UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE: ALL FUNDS ON DEPOSIT IN ACCOUNT NUMBER 000669829075 in THE BANK OF MM ACME BANQUE DE COMMERCE, INC., AT NATIONSBANK, N.A., CONSISTING OF $18,756,420.97, MORE OR LESS.	C.A. NO. 3:98mc96-McK
GEORGE AND DOLORES ROLLAR, Plaintiffs, v. UNITED STATES OF AMERICA, et al., Defendants.	C.A. NO. 3:01CV205-McK
RICHARD VASQUEZ, Intervener.	

REPLY OF GEORGE AND DOLORES ROLLAR TO GOVERNMENT'S BRIEF IN OPPOSITION TO MOTION FOR ATTORNEYS' FEES AND COSTS

I. Introduction.

The only opposition to the Motion of Plaintiffs George and Delores Rollar for Attorneys' Fees and Costs (the "Rollars' Motion") comes from the government—the very entity that necessitated the filing of the Complaint because of its unreasonable delay in implementing a procedure whereby victims like the Rollars could recover their money being held by the government. In its Response to the Rollars' Motion, which is lean on

authority,[1] the government, argues in self-serving fashion that (i) the Rollars' expenditure of attorneys' fees did not confer any benefit on the other victims in the case, (ii) the Rollars' legal fees were incurred so that they would obtain a larger share of the Seized Funds, and (iii) the Rollars waived any right to seek attorneys' fees by agreeing to the October 11, 2001 Consent Order.

As a threshold matter, the government lacks standing to contest the Rollars' Motion, as discussed below. Further, each of the government's arguments fails on substantive grounds: (i) the facts speak for themselves and establish beyond dispute that the Rollars' efforts in filing the Complaint spurred the government into action to distribute the Seized Funds after more than two and one-half years of apparent inaction on the government's part; (ii) it is irrelevant under the applicable authorities whether the Rollars' legal fees were incurred to obtain for themselves a "larger share of the Seized Funds," so long as their efforts resulted in a benefit to the other victims; and (iii) the Rollars, by agreeing not to pursue the government for recovery of their attorneys' fees incurred in connection with the claims in the Complaint did not waive their right to seek reimbursement from the Seized Funds and the receivership estate under the common fund doctrine.

II. Argument and Authorities.

A. The Government lacks standing to oppose the Rollars' Motion.

In the Consent Order filed on October 11, 2001, the government agreed to the following:

---

[1] In its 9-page response, the government cites only one case, and that case has nothing to do with the common fund doctrine—the basis for the Rollars' Motion.

> Subject to the submission of a bond under the preceding paragraph, the government, as stakeholder, is hereby deemed to have duly invoked interpleader pursuant to 28 U.S.C. § 1335 and Fed. R. Civ. P. 22 with regard to the seized funds. After furnishing all discoverable information as provided above, **the government shall have no further interest in or liability for the seized funds**, and this case shall be stayed as to the government in all respects, except that the government may designate individual witnesses to testify by deposition or otherwise in this case. Once the seized funds (and any interest) have been finally disbursed by order of the Court, plaintiffs' complaint shall be dismissed as to the government, with prejudice. As to those claims, each party shall bear its own costs, including attorneys fees.

Consent Order, ¶ 8 (Docket Entry No. 23).

Clearly, the government relinquished all interest in the Seized Funds pursuant to paragraph 8 of the Consent Order. Moreover, pursuant to the Order Appointing Receiver, dated October 29, 2001 (Docket Entry No. 27), Michael J. Quilling was appointed receiver and made the representative of all of the claimants to the Seized Funds. The government's lack of an actual interest in the disbursement of the Seized Funds results in a lack of standing for its opposition to the Rollars' motion for attorneys fees, and the Rollars move that the Response be stricken on that ground. *See Matter of Zedda*, 169 B.R. 605, 607 (1994) (holding that debtors without an interest in an estate had no standing to oppose fee applications to be paid from estate).[2] Inasmuch as no party with standing to oppose the Rollars' Motion did so, the motion should be granted if the Court deems it meritorious on its face.

