Supreme Court, U.S.
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No. 24A154

# In the Supreme Court of the United States

Jeffrey J. Prosser, *pro se*, and John P. Raynor, *pro se*,

v.

Gretchen C.F. Shappert, Virgin Islands USA, in her official capacity, and Merrick B. Garland, the U.S. Attorney General, in his official capacity.

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## APPLICATION FOR A STAY OF PROCEEDINGS BEFORE THE THIRD CIRCUIT PENDING THE FILING OF A PETITION FOR WRIT OF CERTIORARI

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Third Circuit Case No. 23-2072

An Appeal from D.V.I. Case No. 21-00026

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## QUESTIONS PRESENTED

**I.**

DOES *SIEGEL v. FITZGERALD* PRECEDENT REQUIRE TIMELY PERFORMANCE OF ADMINISTRATIVE DUTIES MEANT TO ENSURE THE INTEGRITY AND EFFECIENCY OF THE BANKRUPTCY SYSTEM?

**II.**

DOES THE THIRD CIRCUIT's ADJUDICATIONS IN THE PROSSER BANKRUPTCY PROCEEDINGS MAKE DIS-QUALIFICATION PROPER!

## PARTIES TO THE PROCEEDING

Applicant Jeffrey J. Prosser is the Chapter 7 Debtor of the Chapter 7 Bankruptcy Proceedings, Case No. 06-30009, which was commenced in the Virgin Islands Bankruptcy Court (VIBC") on July 31, 2006.

Applicant John Raynor is one of the Plaintiffs in a Civil Racketeering Influence and Corrupt Organization ("RICO") filed in the Virgin Islands District Court ("VIDC") [Case No. 2008 - 107] who is enjoined from prosecuting the RICO action by reason of a Third Circuit Mandate issued on May 15, 2015.

## DISCLOSURE STATEMENT

*Pro se* Applicant Jeffrey J. Prosser, on July 31, 2007, filed Chapter 11 bankruptcy personally and Chapter 11 Petitions for two holding companies owned and controlled by him: Emerging Communications, Inc. [VIBC No. 06-30007] and Innovative Communication Company, LLC [VIBC No. 06-30008]. Another company controlled by Applicant Prosser – Innovative Communication Corporation ("ICC") - was forced into involuntary bankruptcy in 2007. Applicant Prosser is also a Plaintiff in the enjoined Civil RICO Action. Collectively, these cases and related proceedings are referred to as the PBP (Prosser Bankruptcy Proceedings).

*Pro se* Applicant John Raynor is a member of the Nebraska Bar Association and a member of this Court's Bar. Applicant Raynor had

served as a Board Member of ICC and many of the operating subsidiaries as well as counsel to Applicant Prosser and many of the Entities previously owned and managed by Applicant Prosser.

## RELATED PROCEEDINGS

There are numerous proceedings emanating from the PBP which includes the above bankruptcy cases and related proceedings including a pending Writ of Certiorari. The gravamen of this litigation involves obtaining relief to set aside corrupted adjudications by a Former Bankruptcy Judge that was forced to resign her judicial appointment as of May 31, 2013, and further agreed to forfeit her accrued retirement benefits from 25 years of Judicial service by reason of her admitted judicial misconduct in presiding over the PBP. Cases related to this end are set forth hereinbelow.

- *Prosser v. Whitaker*, 2018 U.S. Dist. LEXIS 193062 (D.D.C., Nov. 13, 2018), was the Applicants litigation against the Department of Justice ("DOJ") seeking a mandatory injunction order to force the DOJ to perform their statutory duties – 28 U.S.C. § 581, in seq. – to restore integrity to the PBP; and to protect the U.S. Treasury.
- *Prosser v. Barr*, 2019 U.S. App. LEXIS 13388 (D.C. Cir., May 2, 2019), is the D.C. Circuit's summary affirmation of the District Court's dismissal of the Applicants litigation.

- *Prosser v. Gerber (In re Prosser)*, 2022 U.S. Dist. LEXIS 224306 (D.V.I. Dec. 13, 2022) ("*Gerber Sanction Case*"), is Virgin Islands District Court ("VIDC") litigation by Applicant Prosser's counsel of record who adopted a issued first raised by Applicants: the Virgin Islands Bankruptcy Court ("VIBC") is Unlawfully Constituted because the VIBC is not statutorily authorized and because it is unconstitutional for the VIBC to serve as an adjunct to the VIDC, an Article IV Court.
- The *Gerber Sanction Case,* the Third Circuit litigation, is reported as *In re Prosser*, 2024 U.S. App. LEXIS 6943 (March 22, 2024), wherein the Third Circuit held that Prosser Counsel forfeited the legal issue resting upon *Nguyen v. United States*, 539 U.S. 69 (2003) and did not address the Constitutional issues. A request for *en banc* reconsideration was rejected.
- The Writ of Certiorari file for *Gerber Sanction Case* was somehow captioned by this Court as *Norman Abood, et al, Petitioners v. Jeffrey J. Prosser* was filed on July 25, 2024, and assigned Case No. 24-98.

The Applicants sought disqualification of the Third Circuit, in total, because of the issued of two 2015 Mandates after the Third Circuit, among other chicanery, knew of the Former Bankruptcy Judge's admission (after her removal and completion of the DOJ's

criminal investigation of her) of egregious Judicial misconduct in the PBP. The opinions upon which the mandates were issued are:

- *Nat'l Rural Utils. Coop. Fin. Corp. v. Prosser (In re Nat'l Rural Utils. Coop. Fin. Corp.)*, 582 F. App'x 131 (3d Cir. 2014), which enjoined the prosecution of the Civil Rico action. In a Motion for Reconsideration, Applicant Prosser filed an affidavit which accused certain defendants of the bribery of Virgin Islands Public Officials (a racketeering act) which was not contested; a adoptive admission under Third Circuit case law. The Mandate was issued May 15, 2015.

- *In re Prosser*, 777 F.3d 154, 161, 62 V.I. 745 (3d Cir. 2015), wherein the Third Circuit overturned a VIDC decision to reinstate sanctions against Applicant Prosser's counsel of record which were assessed by Former Bankruptcy Judge. The Mandate was issued March 5, 2015.

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**Appendix 2 (App 3)** – Applicants' April 25, 2024, Motion to Strike the Department of Justice Response.

**App 87 - 94**

**TO THE HONORABLE SAMUEL A. ALITO, CIRCUIT JUSTICE OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT:**

In accordance with this Court's Rule 23 and the All Writs Act, 28 U.S.C. § 1651, Messrs. Prosser and Raynor ("Applicants"), filing on a *pro se* basis, request a Stay of the Third Circuit case involving the Prosser Bankruptcy Proceedings ("PBP") [FB[1] 1] pending the timely filing and disposition of a petition for a writ of certiorari and any additional proceedings in this Court.

The inferior courts are the Third Circuit [Art. III Ct.], the Virgin Islands District Ct. ("VIDC,") [Art. IV Ct.], and the unlawfully constituted V.I. Bankruptcy Court ("VIBC") [Art. IV Ct.].

This case centers upon an extreme departure from Judicial norms; highly irregular proceedings in proceedings before all three Courts! FB 5 (statements supported by DOJ authorized declaration[2]). "When the government's boot is on your throat, whether it is the left boot or right, is of no consequence." Anonymous. In this case both boots are

[1] "FB" means Factual Background supporting relief.

[2] Proof of the factual allegations in this Application rests upon a DOJ authorized Declaration which supports the facts set out in, and made possible the filing of, the "SOF&L" (Statement of Facts & Law) filed in July 2023 in the Third Circuit. For the facts revolving around the authorized declaration please refer to the Applicants' Motion to Strike which was filed in the Third Circuit on April 25, 2024, and is set out (without supporting exhibits) as App 87-94.

on the Applicants throats for more than a decade. The boots are the Department of Justice ("DOJ") and the Third Circuit's Judicial Council ("Judicial Council").

For years, the Applicants have been pigeonhole; the Applicants had knowledge of the PBP's corruption but possessed no definitive evidence. App 1-23, FB 9a. This is especially true when the presiding courts, including the Third Circuit, adjudications supported PBP secured creditors corruption of the PBP. FB 7, 8. The DOJ possessed evidence of PBP corruption but took no action, civil or criminal, to restore integrity and efficiency to the PBP. FB 9a, 9e.

To break out, Applicants instigated two suits against the DOJ – 2017 litigation in D.D.C. [PH[3] A] seeking injunctive relief and 2021 litigation in the VIDC [PH D] seeking documentary evidence known to be in the possession of the DOJ ("Discovery Litigation").

The 2017 litigation requested relief rested upon the DOJ's affirmative duties to ensure the integrity and efficiency of the PBP. See 28 U.S.C. §§ 581-589b. Applicants designated these duties as the "Integrity Duty" – Judicial administrative duties that have been transferred from the courts to the "USTP" (United States Trustee Program) and the "UST" (U.S. Trustee). The D.D.C. action which sought mandatory injunctive relief, *e.g.*, an order mandating the

[3] "PH" means procedural history.

DOJ's performance of the Integrity Duty, failed. PH A-C.

After the D.D.C. litigation failed to provide relief, in 2021 the Applicants filed "Discovery Litigation" in the VIDC. The Discovery Litigation commenced on March 16, 2021. PH D. Applicants sought evidence of: (i) the DOJ's forced resignation of the Former Bankruptcy Judge as of May 31, 2013 [FB 6]; and (ii) "ICC Bribery" [FB 4c, 7a)], the "CH" (Chapter) 11 Secured Creditor's bribery of V.I. Public Officials known to have been facilitated by the CH 11 "CA" (Court-Appointed) Fiduciaries. The VIDC dismissed the case [FB 16: PH F] and later dismissed Applicants contest over the Unlawfully Constituted VIBC [FB 17: PH E, I]. The appeal from VIDC's denial of relief is currently pending before the Third Circuit. [PH I]. It is this Third Circuit proceeding [Case No. 23-2072] that Applicants seek a stay so that they can file a Writ of Certiorari pursuant to this Court's Rule 11 for the reasons set forth hereinafter.

In the appeal, Applicant Raynor sought to move for the disqualification of the Third Circuit, in total, under 28 U.S.C. § 455(a). Based upon personal knowledge of the facts, in support of the proposed Motion, Applicant Raynor prepared a "SOF&L" (Statement of Facts & Law). App 24-86. The SOF&L also set forth known facts about the DOJ's parallel criminal investigation (Nov. 2009 through the present). App 72-82, ¶ 62. The SOF&L, in the eyes of any

reasonable person, establishes that the Third Circuit is not impartial.

Applicant Prosser's approval to file the SOF&L came only after Applicant Raynor obtained a supporting Declaration. App 87-94. Because of the supporting Declaration, on July 8, 2023, Applicants filed the Extraordinary Relief Motion which relief included Stay request to bypass the Third Circuit. PH J. The SOF&L was filed to support the requested relief. PH K. Applicants did not file nor disclose the supporting Declaration. On July 14, 2023, the DOJ responded with a Notice of No Objection. PH L. The DOJ did not contest nor reserve the right to contest the facts set out in the SOF&L. The Third Circuit issued a stay until a related case was resolved [*Gerber Sanction Case*] and denied all other relief, including a stay so the Applicants could file a Writ of Certiorari with this Court. PH M.

Later, Applicants confirmed that the DOJ authorized the Declaration. PH O3, Q; App 87-94. The temporary stay ended on March 22, 2024, with a disappointing Third Circuit opinion in a related case – *Gerber Sanction Case*. PH N. From that date until this date, the Applicants filed an array of motions. PH O. Most relevant is the April 25, 2024, Motion to Strike a DOJ Response to Applicants April 19, 2024, Motion. PH O3; App 87-94. The Motion to Strike publicly disclosed the authorized Declaration and gave a full account of why the SOF&L should be treated as a joint filing. App 87-94. The

DOJ has not contested the Motion to Strike. PH Q. The DOJ's admission of the SOF&L facts follows a multiyear criminal investigation. App 72-82.

The SOF&L supports Applicants position that the Third Circuit's is not impartial and that the Judicial administrative functions transferred to the UST have not been performed because of the parallel criminal investigation. The PBP have been and continue to be *in terrorem* proceedings. App. 24-86.

Applicants seek to file a Writ before the Third Circuit enters Judgement. The Third Circuit has departed so far from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by the VIBC, as to call for this Court to exercise its supervisory power. S. Ct. Rule 10(a). As the factual background demonstrates, the Third Circuit is irretrievably conflicted.

Applicants assert that this case involves extraordinary circumstances wherein there exists an Appeal by Right to this Court from the VIDC's Judgment. Applicants have suffered from Judicial rulings since 2007 wherein the most fundamental due process right, an impartial adjudicator, has been and is wanting. For Applicants there has been no adjudications by an impartial Article III Court.

Former Justice Scalia noted that this Court "can review only an insignificant proportion of the decided cases" which means the

"thirteen different courts of appeals" are primary courts making the Federal case law. See *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, *1178-79. Our Constitution cannot tolerate, nor did Congress contemplate, when devolving the exercise of the Judicial Power of the U.S., a case where the only Article III adjudicator is not impartial.

The *Gerber Sanction Case* is the subject of a pending July 25, 2024, Writ of Certiorari. No. 24-98. This legal issue was first raised by Applicants. PH E, G. The Writ was filed by and for Applicant Prosser's counsel of record. Because of procedural history what is missing from Writ's facts is a dispositive Due Process Issue. The Judge issuing the sanctions was the Former Bankruptcy Judge that resigned her judicial appointment and agreed to the forfeiture of her retirement benefits because of Judicial misconduct in the PBP. This was known by the Third Circuit in 2015 and in 2024. PB 6. Further, the SOF&L, addressing the 2015 Sanction Mandate [App 44, ¶ 29], stated that the Third Circuit issued that Mandate to chill Applicant Prosser's counsel. App 45, ¶ 31. Place in a Constitutional prospective, the sanctions at issue involve an appeal of sanctions issued by an Article I Judge (which has admitted egregious judicial misconduct) that has never had the benefit of a review by an impartial Article III Judge or Court.

## STATEMENT

### I. Factual background ("FB").

**1.** The PBP involves three (3) voluntary CH 11 bankruptcies and one (1) involuntary CH 11 bankruptcy; all filed in the VIBC. APP 27. Applicant Prosser's CH 11 personal bankruptcy was converted to a CH 7 Bankruptcy on Oct. 3, 2007, and this CH 7 Case is still active. The other CH 11 Cases involved companies controlled and managed by Applicant Prosser which were primarily holding companies. The CH 11 Cases [Chapter 11 Cases] were terminated on October 31, 2012, through a joint reorganization plan wherein all the claims of the CH 11 Estates were transferred into a Joint Liquidation Trust with the CH 7 Trustee appointed as the Trustee. App 84, n65. The Liquidation Trust is still in effect.

**2.** An accounting of events which resulted in the DOJ verification of the facts set forth in the SOF&L [App 24-86] is set out in the Applicants' Motion to Strike. App 87-94; PH O3, Q.

**3.** The SOF&L establishes the veracity of a whistleblower's article – the "2012 DC Article" - which was published by the Daily Caller on February 1, 2012. App 1-23, *Bribery, compromised officials leave indicted financial-crime suspects free from prosecution under Holder's DOJ*. More specifically, the 2012 DC Article was verified by the SOF&L, App 73, ¶ 62b: App 76, n55.

**4.** The 2012 DC Article [App 1-23] discloses:

a. An Embezzlement Scheme [App 3-5] which requires the commission, annually, of mail fraud, wire fraud, money laundering, and tax fraud. RTFC[4] and CFC[5], acting through RTFC, were the primary secured lender/creditor of Applicant Prosser's business entities.

b. The DOJ criminal investigation which commenced in 2009 with assignments of two prosecutors to investigation "Bank Fraud." App 8-9. The violation of 18 U.S.C. § 1344, Bank Fraud, is a racketeering act within the meaning of 18 U.S.C. § 1961(1)(B).

c. The ICC Bribery [defined App 26] is the bribery of the V.I. Public Officials by the CH 11 Secured Creditor. App 1. ICC Bribery is a racketeering act within the meaning of 18 U.S.C. § 1961(1)(A).

d. The bribery of Federal prosecutors by financial executives of CFC, the CH 11 Secured Creditor. App 1. The CH 11 CA Fiduciaries [defined, App 24] were obtaining confidential information on the criminal investigation on a real time basis from bribed or compromised Federal prosecutors. App 13, "DOJ springs a leak."

e. The DOJ considered Applicant Prosser a victim. App 10.

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[4] "RTFC" means the Rural Telephone Finance Cooperative, a coop under the dominion and control of CFC.

[5] "CFC" means the National Rural Utilities Cooperative Finance Corporation.

f. That the CH 11 Secured Creditor forced Applicant Prosser's personal and business bankruptcy filings. App 5, 7.

g. That the CH 11 Secured Creditor and some of its key financial officers were indicted in May 2011. App 1, 12, 14-15, 20-21.

h. The 2009 Loan Fraud (a violation of 18 U.S.C. § 157) committed within the PBP by the CH 11 Secured Creditor; by using a credit bid to establish a phantom value unsupported by CH 11 Estates worldwide marketing effort established the assets were worth at best $10 Million. The value as established by the market and testimony was never disclosed in the SEC filings. App 15-16.

i. That the CH 11 Secured Creditor was securing Federal funds with false financial statements. App 3, 20-21.

j. That the CH 11 CA Fiduciaries "were intimately involved in the activity at the heart of the DOJ's financial-crimes investigation." App 9-10.

**5.** The SOF&L, which supported by a DOJ authorized Declaration [App 87-94], made to general, conclusory statements about the PBP which are:

a. "First, the Prosser Bankruptcy Proceedings have been permeated with corruption. The Former Bankruptcy Judge was civilly compromised and colluded with a cabal that included CFC and CFC's counsel, Greenlight and Greenlight's counsel, CH 11 CA

Fiduciaries, and the CH 7 CA Fiduciaries. The CH 7 CA Fiduciaries, while not caught often in as openly overt acts as were committed by the CH 11 CA Fiduciaries; nevertheless, played a vital role."

b. "Second, the whole of the Prosser Bankruptcy Proceedings involves Constitution Torts and other torts perpetrated under the Color of Law, including deprivation of the most fundamental Constitutional right, an impartial adjudicator. The whole of the Prosser Bankruptcy Proceedings violated 42 U.S.C. §§ 1981-1982 because of a 42 U.S.C. § 1985(c) conspiracy that denied (and continues to deny) Appellant Prosser, and his associates', equal protection of the law and a conspiracy to deprive Appellant Prosser and his family of their property under the Color of Law, *e.g.*, without the due process of law in accord with U.S. Const., Amdt5.5.1."

App 29, ¶ 1.

**6.** The SOF&L establishes that the Third Circuit Judicial Council knew, on a real time basis, that: (i) the Former Bankruptcy Judge presiding over the PBP from July of 2006 until May of 2013 was forced to resigned by the DOJ because of egregious Judicial misconduct in presiding over the PBP [App 40, ¶ 25a]; (ii) that the Former Bankruptcy Judge was a subject of a continuing criminal investigation [App 41, ¶ 25b]; and (iii) further, by 2015, the Former Bankruptcy Judge had agreed to forfeit her Judicial retirement [App

40, ¶ 25a, d]. App 38-43, ¶ 19-27 (primarily). It was not a matter of conjecture but admitted misconduct [App 39, ¶ 21c] documented in the DOJ/Judge Agreements [App 25]. The Former Bankruptcy Judge's Judicial misconduct started in July 2007, if not earlier. App 42, ¶ 26.

