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Criminal Division
Asset Forfeiture and Money Laundering Section

ASSET FORFEITURE NEWS

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Disposition of Firearms

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At the recent Sixth Circuit Asset Forfeiture Component Seminar in Nashville, Tennessee, on September 10-12, 1996, several questions arose regarding the disposal of firearms seized from defendants. The legal authority to forfeit firearms connected with criminal activity was previously discussed in the September/October 1995 issue of the *Asset Forfeiture News*. As noted in that issue, the authority to forfeit firearms under laws enforced by the Bureau of Alcohol, Tobacco and Firearms (ATF) is quite broad. Firearms

(See **FIREARMS** on page 6)

Forfeiting Property "Involved In" and "Traceable To" a Money Laundering Offense

by
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A recent decision by the Court of Appeals for the Third Circuit gives a narrow interpretation to what the government is able to forfeit as property "traceable to" a money laundering offense. If the property is not strictly traceable to the money laundering offense, the court holds, it is not forfeitable directly under 18 U.S.C. § 982(a)(1)(A), but must be forfeited as substitute assets. In the course of its decision, however, the court reaffirms the government's right to a money judgment against the defendant in a criminal forfeiture case, and it explains the often confusing distinction between a money judgment and substitute assets. The case also illustrates the importance of choosing the right transaction to charge as a

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money laundering offense to ensure that specific assets are subject to forfeiture.

In *United States v. Voight*, 89 F.3d 1050 (3rd Cir. 1996), the defendant was engaged in a long-running fraud scheme involving the sale of bogus financial instruments and the solicitation of advance fees for loans that were never made. Altogether, in the course of the scheme the defendant received $7.5 million in fraud proceeds.

The indictment alleged that the defendant deposited the fraud proceeds into one bank account and then executed wire transfers that moved the proceeds from the first bank account to a second account where they were commingled with untainted funds. The movement of the funds from the first account to the second was charged as a series of money laundering offenses involving a total of $1.6 million. The indictment contained a criminal forfeiture count under section 982(a)(1)(A) that sought the forfeiture of all property involved in the money laundering offenses.

"A money judgment does not give the government the right, under the forfeiture laws, to seize specific assets."

When the defendant was convicted of the money laundering offenses, the district court granted the government's motion to forfeit certain jewelry that the defendant had purchased with funds drawn from the second bank account. The government's theory was that the second bank account contained property "involved in" the money laundering offenses, and that the jewelry was "traceable to" that property. *See* 18 U.S.C. § 982(a)(1)(A) (authorizing the forfeiture of "any property, real or personal, involved in [a money laundering] offense, and any property traceable thereto").

The defendant objected to the forfeiture of the jewelry on the ground that the account, from which the purchase money was drawn, contained not only money involved in the money laundering offense, but also other funds from other sources. Thus, the issue before the Third Circuit was whether property purchased with commingled funds is "traceable to" the crime giving rise to the forfeiture, within the meaning of section 982(a)(1)(A).

In Personam Nature of Criminal Forfeiture

The government argued that because criminal forfeiture is an *in personam* penalty, it is not necessary to trace property belonging to the defendant directly back to the offense giving rise to the forfeiture. In support of this argument, the government relied on a series of cases from the mid-1980's holding that given the *in personam* nature of the penalty and the fungible quality of money, funds in a bank account are subject to criminal forfeiture even if they cannot be traced to a particular offense. *See United States v. Robilotto*, 828 F.3d 940, 949 (2d Cir. 1987), *United States v. Ginsburg*, 773 F.2d 798, 802-03 (7th Cir. 1985) (*en banc*); *United States v. Conner*, 752 F.2d 566, 576 (11th Cir. 1985).

The Third Circuit, however, rejected this argument and held that "traceable to" means exactly what it says: to be subject to forfeiture, property must be directly traceable to the underlying criminal offense. 1996 WL 380609 at *33. The trio of cases on which the government relied, *Robilotto*, *Ginsburg* and *Conner*, were all decided before Congress amended the criminal forfeiture statutes to authorize the forfeiture of substitute assets. Thus, to the extent that those cases permitted the forfeiture of property without strict tracing -- i.e., to the extent that they created a common law mechanism of forfeiting substitute assets not directly traceable to the underlying offense -- they have been legislatively overruled.

