. Defendant then filed a petition for relief under 28 U.S.C. § 2255, asserting that his plea was not voluntary because the district court judge did not explain to Defendant that, as part of his plea, he forfeited the real property. The court denied the petition, finding that the plea was voluntary and made with knowledge of possible forfeiture. The Third Circuit denied Defendant's request for a certificate of appealability.

Meanwhile, the Government also sought civil forfeiture of the parcel of property. The court entered

an order of civil forfeiture for the same property on a summary judgment motion filed by the Government. Defendant then sought relief from the civil forfeiture pursuant to Fed. R. Civ. P. 60(b)(6).

Rule 60(b) states in certain circumstances, "[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order or proceeding for . . . (1) mistake, inadvertence, surprise, or excusable neglect; . . . or (6) any . . . reason justifying relief from the operation of the judgment." The district court has discretion to determine whether such relief is warranted. A party moving under Rule 60(b) bears a heavy burden of proof that extraordinary circumstances are present to justify the relief. The motion must be made within a reasonable time, and for subsection (1), not more than one year after the judgment, order, or proceeding was entered or taken. Defendant filed his motion under Rule 60(b)(6), arguing that the judge erred during the guilty plea colloquy. The court ruled that the motion would have been more appropriately made pursuant to Rule 60(b)(1) rather than (b)(6). But, the claim is barred by the one-year statute of limitations as Defendant's motion was filed four years after the entry of summary judgment. Additionally, even if Defendant's claim is liberally construed under Rule 60(b)(6), the motion must be filed within a reasonable amount of time. The court held that a four-year delay is not a reasonable amount of time.

The court also found that the motion purported to relitigate the legality of the guilty plea when the issue had already been decided by the district court and a certificate of appealability had been denied. Therefore, Defendant's motion is barred by collateral estoppel—a party may not relitigate the same issue in a separate proceeding. Four factors apply to collateral estoppel or issue preclusion: (1) whether the identical issue was previously litigated; (2) whether the issue was actually litigated; (3) whether the previous determination was necessary to the decision; and (4) whether the party being precluded from relitigating the issue was fully represented in the prior action. Defendant already litigated whether the guilty plea was voluntary in his habeas petition, the district court decided that the guilty plea was valid, and the court of appeals refused to allow an appeal for lack of a substantial showing of a denial of a constitutional right. Defendant may not relitigate this issue in an independent civil proceeding.

Accordingly, Defendant's motion was both time-barred and barred by issue preclusion. —*MML*

United States v. Real Property Located at 1323 South 10th Street, No. CIV-A-91-5848, 1998 WL 470161 (E.D. Pa. Aug. 11, 1998) (unpublished). Contact: AUSA Frank Labor, APAE11(flabor).

Disposition of Forfeited Property

- **A defendant who pleads guilty and agrees to forfeit $1 million to be satisfied by forfeiture of his property with any balance to be paid in cash has standing to argue that the Government disposed of the property at less than fair value.**

- **However, because the defendant was also asking for a refund, which is the equivalent of a suit for money damages, the district court lacked jurisdiction and defendant would have to file suit in the Federal Claims Court.**

Defendant pled guilty to RICO charges and agreed to forfeit $1,000,000, which was to be satisfied by the forfeiture of various assets, with any balance to be paid in cash. He later filed a motion in district court contending that the Government had sold the forfeited property at less than its fair value, which was in excess of a million dollars, thus he should have gotten a refund. The Government's position was that Defendant still owed a considerable sum.

The Government argued that, because Defendant retained no interest in the property after its forfeiture,

he had no standing to challenge its disposition. The district court rejected this contention, explaining that: (1) the property was sold pursuant to the plea bargain, which is to be interpreted under familiar contract principles, and (2) every contract requires the parties to act in good faith.