**7.** In alleging that the Third Circuit should be disqualified under 28 U.S.C. § 455, the SOF&L concentrated on two mandates issued by the Third Circuit in 2015: the May 15, 2015, Third Circuit Mandate affirming the RICO/CICO Injunction [defined, App 28] and the March 5, 2015, Sanction Mandate[6] [defined, App 44, ¶ 29]. In addition to knowing the Former Bankruptcy Judge's – the presiding judge – was engaged egregious Judicial misconduct and had agreed to forfeit her judicial retirement [FB 6], the SOF&L establishes that the Third Circuit had actual knowledge of –

a. ICC Bribery. App 34-34, ¶ 8-18: App 44, ¶ 30; App 64-67, ¶ 40-45: App 73, ¶ 62b, App 77, ¶ 62f-g. In Nov. 2014, Applicant Prosser filed with the Third Circuit the "Prosser 2014 Affidavit" [defined App 27] with disclosures/admissions re ICC Bribery which affidavit explicitly stated the CH CA Fiduciaries facilitated the ICC Bribery. The parties to the proceedings which were accused of the ICC Bribery

[6] This was the first appeal of the sanctions against Applicant Prosser's counsel of record which is a/k/a, the *Gerber Sanction Case*.

did not deny the criminal accusation. Under 3rd Cir. Case law, the failure to deny is an 'adoptive admission'. App 34-38, ¶ 8 – 18 (¶ 11, operating subsidiaries of ICC, a CH 11 Debtor, were used to facilitate partial payment of the bribes).

b. The payment of an Unlawful Gratuity to a fact witness. App 44-49, ¶ 28 – 32. The agreement for the payment of the fact witness' attorney fees was made after his testimony to preserve his perjurious testimony. This violation of 18 U.S.C. § 201(c) is a racketeering act within the meaning of 18 U.S.C. § 1961(1)(B).

c. The May 24, 2010, Evidentiary Hearing disclosed that the "remaining parties" (the term used by the Third Circuit which has the effect of concealing that CH 11 CA Fiduciaries were implicated) paying the Unlawful Gratuity were the CH 11 CA Trustee, the CH 11 CA Attorneys, and the Secured Creditors counsel. App 48, ¶ 32(g)(i); *Prosser v. Gerber (In re Prosser)*, 2011 Bankr. LEXIS 5009 (Bankr. D.V.I. Dec. 20, 2011). The admitted arrangement establishes that the CH 11 CA Fiduciaries were not disinterested in the meaning of 11 U.S.C. § 101(14).

d. That the CH 11 CA Fiduciaries embezzled from the CH 11 ICC Estate [App 48, ¶ 32g(iii)-(iv)] – ICC Estate had paid the unlawful gratuity - which violated 18 U.S.C. §§ 153 & 645. The later reimbursement (when the issue was the subject of scrutiny) does not

excuse this crime.

**8.** The SOF&L, ¶ 46, states that "Issuing the 2015 Mandate [re: RICO/CICO Injunction] was not only an error but rather has the known effect of sheltering and protecting the Racketeering Enterprise and facilitating the Racketeering Enterprise's unlawful access to the US Treasury." App 67. The statement is supported by the SOF&L as a whole and more specifically, App 64, ¶ 40-45.

**9.** **Timing**: The following is evidence of the inordinate delay in restoring integrity to the PBP:

a. Applicants acknowledge that the facts disclosed in the "2012 DC Article" had not been verified by the DOJ until 2023. PH J, K, L, O3, Q.

b. The Duty Chief of the DOJ's Criminal Fraud Division in January of 2011 authorized VI USA to seek a stay of all the Prosser Bankruptcy proceedings. App 10. The VI USA never acted upon the stay authorization. App 10-11.

c. Arrests of CH 11 Secured Creditor and CH 11 CA Fiduciaries were planned and expected to occur in May of 2011, *i.e.*, arrest teams in place around the country and marked to strike. App 11-12: App 14-15. Civilly, the CH 11 CA Fiduciaries should have been removed in early 2011.

d. Based upon the facts set forth in the SOF&L [¶ 62(b) [App

73], the DOJ knew that the CH 11 Secured Creditor and the CH 11 Fiduciaries used subsidiaries of the holding companies in bankruptcy to pay part or all the ICC Bribes. Civilly, the CH 11 CA Fiduciaries should have been removed in early 2011.

e. Based upon the facts set forth in the SOF&L, the DOJ, no later than early 2015 and as early as May 31, 2013, should have taken all the necessary civil actions to set aside the Former Bankruptcy Judge's adjudications in the PBP. App 39, ¶ 21.

f. Based upon the facts set forth in the SOF&L, the 3rd Cir. Judicial Council, no later than early 2015 and as early as May 31, 2013, had all the evidence (involuntary resignation) necessary from a reliable source (DOJ) to enter the Orders to vacate the Former Bankruptcy Judge's adjudications in the PBP. FB 7.

**10.** The Former Bankruptcy Judge is still a member of the Third Circuit Bar and is a license attorney. //www.tuckerlaw.com/people/honorable-ret-judith-k-fitzgerald/. The Former Bankruptcy Judge markets her Judicial experience as a Former Bankruptcy Judge to an unknowing public when she should not even possess a law license. Arguably, this is a fraud upon the public supported by the Third Circuit's nonfeasance.

**11.** Bankruptcy Clause: U.S. Const., ArtI.S8.C4.2, the Bankruptcy Clause, imposes a uniformity requirement which

mandates uniformity with respect to both substantive and administrative bankruptcy law. See *Siegel v. Fitzgerald*, 596 U.S. 464, 474 (2022) (uniformity requirement applies to both substantive and administrative laws). The USTP was established by two bankruptcy acts: Bankruptcy Reform Act of 1978; and Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986.

**12.** Take Care Clause: U.S. Const., ArtII.S3.3, the Take Care Clause, has historically vested the DOJ with enormous discretion with respect to enforcing the U.S. Laws. *Loving v. United States*, 517 U.S. 748, 758-759 (1996) (discretion in context of making law in contrast to the execution of a law finding as to the latter "no valid objection can be made.").

**13.** Civil Abeyance: The SOF&L establishes that civil performance of PBP Bankruptcy Administrative Duties of integrity and efficiency has been held in abeyance because of corruption and/or deferment to the criminal division for at least a decade. App 72-82, ¶ 62.

**14.** Successor Bankruptcy Judge: The successor Bankruptcy Judge has a personal financial relationship with the Former Bankruptcy Judge which was known or should have been known by the Third Circuit Judicial Council. App 62, ¶ 36-39.

**15.** Emancipated DOJ: The Verified SOF&L cannot be read without realizing the referenced to DOJ encompasses two distinct subgroups: a DOJ which has been corrupted by self-interest and a hidden hand; and an "Emancipated DOJ" – the present reconstituted DOJ which appears to hold the parties to this injustice accountable. App 72-82, ¶ 62.

**16.** VIDC's Dismissal [PH F]: On October 19, 2022, the VIDC dismissed the *Shappert Compl* for failure "to state any claims upon which relief can be granted and because the Court finds that it lacks subject matter jurisdiction." *Prosser v. Shappert*, 2022 U.S. Dist. LEXIS 190783 at 28 (D.V.I. Oct. 19, 2022) (relying upon FRCP 12(b)(1) and 12(b)(6)). The VIDC found:

a. "[B]ecause Defendants are shielded by sovereign immunity acting in their official capacity, no subject matter jurisdiction exists for a claim brought pursuant to § 1983." *Id.* at 10.

b. Plaintiffs lacked standing because "the Court finds that Plaintiffs never submitted a FOIA [5 U.S.C. § 552] request with the Department of Justice." *Id.* at 17.

c. that "Plaintiffs provide no other factual support that Defendants have manifested an adoption or belief in the truth of Plaintiffs' allegations" [*Id.* at 26] and there was "absence of allegations of plausible facts" [*Id.* at 28].

**17.** VIDC's Motion Denial of Applicants' Motion for Rehearing [PH I]: Applicants filed the *Nguyen* Reconsideration Motion. In the denial order [ECF 40], the VIDC [No. 21-0026] made an absurd finding: "This case did not arise out of Plaintiff Prosser's bankruptcy proceedings nor is it ancillary thereto." 4/14/2023 Order, p 3. The *Shappert Compl* fully disclosed the D.D.C. litigation and stated both complaints were prosecuted for the stated purpose of vacating the Former Bankruptcy Judge's adjudications.

## II. Procedural History ("PH").

The procedural history involves three difference cases: one case filed in the D.C. Circuit and two cases filed in the Third Circuit. *Prosser v. Sessions*, 315 F. Supp. 3d 547 (D.D.C. 2018), was filed by Applicants in the District Court for the District of Columbia ("D.D.C."). This first decision in this Discovery Litigation by the VIDC was captioned as *Prosser v. Shappert*, 2022 U.S. Dist. LEXIS 190783 (D.V.I. Oct. 19, 2022), and the appeal therefrom is 3rd Cir. Case No. 23-2072. A related case involving the sanctions of Applicant Prosser's counsel of record has been reported as *In re Prosser*, 2024 U.S. App. LEXIS 6943 (March 22, 2024), but was referred to in pleadings as *Prosser v Gerber*[7], 3rd Cir. Case No. 22-3456 ("*Gerber Sanction Case*").

[7] *Prosser v Gerber* is the case name assigned to two separate and distinct cases that arose from the same proceeding: one where the

The *Gerber Sanction Case* at issue emanates from the Evidentiary Hearing proceeding cited above [FB 7c] but is not the same proceeding. See *In re Prosser*, 2014 U.S. Dist. LEXIS 18930 (D.V.I. Feb. 14, 2014) (This case reversed the Former Bankruptcy Judge's sanctions only to be itself reversed by the Third Circuit's March 5, 2015, Mandate restating the sanctions).

**A. D.D.C.:** Knowing that the Former Bankruptcy Judge circumstances, the Applicants sued the DOJ in the D.C.C. on June 26, 2018. *Prosser v. Sessions* Complaint, D.D.C. Case 17-01662, ECF 1, 8/16/2017; Amended Complaint, ECF 31, 6/26/2018. The Applicants sought a Ct. Order mandating the DOJ's performance of the Integrity Duty [28 U.S.C. § 586] and a Ct. Order mandating the DOJ act to protect the U.S. Treasury.

**B. D.D.C.:** On Nov. 13, 2018, the Applicants' D.D.C. Complaint was dismissed for the second time. See *Prosser v. Whitaker*, 2018 U.S. Dist. LEXIS 193062 (D.D.C., Nov. 13, 2018) (the Executive Branch enjoys wide discretion in enforcing the law).

**C. D.C. Cir.:** On May 2, 2019, the Applicants' appeal was dismissed with the D.C. Cir. summarily affirming the D.D.C.

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Former Bankruptcy Judge whitewashed criminal conduct by the CH 11 CA Fiduciaries and the CH 11 Secured Creditor's Counsel; and the other where Applicant Prosser's counsel of record were sanctioned by the Former Bankruptcy Judge.

dismissal. See *Prosser v. Barr*, 2019 U.S. App. LEXIS 13388 (D.C. Cir., May 2, 2019).

**D.** ***Shappert* - VIDC:** Having failed to force the DOJ to perform the Integrity Duty, a Bankruptcy Administrative Duty, on May 16, 2021, the Applicants again sued the DOJ by essentially refiling the substance of the D.D.C. Complaint in the VIDC. VIDC Case No. 21-026, ECF 1, the "*Shappert Compl.*" Instead of injunctive relief denied by D.D.C., the *Shappert Compl* sought documents (Discovery Litigation) from the DOJ centering upon two transgressions: the removal of the Former Bankruptcy Judge – the "DOJ/Judge Agreements" [FB 6]; and ICC Bribery [FB 4c, 7a], the bribery of former V.I. Public Officials. The *Shappert Compl* sought no legal damages. The *Shappert Compl* was a suit in equity to obtain the evidence to do the lawful duty the UST had abandoned; to vacate all the Former Bankruptcy Judge's PBP adjudications and strike from the public record her supporting opinions.

**E.** ***Shappert* - VIDC:** Applicants discovered this Court's decision, *Nguyen v. United States*, 539 U.S. 69 (2003), during the VIDC proceeding and understood VIBC to be Unlawfully Constituted pursuant to the *Nguyen* precedent. Applicants moved VIDC to declare VIBC Unlawfully Constituted. VIDC No. 21-026, ECF 17, filed 6/20/2022. *Nguyen* was a quicker path to the same end, vacating the

Former Bankruptcy Judge's adjudications.

**F. *Shappert* - VIDC:** On October 19, 2022, the VIDC dismissed the Applicants' *Shappert Compl* for want of jurisdiction. FB 16: See *Prosser v. Shappert*, 2022 U.S. Dist. LEXIS 190783 (D.V.I. Oct. 19, 2022).

**G. *Gerber Sanction Case* - VIDC:** In the appeal to the VIDC in the sanction case, Prosser's Counsel after realizing the import of the *Nguyen* precedent and henceforth, relied exclusively thereon. The VIDC affirmed the sanctions against Applicant Prosser's counsel. See *Prosser v. Gerber (In re Prosser)*, 2022 U.S. Dist. LEXIS 224306 (D.V.I. Dec. 13, 2022).

**H. *Gerber Sanction Case* – 3rd Cir.:** Prosser's Counsel appealed of *Gerber Sanction Case* adjudication to the Third Circuit which was docketed on December 30, 2022. 3rd Cir. No. 22-3456.

**I. *Shappert* - VIDC:** On April 14, 2023, the VIDC entered an Order denying the Applicants Reconsideration Motion premised upon *Nguyen* precedent. FB 17. Applicants' appeal which was docketed as Case No. 23-2072.

**J. *Shappert* – 3rd Cir.:** In their appeal, on July 8, 2023, the Applicants filed the "Extraordinary Relief Motion" (Motion for Extraordinary Relief). No. 23-2072, ECF 10-1. The Motion was in fact three motions: (i) a Stay of Proceedings until *Gerber Sanction Case*

was addressed by another Third Circuit Panel; (ii) the Appointment of a Special Master to fulfill the Third Circuit's supervisory responsibilities over the PBP as the only Article III Court in Federal Court Hierarchy; and/or (iii) lastly, Applicants sought a stay of proceedings so that a Writ of Certiorari could be filed seeking to bypass adjudication by the Third Circuit.

**K.** ***Shappert* – 3rd Cir.:** The Applicants' Extraordinary Relief Motion was supported by the SOF&L. App 24-86. The facts set forth in the Motion to Strike [App 87- 94] truthfully describe the supporting Declaration and why the SOF&L would not have been filed but for the Declaration.

**L.** ***Shappert* – 3rd Cir.:** In response to the Extraordinary Relief Motion, the DOJ, on July 14, 2023, filed a Notice of No Opposition. ECF 12. The DOJ did not contest the facts set forth by the SOF&L nor did the DOJ reserve the right to contest the SOF&L.

**M.** ***Shappert* – 3rd Cir.:** In response to the uncontested Motion, the Third Circuit on issued a stay until *Gerber Sanction Case* was decided. ECF 13, dated Aug. 8, 2023. All other relief was denied, including 28 U.S.C. § 455(a) relief.

**N.** ***Gerber Sanction Case* – 3rd Cir.:** The *Gerber Sanction Case* Opinion was issued by the Third Circuit on March 22, 2024. See *In re Prosser*, 2024 U.S. App. LEXIS 6943 (March 22, 2024). The Third

Circuit used the Forfeiture Doctrine to sidestep statutory interpretation issue framed by *Nguyen v. United States*, 539 U.S. 69 (2003) ("*Nguyen*"), and to ignore the Constitutional issues framed by *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (U.S. 1982) ("*N. Pipeline*) and its progeny. More importantly, in 2024, the Third Circuit rendered this decision knowing that the Former Bankruptcy Judge resigned her judicial appointment and agreed to the forfeiture of her statutory retirement benefits was the Judge sanctioning Applicant Prosser's counsel of record. This decision was entered months after the DOJ Notice of No Objection [PH L].

**O.** ***Shappert* – 3rd Cir.:** Applicants have filed several Motions since the issuance of the Third Circuit's *Gerber Sanction Case* opinion.

1. April 11, 2024, Motion seeking to declare the VIBC Unlawfully Constituted relying upon both statutory grounds (*Nguyen* Precedent) and Constitutional grounds (Article I Court as an adjunct to an Article IV Court – Legislative Courts stacking). Applicants pointed out that the Judicial Oath mandated a decision of the Constitutional status of the VIBC. ECF 36-1.

2. April 11, 2024, Motion to Appoint a Special Master should the Court find the VIBC Unlawfully Constituted. ECF 37-1.

3. April 25, 2024, Motion to Strike the DOJ's Response to the

Unlawfully Constituted Motion. ECF 39-1. This filing disclosed the authorized Declaration supporting the SOF&L alleging that the document should considered as if the SOF&L was jointly filed. APP 87-94. Applicants' Motion to Strike did not disclose the name of the Declarant because disclosure would only be necessary if the DOJ were going to contest that the Declaration supporting the SOF&L was not authorized.

4. April 25, 2024, the Applicants also filed a Reply pointing out that in the DOJ's Response the DOJ did not argue that the VIBC was Unlawfully Constituted. ECF 40-1.

5. May 22, 2024, the Applicants filed a Motion to Supplement the Record with filings in the VIDC on pending cases related to *Nguyen v. U.S., supra*. ECF 41-1. These documents better articulated Applicants legal position re Unlawfully Constituted Court [PH O1].

6. May 30, 2024, Applicants' Supervisory Motion moved the Third Circuit to order the DOJ to produce evidence *in camera*, solely to the Court, relying upon its supervisory responsibility for the PBP as the only Article III Court. ECF 43-1. This Motion also raised 28 U.S.C. § 455(a) noting that the responsibility for disqualification arises independently of a Motion.

7. June 7, 2024, Applicants filed their reply to the DOJ's response to the Supervisory Motion. ECF 45-1. In the reply, for the

first time, the Applicants presented this Court's decision of *Siegel v. Fitzgerald*, 596 U.S. 464 (2022).

**P.** ***Gerber Sanction Case* – $3^{rd}$ Cir.:** The Applicants effort to have rehearing or a hearing *en banc* of the *Prosser v Gerber* was rejected by the Third Circuit on April 26, 2024. No. 22-3456, ECF 60. The Third Circuit supports the unlawfully constituted VIBC more than forty years after this Court's opinion in *N. Pipeline*, and more than twenty years after this Court's opinion in *Nguyen*.

**Q.** ***Shappert* – $3^{rd}$ Cir.:** To each of the Applicants' Motion set forth above, the DOJ timely filed a response except for one – the Applicants April 25, 2024, Motion to Strike [PH O3] is uncontested. Failure to respond is a Judicial Admission that the Declaration supporting the SOF&L was authorized by the DOJ.

**R.** ***Shappert* – $3^{rd}$ Cir.:** On July 31, 2024, the Applicants filed their opening brief in the Appeal.

**S.** ***Gerber Sanction Case* – SCOTUS:** On July 25, 2024, Applicant Prosser's counsel of record filed a Writ of Certiorari. No. 24-98. The Writ presents a legal issue of the Unlawfully Constituted VIBC relying exclusively upon the law. Nevertheless, the law is only part of the picture. The Judge issuing the sanctions was the Former Bankruptcy Judge removed by the DOJ for egregious misconduct in presiding over the PBP. For the reasons set forth hereinafter, the

sanctions should have been set aside by the DOJ and/or the Judicial Counsel. The same Former Bankruptcy Judge that is a current member of the Third Circuit Bar. App 87, ¶ 73.

## ARGUMENT

An applicant seeking a stay pending certiorari must demonstrate "(i) a reasonable probability that this Court would eventually grant review and a fair prospect that the Court would reverse, and (ii) that the applicant would likely suffer irreparable harm absent the stay." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). This Court also considers the public interest and the equities. *Id.*

The Discovery Litigation exists because of two failures: self-governance by the Third Circuit Judicial Council; and the Emancipated DOJ's conflating discretion bestowed by the Take Care Clause with the DOJ's duty to perform civil Judicial Administrative duties assigned to the USTP and which duties are subject to the uniformity requirement.

