

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

1:08cv230

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	MOTION TO LIFT STAY AND
)	TO UNSEAL ORDERS,
)	MOTIONS, PLEADINGS,
3039.375 POUNDS OF COPPER)	EXHIBITS, AND TRANSCRIPTS
COINS, et al.,)	
)	
Defendants.)	
)	

Claimants Shelter Systems, LLC, a/k/a Shelter Systems Warehouse (hereinafter, “Systems”), Bernard von NotHaus, Mary Nothhouse, Jeff Kotchounian, Matt Pitagora, Dave Gillie, Dan Morrow, Gerhart Reile, Karl Reile, Alan McConnell, Tom Olmsted, William H. Wesson, Dan Priest, and Vernon L. Robinson (hereinafter referred to as “CLAIMANTS”), for themselves alone and for no other Defendants or Claimants, hereby, move pursuant to Local Rule 6.1(H) and Rule 7(b) of the Federal Rules of Civil Procedure for an Order lifting the Stay, previously imposed by the Court, and unsealing all filings, previously sealed by the Court. In support of this Motion, CLAIMANTS state as follows:

1. Defendant property and other property were seized from various premises located in Idaho, Indiana, North Carolina, and California by the government on November 14, 2007 pursuant to search and seizure warrants. On November 9, 2007, this Court published—whether intentionally or inadvertently--the 33-page Affidavit of the government in support of the search and seizure warrants. See Exhibit 1.

2. On May 29, 2008, the United States filed the Complaint *for Forfeiture in Rem*, which initiated this case.

3. On June 17, 2008, Claimants Systems, Jeff Kotchounian, Matt Pitagora, Dave Gillie, Dan Morrow, Karl Reile, Alan McConnell, Tom Olmsted, William H. Wesson, Dan Priest, and Vernon L. Robinson filed a Motion for Return of Property Under Federal Rules of Criminal Procedure 41(g), in a companion case in the District of Idaho, Case No. 07-6337, requesting the return of the Defendant property seized on November 14, 2007. *See Exhibit 2.*

4. On June 20, 2008, this Court issued an Order granting the United States' *ex parte* Motions to Stay and to Seal Documents in this case.

5. On June 27, 2008, the United States notified counsel for CLAIMANTS of the filing of the Complaint in this case and the Order granting the United States' *ex parte* Motions to Stay and to Seal Documents in this case.

6. On July 25, 2008, CLAIMANTS filed Claims in this case asserting their rights to the Defendant properties.

7. On August 13, 2008, CLAIMANTS filed their Answer in this case.

8. On August 21, 2008, the parties filed, in the District of Idaho, a Joint Motion to Dismiss the Motion for Return of Property agreeing that the Claimants identified in paragraph 3 may assert any rights or other claims during this Civil Forfeiture Proceeding. *See Exhibit 3.* On August 22, 2008, the District of Idaho granted the Joint Motion to Dismiss in the companion case. *See Exhibit 4.*

9. The United States has not filed a substantive Reply to the Answer of the CLAIMANTS.

10. The CLAIMANTS have suffered and continue to suffer substantial hardship in that their property--the underlying Defendant property, which is comprised of precious metals—has been seized by the government since November 14, 2007. For example, (a) Claimant Gerhardt Reile is indigent since the seizure of the Defendant property, and (b) the Defendant property includes the life-savings and retirement savings of Claimant Mary Nothhouse.

11. District Courts enjoy considerable discretion in determining how best to manage their records and files. *See, e.g., Knoxville News-Sentinel Co. v. Knoxville Journal Corp.*, 723 F.2d 470, 473 (6th Cir. 1983). However, that discretion is “circumscribed “by the traditional and “presumptive right of the public to inspect and copy judicial documents and files.” *Id.* at 473-74.

12. As set forth in paragraph 1, the Court has already published the 33-page Affidavit, which reveals the nature, scope, and facts surrounding the government’s criminal investigation of Claimant Bernard von NotHaus. Thus, the reasoning espoused by the United States in its *ex parte* Motion to Stay and Seal--that the Stay and Seal are necessary to protect the integrity of the United States’ criminal investigation--is without merit since the nature, scope, and facts surrounding the investigation are already a matter of public record.

13. Stay and Seal of civil forfeiture proceedings pending disposition of a related criminal action is not warranted where the government fails to espouse continuing and bona fide reasoning why the forfeiture action should be stayed and sealed.

14. Pursuant to 18 U.S.C. § 983(d), CLAIMANTS are entitled to a timely pretrial hearing regarding their allegation in their Answer that the alleged conduct sought

to be punished is grossly disproportionate to the alleged offense, unconscionable, and, therefore, violates the Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution. No further discovery, which could compromise the criminal investigation of the United States, needs to occur before the Court could hold this hearing.

15. As set forth in paragraph 8, the Claimants identified in paragraph 3 agreed to dismiss their Motion for Return of Property in the companion case in the District of Idaho based on the agreement of the United States that the Claimants could assert their rights or other claims during this Civil Forfeiture Proceeding. *See* Exhibit 3.

16. The CLAIMANTS' rights to seek timely return of their property outweighs the government's interests in continuing to delay this case and in preventing CLAIMANTS' access to sealed filings.

17. Pursuant to Local Rule 7.1(b), the parties have mutually consulted via email and telephone in an unsuccessful attempt to informally resolve the issues presented in this motion. The United States has informed Counsel for CLAIMANTS that the United States objects to the granting of this Motion.

WHEREFORE, CLAIMANTS respectfully request that this Court enter an Order lifting the Stay and Unsealing any Orders, Motions, Pleadings, Exhibits and Transcripts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded to all counsel of record by means of electronic filing on this 19th day of September, 2008.

Thomas R. Ascik
Assistant United States Attorney
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Date: September 19, 2008

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