So, under the current statutory scheme, if the government wishes to forfeit property directly under section 982(a)(1)(A), it must establish, by a preponderance of the evidence, that the property "has some nexus to the property 'involved in' the money laundering offense." *Id.* The court gave the following example. If the defendant receives $500,000 in

cash in a money laundering transaction and hides it in his house, the government may seize the cash as property involved in the money laundering offense. If the defendant uses $250,000 to purchase personal property, the government may seize the remaining $250,000 in cash as property directly involved in the offense, and may seize the personal property as property "traceable to" the money laundering offense.

But the court emphasized the government's burden of tracing property to a money laundering offense will be "difficult if not impossible to satisfy" when the purchase money is drawn from a bank account that contains commingled funds. *Id.* at *34. In particular, in such instances the government will not be entitled to a presumption that the tainted funds were used to purchase the property the government wishes to forfeit while the untainted funds remained behind in the account.[1]

The solution in such instances, the court held, is to use the substitute asset provision in 21 U.S.C. § 853(p), incorporated into section 982 by section 982(b)(1)(A). In the court's view, Congress's enactment of the substitute assets provision means that if the "defendant has commingled laundered funds with untainted property -- whether in a bank account or in a tattered suitcase . . . the government must satisfy its forfeiture judgment through the substitute assets provision" and not by reliance on case law that treated substitute assets as property traceable to the offense. *Id.*

"The government may avoid this problem, however, by carefully choosing the transaction that is charged as a money laundering offense in the Indictment. "

Personal Money Judgments

The Third Circuit viewed its holding as a narrow one: given the enactment of the substitute assets statute, the government must rely on section 853(p) to forfeit property that cannot be traced directly to the criminal offense, and cannot claim that the property is "traceable to" the offense under *Robilotto, Ginsburg* and *Conner*. However, the court stressed that it was not in any way limiting the amount of money that the government is entitled to forfeit in a money laundering case, nor was it disagreeing with the notion embodied in *Robilotto, Ginsburg* and *Conner* that a criminal defendant is personally liable for the entire amount subject to forfeiture whether the property could be located or not.

As the earlier decisions made clear, the government in a criminal case is entitled to an *in personam* money judgment against a defendant for the amount of money subject to forfeiture. Thus, as in this case, "when a defendant has been convicted of committing $1.6 million in money laundering offenses, the government . . . is entitled to $1.6 million in criminal forfeiture; that amount represents property 'involved in' money laundering activity for purposes of section 982(a)(1)." *Id.* at *30. The government may, in other words, obtain a money judgment for that amount, and may attempt to enforce the judgment against the defendant in the manner that such judgments are enforced under state law. But a money judgment does not give the government the right, under the forfeiture laws, to seize specific assets. The only property that may be seized is property directly traceable to the offense under section 982(a)(1)(A), and substitute assets.

Thus, the relative merits of the various ways of obtaining and enforcing a forfeiture judgment in a criminal case are made clear. If the defendant launders $1.6 million, the government is entitled to a judgment in that amount, whether it can locate the assets or not. Accordingly, obtaining a personal money judgment has enormous advantages for the government over an order authorizing the forfeiture of specific assets. Indeed, in virtually every case brought under section 982, the government should

obtain a personal money judgment for the full amount involved in the money laundering scheme whether or not it can locate any assets equal in value to that amount.

