SUBMISSION TO THE SENATE INQUIRY INTO PENALTIES FOR WHITE COLLAR CRIME

Committee Secretary

Senate Inquiry into

White-Collar Crime Penalties

Parliament House

Senate.eco@Aph.gov.au

Dear Senators

Thank you for the opportunity to contribute to this very important area which dovetails into many other Parliamentary Inquiries, eg into ASIC, Foreign Bribery, and anti-corruption measures.

US 'CLASS ACTION' EVIDENCE

1. As you may be aware, US authorities like the Consumer Finance Protection Bureau carry out investigations, initiate prosecutions, and recover compensation for victims without the need for private litigation. We feel it is vitally important that these types of prosecutors have clear guidelines on the class of victims they can recover compensation for as part of the penalty. Furthermore the compensation should not go to the Crown office, would rather should go directly to the relevant victims. We strongly urge you to cut out as many of the middlemen as possible in order to maximise the returns to victims.

The US evidentiary system is worth examining for major 'class' prosecutions that commonly involve millions of pages of documents, such as 25,000,000 mortgages in a case that penalised Citigroup $7,000,000,000 in July 2014. Apart from speeding up trials, cases can be brought before limitations periods expire, and staff can work on other cases.

"After nearly 50 subpoenas to Citigroup, Trustees, Servicers, Due Diligence providers and their employees, and after collecting nearly 25 million documents relating to every residential mortgage backed security issued or underwritten by Citigroup in 2006 and 2007, our teams found that the misconduct in Citigroup's deals devastated the nation and the world's economies, touching everyone," said U.S. Attorney of the Eastern District of New York Loretta Lynch. "The investors in Citigroup RMBS included federally-insured financial institutions, as well as a host of states, cities, public and union pension and benefit funds, universities, religious charities, and hospitals, among others. These are our neighbors in Colorado, New York and around the country, hard-working people who saved and put away for retirement, only to see their savings decimated."

Streamlining evidence with international cooperating agencies:

We also think it would be beneficial if rules of evidence were streamlined with Britain and the USA to better ensure that all the cooperating international investigators can use the others' evidence. It might be necessary to pass an act that simply says that the evidence for an Australian trial will be admissible if it is admissible in the country of origin.

2. The thinking in the now famous "Yates memo" has criminal and administrative penalty prosecutors working together, along with the IRS and international white-collar crime investigators, to penalise the corporation while always **keeping the responsible individuals** in sight for personal prosecution.

The evidentiary standards should be streamlined so be various prosecutors sing from the same hymn book to the juries. There must be nothing more frustrating and costly than having to redo different presentations, and of course there is any administration cost of justice that can benefit from streamlining.

3. Complete statements of admission of guilt should be public and admissible in other cases (including civil litigation by victims of corporate wrongdoing, e.g. shareholders and customers).

4. Cooperating witnesses should be included in standard form release clauses of governmental prosecutors, the state and the Commonwealth, and related agencies. In other words, potential witnesses, actual witnesses, and whistleblowers should be granted **immunity, protection from retaliation, and exoneration of (for** example) mortgage debt. As in a matter we have in mind from Fos, the mortgage was written off 90% in accordance with the general ex turpi causa principles that does not allow the perpetrator to keep his ill gotten gains. In our opinion, perpetrators should not keep their ill gotten gains, and should be barred from taking steps to inflict financial harm on potential witnesses.

5. Important witnesses should be given **guaranteed immunity from prosecution** (subject to appropriate qualifications) to encourage the small fish to finger Mister Big. In our view, part of the penalties should be allocated towards rewarding witnesses in a carrot and stick approach as in the appended opinion of U.S. SEC Deputy Commissioner Kara Stein.

Full disclosure of plea-bargain to the Court:

Attached are other concerns of a Victorian Supreme Court judge with the expectation is simply to rubberstamp deals done by ASIC and defendants. The same views are shared by Judge Rackoff of New York. In the cases after be global financial crisis, it was too common for the shareholders and consumers to wear the ultimate consequences of managers. Rackoff gave the analogy of traffic on the freeway. Most people stuck to the speed limit, some drove at 120 mph, and others had 200 miles an hour weaving in and out of traffic. A calamity was inevitable. The traffic tickets were not paid by the perpetrators. Accordingly we support the idea that the perpetrators be required to disgorge profits, disgorge bonuses, and generally be kept honest.

Disgorgements:

With creative accountancy, it is relatively easy to inflate profit and thereby inflate one's bonus. The false accounting may never be noticed, or if it is noticed, it is noticed long after the statute of limitations has expired. We suggest the concept of tolling which keeps the statue limitations rolling along. As senators may be aware, in the USA some prosecutions and recoveries by retrospective to the 1990s. We firmly believe that the ill gotten gains should be recoverable with retrospective effect.

We also believe that it is unacceptable to simply hand over the ill gotten gains if one happens to be caught. The typical criminal mind thinks it'll never get caught because they are too clever, and if caught, they think they need only hand over the cookies in their pocket. We think they should be sent to the principal for the strap. Crime should not pay.