The Applicants assert the Third Circuit should stand down by reason of 28 U.S.C.§ 455(a) from resolving this Appeal from the VIDC.

With respect to the DOJ, this Court needs to clarify the uniformity requirement in context of the limits of the DOJ's civil discretion with respect to ensuring the civil integrity and efficiency of bankruptcy

proceedings. This case demonstrates that the DOJ believes a parallel criminal imbues the DOJ with discretion to ignore its civil Bankruptcy duties even when the most fundamental due process rights are being denied; hence, the DOJ's boot.

### 1st. DOES *SIEGEL v. FITZGERALD* PRECEDENT REQUIRE TIMELY PERFORMANCE OF ADMINISTRATIVE DUTIES MEANT TO ENSURE THE INTEGRITY AND EFFECIENCY OF THE BANKRUPTCY SYSTEM?

This subpart addresses the Emancipated DOJ's nonfeasance of Bankruptcy Administrative Duties [judicial responsibilities assigned to the USTP] by primarily focusing upon the lack of relief after the May 31, 2013, the effective date of the Former Bankruptcy Judge's forced resignation for egregious Judicial misconduct in presiding over the PBP.

The Former Bankruptcy Judge forfeited her retirement benefits accrued by reason of 25 years of Judicial service due to admitted egregious Judicial misconduct. FB 6, 9e. The SOF&L establishes that: her Judicial misconduct commenced in early 2007 [FB 6]; and her Judicial misconduct was clearly intentional [FB 5]. When the Former Bankruptcy Judge's resignation became effective, she was still one subject of an ongoing multiyear DOJ criminal investigation. App 41, ¶ 25b.

"A fair trial in a fair tribunal is a basic requirement of due

process," *In re Murchison*, 349 U.S. 133, 136 (1955). The Due Process violation in this case occurred in an equitable forum governed by equitable principles and was continuous; early 2007 through May 31, 2013. FB 5. The Third Circuit 2015 Mandates and other adjudications are still oppressing the Applicants and others. "[B]ankruptcy courts [] are courts of equity and apply the principles and rules of equity jurisprudence." *Young v. United States*, 535 U.S. 43, 50 (2002) (Citations omitted). See also *Granfinanciera v. Nordberg*, 492 U.S. 33, 80 (1989) (J. White dissenting) (agreeing with the majority - "we have indicated on several previous occasions that bankruptcy courts -- by their very nature, [are] courts of equity ...").

The SOF&L weighs heavily against the DOJ. The SOF&L establishes DOJ's performance of Judicial Administrative Duties assigned to the DOJ to ensure the integrity and efficiency of bankruptcy proceedings ("Integrity Duty") was abandoned by the DOJ, first, because the DOJ was conflicted if not compromised. App 72-82, ¶ 62. Once no longer compromised, the Emancipated DOJ has held performance of the Integrity Duty in abeyance by abandoning performance thereof to the Judicial Council. App 72-82, ¶ 62. When the Judicial Council failed to act, the DOJ did nothing! App 24-86, the SOF&L, in total. Applicants and in particular, Applicant Prosser and his family, have labored under the weight of corrupt adjudications for

far too long. FB 5, 9. Does the DOJ have the authority to hold in abeyance their performance of their Bankruptcy Administrative Duties set out in 28 U.S.C. §§ 581 - 589b? Applicants believe the answer is NO! This Court's Opinion in *Siegel v. Fitzgerald, supra,* supports Applicants.

This Court holds that the 'uniformity requirement' of the Bankruptcy Clause applies to both Bankruptcy judicial adjudicative and judicial Bankruptcy administrative duties assigned to the DOJ (USTP). *Siegel v. Fitzgerald, supra.* The Judicial Bankruptcy Administrative Duties are now housed within, and performed by, the DOJ – more specifically, the USTP. *Siegel v. Fitzgerald, supra.* The administrative duties include "monitoring [bankruptcy] cases for signs of abuse and fraud." *Id.* at 469. The USTP's Mission Statement is "to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public." USTP, About the Program at https://www.justice.gov/ust/about-program. The Ninth Circuit's opinion, *In re Castillio*, 297 F.3d 940, 950 (9th Cir., 2002), relying heavily upon the Congressional Record, holds that the UST is the 'watchdog' of the bankruptcy system charged with preventing fraud and abuse. The USTP cites the same H. Rpt. to self-describe the USTP as a 'watchdog' over the Bankruptcy Process. The term "Integrity Duty" is meant to capture both the

monitoring and the civil action necessary to restore integrity and efficiency to the bankruptcy proceedings.

The USTP has been assigned Judicial functions by Congress because of the passage of two Bankruptcy Acts passed under the authority of the Bankruptcy Clause: not under the Take Care Clause.

The 'uniformity requirement' constrains the DOJ's discretion to hold in abeyance the civil performance of these duties necessary to maintain the integrity and efficiency of bankruptcy proceedings. The SOF&L establishes that criminals have transmuted equity proceedings into an *in terrorem* proceedings wherein Applicants and others are stripped of their Constitutional Rights under the Color of Law.

This case is especially egregious because the delay of civil enforcement has persisted for more than a decade. FB 9.

In challenging the Constitutionally of statutes two tests apply, as written and as applied. *Citizens United v. FEC*, 558 U.S. 310 (2010) (discussing facial vs. as applied challenges). The UST's performance of its mission to promote the integrity and efficiency of bankruptcy proceedings likewise must satisfy both Constitutional tests – otherwise, the uniformity requirement rings hollow. Equal protection (due process) and 42 U.S.C. § 1986 support this result.

**NATIONAL IMPORTANCE:** Bringing clarity to this issue

affects integrity of Bankruptcy system as a whole and to those bankruptcy cases subject to criminal investigation is of national importance.

This Court has held noted "the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' described in § 105(a) of the Code." *Marrama v. Citizens Bank*, 549 U.S. 365, 375 (2007). 28 U.S.C. § 581-589b charges[8] the UST to invoke that power when and as needed. 11 U.S.C. § 307 – The UST "may raise and may appear and be heard on any issue in any case or proceeding …".

Because of public interest in the credibility of the bankruptcy system, Title 18, CH 9 (bankruptcy crimes) criminalizes abuses of the bankruptcy system. See *United States v. Grant*, 971 F.2d 799, 805 (1st Cir. 1992) (Section 152 promotes efficient bankruptcy administration … by criminalizing efforts to preempt a neutral and informed assessment by the trustee as to the debtor's legal, equitable and possessory interests in property at the commencement of the case.): *United States v. Free*, 839 F.3d 308, 319 (3d Cir. 2016) (no fraudulent losses need to occur for a debtor to violate § 157; [f]iling itself is the forbidden act). Public interest weighs so heavily that there are numerous criminal cases where there is a conviction for abuses of the

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[8] 28 U.S.C. § 586 makes ample use of the word "shall."

Bankruptcy system even when there is no monetary loss. The USTP's Mission Statement acknowledges the public's interest in the integrity of bankruptcy proceedings.

The UST responsibilities spring from the Judicial Branch and not the Executive Branch. Moving Judicial administrative duties to the Executive Branch to avoid the "appearance of bias" did not and was not meant to subjugate the performance of these duties to the discretion afforded the DOJ under the Take Care Clause. It is illogical that a Trustee will be removed for a civil conflict in one case while in another case a Trustee will retain his position and power because the conflict is criminal. Uniformity in practice must exist.

In this case, it is indisputable that civil enforcement awaits criminal enforcement. FB 7, 9. This Court has supervisory authority over all lower courts. Can this Court tolerate bankruptcy proceedings which are known to be under the Color of Law and known to be devoid of all integrity because the DOJ is pursuing a related criminal case? Three Federal Courts, in this case, believe the DOJ has such discretion: the D.D.C. [PH (A, B)], the D.C. Cir. [PH (C)], and the VIDC [PH (F)]. Additionally, as evidenced by the Writ of Certiorari filed in the *Gerber Sanction* Case [PH S] and this case, the DOJ's nonfeasance has unreasonably and arguably, vexatiously, multiplied proceedings. 28 U.S.C. § 1927. The transmutation of equitable

proceedings into *in terrorem* proceedings is of no consequence to these courts nor to the DOJ.

The duty to ensure the integrity and efficiency of Bankruptcy proceedings is of paramount performance and has been entrusted to the DOJ for well over thirty years. It is consistent with reasons for the USTP's establishment that civil performance of the Integrity Duty should not be delayed nor controlled by the DOJ criminal division. This Court's decision *Siegel v. Fitzgerald, supra*, was long overdue. Nevertheless, a clear message must be sent that the uniformity requirement mandates timely performance of the Integrity Duty. Otherwise, as in this case, crime pays.

**2nd. DOES THE THIRD CIRCUIT's ADJUDICATIONS IN THE PBP MAKE DISQUALIFICATION PROPER?**

Note, the Applicants do not address herein VIBC's Unlawfully Constituted Court status. In this case it is an unresolved motion pending before the Third Circuit Panel since April 11, 2024. PH O1. Resolution of the issue is simple: (i) the Virgin Islands is not a Judicial District for purposes of 28 U.S.C. § 151 [28 U.S.C. CH 5; 28 U.S.C. § 152(a)(2)]; (ii) the VIDC is not a District Court as defined by 28 U.S.C. § 451; (iii) the VIDC is the Bankruptcy Court for the Territory [28 U.S.C. § 152(a)(4)]; and per 48 U.S.C. § 1612(a), the VIDC is ordained with the jurisdiction "of a bankruptcy court of the United States."

The Third Circuit's knowledge of the Former Bankruptcy Judge's judicial misconduct in presiding over the PBP is not disputed by the DOJ: she was forced to resign and agreed to the forfeiture of her benefits accrued under 28 U.S.C. § 377 for 25 years of Judicial service.[9] PH 6, 7. The succeeding Bankruptcy Judge and the Former Bankruptcy Judge have a financial relationship which is furthered by maintaining the public status of the Former Bankruptcy Judge. FB 14. The disparity in the Third Circuit's adjudications (and departure from Judicial norms) is illustrated by the treatment of Applicant Prosser's counsel of record, *i.e.*, the 2015 Sanction Mandate [FB 7], also referred to as the *Gerber Sanction Case*, and the 2024 Sanction adjudications [PH N, P, S], as compared to the Third Circuit treatment of the Former Bankruptcy Judge [FB 10], *i.e.*, a member in good standing of the Third Circuit Bar marketing her Judicial experience to an unknowing public. The foregoing does not appear to comport with their Code of Conduct for Federal Judges, U.S.C., Title 28, appendix III, nor with their duties as attorneys to uphold the integrity of the profession.

"The Administrative Office Act of 1939 (Act) created the

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[9] "That during 2022, a member of the DOJ's Criminal Task Force publicly stated his dismay that the Third Circuit had not yet acted to vacate all the Former Bankruptcy Judge's adjudications in the Prosser Bankruptcy Proceedings." App 40-41, ¶ 21f.

Administrative Office of the United States Courts, and thereby effectively transferred responsibility for supervising court administration from the Department of Justice to the courts themselves." *In re United States*, 791 F.3d 945, 961 (9th Cir. 2015) (J. Wallace, concurring). "... the Circuit Council is presently vested with broad authority to make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit." Id. at 961. "[I]nnumerable authorities with diverse qualifications have asserted that the phrase 'effective and expeditious administration of the business of the courts' is to be broadly construed." *In re Imperial "400" Nat., Inc.*, 481 F.2d 41, 45 (3d Cir. 1973). "Congress' intent, as manifested by both the language and history of the Act, was to give the Councils broad power to deal with **the evil of judicial delay**." *Gov't of V.I. v. Bryan*, 818 F.2d 1069, 1074 (3d Cir. 1987) (quoting *Hilbert v. Dooling*, 476 F.2d 355 (2d Cir. 1973) (*en banc*)) (bold added).

For the PBP the foregoing paragraph has been and continues to be empty rhetoric. The DOJ concedes that the PBP were Color of Law proceedings which involved deprivation of Constitutional rights. FB 5. The Third Circuit's Judicial Council knew that the DOJ forced the Former Bankruptcy Judge to resign her Judicial appointment as of May 31, 2013, for egregious Judicial misconduct in presiding over the

PBP. FB 6. By 2015, the Judicial Council knew the Former Bankruptcy Judge entered into agreements involving her admission of Judicial misconduct and had agreed to the forfeiture of her retirement benefits accrued for more than 25 years of service as Bankruptcy Judge. FB 6. While the Judicial Council failed to act to restore integrity to the PBP, Third Circuit Panels in 2015 issued mandates intentionally overlooking criminal and civil chicanery by the CH 11 CA Fiduciaries. FB 7. The effect of prior Third Circuit adjudications "sheltering and protecting the Racketeering Enterprise." FB 8.

Relying upon the SOF&L, Applicants above argued "that criminals have transmuted equity proceedings into an *in terrorem* proceedings wherein Applicants and others are stripped of their Constitutional Rights under the Color of Law." The same statements apply with equal force to the Third Circuit adjudications and the Third Circuit Judicial Council's failure to address the Former Bankruptcy Judge's resignation.

The 2024 *Gerber Sanction Case* adjudication [PH S] demonstrates that the Judicial Council remains irretrievably conflicted.

**NATIONAL IMPORTANCE:** This case is unprecedented. Most importantly, the Third Circuit is the 'only' Article III in Federal Court hierarchy for the Applicants. There exists a Constitutional void when

the only Article III Court adjudications are so outside the bounds of Judicial norms that the Circuit Court, in total, should be disqualified. Writing the SOF&L was an act of frustration arising from the gap between the information Applicants knew and what the Applicants could definitively prove. Why then does the DOJ authorize the execution of a Declaration so the SOF&L would be filed? Applicants do not know but submit: the Third Circuit's 2015 adjudications are far outside the bounds of Judicial norms; and the verification of the SOF&L by the DOJ supports Applicants proposition that the Third Circuit, in total, should be disqualified.

Given the foregoing, this Appeal is of national importance because it involves the integrity of the Federal Court System and its adherence to the U.S. Constitution. With respect to Applicants proceedings, the right to file a Writ of Certiorari rests upon the fact that a fair and impartial adjudication by an Article III Court is wanting. The SOF&L has established impartial adjudications in the PBP are wanting. Congressional legislation removing original jurisdiction from this Court to inferior but impartial courts, in this case, has been ineffective. With foundational rights such as an impartial adjudicator at issue, Applicants should have a right to appeal by right to this Court. It is a matter of Applicants' Due Process Rights.

## ARGUMENT SUMMATION

This Writ involves two acts which shifted responsibilities for the integrity of Judicial Proceedings between the Judicial Branch and the Executive which, in this case, have both failed. The Administrative Office Act of 1939 created self-regulation of the Federal Courts effectively ending DOJ's supervisory role. The 1978 and 1986 Bankruptcy Acts moved the Judicial Administrative Duties for Bankruptcy proceedings from the Courts to the DOJ: more specifically, to the USTP. Both have been catastrophic failures in this case.

The Third Circuit's failure is in excusable.

On the other hand, the DOJ's failure is excusable if the DOJ is conflating the discretion emanating from the Take Care Clause with the DOJ's civil performance of the Integrity Duty. On June 6, 2022, that confusion should have ended. *Siegel v. Fitzgerald, supra.* over two years have passed, and civil performance is still wanting. Clearly, the law established in *Siegel v. Fitzgerald*, 596 U.S. 464, 474 (2022), needs further development to ensure the civil integrity and the civil efficiency of Bankruptcy Proceedings throughout the nation. The uniformity requirement is meaningless if civil performance of the Integrity Duty can be held in abeyance because of criminal investigation. Thus, adjudication of this case by this Court is of

national importance!

Further, the Constitution Framers had wisdom in forming three separate, but equal branches of Government. In this case that Constitutional structure has failed. In this case, there is something, a hidden hand, which collapsed the independence of Judicial and Executive Branches. The Legislative Branch is not conducive to addressing the corruption in a single case on a real time basis. Objectively, the Third Circuit, to this day, is irretrievably conflicted. Once free of the hidden hand, the Emancipated DOJ still believes it is imbued with discretion to withhold civil performance because of a criminal investigation. How else do you explain authorizing the Declaration supporting the SOF&L while refraining from civilly performing its Integrity Duty?

U.S. Const. Art. III, § 1, known as the Judicial Vesting Clause, confers the federal judicial power on "one supreme Court" and "such inferior Courts as the Congress may from time to time ordain and establish." When the Congressional legislation devolving this Court's jurisdiction to inferior courts in fact fails (an applied test), this Court, as a matter of law, should have Appellate Jurisdiction over the VIDC's adjudication. Otherwise, Applicates will be denied the benefit of an impartial Article III Court review.

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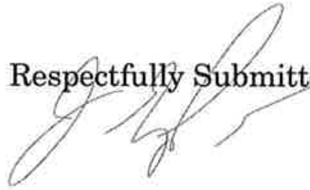
APPLICANTS PRAY FOR A STAY SO THAT THEY MAY PREPARE AND SUBMIT A WRIT OF CERTIORARI TO BYPASS THE THIRD CIRCUIT PURSUANT TO THIS COURT'S RULE 11.

Respectfully Submitted by:



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# CERTIFICATE OF SERVICE

The undersigned hereby represents and certifies that a copy of this document was sent by Federal Express, postage prepaid, to Respondents counsel on this 6th day of August 2024, to:

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John P. Raynor

***Prosser et al v. Shappert et al***
**Civil Case Docket Number: 3:21-cv-00026-RAM-RM**

# 2012 Daily Caller Article

*Bribery, compromised officials leave indicted financial-crime suspects free from prosecution under Holder's DOJ*

**The Daily Caller**

# Bribery, compromised officials leave indicted financial-crime suspects free from prosecution under Holder's DOJ

The Daily Caller
February 1, 2012

A U.S. Justice Department source has told The Daily Caller that at least two DOJ prosecutors accepted cash bribes from allegedly corrupt finance executives who were indicted under court seal within the past 13 months, but never arrested or prosecuted.

The sitting governor of the U.S. Virgin Islands, his attorney general and an unspecified number of Virgin Islands legislators also accepted bribes, the source said, adding that U.S. Attorney General Eric Holder is aware prosecutors and elected officials were bribed and otherwise compromised, but has not held anyone accountable.

The bribed officials, an attorney with knowledge of the investigation told TheDC, remain on the taxpayers' payroll at the Justice Department without any accountability. The DOJ source said Holder does not want to admit public officials accepted bribes while under his leadership.

That source said that until the summer of 2011, the two compromised

prosecutors were part of a team of more than 25 federal prosecutors pursuing a financial crime ring, and at least five other prosecutors tasked to the case were also compromised by the criminal suspects they were investigating, without being bribed.

TheDC is withholding the name of the source, a knowledgeable government official who served on the Justice Department's arrest team and was involved in the investigation, in order to prevent career retaliation from political figures in the Obama administration.

A former high-level elected official vouches for the government source's veracity. "[The source] was trustworthy … and you could tell [the source] information or [the source] could hear information and [the source] would keep things close to [the source's] chest," that former official told TheDC. "You could trust [the source] with your life."

**Taxpayer money and alleged financial irregularities**

Alleged financial irregularities first emerged on the books of the National Rural Utilities Cooperative Finance Corporation — CFC, for short — during the early 2000s.

A trade group that solicits funding from the federal government and lobbies on behalf of electricity cooperatives created the organization

in 1969 to help rural electric co-ops gain access to private capital.

A significant amount of CFC's money originates within the federal government. The U.S. Department of Agriculture and the Federal Agricultural Mortgage Corporation combined to give more than $5.1 billion to CFC between July 2005 and February 2010, according to federal court documents obtained by The Daily Caller.

CFC's tax return for the fiscal year ending in May 2010, the most recent publicly available filing, shows that borrowers owed it more than $18.5 billion in outstanding loans.

CFC created the Rural Telephone Finance Cooperative (RTFC) in 1987 as a telecommunications affiliate. While it was initially launched to help rural communities finance their telephone infrastructure, its mission has grown to encompass broadband Internet and other more modern telecommunications platforms. It is still affiliated with and operated by CFC.

