



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

March 25, 2009

BY HAND AND ECF

Honorable Stuart M. Bernstein
Chief United States Bankruptcy Judge
Southern District of New York
One Bowling Green
New York, NY 10004-1408

**Re: *In re Dreier LLP*, No. 08-15051 (SMB) (Ch. 11)
In re Marc S. Dreier, No. 09-10371 (SMB) (Ch. 7)**

Dear Chief Judge Bernstein:

This Office represents the United States of America in the above-referenced bankruptcies, as well as in *United States of America v. Marc Dreier*, No. 09 Cr. 085 (JSR). I write in response to the concerns expressed by counsel for Sheila M. Gowan, the Chapter 11 Trustee of the estate of Dreier LLP (the "Trustee") at the hearing last Friday, March 20, 2009, and to amplify my own comments at that hearing.

As the Court is aware, these bankruptcies were filed against the backdrop of the Government's prosecution of Marc S. Dreier ("Dreier"), the sole owner and only equity partner of Dreier LLP (the "Firm"). The Firm's bankruptcy was filed by a court-appointed receiver for the assets of Dreier. Shortly after the Firm filed for bankruptcy protection, this Office charged Dreier in a seven-count indictment, which also contained forfeiture allegations. According to the initial indictment, Dreier "shall forfeit to the United States . . . all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the [wire and securities] fraud offenses, including but not limited to . . . at least \$400 million in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the charged securities and wire fraud offenses, including but not limited to" 181 separately and specifically enumerated assets, including a yacht, four waverunners, four cars, six pieces of real property, nine bank accounts (including three held in the name Dreier LLP and one held in the name Dreier LLP Master Escrow 2), 150 pieces of artwork, and securities. The indictment also included a "substitute assets provision," which alleged that the Government would seek forfeiture of "any other property of" Dreier up to \$400 million.

Since the initial indictment was filed, the Government and the Trustee have worked together to ensure that the Government can effectively prosecute its forfeiture allegations, while, at the same time, the Trustee can effectively administer the Firm's estate. Indeed, over the course of the past several months, the Government has repeatedly consented to the Trustee's requests to release estate assets, even as we maintained all along that *all* of Dreier's assets — including the Firm itself — were subject to forfeiture.

Likewise, after Dreier's personal bankruptcy was filed and a Chapter 7 trustee was appointed, the Government met promptly with that trustee. At that meeting, we explained that although *all* of Dreier's personal assets are subject to forfeiture, we would work collaboratively with the trustee to efficiently administer that estate in a way that preserved value for Dreier's victims and other creditors alike. For example, we informed the trustee that although Dreier's homes on Long Island and all of the property in them were subject to forfeiture and under United States Marshals supervision, we had no intention of actually forfeiting the personal effects in those homes, which could be disposed of through the bankruptcy.

On March 17th, this Office filed a superseding indictment in the criminal case against Dreier, charging him with, among other things, money laundering in violation of 18 U.S.C. § 1956(a)(1) & (2) and alleging that, among other things, “[a]ll of the assets of Dreier LLP” are subject to forfeiture to the Government — making express what the Government has been representing all along. Literally within minutes of the indictment being made public, the Government contacted the Trustee to express our view that the new forfeiture allegations did not in any way change the Government's position regarding these bankruptcies. Because we were unable to immediately reach the Trustee, that conversation actually happened on March 18th; immediately after speaking with the Trustee, we contacted and expressed the same views to counsel for the Official Committee of Unsecured Creditors.

As I explained at the hearing last week, the new forfeiture allegations are notice provisions, included in the indictment because they are the logical byproduct of the new money laundering charge — *i.e.*, the Firm itself was an instrumentality of the money laundering crime. As I also explained, the Government has not sought and does not intend to seek additional restraining orders or seizure warrants with respect to property of the Firm, nor do we intend to seek final orders of forfeiture with respect to any assets not currently seized or restrained. Most importantly for the administration of these bankruptcies, the Government has no intention of forfeiting assets brought into the estate as a result of the Trustee's hard work, including the proceeds of section 363 sales (or the assets sold), collections from accounts receivable or works-in-progress, or the proceeds of avoidance actions.

As counsel to the Trustee noted at the hearing, the *only* thing that the Government cannot presently promise is that we will not seek to forfeit additional assets at some point in the future. The reason why the Government necessarily stops short of making that representation is only because new and unexpected developments may force us to change our position — for example, if a cache of secreted assets is discovered, or if the bankruptcy is dismissed.

As we discussed at last week's hearing — and as the parties discussed at much greater length immediately after the hearing — to the extent that the Government's reservation of rights in this regard creates any uncertainty over the administration of the bankruptcies, we are happy to give our binding consent with respect to particular identified assets as the Trustee seeks to dispose of them. To that end, and as I offered immediately before and after Friday's hearing, enclosed please find a stipulation between this Office and the Trustee, whereby the Government affirms that it will not seek to forfeit the property that the Trustee is in the process of selling as a result of this Court's March 12, 2009 Order.

The Government fully appreciates the difficulties of administering these bankruptcies against the backdrop of the criminal case and particularly our forfeiture allegations. We are committed to continuing to work effectively with the court-appointed trustees in both cases to ensure meaningful recovery for the victims of Dreier's fraud and the creditors of the estates. In the Government's view, the new forfeiture allegations — while facially broader than those contained in the initial indictment — do nothing to change that relationship or the allocation of assets between the bankrupt estates, on the one hand, and the Government's forfeiture case, on the other.

I hope these representations will serve to clarify the Government's role in these cases. Thank you for your consideration.

Respectfully,

LEV L. DASSIN
Acting United States Attorney

By: /s/ Matthew L. Schwartz
MATTHEW L. SCHWARTZ
Assistant United States Attorney
Telephone: (212) 637-1945
Facsimile: (212) 637-2750
E-mail: matthew.schwartz@usdoj.gov

enc.

cc: BY FEDERAL EXPRESS AND ECF

Sheila M. Gowan, Esq.
Howard D. Ressler, Esq.
Diamond McCarthy LLP
620 8th Avenue, 39th Floor
New York, New York 10018

Salvatore LaMonica, Esq.
Gary F. Herbst, Esq.
LaMonica Herbst & Maniscalco
3305 Jerusalem Avenue
Wantagh, New York 11793

Tracy L. Klestadt, Esq.
Sean C. Couthard, Esq.
Klestadt & Winters, LLP
292 Madison Avenue, 17th Floor
New York, New York 10017

Gerald B. Lefcourt, Esq.
Gerald B. Lefcourt, P.C.
148 East 78th Street
New York, New York 10075

Stephen J. Shimshak, Esq.
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
1285 Avenue of the Americas
New York, New York 10019

T. Barry Kingham, Esq.
Curtis, Mallet-Provost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178

Joseph Lubertazzi, Esq.
McCarter & English LLP
245 Park Avenue, 27th Floor
New York, New York 10167

Jeffrey W. Levitan, Esq.
Proskauer Rose LLP
1585 Broadway
New York, New York 10036

Brian S. Masumoto, Esq.
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, New York 10004