---

[2] Hopefully, it will not be lost on the Court that the parties with an actual interest in the Seized Funds—the receiver, on behalf of all claimants, and intervenor Richard Vasquez—have not opposed the Rollars' Motion. It appears that the government's true motivation for opposing the Rollars' Motion was to attempt to defend its inexcusable delay in implementing a procedure to distribute the Seized Funds.

B. The Rollars did not waive their right to seek attorneys' fees from the Seized Funds pursuant to the common fund doctrine.

The government quotes out of context one clause from paragraph 8 of the Consent Order ("bear their own costs, including attorneys' fees" (*see* Response, p. 9)) and argues that "this language should be construed, among other things, as a waiver of [the Rollars'] right to come back later and recover their attorneys' fees out of the seized funds." *Id.* The government's waiver argument loses all validity and credibility when viewed in light of the complete language in paragraph 8 (set forth above) and the language in paragraph 12. Specifically, paragraph 8 of the Consent Order provides, in relevant part: "Once the seized funds (and any interest) have been finally disbursed by order of the Court, **plaintiffs' complaint shall be dismissed as to the government, with prejudice. As to those claims** [claims against the government that shall be dismissed], **each party shall bear its own costs, including attorneys fees.**"

Moreover, paragraph 12 provides:

> Subject to the terms and conditions of this order, **plaintiffs and movant [Richard Vasquez] expressly reserve the right to assert in this case any and all claims for distribution from the seized funds, in accordance with the applicable law and their respective complaints.**

The Rollars will not speculate as to whether the government was merely sloppy or intended to mislead the Court by its out of context quote from paragraph 8 and its failure to direct the Court to paragraph 12, but the clear and unambiguous effect of those paragraphs is that (i) the Rollars only agreed not to seek attorneys' fees from the government for the claims in the Complaint and (ii) the Rollars reserved all of their rights to make "any and all claims for distribution from the seized funds." Inasmuch as the Rollars' Motion seeks payment from the Seized Funds (not the government) pursuant to

the common fund doctrine (the "applicable law") for that portion of their attorneys' fees that benefited all of the claimants, that claim was not waived but was expressly reserved.[3]

C. Under the common fund doctrine, it is irrelevant that the Rollars' legal fees "were originally incurred by the Rollars to obtain a larger share of the Seized Funds."

As the cases in the Memorandum of Authorities in Support of the Rollars' Motion make abundantly clear, it simply does not matter for purposes of the common fund doctrine that the Rollars acted out of their own self-interest in pursuing the government and did not purport to sue on behalf of a class, so long as their lawsuit ultimately benefited a similarly situated class. *See Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 165-66 59 S.Ct. 777, 779-80 (1939) ("To be sure, the usual case is one where through the complainant's efforts a fund is recovered in which others share. Sometimes the complainant avowedly sues for the common interest while in others his litigation results in a fund for a group though he did not profess to be their representative.") *See also Buford v. Tobacco Growers' Co-Op. Ass'n et al.*, 42 F.2d 791, 792 (4th Cir. 1930) ("if the class of persons among whom the fund will be distributed has been benefited by the suit, it makes no difference that some of them may have contested it; for it is the benefit conferred, and not the fact that all of the beneficiaries may have agreed as to what was beneficial, that entitles counsel to compensation."). In this case, the Rollars admittedly