The disadvantage to a money judgment, of course, is that it does not allow the Marshals to seize any specific property. Only property involved in the offense or traceable thereto (assets subject to direct forfeiture) and substitute assets can be seized. Therefore, a criminal order of forfeiture should also list the directly forfeitable assets and should include a paragraph authorizing the forfeiture of substitute assets if the directly forfeitable assets cannot be found, or as in *Voight*, if they have been commingled with other assets. If such a provision is included in the order of forfeiture, it may be amended at any time to add a particular piece of property as a substitute asset, thus authorizing the Marshals to seize the property.[2]

Choosing a Different Money Laundering Transaction

The disadvantage of forfeiting property under a substitute assets theory, as opposed to a theory that the property is directly forfeitable, is a practical one: in most circuits, property subject to direct forfeiture may be restrained pre-trial, but property forfeitable as substitute assets may not.[3] Thus, if the government is required to forfeit property purchased with commingled funds under a substitute assets theory, the property will, in most courts, remain in the defendant's possession until the time of conviction, and may be alienated, dissipated, or otherwise diminished in value.

The government may avoid this problem, however, by carefully choosing the transaction that is charged as a money laundering offense in the indictment. Recall that in *Voight*, the defendant deposited the fraud proceeds in one bank account and then transferred the money to a second account. The transfer of the funds from the first account to the second account was charged as the money laundering offense. The defendant then commingled the money in the second account with other money before using the commingled funds to buy the jewelry. The legal problem arose because after the commingling occurred, there was no clear nexus between the jewelry and the money laundering offense. But if the government had charged the purchase of the jewelry as a substantive money laundering offense, the nexus would have been obvious, and the forfeiture under section 982(a)(1)(A) would have been straightforward.

It is well-established that an offense under 18 U.S.C. § 1956 need only "involve" the proceeds of specified unlawful activity ("SUA"). That is, it is not necessary to show that *all* of the funds involved in the financial transaction were tainted; as long as at least *some* of the funds in the transaction are SUA proceeds, the proceeds element of section 1956 is satisfied.[4] Thus, a transaction in which funds drawn from a commingled account are used to purchase real or personal property can be charged generally as a money laundering offense.

If the purchase of the jewelry in *Voight* had been charged as a money laundering offense, it would be obvious that the jewelry was "involved in" the offense for purposes of the forfeiture statute. The case law is clear on this point: property received in an exchange that constitutes a money laundering offense is forfeitable as property involved in the offense.[5] Thus, by charging the purchase of property from an account containing commingled funds as a money laundering offense, the government can tie the property directly to a money laundering violation and forfeit it without resorting to a tracing analysis or application of a substitute assets theory.

Conclusion

The Third Circuit's decision in *United States v. Voight* is important in a number of respects. It makes clear that the words "traceable to" in the forfeiture statute will be strictly construed; it puts the government on notice that it will generally be unable to satisfy strict tracing requirements in cases involving commingled bank accounts and that it will have to pursue a substitute assets theory in such cases; it reaffirms the court's authority to enter a personal money judgment against the defendant in a criminal forfeiture case; and it explains the limitations of a

personal money judgment versus an order forfeiting specific property in terms of what the order authorizes the government to seize. The case also teaches that the choice of what financial transaction is alleged as a money laundering offense in the indictment can have a direct and material effect on what property is subject to forfeiture. By looking ahead to the forfeiture part of the case at the time the indictment is drafted, prosecutors can choose money laundering offenses that permit the direct forfeiture of the property, thus obviating the need to rely on a substitute assets theory and making it possible to restrain the property pre-trial so that it remains available for forfeiture.

ENDNOTES

1. In a footnote, the court specifically declined to allow the government to employ a first-in, last-out rule such as the Second Circuit approved in *United States v. Banco Cafetero Panama*, 797 F.2d 1154 (2d Cir. 1986). *Id.* at *33 n.22.

2. The court said the following in this regard, "Since all that is at issue is the process by which the government may seize property in satisfaction of the $1.6 million to which it is lawfully entitled, on remand the government should be permitted to move to amend the judgment to reflect that the jewelry is forfeitable as a substitute asset." *Id.* at *34, citing *United States v. Hurley*, 63 F.3d 1, 23 (1st Cir. 1995) (government may move to amend the order of forfeiture to include substitute assets at any time).

