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Intersection of the Bankruptcy Code with Criminal and Civil Forfeiture

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Intersection of the Bankruptcy Code with Criminal and Civil Forfeiture

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TABLE OF CONTENTS

1. The Battle Over Forfeited Assets
2. Coordination Agreement – *United States of America v. Dreier*
3. Coordination Agreement – *In re MuniVest Services LLC*
4. Coordination Agreement – *In re Rothstein Rosenfeldt Alder*
5. 28 C.F.R. § 9.1
6. 18 U.S.C.A. § 982
7. 21 U.S.C.A. § 853

THE BATTLE OVER FORFEITED ASSETS

Intersection of the Bankruptcy Code with Criminal and Civil Forfeiture

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By Kathy Bazoian Phelps and Hon. Steven Rhodes

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When the government has seized the assets of a fraudster in a civil or criminal forfeiture proceeding, defrauded victims turn to the government for compensation from those assets. When the fraudster has filed a parallel bankruptcy proceeding, bankruptcy trustees look to deliver a return to creditors and victims from the assets of the fraudster. The assets of the fraudster are at the intersection of the forfeiture and bankruptcy proceedings, subject to competing claims. Those assets can range from cash, to real property, to intellectual property, to commercial paper, to operating business, or general intangibles, and they may be located in the United States or overseas.

Conflicts arise when the government enforces the criminal and drug control laws containing provisions for asset forfeiture, while bankruptcy trustees and regulatory receivers seek to fulfill their mandate by marshalling and liquidating assets for the benefit of the creditors of the estate. In addition to the government and bankruptcy trustee fighting for control of those assets, third parties, including secured creditors, may assert interests in those same assets. When you add to that the individual defrauded investors who want to pursue direct claims to the assets, complicated disputes arise. The manner in which these competing claims are resolved can either lead to impressive coordination and cooperation agreements where everyone benefits, or scorched earth litigation.

These materials summarize the nature of forfeiture proceedings and the types of third party claims that may be asserted in property subject to a criminal or civil forfeiture proceeding.

I. Criminal and Civil Forfeiture Proceedings

A. Criminal Forfeiture

Criminal forfeiture is an *in personam* action against the defendant, by which the

government takes property as a punishment for a criminal act.¹ Procedures are in place for third parties to claim an interest in property subject to criminal forfeiture. In summary, a third party cannot contest a criminal forfeiture allegation in the forfeiture proceeding itself and may not commence an ancillary proceeding to assert an interest until entry of a preliminary order of forfeiture is entered in the proceeding as between the criminal defendant and the government. Such a preliminary order will become final if there is not a successful ancillary challenge.

B. Civil Forfeiture

Civil forfeiture is an *in rem* action against the property sought to be forfeited.² The effect of a civil forfeiture is that the government takes the “guilty property” because the property was used in the crime.³ The government bears the initial burden of showing probable cause that the property sought to be forfeited is “involved in” or “traceable to” certain fraudulent activity.⁴ If a party asserts ownership of the property, the burden then shifts to that party to prove that the property is not subject to forfeiture.⁵

II. Interests of Third Party Claimants in Forfeited Property

Once the government has commenced a civil or criminal forfeiture proceeding, a trustee, receiver, secured creditor, or an individual victim of the fraudulent scheme may seek to assert an interest in the forfeited property. Generally, there are two ways in which a claimant can assert an interest in property that is subject to forfeiture.⁶ The first way is that the claimant can assert a legal

¹ 11 U.S.C. § 982; *United States v. Bajakajian*, 524 U.S. 321, 330, 118 S. Ct. 2028, 2030 (1998); *Libretti v. United States*, 516 U.S. 29, 41, 116 S. Ct. 356, 364 (1995).

² 11 U.S.C. § 981; *United States v. Usery*, 518 U.S. 267, 116 S. Ct. 2135 (1996).

³ *Bajakajian*, 524 U.S. at 329-30, 118 S. Ct. 2034.

⁴ 18 U.S.C. § 981(b)(2).

⁵ *United States v. Contents of Account Numbers 208-06070 and 208-06068-1-2*, 847 F. Supp. 329, 335 (S.D.N.Y. 1994).

⁶ 21 U.S.C. § 853(n).

interest in the property. The second is to assert a constructive trust in the property. There are no provisions for a third party to challenge the criminal allegations in the first instance or to challenge whether the property was used in connection with the criminal activity, so a third party's rights are limited to proving an interest in the property itself.

A. Asserting a Legal Interest in Property Subject to Criminal Forfeiture

1. The Process

The process by which a claimant can assert a legal interest in forfeited property stems from a provision in the drug control laws.⁷ The forfeiture statute states, “The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. [§] 853).”⁸

A claimant asserts a legal interest in forfeited property pursuant to a specific statutory procedure.⁹ Under this procedure, the first step is for the government to publish and serve notice of the forfeiture order and of the proposed disposition of the forfeited property.¹⁰ The claimant asserting a legal interest then has 30 days to petition the court for a hearing to adjudicate the validity of the alleged interest.¹¹ A petition in an ancillary proceeding is the exclusive means by which a third party may assert a claim to forfeited assets.¹² A third party is barred from intervening

⁷ 21 U.S.C. § 853(n).

⁸ 18 U.S.C. § 982(b)(1). Identically, 28 U.S.C. § 2461(c) states, “The procedures in section 413 of the Controlled Substances Act (21 U.S.C. [§] 853) apply to all stages of a criminal forfeiture proceeding[.]”

⁹ 21 U.S.C. § 853(n).

¹⁰ 21 U.S.C. § 853(n)(1).

¹¹ 21 U.S.C. § 853(n)(2).

¹² See *DSI Assocs. LLC v. United States*, 496 F.3d 175, 183 (2nd Cir. 2007).

in a criminal case to challenge forfeiture of property.

It must be noted that claimants are explicitly barred from intervening in a criminal forfeiture action in an attempt to establish that the property is not subject to forfeiture. The statute mandates, “[N]o party claiming an interest in property subject to forfeiture under this section may (1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section”¹³ The ancillary proceedings established in § 853(n) are the only means for a claimant to assert an interest in property subject to criminal forfeiture.¹⁴

2. Vested Legal Title or *Bona Fide* Purchaser for Value

The petitioner then must establish by a preponderance of the evidence that either the title was vested in the petitioner rather than the defendant, or that “the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section”¹⁵

“[T]he statute provides that if a petitioner can prove by a preponderance of the evidence that (1) the petitioner has some interest in forfeited property and (2) that the defendant has an

¹³ 21 U.S.C. § 853(k). That section also prohibits a party claiming an interest in property subject to forfeiture from commencing “an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.” See also *United States v. Cox*, 575 F.3d 352, 358 (4th Cir. 2009); *United States v. Nolasco*, 354 Fed. App’x 676, 678 (3d Cir. 2009) (“When an *in personam* criminal forfeiture prosecution is initiated, a third party is barred from intervening in the criminal case”); *United States v. Porchay*, 533 F.3d 704, 710 (8th Cir. 2008).

¹⁴ See FED. R. CRIM. P. 32.2. Some courts consider an exception to this rule “where the delay between the entry of the property restraint and the criminal trial threatens to deprive a third party of its due process right to have a meaningful hearing at a meaningful time.” See *United States v. Petters*, 2010 U.S. Dist. LEXIS 128694, at *11 (D. Minn. Dec. 6, 2010) (citations and internal quotation marks omitted). In *Petters*, however, the court found no due process violation where the movant’s living expenses had been paid from forfeited funds while her claim was pending and the further delay would not be significant. *Id.* at *11. Addressing a similar request by a different claimant in the *Petters* case, the court came to a different result. *United States v. Petters*, 2011 U.S. Dist. LEXIS 13357 (D. Minn. Feb. 10, 2011). “Based on these circumstances and the possibility that Joan Catain may have an ownership interest in some of the assets frozen in the Catain Receivership, the Court will approve monthly payments of \$891 to Joan Catain during the pendency of the forfeiture proceedings.” *Id.* at *19.

¹⁵ 21 U.S.C. § 853(n)(6)(A) & (B).

inferior interest (e.g., no interest) in forfeited property at the time of the commission of the acts which gave rise to the forfeiture of the property, then the petition has effectively challenged the forfeiture.”¹⁶

So a secured creditor must establish as a petition that it has an interest in the property that arose prior to the time of commission of the acts which provide the basis for the forfeiture. 21 U.S.C. § 853(n)(6)(A); *Gowan v. The Patriot Group, LLC (In re Dreier LLP)*, 452 B.R. 391, 410 (Bankr. S.D.N.Y. 2011). Alternatively, the petitioner must be a “bona fide purchaser for value” who was “reasonably without cause to believe that the property was subject to forfeiture.” 21 U.S.C. § 853(n)(6)(B); *Drier*, 452 B.R. at 410.

In *United States v. Egan*, several claimants asserted superior legal interests in cash seized from the defendant’s vaults. The court denied the government’s motion to dismiss, concluding that the claimants’ petitions adequately stated claims that the defendant’s possession of the cash was merely a bailment for them and that the funds subject to the bailment had not been misappropriated or commingled, and were therefore not the proceeds of the defendant’s fraud.¹⁷ The court also rejected the government’s argument that returning the claimants’ funds to them would be inequitable to the defendant’s victims. The court stated:

The Government’s argument in favor of the “equitable” distribution of the property fails because it is without support in the criminal forfeiture statute, which gives third-parties the right to recover property in which they have a legal interest. 21 U.S.C. § 853(n)(6)(A)-(B). The statute contains no distinction between those who are victims of fraud and those who are not victims of

¹⁶ *United States v. Rothstein*, 2010 U.S. Dist. LEXIS 69180, at *20 (S.D. Fla. July 9, 2010) (citation omitted); see also *United States v. Egan*, 2011 U.S. Dist. LEXIS 84892, at *19 (S.D.N.Y. Aug. 2, 2011); *United States v. Edwards*, 2011 U.S. Dist. LEXIS 54946, at *14 (N.D. Ga. Apr. 18, 2011), *Mag. report and recommendation adopted*, 2011 U.S. Dist. LEXIS 54943 (May 23, 2011) (rejecting the petitioners’ claim to forfeited property “because they cannot show that the title to any of the properties is vested in them rather than Defendant, or that their title is superior to Defendant’s title, because each of the properties was acquired after the illegal activity with illegally derived proceeds.”).

¹⁷ *Egan*, 2011 U.S. Dist. LEXIS 84892, at *20.

fraud; under the plain language of the statute, any third party with a legal interest in property superior to the defendant's may recover that property.¹⁸

3. Standing to Assert a Claim in a Criminal Forfeiture Proceeding

“Under § 853(n), only a person asserting a ‘legal interest in property which has been ordered forfeited’ may petition the Court for redress. This ‘legal-interest’ requirement ‘impose[s] a statutory-standing requirement on claimants.’”¹⁹

A legal interest may be established as set forth herein. Unsecured general creditors “lack standing as claimants of forfeited assets,” because they “cannot claim an interest in any particular asset.”²⁰

B. Asserting Legal Interest in Property Subject to Civil Forfeiture

1. The Process

A somewhat similar procedure is established for a claimant to assert a legal interest in property subject to civil forfeiture. Within 30 days after service of the government’s civil forfeiture complaint, “any person claiming an interest in the seized property may file a claim asserting such person’s interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims”²¹ The contents of this claim are set forth in Rule G(5)(A) of Supplemental Rules for Certain Admiralty and Maritime Claims. The claimant then has 20 days to file an answer to the government’s forfeiture complaint.²²

¹⁸ *Id.* at 25-26.

¹⁹ *United States v. White*, 779 F. Supp. 2d 984, 989 (D. Minn. 2011) (quoting *United States v. Timley*, 507 F.3d 1125, 1129 (8th Cir. 2007).

²⁰ *DSI Assocs. LLC v. United States*, 496 F.3d 175, 184 (2d Cir. 2007); *White*, 779 F. Supp. 2d, at *989; *United States v. Dempsey*, 55 F. Supp. 2d 990, 993 (E.D. Mo. 1998).

²¹ 18 U.S.C. § 983(a)(4)(A).

²² 18 U.S.C. § 983(a)(4)(B).

2. Innocent Owner Defense

A third party may seek to assert superior interests in the forfeited property under the “innocent owner” defense.”²³ The statutory basis for the “innocent owner defense is:

An innocent owner’s interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.²⁴

For a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, an “innocent owner” is an owner who “(i) did not know of the conduct giving rise to forfeiture; or (ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.”²⁵

For a property interest acquired after the conduct giving rise to the forfeiture has taken place, an “innocent owner” is an owner who “(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and (ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.”²⁶ The statute does

²³ 18 U.S.C. § 983(d)(1).

²⁴ *Id.*

²⁵ 18 U.S.C. § 983(d)(2)(A); *see also* 18 U.S.C. § 983(d)(2)(B), which states:

(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

²⁶ 18 U.S.C. § 983(d)(3)(A) provides:

not contain a requirement that the “innocent owner” establish that it acquired the property for value, which is in contrast to an assertion of rights in a criminal forfeiture proceeding.

Owner” is defined to mean a leasehold, lien, mortgage, recorded security interest or a valid assignment of an ownership interest. 18 U.S.C. § 983(a)(6).

To successfully assert the innocent owner defense, however, the owner must demonstrate a lack of any knowledge of the illegal activity; turning a blind eye or willful blindness is equated with knowledge of the illegal activity.²⁷

3. Standing to Assert a Claim in a Civil Forfeiture Proceeding

As in every matter in federal court, a claimant to property in a civil forfeiture action must establish its standing to assert its claim.²⁸ Generally, however, this should not be an onerous burden, because it only requires the claimant to follow the applicable procedures for asserting its claim and to allege an interest in the subject property, such as an ownership, possessory or security

(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term “innocent owner” means a person who, at the time that person acquired the interest in the property –

(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

²⁷ *United States v. All Monies (\$4,477,048.62) In Account No. 90-3617-3, Israel Discount Bank, New York, N.Y.*, 754 F. Supp. 1467, 1477 (D. Haw. 1991).

²⁸ *See, e.g., United States v. \$148,840.00 in U.S. Currency*, 521 F.3d 1268, 1273 (10th Cir. 2008) (“As the party seeking to intervene in an in rem forfeiture action, a claimant bears the burden of establishing his own constitutional standing at all stages in the litigation.”).

interest.²⁹ However, unsecured creditors are specifically excluded from the definition of owner.³⁰ “Unlike secured creditors, general creditors cannot claim an interest in any particular asset that makes up the debtors’ estate.”³¹

The standing of a claimant to assert a legal interest in property subject to civil forfeiture was discussed in depth in the Ponzi case of *United States v. Assets Described in “Attachment A” to the Verified Complaint Forfeiture in Rem*.³² In that case, Kinetic filed a claim asserting that its judgment against the Ponzi perpetrators gave it an interest in the assets at issue. The government moved to dismiss Kinetic’s claim. It asserted that Kinetic lacked standing to assert a claim against the property that was not titled to the Ponzi perpetrators, and that as to the property that was titled to them, Kinetic could not show that it was an “innocent owner” under § 983(d).³³

The court denied the government’s motion. First, the court discussed the two distinct types of standing that must be met - “Article III standing, which is at issue in every federal case and requires that there be an actual ‘case’ or ‘controversy,’ and ‘statutory standing,’ which requires

²⁹ *Id.*; see also *United States v. 8 Gilcrease Lane*, 638 F.3d 297, 299 n.1 (D.C. Cir. 2011) (“Rule C(6) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions requires a claimant in a forfeiture proceeding to file a “verified statement of right or interest” in the property at stake . . . This statement is known as a ‘verified claim’ and ‘is essential to confer[ring] statutory standing upon a claimant in a forfeiture action.’”) (quoting *United States v. \$125,938.62*, 370 F.3d 1325, 1328 (11th Cir. 2004) (per curiam) and *United States v. \$175,918.00 in U.S. Currency*, 755 F. Supp. 630, 632 (S.D.N.Y.1991)) (internal quotation marks omitted); *United States v. Real Property Located at 475 Martin Lane*, 545 F.3d 1134, 1140 (9th Cir. 2008) (“[A] claimant must allege that he has an ownership or other interest in the forfeited property. In their pleadings, the Kim Claimants specifically alleged an ownership interest in the May 2004 properties, which was sufficient at the initial stages of the litigation to establish that they had standing to challenge the civil forfeiture action.”) (citations and quotation marks omitted).

³⁰ 18 U.S.C. § 983(d)(6)(A) (“[T]he term ‘owner’ . . . does not include . . . a person with only a general unsecured interest in, or claim against, the property or estate of another[.]”); *United States v. \$20,193.39 in U.S. Currency*, 16 F.3d 344, 346 (9th Cir. 1994) (“[F]ederal courts have consistently held that unsecured creditors do not have standing to challenge the civil forfeiture of their debtors’ property.”).

³¹ *United States v. \$20,193.39 in U.S. Currency*, 16 F.3d 344, 346 (9th Cir. 1994); see also *United States v. One-Sixth Share*, 326 F.3d 36, 44 (1st Cir. 2003); *United States v. Watkins*, 320 F.3d 1279, 1283–84 (11th Cir. 2003).

³² *United States v. Assets Described in “Attachment A” to the Verified Complaint Forfeiture in Rem*, 799 F. Supp. 2d 1319 (M.D. Fla. 2011).

