

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A.,  
BANK OF CREDIT AND COMMERCE  
INTERNATIONAL, S.A.,  
BANK OF CREDIT AND COMMERCE  
INTERNATIONAL (OVERSEAS)  
LIMITED, AND  
INTERNATIONAL CREDIT AND  
INVESTMENT COMPANY  
(OVERSEAS) LIMITED,

Defendants.

**Crim. Action No. 91-0655 (JHG)**

**Defendants 1-4**

**FINAL ORDER OF FORFEITURE AND DISBURSEMENT**

For the reasons stated more fully in the Opinion issued this date, this Order brings to an end the longest-running criminal forfeiture proceeding in history. It provides for (1) the disbursement of all liquid assets currently held in escrow by the United States Marshals Service; (2) the dissolution of the two trusts created by this Court to aid in the liquidation of forfeited assets; (3) and the transfer of all remaining illiquid assets, including the corporate stock of First American Corporation, either to the Department of Justice or to the Court Appointed Fiduciaries, who are liquidating the BCCI corporate defendants in this case.

**1. Background**

When a defendant is convicted of a criminal offense for which forfeiture is provided as a sanction, or when a defendant enters a guilty plea to such offense, the Court, pursuant to Rule 32(d)(2) of the Federal Rules of Criminal Procedure enters a preliminary order of forfeiture transferring the defendant's interest in the property subject to forfeiture to the United States. The preliminary order of forfeiture becomes final *as to the defendant* at the time of sentencing, but it remains "preliminary" as to third parties until all such third parties have had an opportunity to litigate whatever claims they may have in an ancillary proceeding. *See United States v. Christunas*, 126 F.3d 765 (6th Cir. 1997); *United States v. Bennett*, 147 F.3d 912 (9th Cir. 1998).

Once the ancillary proceeding is concluded, the order of forfeiture becomes final as to *all parties*, and the United States has good title to all forfeited assets. 18 U.S.C. § 1963(l)(7). In a case such as this, where a total of 175 claims were filed in the ancillary proceeding, the Court finds it prudent to enter a final order of forfeiture affirming that all statutory requirements regarding the rights of third parties have been met, that the ancillary proceeding has been concluded, that all amendments to the order of forfeiture necessary to recognize third party rights have been made, and that the United States has good title to the remaining forfeited assets.

In this case, the Court accepted the defendants' guilty plea and entered a preliminary order of forfeiture on January 24, 1992. Thereafter, the Court amended the Order of Forfeiture on six occasions to include additional assets that were

subject to forfeiture under the original Order but that had not been located or identified at the time the original Order was entered.<sup>1</sup> The last such amendment occurred on December 22, 1998.

After the entry of the original Order, and on each occasion thereafter when the Order was amended to include newly discovered property, the Court conducted an ancillary proceeding pursuant to 18 U.S.C. § 1963(*l*). In all 175 claims (“L-claims”) were filed in the ancillary proceedings. Most of those claims were denied, but on various occasions the Court amended the Order of Forfeiture to recognize all or part of a third party's claim.

The last ancillary proceeding ended today, July 2, 1999, when the Court disposed of the last L-claim. All proceedings required by Section 1963(*l*) having been conducted in accordance with law, all amendments to the Order of Forfeiture necessary to recognize third party rights having been made, and the time for the appeal from the disposition of all L-claims having expired, the Court may now enter a Final Order of Forfeiture affirming the government's title to the remaining forfeited property.

## **2. Termination of Trustee's Role; Disbursement of Assets**

In addition to affirming the completion of the ancillary proceeding, and the government's title to the forfeited property, the Court must enter a final order of forfeiture in this case to resolve several other matters. In particular, the Court must authorize the U.S. Marshals Service (the “Marshals”) to disburse the remaining forfeited funds in accordance with the Plea Agreement, provide for the termination of the roles of the court-appointed Trustees, and provide for the transfer or disposition of any forfeited, liquid and non-liquid assets. (The two Trustees appointed by the Court were Harry W. Albright Jr. (the “First American Trustee”), Robb Evans (the “State Liquidation Trustee”).)