---

[3] The timing of events in this case further undermines the government's waiver argument. As of the date of the Consent Order (October 11, 2001), the receivership had not been established (that did not happen until, at the earliest, October 29, 2001—the date of the Order Appointing Receiver). The Rollars' so-called "waiver" of their right to pursue attorneys' fees from the government in connection with the claims against the government set forth in the Complaint cannot be construed as waiving a claim for reimbursement from subsequently created receivership estate for which an independent receiver had yet to be appointed. *Cf. Underwood v. Pierce*, 761 F.2d 1342, 1345 (9th Cir. 1985), *rev'd in part on different grounds*, 487 U.S. 552, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988) (holding that even though settlement agreement specifically precluded attorneys fees from being awarded from a settlement fund, it did not contemplate or bar the award of fees under the Equal Access to Justice Act, which had not been enacted at time of settlement).

proceeded out of self interest; however, as a result of their self-interest and dogged pursuit, the government was finally forced to take action to distribute the Seized Funds, thus resulting in a benefit to all claimants situated similarly to the Rollars.[4]

D. The Rollars' lawsuit clearly prompted government action and thereby bestowed a benefit on the other investors.

The chronology of events in this case speaks volumes about the effect of the Rollars' lawsuit. The government seized the Seized Funds on December 11, 1998. By May 1, 2001, almost two and one-half years later, no procedure had been implemented by which victims, including the Rollars, of the Ponzi scheme at issue could lay claim to what was rightfully theirs. On May 1, 2001, the Rollars filed their Complaint against the government. Within five months thereafter, a receiver was appointed, and the process of distributing the Seized Funds began.

In its Response, the government argues in conclusory fashion (and without offering any evidence to support the conclusions), that "[t]he government was proceeding expeditiously on a massive and complex international fraud investigation. . ." Response, p. 7. The government also argues that the Rollars "vigorously contested the government's motion for an interim receiver" (*Id.* at 4) and takes the preposterous position that "simply by filing their frivolous lawsuit, the Rollars may have actually

---

[4] The government correctly notes that the Rollars initially sought a direct tracing method of distribution. Response, p. 4. That was because, among other reasons, the government had initially led the Rollars to believe that virtually all of their $12.5 million "investment" was traceable to the Seized Funds. Indeed, the Rollars made every reasonable effort to determine early in the litigation whether or not tracing was appropriate. Toward that end, the Rollars requested that the government voluntarily provide the tracing materials it said it had. When the government refused, the Rollars filed on August 28, 2001 their Opposed Motion for Expedited Discovery of Tracing Materials Pursuant to Rule 26(d) and Motion for Continuance on the Government's Request for an Interim Receiver (Docket Entry No. 16.) ("Discovery Motion"). It was only after the receiver was appointed and after he provided tracing information to the Rollars that they learned that some of the accounts into which the Rollars' money had been transferred had been depleted, thus rendering a strict tracing theory inapplicable to at least some of their investment. Again, had the government provided the tracing information to the Rollars voluntarily rather than delaying its production, this case could have progressed even faster.

delayed the resolution of this matter by distracting government officials from their duties." *Id.* at. 8. Perhaps two and one-half years with no obvious results is expeditious in the government's eyes, but it certainly was not "expeditious" in the eyes of the Rollars. The Rollars do not believe, and neither should the Court, that the appointment of a receiver within just months after the Rollars filed their Complaint was coincidence or serendipity.

With respect to its argument that the Rollars' opposed a receiver, the government, again, relays only half of the truth. In a letter dated June 13, 2001 (fewer than 45 days after the Complaint was filed) to the government's attorney (a copy of which is attached as Exhibit 1), the Rollars offered as follows:

> . . . In fact the Rollars are willing to consent to a motion that:
>
> **Requests the court to appoint a person (whether denominated a receiver or special master) with the authority to begin the process of formally tracing deposits into the seized account so long as the Seized Funds (as that term is defined in your motion) are deposited with the Clerk of the United States District Court for the Western District of North Carolina under the jurisdiction of the court,** and
>
> Requests a temporary stay of proceedings with respect to the individual defendants in both their personal and official capacities and a temporary stay of proceedings with respect to the due process claims against the United States.