³³ *Id.*

that a claimant satisfy statutory requirements.”³⁴ Addressing Kinetic’s Article III standing to claim an interest in the untitled assets, the court stated, “a claimant must have a ‘facially colorable interest’ in the property at issue, and courts have repeatedly noted that this standard is not difficult to satisfy.”³⁵ The court held that Kinetic did have Article III standing because it claimed an interest in whatever property was determined to be the property of the perpetrators, including any property the ownership of which was unresolved due to the perpetrators’ concealment of the true ownership.³⁶

On the other hand, in *United States v. \$7,206,157,717 on Deposit at JP Morgan Chase Bank, N.A.*, the court denied a motion by Fox, an investor in the Madoff Ponzi scheme, to intervene in a forfeiture action so that he could challenge a settlement between another investor, the estate of Jeffery Picower, and the government on its forfeiture claim against Picower’s estate.³⁷ The court found that Fox “has, at most, a contingent interest in forfeited funds, which is an insufficient interest on which to grant intervention as a matter of right.” The court concluded, “To allow those with, at most, contingent interests in a res to intervene would open the floodgates of intervention in forfeiture actions and thus would not serve the efficient administration of justice.”³⁸ The court then suggested, “In any case, the proper avenue for Fox to challenge Picard’s method of compensating Madoff’s victims is not with this case, but with the appeal by other net winners of the Bankruptcy Court’s decision approving of Picard’s method. That appeal is currently pending in

³⁴ *Id.* at 1322 (citing *United States v. \$38,000.00 Dollars in U.S. Currency*, 816 F.2d 1538, 1543-47 (11th Cir. 1987)).

³⁵ *Id.* (citing *United States v. One-Sixth Share*, 326 F.3d 36, 41 (1st Cir. 2003), and *United States v. \$557,933.89, More or Less*, 287 F.3d 66, 79 (2d Cir. 2002)).

³⁶ *Assets Described in “Attachment A,”* 799 F. Supp. 2d at 1322.

³⁷ *United States v. \$7,206,157,717 on Deposit at JP Morgan Chase Bank, N.A.*, 274 F.R.D. 125, 126-27 (S.D.N.Y. 2011).

³⁸ *Id.* at 127.

the Second Circuit.”³⁹

In another case, a creditor with a security interest in the LLC membership interest of an entity which owned a lodge forfeited by the government does not have standing to pursue a petition in an ancillary proceeding involving the LLC’s property because it was one step too far removed from the forfeited property.⁴⁰

On the issue of statutory standing under § 983, the court in *United States v. Assets Described in “Attachment A”* stated, “[S]tanding’ and ‘ownership’ are distinct concepts in civil forfeiture law. . . . Although the two issues are sometimes blurred in reported decisions, they should properly remain separate because they pertain to different stages of the forfeiture case.”⁴¹ It concluded, “Kinetic has statutory standing because it has complied with the requirements of 18 U.S.C. § 983(a)(2) and Rule G(5)(a) regarding the filing of a claim. The definition of ‘owner’ and the elements of the ‘innocent owner defense’ set forth in 18 U.S.C. § 983(d) do not relate to the standing inquiry[.]”⁴²

Many courts find that standing can be acquired by asserting a constructive trust.

Almost all circuits have recognized that, in appropriate situations, a constructive trust theory can provide at least Article III standing to challenge a forfeiture. *See, e.g., United States v. Shefton*, 548 F.3d 1360, 1365 (11th Cir. 2008) (“We agree with the large majority of courts that have determined (1) that a constructive trust, despite being an equitable remedy, constitutes a ‘legal right, title, or interest in . . . property’ . . . and (2) that a constructive trust can render a forfeiture order invalid[.]”) (citing cases). *Shefton* recognized that “[o]nly one circuit court has concluded that a constructive trust cannot invalidate a forfeiture order.” *Id.* (citing *United States v.*

³⁹ *Id.*

⁴⁰ *United States v. Petters (Petters 1)*, 857 F. Supp. 2d 841, 8447 (D. Minn. 2012 citing *United States v. All Funds in Account of Prop. Futures, Inc.*, 820 F. Supp. 2d 1305 (S.D. Fla. 2011)(“just as shareholders lack standing to contest the forfeiture of corporate assets, LLC members lack standing to contest the forfeiture of assets owned by an LLC”).

⁴¹ *Assets Described in “Attachment A,”* 799 F. Supp. 2d at 1322 (citations omitted).

⁴² *Id.*

BCCI Holdings (Luxembourg), S.A., 46 F.3d 1185, 1190-91 (D.C. Cir. 1995)).⁴³

C. Asserting a Constructive Trust

Outside of the Ponzi context, some courts find that property is not forfeitable where it was taken from a third party by fraud and the criminal defendant therefore only held it in constructive trust. These courts hold that, therefore, the property impressed with the trust is not subject to forfeiture.⁴⁴ The Eleventh Circuit held in *United States v. Shefton* that a constructive trust is a cognizable “legal interest” sufficient to assert an interest under the forfeiture statutes.⁴⁵ Several other circuits have similarly found that where property was taken from a third party by fraud, a constructive trust is imposed over the property held by the criminal defendant and the property is therefore not subject to forfeiture.⁴⁶

However, in *United States v. BCCI Holdings (Luxembourg)*, the court held, “[A] constructive trust may not be used to defeat the government’s forfeiture claim.”⁴⁷ The *Shefton* court, however, rejected the *BCCI* court’s holding that a constructive trust does not arise until determined by a court.⁴⁸ The *Shefton* court further criticized the *BCCI* court’s conclusion that the third party must establish that its interest is superior to the government’s, as opposed to superior to the criminal defendant’s.⁴⁹

⁴³ *United States v. One Hundred Thirty Three (133) United States Postal Service Money Orders*, 780 F. Supp. 2d 1084, 1096 (D. Haw. 2011).

⁴⁴ See, e.g., *United States v. Shefton*, 548 F.3d 1360, 1366 (11th Cir. 2008); *United States v. \$4,224,958.57*, 392 F.3d 1002, 1004-05 (9th Cir. 2004); *Schwimmer*, 968 F.2d at 1574, 1582; *United States v. Marx*, 844 F.2d 1303, 1308 (7th Cir. 1988); *United States v. Campos*, 859 F.2d 1233, 1238-39 (6th Cir. 1988).

⁴⁵ *Shefton*, 548 F.3d at 1366.

⁴⁶ See, e.g., *United States v. \$4,224,958.57*, 392 F.3d 1002, 1004-05 (9th Cir. 2004); *United States v. Marx*, 844 F.2d 1303, 1308 (7th Cir. 1988); *United States v. Campos*, 859 F.2d 1233, 1238-39 (6th Cir. 1988); *United States v. Schwimmer*, 968 F.2d 1570, 1574 (2d Cir. 1992).

⁴⁷ *United States v. BCCI Holdings (Luxembourg)*, S.A., 46 F.3d 1185, 1190-91 (D.C. Cir. 1995).

⁴⁸ *Shefton*, 548 F.3d at 1366.

⁴⁹ *Id.*; see also 21 U.S.C. § 853(n)(6)(A) (criminal forfeiture order may be vacated if “the petitioner has a legal right, title, or interest in the property . . . [that] was superior to any right, title, or interest of the defendant at the

When imposing such a trust impairs the recovery of other victims from limited forfeiture assets, courts are more likely to conclude that the remedy is inequitable and therefore to refuse it.⁵⁰

In the Ponzi context, for the same reason, investors' attempts to use the constructive trust theory to protect against forfeiture are generally not successful. "[E]quity demands that no victim be given priority over any other similarly situated victim[.]"⁵¹

The *Ramunno* court summarized the issue as applied in a Ponzi scheme as follows:

If the funds are distributed equitably to all victims, then each victim . . . may recover some fraction of their lost investments. However, if Martin is granted a constructive trust and recovers his entire loss, the other victims would recover less than their pro-rata share of the seized assets.⁵²

time of the commission of the acts which gave rise to the forfeiture").

⁵⁰ See, e.g., *United States v. Andrews*, 530 F.3d 1232, 1238-39 (10th Cir. 2008); *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996).

⁵¹ *United States v. Ramunno*, 599 F.3d 1269, 1275 (11th Cir. 2010); see also *United States v. Dreier*, 682 F. Supp. 2d 417, 422 (S.D.N.Y. 2010) (rejecting the equitable claim of one victim to a priority in restitution); *Cunningham v. Brown*, 265 U.S. 1, 12-13, 44 S. Ct. 424, 427 (1924); *Liberte Capital Grp., LLC v. Capwill*, 148 Fed. App'x 426, 436 (6th Cir. 2005) ("[T]he district court was not obliged to impose a constructive trust if it determined that one would be inequitable."); *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 89 (2d Cir. 2002) ("[T]he use of a pro rata distribution has been deemed especially appropriate for fraud victims of a 'Ponzi scheme[.]'"); *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996); *SEC v. Elliott*, 953 F.2d 1560, 1569-70 (11th Cir. 1992); *Rollins v. Neilson (In re Cedar Funding, Inc.)*, 408 B.R. 299, 315 (Bankr. N.D. Cal. 2009) (holding that the bankruptcy principle of ratable distribution outweighs a victim's right to a constructive trust); *In re Schneider*, 2008 Bankr. LEXIS 2744, at *8 (Bankr. N.D. Cal. Sept. 26, 2008) ("[T]he committee was in breach of its fiduciary duties by pursuing a constructive trust theory since it appeared that the remedy would benefit the defrauded investors solely to the derogation of the interests of other unsecured creditors of the estate.").

⁵² *Ramunno*, 599 F.3d at 1275.

III. Competition Between Parallel Forfeiture Proceedings and Civil Insolvency Proceedings to Compensate Ponzi Victims

Bankruptcy and receivership proceedings can be used to compensate victims as well as other general unsecured creditors for their losses in Ponzi schemes. In parallel criminal proceedings, the government has been utilizing civil and criminal forfeiture proceedings with increasing regularity to distribute assets to victims. Although there are advantages and disadvantages to both types of proceedings, many outside of the government have criticized forfeiture remission and restoration proceedings as a process for compensating victims, as well as the criminal restitution process. The criticisms focus on the following issues:

First, there is no judicial review of the government's distribution of forfeited assets in the remission process, causing those outside the government concern regarding the handling and ultimate disposition of forfeited assets. To the contrary, there is close judicial review of distributions made to creditors in bankruptcy cases and equity receiverships. The Department of Justice website, however, endeavors to provide publically available data regarding the disposition of forfeited assets in pending cases.⁵³

Second, there does not appear to be a time limit to complete the administration of forfeited property and no oversight over that process, whereas the Office of the United States Trustee oversees bankruptcy trustees, and the courts presiding over the receivership cases oversee the receivers that they appoint, both seeking to ensure that the insolvency proceedings do not linger indefinitely and that distributions are made to creditors.

Third, because the definition of "victim" under the criminal statutes is significantly

⁵³ See <http://www.justice.gov/jmd/afp/01programaudit/fy2010-afs-rpt.pdf>; <http://www.justice.gov/jmd/afp/01programaudit/index.htm>; <http://www.justice.gov/jmd/afp/02fundreport/2010affr/index.html>

narrower than the classification of general unsecured creditors under the Bankruptcy Code, creditors affected by a Ponzi scheme that are not classified as a “victim” for forfeiture purposes will not receive distributions from forfeited assets. On the other hand, the Bankruptcy Code contains a priority scheme for distributions to all creditors, and the distribution scheme that a receiver proposes is subject to the approval of the court after all interested parties have an opportunity to be heard. The competing objectives of the government to pay “victims,” on the one hand, and trustees and receivers to pay “creditors,” on the other hand, leads to tension regarding the distribution of recovered funds. Forfeiture and restitution exclude the claims of commercial creditors whose claims remain unpaid when a Ponzi scheme collapses. The government’s forfeiture action has as some of its primary goals punishment of the wrongdoer and restitution to the defrauded victims. The Bankruptcy Code, on the other hand, seeks equitable distribution to all creditors.⁵⁴ There is no provision in the forfeiture statutes for payment to non-victims, including general unsecured creditors who have also been harmed by a Ponzi scheme, and there is no provision in the Bankruptcy Code for priority payment to defrauded victims.

Fourth, trustees in bankruptcy generally feel that they are better equipped to marshal the tangible assets of the Ponzi perpetrator by engaging brokers, conducting auctions, or otherwise maximizing the value of the assets. The government, on the other hand, feels that it may be better situated to seize the assets in a quick forfeiture proceeding and thereafter liquidate those assets more affordably than a trustee.

Fifth, the criminal statutes provide that the government can choose to distribute forfeited

⁵⁴ *Howard Delivery Serv. v. Zurich Am. Ins. Co.*, 547 U.S. 651 (2006) (“The Bankruptcy Code aims, in the main, to secure equal distribution among creditors. Preferential treatment of a class of creditors is in order only when authorized by Congress.”).

assets to its own law enforcement agencies,⁵⁵ causing concern that the forfeited assets might not actually be returned to victims. In contrast, bankruptcy and receivership proceedings are subject to statutory distribution guidelines and court review and supervision, and all funds are returned to creditors after payment of administrative costs.

Sixth, by focusing on the perpetrator's tangible assets, forfeiture and restitution exclude the proceeds of actions against other insiders and third parties. Trustees and receivers, on the other hand, can seek to avoid certain types of transfers pursuant to the Bankruptcy Code or applicable state law, and may also seek recovery for damages on various legal theories where the assets themselves have already disappeared. As the Seventh Circuit observed in addressing forfeiture issues in the Ponzi case of *United States v. Frykholm*:

[An involuntary bankruptcy petition] would have provided a superior way to marshal [the perpetrator's] remaining assets and distribute them to her creditors. Although § 853(n)(1) allows the Attorney General to use forfeited assets for restitution, it does not create a comprehensive means of collecting and distributing assets. Bankruptcy would have made it pellucid that [one victim] cannot enjoy any priority over the other victims and cannot reap a profit while [the perpetrator's] other creditors go begging. Moreover, bankruptcy would have enabled the trustee to recoup the sums distributed to the first generation of investors, who received \$5 million or so against \$2.5 million paid in. Those payments could have been reclaimed under the trustee's avoiding powers and made available to all of the bilked investors.⁵⁶

This issue was also addressed in *SEC v. Madoff*.⁵⁷ In that case, several of Madoff's victims asked for a modification of the preliminary injunction to permit them to file an involuntary bankruptcy petition.⁵⁸ The court rejected the objections asserted by the SEC, the United States

⁵⁵ 21 U.S.C. § 881(e).

⁵⁶ *United States v. Frykholm*, 362 F.3d 413, 417 (7th Cir. 2004).

⁵⁷ *SEC v. Madoff*, 2009 U.S. Dist. LEXIS 30712 (S.D.N.Y. Apr. 10, 2009).

⁵⁸ *Id.* at *3.

Attorney, and the SIPA trustee, concluding:

No opponent to the relief sought by the motion offers as familiar, comprehensive, and experienced a regime as does the Bankruptcy Code for staying the proliferation of individual lawsuits against Mr. Madoff individually, marshaling his personal assets other than those criminally forfeitable, and distributing those assets among his creditors according to an established hierarchy of claims.

A Bankruptcy Trustee has direct rights to Mr. Madoff's individual property, with the ability to maximize the size of the estate available to Mr. Madoff's creditors through his statutory authority to locate assets, avoid fraudulent transfers, and preserve or increase the value of assets through investment or sale, as well as provide notice to creditors, process claims, and make distributions in a transparent manner under the procedures and preferences established by Congress, all under the supervision of the Bankruptcy Court.⁵⁹

These tensions were also addressed in *United States v. Dreier*:

An under-appreciated evil of substantial frauds like those of Marc Dreier is how they pit their victims against one another. Where, as here, the funds remaining after the fraud is uncovered are insufficient to make whole Dreier's numerous victims and creditors, these unfortunates are left to squabble over who should get what. In this case, moreover, resolution of these competing claims involves consideration of three bodies of law – criminal law, securities law, and bankruptcy law – that cannot always be reconciled without some friction.⁶⁰

V. Cooperation Agreements

By entering into cooperation agreements, trustees, receivers, and the government have begun to address the conflicts between the differing distribution schemes and the conflicting interests in the forfeited property.

⁵⁹ *Id.* at *3-4.

⁶⁰ *United States v. Dreier*, 682 F. Supp. 2d 417, 418 (S.D.N.Y. 2010); see also *United States v. Guidant LLC*, 708 F. Supp. 2d 903, 920 (D. Minn. 2010) ("The forfeiture remission process can be, to say the least, cumbersome . . ."); Mary Jo Heston, et al., *Bankruptcy Fraud: A Roundtable Discussion*, 6 AM. BANKR. INST. L. REV. 275 (1998); Myron M. Sheinfeld, et al., *Civil Forfeiture and Bankruptcy: The Conflicting Interests of the Debtors, Its Creditors and the Government*, 69 AM. BANKR. L.J. 87, 101 (1995).

