Eleventh Circuit holds that the defendant did not show it was plainly erroneous for him to be held liable for property he did not personally obtain as proceeds of the conspiracy. Schneider, a securities law attorney, appealed his securities fraud and money laundering convictions involving the creation of about 20 fraudulent companies and causing millions of dollars of investor losses. On appeal, Schneider argued the district court plainly erred by ordering forfeiture of property that Schneider did not obtain as the result of his money laundering offenses. Under *Honeycutt v. United States*, holding a defendant jointly and severally liable for property his coconspirator derived from the crime but the defendant himself did not acquire. would be inconsistent with the statute's text and structure, because forfeiture under § 853(a)(1) was limited to tainted property the defendant himself acquired as a result of the crime. The statute at issue in *Honeycutt* requires forfeiture of "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of [a drug] violation." By contrast, 18 U.S.C. §982(a)(1), the statute mandating forfeiture for money laundering offenses, requires forfeiture of "any property, real or personal, involved in such offense, or any property traceable to such property." *Honeycutt*'s "tainted property" requirement does not apply to §982(a)(1) because this statute contains neither a "proceeds" nor an "obtained" limitation. Similarly, §981(a)(1)(C), the statute governing forfeiture for securities and wire fraud offenses, provides that "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to" any securities or wire fraud offense is subject to forfeiture to the government. Here, imposing the forfeiture order on a count-by-count basis was permitted under 18 U.S.C. §§981(a)(1)(C), 982(a)(1), the statutes that governed forfeiture in this case. Moreover, the statutes contain broad forfeiture provisions that do not limit forfeiture on a count-by-count basis. Further, the government had acknowledged it would not seek to "double count" in its collection of the forfeiture money judgments. Nor did the district court plainly err by imposing forfeiture on money obtained by Schneider's coconspirators as proceeds of their criminal conduct after it passed through a trust account maintained by his law firm. Schneider's reliance on *Honeycutt* was misplaced because *Honeycutt*'s "tainted property requirement" does not apply to §982(a)(1), the statute mandating forfeiture for Schneider's money laundering offenses. Thus, Schneider did not show it was plainly erroneous for him to be held liable for property he did not personally obtain as proceeds of the conspiracy. *United States v. Schneider,* 2021 WL 1575428, No. 19-10740, (11th Cir., Apr. 22, 2021).

Minnesota district court says it lacked the authority to stay administrative forfeiture proceeding. Sauke moved the court to order the suspension of an administrative forfeiture proceeding for the duration of his criminal case. The property was not the same property charged in the criminal indictment. Sauke moved on the ground that any statements he may make as a claimant to the seized property – to identify the property and document his claim to it – implicated the Fifth Amendment because he was a criminal defendant in a federal prosecution in which the same agency, ATF, had primary involvement in the investigation and prosecution. He contended that his possession of the property could support other charges and sentencing enhancements and he should not be required to choose between making statements against the interests and forgoing a claim on property. The court, however, found no provision in 18 U.S.C. §981 that authorizes a stay of an administrative forfeiture proceeding. It said the language in §981(g) appears to apply only to judicial forfeiture proceedings and presupposes there is a "claimant" who has asserted a "claim" to the property. Thus, the court lacked the authority to stay

ATF's administrative forfeiture proceeding and denied Sauke's motion. It added that if Sauke filed a valid, timely claim in the administrative forfeiture proceeding, the matter would end up in a judicial forfeiture proceeding (unless the property was returned to him), at which point either he or the government seek a stay under §981(g) if the applicable provisions in that subsection were satisfied. In addition, Sauke could file a motion in limine seeking to exclude the use of administrative claim forms as evidence in his criminal trial; alternatively, he could seek a protective order. *United States v. Sauke*, 2021 WL 1381334, No. 21-CR-36 (NEB/DTS)(D. Minn., Apr. 5, 2021).