However, the court raised *sua sponte* the issue of whether it had jurisdiction over Defendant's claim. It concluded that it did not because Defendant was seeking money damages, *i.e.*, a refund. The Administrative Procedures Act, 5 U.S.C. § 702, waives sovereign immunity for suits in the district court to challenge agency action, but not suits for money damages exceeding $10,000.

The court decided that it did have jurisdiction to modify or correct Defendant's sentence of forfeiture but that since Zinner had posited no grounds to support such action, the court would deny it. —*BB*

United States v. Zinner, No. CRIM-A-95-0048, 1998 WL 437270 (E.D. Pa. July 30, 1998) (unpublished). Contact: AUSA Pamela Foa, APAE11(pfoe).

Tax Deduction for Forfeiture

- **A narcotics trafficker who revealed the location of $636,940 in buried narcotics proceeds and handed it over to the Federal Bureau of Investigation (FBI), which promised to give it to the Internal Revenue Service (IRS), but forfeited it instead, is liable for taxes on the $636,940 and cannot claim the $636,940 either as a credit or a deduction for a business loss.**

Defendant pled guilty to narcotics charges and agreed to forfeit, *inter alia*, $636,940 in cash. He also agreed to reveal to FBI agents the location of money buried on his ranch. Defendant stipulated that he wanted the money used to satisfy his tax obligation on his illegal, but taxable, income. The FBI agreed to accept the money on behalf of the IRS, but instead, after the FBI took the money, it was forfeited "pursuant to the plea agreement and a stipulation for forfeiture." The mechanism of forfeiture was not explained in the opinion.

Defendant then filed an amended tax return, reporting the $636,940 for the first time and claiming a credit for the money given to the FBI. The IRS disallowed the money as either a credit against taxes owing or a business deduction. Defendant paid taxes and penalties on the $636,940 and brought suit in the district court, which entered summary judgment for the United States.

The **Ninth Circuit** affirmed the judgment, holding that the illegally obtained narcotics proceeds were taxable as income but that no business deduction or credit was allowable when the money was forfeited. Defendant argued that the credit should be allowed in order to encourage others to reveal the location of hidden drug money. In response, the court of appeals said that justice was accomplished because the disclosure of the hidden money was an element in Defendant's negotiation for a lighter sentence.

The opinion does not deal with the issue of whether the FBI was obligated to keep the promise that King claimed had been made to him. (The Assistant U.S. Attorney who handled the case advises that there was no such promise.) —*BB*

King v. United States, ___ F.3d ___, No. 96-35893, 1998 WL 537939 (9th Cir. Aug. 26, 1998), *aff'g* 949 F. Supp. 787 (E.D. Wash. 1996). Contact: Attorney Thomas Clark, Tax Division, Department of Justice, (202) 514-9084.

Good Violation / Post and Walk / *Lis Pendens*

- **Posting of an arrest warrant *in rem* and filing a *lis pendens* at the**

initiation of a civil forfeiture case, without prior notice and a hearing, do not violate due process. But, subsequent use of the *lis pendens* as "leverage" to induce a settlement in the forfeiture action amounted to an unlawful seizure under *James Daniel Good*.

The Government filed a complaint and posted warrants *in rem* against two parcels of real property that were titled in the names of a cocaine trafficker and his wife. Claims asserting innocent ownership were filed by the wife while she continued to reside on one parcel, which was mortgaged. Without benefit of her husband's illegitimate funds, she needed to sell the other parcel in order to meet the mortgage payments on her residence. Meanwhile, the Government filed *lis pendens* against the properties. Eventually, the Government allowed one parcel to be sold and released the *lis pendens* on that parcel upon reaching an agreement to place the proceeds of the sale in the custody of the court pending disposition of the forfeiture action.