In *Ritchie Special Credit Investments, Ltd. v. United States Trustee*, which addressed the Petters Ponzi scheme, the Eighth Circuit noted that “the district court’s receivership order requires [the receiver] to coordinate with representatives of the United States Attorney’s office and Court personnel as needed to ensure that any assets subject to the terms of this Order are available for criminal restitution, forfeiture, or other legal remedies.”⁶¹

In *United States v. Petters*, the court on its own motion chose to utilize the bankruptcy process over restitution proceedings to redress the claims of victims.⁶² The court noted, “it would be a waste of resources to order restitution of pennies on the dollar (at best) when most victims have filed, or will be filing, parallel claims in bankruptcy proceedings.”⁶³

A coordination agreement and several other agreements were also reached and approved in the Dreier Ponzi case.⁶⁴ Those agreements provided:

1. The government released to the chapter 11 trustee its forfeiture claim to 97 pieces of artwork that it could not trace to proceeds of Dreier’s fraud.
2. The government will not seek to forfeit the proceeds of the trustee’s avoidance actions.
3. The trustee agrees not to contest the government’s forfeiture of the properties in the preliminary forfeiture order.
4. The trustee will not challenge the forfeiture of over \$30 million to be disgorged by CGO Capital Partners.
5. GSO will pay the chapter 11 trustee \$9.25 million and the chapter 7 trustee \$250,000, in exchange for the trustees’ promises not to sue GSO and the entry of an order to bar other parties

⁶¹ *Ritchie Special Credit Investments, Ltd. v. United States Trustee*, 620 F.3d 847, 854 (8th Cir. 2010) (citation and internal quotation marks omitted).

⁶² *United States v. Petters*, 2010 U.S. Dist. LEXIS 55040 (D. Minn. June 3, 2010).

⁶³ *Id.* at *14-15.

⁶⁴ *United States v. Dreier*, 682 F. Supp. 2d 417 (S.D.N.Y. 2010).

from suing GSO.

6. Upon the sale of three real properties by the chapter 7 trustee, the trustee may retain 10% of the proceeds; and

7. The government agrees not to seek forfeiture of funds paid to Fortress Investment Group LLC, which had invested in Dreier's fictitious notes and lost \$84 million.⁶⁵

The government also cooperated with a parallel receivership proceeding in *United States v. Moreland*.⁶⁶ "At the prosecution's request, the district court also deferred the issue of restitution pending a determination by a receiver in a related civil case, brought by the U.S. Securities and Exchange Commission, of the identities of victims and the amounts of their losses."⁶⁷

⁶⁵ *Id.* at 418-19.

⁶⁶ *United States v. Moreland*, 622 F.3d 1147, 1154 (9th Cir. 2010).

⁶⁷ *Id.*

AMERICAN BANKRUPTCY INSTITUTE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 2 of 20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

MARC DREIER,

Defendant.

COORDINATION AGREEMENT

SI 09 Cr. 85 (JSR)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

DREIER LLP,

Debtor.

08-15051 (SMB)

WHEREAS, on or about December 24, 2008, the Honorable
Jed S. Rakoff, sitting in Part I, signed a temporary,
pre-indictment restraining order (the "December 24, 2008
Restraining Order"), upon an ex parte application by the United
States Attorney's Office for the Southern District of New York
("USAO-SDNY");

WHEREAS, on or about January 12, 2009, the Honorable
Colleen McMahon, sitting in Part I, signed a consent order (the
"January 12, 2009 Restraining Order"), extending the December 24,
2008 Restraining Order by 45 days;

WHEREAS, the January 12, 2009 Restraining Order
authorized the United States Marshals Service ("USMS") to take

2021 WINTER LEADERSHIP CONFERENCE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B.
Coordination Agreement Pg 3 of 20

custody of, among other properties, the artworks listed as Items 1 through 20 in Schedule 1 of this Coordination Agreement;

WHEREAS, on or about February 26, 2009, this Court signed a Post-Indictment Consent Order for Extension of Restraining Order and Seizure of Property (the "February 26, 2009 Restraining Order"), extending the December 24, 2008 Restraining Order pending further order of the Court;

WHEREAS, the February 26, 2009 Restraining Order authorized the USMS to take custody of, among other properties, the artworks listed as Items 21 through 95 in Schedule 1 of this Coordination Agreement;

WHEREAS, in or about February 2009, the USMS took custody of the artworks identified in Schedule 1 of this Coordination Agreement (collectively, the "Seized Artworks");

WHEREAS, on March 17, 2009, Marc Dreier, the defendant, was charged in an eight-count superseding Indictment, S1 09 Cr. 85 (JSR) (the "Indictment"), with securities fraud offenses in violation of Title 15, United States Code Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code Section 2 (Counts One and Two); wire fraud offenses, in violation of Title 18, United States Code, Sections 1343 and 2 (Counts Three through Seven); and money laundering, in violation of Title 18, United States Code, Section 1956 (Count Eight);

AMERICAN BANKRUPTCY INSTITUTE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 4 of 20

WHEREAS, on May 11, 2009, the defendant pled guilty to
all counts of the Indictment;

WHEREAS, on July 13, 2009, the defendant was sentenced
and ordered to forfeit:

(1) a sum of \$746,690,000 in United States currency,
representing the amount of proceeds obtained as a
result of the fraud offenses alleged in Counts One
through Seven, as well as property involved in the
money laundering offense alleged in Count Eight; and

(2) the specific properties (the "Specific
Properties") listed in Schedule A of the Court's
Preliminary Order of Forfeiture, dated July 13, 2009
(the "Preliminary Order of Forfeiture");

WHEREAS, on July 13, 2009, the Court entered an Order
of Forfeiture/Preliminary Order of Forfeiture as to Specific
Properties (the "Preliminary Order") imposing a forfeiture money
judgment against the defendant, in the amount of \$746,690,000,
and forfeiting all of the defendant's right, title and interest
in the Specific Properties;

WHEREAS, on or about December 30, 2008, Sheila M.
Gowan, was appointed the Chapter 11 Trustee for Dreier LLP (the
"Chapter 11 Trustee"), in In Re Dreier LLP, 08-15051 (SMB) (the
"Chapter 11 Case");

WHEREAS, the Seized Artworks are not among the artworks
listed in the Schedule A of the Preliminary Order of Forfeiture;

WHEREAS, the Chapter 11 Trustee represents that she is
authorized to take possession of the Seized Artworks;

2021 WINTER LEADERSHIP CONFERENCE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 5 of 20

WHEREAS, the USAO-SDNY and the Chapter 11 Trustee desire to resolve their respective claims to the Seized Artworks and the Specific Properties;

WHEREAS, in order to resolve any potential claims by the Chapter 11 Trustee to the Seized Artworks and the Specific Properties, the Government has agreed to request that the Court vacate the February 26, 2009 Restraining Order as to the Seized Artworks, and the Chapter 11 Trustee has agreed that, if said order is so vacated, the Chapter 11 Trustee will not file a petition or claim, or assist others in filing a petition or claim, or otherwise take any action to contest the forfeiture of, any of the Specific Properties, or any properties that are the subject of the Consent Order of Forfeiture (the "GSO Consent Order of Forfeiture"), signed on or about December 21, 2009, between the Government and the GSO Facilities (as that term is defined in GSO Consent Order of Forfeiture);

WHEREAS, the Chapter 11 Trustee requires that this Coordination Agreement be contingent upon judicial approval of the Agreement, dated in or about December 2009, between the Chapter 11 Trustee and GSO (the "GSO-Chapter 11 Trustee Agreement");

NOW, THEREFORE, IT IS HEREBY STIPULATED, ORDERED AND AGREED that:

AMERICAN BANKRUPTCY INSTITUTE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 6 of 20

1. The February 26, 2009 Restraining Order is hereby vacated as to the Seized Artworks. The USMS shall release the Seized Artworks to the Chapter 11 Trustee or her designated agent.

2. Subject to paragraph 1, the Chapter 11 Trustee shall not file a petition or claim, or assist others in filing a petition or claim, or otherwise take any action to contest the forfeiture of, any of the Specific Properties.

3. Subject to paragraph 1, the Chapter 11 Trustee shall not file a petition or claim, or assist others in filing a petition or claim, or otherwise take any action to contest the forfeiture of, any property that is the subject of the Consent Order of Forfeiture.

4. Subject to Paragraphs 2 and 3, the USAO-SDNY shall not seek to forfeit or assert a right with respect to the proceeds of any actions seeking to avoid fraudulent transfers or preferences brought by the Chapter 11 Trustee against the persons and entities identified in the attached Schedule 2.

5. This Coordination Agreement shall not constitute a waiver of any right(s) that the Chapter 11 Trustee may have in any forfeiture proceedings to file a claim or petition for, or otherwise contest the forfeiture of, any properties that are not listed in Schedule A of the Preliminary Order of Forfeiture or in the GSO Consent Order of Forfeiture.

2021 WINTER LEADERSHIP CONFERENCE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 7 of 20

6. This Coordination Agreement shall not constitute a waiver of the USAO-SDNY's right(s) to bring criminal or civil forfeiture proceedings against any proceeds of Dreier's criminal offenses that are discovered after the date of this Coordination Agreement, including any properties owned or controlled by the persons and entities listed in Schedule 2.

7. Notwithstanding the foregoing, nothing in this Coordination Agreement shall be read to impair in any way the rights or recoveries of the United States of America in connection with any claims filed by the United States or its agencies in the Chapter 11 Case, or any rights of setoff under the Bankruptcy Code, all of which rights are explicitly reserved.

8. The Chapter 11 Trustee is hereby barred from asserting, or assisting others in asserting, any claim against the United States and any and all agents and employees of the United States (including but not limited to the Department of Justice ("DOJ"), the USAO-SDNY, the United States Postal Inspection Service ("USPIS"), the USMS, and any agents and employees of the United States, the DOJ, the USAO-SDNY, the USPIS, and the USMS), in connection with or arising out of the seizure, restraint, and/or constructive possession of the Seized Artworks, including, but not limited to, any claim that there was no probable cause to seize the Seized Artworks, that the Chapter

AMERICAN BANKRUPTCY INSTITUTE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 8 of 20

11 Trustee is a prevailing party, or that the Chapter 11 Trustee is entitled to attorney's fees or any award of interest.

9. The Chapter 11 Trustee agrees to hold harmless and indemnify the United States and any and all agents and employees of the United States (including but not limited to the DOJ, the USAO-SDNY, the USPIS, the USMS, and any agents and employees of the United States, the DOJ, the USAO-SDNY, the USPIS, and the USMS), from any and all third-party claims of ownership of the Seized Artworks.

10. Each party to this Coordination Agreement shall bear its own costs and attorney's fees.

11. This Coordination Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed the complete Coordination Agreement. Fax or PDF copies shall be treated as originals.

12. The parties hereby waive all rights to appeal or to otherwise challenge or contest the validity of this Coordination Agreement.

13. The Court shall have exclusive jurisdiction over the interpretation and enforcement of this Coordination Agreement.

2021 WINTER LEADERSHIP CONFERENCE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 9 of 20

14. This Coordination Agreement constitutes the complete agreement between the parties hereto and may not be amended except by written consent thereof.

15. This Coordination Agreement shall not become effective until the GSO-Chapter 11 Trustee Agreement is approved by Chief Judge Bernstein in the Chapter 11 Case.

16. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 9014 or otherwise, and subject to the provisions of paragraph 15 above, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

17. The Clerk of the Court shall forward four certified copies of this Order to Assistant United States Attorney Anne E. Arreola, One St. Andrew's Plaza, New York, New York 10007.

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08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 10 of 20

Agreed and consented to:

FREET BARARA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: 

SHARON COHEN LEVIN
Chief, Asset Forfeiture Unit
One St. Andrew's Plaza
New York, New York 10007
Tel. (212) 637-2210
Fax (212) 637 0421

12/18/09
DATE

SHEILA M. GOWAN
Solely in her capacity as
Chapter 11 Trustee for Dreier LLP

By: 

620 Eighth Avenue, 39th Floor
New York, New York 10018
Tel. (212) 430-5400
Fax (212) 430-5499

12/18/09
DATE

SO ORDERED:

HONORABLE JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

DATE

SO ORDERED:

HONORABLE STUART M. BERNSTEIN
CHIEF U.S. BANKRUPTCY JUDGE

DATE

2021 WINTER LEADERSHIP CONFERENCE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 11 of 20

SCHEDULE 1

1. Lithograph screenprint by John Baldessari, "Two Bowlers (with Questioning Person)" (1994);
2. Photogravure by John Baldessari, "Paradise" (1989-90);
3. Lithograph by Vija Celmins, "Untitled (Ocean)" (1972);
4. Aquatint by Henri Matisse, "Grand Masque" (1948);
5. Aquatint by Henri Matisse, "Nadia aux cheveux lisses" (1948);
6. Aquatint by Henri Matisse, "Nadia au profil algu" (1948);
7. Three aquatints by Dan Flavin, "Untitled (Triptych)" (1996-98);
8. Series of four silver-gelatin prints by Ed Ruscha, "Rooftops" (1961/2004);
9. Acrylic and pastel on paper by Peter Alexander, "Study for Gas" (1989);
10. Acrylic on canvas by Lorser Feitelson, "Untitled (February 28)" (1971);
11. Ilfochrome by Robert Flick, "At Cambria-A_01082401 (at Cambria Looking West)" (2001);
12. Ilfochrome by Robert Flick, "At Cambria-B_01082401 (at Cambria Looking West)" (2001);
13. Cibachrome print by Robert Flick, "LD SV970121 Alameda B, Los Angeles, CA" (1997);
14. Lithograph and etching by David Hockney, "Picture of Two Chairs, from Moving Focus Series" (1985-86);
15. Lithograph by David Hockney, "The Wave, A Lithograph" (1990);
16. Gelatin silver print by Julius Shulman, "Case Study House #22 (2 Girls) (Pierre Koenig, architect, 1959)" (1960);
17. Screenprint by Andy Warhol, "Space Fruit: Still-Lifes (Cantaloupes)" (1979);

AMERICAN BANKRUPTCY INSTITUTE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 12 of 20

18. Screenprint by Andy Warhol, "Martha Graham: Letter to the World (The Kick)" (1986);
19. Print by Eric Perez, "Don Q Puerto Rican Rum" (unknown) Edition 17 of 300;
20. Bronze sculpture by JR Summers, "Man & Boy" (unknown);
21. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
22. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
23. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
24. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
25. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
26. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
27. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
28. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
29. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
30. Silkscreen by Josef Albers, "Soft Edge-Hard Edge" (1965);
31. Lithograph by Willem De Kooning, "Quatre Lithographies: One Plate" (1986);
32. Woodcut printed in colors by Richard Deibenkorn, "Ochre" (1983);
33. Lithograph by Philip Guston, "Sea" (1981);
34. Lambda print in colors by Damien Hirst, "Lysergic Acid Diethylamide (square colored dots)" (2000);
35. Lambda print in colors by Damien Hirst, "Valium" (2000);
36. Lithograph by David Hockney, "Potted Daffodils" (1980);
37. Lithograph by Jasper Johns, "Cicada" (1981);
38. Screenprint by Jasper Johns, "Usuyuki" (1981);
39. Lithograph by Ellsworth Kelly, "Blue Curve" (1968);

2021 WINTER LEADERSHIP CONFERENCE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 13 of 20

40. Pressed paper pulp by Ellsworth Kelly, "Colored Paper Image XVI" (1987);
41. Screenprint by Ellsworth Kelly, "Four Panels" (1970-71);
42. Lithograph by Ellsworth Kelly, "Green/Black" (1976);
43. Lithograph by Ellsworth Kelly, "Green/White" (1970-72);
44. Four color lithograph by Ellsworth Kelly, "Purple, Red, Grey, Orange" (1967);
45. Lithograph by Ellsworth Kelly, "Yellow/Black" (1970);
46. Oil on canvas by Pierre Letellier, "Nature Morte Au Pichet Bleu" (unknown);
47. Woodcut and screenprint by Roy Lichtenstein, "Imperfect for B.A.M." (1987);
48. Lithograph by Gerhard Richter, "1260 Farben" (1974);
49. Screenprint by Gerhard Richter, "9 Von 180 Farben" (1971);
50. [Unknown media] by Duke Snyder, "Autographe d Photo" (unknown);
51. Lithograph and screenprint by Frank Stella, "Port Aux Basques" (1971);
52. Lithograph by Frank Stella, "River of Ponds II (A.51)" (1971);
53. Lithograph and screenprint by Frank Stella, "Sinjerli Variations 1A" (1977);
54. Woodcut by Donald Sultan, "Black Flowers September 26, 1999" (1999);
55. Woodcut by Donald Sultan, "Blue Flowers May 19, 1999" (1999);
56. Woodcut by Donald Sultan, "Four Red Flowers May 17, 1999" (1999);
57. Print by Tito, "Colored Rectangles" (unknown);

AMERICAN BANKRUPTCY INSTITUTE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 14 of 20

58. Print by Tito, "Colored Triangles" (unknown);
59. [Unknown media] by unknown, "Etchings" (unknown);
60. [Unknown media] by unknown, "Untitled" (1988) Edition 104/200;
61. [Unknown media] by unknown, "Untitled" (1988) Edition 104/200;
62. [Unknown media] by unknown, "Untitled" (1988) Edition 103/200;
63. Screenprint by Andy Warhol, "Flowers (F. & S. 11.69)" (1970);
64. Screenprint by Andy Warhol, "Flowers (F. & S. 11.71)" (1970);
65. Screenprint by Andy Warhol, "Flowers (F. & S. 11.72)" (1970);
66. [Unknown media] by Howard Behrens, "Untitled" (unknown);
67. [Unknown media] by Kjell Engman, "3 Kosta Boda Glass Bottles" (unknown);
68. Drawings by Marco Fabiano, "Women's accessory items x 3" (unknown);
69. Pottery by Rina Menardi, "Menardi Cone # 57" (unknown);
70. Pottery by Rina Menardi, "Menardi Cone # 94" (unknown);
71. [Unknown media] by RM, "Pottery Green" (unknown);
72. [Unknown media] by Kolene Spicher, "4 Beach Clothing" (unknown);
73. [Unknown media] by Kolene Spicher, "Perfume Bottles x 4" (unknown);
74. [Unknown media] by Kolene Spicher, "Series of Boats" (unknown);
75. Glass coral design by unknown, "M" (unknown);