(Footnote omitted.) The government, however, was unwilling to deal except on its own terms and wanted to move forward with its efforts to dismiss the Complaint. The Court may note that the compromise agreement the Rollars offered on June 13, 2001 is substantially the same as the arrangements implemented by the October 11, 2001 Consent Order four months later.[5]

---

[5] The Rollars had two interrelated objections to the appointment of a receiver: i) the government had represented that its tracing was nearly complete (*see, e.g.*, paragraph 5 of the government's Motion to (cont'd)

In sum, the record amply demonstrates prolonged retention by the government of the Seized Funds and that within months of the filing of the Complaint a procedure was implemented by which victims of the Ponzi scheme at issue could lay claim to their property. The Rollars' motivation in opposing a receiver was manifestly not to delay the proceedings, but rather, among other things, was out of concern for the costs of paying to have a tracing done when the government represented one was already "substantially" complete. Indeed, the fact that the receiver has had to expend so much time tracing the Seized Funds belies the government's claims that it was "proceeding expeditiously" and that the tracing was "substantially" complete.

III. Conclusion.

In summary, there is only one issue the government raises that is relevant to the Rollars' motion: Did the legal services provided by the Rollars' counsel confer a benefit on the other victims of the Ponzi scheme? Based on the indisputable facts that the exercise of the Court's jurisdiction over the Seized Funds and the current mechanism for distribution both sprang from the litigation instituted by the Rollars, this question must be answered in the affirmative. It is therefore equitable that the portion of the Rollars' legal

---

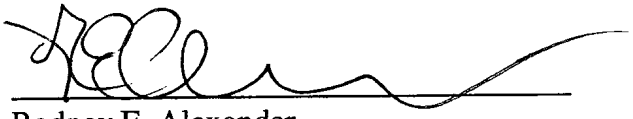
(... cont'd)

Appoint Interim Receiver and to Stay All other Proceedings in this Case (Except One Motion to Dismiss) filed on June 15, 2003 (Docket Entry No. 2)), so the Rollars did not see the need for a receiver to do what the government represented that it had already done; and ii) the Rollars were concerned about the expense of a receivership to perform a tracing that the government represented was substantially complete. *See* Discovery Motion, p. 4 (Docket Entry No. 16) ("If, however, the tracing the government performed is substantially complete and accurate, then paying a receiver or special master to perform a tracing would be a waste of assets (be it the government's or those in the Seized Account)."). On August 28, 2001, the government's attorney wrote to the undersigned and steadfastly refused to agree to have the Seized Funds transferred into the registry of this Court. The government also challenged the undersigned to voice any legitimate objection to the appointment of a receiver. *See* Exhibit 2 (a copy of the August 28, 2001 letter from the government's attorney). The undersigned responded by letter dated August 30, 2001 (copy attached as Exhibit 3), and voiced concerns about the substantial cost of a receiver to perform a task that the government said it had substantially completed—trace the Seized Funds. *See* paragraph 2 of Exhibit 3.

fees which contributed to these benefits be reimbursed pursuant to the common fund doctrine.[6]

This the 24th day of November, 2003.

Respectfully submitted,



Rodney E. Alexander
North Carolina Bar No. 23615
Eric Cottrell
North Carolina Bar No. 21994

MAYER, BROWN, ROWE & MAW LLP
214 North Tryon Street, Suite 3800
Charlotte, North Carolina 28202
Tel.: 704-444-3500
Fax: 704-377-2033

ATTORNEYS FOR PLAINTIFFS GEORGE AND DOLORES ROLLAR

[6] Finally, the Court should consider that the Rollars are not requesting reimbursement of all of their attorneys' fees and expenses. While such a request could be supported under the common fund doctrine, the Rollars have endeavored to limit the attorneys' fees for which they request reimbursement to only those fees that benefited all of the claimants.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY OF GEORGE AND DOLORES ROLLAR TO GOVERNMENT'S BRIEF IN OPPOSITION TO MOTION FOR ATTORNEYS' FEES AND COSTS** was served by depositing a copy of same in the U.S. Mail, postage prepaid and addressed as follows:

William A. Brafford
Assistant United States Attorney
United States Attorney's Office for
the Western District of North Carolina
227 West Trade Street, Suite 1700
Charlotte, NC 28202

Jennifer Leong
Kilpatrick Stockton LLP
214 North Tryon Street, Suite 2500
Charlotte, NC 28202-2381

Michael J. Quilling
Quilling, Selander, Cummiskey & Lownds
2001 Bryan Street, Suite 1800
Dallas, TX 75201

This the 24th day of November, 2003.

Rodney E. Alexander

MAYER, BROWN & PLATT

BANK OF AMERICA CORPORATE CENTER
100 NORTH TRYON STREET, SUITE 2400
CHARLOTTE, NORTH CAROLINA 28202

Rodney E. Alexander
DIRECT DIAL: (704) 444-3569
DIRECT FAX: (704) 377-2033
RALEXANDER@MAYERBROWN.COM

MAIN PHONE
(704) 444-3500
MAIN FAX
(704) 377-2033

June 13, 2001

William A. Brafford
Assistant United States Attorney
United States Attorney's Office for
the Western District of North Carolina
227 West Trade Street, Suite 1700
Charlotte, NC 28202

Re: No. 3:01CV205-McK; *George and Delores Rollar v. United States of America*, et al.

Dear Bill:

This letter is in response to the Government's request that the Rollars consent to a motion in the above matter requesting the appointment of a receiver and staying the proceedings. As we have discussed, the Rollars are in substantial agreement with the two substantive proposals in you motion (e.g., the appointment of some type of "receiver" and a stay of most of the proceedings). In fact the Rollars are willing to consent to a motion that:

1. Requests the court to appoint a person (whether denominated a receiver or special master) with the authority to begin the process of formally tracing deposits into the seized account so long as the Seized Funds (as that term is defined in your motion) are deposited with the Clerk of the United States District Court for the Western District of North Carolina under the jurisdiction of the court[1]; and

2. Requests a temporary stay of proceedings with respect to the individual defendants in both their personal and official capacities and a temporary stay of proceedings with respect to the due process claims against the United States.

---

[1] You have stated that the Government's tracing of funds deposited into the seized account (as identified in your motion) confirms that $12.5 million of the over $18.7 million seized is directly traceable to accounts owned by the Rollars. As I have recently explained to you, it is the Rollars' position that they are entitled in this case to an immediate return to them of the entire $12.5 million (plus the interest that has been accruing on that money since seized by the Government) that is traceable to them. All of the following proposals in response to your proposed motion are made without waiver of that basic contention. Moreover, any agreement with the Government to attempt to move the resolution of this matter forward is without waiver of the Rollars' due process and other claims.

EXHIBIT

The Rollars cannot consent to the Government's proposed motion as drafted, however, because it goes far beyond requesting a temporary stay and the appointment of a receiver *in this case*. In fact, the motion appears intended to lay the groundwork for the eventual transfer of the claims in this case to some other forum. Further, in the event of a stay of all proceedings except the motions to dismiss with respect to the individual defendants, the Rollars' claims would sit idle until the Government is ready to proceed while the Government makes every effort to parse out and defeat some of the Rollars' claims (at substantial expense to the Rollars responding to motions to dismiss). We are at pains to explain to the Rollars why they should embrace such a one sided agreement. If the goal is to streamline proceedings, reduce the work for the parties and make progress toward resolving this case, it seems that the motions to dismiss should be stayed along with all of the other due process claims (which are related in large part to the individual defendants).