Claimant filed a motion to dismiss the forfeiture, alleging on several grounds that the Government had illegally seized the properties without prior notice and hearing in violation of *United States v. James Daniel Good*, 510 U.S. 43 (1993). The court rejected Claimant's first two arguments in an earlier decision. *See United States v. Property Identified as Lot Numbered 718*, 983 F. Supp. 9 (D.D.C. 1997) (declining to follow the Eleventh Circuit's decision in *United States v. 408 Peyton Road*, 112 F.3d 1106 (11th Cir. 1997), which held that posting an arrest warrant *in rem* without prior notice and a hearing constitutes a *Good* violation, and holding that the *ex parte* filing of a *lis pendens* at the initiation of a case does not constitute a *Good* violation either). The court sought further testimony, however, with regard to Claimant's last argument, which contended that the Government, in "causing" the mortgagee to institute foreclosure proceedings and by offering to prevent the foreclosure if Claimant settled the forfeiture action, exercised such control over the residence as to constitute an unlawful seizure.

The court held that the United States exercised *de facto* control over Claimant's properties when it offered to trade its "*lis pendens* power" over the mortgaged property for the net proceeds from the sale of the other parcel, and that the exercise of such control, in the absence of notice and a hearing, deprived Claimant of due process.

First, the court had to determine if the Government's action constituted a seizure. Noting that a seizure occurs when "there is some meaningful interference with an individual's possessory interest" in the property, the court found that even though the initial filing of the *lis pendens* did not constitute a seizure, the Government's continued use of the *lis pendens* to leverage a settlement was tantamount to a seizure because it deprived Claimant of her right to maintain control over her home, free from governmental interference.

The court also held that the procedure employed by the Government created "an unacceptable risk of error" because it afforded little or no protection to the innocent owner. Noting that the Government commenced the action without an independent determination of probable cause, the court was particularly offended that the Government's use of the *lis pendens* on the mortgaged parcel to force a settlement of the forfeiture action against the other parcel meant that there would never be a judicial determination that the second parcel was subject to forfeiture. Filing a *lis pendens* poses no threat to an owner's property rights if the underlying forfeiture case has merit, the court reasoned, but "using the *lis pendens* as leverage to secure a settlement" would be abusive if the Government's forfeiture action has little merit.

The last issue addressed by the court involved finding an appropriate remedy for Claimant. In ruling out the efficacy of an award of damages and suppression of evidence obtained by the Government through an unlawful seizure, the court found that dismissal of the case without prejudice would provide Claimant with the most meaningful solution. —*WJS*

United States v. Property Identified as Lot Numbered 718, ___ F. Supp. 2d ___, No. 96-

2100-LFO,1998 WL _____ (D.D.C. July 29, 1998). Contact: AUSA William Cowden, CIV01(wcowden).

Quick Notes

■ Prejudgment Interest

A district court agreed with a claimant that notice provided of an administrative forfeiture was inadequate and that the claimant was entitled to have the court determine the validity of the forfeiture on the merits. After briefing on the merits, the court held that the forfeiture was supported by probable cause as to all but $1,822 found on the claimant's person. Pertaining to that amount, the court ordered the Government to return the money to the claimant with interest. Such interest would include any interest actually earned on the money since the date it was deposited into an interest-bearing account. If the money was not deposited into such an account, the Government must calculate the amount of interest "constructively earned."

Kadonsky v. United States, No CA-3:96-CV-2969-BC, 1998 WL 460293 (N.D. Tex. Aug. 4, 1998). Contact: AUSA Brock Stevenson, ATXND01(bstevens).

■ Customs Service / Lottery Tickets

A district court held that the prohibition against the importation of lottery tickets from "any foreign country," *see* 19 U.S.C. § 1305(a), applies to the importation of such items from the U.S. Virgin Islands. Consequently, the civil forfeiture of the imported lottery tickets was upheld.

Couvertier v. Bonar, ___ F. Supp. 2d ___, No. CIV-97-1768(RLA), 1998 WL 481273 (D.P.R. Aug. 3, 1998). Contact: AUSA Fidel A. Sevillano Del Rio, APR01(fsevilla).

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