2021 WINTER LEADERSHIP CONFERENCE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 15 of 20

76. [Unknown media] by unknown, "Al Pacino and Robert DeNiro - Heat" (unknown);
77. [Unknown media] by unknown, "Audrey Hepburn - Breakfast at Tiffany's" (unknown);
78. [Unknown media] by unknown, "Basket of Flowers" (unknown);
79. [Unknown media] by unknown, "Butterfly Triptych x 3" (unknown);
80. [Unknown media] by unknown, "F.T.W. St. Barth" (unknown);
81. [Unknown media] by unknown, "F.T.W. St. Barth Shoreline" (unknown);
82. Oil on canvas by unknown, "Fabrice de Villeneuve" (unknown);
83. [Unknown media] by unknown, "Fabrice de Villeneuve Sea Shells" (unknown);
84. Oil on canvas by unknown, "Fabrice de Villeneuve Still Life with Flowers" (unknown);
85. [Unknown media] by unknown, "Fabrice de Villeneuve x 4" (unknown);
86. Group of 4 photographs by unknown, "Flowers" (unknown);
87. [Unknown media] by unknown, "Flowers (Group of 4 unframed paintings)" (unknown);
88. [Unknown media] by unknown, "Glass Bowl Brown/Blue" (unknown);
89. Oil on mesonite by unknown, "Landscape" (unknown);
90. Pottery: 2 Grey, 1 White Vessels by unknown, "Rose" (unknown);
91. [Unknown media] by unknown, "St. Barth/FWI Beach" (unknown);
92. Wood by unknown, "Two Oval Containers" (unknown);
93. [Unknown media] by unknown, "Umbrella at the Beach" (unknown);

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08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 16 of 20

- 94. Photograph mounted on aluminum by unknown, "Untitled"
(unknown);
- 95. [Unknown media] by unknown, "WG - 7181 A, B, & C" (unknown);
- 96. [Unknown media] by unknown, "St. Barth/FEW 2004" (unknown);
and
- 97. Photograph by Liz Smith, "Dreier" (unknown);

2021 WINTER LEADERSHIP CONFERENCE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 17 of 20

SCHEDULE 2

1. ABM Janitorial Svcs Neast Inc.
2. ADP, Inc.
3. Advantage Title Agency, Inc.
4. Aetna
5. Aldine Legal Supply Co, Inc.
6. All County Legal Support
7. American Conference Institute
8. American Express
9. AT&T Mobility
10. Audio Command System, Inc.
11. Best Kar Transportation, Inc.
12. Bloomberg L.P.
13. Bronstein, Van Veen & Schuck, LLC
14. Canon Business Solutions - East, Inc.
15. Canon Financial Services
16. Chai Lifeline
17. Chase Home Finance
18. CIT Technology Financial Service, Inc.
19. CitiStorage, LLC
20. CLSS-NationWide Service Center (NWSC)
21. Corporate Coffee Systems
22. Cort Furniture Rental
23. Dietl International Services, Inc.

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08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 18 of 20

24. Dr. Benjamin Goldberg
25. Eastern Farms, Inc. /dba Delmonico
26. Elite Limousine Plus Inc.
27. Epic Staffing Services
28. Exponent, Inc.
29. FedEx
30. FileBank, Inc.
31. First Reporting Corporation
32. Gardell Wynne Sewell LLP
33. Globe Storage & Moving Co., Inc.
34. Greenfield Sacks Gallery
35. Hawthorne Investigations & Security, Inc
36. Hines 499 Park Avenue LLC
37. Information Management Network
38. Interior Foliage Design Inc.
39. J.C. Professional Publications
40. Johnsen, Fretty & Co., LLC
41. Kasowitz, Benson, Torres & Friedman, LLP
42. Koppers Building Holdings, Inc.
43. Landmark Square 1-6 LLC
44. Landstar Title Agency, Inc.
45. Lehr Construction Corp.
46. Lincoln Life & Annuity Company of NY
47. Louis M. Dubin

2021 WINTER LEADERSHIP CONFERENCE

08-15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B.-
Coordination Agreement Pg 19 of 20

48. Lucas Group
49. Mark Limousine, Inc.
50. New York Hotel Traders Council Health Benefits Fund
51. NYC Department of Finance
52. Oxford Health Plans
53. Paul, Weiss, Rifkind, Wharton & Garrison LLP
54. PR Newswire Association, LLC
55. SeamlessWeb Professional Solutions, Inc.
56. Seraglini Christophe
57. The Aventus Group
58. The Edgemont Group
59. The Estate of Herbert Gallen
60. U.S. Patent & Trademark Department
61. U.S. Postal Service
62. Wachovia Bank Commercial Loan
63. Wachovia Financial Services, Inc.
64. Waldorf Astoria
65. W.B. Mason Company, Inc.
66. Westlaw
67. XYZ Two Way Radio Service, Inc.
68. Yorkson Legal Inc.
69. Zurich American Insurance Company
70. Amaranth Partners, LLC
71. Concordia Advisors, LLC

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08:15051-smb Doc 337-2 Filed 01/08/10 Entered 01/08/10 15:23:52 Exhibit B -
Coordination Agreement Pg 20 of 20

- 72. Context Capital Management, LLC
- 73. Eton Park Asset Management, LLC
- 74. Fortress Credit Corporation, LLC
- 75. GSO Capital Partners, LP
- 76. Adrian and Sonia Kingshott
- 77. Meyer & Co., LLC
- 78. Novator Credit
- 79. The Patriot Group, LLC
- 80. Perella Weinberg Partners
- 81. Verition Fund Management, LLC
- 82. Westford Global Asset Management, LLC

2021 WINTER LEADERSHIP CONFERENCE

COORDINATION AGREEMENT

This Coordination Agreement ("Agreement") is entered into on August 17, 2011, between Gene Kohut, as Chapter 7 Trustee ("Trustee") for the estates ("Estates") of Dante DeMiro, *et al.* ("DeMiro") (Bankruptcy Case #10-71404, "DeMiro Case") and MuniVest Services, LLC, *et al.* ("MuniVest," and collectively with DeMiro, "Debtors") (Bankruptcy Case #10-71403, "MuniVest Case," and collectively with the DeMiro Case, "Bankruptcy Cases"), and the United States Attorney's Office for the Eastern District of Michigan ("USAO," and collectively with the Trustee, "Parties").

RECITALS

A. On April 19, 2011, DeMiro pled guilty to Counts One through Five of the First Superseding Information, Case No. 10-20594 pending in the Eastern District of Michigan (the "Criminal Case"), in which the USAO alleged, among other things, that DeMiro devised a scheme to defraud and obtain money by means of false pretenses. On July 7, 2011, pursuant to Federal Rule of Criminal Procedure 32.2, the District Court Judge in the Criminal Case entered a preliminary order of forfeiture (the "POF") with respect to the assets listed in the POF (the "Forfeited Assets"). On July 19, 2011, Judgment was entered against DeMiro which, among other things, ordered DeMiro to pay restitution to the victims listed in the Judgment.

B. Upon obtaining a final forfeiture order, the USAO will seek final approval from the appropriate authority to use Forfeited Assets to restore the victims identified in the Judgment entered in the Criminal Case.

C. On October 12, 2010, the Bankruptcy Cases were initiated pursuant to Section 303(b) of the United States Bankruptcy Code ("Code"). Orders for relief were entered in the Bankruptcy Cases on November 5, 2010. Pursuant to the Code, the Trustee has a responsibility to recover assets of the Estates for the benefit of all of the Debtors' creditors and distribute the proceeds in accordance with the distribution provisions in the Code ("Bankruptcy Distribution Provisions").

D. In order to avoid the overall diminishment of the recovery for the victims in the Criminal Case and creditors alike and to avoid undue delay in the disposition of the Forfeited Assets that may result absent this Agreement, the Parties have agreed to enter into this Agreement.

AGREEMENT

1. Condition Precedent. This Agreement is conditioned upon judicial approval in the Bankruptcy Cases.

2. Forfeited Assets. The Forfeited Assets are not assets of the Estates, and the District Court in the Criminal Case has jurisdiction over adjudications involving the Forfeited Assets. The Trustee will not file a claim or a petition contesting the forfeiture of the Forfeited Assets in the Criminal Case and will not otherwise institute ancillary proceedings in the Criminal Case relating to the Forfeited Assets.

3. All other Assets. All other assets of the Debtors (i.e., assets that are not Forfeited Assets), tangible and intangible, whether now existing or hereafter discovered or

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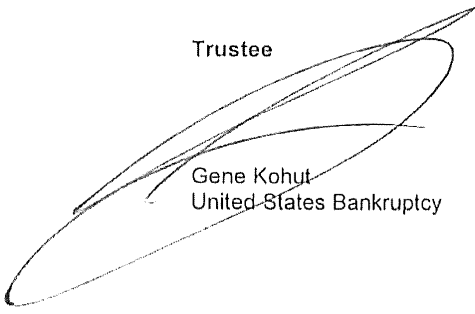
recovered, including any proceeds of Avoidance Actions (the "Remaining Assets") are and will be deemed property of the Estates. The USAO will not file a claim or petition in the Bankruptcy Cases to recover the restitution or money judgment owed by DeMiro in the Criminal Case. Furthermore, the USAO agrees that it will not seek to forfeit the Remaining Assets or any proceeds of the Remaining Assets.

United States Attorney's Office
for the Eastern District of Michigan

Trustee

Linda Aouate
Assistant United States Attorney
Trustee

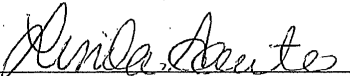
Gene Kohut
United States Bankruptcy



2021 WINTER LEADERSHIP CONFERENCE

recovered, including any proceeds of Avoidance Actions (the "Remaining Assets") are and will be deemed property of the Estates. The USAO will not file a claim or petition in the Bankruptcy Cases to recover the restitution or money judgment owed by DeMiro in the Criminal Case. Furthermore, the USAO agrees that it will not seek to forfeit the Remaining Assets or any proceeds of the Remaining Assets.

**United States Attorney's Office
for the Eastern District of Michigan**


Linda Aouate
Assistant United States Attorney

Trustee

Gene Kohut
United States Bankruptcy Trustee

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO. 09-CR-60331-COHN

UNITED STATES OF AMERICA,

v.

SCOTT W. ROTHSTEIN,

Defendant.

**JOINT MOTION TO APPROVE SETTLEMENT; APPOINT MICHAEL I. GOLDBERG
AS RESTITUTION RECEIVER; APPROVE 18 U.S.C. § 3664(j) PROTOCOLS;
APPROVE DISTRIBUTION PROTOCOLS; AND
REQUEST TO SET JOINT HEARING¹**

Michael I. Goldberg (the “Trustee” or “Goldberg”), in his capacity as Liquidating Trustee for the RRA Liquidating Trust (“RRA Trust”) and the United States of America (the “Government,” with Goldberg or the Trustee, the “Parties”), respectfully move for the specific relief set forth below as the Parties have reached an agreement globally resolving **all** issues between the Trustee and the Government relating to forfeiture and restitution matters in connection with the Scott W. Rothstein (“Rothstein”) criminal case. The settlement between the Parties is memorialized in the agreement attached hereto as Exhibit A (the “Agreement” or “Settlement Agreement”).²

¹ The Parties are simultaneously filing this Motion before both the district court presiding over *United States v. Rothstein*, 09-60331-CR-COHN (S.D. Fla. 2009) (the “District Court”) and the bankruptcy court presiding over *In re Rothstein Rosenfeldt Adler P.A.*, 09-347981-RBR (Bankr. S.D. Fla. 2009) (the “Bankruptcy Court;” the District Court and Bankruptcy Court are referred to collectively as the Courts).

² The RRA Trust is the successor in interest to Rothstein Rosenfeldt Adler, P.A.’s (“RRA”) bankruptcy estate and all assets of RRA’s bankruptcy estate, including its forfeiture claims, have been transferred to the RRA Trust pursuant to the RRA Plan (as defined herein below).

The Settlement Agreement, upon approval by the Courts, allows the Trustee and the Government to avoid costly and protracted litigation with respect to forfeiture issues following the issuance of the Eleventh Circuit Court of Appeals decision in *United States v. Rothstein, Rosenfeldt, Adler, P.A. (In re Rothstein, Rosenfeldt, Adler, P.A.)*, 717 F.3d 1205 (11th Cir. 2013), and provides an equitable mechanism that will likely allow for all non-subordinated victims to be paid in full and for the RRA bankruptcy estate to receive a meaningful distribution from the assets seized by the Government in connection with Rothstein's criminal prosecution. The Settlement will facilitate a significant distribution to Qualifying Victims (as defined in the Settlement Agreement). The distribution to Qualifying Victims is expected, but not guaranteed to be, 100% of their ultimately allowed Restitution Claims. The RRA Trust is expected to receive in excess of \$23 million of economic benefit comprised of the cash and assets that will be turned over to the RRA Estate pursuant to the Settlement Agreement and the collateral source effect of the distribution of approximately \$28 million to the Qualifying Victims under the Collateral Source Recovery provisions contained in the confirmed RRA Plan (as defined herein below).

BACKGROUND AND PROCEDURAL HISTORY

As the Courts are well aware, Scott W. Rothstein ("Rothstein"), the 50% shareholder of RRA, began perpetrating a Ponzi scheme through the sale of fictitious structured settlements. Rothstein used RRA's bank accounts in his Ponzi scheme. Through this process he commingled the law firm's legitimate receipts for legal work and the proceeds of his criminal activity. In late October of 2009, Rothstein's scheme collapsed.

The procedural history of the litigation that was triggered by Rothstein's crimes is set forth in detail in the Settlement Agreement.

THE SETTLEMENT

The Trustee and the Government believe that the terms of the Settlement are fair, equitable and in the best interests of the RRA Trust and the Qualifying Victims.

The following is a summary of the key terms of the Settlement Agreement:³

Forfeiture of Restitution Assets: The Trustee agrees to support the entry of a final order of forfeiture (the “Agreed Final Order of Forfeiture”), which shall finally forfeit to the Government the Restitution Assets. The Agreed Final Order of Forfeiture shall be in a form and substance acceptable to both the Trustee and the Government and consistent with the Agreement.

Release of Remaining Assets: All Remaining Assets shall be released to the Trustee for liquidation and/or distribution to the creditors of RRA pursuant to the RRA Plan under the supervision of the Bankruptcy Court.

Appointment of Michael I. Goldberg, Esq., as Restitution Receiver: The District Court Approval Order shall provide that Michael I. Goldberg, Esq., will be appointed as the “Restitution Receiver.” The District Court Approval Order will authorize the Restitution Receiver to take any action necessary to distribute the proceeds of any Restitution Assets to Qualifying Victims in accordance with the Agreement and the Final Amended Restitution Order (as defined in the Agreement).

Maximum Proposed Distribution: Under no circumstances shall the distribution to any Qualifying Victim exceed the amount of the Restitution Claim after application of Title 18, United States Code, Section 3664(j).

³ To the extent that there is any conflict between the Settlement Agreement and this Motion, the terms of the Settlement Agreement control.

Distribution to Holders of Allowed Restitution Claims: As soon as practicable after entry of the Final Amended Restitution Order by the District Court and the entry of the Agreed Final Order of Forfeiture, the Restitution Receiver shall disburse funds in accordance with the Final Amended Restitution Order, unless the District Court orders otherwise upon motion by the Restitution Receiver.

Kim Rothstein Criminal Case: The Government agrees that all assets forfeited or subject to forfeiture in connection with the Kim Rothstein Criminal Case shall be treated as Remaining Assets under the Agreement; provided, however, the Trustee shall pay from the proceeds of the Remaining Assets the amount of \$250,000 to Sean Dunn pursuant to Title 19 U.S.C. § 1619.

Marin Criminal Case: The Government agrees that all assets forfeited or subject to forfeiture in connection with the Marin Criminal Case shall be treated as Remaining Assets under the Agreement.

Mass Mutual Case: The Trustee and the Government agree to have the Mass Mutual Funds treated as Remaining Assets under the Agreement.

Alu Appeal: The Alu Appeal shall be dismissed and the funds subject of the Alu Appeal shall be treated as Remaining Assets under the Agreement.

Future Criminal Prosecutions: This agreement does not cover any assets forfeited or subject to forfeiture in connection with any future criminal prosecutions involving or relating to the crimes committed by Scott W. Rothstein and others. The Parties reserve all of their rights with respect to any future criminal prosecutions.

AUTHORITY TO SUPPORT APPROVAL OF THE SETTLEMENT

The Parties seek approval of the Settlement pursuant to the District Court's inherent power to approve settlements relating to the forfeiture and restitution process and pursuant to

Rule 9019 of the Federal Rules of Bankruptcy Procedure (“Rule 9019”), which is applicable to the Bankruptcy Court’s approval of the Settlement. The Parties submit that the Rule 9019 criteria are instructive and helpful to the District Court’s consideration and approval of the Settlement.

