FRAUD DETECTION, INVESTIGATION, & RESOLUTION: FINISHING THE JOB
FINISHING THE JOB: RECOVERING DIVERTED ASSETS

It's been estimated that 97 percent of illegally obtained assets are never recovered. In this presentation, you will learn the legal, investigative, and practical aspects of asset recovery operations, including tracing, freezing assets, and financial and commodities flow analysis.

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DsZ Forensic Accounting and Consulting Services LLC
Forest Hills, NY

As Managing Partner, David Zweighaft is responsible for providing law firm clients with litigation consulting services including conducting investigations, performing analyses and calculating economic damages, providing expert witness testimony, and performing due diligence reviews. In addition, he has managed large litigation consulting engagements, assessing controls and evaluating documents produced during the discovery process. Prior to starting his own practice, Zweighaft spent four years at a risk management advisory firm as Associate Director of their Fraud Risk Management practice and more than 13 years with global public accounting firms focusing on litigation and forensic services.
# FINISHING THE JOB: RECOVERING DIVERTED ASSETS

## Administrative and Investigative Framework

**Asset Tracing and Recovery**

1. Approximately 97 percent of criminal proceeds are never recovered (IAAR 2011)
2. Evaluating recovery from targets and pursuing third parties
3. Gatekeepers and intermediaries
4. Forfeiture of assets and substitute assets

## Freezing Assets

1. Identifying assets to be frozen and recovered
2. Examples of preemptive or extraordinary relief:
   - Mareva injunctions (freezing orders)
   - Anton Piller orders (authorizing civil search and seizure of evidence)
   - Mini-Anton Piller orders
   - Norwich Pharmacal/Bankers Trust document disclosure orders
3. Asset arrest
4. System for valuation of assets
5. What freezing orders are and what they do
6. What freezing orders are not
7. Discharge of freezing orders
8. Asset holding and jurisdictional issues
9. Grounds for a freeze order
10. Considerations in seeking a freeze order
    - Mareva by Letter
    - Attachment
    - Injunction

## Financial and Commodities Flow Analysis

1. Following the flow of funds
2. Forward and reverse tracing
3. Analysis of bank records
4. Typical banking records
   - Deposit tickets

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## FINISHING THE JOB: RECOVERING DIVERTED ASSETS

- Deposited items (checks and other monetary instruments)
- Checks drawn
- Debit memos
- Credit memos
- Outgoing wire transfer orders
- Incoming wire transfers
- Money orders sold
- Cashier’s checks sold
- Foreign currency sold

### NOTES

5. Typical records associated with a checking account are:
   - Checking account application
   - Signature card
   - Monthly statement
   - Canceled checks (checks written on the account)
   - Deposit ticket
   - Deposit item
   - Debit and credit memos
   - Cashier’s checks
   - Money orders
   - Wire transfers

6. Once the records are obtained or gathered, analyze them to determine:
   - Money deposited to the accounts
   - Money transferred from the account by cash withdrawal, check, debit memo, or wire transfer
   - Increases and decreases in account balances
   - A summary of deposits and withdrawals
   - A summary of checks written on the account
   - A summary of wire transfers into or out of the account
   - Dates
   - Amounts
<table>
<thead>
<tr>
<th>FINISHING THE JOB: RECOVERING DIVERTED ASSETS</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Check numbers</td>
</tr>
<tr>
<td>- Payees</td>
</tr>
<tr>
<td>- Bank endorsements</td>
</tr>
</tbody>
</table>

7. Business records are kept in an informal or complex fashion, but in most cases the following exist and can be analyzed:
   - Records of sales of goods and services
   - Sales invoices
   - Purchase contracts
   - Leases
   - Rental agreements
   - Shipping or delivery documents
   - Cash receipts
   - Credit card receipt
   - Canceled check
   - Copy of checks deposited
   - Records of money it is owed
   - Cash receipts showing balance due
   - Accounts receivable ledger
   - Accounts payable ledger
   - Supplier’s invoices
   - Supplier’s monthly credit statements
   - Records of inventory
   - Shipping and receipt records
   - Payroll records
   - Individual employee personnel file
   - Active employee list
   - Canceled payroll checks
   - Bank records, payroll account
   - Records of profit and loss
   - Income or sales records
   - Expense records (invoices)
   - Profit and loss statement

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8. Records also should be scrutinized for such things as:
   - Odd notations on business documents, which might be codes for money movements or assets or fronts and nominees
   - Business transactions that make no sense or seem to have no apparent business purpose

