

Money Laundering and Forfeiture Digest: A Compilation of Recent Money Laundering and Asset Forfeiture Cases September 2017

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Search and Seizure / Damming Warrant / North Korea Sanctions

Court approves the use of damming warrants to stop the flow of forfeitable funds through correspondent bank accounts at US banks.

Such funds were subject to forfeiture as property involved in the evasion of US sanctions against sending funds to North Korea.

United States v. All Wire Transactions Involving Dandong Zhicheng Metallic Material Co., 2017 WL 3233062 (D.D.C. May 22, 2017).

D.D.C. * The Government applied for eight seizure warrants to stop the flow of money to North Korea through eight correspondent bank accounts in the US. The warrant application alleged that five Chinese front companies had been receiving money through the correspondent accounts for several years, that the companies were acting on behalf of North Korea, that it was likely that additional funds would be moving through the accounts in the future, and that such funds would be subject to forfeiture under 18 U.S.C. § 981(a)(1)(I) as property involved in violations of the North Korean Sanctions Policy Enforcement act, § 981(a)(1)(C) as proceeds of IEEPA violations, and § 981(a)(1)(A) as property involved in and traceable to money laundering violations.

The warrants the Government requested were styled as “damming warrants” that ordered each of the correspondent banks to freeze any funds sent by or to any of the five Chinese companies through the correspondent bank accounts for a period of 14 days, and to turn over the accumulated funds to the Government at the end of that period.

A magistrate judge denied the application on the ground that there is no authority in F.R.Crim.P. 41 for a damming warrant, and the Government appealed to the district court.

The district court granted the appeal, holding that damming warrants are merely one type anticipatory seizure warrant. Such warrants, the court said, may be issued if there is probable cause to believe that property subject to forfeiture will be found in a particular location at a particular time in the future.

Here, the Government's affidavit contained 80 pages of detailed information showing the connection between the five Chinese front companies and North Korea and how the companies engaged in transactions designed to conceal the true origin and destination of funds being routed to and from North Korea through US correspondent banks in violation of US law. Accordingly, there was probable cause to believe that any funds sent by or to those companies in the future would be subject to forfeiture.

Moreover, the affidavit showed that at least \$20 million had moved through each of the eight correspondent accounts to and from the five front companies since 2009, and that collectively, the eight accounts had processed \$52 million for the front companies in the past seven months. Accordingly, the court held that there was probable cause to believe that property subject to forfeiture would be found in the correspondent accounts during the 14-day period when the damming warrants would be in effect.

So the court vacated the magistrate judge's order and issued the eight warrants under seal. The court later unsealed both the warrants and its Memorandum and Order granting the Government's appeal. *SDC*

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Comment: While the use of damming warrants has become fairly routine over the past decade, there is virtually no case law discussing them. For that reason, this case is enormously important, as it gives prosecutors a description of what to include in the application for such a warrant, the text of what the warrant should say, and a precedent to show a skeptical judge who has not previously been called upon to issue one.

In short, a damming warrant is a type of anticipatory seizure warrant which may be issued if there is probable cause to believe two things: that certain property is subject to forfeiture, and that the property will be in a particular place at a particular time.

Here, the Government had ample evidence that the Chinese front companies were handling financial transactions for North Korea and that any money involved

in such transactions would be subject to forfeiture. The hard part was showing that there was probable cause to believe that such funds would be in the correspondent accounts of the US banks in the 14 days in which the damming warrants would be in effect.

The Government satisfied this requirement by showing the pattern and volume of transactions through the eight banks accounts over a period of years, including \$52 million in transactions in the past seven months. That pattern satisfied the court that similar transactions were likely to occur in the near future.

It's also worth noting that this is the first case that has ever applied § 981(a)(1)(I) (forfeiture under the North Korean Sanctions Policy Enforcement Act). *SDC*

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