In its December 22, 1998 Order (“Sixth Order of Forfeiture”), the Court directed the Government to address these matters as follows:

[A]s soon as the ancillary proceeding following the issuance of this Order is complete, or if no further L-claims are filed, as soon as the 30-day period for filing such claims has expired, the United States shall file a motion and proposed Final Order of Forfeiture that sets forth a procedure for dividing the remaining liquid and non-liquid assets held by the Marshals and/or Robb Evans in accordance with the Plea Agreement, terminates the role of Robb Evans as court-appointed trustee, provides for the allocation of any future distributions by the Court's other trustee, Harry Albright, and addresses what rights the United States may have in any other property of BCCI that is identified after the Final Order of Forfeiture is entered.

The Government has now complied with this direction by filing a motion for a Final Order of Forfeiture. In accordance with the Government's motion, in which the Court-Appointed Fiduciaries,<sup>2</sup> both Trustees, the Board of Governors of the Federal Reserve concurred, it is hereby

(A) **ORDERED** that all matters involving the rights of third parties having been concluded, and all necessary amendments to the Order of Forfeiture have been made by previous Orders of this Court, the United States has clear title to the remaining forfeited property; it is

(B) **FURTHER ORDERED**, as set forth below, that the roles of the two Trustees appointed and supervised by the Court shall be terminated in an orderly fashion, and the forfeited assets that have not previously been disbursed by Order of this Court shall be divided between the Department of Justice and the Court-Appointed Fiduciaries in accordance with the Plea Agreement. As set forth below, all forfeited assets currently subject to this Court's jurisdiction will be identified, with a value placed on non-liquid assets (with certain exceptions), and the aggregate total of all assets, liquid and non-liquid, tangible and intangible,<sup>3</sup> will be divided evenly between the United States and the Court-Appointed Fiduciaries. As the parties have agreed, and with the exceptions noted below, the United States' portion of the divided assets will consist exclusively of liquid assets; all non-liquid assets will be allocated to the Court-Appointed Fiduciaries. It is

(C) **FURTHER ORDERED**, as the United States has agreed, that the United States has waived its right to the forfeiture of certain intangible assets (as described herein) and to any assets presently unknown to the parties that may subsequently be discovered or located; it is

(D) **FURTHER ORDERED**, as set forth below, that the United States Marshals Service and each of the Trustees shall file a notice to the Court advising the Court when each of them completes all of the requirements set forth in this Order, and that upon the filing of his respective notice, each of the Trustees will be discharged without further Order of the Court.

**IT IS FURTHER ORDERED** that the property now in the possession of the Marshals and the two court-appointed Trustees shall be disbursed as follows:

(1) The First American Trustee is currently in possession or control of four categories of assets:

(a) Cash and cash equivalents held by First American Corporation (“FAC”) and the First American Trustee (of which some portion is currently subject to reserves and therefore is not available for distribution in accordance with the Procedural Order);

(b) Unexecuted final judgments against six defaulted defendants entered on common law causes of action in *First American Corporation v. Al-Nahyan*, CA No. 93-1309 (JHG) (DDC)(“*Zayed*”) held by FAC;

(c) Unexecuted final judgments against six defaulted defendants entered on RICO causes of action in *Zayed* held by FAC; and

(d) A cause of action filed by FAC in Luxembourg against Price Waterhouse, former auditors to the BCCI Group.

(2) The State Liquidation Trustee is currently in possession of cash and non-liquid forfeited assets, as reflected in his regular reports to the United States and to the Court. These assets include, without limitation, judgments, causes of action, loans, and real property. The State Liquidation Trustee also is exposed to certain potential liabilities as Trustee for the United States.