In at least four different years between 2000 and 2005, and possibly in other years, CFC allegedly inflated its own balance sheet with millions of dollars in nonexistent operating income. At the same time, it deflated RTFC's worth, essentially siphoning money away from a member co-op that it created.

CFC is a non-profit organization, and exempt from federal income tax, but RTFC is not tax-exempt. Secretly moving money from RTFC to its tax-exempt parent organization resulted in a far lower income tax liability.

CFC's control of RTFC's books allegedly allowed the subtle financial transfers to go unnoticed. The two groups shared executive staff, including a common CEO, and still do to this day.

And while CFC executives were, allegedly, in effect bailing out rural electric co-ops on the backs of rural telephone co-ops, their salaries grew. By mid-2010, the non-profit organization's top three executives earned annual compensation packages worth $2.6 million, $1.5 million, and nearly $1.2 million.

CFC's alleged financial irregularities may never have been uncovered if not for the Enron accounting scandal, whose corporate casualties included Arthur Andersen, CFC's accounting firm. Another firm, Deloitte, ultimately won that account, but not before the accounting firm of Ernst & Young took over auditing duties for CFC's books during the interim.

According to legal documents obtained by The Daily Caller and

reviewed by independent forensic accountants, the Ernst & Young audits detected irregularities in CFC's annual statements that Arthur Andersen had allowed to persist.

Randall B. Johnston, the Deloitte partner who later audited CFC's books, was the same accountant who had handled the organization's books at Arthur Andersen.

**Curious investor pokes the beehive**

When the RTFC loaned telecommunications investor Jeffrey Prosser approximately $100 million in 1988, his Virgin Islands-based Innovative Communications Corporation became a co-op member. By 2004, the company had significantly expanded its RTFC loan obligations after a string of acquisitions, owing the co-op a total of $600 million.

Prosser and his attorney, John Raynor, were among the first to notice CFC's misuse of RTFC members' funds.

Prosser raised his concerns with CFC leadership at least twice. On both occasions, CFC pushed to foreclose on his loans in what he and Raynor considered an effort to silence him.

Lanny Davis, the former Clinton administration White House

counsel, represented Prosser's company in 2004 while he was a litigation partner at Orrick, Herrington & Sutcliffe. Davis asked global expert services and financial consulting firm LECG Corporation to conduct a financial analysis of CFC's accounting behavior.

"What I found very suspicious was the structure of the CFC and the RTFC," Davis said in a phone interview with The Daily Caller. "I saw inherent conflicts of interest in the structure. I saw movements of money between a taxable entity and a non-taxable entity that seemed very suspicious to me. I was absolutely convinced — I'll use a stronger word than suspicion — that they lacked transparency and that that was intentional."

LECG concluded that there were indeed financial irregularities on the two organizations' books, something that LECG forensic accountant John DeLuca confirmed to TheDC.

"Lanny hired LECG in the mid to later part of 2004, in his capacity at Orrick as Jeff Prosser's outside legal counsel, to review and provide analysis on selected CFC and RTFC financial statements, tax information and other related documents," DeLuca said. "David Bloch, Esq. and myself, John J. DeLuca, CPA, CVA, found certain

financial and tax 'irregularities' that portray 'badges and indicia of fraud.' These 'irregularities' warranted further investigation."

Davis forwarded LECG's report to former Securities and Exchange Commission official Jim Meyers, who had recently joined Orrick.

"I said I wanted his unbiased opinion," Davis recalled. "I didn't want him to make the best argument he could make — I wanted him to tell me if he were still an enforcement official at the SEC, would he investigate this matter?"

Meyers wrote a lengthy letter to the SEC supporting the allegations in LECG's report, and pushing for an investigation. None ever materialized.

CFC's leadership continued to squeeze Prosser's company in the Virgin Islands until it was driven into involuntary bankruptcy. Overtures were made to the Justice Department for investigations of Prosser for bankruptcy fraud in an effort, he told TheDC, to tarnish his reputation and make his allegations less believable.

The DOJ investigated Prosser on three different occasions for unspecified bankruptcy crimes. The first investigation ran from late 2007 through early 2008, Raynor said.

That investigation began almost immediately after Prosser was forcibly removed as CEO of Innovative Communications Corporation on Oct. 8, just two weeks after its Sept. 25 bankruptcy.

Prosser was cleared of wrongdoing.

According to Alex Angueira, an attorney who worked with Raynor on Prosser's behalf, in August 2009 the DOJ finally decided to take seriously Prosser's allegations about financial crimes at CFC.

**DOJ prosecutors plan a financial-crimes investigation**

Angueira told The Daily Caller that he, Raynor and Guy Lewis, then director of the Executive Office for United States Attorneys, met with Paul Pelletier, then the Fraud Section deputy chief of the DOJ's Criminal Division.

"We presented a wide ranging RICO [Racketeer Influenced and Corrupt Organizations Act] conspiracy spanning two decades," Angueira said. "Though Paul said he was interested, he said they did not have the resources to pursue a RICO action. Paul indicated that he was interested in what he described as 'bank fraud.'"

Angueira and Raynor narrowed the case down to its bank-fraud elements and resubmitted it to Pelletier the following month.

"In September of 2009 we presented a narrow case focusing upon CFC's use of false financial statements to secure federal funds," Angueira recalled. "After his review of the materials, I was told he was recommending an investigation or an assignment of resources."

Raynor said Pelletier assigned two prosecutors to the case.

At about the same time, during Innovative Communications Corporation's bankruptcy proceedings, Prosser's team deposed Arthur Stelzer, a former personal assistant to Prosser who was siding with his opponents.

"Who's paying for your counsel?" the attorneys asked.

"The guy responded that either Vinson & Elkins was, or ICC — the debtor," Raynor explained. "This was at the very end of the deposition. It was witness bribery. There's a federal statute that when you're dealing with an 'occurrence witness' — versus an 'expert witness' — you can't pay for their representation. It falls within witness bribery."

Vinson & Elkins attorneys Dan Stewart and James Lee represented the bankruptcy trustee Stan Springel, who handled the proceedings. Springel himself was managing partner at Alvarez & Marsal, a forensic accounting firm.

TheDC's source said officials from both firms were intimately

involved in the activity at the heart of the DOJ's financial-crimes investigation.

The DOJ launched a second investigation of Prosser later in 2010, according to Raynor, who said he was interviewed in November 2010. But by January 2011, he recalled, the DOJ appeared ready to classify Prosser as a victim and put a hold on the bankruptcy proceedings.

By early 2011, Raynor said, he and the rest of Prosser's legal team had learned that Pelletier at the DOJ "had a grand jury underway investigating CFC, and investigating some of the bankruptcy crimes."

Pelletier, Raynor said, eventually "authorized the U.S. attorney in the Virgin Islands [Ronald Sharpe] to go ahead and file for a stay" of the bankruptcy proceedings surrounding Prosser's company, "which means, as we were told clearly, the second investigation had cleared Mr. Prosser again."

But Sharpe never put the bankruptcy proceedings stay in place.

"Being a U.S. Attorney in the Virgin Islands is like being a diplomat in a small country in South America," Prosser said. Sharpe, he explained, would have found it difficult to go against the political grain to file the papers necessary to halt the bankruptcy case.

"You've got a lot of power," Prosser told TheDC. "He and the governor are very close. They were in the same social clubs and the same parties."

"It's very difficult for him because he knows that once he indicted V&E [Vinson & Elkins], Alvarez [& Marsal], the trustees — he knows the governor is next and tied directly to it. We have emails showing it."

**No prosecutions, no explanations**

Pelletier planned his departure from the DOJ for the spring of 2011, officially retiring on May 13. Raynor told TheDC that Pelletier vowed not to retire until the case was closed and arrests were made.

According to Angueira, the attorney who worked with Raynor to present the RICO case to Justice, Pelletier expected a full-scale prosecution to begin immediately after his exit.

"From our conversations with DOJ," Angueira told TheDC, "I was left with a very strong impression that Paul Pelletier was ensuring that the investigation was proceeding to conclusion and that the case would be taken down in two waves: a smaller case initially followed by a bigger case after the initial takedown of the smaller case."

"We were not told [the] specifics of ... these two waves. However, it

was very evident that the case had expanded as a result of the DOJ investigation."

Pelletier, he said, called him and Raynor shortly after his retirement. "After he left, he advised us sometime in early May — the week after he left — that he was surprised the case had not gone public yet," Angueira recalled. "As a former federal prosecutor, [he said] matters become public when indictments are announced and arrests are made."

Angueira wasn't sure what specific charges would be filed against CFC executives and others.

"The case against CFC involves the use of false and misleading financial statements used to improperly secure federal funds to the tune of several billion dollars," he explained. "So there is an aspect involving false claims against the U.S. government and U.S. taxpayers, together with various tax crimes related to CFC's misreporting of income and illegally manipulating co-op rules."

With the resolution hanging in the air and no arrests made, Raynor said, the next shoe to drop was a third investigation of Prosser.

It "probably started in July 2011 and closed out in early October 2011," Raynor said.

For a third time, Prosser was cleared of wrongdoing.

**DOJ springs a leak**

While the DOJ was taking its final look at Prosser, its case against the CFC suspects sprung several leaks.

According to the source on the team preparing to make financial-crimes arrests, DOJ investigators discovered that several members of its team had been compromised, and that at least two were corrupt. Information from the investigation was being passed to the Vinson & Elkins law firm and the Alvarez & Marsal accounting firm.

By this time, the case had grown so large that the DOJ's team had grown from just two prosecutors to more than 25, making the leak difficult to find.

"What happened was the team was assembled — some members from the U.S. Virgin Islands and some main Department of Justice personnel," TheDC's source said. "It was discovered that information that was supposed to have been confidential was leaving U.S. DOJ and going straight into Vinson & Elkins' and Alvarez & Marsal's hands."

"Subsequently, individuals were brought in from all different areas in one meeting. Individuals who were on the team [who were compromised] were then removed. There were 26 or 27 prosecutors that met, [and] were all called into one city."

The source added that the summit meeting, held during the summer of 2011 in Washington, D.C., led to the discovery that two prosecutors had accepted cash bribes. That led to the team's partial dismantling.

"There were two individuals who were the main players," the source said. "What happened was those individuals who were a part of the team — the team broke down significantly. Individuals were moved from the investigation because of their involvement, whether or not they were paid."

"We have information showing that they — the two main players [who were bribed] — agreed not to move it [the investigation] in the way that it should have. The group of prosecutors from D.C. called CFC 'the Godfather.'"

By this time, the source added, arrest teams were already in place around the country. "The indictments were to be served with teams

already in place. The assets, the residence[s] — all these things were already identified. The teams were actually marked to strike. And with this issue in DOJ, of course, that whole thing went to sleep."

"It never happened. There were going to be arrests."

**Alleged bribes and corruption on the Virgin Islands**

The alleged corruption ultimately reached the rarefied air of the Virgin Islands' current governor, Democrat John de Jongh. TheDC's source alleges that collectively, de Jongh, attorney general Vincent Frazer, and assorted Virgin Islands legislators accepted at least $20 million in cash bribes to quash local concerns about CFC's financial irregularities.

That money, the source said, was meant to insure against the possibility that concern about financial crimes at CFC would spring from the Virgin Islands and spread to the nationwide public.

During ICC's bankruptcy proceedings, CFC officials testified that only two offers had surfaced for the company's assets — including the Virgin Islands Telephone Company.

At best, they said, CFC would recover between $1 million and $10

million if another buyer purchased those assets. Once expenses were paid, CFC's net proceeds from its loan to ICC would be next to nothing.

But just days later, CFC's quarterly filing with the Securities and Exchange Commission showed that it was carrying the ICC loan on its books at a value of $525 million, a massive premium over what its officials told the federal bankruptcy court it was actually worth.

Raynor told TheDC that CFC "had to buy the assets" to justify the financial irregularities on its books — including the funds siphoned from RTFC.

"Now you have CFC in a position where they're going to be operating the Virgin Islands Telephone Company and they need to get their acquisition through the local PSC [in the Virgin Islands], as not only did the bankruptcy judge have to sign off on it, but the Public Service Commission had to sign off on it," Raynor said.

"So you had CFC organizing to acquire this company because they can't afford to recognize the loss to continue their accounting fraud. And that's where the cooperation with the governor became

absolutely key."

Prosser said CFC needed de Jongh to "make sure that the PSC not only approved the sale, but would, God willing, allow enough cash flow to come through to help them support the [$525 million] valuation that they put on this [loan]."

"When we say the governor was instrumental in this case — without the governor's involvement that sale never would have happened," Prosser said.

"At a certain point," Raynor added, "the Public Service Commission was fighting the bankruptcy and supporting Jeff Prosser. Then all of a sudden, overnight, that attorney got removed, a new attorney came in and they were in line with CFC."

According to Prosser, the governor fired the PSC's outside counsel and hired the Virgin Islands attorney general — an employee of the governor — to represent the PSC.

TheDC's source said the governor and Virgin Islands Attorney General Vincent Frazer have both accepted bribes, explaining that

"there have been a significant amount of transactions."

Speaking of officials in Frazer's office, the source explained: "What they did — of course this is a civil matter — is arrange these meetings. Then you have the local government behind the stage participating in something they shouldn't have been participating in and, of course, being financially rewarded for their assistance."

The source points to an Oct. 6, 2010 CFC press release in which CFC Chief Financial Officer Steven Lilly publicly thanked the Virgin Islands government for supporting the co-op during its purchase of the local phone company, which had been among ICC's assets.

"CFC thanks Governor John de Jongh, the commissioners, staff and consultants of the Virgin Islands Public Services Commission and other public officials who were supportive throughout this process," Lilly said in the release.

That same source, who believes the press release was a tactical error on CFC's part, said de Jongh, Frazer and others ultimately accepted "in excess of $20 million."

Several individuals who were involved with the scheme and have evidence of the massive bribes, the source added, are now cooperating with federal investigators.

"There are individuals who have been involved with the governor of the Virgin Islands who have been turned," the source said. "More than one."

In addition to Frazer and de Jongh, TheDC's source said, several members of the Virgin Islands legislature are under investigation for their parts in the corruption related to CFC's alleged financial corruption.

The source pointed to a recent federal law-enforcement raid at the Virgin Islands legislature as evidence. The Oct. 5, 2011 raid, officials told the Associated Press, targeted a government building's central computer system and the office of at least one Virgin Islands senator.

The Department of Justice has been silent on the reasons for this raid, saying only that 25 agents from the Internal Revenue Service, the Drug Enforcement Administration and the U.S. Marshall Service were involved. The AP reported that an FBI spokesman declined to

say who was being targeted and whether any evidence was seized.

**Cold case file**

As it stands, TheDC's source explained during an interview, no suspects under sealed indictment have been arrested, but the DOJ is planning to execute arrest warrants at some point in the future. The sticking point, according to the well-placed source, is that the Department of Justice — particularly Attorney General Eric Holder — does not want to admit public officials accepted bribes.

Raynor said that while the DOJ has failed to act on its sealed indictments, his client — Jeffrey Prosser — is still being treated unfairly "as a result of criminal activity that they did in the bankruptcy case and [those under indictment] are still benefiting from."

"And it's still ongoing even though they know they're sitting on sealed indictments."

Raynor was quick to reiterate that CFC solicits and receives funds from the federal government, adding a new criminal dimension to every financial filing it uses to secure public money.

"Every financial statement they file, every dime they go to get from federal government money, it's another crime," Raynor said. "And you have the people who are sitting on sealed indictments who know this is going on. And they're allowing the criminal activity to continue."

Bribed officials, he insists, remain on the taxpayers' payroll at the Justice Department without any accountability.

Reached for comment, Pelletier refused to back up the allegations. "I'm not in a position to comment on the existence or non-existence of a federal investigation," Pelletier said when TheDC presented him with the facts of the case. "But, what I've just heard sounds kooky and implausible."

Gov. de Jongh's spokesperson directly attacked the revelations. "What your sources have told you about Governor John P. de Jongh, Jr. (D-VI) is completely false," de Jongh communication director Jean Greaux told TheDC.

Greaux also made a threat seemingly aimed at scaring TheDC away from running this story.

"Given that your information is false and that you cannot confirm these rumors, you will be going down a slippery slope if you print this story," Greaux wrote. "If you do print inaccurate information about the governor, we will seek a correction and possible legal action."

When provided with an outline of this report, Justice Department spokeswoman Tracy Schmaler refused to comment.

Spokespersons for CFC, RTFC, Deloitte, Vinson & Elkins, Alvarez & Marsal, Sharpe and Frazer did not return requests for comment.

During his State of the Union Address on Jan. 24, President Obama directed Attorney General Holder to create a special unit inside the DOJ to address a broad category of financial crimes that includes large-scale institutional fraud.

"We'll also establish a Financial Crimes Unit of highly trained investigators to crack down on large-scale fraud and protect people's investments," Obama said. "Some financial firms violate major anti-fraud laws because there's no real penalty for being a repeat offender. That's bad for consumers, and it's bad for the vast majority of bankers

and financial service professionals who do the right thing."

# STATEMENT OF FACTS & LAW
# ("SOF&L")

## STATEMENT OF FACTS & LAW
## ("SOF&L")

**Primary[1] Controlling Definitions:**

"**2006 Settlement Agreement**" is the legal agreement, a product of extortion and retaliation, which is the foundation of the RICO/CICO Injunction (defined hereinbelow), *e.g.*, if the preference was set aside there would be no injunction.

"**5/15/2015 Mandate**" means the mandate issued by this Court in the case herein referred to as *Nat'l Rural Utils. Coop. Fin. Corp. Case* (defined hereinbelow).

"**CA Fiduciaries**" means some or all the Court-Appointed Fiduciaries in the Prosser Bankruptcy Bankruptcies. "**CH 11 CA Fiduciaries**" means the Chapter 11 Estates Trustee, the Chapter 11 Estates' accountant, and Chapter 11 Estates' counsel permanently appointed by the Former Bankruptcy Judge. "**CH 7 CA Fiduciaries**" means the Chapter 7 Trustee appointed October 31, 2007, and the Chapter 7 Estate's Counsel appointed March 18, 2008.

"**CFC**" means collectively, the National Rural Utilities Cooperative Finance Corporation, member-owned financing cooperative for rural electric utilities, and the Rural Telephone

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[1] There will be other definitions which are defined within this document which will be bolded for the Court's convenience.

Finance Cooperative[2] (**"RTFC"**), member-owned financing cooperative for rural telecommunications companies operating under the dominion and control of CFC. CFC is not a GSE but rather a private, member-owned (electric), coop.

**"CS"** means a confidential source who knows, directly or indirectly through reliable sources, details about the DOJ's criminal investigation which the Appellants deem reliable

**"DOJ/Judge Agreements"** means one or more agreements the DOJ executed with the Former Bankruptcy Judge wherein the Former Bankruptcy Judge admitted to egregious Judicial misconduct in the Prosser Bankruptcy Proceedings which included colluding with a cabal which includes CFC and CFC's counsel, Greenlight and Greenlight's counsel, and CA Fiduciaries.

**"Former Bankruptcy Judge"** means former Bankruptcy Judge

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[2] In many documents, RTFC is addressed separately than CFC. For all the reasons CFC and RTFC publicly report as a 'single financial entity,' it is easier to comprehend matters if RTFC is included within the reference to CFC. To rural telecommunications companies, RTFC is the Enterprise; however, to racketeering acts committed upon the public, CFC is the Enterprise. Ultimately, CFC members were the Control Persons operating through CFC's management and CFC's management served as RTFC's management.

Judith K. Fitzgerald who was the judge for the Virgin Islands Bankruptcy Court ("**VIBC**") and was the primary adjudicator of the Prosser Bankruptcies Proceedings [Defined Below] through May 31, 2013. In the Appellants' complaint for *Prosser et al v. Shappert et al*, VIDC Case No. 21-00026, which was filed 3/16/2021 in the Virgin Islands District Court ("**VIDC**"), Appellants' asserted the Former Bankruptcy Judge was Civilly Compromised.