9. Analysis of tax returns
10. Ownership of assets
11. Indirect methods of financial analysis

### NET WORTH ANALYSIS

<table>
<thead>
<tr>
<th>Begin with</th>
<th>Assets</th>
</tr>
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<tbody>
<tr>
<td>less</td>
<td>Liabilities</td>
</tr>
<tr>
<td>equals</td>
<td>Net worth</td>
</tr>
<tr>
<td>less</td>
<td>Prior year’s net worth</td>
</tr>
<tr>
<td>equals</td>
<td>Increase in net worth</td>
</tr>
<tr>
<td>add</td>
<td>Known expenses</td>
</tr>
<tr>
<td>equals</td>
<td>Total net worth increase</td>
</tr>
<tr>
<td>less</td>
<td>Funds from known sources</td>
</tr>
<tr>
<td>Equals</td>
<td>Funds from unknown sources</td>
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### BANK DEPOSITS ANALYSIS

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<thead>
<tr>
<th>Begin with</th>
<th>Total deposits to all accounts</th>
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<tbody>
<tr>
<td>less</td>
<td>Transfers and re-deposits</td>
</tr>
<tr>
<td>equals</td>
<td>Net deposits to all accounts</td>
</tr>
<tr>
<td>plus</td>
<td>Cash expenditures</td>
</tr>
<tr>
<td>equals</td>
<td>Total receipts from all sources</td>
</tr>
<tr>
<td>less</td>
<td>Funds from known sources</td>
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## EXPENDITURES ANALYSIS

**Begin with** Known expenditures  
**Less** Known sources of funds  
**Equals** Funds from **unknown** sources

### Investigative Techniques

1. Analytic methodologies in data compilation and analysis  
   - Data Summaries  
     - Excel/Access  
     - Charts/graphs  
     - Pivot tables  
   - Data Visualization  
     - Link charts  
     - Commodity flow charts  
     - Time-series analysis  

2. Obtaining evidence that establishes probable cause that the property was either acquired from proceeds of illegal activity, or that it facilitated or was an instrumentality of crime.  
   - Compulsory power to obtain documents, information, and testimony  
   - Effective interviewing skills  
   - Search warrants  
   - Computer seizures and evidence recovery  
     - Chain of custody requirements  
     - Data forensics  
   - Electronic surveillance  
     - Public investigations ONLY  
   - Physical surveillance  
   - Requests for international assistance  
     - Formal  
       - Interpol  
       - Diplomatic channels  
     - Informal  
       - Embassy contacts
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* Law enforcement
* FIUs
  - Undercover operations
  - Privacy laws
- Garbage pickups
  - Abandoned
  - Curtilage
- Recording conversations with one party consenting
  www.pimall.com/nais/n.tel.tape.law.html
- Civil society information
  - Transparency International, Global Integrity
  - Lawsuits
3. Internet and public record data searches—a sampling of what a simple Internet search can yield:
   - The geographic location of individuals
   - Telephone numbers
   - Reverse phone number lookups
   - Marriage records
   - Divorce records
   - Birth records
   - Death records
   - Corporation records
   - Officers, directors, and registered agent
   - Address and type of business
   - Annual reports
   - Criminal records
   - Court records
   - Names of government and corporate employees including salaries
   - Business and required licenses, such as liquor licenses, building permits, etc.
   - Corporate and Uniform Commercial Code records by state
   - Adoption records
Fictitious names ("Doing Business As" or DBA) of companies, persons, sole proprietorships, partnerships, and other business organizations

### Asset Forfeiture Legal Framework

#### Types of Forfeiture

1. **Criminal forfeiture**
   - Imposed as part of sentence following criminal conviction
   - Forfeits the criminal defendant’s interests in property
   - Opportunity for third parties to assert claims of innocent ownership or bona fide purchaser for value

2. **Civil forfeiture**
   - In rem proceeding against defendant property
   - Separate civil action
   - Opportunity for claimants to challenge forfeitability of property and assert claims of innocent ownership or bona fide purchaser for value

### Crimes Giving Rise to Forfeiture

**WHITE-COLLAR CRIME**
- Securities fraud
- Bank fraud
- Mail and wire fraud
- Tax fraud
- Bankruptcy fraud:
  - *United States v. Marc Dreier*, 09 Cr. 85 (JSR) (S.D.N.Y.)
- Securities fraud, wire fraud, money laundering:
  - *United States v. Bernard Madoff*, 09 Cr. 213 (DC) (S.D.N.Y.)
  - *United States v. Hassan Nemazee*, 09 Cr. 902 (SHS) (S.D.N.Y.)
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- Bank fraud, wire fraud

CUSTOMS VIOLATIONS
- False statements on customs forms
- Stolen property:
  * United States v. The Painting Known as “Hannibal,” by Jean-Michel Basquiat, 08 Civ. 1511 (RJS) (S.D.N.Y.)
- Import violations:
  * United States v. The Leasehold Interests Held By Aerovias Nacionales de Colombia S.A. Avianca in Various Boeing 767 Aircraft, 04 Civ. 8199 (LMM) (S.D.N.Y.)
- Narcotics trafficking
- Customs violations