Rule 9019 provides that, after notice and a hearing, a bankruptcy court may approve a proposed settlement of a claim. The decision of whether or not to approve a compromise is within the sound discretion of the court. *In re Chira*, 367 B.R. 888, 896 (S.D. Fla. 2007) *aff’d*, 567 F.3d 1307 (11th Cir. 2010)(citing *In re Air Safety Intern., L. C.*, 336 B.R. 843, 852 (S.D. Fla. 2005)); *In re Arrow Air, Inc.*, 85 B.R. 886 (Bankr. S.D. Fla. 1988).

In passing on proposed settlements, the Bankruptcy Court must determine whether a proposed settlement is fair and equitable. *In re Chira*, 367 B.R. at 896. The Court must evaluate whether the compromise falls below the “lowest point in the range of reasonableness.” *In re S&I Investments*, 421 B.R. 569, 583 (Bankr. S.D. Fla. 2009) (citing *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993)); *see also In re Arrow Air, Inc.*, 85 B.R. at 886.

The Eleventh Circuit, in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), provided additional guidance regarding whether a settlement should be approved and established a four-part test:

- a. The probability of success in litigation;
- b. The difficulties, if any, to be encountered in the matter of collection;
- c. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- d. The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

The Parties each believe that they will be successful in any future litigation. However, the uncertainty of litigation coupled with the associated cost and delay of the Trustee and the Government litigating, is not in the best interests of the stakeholders in each respective case. Moreover, if litigation were to recommence, it is likely that one or both of the Parties would, again, seek appellate review of any decision made at trial, further delaying distributions to Qualifying Victims and creditors. The issues raised in this litigation are complicated and may require expert testimony and analysis regarding the financial transactions of the RRA law firm.

There is no difficulty in collecting the already monetized assets. However, certain assets have yet to be monetized and are incurring monthly carrying costs (i.e., real estate taxes), thereby decreasing the net recovery each month the dispute persists.

The litigation is undoubtedly complex. The first trial lasted three days and involved several witnesses, including two experts who traced millions of dollars through numerous bank accounts. Further litigation between the Parties would require the resolution of novel legal issues involving the intersection between bankruptcy law, constructive trust law, and federal forfeiture law.

The creditors and victims are singularly interested in obtaining their recovery as soon as possible. This Settlement allows for the prompt exercise and faithful discharge of the respective duties of the Parties who have worked tirelessly to ensure that the victims and creditors are compensated for their losses.

Accordingly, there is little doubt that the Settlement overwhelmingly meets the requirements under *Justice Oaks*' requirements and should therefore be approved.

APPOINTMENT OF MICHAEL I. GOLDBERG AS RESTITUTION RECEIVER

In order to harmonize the distributions to be made to Qualifying Victims in the Rothstein Criminal Case and to creditors in the RRA Case, the Settlement provides for the appointment of Michael I. Goldberg as the Restitution Receiver.

The Court's authority to appoint a receiver is found in the criminal forfeiture provisions. Specifically, 18 U.S.C. § 982, which incorporates the provision of 21 U.S.C. § 853(g), provides, in relevant part, that the Court, following entry of an order of forfeiture and upon application of the United States, may take any action to protect the interests of the United States in the property ordered forfeited.

This mechanism has been employed by courts in this district before. In *United States v. Brandau*, Judge Hurley authorized the appointment of a receiver to monetize assets and distribute the proceeds to victims of the Financial Federated Ponzi scheme. *United States v. Brandau*, 99-8125-CR-HURLEY [ECF No. 759, *Order Approving Memorandum Agreement and Appoint Receiver* (S.D. Fla. Aug. 11, 2000)]. Similar to Goldberg, the *Brandau* Receiver also served as the bankruptcy trustee in the related chapter 11 case, which enabled him to better coordinate distributions between the two estates.

The Settlement Agreement contemplates that slightly more than \$28,000,000 of assets will be finally forfeited and disbursed/restored to Qualifying Victims. In order to ensure that the distribution of these funds to Qualifying Victims and RRA creditors is maximized, the Settlement Agreement contemplates Goldberg being appointed as the Restitution Receiver. The benefit of Goldberg filling that role is that he and his professionals are already aware of and familiar with the collateral source recovery provisions in the RRA Plan. Moreover, as a result of the collateral source reporting that was required by the RRA Plan, Goldberg and his

professionals are in the best position to apply, in consultation with the Government and under the District Court's supervision, the provisions of 18 U.S.C. § 3664(j). Indeed, having a single person responsible for harmonizing distributions from both the RRA Trust and the Rothstein Criminal Case is the most efficient and effective method to ensure that no person receives an amount exceeding their losses.

A. Terms of Appointment

Pursuant to the Settlement Agreement, the United States and the Trustee seek to have Goldberg appointed as Restitution Receiver:

Scope: the Restitution Receiver shall have standing to raise any position that is available to the Government or the RRA Trust. The Restitution Receiver will be authorized by the District Court to take any action necessary to protect or monetize any Restitution Assets (as defined in the Settlement Agreement) and to make distributions to Qualifying Victims in accordance with the Settlement Agreement and applicable law. Any issue relating to the scope of this receivership shall be determined in the first instance by the District Court.

Fees and Expenses: The Restitution Receiver and his counsel will be compensated exclusively from the RRA Trust on the same terms as they provide their services to the RRA Trust. Their fees and expenses will be treated as Costs and Expenses of the Liquidating Trust pursuant to sections 6.2.9 and 6.2.11 of the RRA Plan as modified by the Confirmation Order. Accordingly, all issues relating to the payment of the Restitution Receiver and his professionals' fees and expenses shall be heard and determined before the Bankruptcy Court.

B. No Impact on Goldberg's role as Trustee

The Government and the Trustee request that the Bankruptcy Court determine that Goldberg's appointment as Restitution Receiver will have no impact on Goldberg's ability to

continue as the Trustee. Additionally, the Trustee also requests that the Bankruptcy Court determine that the Trustee's professionals (Berger Singerman LLP, Akerman LLP, Berkowitz Pollack Brandt Advisors and Accountants, and Kapila Mukamal LLP) (the "Trustee's Professionals") representation of the Restitution Receiver have no impact on their ability to continue representing the Trustee, even though they will be providing services to Goldberg in his capacity as Restitution Receiver.

18 U.S.C. § 3664(j) PROTOCOLS

In order to ensure that Qualifying Victims are treated equally, the Parties request that the District Court approve certain protocols regarding the application of 18 U.S.C. § 3664(j) ("Section 3664(j)"). Section 3664(j) provides:

- (1) If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.
- (2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—
 - (A) any Federal civil proceeding; and
 - (B) any State civil proceeding, to the extent provided by the law of the State.

Several of the Qualifying Victims have already recovered compensation in excess of their loss. It would be patently inequitable for these persons to share in Restitution Assets thereby diluting the recovery of other Qualifying Victims who have not yet been wholly compensated. The purpose of Section 3664(j)(2) "is to prevent double recovery by a victim." *United States v. Stanley*, 309 F.3d 611, 613 (9th Cir. 2002). If the victim later recovers civil damages for the same loss, the court subtracts that sum from the victim's loss to determine the defendant's

remaining restitution. *Id.*; see also *United States v. Nucci*, 364 F.3d 419, 423 (2d Cir. 2004) (holding that victim may not receive double recovery in a criminal context); *United States v. Dawson*, 250 F.3d 1048, 1050 (7th Cir. 2001) (concluding that, in the criminal context, a victim should not receive more restitution than necessary to make him or her whole). Furthermore, the Settlement Agreement requires that any credit pursuant to 18 U.S.C. § 3664(j) be applied on a gross basis without deduction for attorneys' fees, costs or prejudgment interest. See *United States v. Sims*, 2003 U.S. Dist. LEXIS 9835 (E.D. Pa. May 30, 2003) (holding that the amount a plaintiff recovers on a judgment may be used to reduce restitution amounts pursuant to 18 U.S.C. § 3664(j)); *United States v. DiBruno*, 438 Fed. Appx. 198 (4th Cir. N.C. 2011) (noting that "any restitution amount paid to a victim under a restitution order must be reduced by the victim's recovery for the same loss in civil proceedings"); *Walsh v. United States*, 2014 U.S. Dist. LEXIS 17761 (D. Md. Feb. 12, 2014) (noting that the purpose of 18 U.S.C. § 3664(j) is to ensure that victims do not, through restitution, receive an amount exceeding their losses).

In order to facilitate the calculation of the reductions to the distributions due to Qualifying Victims as a result of the application of the 18 U.S.C. § 3664(j), the Trustee and the Government propose that the District Court approve the following protocols:

1. Within fourteen (14) days of the entry of an Order by the District Court approving this Motion, the Restitution Receiver and the Government shall jointly file the Distribution Schedule (as defined in the Settlement Agreement). The Distribution Schedule filed with the District Court will identify Qualifying Victims by VNS number only. At the District Court's request the Parties will file a Distribution Schedule, under seal, that lists the Qualifying Victims by name.
2. The Distribution Schedule will indicate for each Restitution Claim:

- a. The original allowed amount of the Restitution Claim;
 - b. Any Collateral Source Recoveries that are applied to reduce the distribution due on any Restitution Claim; and
 - c. Which Restitution Claims, if any, are to be treated as Subordinated Restitution Claims (as defined in the Settlement Agreement).
3. Any Qualifying Victim shall have twenty-one (21) days from the date of notice of the Distribution Schedule to file an objection with the District Court to the proposed treatment of their Restitution Claim. **Any objection must be signed under penalty of perjury by the holder of the Restitution Claim.**
4. Upon resolution of the objections, the Court, at the request of the Parties, will enter a Final Amended Restitution Order.

The Parties believe that these Protocols provide for the most equitable and efficient and least intrusive way to ensure that no Qualifying Victim reaps a windfall at the expense of the other victims. Indeed, this is only way to ensure that each Qualifying Victim is paid only once on its claims.

DISTRIBUTION PROTOCOLS

As soon as practicable after the District Court has entered the Final Amended Restitution Order, the Parties request that the Restitution Receiver be authorized to begin making distributions to the Qualifying Victims in accordance with the Distribution Schedule, unless ordered otherwise by the District Court upon motion by the Restitution Receiver. The Parties request that the District Court approve the following protocols:

1. All distributions will be made by check;

2. The address for any Qualifying Victim to which distribution will be mailed will be the address provided to the Government as part of the Victim Notification Service; and
3. The Restitution Receiver, without the need for any further order of the Court, may replace any lost check at his discretion.

REQUEST TO SET JOINT HEARING

The Settlement Agreement represents the culmination of years of work by both the Government and numerous bankruptcy professionals. It provides the quickest, most efficient and fairest way for the proceeds of the assets seized by the Government in November and December of 2009 to finally be distributed to the parties that were most affected by the actions of Rothstein and his co-conspirators. Accordingly, in order to facilitate the approvals required for the Settlement to become effective, the Parties respectfully request that the District Court and Bankruptcy Court conduct a joint hearing to consider the relief requested in this Motion.

This procedure has been used in other circuits when faced with similar situations, most notably and recently in *In re Dreier LLP*, 08-15051-SMB (Bankr. S.D.N.Y. 2008); *United States v. Dreier*, 09-cr-085- JSR (S.D.N.Y. 2008)—another case involving a law firm in chapter 11 that was used as part of a large Ponzi scheme. In the *Dreier* case the judges overseeing the Marc S. Dreier criminal case, the Dreier LLP SEC lawsuit, and the Dreier LLP bankruptcy case, had several coordinated, joint status conferences. *See United States v. Dreier*, 09-cr-085-JSR (S.D.N.Y. 2009) (minute entry for April 22, 2009, referring to a joint status conference held by all three judges); *see also United States v. Dreier*, 09-cr-085-JSR (S.D.N.Y. May 4, 2009) (joint order to parties). The efficacy of these joint conferences was recognized by United States District Court Judge Rakoff, wherein he noted that the “inherent tensions are best addressed through

coordination and cooperation by all concerned. Accordingly, on April 22, 2009, the three judges convened a joint hearing to urge such a resolution by the affected parties.” *United States v. Dreier*, 09-cr-085-JSR (S.D.N.Y. February 5, 2010).

Accordingly, the Parties request that both the District Court and the Bankruptcy Court convene a joint hearing for the purpose of considering the Settlement Agreement and the other related relief requested in this Motion.⁴

WHEREFORE the Government and the Trustee respectfully request that:

A. The District Court: (i) grant the request for a joint hearing with the Bankruptcy Court; (ii) approve the Settlement Agreement; (iii) appoint Michael I. Goldberg, Esq., as Restitution Receiver; (iv) approve the 18 U.S.C. § 3664(j) Protocols; (v) approve the Distribution Protocols; (vi) retain jurisdiction over all aspects of the Settlement, except for approval by the Bankruptcy Court and Bankruptcy Court oversight of the fees and costs of the Restitution Receiver and his professionals; and (vii) grant any other such relief as is just and appropriate.

B. The Bankruptcy Court: (i) grant the request for a joint hearing with the District Court; (ii) approve the Settlement Agreement; (iii) determine that Michael I. Goldberg’s appointment as Restitution Receiver will have no impact on and will not disqualify Goldberg from continuing as the Trustee; (iv) determine that Trustee’s Professionals may to continue to advise the Trustee in connection with the RRA case; (v) determine that Trustee’s Professionals may provide services to the Trustee notwithstanding of their representation of the Restitution Receiver; (vi) authorize that all attorneys’ fees, costs, and expenses incurred by the Restitution Receiver and his professionals be treated pursuant to sections 6.2.9 and 6.2.11 of the RRA Plan as modified by the

⁴ If the either the District Court or the Bankruptcy Court decline to grant the request for a joint hearing, the parties propose that the approval of the Settlement Agreement be obtained first from the Bankruptcy Court followed by the District Court. However, in the interest of efficiency the Parties submit that a joint hearing would be the most expeditious way to bring the Settlement Agreement before the Courts for approval.

Confirmation Order and compensated from RRA Liquidating Trust assets; (vii) retain jurisdiction to approve the Restitution Receiver and his professionals fees in the same manner as all other Post-Confirmation Professionals; and (viii) grant any other such relief as is just and appropriate.

Dated: July 14, 2014

Respectfully Submitted,

BERGER SINGERMANN LLP.
Counsel for Liquidating Trustee
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ Paul Steven Singerman
Paul Steven Singerman
singerman@bergersingerman.com
Florida Bar No. 378860
Isaac Marcushamer
imarcushamer@bergersingerman.com
Florida Bar No. 0060373

and

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By: /s/ Evelyn B. Sheehan
Evelyn B. Sheehan (Fla. Bar No. 944351)
Alison W. Lehr (Fla. Bar No. 444537)
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99 NE 4th Street
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Tel. (305) 961-9101
Fax. (305) 536-7599
Evelyn.Sheehan@usdoj.gov
Alison.Lehr@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system and therefore the foregoing has been furnished on such date via the Court's CM/ECF system to all electronic filing participants in this case.

/s/ Paul Steven Singerman

Paul Steven Singerman

EXHIBIT “A”

SETTLEMENT AGREEMENT

THIS Settlement Agreement is entered into July 14, 2014 (the "**Settlement Agreement**") and is by and between Michael I. Goldberg, Esq., solely in his capacity as the Liquidating Trustee of the RRA Liquidating Trust (the "**Trustee**") of the bankruptcy estate of Rothstein Rosenfeldt Adler, P.A. ("**RRA**") pending in the United States Bankruptcy Court for the Southern District of Florida (the "**Bankruptcy Court**") and the United States of America (the "**Government**" or the "**United States**"). The Trustee and the Government are collectively referred to as the "**Parties**".

RECITALS

The Scott Rothstein Criminal Case and RRA Bankruptcy

A. In 2005, Scott W. Rothstein ("**Rothstein**"), the 50% shareholder of Rothstein Rosenfeldt Adler, P.A. ("**RRA**"), began perpetrating a Ponzi scheme through various means, including through the sale of fictitious structured settlements with non-existent and fictitious clients of RRA (the "**Rothstein Ponzi**").

B. On November 10, 2009, (the "**RRA Petition Date**"), certain creditors of RRA filed an involuntary petition for relief under Chapter 11 of Title 11 of the United States Code, as amended (the "**Bankruptcy Code**"), with the Bankruptcy Court against RRA, which created the RRA bankruptcy estate (the "**RRA Estate**"). RRA's bankruptcy case was assigned case number 09-34791-RBR (the "**RRA Case**").

C. On November 20, 2009, the Office of the United States Trustee selected Herbert Stettin ("**Stettin**") to serve as the chapter 11 trustee in the RRA Case [RRA Case ECF No. 55]. On November 30, 2009, the Bankruptcy Court entered an order for relief in the RRA Case [RRA Case ECF No. 66].

D. On December 1, 2009, the United States Attorney for the Southern District of Florida charged Rothstein, by way of Information, with violations of 18 U.S.C. §1962(d), 18 U.S.C. §1956(h), 18 U.S.C. §1349 and 18 U.S.C. §1343 (Case No. 09-CR-60331-JIC) (the "**Rothstein Criminal Case**") [Criminal Case ECF No. 1]. The Information further advised Rothstein that forfeiture of certain properties and a forfeiture money judgment would be sought pursuant to 18 U.S.C. §1963, §982(a)(1) and §981(a)(1)(C). A Bill of Particulars for Forfeiture was then filed by the United States, which Bill of Particulars identified additional property subject to forfeiture [Criminal Case ECF No. 34].

E. On April 19, 2010, the District Court presiding over the Rothstein Criminal Case (the "**District Court**") entered its Preliminary Order of Forfeiture [Criminal Case ECF No. 134] (the "**POF**"). The POF listed the assets subject to forfeiture (the "**POF Assets**").