"**Greenlight**" means the following companies: Greenlight Capital Qualified, L.P., a hedge fund; Greenlight Capital Offshore, Ltd., a hedge fund; Greenlight Capital, L.P., a hedge fund; and Greenlight Capital Advisors, L.L.C., which manages the foregoing hedge funds.

"**ICC Bribery**" means the bribery by CFC/RTFC of Virgin Islands Public Officials (of the John Percy de Jongh Jr. administration, in office: January 1, 2007 – January 5, 2015 ["**J. de Jongh Administration**"]) including the then Governor, the then Virgin Islands Attorney General and others including former territorial Senator Alvin L. Williams, Jr.

"***Nat'l Rural Utils. Coop. Fin. Corp. Case***" means in which this Court's opinion captioned as *Nat'l Rural Utils. Coop. Fin. Corp. v. Prosser (In re Nat'l Rural Utils. Coop. Fin. Corp.)*, 582 F. App'x 131 (3d Cir. 2014)), was issued and culminated with the issuance of the "Third Circuit Mandate( (defined hereinbelow).

"**Prosser 2014 Affidavit**" means Appellant Prosser's Nov. 17, 2014 Affidavit documenting admissions made about the ICC Bribery by a felon that, in his official capacity as the Chief of Staff for former Territorial Sen. Alvin Williams, Jr., kept a ledger of bribes received or to be received by numerous Territorial Senators.[3] The Affidavit was filed in *Prosser, et al, v National Rural Utilities Cooperative Finance Corporation, et al*, 3RD CA, Case No. 13-2076, as Doc No. 003111796375, filed 11/18/2014, and in *Prosser et al v. Shappert et al*, VIDC Case No. 21-00026, ECF No. 14-3, filed 9/27/2021.

"**Prosser Bankruptcies**" and/or "**Prosser Bankruptcies Proceedings**" means collectively the Chapter 7 Bankruptcy of Jeffrey Prosser [VIBC Case No. 06-30009], the Chapter 11 Bankruptcies of Innovative Communication Corporation, a/k/a "**ICC**" [VIBC Case No. 07-30012], Innovative Communication Company, LLC, a/k/a "**ICC-LLC**" [VIBC Case No. 06-30008] and Emerging Communications, Inc., a/k/a "**ECI**" [VIBC Case No. 06-30007], and the related adversary proceedings. "**Chapter 11 Cases**" or "**Chapter 11 Proceedings**" means the bankruptcy cases/proceedings of ICC, ICC-LLC, and ECI and the related adversary proceedings. "**Chapter**

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[3] The Williams Indictment designates the Virgin Islands Legislature as the Enterprise and charges former Territ. Sen. Williams and unnamed others.

**7 Cases"** or **"Chapter 7 Proceedings"** means the Bankruptcy case/proceedings of Appellant Prosser and the related adversary proceedings.

**"RICO/CICO Civil Case"** means civil action captioned as *Prosser v. Nat'l Rural Utils. Coop. Fin. Corp.*, VIDC[1] Case No. 2008-107, filed December 7, 2008. **"RICO"** means the Racketeer Influenced And Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968. **"CICO"** means the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. §§ 600-614, commonly referred to as the Virgin Islands RICO statute.

**"RICO/CICO Injunction"** means this courts, the Third Circuit's[4], October 21, 2014, Opinion (*Nat'l Rural Utils. Coop. Fin. Corp. v. Prosser (In re Nat'l Rural Utils. Coop. Fin. Corp.)*, 582 F. App'x 131 (3d Cir. 2014)) affirming injunction against Appellants which enjoined the Appellants' civil prosecution of the RICO/CICO Civil Case.

**"Third Circuit Mandate"** or the **"Third Circuit Injunction"** means this Court's May 15, 2015, mandate affirming the RICO/CICO Injunction.

**"VIPO"** means Virgin Islands Public Officials.

**"Williams Case"** means the criminal case (racketeering)

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[4] **"Third Circuit"** means the Third Circuit Court of Appeals.

captioned as *United States of America and the People of the Virgin Islands v. Alvin L. Williams, Jr. et al.*, VIDC Cr. Case No. 2012-33.

"**Williams Case Sealed Records**" means the records under seal in the Williams Case which is probative of the ICC Bribery. These records not only include a ledger but also emails between VIPO which were stored on the V.I. Legislature's hard drive secured in the 10/5/2011 raid of Williams Senator Office.

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**1.** The gravamen of the Appellants' Motion rests upon the following facts.

First, the Prosser Bankruptcy Proceedings have been permeated with corruption. The Former Bankruptcy Judge was civilly compromised and colluded with a cabal that included CFC and CFC's counsel, Greenlight and Greenlight's counsel, CH 11 CA Fiduciaries, and the CH 7 CA Fiduciaries. The CH 7 CA Fiduciaries, while not caught often in as openly overt acts as were committed by the CH 11 CA Fiduciaries; nevertheless, played a vital role.

Second, the whole of the Prosser Bankruptcy Proceedings involves Constitution Torts and other torts perpetrated under the Color of Law, including deprivation of the most fundamental Constitutional right, an impartial adjudicator. The whole of the Prosser Bankruptcy Proceedings violated 42 U.S.C. §§ 1981-1982 because of a 42 U.S.C. §

1985(c) conspiracy that denied (and continues to deny) Appellant Prosser, and his associates', equal protection of the law and a conspiracy to deprive Appellant Prosser and his family of their property under the Color of Law, *e.g.*, without the due process of law in accord with U.S. Const., Amdt5.5.1.

Third, the VIDC erred by not forcing the production of the DOJ/Judge Agreements and the unsealing of the Williams Case Sealed Records on the ICC Bribery. The records sought were necessary to provide equal protection of the law and the VIDC neglected, a violation of 42 U.S.C. §1986, to prevent the denial of equal protection of the law. Publicly, this Court already issued an Order[5] which arguably sets forth the Appellants' right to the Williams Case Sealed Records.

Fourth, the VIDC erred in not performing its affirmative duties to investigate Fraud Upon the Court and to interdict Color of Law violations.

Fifth, another issue was raised before the VIDC but is not directly relevant to this Stay Motion. Appellants' raised whether the VIBC was legally constituted after *Khanh Phuong Nguyen v. United States*,

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[5] See Appellants' Complaint, ¶ 52, *Prosser et al v. Shappert et al*, VIDC Case No. 21-cv-00026, ECF No. 1, filed 3/16/2021 or Third Circuit Case No. 13-2076, 1/15/2015 Order.

539 U.S. 69 (2003) because the Appellants believe said case implicitly overruled *Vickers Assocs., Ltd. v. Urice (In re Jaritz Indus.)*, 151 F.3d 93, 98 (3d Cir. 1998). If the VIBC is not legally constituted; then, the RICO/CICO Injunction would be dissolved. This issue is currently pending before this Court in *Prosser v, Gerber*, Case No. 22-3456.

**2.** The Appellant's action in the VIDC was a proceeding to vindicate their civil rights within the meaning of 42 U.S.C. § 1988(a) arising because of violations of 42 U.S.C. § 1985(c)[6]. Because the deprivation of Constitutional Rights is continuing, Judge Malloy's dismissal violates 42 U.S.C. § 1986[7]. Appellants understand that

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[6] 42 U.S.C. § 1985(c) – "If two or more persons in any … Territory conspire … for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any … Territory from giving or securing to all persons within such State or Territory the equal protection of the laws …".

[7] 42 U.S.C. § 1986 – "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and **having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do**, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented …".

Judge Malloy is cloaked with Judicial immunity; nevertheless, Judge Malloy violated 42 U.S.C. § 1986.

**The Third Circuit's Disqualification:**

**3.** The gravamen of the Appellants' Motion rests upon 28 U.S.C. § 455(a)[8]. Facts were known to Judge Malloy only when the Appellants filed *Prosser et al v. Shappert et al*, VIDC Case No. 21-cv-00026, ECF No. 1, filed 3/16/2021. On the other hand, facts known or which have been known to this Court on or before May 15, 2015, make issuing the Third Circuit Mandate a violation of 42 U.S.C. § 1986 and is disqualifying. This Court then had actual knowledge of facts that Judge Malloy could only learn by having the DOJ produce the DOJ/Judge Agreements, *e.g.*, VIDC's nonfeasance in contrast to this Court's malfeasance.

**4.** Arguably, since this Court is the only Article III Court in the Federal Court hierarchy, and the only Article III Court to which Appellants have an appeal by right, this Court's burden for the deprivation of constitutional rights because of Color of Law proceedings is heavier. *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (U.S. 2015) (Article III courts retain supervisory authority

[8] 28 U.S.C. § 455(a) – "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

over the bankruptcy process): 42 U.S.C. § 1986 (mandating that the Judicial Power of the United States be used to prevent Color of Law violations which deny equal protection of the law).

**5.** Issuing the Third Circuit Mandate was then antithetical to its supervisory obligations and 42 U.S.C. § 1986; hence, the act is disqualifying under 28 U.S.C. § 455(a).

**The Third Circuit's Mandate and Facts Then Known or Knowable**

**6.** On May 15, 2015, this Court issued the Third Circuit Mandate premised upon its October 21, 2014, Opinion (*Nat'l Rural Utils. Coop. Fin. Corp. v. Prosser (In re Nat'l Rural Utils. Coop. Fin. Corp.)*, 582 F. App'x 131 (3d Cir. 2014)) affirming injunction against Appellants enjoining prosecution of the RICO/CICO Civil Case - the RICO/CICO Injunction.

**7.** Appellants' are victims[9] that were then Plaintiffs in the RICO/CICO Civil Case; thus, the Appellants were acting not only in a personal capacity but in the public's interest as private attorney

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[9] Attorney Angueira's June 3, 2011, Declaration that the DOJ considered Mr. Prosser a victim filed in VIBC Case No. 06-30009, ECF No. No. 3481-1. Attorney Angueria interfaced with the DOJ on behalf of Messrs. Prosser and Raynor. See *Prosser et al v. Shappert et al*, VIDC Case No. 21-cv-00026, ECF No. 14-1, filed 9/27/2021.

generals. *Rotella v. Wood*, 528 U.S. 549, 557 (U.S. 2000) (The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, "private attorneys general," dedicated to eliminating racketeering activity). All of which makes the issuance of the Third Circuit Mandate more egregious.

**ICC Bribery – What Was Then (5/15/2015) Known:**

**8.** In this Court, specifically in the case of *Nat'l Rural Utils. Coop. Fin. Corp. Case*, on Nov. 18, 2014, Appellant Prosser filed the 'Prosser 2014 Affidavit.'

**9.** The Prosser 2014 Affidavit documented admissions of ICC Bribery made by a Williams Case defendant. The affidavit directly and unequivocally accused one or more of the CH 11 CA Fiduciaries of acting in concert with CFC, a debtor, in bribing VIPO in re Prosser Bankruptcy proceedings.

**10.** Simultaneously, on Appellant Prosser's behalf, a "Motion Requesting The Court [Third Circuit] To Take Judicial Notice" was filed, in essence, placing this Court on notice that evidence proving ICC Bribery was held by the VIDC as part of the Williams Case Sealed Records. This Court as an Article III Court had supervisory power over the VIDC, an Article IV Court.[10]

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[10] The VIDC in *Jaritz Indus. v. Urice*, 207 B.R. 451 (D.V.I. 1997) gave numerous examples of this Court exercising supervisory

**11.** November 18, 2014, filings made on behalf of Appellant Prosser made known to this Court that:

a. One or more of the CH 11 CA Fiduciaries were engaged in the commission of a Federal offense – bribery.

b. The Appellant Prosser was a victim of the commission of the Federal offense within the meaning of 18 U.S.C. § 3771(e)(2)(a)[11].

c. One or more of the CH 11 CA Fiduciaries had egregiously breached their Fiduciary duty and should be removed.

d. One or more of the 11 CA Fiduciaries were not disinterested in the meaning of 11 U.S.C. § 101(14).

Appellants knew based upon information provided by CS which has been confirmed by other sources that most of the funds to pay the ICC Bribes were transferred from Vitelco, a non-bankrupt operating subsidiary under the control of the CH 11 CA Fiduciaries and CFC[12],

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authority over the VIDC. Since the Prosser Bankruptcies Proceedings implicate bankruptcy law supervision of lower legislative courts is more necessary.

[11] "In general. The term 'crime victim' means a person directly and proximately harmed as a result of the commission of a Federal offense ...". This is plain, unambiguiuos language.

[12] Effective Nov. 1, 2007, ICC's *de facto* Chief Restructuring Officer was simultaneously employed by CFC and Vitelco. See *Motion for a*

transferred over $10 Million to a foreign affiliate to facilitate the payment of the ICC Bribery.

**12.** This Court was the only Article III Court, and this Court then did nothing to discharge its supervisory role.

**13.** The Accused CA Fiduciaries[13] were parties to proceedings before this Court and failed to deny the serious allegations; therefore, effectively admitting the truthfulness of the ICC Bribery allegations, *e.g.*, an adoptive admission.

**14.** The other parties, defendants in the RICO/CICO Civil Case, did not act to separate themselves from the Accused Fiduciaries, in essence, their inaction suggests that the parties were acting in concert, *e.g.*, the RICO/CICO defendants all benefited from the ICC Bribery.

**15.** The only action taken by this Court after knowledge of the

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*Referral to the United States Attorney for Perjury and for Removal of Stan Springel, the Chapter 11 Trustee, and Daniel Stewart, the Chapter 11 Estate Counsel, from this Case for Egregious Misconduct and/or Lack of Disinterestedness*, Adv. Case No. 09-3012, *Springel v Raynor*, ECF No. 56, filed July 3, 2012.

[13] The CH 11 CA Fiduciaries really consisted of two parties: the CH 11 Estates' Law Firm and the CH 11 Estates' Accounting Firm since the CH 11 Estates' Trustee was a managing member of the CH 11 Estates' Accounting Firm.

ICC Bribery and the adoptive admission was to issue the 1/15/2015 Order[14] (the "**Judicial Notice Order**") arguably publicly implying the Appellants' were entitled to the Williams Case Sealed Records.

**16.** This Court closed its eyes to known corruption involving the Prosser Bankruptcy Proceedings by then issuing the Third Circuit Mandate, and closing the case. While foreclosing Appellants' civil remedies (and the public interest, *e.g.*, public attorney generals), this Court neglected its supervisory responsibilities.

**17.** In retrospect, the Judicial Notice Order was meaningless. Judge Gomez, an Article IV holdover Judge (his judicial appointment had expired as of January 27, 2015). As a holdover, Judge Gomez's accrual of retirement benefits was subject to his continued service until the appointment of his successor or his reappointment.[15] At age 65, Judge Gomez's retirement benefits increased by more than $82,000 a year because of his service until April 27, 2020. On information and belief, Judge Gomez did not consider the Appellants' Motion to unseal the ICC Bribery records because to do so jeopardized

[14] Third Circuit Case No. 13-2076, 1/15/2015 Order, Doc No. 003111850654.

[15] This Court is very influential in either nominating Judge Gomez for re-appointment or causing the appointment of a successor. If neither action was taken, Judge Gomez had a very substantial financial incentive to act or not act as wished by this Court.

his continual service and his retirement benefits.

**18.** Considering the ICC Bribery evidence known to the Third Circuit, the issuance of the Third Circuit Mandate was a manifest injustice and/or a miscarriage of justice which violates 42 U.S.C. § 1986 and this Court's supervisory duties. Knowledge of the ICC Bribery and the criminal conduct of the CH 11 Estates CA Fiduciaries, disqualifies this Court, and any Judge of this Court, from hearing this appeal under 28 U.S.C. § 455(a).

**The Former Bankruptcy Judge's Purported Retirement:**

**19.** In September 2012, the Former Bankruptcy Judge publicly announced[16] her intent to purportedly resigned her judicial appointment on May 31, 2013. By May 31, 2013, the Former Bankruptcy Judge was then 65 years old and had served as a judge for 25 years, 7 months, and was less than 2 years, 6 months from completing her second term.

**20.** The Former Bankruptcy Judge adjudicated the Prosser Bankruptcies and nearly all of the Prosser Bankruptcy Proceedings

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[16] The Former Bankruptcy Judge publicly announced her resignation in September 2012. See Behind the Bench, Vol. 19, Issue 3, September 2012: *RETIREMENT SCHIZOPHRENIA*

*Honorable Judith K. Fitzgerald, U.S. Bankruptcy Judge Western District of PA.*

from their inception on July 30, 2006, until May 31, 2013.

**21.** According to a Confidential Source ("**CS**"), Appellants were told:

a. That the Former Bankruptcy Judge was forced to resign, *e.g.*, she was removed, by DOJ.

b. That the Former Bankruptcy Judge was forced to resign because of misconduct in the Prosser Bankruptcy Proceedings.

c. That the DOJ and the Former Bankruptcy Judge entered into written agreements wherein she admitted to egregious judicial misconduct in the Prosser Bankruptcy Proceedings herein defined as DOJ/Judge Agreements.

d. That the Former Bankruptcy Judge agreed to the forfeiture of her pension earned because of her 25 years of judicial service.

e. That if the Appellants sue the DOJ for the DOJ/Judge Agreements and the supporting evidence, the DOJ cannot deny[17] the existence of the agreements with the Former Bankruptcy Judge.

f. That during 2022, a member of the DOJ's Criminal Task Force publicly stated his dismay that the Third Circuit had not yet

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[17] Appellant Raynor is attorney and very much seeks to retain his license and would not make public accusations against the Former Bankruptcy Judges without assurances he deemed reliable.

acted to vacate all the Former Bankruptcy Judge's adjudications in the Prosser Bankruptcy Proceedings.

**22.** Other parties working for the Appellants had confirmed their lobbying/investigation confirmed the Former Bankruptcy Judge was to use their term: "dirty."

**23.** Under 18 U.S.C. § 152(e), the Former Bankruptcy Judge could only be forced to resign "only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless **a majority of all of the judges of such council** concur in the order of removal." (Emphasis added).

**24.** The DOJ's Justice Manual, § 1-4.340, in the relevant portion states: "Allegations that ... judges have committed misconduct shall be reported to **OPR** [DOJ's Office of Professional Responsibility] to determine whether to refer the allegation to appropriate disciplinary authorities. If OPR determines that a referral is appropriate, it will report the allegation to the disciplinary authority."

**25.** On information and belief, the Appellants believe:

a. Coupling together the import of 18 U.S.C. § 152(e) and Justice Manual, § 1-4.340, on or before September of 2012 the Judicial

Council knew the Former Bankruptcy Judge's misconduct in the Prosser Bankruptcy Proceedings was so egregious that she was being forced resign by the DOJ.[18]

b. On or before September 2012, the Judicial Council was informed that the DOJ's *criminal* investigation of the Former Bankruptcy Judges was ongoing.

c. On or before May 15, 2015, the DOJ had concluded its criminal investigation and had entered into the DOJ/Judge Agreements.

d. On or before May 15, 2015, the Judicial Council knew that the Former Bankruptcy Judge had already agreed to forfeit her statutory retirement benefit[19] for her judicial service because of misconduct in the Prosser Bankruptcies Proceedings. The Former Bankruptcy Judge was 65 years old as of May 31, 2013.

e. The relationship by and between the Judicial Council and DOJ concerning the Former Bankruptcy Judge's misconduct was not unilateral. In essence, the Judicial Council knew or should have known the major transgressions and whether the Former Bankruptcy Judges' admitted misconduct in the Prosser

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[18] The DOJ does not lightly interfere with the Judicial Branch. Forcing the Former Bankruptcy Judge to resign her judicial appointment does not happen without serious misconduct.

[19] 28 U.S.C. § 377.

Bankruptcy Proceedings was civil, criminal misconduct, or both.