(3) The Marshals are currently in possession of forfeited cash assets in the amount of approximately \$294 million, which have not previously been disbursed by order of this Court. In addition, there were certain assets listed on the First through Sixth Supplemental Lists of Forfeited Property that the Marshals were unable to recover.

(4) For purposes of paragraph 8, not later than 10 days after the entry of this Order, the First American Trustee will provide the Marshals with a schedule to be prepared by the First American Trustee and FAC of liquid and non-liquid assets in their possession or control. The First American Trustee will also provide the Marshals with a schedule of FAC's and the First American Trustee's known potential liabilities, a summary of the portion of the liquid assets and tangible non-liquid assets held in reserve for expenses, potential liabilities and contractual obligations and the reasons for the reserve. The purpose of having the First American Trustee provide these schedules and summary of the reserves to the Marshals is to allow the Marshals and the State Liquidation Trustee to make a fair calculation of the value of the liquid and non-liquid assets to be divided between the United States and the Court-Appointed Fiduciaries pursuant to the Plea Agreement. For the purpose of the division of assets between the United States and the Court-Appointed Fiduciaries, as described in paragraph 8, and in recognition of the reserves, the First American Trustee's cash assets described in paragraph 1(a) shall be considered non-liquid assets.

In preparing the schedule (and only for the purposes of this allocation), FAC shall assign no value to the assets described in paragraphs 1(b), (c) and (d).

(5) The United States has waived its right to distribution of the assets described in paragraphs 1(b) and (d). The United States has not waived its right to distribution of the assets described in paragraphs 1(a) and (c), which include the RICO judgments set forth as follows:

DEFENDANT	JUDGMENT
Ghaith R. Pharaon	\$1.280 billion
Estate of Mohammed Mahmoud Hammoud	\$1.5 billion
Swaleh Naqvi	\$1.5 billion
Agha Hassan Abedi or his successors in interest	\$1.5 billion
Facial Saud Al-Fulaij	\$1.5 billion

The First American Trustee will transfer the RICO judgments to the United States pursuant to paragraph 9.

(6) For the purposes of paragraph 8, not more than 30 days after the First American Trustee provides the schedules referred to in Paragraph 4 to the Marshals, the State Liquidation Trustee and the Marshals will provide the Court, the Government, the First American Trustee and the Court-Appointed Fiduciaries with a schedule listing all liquid and non-liquid assets subject to the jurisdiction of the Court, including assets held by the Marshals, by the State Liquidation Trustee and by the First American Trustee. The Marshals will include, as non-liquid assets, any property listed as subject to forfeiture on any of the amendments to the preliminary order of forfeiture that the Marshals have thus far been unable to collect. In preparing the schedule, the State Liquidation Trustee and the Marshals, after consultation with the Court-Appointed Fiduciaries, will assign a reasonable dollar value to the non-liquid assets (except the assets described in paragraphs 1(b), (c) and (d)), and will include an offset representing the reasonable value of any reserves of the State Liquidation Trustee, the First American Trustee, and FAC. For purposes of this paragraph and Paragraph 8, the cash assets held by the First American Trustee that are described in Paragraph 1(a) will be considered one of the non-liquid assets, to the extent they are subject to reserves.

(7) The Superintendent of Banks of the State of New York continues to hold \$1,800,000 in surplus funds from the New York liquidation of BCCI, S.A. that was forfeited to the United States in the Sixth Order of Forfeiture. The right of the United States to receive those funds pursuant to the Order of Forfeiture will also be included as one of the non-liquid assets held by the State Liquidation Trustee for purposes of Paragraph 6. Thus, the \$1,800,000 may remain in the possession of the Superintendent until such time as the Superintendent needs to dispense all or part of the funds to satisfy outstanding liabilities, or determines that there is no longer any reason to hold the property in reserve, at which time the Superintendent will transfer the money, or whatever part of it remains, to the Court-Appointed Fiduciaries. Following the appointment of Robb Evans as Trustee for the Court Appointed Fiduciaries as set forth in paragraph 10, *infra*, the Superintendent will report on a quarterly basis to Mr. Evans concerning the status of these funds.