In the interest of cooperation, economy and expediency, the Rollars will agree to a stay of most of the proceedings, but the Rollars will not agree to stay the 41(e) claim. The result of such an agreement is that the Government (the United States proper and not the individual defendants) would be required to answer only the 41(e) allegations of the Complaint (until the temporary stay is set aside or the matter is resolved) and the Rollars would be entitled to discovery limited to establishing their claims under 41(e) and to an expeditious hearing on those claims. This compromise greatly reduces the work the Government must do to respond to the Complaint and gives the Rollars the opportunity to obtain at least partial relief without further delay.[2]

I believe the above offer provides you with most of the substantive relief you were seeking in your draft motion, yet provides the Rollars with an avenue for relief in the foreseeable future. The Rollars will not oppose a motion consistent with the above, with the only additional caveat being that the agreement not to oppose would be based on your agreement not to contest the Rollars' standing to pursue their due process and 41(e) claims.

---

[2] As we discussed, we believe the Court can determine the Rollars' entitlement to restitution under Rule 41(e) without the necessity of notice to all persons whom the Government believes may make claims against the Seized Funds. The Court certainly would be apprised of the existence of potentially competing claims, but could decide whether, in this novel factual setting for a Rule 41(e) claim, the Rollars are entitled to return of the money that can be traced to them. If the Court deems notice to potentially interested persons necessary for resolution of the 41(e) claims, then it can order notice to potentially interested parties immediately, and we can move forward with this case rather than waiting for the Government (the SEC) to decide when or if it plans to take action some time in the future. As I told you, George Rollar is seventy-two years old and rightfully believes the time for waiting is over.

I hope we can reach agreement inasmuch as a contested motion will simply increase the expense of litigation, and I cannot conceive that the Court would agree to an opposed motion for a stay in a proceeding made necessary by the Government's undue delay. If you would like, I am happy to draft a form of motion agreeable to the Rollars.

Sincerely,

Rodney E. Alexander

REA/dmt
cc: George Rollar
Lee Rubin (DC)

U. S. Department of Justice

United States Attorney
Western District of North Carolina

Headquarters:
227 West Trade Street
Suite 1700, Carillon Building
Charlotte, North Carolina 28202
704/344-6222
FAX 704/344-6629

Branch:
U. S. Courthouse, Room 233
100 Otis Street
Asheville, North Carolina 28801
828/271-4661
FAX 828/271-4670

REPLY TO: Charlotte Office

August 28, 2001

Mr. Rodney E. Alexander
Mayer, Brown & Platt
Bank of America Corporate Center
100 North Tryon Street, Suite 2400
Charlotte, NC 28202

Re: Rollar v. United States, et al.

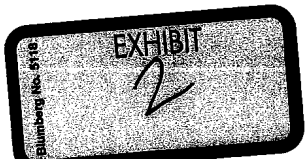
Dear Rodney:

This is in response to your letters of August 21 and 24.

I will not agree to a transfer of any portion of the seized funds into the registry of the court for at least two reasons. First, such a transfer is totally unnecessary for the protection of your clients' interest in this matter. The funds are being held pursuant to an order of the court and cannot be released or transferred anywhere without another order of the court, regardless of what might happen in another judicial district. Second, the funds may be earning a higher interest rate where they are now than they would in the clerk's account. I am waiting on information from the Marshals in this regard.

As to your objection to a receiver, I will take it seriously if you can articulate any reason that your clients would be prejudiced by such an action. You have never done so. It appears that you are mainly worried that you don't know some things about the underlying criminal investigation, which is true, but so what? This case is not about eliminating any conceivable exposure you might have to a future malpractice claim by your clients, no matter how unlikely. I doubt that Judge McKnight will be so concerned about this perceived risk that he will continue delaying restitution for more than 200 other victims of the Ponzi scheme, many of whom (unlike your clients) are financially destitute. Give me a hypothetical fact situation that would put your client in a worse position merely because a receiver is appointed. I don't think you can do it.