**26.** The Appellants believe objective evidence demonstrates that the Former Bankruptcy Judge was no longer impartial as early as 2007, to wit:

a. On July 5, 2007, Greenlight[20] filed involuntary bankruptcy petitions against ICC [Innovative Communication Corporation ("**ICC**"), VIBC Case No. 07-30012]. The Claim arose from the 1998 privatization of ECI and was time-barred.

b. Greenlight had on three earlier occasions balked[21] at pursuing

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[20] Greenlight entered into agreements which made it CFC's proxy for the instigation of bankruptcy proceedings against Appellant Prosser and entities controlled by Appellant Prosser after a May 2005 deposition established that the Loan Document filed in the foreclosure proceedings was not the Loan Document executed by Appellant Prosser. CFC was denied summary judgment in the foreclosure proceedings, in part, because the Loan Document could not be authenticated. See VIDC Case No. 2004-154, 12/29/2005 Order, ECF No. 168 ("While the loan transaction is not in dispute, the parties dispute the very document that RTFC claims reduced the loan transaction and ICC's obligation to a writing.")

[21] On three prior occasions when Greenlight had an opportunity to assert a claim against ICC, Greenlight balked:

i. When seeking the judgments against Appellant Prosser, ICC-LLC and ECI, ICC objected to Greenlight's attempt to obtain

a claim against ICC.

c. On information and belief, given Greenlight's three balks, Greenlight's involuntary bankruptcy petition was cleared before filing by the Former Bankruptcy Judge, *e.g.*, collusion between the debtors, the then CA Fiduciaries, and the Bankruptcy Judge.

**27.** Considering the Judicial Council's knowledge that the Former Bankruptcy Judge's egregious judicial misconduct in the Prosser Bankruptcy Proceedings, the issuance of the Third Circuit Mandate was a manifest injustice or a miscarriage of justice which transgresses upon 42 U.S.C. § 1986. Knowledge of the Former Bankruptcy Judge's resignation of her judicial appointment and her admissions, disqualifies this Court, and any Judge of this Court, from hearing the appeal under 28 U.S.C. § 455(a).

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a judgment ICC. Greenlight waived its request for a judgment against ICC from the Delaware Chancery.

ii. After obtaining the 1/9/2006 judgments, Greenlight filed a statutory notice of judgment against ICC in the Virgin Islands. When confronted that there was no judgment against ICC, Greenlight withdrew its public filing against ICC.

iii. After obtaining the 1/9/2006 judgments, Greenlight filed involuntary bankruptcy proceedings against Appellant Prosser, ICC-LLC and ECI but not ICC.

**Knowledge of Unlawful Gratuity.**

**28.** This incident – the payment of an unlawful gratuity[22] - involved a related case arising out of the Prosser Bankruptcies Proceedings.

**29.** The Court on January 26, 2015, issued an opinion captioned as *In re Prosser*, 777 F.3d 154, 161, 62 V.I. 745 (3d Cir. 2015), Appellees then Feb. 9, 2015, filed a petition of rehearing *en banc* which this Court denied on Feb. 24, 2015, and the Mandate was issued March 5, 2015. For purposes of this document, this decision is hereinafter referred to as "***Prosser v Gerber Sanction Case***" and the mandate is referred to as "**Sanction Mandate.**"

**30.** The Timing: This Court's Sanction Mandate was issued after:

a. In a related case, the Prosser 2014 Affidavit was filed establishing both the ICC Bribery, the existence of evidence of the ICC Bribery held in the Williams Case Sealed Records, and the adoptive admissions of the ICC Bribery.

b. The Former Bankruptcy Judge's forced resignation from her

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[22] 18 U.S.C. § 201(c)(2) – Whoever "(2) directly or indirectly, gives, offers, or promises anything of value to any person, ... because of the testimony under oath ... before any court ... shall be fined under this title or imprisoned for not more than two years, or both."

judicial appointment in September 2012 to be effective May 31, 2012, because of Judicial Misconduct in the Prosser Bankruptcy Proceedings.

c. On information and belief, the Judicial Council knew the facts regarding the Former Bankruptcy Judge's Judicial misconduct for the reasons set forth hereinabove on or before the date the Court issued the Sanction Mandate.

**31.** This Court went outside the record, to chill Appellant Prosser's counsel by overturning VIDC Judge Gomez's holding in *In re Prosser*, 2014 U.S. Dist. LEXIS 18930 (D.V.I. Feb. 14, 2014), which had reversed the Former Bankruptcy Judge's sanctions. See Appellees Rehearing/En Banc Petition, 3 CA Case No. 14-1633, Doc No. 003111872734, filed on 02/09/2015. The failure of this Court to consider the DOJ's criminal investigation and forced retirement of the Former Bankruptcy Judge when sanctioning the Appellees (Prosser's Counsel) is beyond explanation. This Circuit knew of egregious judicial misconduct directly implicating due process, the foundational requirement of an impartial adjudicator. Objectively, this Court appears to be partial.

**32.** The circumstances of the Former Bankruptcy Judge's departure from the bench suggested the need for a higher level of scrutiny of the factual underpinnings of sanction award given this

Court is the only Article III Court with supervisory authority. The record, including the Former Bankruptcy Judge's opinion regarding the so-called "remaining parties" [*Prosser v. Gerber (In re Prosser)*, 2011 Bankr. LEXIS 5009 (Bankr. D.V.I. Dec. 20, 2011) which is hereinafter referred to as "***VIBC 12/20/11 Evid. Hr. Op.***"] on the evidentiary hearing for the remaining parties[23], discloses and/or raises the following matters:

a. The fact witness testified "legal fees were paid either by the debtor companies or by the law firm representing the trustee in a separate but related Chapter 11 proceeding." *Prosser v Gerber Sanction Case*, 777 F.3d at 158., 777 F.3d at 157.

b. The Former Bankruptcy Judge took the unusual step of presiding over a fact witness's Jan. 12, 2010, deposition of Mr. Stelzer. *Id.*, 777 F.3d at 157.

c. It is evident from even a high-level examination of the transcript of Stelzer's Jan. 12, 2010, Deposition, the Former Bankruptcy Judge acted to preserve Mr. Stelzer's June 10, 2008, testimony. See *Prosser v Gerber Sanction Case*, ECF No. No. 003111711678,

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[23] *Prosser v Gerber Sanction Case*, 777 F.3d at 160, n 7, this Court noted that the Former Bankruptcy Judge "spent nearly 110 pages exhaustively addressing ... the request for a referral of bribery allegations to the United States Attorney."

filed 8/18/2014, at A 002809 - A 002846.

d. The VIDC Judge Gomez ordered the Former Bankruptcy Judge to have an evidentiary hearing. *Id.,* 777 F.3d at 158. No party sought to appeal against the VIDC Order.

e. On March 11, 2010, the Former Bankruptcy Judge made a criminal referral. "*VIBC 12/20/11 Evid. Hr. Op. Id.,* 2011 Bankr. LEXIS 5009, *7, n6[24]. 18 U.S.C. § 3057 mandates the VI USA commence an investigation; there is not discretion.

f. The criminal referral was announced at the March 11, 2010, Omnibus Hearing[25] but the transcript was purportedly lost due to a malfunction.[26] This extraordinary occurrence coupled with the Former Bankruptcy Judge's forced resignation for Judicial misconduct requires scrutiny; instead, this Court blindly accepts the Former Bankruptcy Judge's findings as fact. Evidence of a potential crime is before this Court; 18 U.S.C. § 1519 criminalizes the destruction of Bankruptcy Court Records when this Court

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[24] See *Prosser v Gerber Sanction Case*, 777 F.3d at 159, n 5, which suggested March 15, 2011. Note, the Former Bankruptcy Judge did not dispute the March 11, 2011, date which was the missing transcript hearing.

[25] See Appellee's Brief 3 CA Case No. 14-1633, ECF No.. 003111741833, filed 9/17/2014 at 19.

[26] See *VIBC 12/20/11 Evid. Hr. Op.* at 5, n6.

knew the Former Bankruptcy Judge was forced to resign.

g. The *VIBC 12/20/11 Evid. Hr. Op.* also discloses:

   i. The conveniently designated "remaining parties[27]" as set forth by the Former Bankruptcy Judge were "Daniel Stewart, a partner at V&E, (on behalf of V&E) [CH 11 Estates CA Counsel], Gerber [CFC's Counsel], and Trustee Springel (on behalf of A&M) [CH 11 Estates CA Trustee and managing member of the CA Accountant] agreed to split the GJB counsel fees equally (referred to hereinafter as the 'thirds arrangement')." *Id*, 2011 Bankr. LEXIS 5009 at 16 (Bankr. D.V.I. Dec. 20, 2011).

   ii. The *remaining parties* were the same directly or indirectly involved in the ICC Bribery.

   iii. Embezzlement was disclosed. The Former Bankruptcy Judge's order includes:

      "3. On or before February 1, 2012, Alvarez & Marsal and

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[27] Gerber is CFC's counsel. This Court's opinion in the *Prosser v Gerber Sanction Case* is devoid of any disclosure that the CH 11 CA Fiduciaries were in a contractual relationship with CFC's counsel to pay the unlawful gratuity. View most favorably for the remaining parties it shows lack of disinterestedness; grounds for immediate removal (an issue avoided by using phrases like "remaining parties" and "others.")

Vinson & Elkins shall reimburse the estate for the unreimbursed interest at the federal rate applicable in each month that New ICC was deprived of the use of the funds (i.e., from November 25, 2008) until reimbursement was made on January 28, 2010, ...". *Id*. 2011 Bankr. LEXIS 5009 at 193-194.

Disclosing the ICC Bankruptcy Estate did fund the gratuity.

iv. Subparagraph (iii) above is a finding of a *prima facie* violation of 18 U.S.C. § 153, or if not 18 U.S.C. § 153, then a violation of 18 U.S.C. § 645, that is excused by Former Bankruptcy Judge; indisputable evidence of partiality. Estate funds were used by the CH 11 CA Fiduciaries and CFC's counsel from November 25, 2008, until January 28, 2010. Further, repaying the estate is akin to excusing a bank robber because he gave the money back before his arrest.

h. Sanctioning Appellant Prosser's counsel while contemporaneously excusing a *prima facie* criminal violation committed by CA Fiduciaries is patently biased. This weighs heavily against this Court which is charged with supervisory power.

**33.** Given the civil and criminal chicanery known or should

have been known to this Court and its supervisory power[28] and obligations, had this Court appointed a 'special master' to investigate the facts surrounding the unlawful gratuity issue, on information and belief, Appellants assert the following would have been discovered.

a. Mr. Stelzer's **June 10, 2008**, Exemption Trial testimony was the factual underpinning to what Appellants designated as the "PB Hard Drive Incident."

b. The PB Hard Drive Incident involved the public Judicial finding and Judicial accusation by the Former Bankruptcy Judge that Appellant Prosser tried to destroy Palm Beach Hard Drive. The accusation was worded as a criminal charge. See *Springel v. Prosser, In re Prosser*, 2009 Bankr. LEXIS 3209 at 52-53 (Bankr. D.V.I. **Oct. 9, 2009**) (*"Exemption Mem. Op."*) (the **"Pub. Cr. Accusation"**).

c. In the sequence of events, after Mr. Stelzer's June 10, 2008, Exemption Trial testimony, all copies of the Palm Beach Hard

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[28] This witness gratuity scheme and the ICC Bribery are two instances of potential criminal chicanery known by this Court by Court-Appointed Fiduciaries, this Court is the first Article III Court in the Virgin Islands Federal Court hierarchy, and it is occurring in a Court of Equity where Federal Public Policy mandates special scrutiny. Thus, even without knowledge of the reasons for Former Bankruptcy Judge forced retirement, this Court should have acted.

Drives (including the original) were located. The CH 11 Estates CA Counsel acknowledged[29] having possession of the original Hard drive since December 2007. An impartial adjudicator might consider failing to voluntarily produce the original hard drive owned by the CH 7 Estate a sanctionable offense.

d. The Former Bankruptcy Judge order a limited forensic analysis of the hard drives. Case No. 06-30009, **8/11/2008** Order, ECF No.1946.

e. The report, the "Intelysis Report", was delivered on **August 18, 2008**, to all parties and was entered into evidence for the Exemption Trial as TE 87. The Intelysis Report is immutable forensic evidence.

f. The Intelysis Report indisputably established that Mr. Stelzer had committed perjury on June 10, 2008. Additionally, Mr. Bergstedt, after review of the Intelysis Report, research his events and executed a March 9, 2010, affidavit[30] recanting and correcting his earlier testimony (which exhibits establishing the date of the purchase of the Hard Drives) which, as corrected, syncs perfectly with the Intelysis Report.

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[29] See VIBC Case 3:06-bk-30009, 8/19/2008 HT, Statement of Mr. Lee, at 73:21-74: 1.

[30] BK Case No. 09-30009, ECF No. 2764-2, filed 3/17/2010.

g. Appellant Prosser Counsel's 8/8/2008 and 8/22/2008 attempts to take Mr. Stelzer's Deposition were quashed by the Former Bankruptcy Judge.[31] These deposition requests straddled the delivery of the Intelysis Report which was new evidence.

h. It is apparent that the unlawful gratuity (paying for Mr. Stelzer's attorneys) was not to secure perjurious testimony by Mr. Stelzer but for purposes of **preserving his known to be perjurious testimony** and to conceal other criminal conduct[32] involving CH 11 CA Counsel. Appellant Prosser was never authorized to depose Mr. Stelzer on the Palm Beach Hard Drive

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[31] See VIBC Adv. No. 07-03010, 08/22/08 Order, ECF No. 467 and VIBC Adv. No. 07-03010, 10/02/2008 Order, ECF No. 525, quashing 2 attempts to depose Mr. Stelzer.

[32] It served other purpose, *e.g.*, the *Emergency Motion To Dismiss; Motion For Disqualification, And Sanctions; And Motion To Stay* [Case 06-30009, ECF No. 2012, filed 08/25/08] for the acquisition Prosser's April and May 2008 American Express statements (the "AmEx Statements") without authorization, which is a violation of *18 USC § 1030(a)(2)* which was denied when the Former Bankruptcy Judge decided an email from Mr. Stelzer's counsel (hearsay evidence) containing false representations [Case 06-30009, ECF No. 2954-1, filed 08/08/2010] deserved more creditability than Appellant Prosser's Oct. 6. 2008 Affidavit.

after the issuance of the Intelysis Report.[33]

i. Someone had filed a criminal complaint against Appellant Prosser relying upon Mr. Stelzer's June 10, 2010, perjurious testimony regarding the Palm Beach Hard Drive, *e.g.*, see the Pub. Cr. Accusation set out in the Former Bankruptcy Judges Exemption Mem. Op.

j. When the FBI came calling, Appellant Prosser authorized the FBI to examine the Palm Beach Hard Drives and additionally provided the FBI with a copy of the Intelysis Report.

k. The Appellants' understanding is that the FBI complaint boomeranged. The VI USA had convened a grand jury, on information and belief, because of March 11, 2010, referral, and that grand jury sought all the Palm Bach Hard Drives. See May 6, 2010, Intelysis Notice filed in Case No. 06-30009, ECF No. 2836, 5/6/2010. Appellant Prosser was not the object of the Grand Judy.[34]

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[33] See ¶ 31(c) above re the Jan. 12, 2010, Deposition, and the Evidentiary Hearing Proceeding Memo explicitly "specifically NOT to include anything related to the AMEX account (as to which, the Court understands from Mr. Abood's statements that Mr. Stelzer may be facing criminal charges) or the testimony concerning the computer hard drives." Case No. 10-3001, ECF No. 149, p. 2, filed 4/6/2010.

[34] See *Prosser et al v. Shappert et al*, VIDC Case No. 21-cv-00026, ECF No. No. 14-1, filed 9/27/2021.

l. But for VIDC Judge Gomez's 1/29/2010 Order directing the Unlawful Gratuity Evidentiary Hearing interrupted collusion between the Former Bankruptcy Judge, the CH 11 Estates CA Fiduciaries, and CFC's Counsel to deny an evidentiary hearing, to wit:

i. Former Bankruptcy Judge's 1/12/2010 "**Charge**": "All right. I'm instructing you to find out, to the best of your ability, whether either the company, whoever that is, or Vinson & Elkins is paying AJS's counsel." See VIDC Case No. 2010-0008, Doc. No. 3-2, 1/12/2010 depo at P142:L2-5.

ii. In response to the Charge, on January 26, 2010, an email was sent wherein the CH 11 Estates' CA Counsel admitted: "My inquiries further reveal that payment of the Stelzers' legal fees with respect to the matters referenced in this retainer agreement are made pursuant to an oral agreement between Vinson & Elkins, Alvarez & Marsal and Fulbright & Jaworski, with each paying 1/3rd. Jim Lee" See *Prosser v. Gerber (In re Prosser)*, 2011 Bankr. LEXIS 5009 at *125 (Bankr. D.V.I. Dec. 20, 2011). This email did not disclose, and was an intended distraction from the fact, that the ICC Estate had paid fees.

iii. The CH 11 Estates CA Fiduciaries repaid the Estate on Jan. 28, 2010. See *Prosser v. Gerber (In re Prosser)*, 2011 Bankr.

LEXIS 5009 at *130 (Bankr. D.V.I. Dec. 20, 2011).

iv. January 29, 2010, Hearing Transcript provides strong evidence that the Former Bankruptcy Judge was colluding with CH 11 Estates CA Counsel and RTFC's counsel. The Charged became very narrowed: The 1/26/2010 Email was accepted as fact and the Former Bankruptcy Judge was only interested in whether the CH 11 Estates CA Fiduciaries had buried within their fee applications the payment of Mr. Stelzer's legal fees.[35] Objectively, it appears that the Court and the CH 11 Estates CA Fiduciaries were distracting attention from the issue and part of the charge on whether the Estate had paid anything.

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[35] "THE COURT: All right. Well, I did go back to take a look at fee applications, and I could find nothing in any of the fee applications submitted so far that I could identify as having been reimbursing anything of AJS's fees. What I want to be sure is that there isn't some hidden thing in these fee applications that I can't identify that would somehow be a disbursement to AJS's counsel from these companies because obviously Mr. Battista and his firm are not retained counsel in these cases. So, I just want all parties who have filed fee applications to go back and review to be sure that in fact no part of the fee applications has involved a payment to a professional or to the trustees in the case that would somehow or other have been the result of payments out to Mr. Battista or his firm." See VIBC Case No. 06-30009, Doc 2700, 1/29/2010 HT, P81:L10-23.

v. Mr. Prosser's counsel asked for a copy of the canceled checks paying the fees, to which the Former Bankruptcy Judge responded: "If I get an action here that I can use discovery purposes for, yes." VIBC Case No. 06-30009, Doc 2700, 1/29/2010 HT, P91:L13-23.