3. Compare *In Re Billman*, 915 F.2d 916 (4th Cir. 1990), *cert.* denied, 500 U.S. 952 (1991) (pre-trial restraint of substitute assets permitted) *United States v. Regan*, 858 F.2d 115 (2d Cir. 1988); *United States v. Schmitz*, 156 F.R.D. 136 (E.D. Wis. 1994); *United States v. O'Brien*, 836 F. Supp. 438, 441 (S.D. Ohio 1993); *United States v. Swank Corp.*, 797 F. Supp. 497 (E.D. Va. 1992) *with United States v. Floyd*, 992 F.2d 498 (5th Cir. 1993) (pre-trial restraint of substitute assets *not* permitted); *In Re* Assets of Martin, 1 F.3d 1351 (3rd Cir. 1993); *United States v. Ripinsky*, 20 F.3d 359 (9th Cir. 1994); *United States v. Field*, 62 F.3d 246 (8th Cir. 1995).

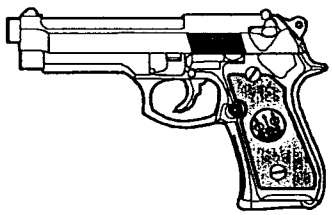
4. *See United States v. Cancelliere*, 69 F.3d 1116 (11th Cir. 1995) (government met burden of showing check drawn on account involved SUA proceeds by showing that $80,000 in proceeds were deposited into the account and commingled with other funds; strict tracing not required); *United States v. Rodriguez*, 53 F.3d 1439 (7th Cir. 1995) (purchase of house involved SUA proceeds even though only $1,000 of $17,000 payment was drug money); *United States v. Garcia*, 37 F.3d 1359 (9th Cir. 1994) ("it is sufficient to prove that the funds in question came from an account in which tainted proceeds were commingled with other funds"); *United States v. English*, ___ F.3d ___, 1996 WL 453264 (9th Cir. Aug. 9, 1996) (following *Garcia*); *United States v. Marbella*, 73 F.3d 1508 (9th Cir. 1996) (once SUA proceeds are commingled in an account, any withdrawal from that account involves proceeds, even if the balance in the account drops to zero between the time the proceeds are deposited and the time of the withdrawal); *United States v. Bencs*, 28 F.3d 555 (6th Cir. 1994) (money launderer may not escape liability by commingling drug proceeds with other assets); *United States v. Jackson*, 935 F.2d 832, 840 (7th Cir. 1991) (transactions drawn on account containing commingled funds "involve" proceeds of SUA); *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (jury instruction that "substantial portion" of laundered funds had to be SUA proceeds was unnecessarily favorable to defendant; only some of commingled funds need be proceeds); *United States v. $633,021.67 in U.S. Currency*, 842 F. Supp. 528 (N.D. Ga. 1993) (to forfeit funds involved in a money laundering transaction, government "need not trace the origin of all funds deposited into a bank account to determine exactly which funds were used for what transactions").

5. *See United States v. Basler Turbo-67*, 906 F. Supp. 1332, 1340 (D. Ariz. 1995) (aircraft purchased with drug money is forfeitable under sections 981 and 1956-57); *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248, 252 (E.D. Va. 1993) (where the financial transaction is a car payment in violation of section 1956 and section 1957, the car is "involved in" the money laundering offense and is forfeitable in its entirety even if legitimate funds are used to make other payments); *United States v. Premises Known as 63 Jade Lane*, 1995 WL 580072 (E.D. Pa. 1995) (real property purchased in a transaction that violates section 1957 is forfeitable as property involved in the offense). ●

(**FIREARMS** continued from page 1)

which are subject to forfeiture by ATF include firearms that are used or involved with violations of the Gun Control Act (GCA), 18 U.S.C. §§ 921-930, and the National Firearms Act (NFA), 26 U.S.C. §§ 5801-5872.[1] The predicate offenses for forfeiture of firearms under the GCA include the unlawful sale or receipt of firearms, the unlawful possession of a firearm by a felon, and the use of a firearm in connection with a crime of violence or a drug trafficking offense.[2] The basis for forfeiture of firearms under the NFA includes the possession of unregistered machine guns, short-barrelled rifles, and destructive devices.[3]