F. On May 24, 2010, Stettin filed his Verified Claims and Petition for Adjudication of Interests (the “**RRA Claims**”), wherein Stettin, as the Chapter 11 Trustee of RRA, made claim to many of the POF Assets [Criminal Case ECF No. 192].

G. On June 9, 2010, Rothstein was sentenced by the District Court to 50 years in prison [Criminal Case ECF No.290].

H. On July 9, 2010, the District Court entered its Order Granting in Part and Denying in Part United States’ Motion to Dismiss Chapter 11 Trustee’s Verified Claims and Petition [Criminal Case ECF No. 400] (the “**Dismissal Order**”) dismissing all of RRA Claims, except for the RRA Accounts (as defined in the Dismissal Order).

I. On August 25, 2010, the District Court entered its Order Denying Trustee’s Motion for Summary Judgment [Criminal Case ECF No. 578], which denied the Trustee’s Motion for Summary Judgment relating to the RRA Accounts.

J. On August 25, 2010, the District Court entered its Order Re: 21 U.S.C. §853(n) Claims [Criminal Case ECF No. 579], which adjudicated RRA Claims relating to the RRA Accounts. On September 8, 2010, the United States filed a Motion for Partial Reconsideration of Order Re: 21 U.S.C. §853(n) Claims [Criminal Case ECF No. 609] with regard to the District Courts finding that Stettin had an interest in BA2, BA3, and BA5. And, after full briefing, on October 14, 2010, the District Court entered an Order Granting in Part and Denying in Part the United States Motion for Partial Reconsideration. [Criminal Case ECF No. 637].

K. On August 31, 2010, the District Court entered an Amended Judgment against Rothstein, which included restitution in the amount of \$406,172,140.26 [Criminal Case ECF No. 593, as amended by ECF Nos. 758, 808, and 825].

L. On February 1, 2011, the District Court entered its First Final Order of Forfeiture [Criminal Case ECF No. 708] (the “**FFOF**”), which finally forfeited many of the POF Assets. Stettin timely appealed from the various adverse orders the district court had entered against him and the FFOF. *Stettin v. USA*, 11-10676 (11th Cir. 2011) (the “**Appeal**”).

M. On May 30, 2013, the Trustee and the Official Committee of Unsecured Creditors in the RRA Case filed the Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed Jointly by the Trustee and the Official Committee of Unsecured Creditors (As Modified) in the RRA Case (the “**RRA Plan**”) [RRA Case ECF Docket No. 4517].

N. On June 12, 2013, the Eleventh Circuit issued its opinion in the Appeal, reversing the District Court’s rulings solely in regard to claims asserted by Stettin and remanded the case back to the District Court for further proceedings. *United States v. Rothstein, Rosenfeldt, Adler, P.A. (In re Rothstein, Rosenfeldt, Adler, P.A.)*, 717 F.3d 1205 (11th Cir. 2013).

O. On July 17, 2013, the Bankruptcy Court entered its Order Confirming Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed Jointly by the Trustee and the Official Committee of Unsecured Creditors (as Modified), Dated May 29, 2013 and Setting the Bar Date for Lease and Contract Rejection Claims [RRA Case ECF No. 5063] (the “**Confirmation Order**”).

P. The effective date (as defined in the RRA Plan) of the RRA Plan was July 22, 2013.

Q. As of the effective date of the RRA Plan, Michael Goldberg, Esq. was appointed as the trustee of the RRA Liquidating Trust.

R. On November 7, 2013, the Eleventh Circuit issued its Mandate as to the Appeal (the "**Mandate**").

The Alu Litigation

S. During the pendency of the Criminal Case, on December 9, 2010, Stettin sued Joseph and Jody Alu (the "**Alus**") to avoid and recover alleged fraudulent transfers, *Stettin v. Alu*, 10-3775 (Bankr. S.D. Fla. 2010) (the "**Alu Case**").

T. The Alus interpled the funds at issue, and the United States as successor in interest to Fifth Court Financial LLC ("**Fifth Court**") became a third party defendant in the Alu Case as a result of equity of Fifth Court being one of the POF Assets.

U. The Bankruptcy Court entered summary judgment in favor of the United States. Case No. Adv. Pro. No. 10-03775-BKC-RBR-A, *Stettin v. Joseph Alu and Jody Alu and USA*, [Alu ECF No. 136].

V. Stettin appealed to the district court. *Stettin v. USA*, Case No. 12-62193 (S.D. Fla. 2012) (the "**Alu Appeal**"). On August 7, 2013, the district court presiding over the Alu Appeal entered its Opinion and Order [Alu Appeal ECF No. 29] affirming the Bankruptcy Court. Stettin appealed to the Eleventh Circuit, where the Alu Appeal remains pending, with all briefing abated. *Stettin v. USA*, Case No. 13-13786 (11th Cir. 2013).

The Kim Rothstein Litigation

W. On June 17, 2011, the Bankruptcy Court entered its Order Granting Motion to Approve the Settlement Agreement Between the Chapter 11 Trustee and Kimberly A. Rothstein [RRA Case ECF No. 1799] (the "**Kim Settlement Order**"). The Kim Settlement Order approved the settlement between Kimberly Rothstein ("**Kim Rothstein**") and RRA (the "**Kim Rothstein Settlement**").

X. On September 6, 2012, Kim Rothstein was charged by the Government with conspiracy to commit money laundering, to obstruct justice and to tamper with a witness. *USA v. Rothstein*, 12-CR-60204-RSR (the "**Kim Rothstein Criminal Case**").

Y. The Trustee alleged that Kim Rothstein violated the Kim Rothstein Settlement.

Z. On May 6, 2014, the Bankruptcy Court entered Final Judgment in the amount of \$2,000,000.00 against Kimberly Rothstein for violation of the Kim Rothstein Settlement.

AA. On November 12, 2013, the Government obtained a Preliminary Order of Forfeiture forfeiting assets recovered as a result of the investigation that culminated in Kim

Rothstein's Criminal Case. [Kim Rothstein Criminal Case ECF No. 113]. The Parties have reached an agreement to extend the time for RRA to file a petition within the Kim Rothstein Criminal Case pending approval of this Settlement Agreement.

Marin and Daoud Litigation

BB. On September 6, 2012, Eddy Marin and Patrick Daoud were charged with conspiracy to obstruct justice, obstruction of justice, and perjury. *United States v. Eddy Marin and Patrick Daoud*, Case No. 12-CR-60205 (S.D. Fla. 2012) ("**Marin Criminal Case**").

Y. On March 24, 2014, the Government obtained a Preliminary Order of Forfeiture forfeiting assets recovered as a result of the investigation that culminated in the Marin Criminal Case. [Marin Criminal Case ECF No. 98].

Mass Mutual Litigation

CC. On December 12, 2009, Massachusetts Mutual Life Insurance Co. filed an action against Rothstein. *Massachusetts Mutual Life Ins. Co., v. Rothstein*, 09-cv-61915-AJ (S.D. Fla. 2009) (the "**Mass Mutual Case**"). The Mass Mutual Case ended with Massachusetts Mutual Life Insurance Co., depositing \$618,777.40 into the District Court's registry ("**Mass Mutual Funds**").

DD. In all, the Government and the Trustee wish to resolve all disputes between them in connection with the Rothstein Criminal Case; the Kim Rothstein Criminal Case; the Marin Criminal Case; the Alu Appeal; and the Mass Mutual Litigation (collectively, the "**Rothstein-Related Litigation**").

EE. The Government wishes to meet its obligations to protect the rights of Qualifying Victims and therefore wishes to distribute the Restitution Assets to Qualifying Victims holding Restitution Claims in the most efficient manner possible¹. The Parties agree that this Settlement Agreement and the appointment of a Restitution Receiver is the best means to accomplish this goal.

NOW, THEREFORE, IT IS HEREBY AGREED, by and among the undersigned Parties as follows:

1. Recitals. The recitals set forth above are an integral part of this Agreement and are incorporated herein by reference and are explicitly made a part of this Agreement.

2. Definitions:

a. Restitution Claim: means each of the claims allowed by the District Court in its Order Approving Government's Final Report as to Restitution [Criminal Case ECF No. 598] (the "**Restitution Order**") [Criminal Case ECF No. 593, as amended [Criminal Case ECF Nos. 758, 808, and 825].

¹ Terms are defined in Section 3, below.

b. **Restitution Assets**: means those assets listed on Exhibit A hereto.

c. **Collateral Source Recoveries**: means any amount recovered by a Qualifying Victim for the same loss claimed by the Qualifying Victim in the Qualifying Victim's Restitution Claim, as mandated by 18 U.S.C. §3664(j)(2), or any compensation from any other source with respect to the loss covered by the Restitution Claim, as mandated by 18 U.S.C. §3664(j)(1). For the avoidance of doubt, Collateral Source Recoveries shall be calculated on a gross basis, with no reduction or credit for prejudgment interest, attorneys' fees or costs.

d. **Subordinated Restitution Claim**: means any Restitution Claim in respect of which the distribution on account thereof would be paid to the "provider of compensation" as mandated by 18 U.S.C. §3664(j)(1).

e. **Remaining Assets**: means all assets listed on Exhibit B hereto.

f. **Qualifying Victim**: means those persons or entities previously awarded restitution by the District Court pursuant to DE 598 as amended DE 758, 808, 825 subject to Title 18, United States Code, Section 3664(j) and Title 18, United States Code, Section 3663A(a)(2).

g. **Settlement Effective Date**: means the first business day after the last to occur of each of: (i) the order entered by the District Court approving this Settlement Agreement (the "**District Court Approval Order**") becoming a Final Order (as hereinafter defined), and (ii) the order entered by the Bankruptcy Court approving this Agreement becoming a Final Order (the "**Bankruptcy Court Approval Order**").

h. **Final Order**: means an order or judgment of the District Court or Bankruptcy Court, or other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, re-argument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, re-argument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, re-argument or rehearing has been denied or resulted in no modification of such order; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Federal Rules of Bankruptcy Procedure may be filed with respect to such order, shall not cause such order not to be a Final Order.

i. **Approval Motion**: means the *Joint Agreed Motion To Approve Settlement; Appoint Michael I. Goldberg As Restitution Receiver; Approve 18 U.S.C. §3664(J) Protocols; Approve Distribution Protocols; And Request To Set Joint Hearing* to be filed both before the District Court and the Bankruptcy Court.

3. **Material Terms**

a. **Forfeiture of Restitution Assets:** The Trustee agrees to support the entry of a final order of forfeiture (the “**Agreed Final Order of Forfeiture**”), which shall finally forfeit the Restitution Assets to the Government. The Agreed Final Order of Forfeiture shall be in a form acceptable to both the Trustee and the Government and consistent with the terms of this Settlement Agreement.

b. **Release of Remaining Assets:** All Remaining Assets shall be released to the Trustee for liquidation and/or distribution to the creditors of RRA pursuant to the RRA Plan under the supervision of the Bankruptcy Court.

c. **Appointment of Michael I. Goldberg, Esq., as Restitution Receiver:** The District Court Approval Order shall provide that Michael I. Goldberg, Esq. will be appointed as the “**Restitution Receiver.**” The District Court Approval Order will authorize the Restitution Receiver to take any action necessary to distribute the proceeds of all Restitution Assets to Qualifying Victims in accordance with this Settlement Agreement and the Final Amended Restitution Order (as defined in paragraph 3 (f) below). The terms of the Restitution Receivership shall include:

(i) **Scope:** the Restitution Receiver shall have standing to raise any position that is available to the Government or the RRA Trust. The Restitution Receiver will be authorized by the District Court to take any action necessary to protect or monetize any Restitution Assets and to make distributions to Qualifying Victims in accordance with the Settlement Agreement and applicable law. Any issue relating to the scope of the receivership shall be determined in the first instance by the District Court.

(ii) **Fees and Expenses:** The Restitution Receiver and his counsel will be compensated exclusively from the RRA Trust on the same terms as they provide their services to the RRA Trust. Their fees and expenses will be treated as Costs and Expenses of the Liquidating Trust pursuant to sections 6.2.9 and 6.2.11 of the RRA Plan as modified by the Confirmation Order. Accordingly, all issues relating to the payment of the Restitution Receiver and his professionals’ fees and expenses shall be heard and determined before the Bankruptcy Court.

d. **Restitution Receiver Distribution Schedule:** Within 14 days of the Settlement Effective Date, the Parties shall file with the District Court a schedule identifying the Restitution Claim for each Qualifying Victim through VNS numbers (the “**Distribution Schedule**”). The Distribution Schedule will indicate for each Restitution Claim: (i) the original allowed amount of the Restitution Claim; (ii) any Collateral Source Recoveries that are applied to reduce the distribution due on any Restitution Claim; and (iii) which Restitution Claims, if any, are to be treated as Subordinated Restitution Claims. Any objection to the Distribution Schedule must be filed in accordance with the procedures approved by the District Court or they are forever barred.

e. Maximum Proposed Distribution: Under no circumstances shall the distribution to any Qualifying Victim exceed the amount of the Restitution Claim after application of Title 18, United States Code, Section 3664(j) thereby taking into account all Collateral Source Recoveries.

f. Approval of the Restitution Receiver Distribution Schedule and Procedure to Resolve any Objection Thereto: the Government and the Restitution Receiver shall seek approval of the Distribution Schedule by the District Court. Any interested party listed thereon shall have 21 days from the date regarding the Distribution Schedule to file an objection with the District Court to their Restitution Claim. For purposes hereof the date of notice shall mean the date on which the Distribution Schedule is mailed to the victims through the Victim Notification System ("VNS"). Any such objection shall be signed under penalty of perjury by the holder of the Restitution Claim. The District Court shall resolve all objections. After all objections are adjudicated by the District Court, the Parties agree to support the entry of an amended restitution order by the District Court (the "**Final Amended Restitution Order.**").

g. Distribution to Holders of Allowed Restitution Claims: As soon as practicable after entry of the Final Amended Restitution Order by the District Court and the entry of the Agreed Final Order of Forfeiture, the Restitution Receiver shall disburse funds to Qualified Victims in accordance with Final Amended Restitution Order, unless the District Court orders otherwise upon motion by the Restitution Receiver.

h. Kim Rothstein Criminal Case: The Government agrees that all assets forfeited or subject to forfeiture in connection with the Kim Rothstein Criminal Case shall be treated as Remaining Assets under this Settlement Agreement; provided, however, the Trustee shall pay from the proceeds of the Remaining Assets the amount of \$250,000 to Sean Dunn pursuant to Title 19, U.S.C., Section 1619.

i. Marin Criminal Case: The Government agrees that all assets forfeited or subject to forfeiture in connection with the Marin Criminal Case shall be treated as Remaining Assets under this Settlement Agreement.

j. Mass Mutual Case: The Trustee and the Government agree to have the Mass Mutual Funds treated as Remaining Assets under this Settlement Agreement.

k. Alu Appeal: The Alu Appeal shall be dismissed and the funds subject of the Alu Appeal shall be treated as Remaining Assets under this Settlement Agreement.

l. Future Criminal Prosecutions: This agreement does not cover any assets forfeited or subject to forfeiture in connection with any future criminal prosecutions involving or relating to the crimes committed by Scott W. Rothstein and others. The Parties reserve all of their rights in respect of any future criminal prosecutions.

m. Filing of the Approval Motion. Promptly after the execution of this Settlement Agreement, the Trustee and the Government shall file the Approval Motion seeking both Bankruptcy Court and District Court approval of this Settlement Agreement.

n. Request for Joint Hearing. The Trustee and the Government shall seek a joint expedited hearing on the Approval Motion before the District Court and Bankruptcy Court. If either Court refuses to conduct a joint hearing, the Parties shall expeditiously first seek approval of this Settlement Agreement by the Bankruptcy Court followed by approval by the District Court.

o. Dismissal of Litigation: Upon the Settlement Effective Date, all litigation between the Trustee and the Government shall be resolved and dismissed in accordance with the terms of this Settlement Agreement.

4. Best Interest of RRA: The Trustee believes that the execution and approval of this Settlement Agreement is in the best interests of the RRA Liquidating Trust and the beneficiaries thereof.

5. Best Interests of Qualifying Victims: The Government believes that this Settlement Agreement is in the best interests of the Qualifying Victims.

6. Governing Law: This Settlement Agreement shall be governed by and construed in accordance with the federal law and where applicable the internal laws of the State of Florida, without giving effect to any principles of conflicts of law.

7. Retention of Jurisdiction: The Bankruptcy Court shall retain jurisdiction solely to enforce its order approving this Agreement and to approve the compensation of the Restitution Receiver and any professional he hires. The District Court shall have exclusive jurisdiction as it relates to all other matters including, but not limited to, the interpretation of this Agreement, all restitution issues, and all disputes arising therefrom.

8. Interpretation. Each Party represents that it has been represented by the counsel of its respective choice in connection with the negotiation of the settlement and documentation of this Settlement Agreement. The Parties have participated jointly in the negotiation and drafting of this Settlement Agreement. If an ambiguity or question of intent or interpretation arises, this Settlement Agreement will be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof will arise favoring or disfavoring any Party hereto because of the authorship of any provision of this Settlement Agreement.

9. Headings. The headings of the Sections, Paragraphs and subsections of this Settlement Agreement are inserted for convenience only and are not part of this Settlement Agreement and do not in any way limit or modify the terms or provisions of this Settlement Agreement and shall not affect the interpretation hereof.

