



Department of Justice

STATEMENT

OF

**LANNY A. BREUER
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ENTITLED

**“PROTECTING AMERICAN TAXPAYERS:
SIGNIFICANT ACCOMPLISHMENTS AND ONGOING
CHALLENGES IN THE FIGHT AGAINST FRAUD”**

PRESENTED ON

JANUARY 26, 2011

**STATEMENT OF
LANNY A. BREUER
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION**

**BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

**ENTITLED
“PROTECTING AMERICAN TAXPAYERS: SIGNIFICANT ACCOMPLISHMENTS AND ONGOING
CHALLENGES IN THE FIGHT AGAINST FRAUD”**

**PRESENTED
JANUARY 26, 2011**

I. INTRODUCTION

Good morning Mr. Chairman, Ranking Member Grassley, and distinguished Members of the Committee. Thank you for inviting me to speak with you today about the many ways in which the Department of Justice protects American taxpayer dollars by bringing criminal fraud prosecutions. I am honored to appear before you on behalf of the Department, and along with my colleague and friend, Assistant Attorney General Tony West.

Together with the United States Attorney’s Offices and our many law enforcement partners, the Criminal Division, whose nearly 600 lawyers I am privileged to lead, is investigating and prosecuting fraud cases all across the country. We are holding fraudsters accountable for bilking the American people and seeking sentences designed to punish and deter. We are also aggressively working to recoup the money these defendants have stolen, whether it is money taken from individual investors in a Ponzi scheme, or funds pilfered from our taxpayer-funded public programs.

And we are coordinating across the U.S. government, working with our colleagues in the Civil and Antitrust Divisions, our important partners in the Inspectors General community, and

numerous task forces which join together the combined resources of multiple law enforcement and regulatory agencies.

As a result of those efforts over the past year, the Department has prosecuted thousands of defendants for fraud crimes and obtained judgments and settlements amounting to billions of dollars in fraud and corporate corruption proceeds. For example, in Fiscal Year 2010 alone, in criminal matters in which the Criminal Division participated, we obtained approximately \$3.4 billion in judgments and settlements, with over \$1 billion in restitution ordered, \$570 million in fines, \$914 million in forfeiture, and \$828 million in other settlements.

II. CONGRESSIONAL SUPPORT FOR CRIMINAL FRAUD ENFORCEMENT

The Department is grateful for the many resources Congress has provided to support and enhance the Department's criminal fraud enforcement efforts. Beyond providing expanded statutory tools to fight various forms of fraud, Congress has authorized critical funds through various means, including in the Fraud Enforcement Recovery Act (FERA), which of course Chairman Leahy and Ranking Member Grassley sponsored. FERA, passed in 2009, authorized needed and targeted funds for the FBI, the Criminal Division, the U.S. Attorneys' Offices, and the Securities and Exchange Commission (SEC), giving us further resources to increase the scope of our collective enforcement response. In addition, last year, in the Affordable Care Act, Congress authorized additional, critical funding for use in health care fraud enforcement.

Congress's financial support of our criminal investigations and prosecutions is critical to protecting the American taxpayer's hard earned money. And the amount of taxpayer money restored to the United States Treasury through our criminal enforcement efforts far exceeds what we spend to recover that money. As a result of our criminal fraud prosecutions, the Department is transferring to the U.S. Treasury far more money than the amount budgeted by Congress to

support the Department's criminal fraud and corporate corruption investigations and prosecutions.

I have had the honor and privilege of appearing before this Committee on more than one occasion since I became Assistant Attorney General, including, most recently, in September 2010. During that testimony, I described to the Committee numerous significant prosecutions that we have brought against fraudsters, and some of our efforts to combat the various kinds of fraud we encounter regularly, including investment fraud, mortgage fraud, bank fraud, and fraud in disaster programs, such as the programs designed to aid survivors of Hurricane Katrina. Over the last several months since I testified, we have continued our aggressive push to investigate and prosecute fraud in all its guises. Focusing on the period since I last testified before this Committee I have set forth below some of the Department's recent fraud prosecutions.