Other federal agencies also possess statutory authorization to forfeit firearms. For example, the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) have authority to forfeit firearms used in connection with a violation of the Controlled Substances Act under 21 U.S.C. § 881(a)(11).[4]



There is statutory authority for federal courts to order the confiscation and disposal of firearms possessed by convicted felons in certain cases. Under 18 U.S.C. § 3665, upon a judgment of conviction for transporting a stolen motor vehicle in interstate or foreign commerce or for committing or attempting to commit a felony in violation of any law of the United States involving the use of threats, force, or violence or perpetrated in whole or in part by the use of firearms, the court may order the confiscation and disposal of firearms and ammunition found in the possession or under the immediate control of the defendant at the time of arrest.[5]

On occasion, firearms which have been seized for evidentiary purposes are discovered at the completion of the criminal case by the agent or prosecutor in an evidence locker or safe, and the question of disposal arises. As a general rule, firearms are personal property and must be treated as such, absent proper statutory authority to dispose of them in some other manner. Thus, once the firearm is no longer needed as evidence, it must be returned to its rightful owner unless another legal means of disposition is available and appropriate.

Initially, it should be determined whether there is statutory authority to forfeit the firearm. To utilize the GCA, an administrative forfeiture must have been initiated by ATF within 120 days of the initial seizure by federal, state or local law enforcement officers. Waiting until after completion of the criminal trial to initiate administrative forfeiture of a firearm under the GCA is normally fatal. *See* 18 U.S.C. § 924(d)(1). If the owner is a convicted felon and the firearm is not subject to forfeiture under applicable law, it is possible for an authorized representative to be designated by the felon/owner to receive possession of the firearm. *See* 18 U.S.C. § 924(d)(1), which provides for return of a firearm to a delegate of the owner or possessor from whom the weapon was seized. At the conclusion of any criminal proceeding where forfeiture is not pursued, a motion should be filed with the court requesting an order regarding a firearm's disposition in light of the owner's status as a convicted felon.

When firearms are unable to be disposed of under any of the above alternatives, disposal by abandonment should be considered. Generally, where the legitimate owner of property, including firearms, cannot be identified or located or where ownership interests in property have been knowingly and voluntarily relinquished, formal abandonment procedures may be utilized.

Agency abandonment notification practices vary. For example, DEA notifies the owner by certified mail at the owner's address of record that the property may be claimed by the owner or his designee; and, that if the property is not claimed within 30 days from the date that the letter of notification is post-marked, title to the property will vest in the United States. The FBI sends written notification registered return receipt to the owner's last address advising that if he fails to claim the property within 30 days of receipt of the letter, title to the property will vest in the United States. In instances where the lawful owner is unknown (*e.g.*, where a

firearm is stolen property), and the property is valued in excess of $100, notice - once a week for three consecutive weeks - must be placed in a publication of general circulation within the judicial district where the property is located. If no claim is made for the firearm, title will vest in the United States at the expiration of the 30-day claim period stated in the advertisement. Upon declaration of abandonment, the firearm may be disposed of by the agency. Final disposition of abandoned firearms is normally through destruction or placement into official use.[6]

Abandonment procedures have a practical value, particularly in situations involving relatively inexpensive firearms seized from a convicted felon to whom the firearm may not be returned. Many incarcerated owners of firearms voluntarily and knowingly abandon such rights to the United States for disposition in accordance with regulations issued by the General Services Administration. These regulations, 41 C.F.R. 101-42.1102-10, bar the sale of abandoned firearms to the public or state or local law enforcement entities.[7]

Finally, the question is often asked as to whether the Attorney General or the Secretary of the Treasury may share forfeited firearms with state and local agencies. As a matter of policy, firearms may not be transferred to state or local law enforcement agencies for equitable sharing purposes.[8]

ENDNOTES

1. As provided in 31 U.S.C. § 9703(o), forfeitures under the GCA and NFA are generally subject to the seizure and forfeiture provisions of the customs laws. The disposition of forfeited firearms under these statues is governed by 26 U.S.C. § 5872(b), which precludes the public sale of forfeited firearms.