Mens rea:

For some offences in the USA, no intention is required. An example is in the field of the laws of bribery of foreign government officials. (See the attached). The " I didn't know it was illegal" is too often a copout. In our experience, and that of many of the submitters to the Senate Inquiry into Foreign Bribery, we have encountered wilful defiance of extraterritorial U.S. foreign corrupt practices legislation. Appallingly that defiance extended to purported legal ethics guardians that the Victorian Ombudsman recommended be referred to the local anticorruption commission, IBAC. (We

urge that white-collar criminal penalties be extended to individuals in governmental prosecutorial positions that, in our experience, has preferred to cover things up to save their own skins).

Evidentiary standards: the reverse onus of proof adopted by the British Financial Conduct Authority.

If we understand how colleagues from the legal services community, there is a standard of proof called the Briginshaw Standard. It is apparently somewhere between the balance of probabilities and the Beyond Reasonable Doubt standard in blue-collar criminal cases. According to our colleagues, this standard is a barrier to them successfully prosecuting top tier gatekeepers such as multinational law firms. We therefore recommend a lower standard of proof, such as the balance of probabilities. In fact we believe that they have reversed the onus of proof and placed it squarely on the directors, thanks to an initiative by the British Financial Conduct Authority. We fully support that reverse onus of proof. We also think our friends at the Financial Ombudsman Service are correct in saying that the Inquisitorial System has merit. Under the genuine inquisitorial system throughout Europe, the bank would have to prove its innocence. In our view, it is about time that these sociopathic unsympathetic corporate executives were held to a count. In the same breath we have to stress that legal profession legislation actually says the prosecutor is immune from improper actions, and the prosecutor is entitled to legal costs even if the prosecution loses. A Stalinist as that sounds, we think it would be an excellent idea if the same concepts apply to governmental boards that carry out disciplinary or regulatory functions. The public simply want to see fairness and equity, proper and ethical prosecutorial investigations, and the holding to account of excessive greed.

Penalties for Corporations that impersonate government agencies:

There are hundreds of submissions from victims of bank tactics as seen on 60 Minutes in the case of a bank and an 85-year-old farmer who never missed a payment. Customers are directed towards the so-called ombudsman schemes which are corporations that have permission from ASIC to not add "Ltd" to their name. (We think these misleading names should be banned). As a result of the misleading name, consumers assume they will get a service from an impartial government investigator rather than a bank-operated arbitration scheme with rules drafted by the banks to stack the deck in the bank's favour. A common theme in lots of media reports and Parliamentary hearings are the blocking tactics used to literally drive people to suicide, as in the case of the average four farm suicides per week in Queensland (refer to Senator Bob Katter).

The most common tactic we come across is known in psychology as gas lighting. Basically nothing the victim puts forward to the so-called ombudsman is good enough. In our case, our material came from the US Department of Justice and the Reserve Bank of Australia, which was not good enough for the financial ombudsman, but turned out to be worth billions in losses for a global credit card company. Unlike the ombudsman's customers, the bank are given extensions of time and are permitted to destroy it or lose documents that go against them, as in the case of falsified loan application forms. The delays and frustration, combined with banks seizing assets and investment funds, are calculated to bully the victim into submission or suicide. Things get even worse as the ombudsman scheme seek to create rights to seize your assets that are in another bank altogether. (We can see why people hide money in the Cayman Islands!). We therefore think that these falsely described corporate ombudsman should be identified as corporate arbitration schemes, and we also think that the penalties should include a white-collar crime penalty akin to manslaughter by reckless indifference. We are appalled and disgusted at how these impersonators of government officials so readily throw their victims on the scrapheap. It is time that they ship up or ship out. The same goes for their directors on numerous government boards which are infamous for rewarding yes-men who rubberstamp anything the CEO says. We firmly believe the directors, and all of the staff who are complicit, should be held to account. We fully support the ideas in the Memo of US Deputy Attorney General Sally Yates to all of her international crimebusting agencies.

Thank you for this opportunity to comment.

Kindest regards

Attachments:

SAMPLE: NO NEED TO PROVE GUILTY INTENT:

US jurisdiction arising from wire/email communications – deemed "knowledge"

In *SEC v Straub*, the Court found that it did not matter that a foreign person did not intend to use the mail services or other means "…of interstate commerce" in order to give rise to a criminal liability.

The Court regarded this feature as a purely "jurisdictional point". Congress had made it clear than no *mens rea* or intent was required in order for an individual to be liable for an improper use of the mail services or other means of interstate commerce. This is a salutary warning to all businessmen as it is no defence to a United States FCPA criminal charge to say that "I did not intend" to use "mail, wire or other means on interstate commerce" to engage in the offending conduct.

Facilitation payments in Australia and Canada

INQUISITORIAL SYSTEM:

Financial Conduct Authority confirms approach to improving responsibility and accountability in the banking sector

Published: Yesterday Last Modified: Yesterday

Press release

The Financial Conduct Authority (FCA) has today confirmed its approach to improving individual responsibility and accountability in the banking sector by publishing feedback which:

- sets out how the FCA will implement the Senior Managers Regime (SMR); and
- provides further information on the FCA's plans for the Certification Regime (CR) and new Conduct Rules.