A. Investment Fraud

We are continuing to investigate and prosecute defendants who are perpetrating myriad forms of investment fraud schemes. As this Committee knows well, investment fraud victimizes hundreds and even thousands of taxpayer investors, at times literally stealing these investors' entire life savings and causing devastating harm.

As reflected by the Department's announcement on December 6, 2010, together with our partners on the Financial Fraud Enforcement Task Force (FFETF), including the SEC, the U.S. Commodity Futures Trading Commission, and state Attorneys General, a tremendous number of investment fraud prosecutions are being pursued. On that date, looking back over many criminal fraud cases within a window of less than four months, the Department reported on fraud schemes involving hundreds of defendants, more than 120,000 victims around the United States, and billions of dollars in estimated losses. Beyond the data, a few of the specific examples of the

Department's recent activity in investment fraud cases illustrate how the Department is bringing defendants to justice who seek directly to defraud the American taxpayer.

On December 1, 2010, David Lewalski was indicted in the Southern District of Florida on mail fraud and wire fraud charges in connection with his alleged participation in a \$30 million fraudulent investment scheme in which he falsely claimed he could earn investors up to 10% per month through trading in the foreign currency market.

On November 17, 2010, Philip Barry was convicted at trial in the Eastern District of New York on 34 counts of securities fraud and mail fraud in regard to his perpetration of a 30-year Ponzi scheme that victimized hundreds of investors and resulted in over \$40 million in investor losses.

On October 21, 2010, Eric Kurz pleaded guilty in the Eastern District of Virginia to conspiring to commit wire fraud and money laundering in regard to a \$100 million scheme to defraud hundreds of investors in numerous states and in Canada in regard to life insurance settlement investments.

The same day, Mark Alan Shapiro, the founder of the Cobalt Companies, was sentenced in the Southern District of New York to 85 years in prison on charges stemming from a fraud that raised more than \$23 million from more than 250 investors in private placement real estate offerings.

On October 14, 2010, a superseding indictment unsealed in federal court in Brooklyn charged five defendants, in addition to a Chief Executive Officer and Chief Operating Officer already under indictment, with securities fraud and money laundering in regard to alleged false inflation of sales figures of Spongetech Delivery Systems, Inc. These defendants and others allegedly executed a fraudulent scheme to publicly report materially overstated Spongetech sales

figures to create artificial demand for, and increase the share price and trading volume of, Spongetech common stock.

I have the honor of co-chairing the FFETF's Commodities and Securities Fraud Working Group, and, together with our law enforcement partners, we will continue aggressively to pursue all forms of investor fraud.

B. Troubled Asset Relief Program Fraud

Taxpayer money has funded the Troubled Asset Relief Program (TARP), and the Department has been successful in detecting and prosecuting attempts to defraud that program. For example, in October 2010, Charles Antonucci, Sr., the former president and Chief Executive Officer of the Park Avenue Bank, pleaded guilty to federal securities fraud charges relating to Antonucci's attempt to fraudulently obtain more than \$11 million of taxpayer rescue funds from TARP. The charges were brought by the United States Attorney's Office in Manhattan and Antonucci's guilty plea was the first criminal conviction for an attempt to defraud TARP. Other matters involving TARP fraud are ongoing, including the prosecution of former Taylor, Bean & Whitaker chairman Lee Bentley Farkas, which I described to this Committee last September.

Working in close coordination with the Special Inspector General for TARP and our other law enforcement partners, the Department is committed to keeping a vigilant watch on these taxpayer funds and, when fraud is detected, holding TARP fraudsters accountable.

C. Medicare Fraud

Over the past two years, we have also expanded our aggressive efforts to prosecute those who seek to defraud our taxpayer-funded health care system, especially Medicare. The Healthcare Fraud Prevention & Enforcement Action Team (HEAT)'s Medicare Strike Force, which now operates in seven U.S. cities, has led this effort. The Strike Force model's central goal is to investigate and prosecute defendants who steal taxpayer dollars through fraudulent

billing of Medicare. The Strike Force consists of dedicated agents from the FBI and the Department of Health and Human Services' Office of Inspector General; these agents work closely with Department prosecutors from the Criminal Division, the Civil Division, and U.S. Attorney's Offices in Strike Force cities.