10. Entire Agreement. This Settlement Agreement constitutes the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into this Settlement Agreement in reliance on any other Party's prior representation, promise or warranty (oral or otherwise) except for those that may be expressly set forth in this Settlement Agreement.

11. Amendment. The terms and provisions of this Settlement Agreement cannot be amended, modified or supplemented orally or by course of conduct or course of dealing, but only in a writing signed by the Party affected thereby.

12. Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

13. Further Assurances. Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Settlement Agreement.

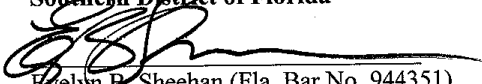
14. Parties' Fees and Costs. The Parties shall bear their own costs (including legal fees) in connection with the negotiation of the settlement and drafting of this Settlement Agreement.

2021 WINTER LEADERSHIP CONFERENCE

Case 0:09-cr-60331-JIC Document 845 Entered on FLSD Docket 07/14/2014 Page 26 of 35

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement,
intending to be legally bound hereby.

WIFREDO A. FERRER
United States Attorney for the
Southern District of Florida



Evelyn B. Sheehan (Fla. Bar No. 944351)

Alison W. Lehr (Fla. Bar No. 444537)

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Evelyn.Sheehan@usdoj.gov

Alison.Lehr@usdoj.gov

Date:

2/14/14

MICHAEL I. GOLDBERG, Esq.
Solely in his capacity as Liquidating Trustee
of the RRA Liquidating Trust

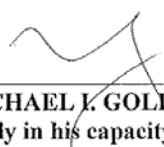
Date:

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement,
intending to be legally bound hereby.

WIFREDO A. FERRER
United States Attorney for the
Southern District of Florida

Evelyn B. Sheehan (Fla. Bar No. 944351)
Alison W. Lehr (Fla. Bar No. 444537)
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Evelyn.Sheehan@usdoj.gov
Alison.Lehr@usdoj.gov

Date: _____



MICHAEL I. GOLDBERG, Esq.
Solely in his capacity as Liquidating Trustee
of the RRA Liquidating Trust

Date: 7/14/14

2021 WINTER LEADERSHIP CONFERENCE

Case 0:09-cr-60331-JIC Document 845 Entered on FLSD Docket 07/14/2014 Page 28 of 35

EXHIBIT A- RESTITUTION ASSETS

| IDENTIFICATION PER ECF NO. 134 | DESCRIPTION |
|---------------------------------------|---|
| RP22 | 353 4 Ave., Unit 12-H, Brooklyn, NY |
| VV1 | 1990 Red Ferrari F40 Coupe |
| VV2 | White Bentley Convertible |
| VV3 | 2008 Yellow McLaren Mercedes Benz |
| VV4 | 2007 Black Limousine Ford Expedition |
| VV5 | 2008 Red Ferrari 430 Spider |
| VV6- | 2007 Silver Rolls Royce Convertible |
| VV7 | 2006 Silver Hummer H1 |
| VV8 | 2008 Cadillac Escalade |
| VV9 | 1967 Red Convertible Corvette |
| VV10 | 2008 Black Bugatti Veyron EB |
| VV12 | 2006 Red Ferrari F430 Spider |
| VV13 | 2008 Chevrolet Corvette |
| VV14 | 2009 Chevrolet Corvette Z06 |
| VV15 | 2009 Blue Gray Maserati Granturismo Coupe |
| VV16 | 2009 White Mercedes Benz |
| VV17 | 2007 87' Warren |
| VV18 | 33' Aquariva |
| VV19 | 2009 11' Yamaha Jet Ski |
| VV20 | 2009 11' Yamaha VS |
| VV21 | 2009 11' Yamaha VS |
| VV22 | 1999 55' Sea Ray 540 Sundancer |
| VV23 | 2009 Yamaha Jet Ski |
| VV24 | 2010 White Lamborghini lp-670sv |
| T1 | 304 Pieces of Jewelry |
| T2 | 16 DuPont Lighters |
| T3 | 3 pieces sports memorabilia |
| T4 | \$271,160 in U.S. currency |
| T5 | \$1,500 in U.S. currency |
| T6 | \$30,000 in American Express Gift Cards |
| T7 | \$50,000 in American Express Gift Cards |
| T8 | 5 additional watches |
| T9 | Guitar collection |
| BA1 | Fidelity Investments Stock Account |
| BA6 | Bank account 178780211819923220000187 |
| BA7 | Bank account Banque Populaire, Morocco |
| BA8 | Bank account Banque Populaire, Morocco |

5816213-3

AMERICAN BANKRUPTCY INSTITUTE

Case 0:09-cr-60331-JIC Document 845 Entered on FLSD Docket 07/14/2014 Page 29 of 35

| | |
|----------|--|
| BA12 | Toronto Dominion Bank, N.A. 6860422200 |
| BA13 | Toronto Dominion Bank, N.A. 6860755757 |
| BA14 | Toronto Dominion Bank, N.A. 6860755781 |
| BI 9 | Equity interest in Renato Watches |
| BI 12 | Equity interest in Sea Club Ocean Resort Hotel, LLC |
| BI 19 | Equity interest in Iron Street Management, LLC |
| BI 24 z. | Broward Financial Holdings, Inc. |
| C4 | \$90,000 to Republican Party of Florida |

5816213-3

2021 WINTER LEADERSHIP CONFERENCE

Case 0:09-cr-60331-JIC Document 845 Entered on FLSD Docket 07/14/2014 Page 30 of 35

EXHIBIT B- REMAINING ASSETS

| IDENTIFICATION PER ECF NO. 134 | DESCRIPTION |
|--------------------------------|---|
| BA2 | Gibraltar Bank account 50010085 |
| BA3 | Gibraltar Bank account 50010093 |
| BA4 | Gibraltar Bank account 50011253 |
| BA5 | Gibraltar Bank account 50015214 |
| BA10 | Toronto Dominion Bank, N.A. 6861011556 |
| BA11 | Toronto Dominion Bank, N.A. 6860420923 |
| BA16 | Toronto Dominion Bank, N.A. 6861076906 |
| BA17 | Toronto Dominion Bank, N.A. 6861011614 |
| BA18 | Toronto Dominion Bank, N.A. 6860291274 |
| BA19 | Toronto Dominion Bank, N.A. 6861076922 |
| BA20 | Schwyz Kantonbank #CH75 0077700530742040 |
| BI 24 b. | 235 GC LLC |
| BI 24 c. | 350 LOP#2840 LLC |
| BI 24 d. | 353 BR LLC |
| BI 24 f. | 708 Spangler LLC |
| BI 24 g. | 1012 Broward LLC |
| BI 24 h. | 1198 Dixie LLC |
| BI 24 i. | 1299 Federal LLC |
| BI 24 j. | 2133 IP LLC |
| BI 24 k. | 15158 LLC |
| BI 24 m. | AAMG1 LLC |
| BI 24 n. | AAMM Holdings |
| BI 1 | Stock Certificates, or beneficial interest, Gibraltar Private Bank & Trust |
| BI 10 | Equity interest in Edify LLC |
| BI 11 | Equity interest V Georgio Vodka |
| BI 13 | Equity interest in North Star Mortgage |
| BI 14 | Equity Interest in Kip Hunter Marketing, LLC |
| BI 15 | Equity interest in RRA Sports and Entertainment, LLC |
| BI 16 | Equity interest in Casa Casuarina |
| BI 17 | Equity interest in Alternative Biofuel Technologies, Inc. |
| BI 18 | Equity interest in RRA Goal Line Management |
| BI 2 | Equity interest in Qtask |
| BI 20 | Equity interest in Africat |

5816213-3

AMERICAN BANKRUPTCY INSTITUTE

Case 0:09-cr-60331-JIC Document 845 Entered on FLSD Docket 07/14/2014 Page 31 of 35

| | |
|-----------|---|
| BI 21 | Equity interest in 1198 Dixie LLC |
| BI 22 | Equity interest 1299 Federal LLC |
| BI 23 | Promissory Note by Uniglobe |
| BI 24 a. | Equity Interest in 29 Bahia LLC |
| BI 24 aa. | Equity interest in CI07, LLC |
| BI 24 ab. | Equity interest in CI08, LLC |
| BI 24 ac. | Equity interest in CI16, LLC |
| BI 24 ad. | Equity interest in CI 27, LLC |
| BI 24 ae. | CSU LLC |
| BI 24 af. | D&D Management & Investment LLC |
| BI 24 ag. | D&S Management and Investment LLC |
| BI 24 ah. | DJB Financial Holdings LLC |
| BI 24 ai. | Equity interest in DYMMU, LLC |
| BI 24 aj. | Equity interest in Full Circle Fort Lauderdale, LLC |
| BI 24 ak. | Equity interest in Full Circle Trademark Holdings LLC. |
| BI 24 al. | Equity interest in GHWI LLC |
| BI 24 am. | IDNL GEAH LLC |
| BI 24 an | Equity interest in ILK3, LLC. |
| BI 24 ao | Equity interest in IS Management, LLC. |
| BI 24 ap | Equity interest in JRCL, LLC. |
| BI 24 aq | Equity interest in Judah, LLC. |
| BI 24 ar. | Kendall Sports Bar |
| BI 24 at. | NF Servicing LLC |
| BI 24 au. | NRI 11 LLC |
| BI 24 av. | NRI 15 LLC |
| BI 24 aw. | NS Holdings LLC |
| BI 24 ax | Equity interest in PRCH, LLC. |
| BI 24 ay | Equity interest in PK Adventures, LLC. |
| BI 24 az | Equity interest in PK's Wild Ride, Ltd. |
| BI 24 ba | All Equity interest held by or on behalf of , in Rothstein Family Foundation |
| BI 24 bb | Equity interest in RRA Consulting, Inc. |
| BI 24 bc. | RRA Goal Line Management LLC |
| BI 24 bd. | RRA Sports and Entertainment LLC |
| BI 24 be. | RSA 11th Street LLC |
| BI 24 bf. | RW Collections LLC |
| BI 24 bg | Equity interest in S& KEA, LLC. |
| BI 24 bh. | Scorh LLC |
| BI 24 bi | Equity interest in Tipp, LLC. |
| BI 24 bj | Equity interest in VGS, LLC. |

5816213-3

2021 WINTER LEADERSHIP CONFERENCE

Case 0:09-cr-60331-JIC Document 845 Entered on FLSD Docket 07/14/2014 Page 32 of 35

| | |
|-----------|---|
| BI 24 bk | Equity interest in The Walters Family, LLC. |
| BI 24 bl | Equity interest in Walter Industries, LLC. |
| BI 24 bm. | WPBRS LLC |
| BI 24 bn. | WAWW |
| BI 24 bo | Equity interest in WAWW 2, LLC. |
| BI 24 bp | Equity interest in WAWW 3, LLC. |
| BI 24 bq. | WAWW 4 LLC |
| BI 24 br | Equity interest in WAWW 5, LLC. |
| BI 24 bs | Equity interest in WAWW 6, LLC. |
| BI 24 bt | Equity interest in WAWW 7, LLC. |
| BI 24 bu. | WAWW 8 LLC |
| BI 24 bv. | WAWW 9 LLC |
| BI 24 bw. | WAWW 10 LLC |
| BI 24 bx. | WAWW 11 LLC |
| BI 24 by. | WAWW 12 LLC |
| BI 24 bz. | WAWW 14 LLC |
| BI 24 ca | Equity interest in WAWW 15, LLC. |
| BI 24 cb | Equity interest in WAWW 16, LLC. |
| BI 24 cc. | WAWW 17 LLC |
| BI 24 cd | Equity interest in WAWW 18, LLC. |
| BI 24 ce. | WAWW 19 LLC |
| BI 24 cf | Equity interest in WAWW 20, LLC. |
| BI 24 cg | Equity interest in WAWW 21, LLC. |
| BI 24 ch | Equity interest in WAWW 22, LLC. |
| BI 24 ci | Equity interest in JB Boca M Holdings, LLC. |
| BI 24 e | 10630 #110 LLC |
| BI 24 l | Equity interest in AANG, LLC. |
| BI 24 o | Equity interest in ABT Investments, LLC. |
| BI 24 p | Equity interest in Advanced Solutions |
| BI 24 q | Equity interest in Bahia Property Management, LLC. |
| BI 24 r | Equity interest in Boat Management, LLC. |
| BI 24 s. | BOSM Holdings LLC |
| BI 24 t | All Equity interest held by or on behalf of, in BOVA Prime, LLC. |
| BI 24 u | All Equity interest held by or on behalf of, in BOVA Restaurant Group, LLC. |
| BI 24 v | All Equity interest held by or on behalf of, in The BOVA Group, LLC. |
| BI 24 w | All Equity interest held by or on behalf of, in BOVA Smoke, LLC. |

5816213-3

AMERICAN BANKRUPTCY INSTITUTE

Case 0:09-cr-60331-JIC Document 845 Entered on FLSD Docket 07/14/2014 Page 33 of 35

| | |
|-----------|---|
| BI 24 x | All Equity interest held by or on behalf of, in BOVCU, LLC. |
| BI 24 y | All Equity interest held by or on behalf of, in BOVRI, LLC. |
| BI 25 a | interest in The 2009 Scott W. Rothstein Revocable Trust |
| BI 25 aa. | Renato Watches, Inc. |
| BI 25 ab | interest in Rothstein Family, LTD. |
| BI 25 ad | interest in SPAC Investments, LLC |
| BI 25 ae | interest in TB22 Mario's, Inc. |
| BI 25 af | interest in TB22N, LLC |
| BI 25 ag | interest in TLBN, LLC |
| BI 25 ah. | UG, LLC |
| BI 25 ai | interest in Uniglobe Environmental Solutions, Inc. |
| BI 25 aj | interest in VGSI, LLC |
| BI 25 ak | interest in V Georgio Spirits, LLC |
| BI 25 al | interest in WAWW 13, LLC |
| BI 25 am | interest in Rothstein Rosenfeldt Adler, P.A., located in Florida |
| BI 25 an | interest in Rothstein Rosenfeldt Adler, P.A., located in Venezuela |
| BI 25 b | interest in REC Group, LLC |
| BI 25 c | interest in REN Group, LLC |
| BI 25 d | interest in REP Group, LLC |
| BI 25 e | interest in RES Group, LLC |
| BI 25 f | interest in RET Group, LLC |
| BI 25 g | interest in REV Group, LLC |
| BI 25 h. | AAMG, LLC |
| BI 25 i | interest in BFHI, LLC |
| BI 25 j | interest in BFH1, LLC |
| BI 25 k. | Cartshield USA, LLC |
| BI 25 l | interest in CCCN, LLC |
| BI 25 m | interest in CCM, LLC |
| BI 25 n | interest in Cha Cha Cha, Inc. |
| BI 25 o. | Fifth Court Financial, LLC |
| BI 25 p. | GBPT, LLC |
| BI 25 q. | Iron Street Management, LLC |
| BI 25 r | interest in JB Boca Holdings, LLC |
| BI 25 s. | JJ Finance Holdings, LLC |
| BI 25 t. | JWG Holdings, LLC |
| BI 25 u | interest in Luxury Resorts, LLC |

5816213-3

2021 WINTER LEADERSHIP CONFERENCE

Case 0:09-cr-60331-JIC Document 845 Entered on FLSD Docket 07/14/2014 Page 34 of 35

| | |
|----------|--|
| BI 25 v | interest in MLC 350, LLC |
| BI 25 w. | MRISC, LLC |
| BI 25 x. | MRI Scan Center, Inc. |
| BI 25 y. | QT, LLC |
| BI 25 z. | Qtask |
| BI 3 | Equity interest in Broward Bank of Commerce |
| BI 7 | Equity interest in Café Iguana, Pembroke Pines, Florida |
| BI 8 | Equity interest in Cart Shield USA, LLC |
| C1 | \$6,000 for Alex Sink |
| C2 | \$40,000 Republican Party of Florida |
| C3 | \$10,000 Republican Party of Florida "Federal" |
| C5 | \$5,000 Republican Party of Florida |
| C6 | \$800,000 Joe DiMaggio Children's Hospital |
| C7 | \$1,000,000 Holy Cross Hospital |
| C8 | \$9,600 Gov. Charlie Crist |
| C9 | Funds turned over in response to publicity, including \$5,000 from CAKK |
| M1 | All premiums paid to Mutual Life Insurance Company |
| M2 | American Express rewards points totaling 20,920,701 |
| M3 | Property in response to publicity, including watches from "JH" and "MBF" |
| RP10 | 10630 NW 4th street, Apt. 110, Plantation, Florida |
| RP11 | 227 Garden Court, Lauderdale by the Sea, Florida |
| RP12 | 708 Spangler Boulevard, Bay 1, Hollywood, Florida |
| RP13 | 1012 East Broward Boulevard, Fort Lauderdale, Florida |
| RP15 | 350 SE 2nd Street, Commercial Unit 2, Fort Lauderdale, Florida |
| RP16 | 361 SE 9 Lane, Boca Raton, Florida |
| RP17 | 1198 N Old Dixie Highway, Boca Raton, Florida |
| RP18 | 1299 N Federal Highway, Boca Raton, Florida |
| RP19 | 151 East 58 Street, apartment 42D, New York, New York |

5816213-3

AMERICAN BANKRUPTCY INSTITUTE

Case 0:09-cr-60331-JIC Document 845 Entered on FLSD Docket 07/14/2014 Page 35 of 35

| | |
|--|---|
| RP20 | 11 Bluff Hill Cove Farm, Narragansett, Rhode Island |
| RP23 | 290 W 11th Street, #1C, New York, NY |
| RP6 | 350 SE 2nd Street, Unit 2840, Fort Lauderdale, Florida |
| RP7 | 380 Carrington Drive, Weston, Florida |
| RP8 | 2133 Imperial Point Drive, Fort Lauderdale, Florida |
| IN ADDITION TO THE FOREGOING, ALL ASSETS SEIZED BY GOVERNMENT AND NOT LISTED ON EXHIBIT A ARE TO BE CONSIDERED REMAINING ASSETS UNDER THE SETTLEMENT AGREEMENT, UNLESS RELEASED OR DISMISSED PURSUANT TO COURT ORDER PRIOR TO THE DATE OF THE SETTLEMENT AGREEMENT. | |

§ 9.1 Purpose, authority, and scope., 28 C.F.R. § 9.1

Code of Federal Regulations

Title 28. Judicial Administration

Chapter I. Department of Justice

Part 9. Regulations Governing the Remission or Mitigation of Administrative, Civil, and Criminal Forfeitures (Refs & Annos)

28 C.F.R. § 9.1

§ 9.1 Purpose, authority, and scope.