The policies announced today are significant and will make it easier for firms and regulators to hold individuals to account.

Following strong demand from firms, the FCA is also today consulting on further, more detailed guidance on how the FCA will apply the Presumption of Responsibility. Additionally, we have published a separate consultation, jointly with the Prudential Regulation Authority (PRA), on the accountability regime for incoming branches of foreign banks.

Boards will effectively be deemed responsible for things they say they didn't notice their managers and staff were doing.

Financial Conduct Authority confirms approach to improving responsibility and accountability in the banking sector

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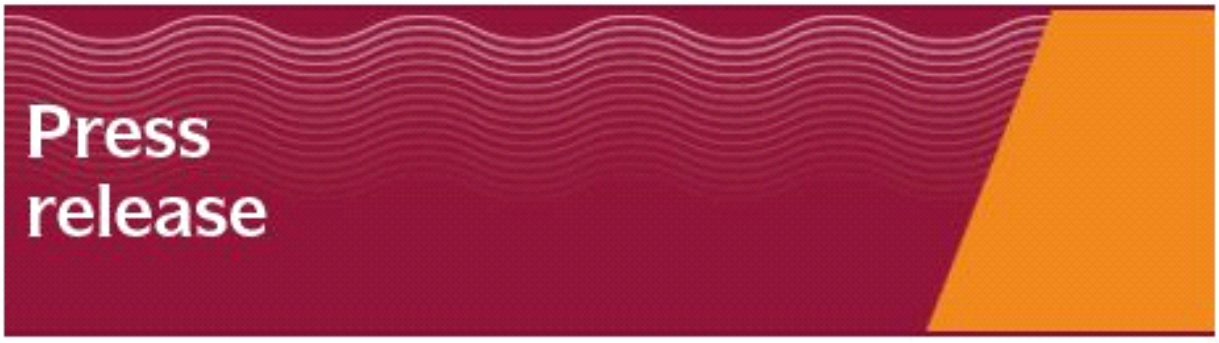

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HOLD INDIVIDUALS RESPONSIBLE

SPEECH

Keynote Address at Compliance Week 2014

Commissioner Kara M. Stein

Washington, D.C.

May 19, 2014

How can the Commission help you make prevention more effective? What are the best incentives? Carrots? Sticks? Or both?

First, let's talk about sticks. The Commission recently imposed a $200 million penalty against a large bank for misstating financial results and lacking effective internal controls. This breakdown in controls, a core part of compliance, contributed to billions – yes billions – in trading losses. The penalty was unprecedented for this type of case and is one of the largest penalties in the history of the Commission. Yet it amounted to a tiny fraction of the firm's net income for just one quarter.

If our actions become nothing more than a footnote in the litigation reserve section of a firm's financial statements, or a brief media storm that can be easily weathered before it is back to business as usual, have we been effective?

Or is it more effective to hold individuals to account? The people who could have, and should have, prevented the harm? This may help empower each of you in making the case to your clients and your firms that they should heed your advice.

I applaud our enforcement staff for bringing some tough and important cases. For example, we recently brought a financial fraud case against the Chief Financial Officer of a large public company,[iv] a case against a Chief Compliance Officer for violations of custody and compliance rules,[v] and a case against the directors of an investment company for failing to properly oversee the fair valuation of fund securities.[vi]

But one gatekeeper that often is absent from the list of cases I see every week are the lawyers. Lawyers often serve as trusted advisers, and they give advice on almost every corporate transaction. They prepare and review disclosures that investors rely upon – disclosures that are at the core of the Commission's regulatory program. And in most cases, they do a good job. But when lawyers provide bad advice or effectively assist in a fraud, sometimes their involvement is used as a shield against liability for both themselves, and for others.

Are we treating lawyers differently from other gatekeepers, such as accountants? I think we should carefully review the role that lawyers play in our markets, with a view towards how they can better help deter misconduct and prevent fraud.

4. **Cooperation.** Until the date upon which all investigations and any prosecution arising out of the Covered Conduct are concluded by the Department of Justice, whether or not they are concluded within the term of this Agreement, Citigroup shall, subject to applicable laws or regulations: (a) cooperate fully with the Department of Justice (including the Federal Bureau of Investigation) and any other law enforcement agency designated by the Department of Justice regarding matters arising out of the Covered Conduct; (b) assist the Department of Justice in any investigation or prosecution arising out of the Covered Conduct by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding; (c) use its best efforts to secure the attendance and truthful statements or testimony of any officer, director, agent, or employee of any of the entities released in Paragraph 5 at any meeting or interview or before the grand jury or at any trial or other court proceeding regarding matters arising out of the Covered Conduct; and (d) provide the Department of Justice, upon

Industries | Tue Nov 17, 2015 6:12pm EST Related: FINANC

U.S. SEC urges companies to self-report possible FCPA misconduct

NATIONAL HARBOR, MD. | BY SARAH N. LYNCH

Nov 17 Public companies will be required to self-report potential foreign bribery violations to U.S. securities regulators if they hope to receive a deferred or non-prosecution agreement in exchange for their cooperation, a top regulator said on Tuesday.

