Virginia district court finds probable cause to seize funds that were traceable to only interest payments on mortgage, since these proceeds enabled defendant to retain title to and keep his home. At issue in this mail and wire fraud, money laundering conspiracy, and identity theft prosecution was whether the government improperly seized the defendant's assets without probable cause to believe those assets will ultimately be proved at trial to be forfeitable as tainted, and not substitute assets. The FBI forensic accounting expert's tracing analysis disclosed that fraudulent proceeds and laundered money were used to make payments associated with properties in Virginia and the Delaware, including payments on a note secured by the Virginia property, payments to fund improvements and to add fixtures to both properties, and payments of the property taxes on the Virginia property. As such, there was probable cause to believe the funds identified were traceable to the money laundering and wire fraud offenses charged in the indictment. The court said this result makes sense – the defendant would not have had the improvements to the Delaware property absent the embezzled and laundered funds. Even though the defendant paid only interest on the Virginia property loan, and did not pay down the principal of his mortgage on that property, the fraud proceeds nonetheless enabled defendant to retain title to, and keep, his home. Had defendant not used the fraud proceeds to pay the interest on the note, he would have lost his home under the terms of the note. *United States v. Miller*, No. 1:17-CR-213, 2018 WL 1235001 (E.D. Va. Mar. 8, 2018).

D.C. district court holds that a "money-transmitting business" could a include a lobbyist who received funds from a foreign client, and that facts constituting purported statute of limitations violation must be developed through discovery. This case turned on what it means to be a "money transmitting business." A federal statute, 18 U.S.C. §1960, makes it a crime to operate one without a license, and the proceeds of a business operated in violation of that statute are subject to civil forfeiture. The government typically deploys this statute against non-bank financial institutions like wire remitters and currency exchangers. Rarely, if ever, have they been applied to ostensible nonfinancial professional-services firms that also transfer funds for clients. Until now, apparently. The government alleged that Pennsylvania-based lobbyist Joseph Szlavik ran an unlicensed money transmitting business by accepting large sums of money from foreign clients – principally the President of Gabon, Ali Bongo, and his associates – and then, for a commission, transferring those funds from accounts he controlled to numerous recipients in the United States as directed by the clients. The underlying funds, the government suggested, were derived from official corruption on the part of President Bongo and his family. On the basis of these allegations, the government filed a civil complaint seeking forfeiture of $475,405.21 in seized funds it contended were connected to Szlavik's business. Szlavik and his wife asserted claims and moved to dismiss, arguing Szlavik merely operated a government-affairs and public-relations "consultancy" beyond the reach of the money transmitting statute as a matter of law. The court stated, however, that while Szlavik may have offered bona fide professional services to his clients, the complete nature of his business activities remained disputed. The government's complaint, while novel, contained sufficient allegations concerning the volume, frequency, and circumstances of Szlavik's money transfers to bring his purported activities within the broad ambit of the statute, regardless of what name one assigned to them. Besides challenging the application of §1960 to Szlavik's business, the Szlaviks contended all of the government's claims were barred by the statute of limitations, 19 U.S.C. § 1621, which is five years beginning when the government "discovered" the alleged offense. The conduct alleged in

the complaint began in February 2010 and the complaint was filed in May 2017. The Szlaviks argued the government was on "inquiry notice" of its claims as of February 2010, when the United States Senate Permanent Subcommittee on Investigations issued a report that detailed how President Bongo and his family used financial institutions to launder proceeds of corruption. According to the Szlaviks, the existence of this report put the government on notice of its claims in this case. However, statute of limitations issues often depend on contested questions of fact, so dismissal is appropriate only if the complaint on its face is conclusively time-barred. Here, the complaint was not conclusively time barred, since it gave no indication of when the government learned of Szlavik's alleged money transfers. In any case, the report concerned Bongo's use of U.S. accounts to launder money, and did not mention anything about Szlavik. The court thus denied the motion to dismiss and permitted the case to proceed to discovery, where the factual record could be developed further. *United States v. $215,587.22 in U.S. Currency Seized from Bank Account No. 100606401387436 held in the Name of JJ Szlavik Companies, Inc. at Citizens Bank*, No. 17-CV-00853(CRC), 2018 WL 1568885 (D.D.C. Mar. 30, 2018).