Indiana district court denies release of defendant funds to pay criminal defense counsel because Claimant did not show that he had no other method of obtaining funds to pay his attorney. The government filed a complaint for civil forfeiture pursuant to 18 U.S.C. §981(a)(1)(C) for property seized from accounts held by Northwest Ambulance Services, Inc., and Ubanwa, LLC. In a related criminal case, a grand jury returned a criminal indictment against Basil Ubanwa, the companies' owner, for healthcare fraud, including a forfeiture allegation listing the assets named as defendants in the civil forfeiture case, which currently was stayed. Claimants sought a release of funds to pay attorney fees in the related criminal case, arguing that Ubanwa had a Sixth Amendment right to access some of the seized funds to pay for counsel of his choice in the related criminal action, since, they asserted, not all of the funds were obtained through the alleged fraud. The government argued Ubanwa must establish a need for funds to pay counsel before any determination can be made as to whether there are untainted funds. The court first said that when a defendant's assets have been seized or frozen and the defendant has insufficient alternative assets with which to pay counsel, then the court must hold an adversary hearing at which the government is required to prove the likelihood that the restrained assets are subject to forfeiture. If it finds that not all assets are subject to forfeiture, then the court must order the release of funds in an amount necessary to pay reasonable attorneys' fees for counsel of sufficient skill and experience to handle the particular case. The first step is for the defendant to present a bona fide need to utilize assets subject to the restraining order to conduct his defense, and if the district court finds that the defendant does not have other assets from which such payments can be made then it will hold a hearing regarding the assets. Claimants asserted that Ubanwa was entitled to release of all funds that cannot be traced to the alleged underlying criminal conduct to pay his counsel, and that the release of untainted funds need not be tied to a demonstration of particular need for them. However, courts have continued to require threshold showings before granting a post-seizure probable cause hearing. Beyond a vague assertion of bona fide need and a statement of the amount of fees he currently owed his counsel of choice, Claimants did not establish that Ubanwa had no other method of obtaining funds to pay his attorneys in the criminal case. Until a showing is made, the court said it need not address the extent to which some of the forfeited funds may be untainted by the alleged fraud charged in the criminal complaint. *United States v. $89,866.18*, 2021 WL 1560813, No. 2:16-CV-42-JEM (N.D. Ind., Apr. 21, 2021).

North Carolina district court denies summary judgment as to government's claim of proceeds of drug trafficking and unlicensed money transmitting business. A K-9 alerted to the odor of narcotics on Coleman's carry-on bag and backpack at Atlanta-Hartsfield- Jackson International Airport, and Coleman consented to a search of his luggage, which contained

approximately $252,140 held together with various multi-colored rubber bands and packaged in a manner and in denominations consistent with drug trafficking. Officers conducted a trace detection test on the currency using an Ion Scan 500DT, and the currency, plastic bags, and interior of the suitcase all tested positive for cocaine. Coleman produced a letter with the logo of the Office of the International Human Rights Commission ("IHRC") stating that Coleman was transporting $150,000 to be disbursed in Africa and the Caribbean. Coleman told officers that Shumake hired him to transport the currency from Atlanta to San Francisco. Shumake, who was not present at the airport, informed officers by phone that he routinely transported large amounts of U.S currency overseas for his organization and never reported the currency, since, as an ambassador, he was accorded diplomatic immunity. But according to the U.S. Department of State Office of Foreign Missions, Shumake was not a recognized ambassador for any organization and Coleman never registered with the DOS as a member of a foreign mission. The official records of the DOS also contained no record of an organization called the IHRC, the IHRC– Relief Trust Fund, or the IHC Humanitarian Mission. The DOS confirmed that the organization, Shumake and Coleman did not enjoy any privileges and immunities in the United States, either currently or at the time of the seizure. Claimants asserted that Shumake raised the money from donors and fundraisers in Atlanta, specifically,1) two individuals affiliated with the rapper "Young Thug" dropped off a bag of cash, approximately $100,000, in a hotel room at the Ritz Carlton in Atlanta where Coleman and Shumake were staying, and 2) John Goldstein, who was Shumake's partner in the "Via Real" cannabis farm business in California, gave approximately $100,000 to Shumake from his bingo business. The government filed a civil forfeiture complaint alleging the currency was the proceeds of drug trafficking or of an unlicensed money transmitting business. Shumake, Coleman, and the IHRC filed claims, and the government moved for summary judgment and challenged Shumake's standing. His claim asserted an ownership and possessory interest in, and the right to exercise dominion and control over, all of the defendant property, and his response to Special Interrogatories declared under oath that he was the owner of the currency (as opposed to mere possessor). The court, however, held that his bare assertion of ownership was not sufficient as a matter of law to establish standing to challenge forfeiture. Moreover, he was not entitled to diplomatic immunity in the United States. Therefore, the court granted summary judgment as to his claim. As for forfeitability as drug proceeds, the government contended the positive K-9 alert and ion scan were probative evidence, however, Claimants disputed the expert testimony related to the K-9 alert and ion scan in a motion in limine, so the court found genuine issues of material fact that would permit a reasonable jury to return a verdict in favor of Claimant IHRC. As for forfeitability as proceeds of an unlicensed money transmitting business, while it was clear that Coleman and Shumake operated an unlicensed money service business, there were genuine issues of material fact as to whether the IHRC also did so as defined in 18 U.S.C. § 1960(b)(1)(A), since the government's motion focused almost exclusively on the individuals. Thus, summary judgment was denied. *United States v. Approximately $252,140.00 in US Currency*, 2021 WL 1239822, No. 3:18-CV-00646-DSC (W.D.N.C., Apr. 2, 2021).

