Pennsylvania district court concludes that forfeiture administrative claim is "filed" on the date it arrives at the agency's address listed in the forfeiture notice, not the date when is routed to the correct person in the agency. After seizing funds from Goodchild, the FBI's mail room received a claim from him on May 4, but the specific agent did not physically possess the claim until May 5. The government requested an extension to file a complaint on the last day of what it perceived was its statutory time limit. Goodchild argued the government's 90-day clock actually started on May 4, so the request for an extension was one day late. The court agreed, concluding that a claim is "filed" when it arrives at the agency. Further, due to the notable number of federal courts that indulged the government by granting equitable tolling under similar circumstances, the court declined to do it yet again here, since the government could not continue to plead ignorance. The regulatory scheme defines "filed" as "received by the office or official identified in the personal written notice." Here, the written notice required claims to be mailed to "the Federal Bureau of Investigation (FBI), Attn: Forfeiture Paralegal Specialist." It further states that a "claim is deemed filed on the date received by the agency at the address listed above." The word "filed" defines an action taken by the claimant to send the claim to the agency, which is required by the statute. The statute uses "filed" as a way of simultaneously leaving the control of the claimant and starting the clock on the government's statute of limitations. The government's reading would mean that its clock does not begin to run until it is internally routed (by whatever means and methods) to the proper person. This "gap in coverage" means is not a viable interpretation. Such a reading also would allow the government to extend its 90-day window by simply leaving claims to sit in the mail room until it processes them. The government also could cause the claim to lapse by leaving it in the mail room and refusing to internally route the mail until the claim is no longer timely. For example, if Goodchild had sent his claim a day later, it would have arrived in the mail room on time, but it would have arrived at the agent's desk too late. *In Re Eight Thousand, Five Hundred Eight Dollars and Sixty-three cents ($8,508.63) From PNC Bank Account x1775 et al.*, No. MC 17-136, 2018 WL 3427635 (E.D. Pa. July 16, 2018).

Fourth Circuit remands forfeiture order because it improperly required defendant to pay amount of money judgment received by her co-conspirators, and not by her. Chittenden was convicted of bank fraud and conspiracy to commit bank and mail fraud for her role in a fraudulent mortgage scheme. Although she received only $231,000 in proceeds from these crimes, the district court ordered her to forfeit over $1 million to cover proceeds that her co-conspirators had received and dissipated. The Supreme Court later decided *Honeycutt v. United States*, which determined 21 U.S.C. §853 precludes co-conspirator liability. As the Court explained, to have "obtained" property, the person must have personally acquired it; one does not obtain property acquired by someone else. And while the words "directly" and "indirectly" modify the word "obtained," they do not erase the statute's requirement that the person in fact obtain the property. The relevant text of 18 U.S.C. § 982(a)(2) mirrors that of 21 U.S.C. §853(a)(1), so *Honeycutt's* interpretation of this language as permitting forfeiture only of tainted property the defendant personally acquired applies with equal force to§982(a)(2). *Honeycutt* further found that 21 U.S.C. § 853(p) – the sole provision of §853 that permits the government to confiscate property untainted by the crime – makes clear that the statute cannot permit joint and several liability. The district court ordered Chittenden to forfeit $1,032,378.82 of her untainted assets as a substitute for criminal proceeds that only her co-conspirators obtained. In short, none of that amount represented assets she obtained from her crimes. Accordingly, the court vacated

the district court's forfeiture orders and remanded for reassessment of the appropriate forfeiture amount. *United States v. Chittenden*, No. 14-4768, 2018 WL 3559227 (4th Cir. July 25, 2018).