Andrew Ceresney, the head of enforcement for the Securities and Exchange Commission, announced the new requirement in remarks at the annual International Conference on the Foreign Corrupt Practices Act (FCPA).

"I'm hopeful that this condition on the decision to recommend a deferred or non-prosecution agreement will further incentivize firms to promptly report FCPA misconduct to the SEC and further emphasize the benefits that come with self-reporting and cooperation," said Ceresney.

The new policy comes at a time when U.S. prosecutors are generally trying to urge companies to cooperate with federal criminal and civil investigations.

In September, Deputy Attorney General Sally Quillian Yates unveiled a new policy that called on prosecutors to beef up their efforts to hold individuals more accountable and

The Deputy Attorney General

Washington, D.C. 20530

September 9, 2015

MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION
THE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION
THE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
THE ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION
THE ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION
THE ASSISTANT ATTORNEY GENERAL, TAX DIVISION
THE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
THE DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES
ALL UNITED STATES ATTORNEYS

FROM: Sally Quillian Yates
Deputy Attorney General

SUBJECT: Individual Accountability for Corporate Wrongdoing

The philosophy behind the agreements is in the statement you have from Kara Stein, which you have, and is in the attached evidence by Geoffrey Graber a short while ago. Put simply, proper modern settlements:

a) Are by the bank per se, and do not protect extraneous self-interested parties.

b) The corporation can recover its losses for the benefit of shareholders;

c) Do not threaten consequences if the customers or collateral victims complain to law enforcement and other agencies;

d) Do not look like the agreement stifles investigations;

e) Specifically do not release middle managers or those they instruct;

f) Specifically spell out possible laws that may be brought against individual officials and those who aid them;

g) Have admissions of the misdeeds with the intent that collateral victims can pursue the bank which in turn can claw back ill gotten gains from the parties responsible. (Your recitals seem to downplay the findings of Justices [redacted] and [redacted] for example);

h) The bank agrees to co-operate with investigations so that the individuals are pursued;

i) The bank can be prosecuted again or sued again if it fails to make full disclosure – and Justices [redacted] and [redacted] may have only vouched the tip of the iceberg.

j) Do not 'save individuals' who, for a pathetic $16,000 to $24,000, would not have the [redacted] splashed in the media on facebook pages with 3,700,000 followers that support calls for a Royal Commission into the banker's servants.

k) Compensate collateral victims, such as US citizens who procured the funds to pay the mediated payout figure of $[redacted] to the bank's lawyers, according to Justices [redacted] and [redacted]