Kentucky district court did not prove hardship sufficient for release of defendant property to pay forfeiture defense counsel, and statute provided for appointment of counsel if needed. Vernier owned and operated Community Counseling and Treatment Service, a purported addiction treatment clinic that, along with its physicians and others, unlawfully diverted

controlled substances, engaged in fraudulent billing practices, and laundered criminal proceeds. The government alleged the defendant properties and funds represented proceeds of drug trafficking, money laundering and health care fraud. Vernier filed a Verified Claim to two pieces of real property and funds seized from six financial accounts, and the court stayed this case pending the conclusion of state criminal case against Vernier. Vernier filed a motion with the state court seeking the release of funds seized by the federal government to pay his counsel. The motion was overruled for lack of jurisdiction. Vernier then sought immediate release of all defendant property in the forfeiture case, or a substantial portion (not less than $100,000.00) for his defense against his pending criminal charges in Ohio under 18 U.S.C. §983(f), which provides a mechanism for the release of property where the government's continued possession would create a substantial hardship on persons claiming an interest in the property. Vernier, however, ignored the explicit terms of the statute, which allows for the release of seized currency if it constitutes the assets of a legitimate business which has been seized. No legitimate business was seized here. The business seized was alleged to have been one of drug trafficking, money laundering and health care fraud. Vernier did not present evidence establishing otherwise. Moreover, although the statute requires the claimant to provide assurance that the property will be available at the time of the trial, and that the likely hardship must outweigh the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding, Vernier sought the release of funds to use for his defense of the pending state criminal action – in other words, he sought release of funds for their dissipation. Under these circumstances, there was no way to ensure the availability of the property for forfeiture as required by statute. Moreover, "hardship" includes "preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless," paying legal fees was not among the statutory exemplars, nor was it contemplated. Congress has explicitly provided for legal representation, under certain conditions, for claimants in civil forfeiture actions. If Congress had intended the release of seized assets to be used for legal fees it would not have expressly permitted appointment of legal counsel. Finally, high ranking precedent has established that a criminal defendant has no constitutional right to use forfeitable property to pay counsel. Motion denied. *United States v. Real Properties Located in Sciotio and Lawrence Counties Ohio,* 2021 WL 1268365, No. CV 14-142-HRW (E.D. Ky., Apr. 6, 2021).

New York district court denies requested criminal forfeiture judgment because government failed to show defendant either directly or indirectly received fraud proceeds.

Dr. Hameedi pleaded guilty to one count of conspiracy in a scheme to defraud insurance providers by making materially false statements in requests for preauthorization for medical tests and procedures and in claims for payment for the provision of medical services and drug items. The bulk of the scheme consisted of submitting requests for preauthorization for payments in the names of doctors who did not perform the services, although services were actually performed by other credentialed physicians. The information also contained a forfeiture allegation seeking $6,871,176. The defendant contended he did not personally "acquire directly or indirectly" the proceeds of the fraud, and any control he exercised over the health care company (CMA) that received the funds was insufficient to hold him responsible for forfeiture of the proceeds of the fraud. While admittedly a close question, the court held there was no evidence to prove that Dr. Hameedi directly obtained the proceeds of the fraud, or that the allegedly fraudulent payments by

insurance companies, which accounted for only roughly 14.9% of the total revenues of CMA, were handled other than in the ordinary course of the business of CMA. And there was no evidence that the profits Hameedi earned from CMA were other than his share of the profits of the enterprise as a whole or that they were funded specifically by the fraudulently obtained insurance payments, and the government did not attempt to show that Hameedi misappropriated any funds from CMA. As for the government's alternative theory that Hameedi obtained the proceeds indirectly, the government also failed to prove that Dr. Hameedi so extensively controlled or dominated CMA that the fraudulently obtained insurance payments were effectively under his control and thus indirectly obtained by him. While Hameedi was the President of CMA, held a majority interest and had a right to 65% of the profits, he ceded the day-to-day management to Dr. Haaris, who also held himself out as the President of CMA from time to time. Furthermore, the government failed to show Hameedi exercised day-to-day control over the assets. While he was a signatory on the main bank account for CMA, so was Haaris, who took care of supervising the payroll for CMA and other expenses. While CMA did pay personal expenses for Dr. Hameedi, there was no evidence the personal expenses were not properly accounted for by CMA or that the payments to Hameedi ever exceeded the amount of loans Hameedi made to CMA. Accordingly, the government failed to show that Hameedi used CMA as his personal piggy bank, or that he could have syphoned off the $6,871,176 for his personal use. In the criminal proceeding against Haaris, the court found her did not exercise sufficient control over the funds to justify holding him jointly and severally liable. The government fared no better against Hameedi, so the court declined to impose an order of forfeiture. *United States v, Hameedi*, 2021 WL 1553999, No. 17-CR-137-1 (JGK) (S.D.N.Y., Apr. 20, 2021).