West Virginia district court denies motion to hold defense attorney in civil contempt for applying property sale proceeds to defense attorney's fee debt, since restraining order was not unambiguous. The government instituted civil contempt proceedings when it moved for an order directing attorney Harris to show cause why he should not be held in civil contempt for converting restrained assets to pay attorney's fees. Saoud was convicted of several federal violations and the government moved for a preliminary order of forfeiture money judgment of $1,243,118.29 against him. Attorney McCoid later noted his appearance for Saoud, following which Harris moved to withdraw as counsel of record because he had been placed on home confinement by the state of West Virginia and was unable to meet with Saoud or interview witnesses. Harris and McCoid moved to continue the sentencing hearing to allow Saoud time to finalize the real estate transactions necessary to "satisfy the Government's forfeiture allegations." The court eventually ordered the requested forfeiture money judgment and restitution, along with an "Agreed"restraining order. Following each of the sales, Mrs. Saoud tendered the net proceeds to Harris Law Offices and executed a contemporaneous acknowledgment that the funds would "be immediately used to pay towards outstanding legal bills." Mrs. Saoud subsequently testified that the funds were meant to be applied to Saoud's restitution. According to Harris, he used $352,556.00 of the net proceeds, which had been deposited in his trust account, to pay his attorney fees incurred during Saoud's criminal trial. The government contended that Harris was in contempt of the forfeiture order. The court said that unless a defendant's "innocent property" is restrained by court order, he may use it to pay a reasonable fee for the assistance of counsel. The decisive inquiry was whether the Agreed Order placed a "clear and unambiguous" restraint on the property. Harris was not a party to the Agreed Order, nor was he counsel of record at the time of its entry. McCoid testified that he himself likely prepared the Order. Although Harris apparently remained somewhat involved in Saoud's case, including discussions regarding the Agreed Order, the Court did not agree that such limited evidence established that Harris was "de facto co-counsel." The Agreed Order was too ambiguous to unequivocally restrain the net proceeds used to pay Harris's attorney's fees because neither the order's text nor context clearly encompassed the property at issue. Civil contempt requires much more precision, and the government did not establish by clear and convincing evidence that Harris violated the Agreed Order. Finally, the government could not prove that it was harmed, so the court denied the motion for contempt. *United States v. Saoud*, No. 1:12CR113, 2018 WL 3244094 (N.D.W. Va. July 3, 2018).

Michigan district court holds that funds seized for civil forfeiture were not part of bankruptcy estate. The government filed a second amended complaint against more than $1,000,000 held in numerous bank accounts linked to Devenkumar Patel and Amee Patel, who owned multiple pharmacies. The government alleged these proceeds related to drug diversion and health care fraud. The court stayed the civil forfeiture proceedings during the pendency of the related criminal investigation, and the seized funds remain in the government's possession. Eight months later VPH, on of the pharmacies, filed for bankruptcy. The Chapter 7 Trustee filed an adversary proceeding seeking turnover account proceeds by the United States, alleging the seized property was part of the bankruptcy estate and could be used to pay creditors – which

would not include the Medicare Trust Fund. Alternatively, the Trustee sought to avoid and recover the seized funds as a fraudulent transfer. The government filed a motion to withdraw the reference from the bankruptcy proceeding with respect to the seized property. The court concluded that the seized property was not part of the bankruptcy estate. The government seized proceeds from VPH's bank accounts before VPH filed for bankruptcy. VPH had no equitable right to the proceeds, and they were not includable in the bankruptcy estate. If the Court held otherwise, entities subject to forfeiture proceedings could undo any prepetition seizures by filing bankruptcy and seeking turnover. Further, district courts, not bankruptcy courts, have original and exclusive jurisdiction over any action for the recovery or enforcement of any forfeiture. District courts must determine the correctness of the forfeiture action. Once a judgment of forfeiture is entered, the property belongs to the government and ownership dates back to the filing of the case. Therefore, the seized VPH accounts were not property of the bankruptcy estate since they were seized by the government long before the bankruptcy action was filed. Also, withdrawal of the reference of the portion of the bankruptcy proceedings that encompassed the forfeited monies was mandatory. *In re: Vph Pharmacy, Inc. Debtor, Samuel D. Sweet, Chapter 7 Tr., Plaintiff, v. United States of America, Defendant*, No. 18-11280, 2018 WL 3574721 (E.D. Mich. July 25, 2018).