Third, I have been involved in the recent Loomis-Fargo trial and am facing a couple of other court deadlines. I do not have time to meet before the status conference this Friday. Moreover, as I told you in my letter of August 10, all discovery is premature at this point under Rule 26. The pleadings are not even closed yet, and all of the remaining victims appear to be necessary parties under Rule 19 (which is one more reason we need a receiver). If you have any authority that says I have to do anything before Judge McKnight rules on the pending motions, please show it to me.



If you had consented to a receiver back in early June, it is possible that we would have received claims from all the victims by now and be in a position to proceed with a hearing on disbursement of funds in the next month or so. That is where you should be fighting your legal battle, not in discovery arguments with the government that you will ultimately lose. I urge you once again to drop this pointless quest for some kind of tactical advantage in your lawsuit and help us and the court to get to the merits of the case as quickly as possible.

Sincerely,

William A. Brafford
Assistant United States Attorney

WAB/wp

MAYER, BROWN & PLATT

BANK OF AMERICA CORPORATE CENTER
100 NORTH TRYON STREET, SUITE 2400
CHARLOTTE, NORTH CAROLINA 28202

Rodney E. Alexander
DIRECT DIAL: (704) 444-3569
DIRECT FAX: (704) 377-2033
RALEXANDER@MAYERBROWN.COM

MAIN PHONE
(704) 444-3500
MAIN FAX
(704) 377-2033

August 30, 2001

William A. Brafford
Assistant United States Attorney
United States Attorney's Office for
the Western District of North Carolina
227 West Trade Street, Suite 1700
Charlotte, NC 28202

Re: No. 3:01CV205-McK; *George and Dolores Rollar v. United States of America*, et al.

Dear Bill:

I have just received your letter dated August 28, 2001. I must say, I am very disappointed with the tone. I think we need to step back from this matter a bit and understand that this lawsuit is not a personal battle.

My objection to a receiver is that one is not necessary at this point in time. The prejudice to my client is the substantial cost associated with a receiver (unless the government is going to agree to pay the costs rather than having them paid from the Seized Funds). Why should the Seized Funds be drained at this point to pay a receiver to do what the government already has done—trace claimants to the Seized Funds?

With respect to your concerns about notice to other interested parties, provide the Court and the Rollars with the names of the people identified by the government as having an interest in the Seized Funds and, if the Court deems it necessary, let's agree on a way to get them notice without depleting the Seized Funds by paying a receiver to perform a clerical task. There are other less expensive and time consuming ways to achieve the results you are after.

On the separate issue of delay and discovery, I have tried to let pass without response your prior attempts to spin the Rollars' concerns about a receiver as efforts to delay this case. That simply is not true, and you must know it because it makes no sense. The Rollars have wanted their money back for nearly three years now. If the Rollars had not filed suit, we would be no closer today to some resolution than we were in August of last year when you said there would be an interpleader action. The largest delay in this case was the government's retention of the Seized Funds for nearly two and one-half years without instituting forfeiture proceedings. That delay was compounded by the defendants' two month extension of time to answer, which

EXHIBIT 3

the Rollars opposed as unnecessarily long. On the other hand, every action I have taken has been in an effort to expedite progress in this case, from filing this lawsuit, to trying to reach a compromise with you on the receiver/special master issue, to trying to obtain some limited, expedited discovery. And if the government truly was interested in preventing delay, it would go ahead and provide copies of the tracing materials now. But, since the only "authority" which could compel you to provide discovery at this time without a court order is courtesy, I suppose you will decide whether we wait for the tracing materials or not.

Next, my actions in this case are not motivated by limiting malpractice exposure and I never have said any such thing to you. Rather, I have been retained to represent the Rollars' interests and will continue to do so to the best of my ability consistent with the law applicable to this case and the Code of Ethics.

Finally, since I "have articulated any reason" why my clients would be prejudiced by the appointment of a receiver, I hope we can sit down together and think of some suitable compromise that addresses the government's concerns while accommodating the Rollars' concerns.

Sincerely,

Rodney E. Alexander

REA/dmt
cc: George Rollar
Frank Whitney