(8) Once the estimate of the value of the liquid and non-liquid assets referred to in Paragraph 6 is made, the United States and the Court-Appointed Fiduciaries will divide the assets pursuant to the Plea Agreement as follows: 50 percent of the assets (consisting exclusively of liquid assets) to the United States, and 50 percent of the assets (consisting of all non-liquid assets, all liabilities, and the balance of the liquid assets) to the Court-Appointed Fiduciaries. Such division of the assets will occur within 10 days of the production of the schedule referred to in Paragraph 6 is made, and will not require any further Order of this Court.

(9) The following assets are specifically exempted from the division of assets set forth in paragraph 8:

(a) The claims of State Liquidation Trustee against Udruzena Beogradska Banka (“UBB”), (*Robb Evans, Trustee v. Beogradska Banka d.d.*, 97 CIV 21570 (LMM) (S.D.N.Y.)),<sup>4</sup> and Rafidain Bank (*Robb Evans, Trustee v. Rafidain*, 95 CIV 6326 (LAP) (S.D.N.Y.)).<sup>5</sup> Because these claims may ultimately be paid out of funds blocked by the Office of Foreign Asset Control, they may only be recoverable if they remain in the possession of the United States or another U.S. national. Accordingly, the parties have agreed that these assets will be transferred to the United States within 30 days of the entry of the final Order of Forfeiture. At such time as these claims are liquidated by the United States or its designees, the liquidated proceeds shall be divided evenly between the United States and the Court Appointed Fiduciaries pursuant to the Plea Agreement without further Order of this Court.

(b) The RICO judgments held by FAC, described in Paragraph 5, will be transferred in their entirety to the United States within 30 days of the entry of this Order. The United States and the Court Appointed Fiduciaries will consult to determine the most efficient means of enforcing any judgments.<sup>6</sup> At such time as any or all of those assets are liquidated by the United States or its designees, the liquidated proceeds shall be divided evenly between the United States and the Court Appointed Fiduciaries pursuant to the Plea Agreement without further Order of this Court.

(10) Except as provided in Paragraph 8, and except for the assets under the control of the First American Trustee which will be disbursed as provided in Paragraph 11, the State Liquidation Trustee will initially take possession and control of the Court Appointed Fiduciaries' share of the liquid and non-liquid assets as this Court's Trustee. As described in the Court Appointed Fiduciaries' submission concerning the orderly transition of forfeited assets, which was filed along with the Government's Motion for a Final Order of Forfeiture, the State Liquidation Trustee will then transfer the Court Appointed Fiduciaries' share of the liquid assets as directed by the Court Appointed Fiduciaries, and will take possession of the remaining assets as Trustee for the Court Appointed Fiduciaries pursuant to a Trust Agreement agreed by Mr. Evans and the Court Appointed Fiduciaries. As Trustee for the Court Appointed Fiduciaries, Mr. Evans will take all steps necessary to effect the transfer of the assets including execution of appropriate assignments, deeds, and other documents. Upon the transfer of the assets to Mr. Evans in his capacity as Trustee for the Court Appointed Fiduciaries, his Trusteeship for this Court and the United States will be terminated.

(11) Except as provided in Paragraph 9(b), the First American Trustee will transfer within 10 days of the delivery of the schedule described in paragraph 6, supra, the following:

(a) Consistent with the supplemental private letter ruling from, and the closing agreement with, the Internal Revenue Service, dated June 29, 1999, the assets described in paragraphs 1(a), (b) and (d), above, will remain in FAC and will be transferred by the First American Trustee to the Court Appointed Fiduciaries through a transfer of all right, title and interest in the shares of FAC as represented by the FAC share certificate issued to the First American Trustee on June 23, 1992 (the "FAC Shares") to BCCI Holdings (Luxembourg) S.A. Pursuant to the Order Appointing Trustee and the Procedural Order, the First American Trustee has the right and power to dispose of the FAC Shares, subject to this Court's approval and consistent with the purposes of his appointment. It is the collective view of the United States, the Board of Governors of the Federal Reserve, the Court Appointed Fiduciaries and the First American Trustee that the FAC Shares should be transferred to BCCI Holdings (Luxembourg) S.A., the ultimate parent of the BCCI Group, to allow the Court Appointed Fiduciaries to continue to realize First American's assets for the benefit of the creditors and depositors of the BCCI Group.