Left to her own devices, the Former Bankruptcy Judge was not going to hold an evidentiary hearing and there would be no sharing of canceled checks. Canceled checks would have shown the Estate had indeed paid Mr. Stelzer's legal fees. The Court and the CH 11 Estates CA Fiduciaries were playing a shell game with Appellant Prosser's counsel.

m. This Court seized upon the Former Bankruptcy Judge's rendition of the March 11, 2010, referral to the USA as fact. *VIBC 12/20/11 Evid. Hr. Op.*[36], at 7, n6, blindly accepted as fact per note 5 of *Prosser v Gerber*, 777 F.3d 154, 160 (3d Cir. 2015). Appellants assert a special master would have rejected such a finding premised upon:

i. The Missing Transcript. The footnote cited by this Court in note 5 of 2015 discloses the missing Court transcript purportedly "lost due to technical malfunction." Appellant Prosser is

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[36] *Prosser v. Gerber (In re Prosser)*, 2011 Bankr. LEXIS 5009 (Bankr. D.V.I. Dec. 20, 2011)

represented by 3 attorneys with extensive litigation experience in numerous courts and none of whom have ever experienced a lost hearing transcript. The loss of a transcript is an extraordinary event requiring closer scrutiny of an impartial adjudicator charged with the supervisory authority and duty of legislative Courts.

ii. On information and belief, the Former Bankruptcy Judge's March 11, 2020, criminal referral was not voluntary:

- There was another case in VIDC – *Prosser v Stelzer*, Case No. 09-065, adjudicated by Judge Timothy J. Savage.
- Mr. Stelzer was represented by the attorneys paid for by the unlawful gratuity agreement.
- Upon hearing VIDC Judge Gomez's Evidentiary Hearing Order through a Motion to disqualify Mr. Stelzer's counsel, Judge Savage ordered and held an impromptu Evidentiary Hearing on Feb. 16, 2010.
- VIDC Judge Gomez and VIDC Judge Savage both made the same error; they assumed the Former Bankruptcy Judge was impartial.
- Judge Savage in the record made it clear that he would share the essence of the testimony involving the bankruptcy

proceedings with the Former Bankruptcy Judge.[37]

- Judge Savage did not disqualify Mr. Stelzer's counsel for accepting payment from the CH 11 Estates Counsel.

iii. Appellants believe Judge Savage had forced the Former Bankruptcy Judge to make the March 11, 2010, criminal referral. The events of March 11, 2010, further support this belief.

n. As to March 11, 2010, Omnibus Hearing, the Appellants' inaction with Appellant Prosser's counsel went as follows:

i. Immediate after the hearing there was a phone call wherein Appellants were informed by counsel that: (x) the criminal referral was announced; (y) the Former Bankruptcy Judge lost her composure; and (z) statements made by the Former Bankruptcy Judge displayed such prejudice and bias

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[37] THE COURT [Judge Savage]: That's not mine. **Judge Fitzgerald is going to handle that bankruptcy matter**. I am sure she is going to get a transcript of what is happening here. Okay. As A matter of fact, **I can assure you all that I will be on the phone with her later today or tomorrow about what is going on**. She deserves to know what's happening. Okay?

➢ See VIDC 2/16/2010 Evidentiary Hearing Transcript, Vol. II at P25:L21-P26L3 (Emphasis added).

The Hearing Transcripts made it evident that Judge Savage and the Former Bankruptcy Judge had been in communication.

towards Appellant Prosser that statements would mandate the Former Bankruptcy Judge's recusal.

ii. Later the same day, Appellants were informed that an Order was entered the same day announcing no transcript was created (no further explanation) and rescheduling the hearing. VIBC Adv. Case No. 10-3001, ECF No. 68.

Appellants believe that the March 11 Hearing Transcript was indeed powerful grounds to recuse the Former Bankruptcy Judge and was intentionally destroyed, an apparent violation of 18 U.S.C. § 1519.

o. A special master's review of the proceedings from January 12, 2010, through May 24, 2010, would have concluded that the Former Bankruptcy Judge was not impartial and that she had managed the whole of the discovery process to conceal other crimes and to a pre-determined end: no intent[38]. The payment of an

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[38] In a criminal complaint filed Oct. 26, 2010, against the Former Bankruptcy Judge, Appellant Raynor, with respect to the disposition of the Evidentiary Hearing, he "... expects the lower court will seize upon the *lack of motive* to excuse the parties for their apparent criminal activity in the Witness Bribery Scheme." The Former Bankruptcy Judge held: "Upon review of the evidence, what is lacking is an intent to violate the law and sufficient evidence to warrant the relief sought." *Id*. 2011 Bankr. LEXIS 5009 at 7.

Unlawful Gratuity is not a crime that requires intent.[39] The lack of intent was the sole basis for excusing the crime; all other elements were admitted.

p. As to the appearance of a violation[40] of 18 U.S.C. § 153 (Embezzlement) and/or a violation of 18 U.S.C. § 645, emails

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[39] The DOJ, in the United States Attorney's Manual ("USAM"), states that 18 U.S.C. § 201(c) (the illegal gratuity section; the section charged) lacks the word "corruptly" and has no corresponding specification of a particular level of criminal intent as does 18 U.S.C. § 201(b), addressing the bribery of public officials. The USAM states: "Rather the intent requirement for section 201(c), lacking any other specification, is simply that the defendant acted 'knowingly and purposefully' and not by mistake or inadvertence, **as opposed to 'corruptly' or 'willfully**.' *United States v. Evans*, 572 F.2d 455, 480-81 (5th Cir.), *cert. denied*, 439 U.S. 870 (1978)." USAM 2044, Particular Elements (Emphasis added). As far as not enough evidence, the Defendants admitted to all the elements of an 18 U.S.C. § 201(c) violation.

[40] See *United States v. Reidenbach*, 2012 U.S. Dist. LEXIS 120739 at *47, n54 (E.D. Pa. Aug. 23, 2012) (The elements of Embezzlement against bankruptcy estate are that (1) a bankruptcy case was pending; (2) the property or interest was part of the bankruptcy estate of the debtor; (3) defendant had access to the property as an attorney or officer of the court; and (4) defendant knowingly and fraudulently embezzled, spent, transferred or appropriated for defendant's own use property belonging to the bankruptcy estate. Eleventh Circuit Pattern Criminal Jury Instruction C.1.4 (2010).)

establish that the CH 11 Estates CA Counsel discovered the ICC Estate's payment of Stelzer attorney fees in January of 2009, that the CH 11 Estates CA Counsel had notified the CH 11 Estates CA Accountant that the ICC Estate legally cannot pay the said fees, that the CH 11 Estates CA Accountant resisted by complaining about personally paying said fees, and that then the email trail went cold until Stelzer's Jan. 12, 2010, deposition.

q. On Jan. 13, 2010, the day after Mr. Stelzer's deposition, the Former Bankruptcy Judge entered a preclusion order relying in part upon the Exemption Opinion finding which rested upon Mr. Stelzer's perjurious testimony[41] and her related filing. In essence, this is objective evidence that the Former Bankruptcy Judge's objective in preserving Mr. Stelzer's perjurious testimony was to rely upon knowing perjurious testimony to deny Appellant Prosser's discharge.

**34.** Given the foregoing, issuing the Sanction Mandate on March 5, 2015, was a manifest injustice and/or a miscarriage of

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[41] Reliance upon perjurious testimony to deny discharge - "(3) 'Mr. Prosser ordered the destruction of computer hard drives located at the Palm Beach Property in an effort to conceal information, records, and documents from the Trustees.' Id. at 29." Former Bankruptcy Judge's 2010 01-13 Order re Discharge, VIBC Adv 07-03011, ECF No. 115.

justice that transgresses upon 42 U.S.C. § 1986. This issuance of the Sanction Mandate disqualifies this Court, and any Judge of this Court, from hearing the appeal under 28 U.S.C. § 455(a).

**Bankruptcy Judge Walrath; the "Successor Bankruptcy Judge."**

**35.** The Successor Bankruptcy Judge and the Former Bankruptcy Judge have a financial relationship that was known, or which should have been known, by the Judicial Council. *Prosser v. Shappert*, Case No. 3:21-cv-0026, ECF No. 29.

**36.** The Financial Relationship disqualifies the Successor Bankruptcy Judge from adjudicating the Prosser Bankruptcy Proceedings under 28 U.S.C. § 455, subsection (a) and (b)(4).

**37.** On 2/16/2018, Judge Walrath granted a Motion to convert a 'sanction order' into a 'sanction judgment' against exempt property both of which are premised upon 11 U.S.C. § 105(a)[42] in favor of the

[42] 11 U.S.C. § 105(a) states: "(a) The court may issue **any order, process, or judgment** that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." (Emphasis added).

CH 7 Trustee against Appellant Prosser and his wife, after –

a. The sanction order was then appealed and before the VIDC. VIBC Case No. 06-30009, ECF No. 4713, filed 12/12/2017.

b. The VIDC, on 2/23/2017, reversed the Contempt Fees Order to the extent the order had charged Exempt assets, continued the stay, and requested the parties to submit briefs on whether the Supplemental Sanctions Order was valid in light of the Supreme Court's ruling in *Law v. Siegel*, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014). See *In re Prosser*, 2017 U.S. Dist. LEXIS 25167 at 103-104. (D.V.I. Feb. 23, 2017).

c. The VIDC ultimately eliminated the Contempt Fees Order and the Supplemental Sanctions Order as a lien or charge against Exempt Assets. *In re Prosser*, 2018 U.S. Dist. LEXIS 101919 (D.V.I. June 19, 2018).

d. Thus, while the VIDC had found VIDC lack the power to issue a Contempt Order charging the Prossers' Exempt Assets and further, the VIDC then had the Supplemental Sanctions Order under consideration, Fox LLP moved Judge Walrath to convert the same order for a judgment. Additionally, VIBC entered a judgment which as of today is a lien against the exempt assets.

The CH 11 CA Fiduciaries and the VIBC, specifically, Judge Walrath, are collectively engaged in a strategy Prosser and his Counsel to

multiple proceedings and deprive Appellant Prosser of the only exempt assets that have not been sold under the color of law for purposes of exhausting all resources and Appellant Prosser's will to contest.

**38.** The are other concerns about the successor judge; however, her financial relationship with the Former Bankruptcy Judge is disqualifying.

**39.** The assignment of the Successor Bankruptcy Judge by this Court to the VIDC disqualifies this Court, and any Judge of this Court, from hearing the appeal under 28 U.S.C. § 455(a).

***Nat'l Rural Utils. Coop. Fin. Corp. Case* and the 5/15/2015 Mandate; Beyond Negligence.**

**40.** At the time of the issuance of the 5/15/2015 Mandate affirming the RICO/CICO injunction, this Court knew of, should have known, or, with a modicum of supervisory investigation, could have known, of:

a. The ICC Bribery and the related civil and criminal chicanery. See "ICC Bribery – What Was Then (5/15/2015) Known" which is incorporated herein.

b. The Former Bankruptcy Judge civil chicanery and if admitted, criminal chicanery. See "The Former Bankruptcy Judge's Purported Retirement" which is incorporated herein.

c. All the facts related payment of Unlawful Gratuity to a fact witness and the related civil and criminal chicanery. See "Knowledge of Unlawful Gratuity" which is incorporated herein.

The Prosser Bankruptcies Proceedings were/are Color of Law proceedings wherein the Former Bankruptcy Judge was undoubtedly prejudiced and colluding with, at a minimum, the CH 11 CA Fiduciaries and CFC's Counsel.

**41.** This Court issued the 5/15/2015 Mandate notwithstanding in which there were detailed pleadings in the RICO/CICO Civil Case complaint about two instances in which CFC made use of bankruptcy proceedings to commit accounting fraud by representing different facts to the bankruptcy court than representations made in CFC's securities and exchange filings, to wit: (x) Denton County Electric Cooperative, Inc. ("CoServ") whose bankruptcy proceedings were in Fort Worth division of the North Texas Bankruptcy Court as case no. 02-04665; and (y) ICC whose bankruptcy proceedings were in VIBC. SEE 2nd Amended RICO/CICO Complaint.[43]

**42.** Further, the 2nd Amended RICO/CICO Complaint

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[43] Filed with this Court in the *Nat'l Rural Utils. Coop. Fin. Corp. Case* on 11/18/2014 as Doc 003111796385; Prosser et al v. Shappert et al, VIDC Case No. 21-00026, ECF No. 17-1, filed 06/20/22; VIDC Case No. 2008-0107, ECF No. 172-1, filed 12/2/2009.

mentioned some form of the word extortion 77 times and some form of the word retaliatory approximately 100 times.

**43.** Appellants plainly outlined in Complaint ¶ 385 that the 2006 Settlement Agreement[44], the agreement on which was the foundation for the injunction, was unlawful and unenforceable.[45]

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[44] If the 2006 Settlement Agreement is void, then the RICO/CICO Injunction is void.

[45] "385. The 2006 Settlement Agreement is void as a matter of law on a number of independent grounds, including: a. The 2006 Settlement Agreement is meant to facilitate and enable CFC and CFC's Management to continue their pattern of fraudulent security reporting by suppressing Jeff Prosser, making the 2006 Settlement and Related Documents void as a matter of law pursuant to 15 U.S.C. § 78cc; b. With reference to the involuntary bankruptcy petitions, as a matter of bankruptcy law, the Bankruptcy Court had to approve and did fail to approve the 2006 Settlement Agreement as a transaction not in the ordinary course of business; c. With reference to the involuntary bankruptcy petitions, as a matter of bankruptcy law the terms of the 2006 Settlement Agreement required the dismissal of the involuntary bankruptcy petitions (required under the 2006 Settlement Agreement) making the 2006 Settlement Agreement a de facto bankruptcy reorganization requiring the procedural protections of any reorganization plan to make it effective, as a matter of law; d. With reference to the voluntary bankruptcy petitions, as a matter of bankruptcy law, the June documentation of the 2006 Settlement Agreement granted preferences to RTFC and Greenlight which are subject to avoidance (and would have been

**44.** The RICO/CICO Civil Case Complaint set out a complete pattern of events including the fact that CFC had unilaterally altered the Loan Agreement (¶¶ 312-315), VIDC rejection of CFC's foreclosure summary judgment motion because CFC couldn't authenticate the loan document (¶¶ 349-351), and CFC forced to make a deal with Greenlight to circumvent the 2004 Foreclosure Action CFC started because CFC was losing.

**45.** Any Court with knowledge of the facts and circumstances of ICC Bribery, the facts and circumstances of the Former Bankruptcy Judge's forced resignation, the facts and circumstances related to the Unlawful Gratuity, or any one of the foregoing would find the allegations in the RICO/CICO Civil Case creditable until proven otherwise and would have not issued the 5/15/2015 Mandate.

**46.** Issuing the 2015 Mandate was not only an error but rather has the known effect of sheltering and protecting the Racketeering Enterprise and facilitating the Racketeering Enterprise's unlawful access to the US Treasury.

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avoided by an independent Trustee) because of the execution of the implementing documents within sixty days of the bankruptcies; and e. The 2006 Settlement Agreement was a product of a course of retaliatory and extortionary conduct by CFC and CFC's Management (beginning with the June 1, 2004, foreclosure action) making such agreements void because of the Public Policy."

**Fox LLP's[46] Malfeasance and Nonfeasance:**

**A Legal Reason the 5/15/2015 Mandate Was Issued In Error.**

**47.** Fox LLP is the firm that was awarded sanctions in the *Prosser v Gerber Sanction Case*.

**48.** But for the Malfeasance and Nonfeasance of the CH 7 Estate CA Fiduciaries, CH 7 CA Trustee represented by CH 7 CA Fox LLP, the RICO/CICO 2006 Injunction would not exist.

**49.** The 2006 Settlement Agreement, the foundation for the 5/15/2015 Mandate, was a voidable preference.

**50.** The RICO/CICO Civil Case Complaint set forth the following allegation:

> "With the foregoing known by the Chapter 7 Trustee, the Chapter 7 Trustee did not seek to, and in fact resisted, setting aside the 2006 Settlement Agreement in violation of the Trustee's fiduciary duty:
>
> a. to maximize the estates; and
>
> b. to challenge claims.
>
> The Chapter 7 Trustee's intentional breach of his duties and lack of independence with respect to Greenlight in order to benefit Defendant Greenlight is demonstrated by the Trustee's

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[46] **"Fox LLP"** means Fox Rothschild, LLP of Philadelphia, PA

distribution of over $1 Million (the sales proceeds from Lake Placid property) to Defendant Greenlight notwithstanding (i) NO order approving the distribution (See Trustee's Proposed Distribution, Case 3:06-bk-30009-JKF, Doc 2195, Filed 10/31/08), (ii) an objection to the proposed distribution (See Case 3:06-bk-30009-JKF, Doc 2204, Filed 11/03/08), and (iii) an oral order of the Bankruptcy Judge at the November 10, 2008 hearing that there be no distribution to Greenlight until such time as the Preference Action was determined."

- See RICO/CICO Civil Case Complaint, ¶ 387.

**51.** If the 2006 Settlement Agreement is void, then the RICO/CICO Injunction is void.

**52.** Appellant Prosser did not seek to set aside the 2006 Settlement Agreement because he was deceived; he thought once financing was secured, the Former Bankruptcy Judge would force CFC and Greenlight to accept the agreed buyout. He was wrong.

**53.** In the Chapter 7 Proceedings, the Former Bankruptcy Judge appointed an examiner.[47] The examiner had served as

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[47] "On April 5, 2007, the Court approved the appointment of the Examiner as examiner in this case [Prosser Bankruptcy Estate]." Page 7 of the *Motion of Steven A. Felsenthal, Chapter 11 Examiner of*

Bankruptcy Judge and had completed the term of his Judicial Appointment.

**54.** The Examiner requested as early as Aug. 13, 2008, that the Chapter 7 Trustee prosecute an avoidance action. *Examiner's Avoidance Motion* at 8-9, VIBC Adv. No. 08-3051, ECF No 23, filed 12/10/2008. The avoidance action would have set aside the 2006 Settlement Agreement and hence, the injunction foundation would have been voided. The Chapter 7 Trustee ignored the request.

**55.** The failure of CH 7 Estate Appointed Fiduciaries to prosecute an avoidance action to set aside the 2006 Settlement Agreement is a nonfeasance that enriched CFC and Greenlight at the expense of unsecured creditors of the CH 7 Estate.

**56.** When the CH 7 Estate CA Fiduciaries did not act, Attorney Robert Craig filed the avoidance action on his behalf. *Craig v Greenlight*, Adv. No. 08-3051, filed 10/2/2008. Attorney Craig was one of Appellant Prosser's counsel. Attorney Craig described the cause of action as *prima facie*[48] and further, represented that the

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*the Jeffrey Prosser Bankruptcy Estate, for Authority to Assert Causes of Action on Behalf of the Estate of Jeffrey J. Prosser* ("**Examiner's Avoidance Motion**"), VIBC Adv. No. 08-3051, ECF No 23, filed 12/10/2008.

[48] "We have a colorable claim. We have a *prima facie* preferential transfer. We have offered to take that litigation and pursue it,

determination was ripe for Summary Judgment.[49]

**57.** Instead of ordering the CH 7 Estate Appointed Fiduciaries to fulfill their duty to maximize the estate for unsecured creditors, the Former Bankruptcy Judge acting under the Color of Law denied Attorney Craig's request based on a fabricated conflict.[50] 11/17/2008 Transcript, VIBC Case No. 06-30009, DE 2267 at P284:P286.

**58.** In response to Attorney Craig's denial, the Examiner then filed *Examiner's Avoidance Motion*. VIBC Adv. No. 08-3051, ECF No 23, filed 12/10/2008. Examiner Felsenthal alleged that the "estate's Preference Action [to set aside the preferential lien] is not only colorable, it is an action for which summary judgment relief in favor

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prosecute to a conclusion on a contingency fee basis. So there would be no expenditure of estate assets." *See* Mr. Craig's representation to the Court, 11/17/2008 Transcript, Case no. 06-30009, DE 2267 at P241:L22 – P243:L1.

[49]"The transactions are really not in dispute. They're documented transactions. The Court has seen almost all of them already. This is going to be a motion for summary judgment, and Your Honor will then determine what the law is and whether that post-petition activity is a defense or is not a defense. So it's not like there's going to be any meaningful, projected expenses and costs incurred." *See* Mr. Craig's representation to the Court, 11/17/2008 Transcript, Case no. 06-30009, DE 2267 at P278:L21 – P279:L2.

[50] How does increasing the Estate create a conflict.

of the estate is appropriate." *Id.* at p. 16.

**59.** Based upon the resistance to the Examiner Felsenthal's Motion filed by both Greenlight and Trustee Carroll, the Former Bankruptcy Judge issued a Memorandum Opinion denying the Examiner authority to separately pursue the avoidance litigation based on procedural or standing grounds while specifically stating that the Court was not commenting upon the validity of the cause of action to set aside the Greenlight preferential lien. *See* Memorandum Opinion, VIBC Case No. 06-30009, DE 2556, 7/31/2009.

