

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 3:15cr238
	)	
v.	)	MOTION OF THE UNITED STATES
	)	FOR ALTERNATIVE VICTIM
JOHN R. PIERRARD	)	NOTIFICATION PROCEDURES
	)	
_____	)	

NOW COMES the United States of America, by and through Jill Westmoreland Rose, United States Attorney, and hereby moves this Court, pursuant to 18 U.S.C. § 3771(d)(2), for authorization to employ alternative victim notification procedures in lieu of those prescribed by 18 U.S.C. §§ 3771(a), (b) and (c) with regard to a subset of the Defendant’s victims, on the grounds that the number of such crime victims makes it impracticable to accord such crime victims the rights described in subsection 3771(a). In support of this Motion, the government avers the following:

I. Statutory Victim Notification Requirements

Title I of the Justice for All Act enumerates specific rights of crime victims in federal criminal cases, codified at 18 U.S.C. § 3771(a). These include “[t]he right to reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime or of any release or escape of the accused,” and “[t]he right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.” 18 U.S.C. § 3771(a)(2), (a)(4). The Act requires “[o]fficers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation and prosecution of crime [to] make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a),” *id.* § 3771(c)(1), and it instructs

the Court to “ensure that the crime victim is afforded” those rights, *id.* § 3771(b). A “crime victim” under the Act is defined as “a person directly and proximately harmed” as a result of the commission of a Federal offense. *Id.* § 3771(e).

Defendant is currently set to plead guilty on October 19, 2015. This is a “public court proceeding,” within the definition of the Act. Accordingly, the government brings this motion to the Court’s attention.

In routine cases involving a single or limited number of victims, the victim notification burdens imposed by the Act upon the government will be substantial. In other cases, involving tens, hundreds, or even thousands of potential victims, the burdens imposed by the Act would be simply overwhelming. In recognition of this, the Act grants the Court authority to fashion alternative notification procedures when the Court finds that implementation of the prescribed requirements would be impracticable. The Act provides:

In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

Id. § 3771(d)(2). The Act places no limitations on the alternative procedures which a Court may fashion other than that the procedures be reasonable to effectuate the Act and that they not unduly complicate or prolong the proceedings. *See id.* Count One of the Bill of Information charges Defendant for his role in an accounting fraud conspiracy that, among other things, operated as a fraud and deceit upon investors in Swisher Hygiene Inc.’s common stock. This motion, as set forth in more detail below, is focuses on the innumerable members of the investing public that may have been misled by the accounting fraud conspiracy of which Defendant was a part.

It is the government's belief that the identification, much less notification, of potentially thousands of victims in the investing public of the accounting fraud conspiracy could quite literally consume the prosecutorial and investigative resources of the government in this district. Identification of the victims in this case would require a review of hundreds or thousands of pages of clearing agent records to locate shareholders, gather contact information, initiate contact with the shareholders to determine the dates of their stockholdings and whether their purchase or sale of the securities in question was influenced by Defendant's fraudulent conduct. The number of potential shareholders and the extensive efforts needed to even identify whether they are in fact victims make compliance with the notification requirements outlined in section 3771(a), (b) and (c) absolutely impracticable. In sum, neither the government nor the Court has the resources to accord all of the victims in this case all of the rights prescribed in subsection 3771(a).

II. Government's Proposed Alternative Notification Procedures

Consistent with the Court's discretion to fashion reasonable alternative victim notification procedures in cases such as this under section 3771(d)(2), the United States requests authorization from the Court to employ alternative notification procedures with regard to the general victims in the investing public, namely publication of a notice. The Government proposes to publish the notice attached hereto as Exhibit A on the U.S. Attorney's website prior to the scheduled plea hearing. Additionally, the Government proposes to publish this or a similar notice, which will be submitted to the Court prior to publication, in a nationwide publication prior to Defendant's sentencing hearing. This is consistent with the procedures previously approved by Judge Britt, in this district, in the securities fraud matters of *United States v. Jaynes* (5:06cr54; No. 31); *United States v. Kos* (3:08cr93, No. 21); and *United States v. Brecher* (3:08cr148, No. 29) and approved by Judge Conrad in *United States v. Rand* (3:10cr182).

The government has conferred with counsel for Defendant, and is informed that Defendant has no objection to alternative victim notification and the procedures outlined herein.

III. Conclusion

For the reasons set forth above, the government respectfully requests that this Court authorize alternative notification procedures under Section 3771(d)(2) with regard to the victims in the investing public, namely publication on the U.S. Attorney's Office website prior to Defendant's plea hearing and subsequent publication in a nationwide publication prior to Defendant's sentencing hearing.

Respectfully submitted, this the 15th day of October, 2015.

JILL WESTMORELAND ROSE
UNITED STATES ATTORNEY

/s/ **Mark T. Odulio**
DC Bar Number 999991

/s/ **Maria K. Vento**
Virginia Bar Number 45960
ASSISTANT UNITED STATES ATTORNEYS
United States Attorney's Office
Western District of North Carolina
227 West Trade Street, Suite 1700
Charlotte, North Carolina 28202
Telephone: 704.344.6222

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October 2015, the foregoing document was served electronically through ECF filing upon the defendants at the following addresses:

Brian Cromwell, counsel for Defendant
briancromwell@parkerpoe.com

/s/ Maria K. Vento

Advisory: Victims' Rights to be Heard and to Obtain Restitution with regard to Accounting and Securities Fraud involving Swisher Hygiene, Inc.

John Pierrard, a former accounting employee at Swisher Hygiene, Inc., has been charged by the United States Attorney's Office for the Western District of North Carolina with participating in an accounting fraud conspiracy from at least in or about 2011 through in or about 2012 that, among other things, operated as a fraud and deceit upon investors in Swisher Hygiene Inc.'s common stock. These charges are pending in the U.S. District Court for the Western District of North Carolina.

Pursuant to the "Justice for All Act of 2004" (18 U.S.C. § 3771), any victim of a criminal defendant's fraudulent acts is entitled to notice of public proceedings and may be entitled to restitution. Victims are also entitled to be reasonably heard in certain public proceedings, including a sentencing hearing. If you believe that you or your organization was a victim, please contact the U.S. Attorney's Office's Victim Witness Program Manager Lynne Crout at Lynne.Crout@usdoj.gov or (877) 464-9631 so that you can be notified of further developments in this case and so that your rights, if any, to restitution can be determined.