VIOLENT CRIME AND NARCOTICS
- Narcotics
- Organized crime
  * In re 650 Fifth Avenue, 08 Civ. 10934 (RJH) (S.D.N.Y.)
- IEEPA violations, money laundering:
- Money laundering
- Bank and wire fraud
- Gambling offenses

What Is Forfeitable?
- Proceeds of crime
- Property involved in crime
- Property that facilitates crime
- Substitute assets (criminal forfeiture only)
## PROCEEDS OF CRIME
- “Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of . . . .” 18 U.S.C. §981(a)(1)(C) (civil forfeiture)
- “. . . any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.” 18 U.S.C. § 982(a)(2) & 21 U.S.C. § 853(a)(1) (criminal forfeiture)
- “In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term ‘proceeds’ means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.” 18 U.S.C. § 981(a)(2)(A)
- The money the criminal made and the things he bought with it

## PROPERTY INVOLVED IN CRIME
- Money laundering:
  * “Any property, real or personal, involved in a [money laundering] transaction or attempted transaction . . . , or any property traceable to such property.” 18 U.S.C. § 981(a)(1)(A) (civil forfeiture)
  * “. . . any property, real or personal, involved in [a money laundering] offense, or any property traceable to such property.” 18 U.S.C. § 982(a)(1) (criminal forfeiture)
- Narcotics:
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* “All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for [an illegal drug], all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of [the narcotics laws].” 21 U.S.C. § 881(a)(6) (civil forfeiture)

  - Organized crime:
    * “... any interest the person has acquired or maintained in violation of [the racketeering laws]” 18 U.S.C. § 1963(a)(1) (criminal forfeiture)
  - The money that was laundered
  - The drugs that were manufactured and distributed
  - The money that was paid for, or intended to be paid for, the drugs
  - The interests acquired or maintained through racketeering

PROPERTY THAT FACILITATES CRIME

  - Money laundering:
    * “The term ‘involved in’ [in the money laundering forfeiture statutes] refers to property that is itself being laundered, as well as property used to facilitate the money laundering offense.” United States v. 250 Documents Containing the Forged Handwriting of President John F. Kennedy and Others, 03 Civ. 8004 (GBD), 2008 WL 4129814, *3 (S.D.N.Y.)
    - Narcotics:
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* “. . . any of the person’s property used, or intended to be used, in any manner or part, to commit, or to facilitate [a narcotics offense]” 21 U.S.C. § 853(a)(2)

* “All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [illegal narcotics or materials and products used to illegal manufacture narcotics]” 21 U.S.C. § 881(a)(4)

* “All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a [narcotics felony]” 21 U.S.C. § 881(a)(7)

  - Organized crime:
    * “. . . any interest in, security of, claim against, or property or contractual right of an kind affording a source of influence over any enterprise which the person established, operated, controlled, conducted, or participated the conduct of, in violation of [the racketeering laws] . . . .” 18 U.S.C. § 1963(a)(2)

    - “Clean” money that was commingled with crime proceeds for the purposes of concealment
    - The stash house where narcotics or drug proceeds were stored
    - The enterprise used to commit racketeering
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**Identifying Forfeitable Assets**

**TRACING**

- Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of . . .” 18 U.S.C. § 981(a)(1)(C)
- “Any property, real or personal, involved in a [money laundering] transaction or attempted transaction . . ., or any property traceable to such property.” 18 U.S.C. § 981(a)(1)(A)
- Two Overarching Tracing Questions:
  * Where did the crime proceeds go? (working from the offense forward)
  * Are the defendant’s valuable assets traceable to the offense? (working from the assets backward)

- Tracing tools:
  * Bank and brokerage account statements
  * Wire transfer records, deposit items, canceled checks
  * Credit card statements
  * Credit reports
  * Currency Transaction Reports, Form 8300s
  * Real estate closing files
  * Mortgage loan and other loan files
  * Accountant work papers
  * Intercepted conversations and phone calls
  * Confidential sources and cooperating witnesses
  * Interrogatories and depositions

**TRACING PRINCIPLES**

- Dirty money in, last out
  * Dirty money sinks to the bottom
  * Lowest intermediate balance rule
- Dirty money in, first out
### FINISHING THE JOB: RECOVERING DIVERTED ASSETS

- Dirty money floats on top (*United States v. Banco Cafetero Panama, 797 F.2d 1154 (2d Cir. 1986)*)

- The government often has flexibility in choosing which principle to apply
  - Interest and appreciation are forfeitable

### NOTES