

**Pennsylvania district court finds government did not meet burden of proving criminal proceeds were used to make mortgage payments, since they were made from accounts containing proceeds commingled with untainted funds, but government was entitled to the appreciation on proportion of the building renovations traceable to criminal proceeds.** The government sought to have the defendant, who was convicted for a fraud scheme, forfeit a money judgment of \$2,561,210 by tracing a portion of illicit rent payments. The government also sought to forfeit substitute assets consisting of her real estate in Philadelphia. The court found the government was entitled to a total money judgment of \$2,401,850, which she directly acquired through above-market and excessive rent and unreturned rent deposits, construction costs paid to renovate a building, and cash acquired from a check-cashing scheme. However, where the property involved in a money laundering transaction is commingled in an account with untainted property, the government's burden of showing that money in the account or an item purchased with cash withdrawn from it is "traceable to" money laundering activity will be difficult, if not impossible, to satisfy. As a result, the court concluded the government did not meet its burden of proving that criminal proceeds were used to make mortgage payments, since they were made with funds drawn on accounts that contained crime proceeds commingled with untainted funds. Intervening deposits and withdrawals diluted the defendant's criminal proceeds, rendering tracing nearly impossible. As for the construction costs, \$599,000 in crime proceeds was used to renovate the 5th Street Building. Defendant purchased the building for \$650,000 and spent an additional \$625,000 on its renovations, using money that the Government has not proven was tainted. Accordingly, \$599,000 in criminal proceeds contributed to the building represented 31.97% of its value. The building appreciated in value and was sold for \$3,000,000. Thus, the government was entitled to the appreciation on the proportion of the building traceable to criminal proceeds, i.e., the 31.97% proportion attributable to criminal proceeds was \$959,100. The court further held the government was entitled to forfeiture of substitute assets and thus could forfeit the remaining amount due from defendant's real estate holdings. *United States v. Tartaglione*, No. CR 15-491, 2018 WL 1740532 (E.D. Pa. Apr. 11, 2018).

**Alabama district court grants government summary judgment where facts showed large amount of cash, high-volume cocaine sales, vacuum sealed packages, drugs, and absence of legitimate source of currency.** The government filed a civil forfeiture action against \$63,788.00 in U.S. currency that was seized as drug proceeds by a Mobile County Sheriff's Office deputy. Blackmon filed a claim of interest and the government moved for summary judgment. In response, Blackmon moved to strike paragraphs from the summary judgment motion because they contained factual statements that cited to the verified complaint, arguing the complaint was not a valid source because it was not verified by someone with personal knowledge of those facts. In response, the government submitted the deputy's declaration, who averred he had personal knowledge. The court thus denied the motion to strike as moot. The court also granted summary judgment. It was a large amount of cash, there was evidence of high-volume cocaine sales that could generate and require a substantial amount of cash, and most of the seized cash was found vacuum-sealed in the pocket of a jacket or folded and rubber-banded in a nightstand drawer. Illegal drugs also were found in the same apartment. The amount of the currency, \$63,788.00, was the approximate street value of two kilograms of cocaine. Finally, the absence of a legitimate origin of the defendant currency, considered together with the other evidence presented, suggested a "substantial connection" between the currency and

the drug trade. Pompey, who resided at the apartment where the currency was found, dealt with large amounts of money in connection with his illegal drug activities, and a witness stated he had never known Pompey to have a legitimate job. Blackmon contended the currency originated from his trust fund and other income, however his own account of his income and expenses demonstrated that at the time of the seizure, he would not have had any money, he had no discretionary income prior to receiving money from his trust fund but had been on food stamps. *United States v. \$63,788.00 More or Less in United States Currency*, No. CV 17-0058-CG-N, 2018 WL 1629114 (S.D. Ala. Apr. 3, 2018).