Seventh Circuit vacates and remands denial of Rule 41(g) motion because government provided only argument, not evidence, regarding alleged administrative forfeiture of currency, and defendant properly challenged forfeiture for lack of notice. During his sentencing in March 2017 for drug trafficking, Flournoy sought return under Rule 41(g) of a number of items, including cash. He stated the government had "not requested the forfeiture" of any of the items, nor had "the court so ordered that such items be forfeited." Flournoy attached police records that listed items seized during his arrest. One document described a "black Gucci bag" that police recovered from his car that "[c]ontained a large amount of USC that was lodged sep[a]rately." The government responded that it had returned all of the items Flournoy had requested (except for a "kilogram press" that was later returned). Flournoy filed an "objection" to the government's response, contending that $7,600, contained in a zipped compartment of the black bag, had not been returned. In support of that assertion, he submitted another police record that showed that $187,800 had been seized from his car, including $7,600 that was labeled "zipper" and associated with the black bag. With the focus on the $7,600, the government argued for the first time that the $7,600 found in the black bag had been forfeited along with other cash – the $187,800 described in the police record that Flournoy had submitted plus another $10,000 from the trunk of Flournoy's car – totaling $197,800. The government's evidence was a "Declaration of Administrative Forfeiture" from 2013. It stated, however, that only that $197,800 was obtained in Rockford on July 30, 2012 (the day of Flournoy's arrest); it did not associate this sum with Flournoy or a car, trunk, or bag. The district judge denied Flournoy's motion, stating that the property was administratively forfeited and thus it could not order its return. Before the judge ruled, Flournoy argued that the government did not give him any notice of "criminal forfeiture." The court did not receive this filing until after its ruling and did not address it. By motion two weeks later, in May 2017, Flournoy formally raised his contention about lack of notice. He asked the court to "reconsider the denial for return of property," contending that he had not been "presented with any documentation giving notice to any alleged civil action." He argued that the absence of "sufficient notice" violated 18 U.S.C. §983(e), the civil forfeiture statute. The district judge denied the motion because Flournoy had not properly called into question the fact that the $7,600 had been forfeited. He added that any purported procedural irregularities in the forfeiture process could not be remedied through a Rule

41(g) motion. On appeal, the court first said the judge's finding in response to the Rule 41(g) motion, that the $7,600 was forfeited, was not based on sufficient evidence. The only evidence that the government adduced was the declaration of administrative forfeiture, but that declaration simply asserted the $197,800 was forfeited on July 30, 2012. The court had only the government's unsworn word in its briefs that this sum included the $7,600 seized from Flournoy's zippered bag. The government could have attached the affidavit of a person with knowledge of the chain of custody, but failed to do so. The district judge therefore could not conclude, based just on the forfeiture declaration, that the forfeiture included $7,600 from Flournoy's zippered bag. Second, Flournoy properly challenged the forfeiture for lack of notice in his motion for reconsideration under §983(e). Once the government told him that in 2013 it sought a forfeiture of that cash, Flournoy asserted in his motion that he had never been notified of any forfeiture. He invoked the correct statute for relief, and filed his motion within the five-year limit prescribed by §983(e)(3). The district judge's response to that motion – that "procedural irregularities in the forfeiture process cannot be remedied through a Rule 41(g) motion" – was inadequate, and it should have allowed that challenge to proceed. The court therefore vacated and remanded for the district judge to consider whether the $7,600 was validly forfeited. *United States v. Flournoy*, No. 17-2124, 2018 WL 1225471 (7th Cir. Mar. 9, 2018).

D.C. district court strikes claims since alleged beneficiaries of trust lacked standing. The government sought forfeiture under 18 U.S.C. §981(a)(1)(A) of 16 defendant properties alleged to have been part of an international conspiracy to launder proceeds of corruption in Nigeria during the military regime of General Sani Abacha. Eight claimants – all relatives of an individual alleged to have been involved in the conspiracy – filed verified claims of interest in four defendant investment portfolios, asserting they were the beneficiaries of a trust structure that owned these portfolios. The government has moved to strike the verified claims, on the ground that claimants lack Article III standing to contest the forfeiture. Courts here have consistently held under federal law that a shareholder lacks standing to contest the forfeiture of a corporation's assets, and have applied this principle equally to closely held companies and sole shareholders. Also, a corporate shareholder cannot bring a personal suit in his own name to vindicate the rights of a corporation except under limited exceptions. Therefore, the claimants failed to provide a basis to set aside the doctrine of corporate separateness, and lacked standing. *United States v. All Assets Held in Account No. 80020796 in name of Doraville Properties Corp.*, No. CV 13-1832 (JDB), 2018 WL 1158002 (D.D.C. Mar. 5, 2018).