The Strike Force has successfully indicted hundreds of defendants and obtained substantial prison terms. In Fiscal Year 2010 alone, the Medicare Strike Force filed 140 indictments involving charges against 284 defendants who collectively billed the Medicare program more than \$590 million. In the same year, 217 guilty pleas were obtained, jury trials resulted in guilty verdicts against 23 other defendants, and 146 defendants were sentenced to prison terms, with an average sentence of more than 40 months of incarceration. The Strike Force also secured court orders of restitution totaling over \$169 million. The Department steadfastly pursues enforcement of those restitution orders, searching for funds secreted away by defendants. When located, stolen taxpayer dollars are restored to the Medicare Trust Fund, where they belong.

The Medicare Strike Force has prosecuted defendants engaged in numerous forms of Medicare fraud, from fraudulent billing for durable medical equipment and HIV-infusion to home health care and mental health therapy. The Strike Force has prosecuted doctors, nurses, owners and operators of fraudulent providers and suppliers, and individuals who recruited beneficiaries to participate in fraud schemes. On October 21, 2010 in Miami, Florida, for example, Assistant Attorney General Tony West and I announced the unsealing of parallel criminal and civil enforcement actions against two Miami health care companies, American Therapeutic Corporation (ATC) and Medlink Professional Management Group, Inc., as well as ATC's owner and other senior executives. The ATC prosecution alleges a fraud scheme

involving approximately \$200 million in Medicare billing for purported mental health services. At the same time that I announced criminal charges and criminal forfeiture counts against these defendants, Assistant Attorney General West announced the use of civil tools to freeze assets of the corporate and individual defendants. The ATC case is one of the largest Medicare Strike Force cases ever brought, it is the first time the Strike Force has indicted a corporation, and it reflects the important coordination occurring between the Department's Criminal and Civil Divisions to hold fraudsters accountable who are stealing taxpayer dollars.

The Department is grateful for the funding Congress has provided to pursue these cases, as well as the enhanced statutory tools Congress passed as part of the Affordable Care Act (ACA). Those tools are being put to use. The ATC indictment, for example, alleges a criminal count based on Congress's amendments to the Anti-Kickback Statute. In addition, the important whistleblower provisions of the False Claims Act spearheaded years ago by Ranking Member Grassley and others are resulting in both criminal and civil enforcement actions in health care fraud cases. On December 7, 2010, for example, Kos Pharmaceutical agreed to pay \$41 million to resolve criminal and civil liability arising from, among other things, illegal kickbacks paid to doctors, other medical professionals, physician groups and managed care organizations to get them to prescribe or recommend certain drugs. As part of the resolution, Kos also entered into a deferred prosecution agreement and agreed to the filing of a criminal information in U.S. District Court for the Middle District of Louisiana charging the company with one count of conspiracy to violate the Anti-Kickback Statute.

D. Procurement Fraud

The Department is also vigorously prosecuting cases in another area where fraudsters are stealing taxpayer money: in government procurement programs. In a recent example of our aggressive prosecution of procurement fraud, on January 7, 2011, former U.S. Army staff

sergeant Stevan Ringo was sentenced to 90 months in prison in connection with a fuel theft scheme to solicit more than \$400,000 in bribes from a government contractor in Afghanistan. In his guilty plea, Ringo admitted that, between December 2009 and February 2010, he accepted more than \$400,000 in cash payments from a government contractor in exchange for submitting fraudulent paperwork that enabled the contractor to steal nearly \$1.5 million worth of fuel.

E. Mortgage Fraud

I have previously described to the Committee the scope of Operation Stolen Dreams, the largest mortgage-fraud sweep in the Department's history, which Attorney General Holder announced last June. Since that time, we have prosecuted many additional mortgage fraud cases.