**Virginia district court denies return of currency to pay for defense counsel because of absence of documentary evidence showing bona fide need for restrained funds.**

Defendant moved for the return of \$67,442.80 in currency seized from her bank accounts and \$2,000.00 in currency seized from her person. Defendant indicated that the FBI had initiated administrative forfeiture proceedings regarding the currency and she filed a claim. The government obtained a superseding indictment specifically referencing the Bank of America and Wells Fargo accounts from which Defendant's funds were seized and money seized from her home. A defendant is entitled to a pretrial hearing to determine whether some or all of her seized property may be used to fund her criminal defense if she makes two threshold showings: 1) she lacks other funds with which to retain counsel; and 2) a bona fide reason to believe that probable cause is lacking for the government to retain the property pre-trial. Defendant's motion was woefully insufficient. The sole allegation explaining the bona fide need for the funds was a statement that the funds were "needed for attorney fees and costs associated with the defense of the case." This conclusory statement plainly was not enough to show a bona fide need for the seized funds. Although she asserted she was gainfully employed prior to entering the alleged conspiracy, and that therefore some of the funds in her bank account were untainted, the absence of any documentary evidence showing a bona fide need for the restrained funds was fatal. Thus, the court denied the motion for return of seized property. *United States v. Paronuzzi*, No. 4:17CR111, 2018 WL 1938463 (E.D. Va. Apr. 24, 2018).

**D.C. district court finds undue prejudice to government in denying claimants leave to add Eighth Amendment defense to answer, based on volume of discovery required for that new legal issue at late stage of the litigation.** Claimants moved the court to reconsider the portion of the court's opinion denying them leave to plead an Eighth Amendment excessive fines affirmative defense. Lazarenko was a prominent Ukrainian politician who, with the aid of various associates, acquired hundreds of millions of dollars through a variety of acts of fraud, extortion, bribery, misappropriation and/or embezzlement committed during the 1990s. The government filed its original complaint in 2004 seeking forfeiture of, all funds on deposit in an account at Credit Suisse (Guernsey) Limited in the name of Samante Limited. Claimants filed a claim asserting their beneficial or ownership interest solely in the Samante assets. Claimants then filed an answer asserting five affirmative defenses, including an "Innocent Interest-Due Process" affirmative defense under the Fifth Amendment. Claimants did not plead or otherwise mention an Eighth Amendment excessive fines affirmative defense in their 2004 answer. After the United States filed an amended complaint in 2005, claimants filed a second claim, as well as a motion to dismiss. Following the denial of their motion, claimants did not file an answer to the amended complaint. In October 2011, the government wrote to claimants' attorney and stated that "if your

clients do not file an appropriate Answer to the First Amended Complaint by November 14, 2011, the United States will move to strike their Claims.” Claimants' attorney thanked the United States for its “courtesy in permitting” the late filing, but did not file an answer to the amended complaint. In April 2015, the government moved to strike their claim. In response, claimants admitted they failed to file an answer “as a result of an oversight by their counsel.” The Court denied the motion because of lack of prejudice given that the allegations in the amended complaint did not substantially vary from the original complaint, and permitted claimants to seek leave to file an answer. Claimants moved for leave to in February 2017. Their proposed answer repeated their “innocent interest-due process” affirmative defense and included, for the first time, an Eighth Amendment excessive fines affirmative defense. The government opposed the inclusion of the excessive fines affirmative defense . The court denied leave to plead an Eighth Amendment defense because permitting the new defense “at this stage of the litigation would prejudice the United States by introducing burdensome discovery with respect to a new legal issue.” The court allowed claimants to file an answer asserting a lack of probable cause affirmative defense and adding supplemental language to certain other defenses that, unlike the excessive fines affirmative defense, were pled in the original answer in 2004. Claimants moved for reconsideration,, which the court denied. The court's concerns about undue prejudice were based on the volume of discovery it believed would be required by adding a new affirmative defense that introduced a new legal issue at this late stage of the litigation. Moreover, the court's consideration of undue prejudice did not exceed the scope of the issues. Also, because claimants merely expressed their disagreement with the Court's analysis respecting prejudice rather than identify a clear error of law, reconsideration was not warranted. Finally, the government’s discovery requests merely reflected what both the court and the parties knew based on the scheduling order: the government was entitled to seek discovery from claimants after claimants filed an answer to the amended complaint. Nothing in the discovery requests changed the court's prior conclusion, and did not constitute new evidence justifying reconsideration. *United States v. All Assets Held at Bank Julius, Baer & Co., Ltd.*, No. CV 04-0798 (PLF), 2018 WL 1617693 (D.D.C. Apr. 4, 2018).