2. *See* 18 U.S.C. § 924(d)(1). Under the GCA, any action or proceeding for the forfeiture of firearms or ammunition *must* be commenced within 120 days of seizure.

3. *See* 26 U.S.C. § 5872.

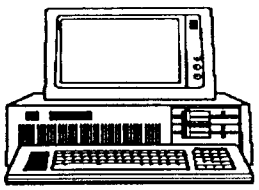
4. A firearm may also be forfeited under 21 U.S.C. § 881(a)(6) where there is probable cause to believe that it was purchased with proceeds traceable to drug trafficking activity.

5. 18 U.S.C. § 3665 allows the court to direct the delivery of firearms and ammunition - ordered subject to confiscation and disposal - to the law enforcement agency which apprehended the individual, for its use or for any other disposition in its discretion. *But see United States v. Seifuddin*, 820 F.2d 1074 (9th Cir. 1987) and *Cooper v. City of Greenwood*, 904 F.2d 302 (5th Cir. 1990), which apply the criminal forfeiture process to firearms disposed of under section 3665. Also, the forfeiture reform legislation drafted by the Justice and Treasury Departments would require criminal forfeiture procedures to apply to the disposition of firearms under 18 U.S.C. § 3665.

6. By memorandum dated May 16, 1994, the Director of the United States Marshals Service (USMS) announced that, unless specifically ordered by a court of competent jurisdiction, the USMS would no longer dispose of any seized or forfeited firearms by sale. This policy is consistent with the January 5, 1994, announcement by the Administrator of the General Services Administration that it would no longer sell, or permit the sale of excess federal firearms.

7. In addition to the requirements of 41 C.F.R. 101-42, forfeited or voluntarily abandoned firearms are subject to the provisions of 41 C.F.R. 128-48, concerning the utilization, donation, or disposal of abandoned and forfeited personal property.

8. *See Asset Forfeiture Manual, Volume I: Law and Practice* (1993), Chap. 10, Sec. III, at p. 10-8. ●



Asset Forfeiture Bulletin Board

UPDATE

The Asset Forfeiture and Money Laundering Section (AFMLS) is upgrading the AFBB to a windows-based (menu-driven) format. The new AFBB will be very similar to the Internet with an easy to use menu that will greatly enhance the user's ability to search, locate and download documents from the system.

The upgrade will occur in two phases. Phase I involves moving the AFBB to the Executive Office for United States Attorneys Bulletin Board System (EOUSA BBS). This will allow the users, who have not yet been upgraded to Windows, access to the AFBB in its current state. Phase II is the actual upgrade of the AFBB to Windows. This process is expected to be completed by the end of January 1997.

All users should expect some changes in service from late December through the month of January. Your patience during this transition is greatly appreciated. Please contact Morenike, the AFBB System Operator, at (202) 307-0265 or by e-mail at CRM07(SOREMEK), if you have any questions or concerns. You may also log onto the AFBB and read the news bulletins to be kept apprised of the AFBB upgrades and changes.

NEW SUBMISSIONS

The following documents have been revised and/or added to the AFBB:

- Special jury instructions on 18 U.S.C. § 982 **(Topic 21 - Criminal Jury Instructions)**
- Asset Forfeiture Bulletin Board Directory Tree **(Topic 55 - Asset Forfeiture Training; Sub-Topic 1 - AFBB Outline)**
- Criminal forfeiture forms on topics excerpted from *Criminal Forfeiture Forms*, including: post- and pre-indictment restraining orders, plea agreements, final orders of forfeiture, rule 6(e) disclosure motions, bills of particulars, jury instructions, special verdict forms, orders appointing receivers, applications for post-indictment and post-verdict restraining orders, and sample substitute asset forfeiture charges.
- Case Outlines **(Topic 55 - Asset Forfeiture Training; Sub-Topic 3 - Outlines) (Topic 57 - CASE FINDER)**