(b) As a condition precedent to the transfer of these shares, the United States has consented to the transfer and has waived any interest it has in future distributions from FAC or the First American Trustee. The Board of Governors and the Federal Reserve Bank of New York also have waived any future interest they may have in distributions from FAC or the First American Trustee pursuant to the "Geneva Agreement" and the "Clifford and Altman Settlement".

(12) On or before September 30, 1999, the First American Trustee shall file his final report to the Court and complete any other requirements set forth in the Order Appointing Trustee, dated June 23, 1992, and the Procedural Order, dated December 21, 1994.

(13) The State Liquidation Trustee, the First American Trustee and the Marshals shall each file a notice to the Court advising the Court that each of them has completed all of the requirements set forth in the Order, and that upon the filing of their respective notices, each of the Trustees are hereby discharged from any further duties or obligations without further Order of the Court. And it is

**FURTHER ORDERED** that all materials previously filed under seal in this matter shall be unsealed forthwith.

IT IS SO ORDERED.  
July 2, 1999, 2:45 p.m.

---

JOYCE HENS GREEN  
United States District Judge

---

<sup>1/</sup> The preliminary order of forfeiture directed the defendants to forfeit all property in the United States that was acquired or maintained in violation of 18 U.S.C. Section 1962 (the RICO statute), or constituted any interest in, or property affording a source of influence over, the RICO enterprise. *See* 18 U.S.C. 1963(a)(1) and (2). That order defined what was subject to forfeiture, but it remained for the United States, through post-trial discovery and investigation, see Section 1963(k), to locate the specific assets covered by the forfeiture order, and to move to amend the preliminary order to include those assets once they were located. In this respect, the preliminary order in this case was no different from a preliminary order of forfeiture in a drug case that orders the defendant to forfeit “all proceeds” of the offense for which he was convicted, but leaves it to the government, through post-trial investigation, to locate the specific assets and move to add them to the order of forfeiture. Amendment of the forfeiture order also assures that third parties have notice of the particular assets being forfeited to the government. This procedure will be codified in the new Rule 32.2, Federal Rules of Criminal Procedure, scheduled to take effect December 1, 2000. *See* Proposed Rule 32.2(e)(1) (order of forfeiture may be amended at any time to include newly discovered property that falls within the scope of the order).

<sup>2/</sup> The term “Court-Appointed Fiduciaries” refers to the liquidators appointed in Luxembourg and the Cayman Islands with respect to the liquidation of the four corporate defendants.

<sup>3/</sup> The remaining assets consist of liquid assets, such as cash, tangible non-liquid assets, such as chattels and real property, and intangible non-liquid assets, such as debts and judgments.

<sup>4/</sup> This claim arises from a number of bills of exchange, approved and accepted by UBB and maturing August 26, 1991. Payment was never made. U.S. Treasury Regulations blocking transactions with the former Yugoslavia may prevent payment from U.S. resources at this time, but there is no bar on payment from foreign resources.

<sup>5/</sup> The claim arose out a letter of credit transactions and has been reduced to judgment by the State Liquidation Trustee. Because the debtor is an Iraqi bank, the claim may be payable out of funds blocked in the United States by the Office of Foreign Asset Control. There is, however, no claims process in place for the distribution of these funds to appropriate claimants. It is expected that a claims process will be instituted within the next few years.

<sup>6/</sup> The United States may appoint the Court Appointed Fiduciaries to collect one or more of the judgments on its behalf.

---