HOLD RESPONSIBLE THOSE BUREAUCRATS WHO 'GASLIGHT', DELAY, OBFUSCATE, AND ALTER EVIDENCE, FABRICATE FILE NOTES

CIRCUMLOCUTIVE SENTENCES

THE ADVOCATE

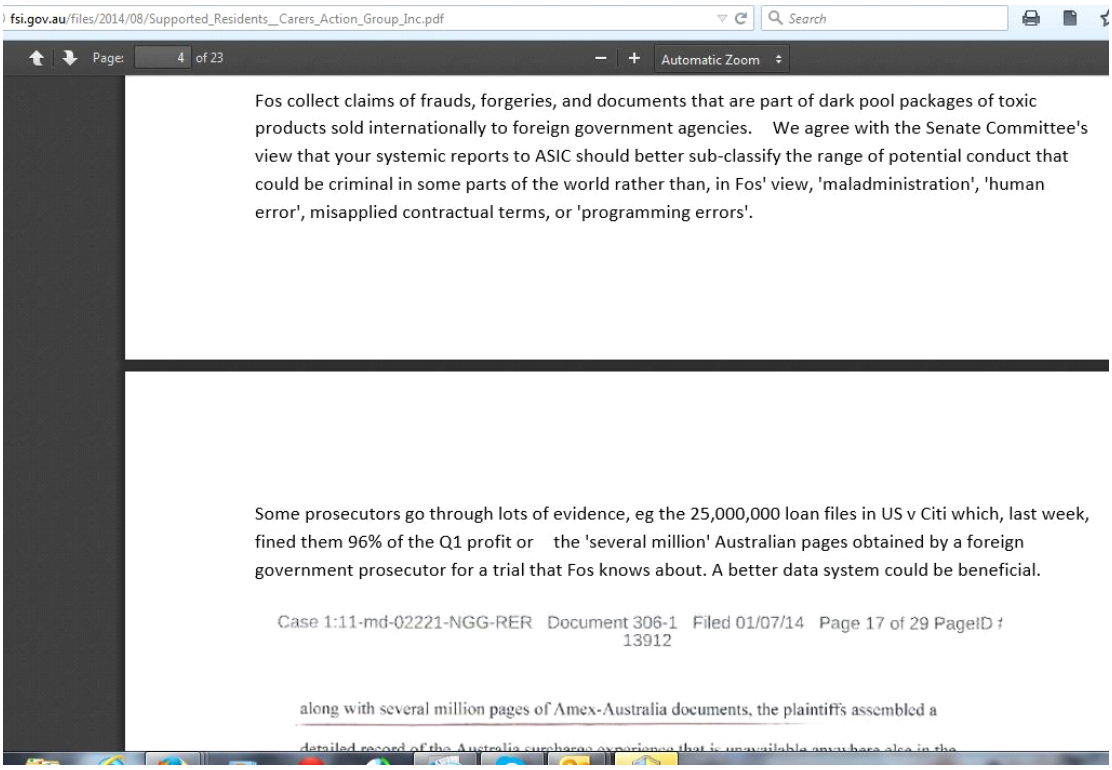
BATON ROUGE NEW ORLEANS ACADIANA

NEWS SPORTS ENTERTAINMENT EATPLAYLIVE OPINION WEEKLIES VIDEO BLOGS HELP

News

Federal judges reject convicted Ponzi scheme operator R. Allen Stanford's appeal, uphold 110-year sentence

US PROSECUTION COSTS 'ONLY' $3.5M THANKS TO RULES OF EVIDENCE:



fsi.gov.au/files/2014/08/Supported_Residents__Carers_Action_Group_Inc.pdf

Page: 4 of 23 Automatic Zoom

Fos collect claims of frauds, forgeries, and documents that are part of dark pool packages of toxic products sold internationally to foreign government agencies. We agree with the Senate Committee's view that your systemic reports to ASIC should better sub-classify the range of potential conduct that could be criminal in some parts of the world rather than, in Fos' view, 'maladministration', 'human error', misapplied contractual terms, or 'programming errors'.

Some prosecutors go through lots of evidence, eg the 25,000,000 loan files in US v Citi which, last week, fined them 96% of the Q1 profit or the 'several million' Australian pages obtained by a foreign government prosecutor for a trial that Fos knows about. A better data system could be beneficial.

Case 1:11-md-02221-NGG-RER Document 306-1 Filed 01/07/14 Page 17 of 29 PageID #: 13912

along with several million pages of Amex-Australia documents, the plaintiffs assembled a

FESS UP EARLY FOR A NON PROSECUTION OR DEFERRED PROSECUTION DEAL:

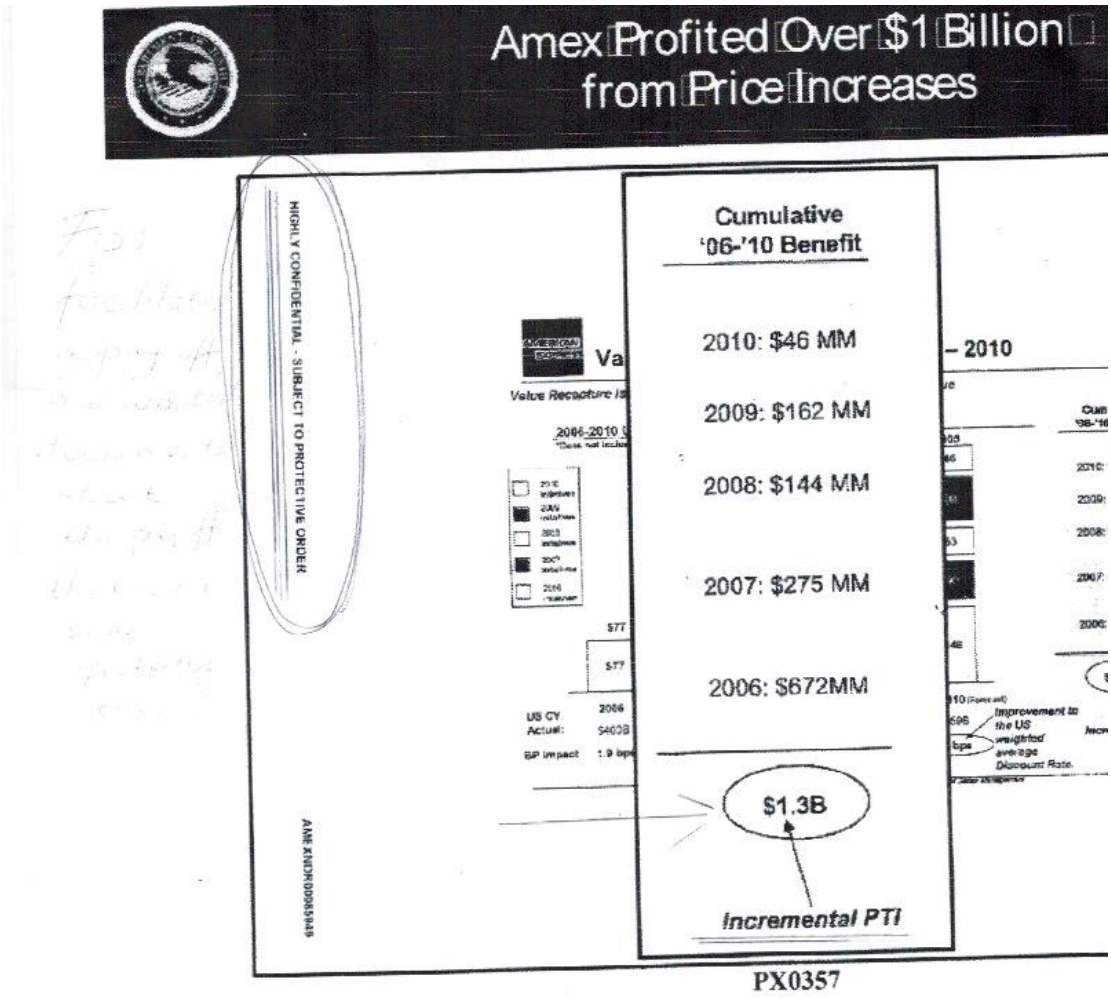
Leniency/amnesty regime

The DOJ administers a formal amnesty program called the "leniency program" that provides for complete immunity from criminal prosecution. The leniency program and "amnesty plus" program are significant detection tools and have played a role in virtually every recent major cartel investigation, including the auto parts investigation, municipal bonds investigation, LIBOR investigation, LCD investigation, air cargo investigation, and freight forwarding investigation. The program also can result in de-trebling of damages in parallel civil cases if the amnesty applicant satisfies the requirements of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 ("ACPERA") by, among other things, providing "satisfactory cooperation" to plaintiffs in the civil action.

A corporation that comes forward to report illegal activity prior to a government investigation qualifies for "Type A" leniency if it satisfies six conditions: (1) at the time the corporation comes forward, the Division has not received information about the activity from any other source; (2) upon the corporation's discovery of the activity, the corporation took prompt and effective action to terminate its participation in the activity; (3) the corporation reports the wrongdoing with candour and completeness and provides full, continuing, and complete cooperation to the Division throughout the investigation; (4) the confession of wrongdoing is truly a corporate act, as opposed to isolated confessions of individual executives or officials; (5) where possible, the corporation makes restitution to injured parties; and (6) if the corporation did not coerce another party to participate in the activity

GLI - Cartels First Edition 255 www.globallegalinsights.com

SAMPLE OF EVIDENCE PRESENTED TO COURT IN US & 17 STATES V AMERICAN EXPRESS:



LET'S NOT FORGET THE VICTIMS

SAMPLE RECOVERY ORDER IN BRITAIN WITH EXTRADITION OF AN AUSTRALIAN TO SERVE TIME

a Claim Form (CPR Part 8)

CLAIM ☐

In the High Court of Justice QBD Admin Ct

Claim no.

Fee Account no.

Claimant

The Director of the Serious Fraud Office
2-4 Cockspur street
London
Sw1Y 5BS

Defendant(s)

Assigned to Master

Does your claim include any issues under the Human Rights Act 1998? ☐ Yes ☑ No

Details of claim *(see also overleaf)*

Details of Claim: The Claimant applies for proceedings to be started in a claim for Civil Recovery against the Respondent. The claim is made under Section 243(1) of the Proceeds of Crime Act 2002 (henceforth referred to as the Act). Section 266(1) allows for the court to make a recovery order.

Consent Order: The Claimant and the Respondent have agreed to a recovery order being made by consent pursuant to Section 276(1) of the Act. Pursuant to this agreement, Form N244 is enclosed. This applies for an order to stay the Civil Recovery proceedings and for the matter to be disposed of by way of a Consent Order. The property, which it has been agreed should be subject to a Consent Order, is valued at US$900,000 (nine hundred thousand US dollars).

Property to which a Civil Recovery Order is sought: The claim arises from property held by Mr Bruce Allan Hall which represents the total value of sums received by him related to the conduct as set out in the matters relied upon below. The Consent Order incorporates provisions pursuant to Section 276(2)(a) of the Act which will prevent any further claim on the property of the Respondent being defined as recoverable property.

Defendant's name and address

£

Court fee

Legal representative's costs

Issue date

For further details of the courts www.gov.uk/find-court-tribunal.
When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

N208 Claim form (CPR Part 8) (05.14)

[redacted]

Claim no.

Details of claim *(continued)*

Matters Relied On In Support Of the Claim: The claim relies on material obtained from a criminal investigation into the conduct of Mr Victor Philip Michael Dahdaleh (henceforth referred to as Mr Dahdaleh) with regard to business activities associated with the contractual supply of alumina to a company called Aluminium B.S.C (henceforth referred to as ALBA). ALBA is a company formed in 1968 in order to provide an aluminium smelting facility within the Kingdom of Bahrain. The day to day management of the company is, and was at the relevant time, undertaken by a number of executive officers. The board of directors included, as a result of being the majority shareholder, a number of Bahrain Government Ministers. The Chairman of the Board, at the material time, was Sheikh Isa Bin Ali Al Khalifa (henceforth referred to as Sheikh Isa), the brother-in-law of Bahrain's Prime Minister.