SUBMISSION REQUESTS

The following pleadings are needed for the AFBB:

- Civil forfeiture money laundering jury instructions
- Civil seizure warrants
- Pleadings citing *Ursery* that respond to allegations of double jeopardy
- FIRREA and money laundering indictments
- Settlement and consent agreements

Road to Reinvigoration

Forfeiture Reinvigoration

by
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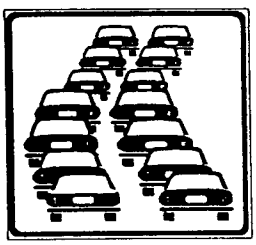
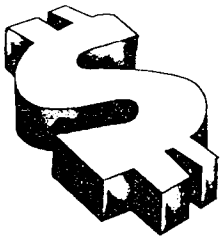
Over the past twelve months, the Detroit United States Attorney's Office has participated in a variety of education outreach programs to revitalize the forfeiture program both within and outside the office. An asset forfeiture Assistant United States Attorney (AUSA) was assigned to each of the criminal division units to assist and oversee all criminal forfeiture litigation, including pre-grand jury investigations and plea negotiations to maximize and effectuate the intended forfeitures. The Asset Forfeiture Unit will also conduct periodic training sessions for the criminal division AUSAs throughout FY 1997.



AUSAs in the Asset Forfeiture Unit (AFU) provided one day of training at the airport to all task force agents on stops, seizures, and follow-up investigation of airport forfeitures; one local AUSA assisted in DEA sponsored training of federal, state and local law enforcement agents both within our district and also in neighboring districts; two members of our asset forfeiture staff participated in the 6th Circuit Asset Forfeiture Component seminar in Nashville, Tennessee.

During the seminar, agents, paralegals, and AUSAs discussed issues and problems related to their joint effort in the asset forfeiture program. As a result, Michigan has now planned issue oriented, quarterly meetings between agency representatives and our AFU staff. Because of the high turnover at each agency, training sessions will help keep agents up to date on developments in forfeiture law.

United States Attorney Saul A. Green, met with all federal and selected state agencies at our Federal Law Enforcement Coordinating Committee meeting to discuss our forfeiture program and specific office initiatives to better coordinate our civil and criminal forfeiture efforts in-house. Finally, the U.S. Attorney encouraged all agencies to renew their forfeiture efforts in the aftermath of the Supreme Court's favorable decision in *Ursery*. ●



Treasury Trends

by Charles Ott
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Forfeiting the Proceeds of Medicare Fraud

Medicare was established in 1965 as Title 18 of the Social Security Act. This federal system of health care cost reimbursement was the subject of much policy debate during the last year as to the best way of ensuring the program's continued fiscal soundness. Most would agree that cracking down on program fraud represents one means to this end, and in 1996 the Criminal Investigation Division of the Internal Revenue Service (IRS/CID) helped unmask a scheme that had bilked Medicare out of tens of millions of dollars.

IRS/CID had been joined in this three year investigation by the U.S. Department of Health and Human Services and their target soon became a Florida medical supplier who owned and operated Bulldog Medical of Kissimmee and MLC-Geriatric Health Services in Osceola County. Between the summer of 1993 and September of the following year, Bulldog and MLC elaborately characterized the adult diapers they supplied as medical devices and billed Medicare Part B between $5 and $9 per diaper when the actual value was no more than 50 cents. The firms caused these and other incontinence care supplies to be delivered to nursing homes while knowing that they were not medically necessary for the Medicare beneficiaries of the homes and, therefore, not reimbursable. They then billed Medicare for these unnecessary supplies and collected millions of dollars in improper payments. Prosecutors in the case also charged that the owner of the companies paid kickbacks to officers of a national chain of nursing homes for their cooperation in the fraud.

In October, 1996, the defendant in the case entered into a plea agreement in U.S. District Court for the Middle District of Florida whereby he agreed to the forfeiture of approximately $32 million in chiefly cash and securities that had been seized by the IRS.