To give just three examples since I last testified before the Committee: On January 3, 2011, Matthew and Lance La Madrid pleaded guilty in the Southern District of California to mail fraud charges pertaining to a \$30 million mortgage fraud and investment fraud scheme. As part of the scheme, the brothers used false borrower information to obtain millions of dollars in mortgages used to fund the defendants' real estate investment fraud scheme.

On December 13, 2010, Sergie Caro was sentenced in the Southern District of Florida to 37 months in prison in connection with a mortgage fraud scheme. To execute the scheme, Caro and others submitted loan applications to mortgage lenders that contained false information, including false bank statements, W-2 forms, pay stubs, verifications of deposit and verifications of employment.

And on October 15, 2010, Thomas Kontogiannis, a New York real estate developer who led a mortgage fraud conspiracy resulting in more than \$90 million in losses, pleaded guilty in the Eastern District of New York to conspiracy to commit bank and wire fraud. Kontogiannis admitted defrauding Washington Mutual Bank and DLJ Mortgage Capital, Inc., a subsidiary of Credit Suisse, in connection with his development of tracts of land in Brooklyn and Queens.

Mortgage fraud remains a high priority for the Department, and the Department is committed to continuing to investigate and prosecute mortgage fraud cases aggressively in the months and years ahead.

F. Foreign Corrupt Practices

The Department is also steadfastly pursuing corporate corruption and bribery in violation of the Foreign Corrupt Practices Act (“FCPA”). This corruption and bribery works to the detriment of us all, stifling competition, imposing an insidious and illegal fee on business transactions, and undermining the transparency and honesty of corporate culture. Led by the Criminal Division’s Fraud Section working in tandem with U.S. Attorney’s Offices, the Department has a robust FCPA enforcement program. In 2010, we recovered over \$1 billion through resolutions of FCPA investigations, more than in any other year in the history of our FCPA enforcement efforts.

G. Recovery Act Fraud

Before I conclude, I would like to say a brief word on the subject of Recovery Act fraud. As this Committee of course knows, President Obama signed the American Recovery and Reinvestment Act shortly after taking office, in February 2009. Among other things, the Act authorized \$275 billion in taxpayer money for federal contracts, grants, and loans in order to spur economic activity and create long-term growth – funding roads, schools, police forces, and countless other projects across the country. So far, it has been encouraging not to see widespread fraud and abuse with respect to Recovery Act funds. However, given the opportunism and innovation of financial criminals, we must be prepared for them to work hard at devising fraudulent schemes aimed at stealing funds disbursed under the Act. To that end, the Criminal Division, the Antitrust Division, the Civil Division, and the U.S. Attorneys’ Offices have established strong partnerships with Inspector Generals’ Offices around the country that are

tasked with investigating Recovery Act fraud. I have the honor of serving as Co-Chair of the FFETF's Recovery Act Working Group, along with Earl Devaney, the Chairman of the Recovery Accountability and Transparency Board, and others. Last November, I had the privilege of speaking at a training conference for several hundred investigators, auditors, and inspectors general who are focused on Recovery Act fraud. I and others from the Department made it clear to them that we will not hesitate to prosecute fraud on Recovery Act funds when the facts and the law warrant, and that they have many strong partners at the Justice Department who stand ready to support them in carrying out our important collective mission to fight Recovery Act fraud.

III. CONCLUSION

Prosecuting fraud is a high priority for the Department of Justice. Every day, federal prosecutors and agents across the country are working hard to investigate and prosecute fraudsters who take directly, and indirectly, from American taxpayers or otherwise undermine the transparency and integrity of our markets. Our efforts have led to the incarceration of hundreds of defendants, and to billions of dollars in judgments and settlements. We are absolutely committed to continuing these efforts.

Thank you for the opportunity to provide the Committee with this brief overview of the Department's efforts to combat fraud. I look forward to working with the Committee further, and am happy to answer any questions.