The Respondent is an Australian national with a long history of working in the smelting industry with a focus on alumina and aluminium production. The Respondent was appointed as the Chief Executive Officer of ALBA in July 2001. The Respondent signed a plea agreement on 25 June 2012 in criminal proceedings before the Crown Court at Southwark (a copy of which is appended to this Claim Form) which confirmed that from 14 February 2002 he had entered into a pre-existing conspiracy with Sheikh Isa and Mr Dahdaleh to receive corrupt payments. The Respondent did not disclose the receipt of these payments to the board of Alba or its shareholders. In total, between January 2002 and November 2005 the Respondent received twenty payments totalling £2,883,806.88 as part of the corrupt arrangement with Sheikh Isa and Mr Dahdaleh.

However the Respondent has acknowledged in interviews with the Claimant that he received other payments relating to corruption which did not originate from accounts owned or operated by Mr Dahdaleh. The Respondent has acknowledged that these payments were not disclosed to the board of Alba. The total sums which the Respondent claims to have received outside of the activities of Mr Dahdaleh amount to nine hundred thousand dollars. The Crown is not pursuing criminal proceedings in relation to the activity which led to that sum being received by the Respondent. The basis for this decision is that the Crown does not have the jurisdiction to prosecute such further conduct as acknowledged by the Respondent.

The unlawful conduct upon which the Claimant bases these proceedings is corruption beyond that which the Respondent faces in criminal proceedings. By virtue of Section 241(2) of the Act, the Respondent's actions fall to be considered as unlawful conduct. The Claimant bases the value of the recovery order on the sums received by the Respondent by virtue of Section 242(1) of the Act under which they would be considered property obtained through unlawful conduct.

has also been nominated by the Director of the Serious Fraud Office to act as the Trustee for civil recovery pursuant to Section 267(2) of the Proceeds of Crime Act 2002. A copy of his signed and written consent to act as Trustee is enclosed with this claim form. The Claimant and the Respondent apply for the court to appoint Richard Gould as the Trustee for civil recovery pursuant to Section 267(1) of the Proceeds of Crime Act 2002.

Statement of Truth

*(I believe)(The Claimant believes) that the facts stated in these particulars of claim are true.

* I am duly authorised by the claimant to sign this statement.

Full name

Name of claimant's legal representative's firm Serious Fraud Office as designated Enforcement Authority

signed

*(Claimant)(Litigation friend)
(Legal representative's solicitor)

position or office held D/Head Investigations POCD
(if signing on behalf of firm or company)

**delete as appropriate*

The Serious Fraud Office,
Proceeds of Crime Division,
2-4 Cockspur Street,
London,
SW1Y 5BS

e-mail:

Claimant's or claimant's legal representative's address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

2 - 4 Cockspur Street London SW1Y 5BS 020 7239 7272 www.sfo.gov.uk
Director: David Green CB QC

Mr Richard Gould
Serious Fraud Office
2-4 Cockspur Street
London
SW1Y 5BS

Direct Line +44 (0)20 7084 454
Direct Fax +44 (0)20 7833 547
E-mail:

Your Ref:

Our Ref:

Date: 10 July 2014

[redacted]

I nominate you to act as trustee for civil recovery in the civil recovery proceedings brought by this offi against Bruce Allen Hall pursuant to Section 266(2) of the Proceeds of Crime Act 2002 (POCA).

Your powers, duties and functions as trustee are set out in section 267 and Schedule 7 of POCA.

[redacted]

DAVID GREEN CB QC
DIRECTOR

[redacted]

Mr David Green CB QC

Director

Serious Fraud Office

2-4 Cockspur Street

London

SW1Y 5BS

16th July 2014

Dear Mr Green

Thank you for nominating me in the role of Trustee in relation to civil recovery proceedings involving Bruce Allen Hall.

I can confirm that I am happy to carry out this role.

I accept the role on the basis that I will be carrying out my duties in accordance with section 267 and schedule 7 of the Proceeds of Crime Act 2002 and the Serious Fraud Office will indemnify me against any action or claim that may be brought against me in my capacity as Trustee and deal with such action or claim as if it was brought against the Serious Fraud Office.

Yours sincerely

Richard Gould

c/o Proceeds of Crime Division, Serious Fraud Office.

MASTER EYRE

CLAIM NUMBER:

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

~~ADMINISTRATIVE COURT~~

IN THE MATTER OF A RECOVERY ORDER

PURSUANT TO SECTION 276 OF THE PROCEEDS OF CRIME ACT 2002

Between

17/7/2014

HIGH COURT OF JUSTICE
17 JUL 2014
QUEEN'S BENCH ACTION DEPT

THE DIRECTOR OF THE SERIOUS FRAUD OFFICE (Claimant)

and

Mr Bruce Allan Hall (Respondent)

Australian Citizen

ORDER FOR DISPOSAL BY CONSENT

UPON THE APPLICATION of the Director of the Serious Fraud Office issued on 17 July 2014

AND BY THE CONSENT of the Claimant and the Respondent,

IT IS ORDERED THAT

1. A Recovery Order is made in respect of the property listed in the first schedule to this Order, marked Schedule One (the "**Scheduled Property**").

2. The Scheduled Property shall vest in the Trustee for Civil Recovery (the "**Trustee**"), namely Richard Gould of the Serious Fraud Office, 2-4 Cockspur Street, London, SW1Y 5BS, forthwith upon the making of this Order.