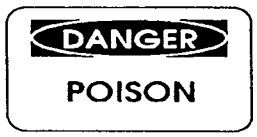
El Dorado Strike in New York Yields Asset Sharings

For several years now, the El Dorado Task Force in New York has been concentrating its investigative efforts on the money side of narcotics trafficking organizations operating in the metropolitan area. The task force is headed by Customs and the IRS and has both full and part time participation from a variety of other federal, state and local law enforcement agencies. A high value seizure in the spring of 1995 recently concluded with approval of the sharing of forfeited net proceeds with a dozen state and local agencies.

On that April evening over a year and a half ago, the night security officer at the Sheraton Hotel on Seventh Avenue told task force agents that one particular guest had paid cash for several rooms. Questioning the individuals staying in the rooms led to various and conflicting stories and eventually a consent search that uncovered two duffel bags with almost one and a half million dollars in cash.

In recognition of contributions made by the non-Treasury agencies to the investigation leading to forfeiture in this case, the Treasury Forfeiture Fund is sharing 20 per cent of the net proceeds with the NYPD, while single digit percentages are going to six North Jersey agencies, district attorney offices in the Bronx, Manhattan and Queens, the New Jersey National Guard and a county sheriff's office in Florida. ●

Lead Paint Contaminated Apartment Building is Approved for Weed and Seed



by Kimberly Butler
Senior Management Analyst
Seized Asset Branch
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The Eastern District of New York has successfully dealt with a property that had high levels of lead based paint contamination and was occupied by tenants with small children. The property, a fully occupied four-family residential apartment building located in Brooklyn, New York, had been identified as a Weed and Seed property. Under newly implemented United States Marshals Service (USMS) interim guidelines for lead based paint, an inspection of the property was immediately ordered. Upon receipt of the inspection report, which cited high levels of lead contamination present in the properrty, representatives from the USMS and the United States Attorney's Office (USAO) briefed the tenants on the findings, and provided them with copies of the inspection report and EPA brochures that outlined the risk of lead paint poisoning.

Initially, eviction seemed to be the only solution in terms of protecting not only the tenants, but also the Government from potential future litigation. Although the responsibility for abatement is passed to the recipient, all parties felt that they had a responsibility to assist the tenants in finding temporary housing during the abatement process. The USMS contacted the New York City (NYC) Government for assistance in finding temporary emergency housing for the duration of the abatement. After endless discussions with city officials, the Director of Housing Development, Emergency Services, confirmed that tenants did not have to move during the abatement process. Abatement is done under NYC housing code health and safety regulations which does not require relocation of the tenants during the abatement process.

The Asset Forfeiture Money Laundering Section (AFMLS) expedited the approval of the Weed and Seed request to effect the transfer of the property to The East New York Urban Youth Corps, however, the transfer has not yet taken place. The community organization, to date, has been unable to obtain additional funding for the cost of abatement. In our quest to know as much about lead based paint as possible, the USMS may have found a solution. HUD provides grants to states where this problem exists, and through the state, low income private citizens who are residing in properties with lead based paint contamination, especially in those properties where small children are residing, may receive a grant to abate the property. Fortunately, community groups are considered to be private citizens. Through the grant program, there may be an avenue to obtain financing for the abatement of the property, which will hopefully ensure the transfer of the property to The East New York Urban Youth Corps.

Through a tremendous amount of interagency cooperation between the USMS, USAO and AFMLS, many valuable lessons were learned which will benefit other districts that may face this situation. Early in 1997 those involved in this case will meet to develop standard operating procedures for lead based paint properties. ●

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The *Asset Forfeiture News* is a bi-monthly publication of the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, United States Department of Justice. Articles in the *Asset Forfeiture News* are intended to assist federal prosecutors and agents in enforcing the forfeiture laws by providing guidance, information, and references. They do not represent the formal policy of the Department of Justice and may not be cited as authority binding the government to positions stated herein.

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