Effective: October 12, 2012

Currentness

(a) Purpose. This part sets forth the procedures for agency officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the agency, and civil judicial and criminal judicial forfeitures under the jurisdiction of the Department of Justice's Criminal Division. The purpose of this part is to provide a basis for the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law. Additionally, the regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(b) Authority to grant remission and mitigation.

(1) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Federal Bureau of Investigation (FBI), authority to grant remission and mitigation is delegated to the Forfeiture Counsel, who is the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel; within the Drug Enforcement Administration (DEA), authority to grant remission and mitigation is delegated to the Forfeiture Counsel, Office of Chief Counsel; and within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), authority to grant remission and mitigation is delegated to the Associate Chief Counsel, Office of Chief Counsel.

(2) Remission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section.

(3) The powers and responsibilities delegated by this part may be redelegated to attorneys or managers working under the supervision of the designated officials.

(c) Scope. This part governs any petition for remission filed with the Attorney General and supersedes any Department of Justice regulation governing petitions for remission, to the extent such regulation is inconsistent with this part.

§ 9.1 Purpose, authority, and scope., 28 C.F.R. § 9.1

(d) The time periods and internal requirements established in this part are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. This part applies to all forfeiture actions commenced on or after October 12, 2012.

AUTHORITY: 5 U.S.C. 301; 8 U.S.C. 1103, 1324(b); 18 U.S.C. 981, 983, 3051; 19 U.S.C. 1606, 1607, 1608, 1610, 1612(b), 1613, 1618; 21 U.S.C. 822, 871, 872, 880, 881, 883, 958, 965; 28 U.S.C. 509, 510; Pub.L. 100-690, sec. 6079.

Notes of Decisions (175)

Current through August 15, 2019; 84 FR 41877.

End of Document

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Proposed Legislation

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 46. Forfeiture (Refs & Annos)

18 U.S.C.A. § 982

§ 982. Criminal forfeiture

Effective: June 5, 2012

[Currentness](#)

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of [section 1956](#), [1957](#), or [1960](#) of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate--

(A) [section 215](#), [656](#), [657](#), [1005](#), [1006](#), [1007](#), [1014](#), [1341](#), [1343](#), or [1344](#) of this title, affecting a financial institution, or

(B) [section 471](#), [472](#), [473](#), [474](#), [476](#), [477](#), [478](#), [479](#), [480](#), [481](#), [485](#), [486](#), [487](#), [488](#), [501](#), [502](#), [510](#), [542](#), [545](#), [555](#), [842](#), [844](#), [1028](#), [1029](#), or [1030](#) of this title,

shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

(3) The court, in imposing a sentence on a person convicted of an offense under--

(A) [section 666\(a\)\(1\)](#) (relating to Federal program fraud);

(B) [section 1001](#) (relating to fraud and false statements);

(C) [section 1031](#) (relating to major fraud against the United States);

(D) [section 1032](#) (relating to concealment of assets from conservator, receiver, or liquidating agent of insured financial institution);

(E) [section 1341](#) (relating to mail fraud); or

(F) [section 1343](#) (relating to wire fraud),

involving the sale of assets acquired or held by the the¹ Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency, or the National Credit Union Administration, as conservator or liquidating agent for a financial institution, shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.

(5) The court, in imposing sentence on a person convicted of a violation or conspiracy to violate--

(A) [section 511](#) (altering or removing motor vehicle identification numbers);

(B) [section 553](#) (importing or exporting stolen motor vehicles);

(C) [section 2119](#) (armed robbery of automobiles);

(D) [section 2312](#) (transporting stolen motor vehicles in interstate commerce); or

(E) [section 2313](#) (possessing or selling a stolen motor vehicle that has moved in interstate commerce);

shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of such violation.

(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or [section 555](#), [1425](#), [1426](#), [1427](#), [1541](#), [1542](#), [1543](#), [1544](#), or [1546](#) of this title, or a violation of, or conspiracy to violate, [section 1028](#) of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law--

(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(ii) any property real or personal--

(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or

(II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.

(B) The court, in imposing sentence on a person described in subparagraph (A), shall order that the person forfeit to the United States all property described in that subparagraph.

(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

(8) The court, in sentencing a defendant convicted of an offense under [section 1028](#), [1029](#), [1341](#), [1342](#), [1343](#), or [1344](#), or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in [section 2325](#)), shall order that the defendant forfeit to the United States any real or personal property--

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 853](#)).

(2) The substitution of assets provisions of subsection 413(p) shall not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of \$100,000 or more in any twelve month period.

CREDIT(S)

(Added [Pub.L. 99-570, Title I, § 1366\(a\)](#), Oct. 27, 1986, 100 Stat. 3207-39; amended [Pub.L. 100-690, Title VI, §§ 6463\(c\)](#), 6464, Nov. 18, 1988, 102 Stat. 4374, 4375; [Pub.L. 101-73, Title IX, § 963\(c\)](#), Aug. 9, 1989, 103 Stat. 504; [Pub.L. 101-647, Title XIV, §§ 1401](#), 1403, Title XXV, § 2525(b), Nov. 29, 1990, 104 Stat. 4835, 4874; [Pub.L. 102-393, Title VI, § 638\(e\)](#), Oct. 6, 1992, 106 Stat. 1788; [Pub.L. 102-519, Title I, § 104\(b\)](#), Oct. 25, 1992, 106 Stat. 3385; [Pub.L. 102-550, Title XV, § 1512\(c\)](#), Oct. 28, 1992, 106 Stat. 4058; [Pub.L. 103-322, Title XXXIII, § 330011\(s\)\(1\)](#), Sept. 13, 1994, 108 Stat. 2145; [Pub.L. 104-191, Title II, § 249\(a\), \(b\)](#), Aug. 21, 1996, 110 Stat. 2020; [Pub.L. 104-208, Div. C, Title II, § 217](#), Sept. 30, 1996, 110 Stat. 3009-573; [Pub.L. 105-184, § 2](#), June 23, 1998, 112 Stat. 520; [Pub.L. 105-318, § 6\(a\)](#), Oct. 30, 1998, 112 Stat. 3010; [Pub.L. 106-185, § 18\(b\)](#), Apr. 25, 2000, 114 Stat. 223; [Pub.L. 107-56, Title III, § 372\(b\)\(2\)](#), Oct. 26, 2001, 115 Stat. 339; [Pub.L. 107-273, Div. B, Title IV, § 4002\(b\)\(10\)](#), Nov. 2, 2002, 116 Stat. 1808; [Pub.L. 109-295, Title V, § 551\(c\)](#), Oct. 4, 2006, 120 Stat. 1390; [Pub.L. 110-161, Div. E, Title V, § 553\(b\)](#), Dec. 26, 2007, 121 Stat. 2082; [Pub.L. 111-203, Title III, § 377\(4\)](#), July 21, 2010, 124 Stat. 1569; [Pub.L. 112-127, § 5](#), June 5, 2012, 126 Stat. 371.)

§ 982. Criminal forfeiture, 18 USCA § 982

[Notes of Decisions \(134\)](#)

Footnotes

¹ So in original.

18 U.S.C.A. § 982, 18 USCA § 982

Current through P.L. 116-41.

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Unconstitutional or Preempted Prior Version's Validity Called into Doubt by [U.S. v. Riedl](#), D.Hawai'i, Oct. 11, 2001



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[United States Code Annotated](#)

[Title 21. Food and Drugs \(Refs & Annos\)](#)

[Chapter 13. Drug Abuse Prevention and Control \(Refs & Annos\)](#)

[Subchapter I. Control and Enforcement](#)

[Part D. Offenses and Penalties](#)

21 U.S.C.A. § 853

§ 853. Criminal forfeitures

Effective: December 1, 2009

[Currentness](#)

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law--

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of [section 848](#) of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property"

Property subject to criminal forfeiture under this section includes--

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers

All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption

There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that--

- (1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II or within a reasonable time after such period; and
- (2) there was no likely source for such property other than the violation of this subchapter or subchapter II.

(e) Protective orders

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section--

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that--

- (i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and
- (ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(4) Order to repatriate and deposit

(A) In general

Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) Failure to comply

Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

(f) Warrant of seizure

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(g) Execution

Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or

derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(h) Disposition of property

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(i) Authority of the Attorney General

With respect to property ordered forfeited under this section, the Attorney General is authorized to--

- (1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;
- (2) compromise claims arising under this section;
- (3) award compensation to persons providing information resulting in a forfeiture under this section;
- (4) direct the disposition by the United States, in accordance with the provisions of [section 881\(e\)](#) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and
- (5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) Applicability of civil forfeiture provisions

Except to the extent that they are inconsistent with the provisions of this section, the provisions of [section 881\(d\)](#) of this title shall apply to a criminal forfeiture under this section.

(k) Bar on intervention

Except as provided in subsection (n), no party claiming an interest in property subject to forfeiture under this section may--

- (1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or
- (2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(l) Jurisdiction to enter orders

The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) Depositions

In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under [Rule 15 of the Federal Rules of Criminal Procedure](#).

(n) Third party interests

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the

property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that--

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(o) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) Forfeiture of substitute property

(1) In general

Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant--

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property

In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) Return of property to jurisdiction

In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

(q) Restitution for cleanup of clandestine laboratory sites

The court, when sentencing a defendant convicted of an offense under this subchapter or subchapter II involving the manufacture, the possession, or the possession with intent to distribute, of amphetamine or methamphetamine, shall--

(1) order restitution as provided in [sections 3612 and 3664 of Title 18](#);

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant, or on premises or in property that the defendant owns, resides, or does business in; and

(3) order restitution to any person injured as a result of the offense as provided in [section 3663A of Title 18](#).

CREDIT(S)

(Pub.L. 91-513, Title II, § 413, as added and amended Pub.L. 98-473, Title II, §§ 303, 2301(d)-(f), Oct. 12, 1984, 98 Stat. 2044, 2192, 2193; Pub.L. 99-570, Title I, §§ 1153(b), 1864, Oct. 27, 1986, 100 Stat. 3207-13, 3207-54; Pub.L. 104-237, Title II, § 207, Oct. 3, 1996, 110 Stat. 3104; Pub.L. 106-310, Div. B, Title XXXVI, § 3613(a), Oct. 17, 2000, 114 Stat. 1229; Pub.L. 107-56, Title III, § 319(d), Oct. 26, 2001, 115 Stat. 314; Pub.L. 109-177, Title VII, § 743(a), Mar. 9, 2006, 120 Stat. 272; Pub.L. 111-16, § 5, May 7, 2009, 123 Stat. 1608.)

[Notes of Decisions \(501\)](#)

21 U.S.C.A. § 853, 21 USCA § 853
Current through P.L. 116-41.

Faculty

Kathy Bazoian Phelps is a partner at Raine Feldman LLP in Los Angeles and has over 30 years of practice as a lawyer in bankruptcy law and fraud litigation. She has spoken and written widely on a broad range of fraud and bankruptcy-related matters, and co-wrote *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*. Ms. Phelps brings her years of practical experience in the administration of Ponzi scheme cases and her knowledge of the law in this area to provide assistance and insight to investors, brokerage firms, financial institutions, attorneys, accountants and other businesses into how to avoid getting involved in a Ponzi or other fraudulent scheme, and what due diligence steps to take. She has literally “written the book” on Ponzi schemes and is the go-to expert on all issues relating to Ponzi schemes. Ms. Phelps recently also wrote a practical guide for investors and others containing specific tools and due diligence questions to ask, and insights into the marketing and sales tactics employed by Ponzi perpetrators and other fraudsters. The book, *Ponzi-Proof Your Investments: An Investor’s Guide to Avoid Ponzi Schemes*, will be released soon. Ms. Phelps has spoken to hundreds of professionals, lawyers, accountants, bankers, financial advisors, investors and others about mandatory due diligence and red flag warnings that simply cannot be ignored. She routinely shares the facts and interesting stories that are occurring in Ponzi cases, along with the legal decisions being published daily that continue to shape the law in this area. Ms. Phelps received her B.A. in international relations from Pomona College and her J.D. from University of California, Los Angeles in 1991.

Evelyn B. Sheehan is a lawyer with Kobre & Kim LLP in Miami, where she focuses her practice on advising institutional clients and their executives in cross-border investigations, government enforcement actions and related asset-forfeiture matters. In addition, she also counsels clients in global asset-tracing investigations and recovery efforts, in which she leads offensive asset-forfeiture actions in aid of civil-claim monetization. Before joining Kobre & Kim, Ms. Sheehan served as a prosecutor at the U.S. Department of Justice as an Assistant U.S. Attorney for the U.S. Attorney’s Office for the Southern District of Florida. Most recently, she served as deputy chief of the Asset Forfeiture Division for that office, where she was responsible for overseeing complex cross-border investigations related to international corruption, foreign bribery, white-collar fraud, narcotics trafficking, organized crime and violations of anti-money laundering laws. During her tenure at the Department of Justice, Ms. Sheehan worked for more than six years to litigate the complex forfeiture matters related to the infamous \$1.4 billion fraud scheme led by Scott Rothstein. The prosecution and forfeiture resulted in the successful conviction and imprisonment of 29 total defendants, and, as a result of the significant forfeiture recovery and coordination with the liquidating trustee for the law firm of Rothstein, Rosenfeldt and Adler, concluded in the full restitution of the hundreds of victims involved. As a result of her work in this case, Ms. Sheehan was awarded the 2016 U.S. Attorney General’s Distinguished Service Award and was a semi-finalist for the 2010 *Daily Business Review*’s Most Effective Lawyers Award for Criminal Justice Category. Ms. Sheehan was also a member of the Regional Committee of the Organized Crime and Drug Enforcement Task Force (OCDETF). As a result of her work on two high-profile international money-laundering investigations, she earned two National OCDETF Awards. She has also lectured extensively on the application of asset-forfeiture and money laundering laws for the U.S. Department of Justice and a number of federal agencies, including the Federal Bureau of Investigation, the U.S. Department of Defense, the U.S. Department of Health and Human Services, and the Drug Enforcement Agency. Before her time as a prosecutor,

Ms. Sheehan practiced with White & Case LLP, where she focused on complex commercial litigation, and with Debevoise & Plimpton LLP, where she focused on private-equity fund formation and bankruptcy work. She received her undergraduate degree from the University of Michigan and her J.D. from Yale Law School.

Frank P. Terzo is a partner in the Bankruptcy and Creditors' Rights and Health Law Practice of Nelson Mullins Riley & Scarborough LLP in Fort Lauderdale, Fla., where his practice is devoted to a wide range of insolvency matters, particularly health care insolvency and restructuring cases. Recently, he represented a \$50 million bank syndication that had a secured claim against a significant Florida-based holding company with multiple subsidiaries operating Medicare Advantage HMOs and Medicare Advantage PFFSs in Florida, Texas, Georgia and Nevada. Additionally, he served as special health care counsel in a well-publicized skilled-nursing home case that challenged CMS's termination of the SNF's provider agreement in both the bankruptcy court, federal district court and the Eleventh Circuit Court of Appeals. Most recently, he represented the UCC and now the liquidating trust in a critical-access hospital case involving a \$300 million clinical laboratory fraud. Prior to practicing law, Mr. Terzo spent 18 years in the health care industry, successfully starting up, managing and operating various public companies in physician practice management, comprehensive home health care and national clinical laboratories. His experience in health care businesses has provided numerous opportunities to represent trustees and committees in hospital, nursing home, diagnostic center and HMO cases, as well as an appointment as a patient care ombudsman in the U.S. Bankruptcy Court for the Middle District of Florida. Mr. Terzo is AV-rated by Martindale-Hubbell, named as a "Super Lawyer" by *Florida Super Lawyers* magazine, described as a "Top Attorney" in the *South Florida Legal Guide*, and listed in the 2009-2020 editions of *The Best Lawyers in America* and the 2012-2019 editions of *Chambers & Partners USA*. He currently serves on the Bankruptcy Faculty Advisory Board of St. John's University School of Law in New York and on the advisory boards of ABI's Caribbean Insolvency Symposium and Alexander L. Paskay Bankruptcy Seminar. Mr. Terzo is a former adjunct professor of bankruptcy law at Nova Southeastern University School of Law. He received his B.S. from the University of Cincinnati and his J.D. with honors from Nova Southeastern University Shepard Broad Law Center, where he was a member of the Order of the Coif.