3. The Respondent is to transfer to the Trustee within fourteen (14) days of the date this order is sealed the property listed in Schedule One of this Order, namely US$ 900,000 (nine hundred thousand US dollars).

4. The Respondent shall pay to the Claimant costs assessed in the sum of £550.00 within fourteen (14) days of the sealing of this Order by the court.

5. Upon the Trustee taking possession of the Scheduled Property:
   a. the proceedings shall be stayed as against the Respondent; and
   b. in accordance with section 276(2)(a) of the Proceeds of Crime Act 2002, any further property of the Respondent held at the date of this Order shall cease to be recoverable property

6. It is ordered that no reference to these proceedings, or any material generated as a result of these proceedings, will be made public without the leave of this court or the Judge at the criminal trial of Mr Bruce Allan Hall on Indictment Number T20127073 until the opening of the sentencing hearing in that matter currently scheduled for the 21st July 2014 at Southwark Crown Court.

7. In accordance with section 276(2)(b) of the Proceeds of Crime Act 2002 all material relating to these proceedings shall not be subject to the Civil Procedure Rules 5.4 and 5.4C. The Court file shall be marked "not for disclosure" and, unless a High Court Judge grants permission, will not be made available by the court for any person to inspect or copy at any time. Any application for permission under this paragraph must be made on notice to the parties in accordance with the Civil Procedure Rules Part 23.

8. The Trustee will be discharged immediately following the satisfactory compliance of the terms of this order.

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9. Liberty to apply.

Dated this 17th day of July 2014

Signed:

.....

For the Claimant

Signed:

.....

For the Respondent

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"After nearly 50 subpoenas to Citigroup, Trustees, Servicers, Due Diligence providers and their employees, and after collecting nearly 25 million documents relating to every residential mortgage backed security issued or underwritten by Citigroup in 2006 and 2007, our teams found that the misconduct in Citigroup's deals devastated the nation and the world's economies, touching everyone," said U.S. Attorney of the Eastern District of New York Loretta Lynch. "The investors in Citigroup RMBS included federally-insured financial institutions, as well as a host of states, cities, public and union pension and benefit funds, universities, religious charities, and hospitals, among others. These are our neighbors in Colorado, New York and around the country, hard-working people who saved and put away for retirement, only to see their savings decimated."

All told, through the extraordinary leadership of dedicated Assistant Attorneys General like Bill Baer – and former leaders of the Antitrust Division like Christine Varney, Sharis Pozen, Joe Wayland and Renata Hesse, who I'm delighted to have with us today – the Antitrust Division's criminal program has prosecuted 385 individuals and 129 corporations over the course of the Obama Administration. We have obtained more than $5 billion in fines and penalties, which have been a major contributor to the Justice Department's Crime Victim Fund, helping victims of all types of crime access the medical, legal, financial and other services they need to move forward with their lives. And through our tireless efforts, we have sent a clear and consistent message to all those who would take advantage of American consumers, exploit our markets, or subvert our laws: the Antitrust Division will not tolerate their dishonest and destructive behavior. In that regard, I expect that there will be more significant news on the criminal side within the next few weeks.

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NO RUBBER STAMP PLEA DEALS:

It was as strong a case of insider trading as ASIC could wish for, carrying a maximum sente of five years in jail and a maximum fine of $220,000 (these maximum penalties have since b increased to 10 years and $765,000).

Gay pleaded guilty and was fined $50,000. He kept the bulk of the proceeds of his crime and avoided a jail sentence. Whilst the AFP could have launched crime recovery action, it chose to.

During sentencing Justice Porter described Gay as 'an exemplary character', thinking the cr 'not in the serious category of insider trading'. Apparently, stealing $750,000 from your fellow shareholders is not evidence to the contrary.

Interestingly, Fairfax's Patrick Durkin reported that in the month of Gay's conviction, in the sa Launceston court, a 48-year old was sentenced to 10 months in jail for stealing $71,000 in shipping containers.

And you can bet that had a Gunns accountant pocketed $750,000, they'd be behind bars aft being compelled to pay back the proceeds. But CEOs stealing from shareholders? Sorry, n the same league.

This is Medcraft's first problem. The institutions he needs to support ASIC in upholding current laws see white-collar crime as a lesser kind of offence. His second problem is that many of Medcraft's employees agree with that view.

ASIC chose not to appeal Gay's sentence, nor did it pursue directors of RBA subsidiaries Securency and Note Printing Australia for breaches of directors' duties, despite the AFP bringing bribery charges against them.

ASIC also recently dropped criminal proceedings against two former AWB directors in connection with the Iraq oil-for-food scandal. Instead, it pursued a pre-arranged settlement, with Judge Mark Weinberg saying his court was reduced to 'rubber stamping' secret deals between ASIC and the accused.


BusinessDay

Why ASIC lets the big fish go

John Addis

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"with Judge Mark Weinberg saying his Court was reduced to 'rubber stamping' secret deals between ASIC and the accused": The Age.