Eleventh Circuit affirms order of forfeiture because petitioner had constructive notice of lis pendens when he purchased forfeitable property. Fernandez appealed from the district court's order of criminal forfeiture that denied his 21 U.S.C. §853(n) third-party claim to a home in Miami, Florida, arguing that the district court erred in granting summary judgment for the government because he presented evidence that he was a bona fide purchaser for value. Under Florida law, to be a bona fide purchaser, the purchaser must have 1) acquired legal title to the property in question, 2) paid value therefore, and 3) been innocent of knowledge of the equity against the property at the time when consideration was paid and title acquired. Also, recorded defects that appear in the chain of title are sufficient to place a purchaser on notice of such defects. Where a purchaser had at least constructive notice of a defect, he is not entitled under Florida law to protections afforded to bona fide purchasers. The purpose of a lis pendens is to

notify prospective purchasers that any interest acquired by them in the property in litigation is subject to the decree of the court. Here, although Fernandez presented evidence that he possessed the title to the property and paid value for it, he did not establish that he was a bona fide purchaser for value. The record showed he purchased the property after the government filed a lis pendens and after the court entered its first preliminary order of forfeiture. Thus, he had constructive notice of a defect in the title, and could not qualify as a bona fide purchaser for value. *United States v. Suarez*, No. 17-10802, 2018 WL 1566524 (11th Cir. Mar. 30, 2018).

First Circuit holds that since embezzlement cannot be done lawfully, it is properly considered an "unlawful activity," and management fees paid can be forfeited as the fruit of an alleged conspiracy. Defendant contended the district court erred in finding management fees to be "proceeds" of the offenses of conviction. Under 18 U.S.C. §981(a), the word "proceeds" has a multiplicity of possible meanings depending on the nature of the offense of conviction. For cases involving illegal goods, illegal services, or unlawful activities, the word is defined to mean "property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to the forfeiture, and any property traceable thereto," pursuant to §981(a)(2)(A). For cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the word "proceeds" means the "amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services." pursuant to §981(a)(2)(B). Given these varying definitions, the classification of an offense of conviction can have a profound effect on the amount that may be subject to forfeiture in a particular case. Section 981(a)(2)(A) captures proceeds directly or indirectly obtained through the offenses of conviction and authorizes the recoupment of the gross amount of those proceeds. In that context, proceeds are not limited to the net gain or profit realized from the offense. By contrast, section 981(a)(2)(B) captures only net proceeds (allowing a deduction for direct costs). Here, the defendant was convicted of embezzlement from an organization receiving federal funds and conspiracy to commit an offense against the United States (through a violation of section 18 U.S.C. §666). He argued that embezzlement is a crime that should be characterized as constituting a lawful service provided in an illegal manner. The court did not agree. To qualify under section 981(a)(2)(B), the crime must involve a good or service that could, hypothetically, be provided in a lawful manner. Activities that are inherently unlawful fall under section 981(a)(2)(A). Embezzlement cannot be done lawfully, and therefore is properly considered an "unlawful activity" within the meaning of section 981(a)(2)(A). Because the management fees were part of the proceeds of the conspiracy offense (at least indirectly), the court said it need not dwell on whether those fees should independently be considered proceeds of the embezzlement offense. For forfeiture purposes under section 981(a)(2)(A), the proceeds of a conspiracy should be computed independently of the underlying substantive crime, since a conspiracy is an offense in its own right. Here, through cronyism and the wielding of political influence, the conspiracy allowed the defendant corruptly to turn a management contract into something resembling his personal piggy bank. The ensuing loss to the public substantially surpassed the value of the misappropriated services and diverted work-hours: the conspiracy not only produced a rigged bidding process but also deprived the public of arm's-length oversight of a regional transportation system. Seen in this light, the case offers a paradigmatic example of how the proceeds of a conspiracy can substantially exceed the proceeds of the underlying substantive offense. Thus, the district court was warranted in

concluding that the defendant, instead of managing the contract to achieve maximum efficiency in transportation services and to further the public good, managed the contract with an eye toward lining his own pockets. On this record, it was not clear error for the district court to determine that the management fees were garnered by the defendant, at least indirectly, as fruit of the charged conspiracy. *United States v. George*, No. 17-1371, 2018 WL 1444332 (1st Cir. Mar. 23, 2018).