**60.** The CH 7 Estate's CA Fiduciaries committed malfeasance by not fulfilling their fiduciary duty to maximize the Chapter 7 Estate.

**61.** This Court's 5/15/2015 Mandate rests upon the implementation of a Color of Law conspiracy by and between CH 7 Estate CA Fiduciaries, a civilly compromised Former Bankruptcy, and Greenlight.

**Status of the DOJ's Criminal Investigation**

**62.** Based upon information Appellant Raynor knows from sources Appellant Raynor deems reliable, in summary, hereinbelow is a rendition of the criminal investigation and its present status:

a. The J. de Jongh Administration (January 1, 2007 – January 5, 2015) is referred to internally by the DOJ as the "**Epstein**

**Administration**." This is more and more open-sourced information on the J. de Jongh Administration ties to Jeffrey Epstein because of litigation of *Gov't of the U.S. Virgin Islands v JP Morgan Chase Bank,* S.D.N.Y. Case No. 22-cv-10904 ("*GOVI v JP Morgan*").

b. Feb. 1, 2012, the Daily Caller published an article on the "**Appellants' Cr. Case**"; the DOJ's criminal case instigated by Appellant Raynor in Aug./Sept. of 2009 ("**2012 DC Article**").[51] The Appellant Raynor asserts that the 2012 DC Article was accurate in all material respects as to the then status of the criminal case instigated by Appellant Raynor ("**Appellants' Cr. Case**") and the author thereof verified his facts with more than one source.[52] Per the 2012 DC Article –

   i. Resources assigned to the Appellants' Cr. Case ramped up from two prosecutors assigned in Nov. 2009 to over twenty-five prosecutors.

   ii. The 2012 DC Article publicly disclosed the ICC Bribery and the payment of at least $20 Million in bribes to members of

[51] See *Prosser et al v. Shappert et al*, VIDC Case No. 21-00026, ECF No. 14-4, filed 9/27/2021.

[52] See *Prosser et al v. Shappert et al*, VIDC Case No. 21-00026, ECF No. 15-3, filed 9/27/2021.

the Epstein Administration.

iii. Two of the DOJ prosecutors assigned to the 'Appellants' Cr. Case' had accepted cash bribes and five other DOJ prosecutors were compromised (the **"Compromised Prosecutors"**).

iv. The information deduced by of the investigation of the 'Appellants' Cr. Case' was known by, e.g., provided in real-time to, the CH 11 Estates CA Fiduciaries.

v. By the date of the 2012 DC Article, the DOJ had already confronted and flipped the bribed and compromised DOJ prosecutors.

vi. USAG Holder was struggling with how to disclose the information, on information and belief, because of the public and Congressional scrutiny created by the Gun Walking Scandal commonly referred to as Operation Fast and Furious.

Based upon other independent sources, the Virgin Islands Telephone Corporation (**"Vitelco"**), an ICC subsidiary under the operation control of both CH 11 Estates CA Fiduciaries and CFC[53]

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[53] Effective Nov. 1, 2007, ICC's *de facto* Chief Restructuring Officer was simultaneously employed by CFC and Vitelco. See *Motion for a Referral to the United States Attorney for Perjury and for Removal of*

since 2007 had wired approximately $14 Million to a foreign ICC subsidiary operating a small business that was then being closed. Additionally, three to five FBI agents examined Vitelco's accounting records on September 8 & 9, 2011. Both events are related to ICC Bribery.

c. The Appellant is aware of two grand juries: one state-side investigating CFC's financial crimes and another in the Virgin Islands (see Intelysis disclosure above) investigating bankruptcy crimes in the Prosser Bankruptcies Proceedings. The VI Grand Jury materials were combined with the other materials and presented to the state-side grand jury to secure indictments either in April 2011 or early May 2011. Execution upon the indictments in May of 2011 would have verified the RICO/CICO Civil Case reducing the issues to one, damages, and would have resulted in the immediate disqualification of the CH 11 Estates CA Fiduciaries.

d. **"Compromised Prosecutors Blockade"** refers to the DOJ's failure to execute the case in May 2011, after Mr. Pelletier

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*Stan Springel, the Chapter 11 Trustee, and Daniel Stewart, the Chapter 11 Estate Counsel, from this Case for Egregious Misconduct and/or Lack of Disinterestedness*, Adv. Case No. 09-3012, *Springel v Raynor*, ECF No. 56, filed July 3, 2012.

retired. The Compromised Prosecutors persuade all the prosecutors to withhold execution upon the sealed indictments until they could investigate Appellant Prosser for the third time, *e.g.*, to avoid embarrassment. The investigation boomeranged on the Compromised Prosecutors because the DOJ discovered allegations against Appellant Prosser were contrived and that the earlier investigations were corrupted in an attempt to falsely charge him.

e. Immediately after the 2012 DC Article publicly disclosing Appellants' Cr. Case, Sen. Grassley made a Feb. 10, 2012, inquiry as to 2012 DC Article disclosures. On Feb. 24, 2012, USAG Holder responded by general denial of bribery (the "**USAG Holder Blockade**"]; however, there was no denial by USAG Holder of CFC's other criminal activity as disclosed in the 2012 DC Article.[54] On information and belief, the bribery denial was false[55]; it is not the first time the DOJ made a

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[54] See *Prosser et al v. Shappert et al*, VIDC Case No. 21-00026, ECF No. 14-5, filed 9/27/2021. Sen. Grassley letter stated: "The article describes in extensive detail the alleged financial crimes of ... [CFC] in the U.S. Virgin Islands."

[55] Information from sources other than the sources other for the 2012 DC Article, support that the DOJ knew of the ICC Bribery on or before February 24, 2012. First, the Vitelco transfer of funds to a

misrepresentation to Congress.[56] Arresting Terr. Sen. Williams for ICC Bribery would be construed as an admission of 18 U.S.C. § 1001 violation; hence, the USAG Holder Blockade.

f. The Williams Case commenced with the Nov. 8, 2012, arrests of then the Territorial Senator Alvin Williams, Jr. The Williams Case indictment did not include ICC Bribery. The USAG Holder Blockade, e.g., the denial letter responding to Sen. Grassley, was sent only eight and one-half months earlier.[57]

g. The Prosser 2014 Affidavit sets forth admissions made by Garry Sprauve, a co-defendant in the Williams Case and the party

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foreign subsidiary that is wholly without any business justification. Secondly, the Territorial Senator Alvin Williams, Jr. (the subject of the Williams Case) office was raided on October 5, 2011. See also, Daily Caller additional articles: 2012 04-17 bag-man-revealed-in-virgin-islands bribery scandal; 2012 04-30 There was second Virgin Islands Bag Man

[56] On December 2, 2011, the Justice Department formally withdrew its statement of February 4, 2011, denying gunwalking, due to inaccuracies. *Justice Withdraws Inaccurate 'Fast And Furious' Letter It Sent To Congress*, NPR, 12/2/2011.

[57] USAG Holder was held in Contempt of Congress on June 28, 2012, a little over 4 months before the Williams arrest.

that maintained a ledger of bribes received.[58] Mr. Sprauve disclosed that the ICC Bribery evidence was held by the VIDC under seal – the Williams Case Sealed Records.

h. Open-source information[59] and the case of *Doe v. United States*, 359 F. Supp. 3d 1201 (S.D. Fla. 2019) makes it evident that Jeffrey Epstein or those associated with Jeffrey Epstein exercised extraordinary control over the Federal justice system. Appellants refer to this control as the "**Epstein Blockade**." First, the Epstein Administration protected Jeffrey Epstein[60] and Jeffrey Epstein protected the Epstein Administration. Secondly, Appellants are aware of at least one face-to-face meeting between CFC's Chief Financial Officer and Epstein in Gov. John de Jongh's office.

i. ICC Bribery was the link between Appellants' Cr. Case and, as

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[58] Former Terr. Sen. Williams was concerned about being shorted; therefore, the ledger tracked all the recipients of the ICC Bribes and other bribes.

[59] Opinion, Washington Posts July 12, 2019, *Jeffrey Epstein's scandal of secrecy points to a creeping rot in the American justice system*.

[60] JP Morgan's defense to civil liability in the case of *GOVI v JP Morgan* is predicated upon the *Gov't of the U.S. Virgin Islands* protection of Jeffrey Epstein and his illegal activities.

it has been described to Appellants, to a much larger criminal case. In 2017, Appellants were informed by two separate and reliable sources that the execution of the 'Appellants' Cr. Case' was tied to the Epstein Cases.

j. Appellants instigated a limited Virgin Islands criminal investigation in July of 2019 by filing a complaint ("**Appellants' VIAG Cr. Compl.**") with then V.I. Attorney General Denise George ("**VIAG**"). Appellants' VIAG Cr. Compl. centered upon two acts:

   i. The ICC Loan Fraud committed by CFC because of its credit bid for the remaining ICC assets to avoid a catastrophic financial loss and to continue CFC's accounting fraud. The Loan Fraud was easily proven by comparing the VIBC 4/6/2009 Hearing Transcript to CFC's SEC filings.

   ii. Another incident in what Appellants refer to as the Shoys Wine Case.

When the election cycle[61] came around again without arrests, VIAG George informed us that the wine case was not supported by sufficient evidence and further, that VIAG George had referred the accounting case to VI USA. Nevertheless, VIAG George has

[61] Former Gov. J. de Jongh and his associates control the Democratic party in the V.I.

gathered all the records related to the Appellants' VIAG Cr. Compl. investigation and they are kept in a separate file which is locked to this day, inaccessible to VIAG's Office.

k. VIAG executed a memorandum of understanding with the DOJ concerning the Appellants' VIAG Cr. Compl. (the "**DOJ MOU**").

l. During the investigation of the Appellants' VIAG Cr. Compl., the Appellants learned that civil enforcement by two separate Federal Instrumentalities had been held in abeyance 'in favor of criminal enforcement:

- the U.S. Department of Agriculture ("**USDA**"); and
- the SEC.

CFC accesses U.S. treasury funds through the USDA.

m. Because of the Appellants' VIAG Cr. Compl., VIAG George's relationship and attitude towards the DOJ transmuted from strained to favorable. Because of the transmutation of the relationship, VIAG George filed the *GOVI v JP Morgan* in the Southern District of New York without the knowledge nor the concurrence of the V.I. Governor. The V.I. Governor publicly admitted that he discharged the VIAG because of filing the *GOVI v JP Morgan* complaint.[62]

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[62] The VI Governor was interviewed by a St. Thomas Source reporter after the 2023 State of the Territory address. A Feb. 2, 2023,

n. On information and belief, VIAG George agreed to not prosecute the Appellants' VIAG Cr. Compl. for two reasons:

- the pressure of the V.I. Governor (who in turn was pressured by former Gov. de Jongh[63]) in an election year; and
- because of the VIAG George agreement with the DOJ to prioritize the forthcoming litigation: the *GOVI v JP Morgan* case.

Thus, that litigation has become the "**JP Morgan Blockade**."

o. Presently and for the last year there continues to be an overwhelming Federal presence in the Virgin Islands; liken to

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article reported: "Among the reasons for [VIAG] George's dismissal was that he [Governor] was blindsided by her filing suit against JPMorgan Chase .... 'I personally, and I'm sure many other Virgin Islanders alike, don't like our name being associated with Jeffrey Epstein and child pornography. ... Now we're suing him for the same dirty money. That seems a little awkward, right? I mean, that's inconsistent. And I just want to get us away from that. That's not the light we want to be seen. If we never mention Jeffrey Epstein again, **it would be good for me** [Freudian slip?],' he [V.I. Governor] said." *JPMorgan Chase Says VI Lawsuit a Masterclass in Deflection*, published by stthomassource.com (Emphasis added).

[63] The former Governor and/or his associates knew every set of the case. The former Governor exercises inordinate influence over the Virgin Islands politics and its donors. The ICC Bribery ensured the former Governor would foreclose prosecution of the Shoys Wine Case.

a snake coiled and prepared to strike. The 'Appellants' Cr. Case' involved substantial Federal resources, but the resources devoted to the larger criminal are much larger with an unlimited budget.

p. Appellants are at a loss when the execution will take place. Appellant Raynor believes the JP Morgan Blockade serves one primary purpose, to bring public awareness to Jeffrey Epstein and the haven provided by the Virgin Islands for Epstein's activities.

q. The Appellants are under the boot of the DOJ as much as they are under the boot of CFC Racketeering Enterprise.

**Civil RICO/CICO Case Status**

**63.** As outlined in the Civil RICO/CICO Complaint, CFC sought to suppress the Appellants and strip the Appellants of all creditability and resources to hold CFC responsible. CFC's preferred forum to retaliate is the Bankruptcy Court, a court of equity.

**64.** CFC has been uniquely successful. CFC directly and through its agents such as Greenlight have compromised, in total, the administration of the Prosser Bankruptcies Proceedings by compromising the Former Bankruptcy Judge, all the Court-Appointed Fiduciaries, and for the most part, foreclosed the Appellants' access to local law enforcement. The Former Bankruptcy

Judge's rulings are oppressive and continue to be oppressive. The Public record ensures Appellant Prosser will struggle to pay the expenses of his day-to-day living.

**65.** This manifest injustice and/or miscarriage of justice has been supported by more than a Former Bankruptcy Judge but support for deprivation of the Constitution rights by the whole of the Judicial system.

**66.** Per the CS, VIDC Judge Wilma A. Lewis has known that the Former Bankruptcy Judge was removed for Judicial misconduct in adjudicating the Prosser Bankruptcies Proceedings but acts, in all cases, as if she is ignorant thereof.

**67.** The latest chapter of this manifest injustice and/or miscarriage of justice is Judge Malloy's failure to mandate the DOJ to produce the DOJ/Judge Agreements even if only there was an *in-camera* production. Judge Malloy has facilitated the Color of Law violations.

**68.** Except for Judge Savage and to a lesser extent Judge Gomez[64], the whole of the Virgin Islands Federal Court system, when

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[64] Judge Gomez, while not perfect, during his appointed tenure, applied the law based upon the facts before him, except when with respect to the Williams Case and the provision of Victim Rights under 18 U.S.C. § 3771. While serving as a holder Judge, the matter before

the Prosser Bankruptcies proceedings are involved, have the appearance of Color of Law proceedings bolstered by the fact that without exception every ruling that benefited Appellant Prosser and/or his associates would be overturned by this Court.

**Closing Comment**

**69.** It has been said that attorneys run with the land. In the Prosser Bankruptcies, counsel which had represented Appellant Prosser disappeared when ICC was placed in involuntary bankruptcy by the Former Bankruptcy Judge.

**70.** Only a small group of counsel remained, nearly all of whom were subject to this Court's Sanction Mandate.

**71.** To the extent Appellant Prosser's counsel has failed to make the record of the Prosser Bankruptcies Proceedings entirely clear, note that the Former Bankruptcy Judge authorized an assault upon Appellant Prosser and his associates which either destroyed the Enterprise Value or largely consumed the various Prosser Bankruptcies Estates.[65] Through June 30, 2013, approve fees to CH

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him involved the Williams Case Sealed Records wherein Appellants' believe Judge Gomez was not impartial.

[65] But for CFC underwriting the costs of the CH 11 Estates administration, the CH 11 Estates would have been converted to Chapter 7 Proceedings. To create the Chapter 11 Estates' Liquidation Trust, CFC subordinated a Superpriority Claim [VIBC Case No. 07-

11 Estates CA Trustee, CA Accounting Firm, and CA Counsel as well as approved fees to the CH 7 Estate CA Trustee and CA Counsel, by Appellant Raynor's calculation, totaled over $56,000,000.

**72.** Additionally, this Court has chilled Appellant Prosser's counsel while simultaneously ignoring corruption occurring by the CA Fiduciaries and the obvious fact that the CA Fiduciaries were acting hand in hand with what the Former Bankruptcy Judge before she was compromised, described as Joint Venture[66]; the Intercreditor Agreement wherein Greenlight assumed the role as CFC's proxy (for a price) and divided the spoils.

**73.** Appellant Raynor checked the Former Bankruptcy Judge's c.v. which still suggests that she is currently authorized to practice before the Third Circuit. On information and belief, this Court has removed the practitioner's authorization to practice before this Court

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30012, Doc 2723-1, p 10 & 16 of 44, filed 9/12/2012] and had to contribute $4,200,000 [VIBC Case No. 07-30012, Doc No. 2723-1, Plan Summary, p 4 of 44, filed 9/12/2012].

[66] Before she was Civilly Compromised, the Former Bankruptcy Judge found the Intercreditor Agreement to be a ***joint venture***, to wit: "... RTFC and the Greenlight Entities entered into a joint venture under an intercreditor agreement." Judge Civ. Compromised JKF's Memorandum Op., Venue holding, V.I. Bk Case no. 06-30009, DE 164 at p. 8.

and reported them (or ordered them to self-report) to the bar association for far less than judicial misconduct which forced the Former Bankruptcy Judge to resign her judicial appointment and forfeit her Federal pension. This preferential treatment of the Former Bankruptcy Judge, standing alone, is disqualifying.

# MOTION TO STRIKE THE DEPARTMENT OF JUSTICE REPONSE

**UNITED STATES COURT OF APPEALS**
**FOR THE THIRD CIRCUIT**

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No. 23-2072

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Jeffrey J. Prosser, *pro se*, and John P. Raynor, *pro se*, Appellants

v.

Gretchen C.F. Shappert, Virgin Islands USA, in her official capacity, and Merrick B. Garland, the U.S. Attorney General, in his official capacity, Appellees

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## MOTION TO STRIKE THE DEPARTMENT OF JUSTICE REPONSE

COMES NOW, Appellant Jeffrey J. Prosser ("Prosser"), *pro se*, and Appellant John P. Raynor ("Raynor"), *pro se*, (collectively, the "Appellants") and for the reasons set out hereinbelow, move this Court to strike the Department of Justice's ("DOJ") April 19, 2024, Response ("DOJ's Response") to Appellants' *Dissolution Motion*[1]

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[1] "Dissolution Motion" refers to Appellants' *Motion Seeking an Immediate Declaration that the Virgin Islands Bankruptcy Court Was Not Legally Constituted and That All of Its Orders (In Active Cases) Are Void Ab Initio*, which was filed on April 11, 2024, as ECF No. 36-1, and refile on April 12, 2024, as ECF No. 37-2, as an exhibit to the Special Master Motion.

and Appellants' *Special Master Motion*[2]. In support of the Motion to Strike, the Appellants respectfully submit:

## NOTICE

Appellants reserve the right to, and intend to, file a Reply to the DOJ's Response.

## WAIVER AND INCONSISTENT PLEADINGS

Appellants move to strike the DOJ's Response on two grounds: waiver; and bad faith, *i.e.*, inconsistent pleadings. The DOJ's waiver has occurred both before this court and in the proceedings below - before the VIDC[3]. The inconsistent pleadings address the DOJ's bad faith.

## UNLAWFULLY CONSTITUTED ISSUE

Appellants note that DOJ did not contest Appellants' position that the VIBC[4] is Unlawfully Constituted Issue[5]. Appellants' position is simple, the DOJ has waived the right to contest the

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[2] "Special Master Motion" refers to Appellants' *Conditional Motion for the Appointment of a Special Master*, filed on April 12, 2024, as ECF No. 37-1.
[3] "VIDC" means the Virgin Islands District Court.
[4] "VIBC" means the Virgin Islands Bankruptcy Court.
[5] The Unlawfully Constituted Issue involves to separate grounds: the VIBC was not authorized by the U.S. Code; and Congress has no Constitutional authority to create the VIBC.

presentation by Appellants of the Unlawfully Constituted Issue by this Court. The DOJ's waiver should weigh heavily in favor of a finding that the VIBC is Unlawfully Constituted Issue.

**APPELLANTS' ALLEGATIONS**

1. The Appellants' SOF&L[6] is a verified pleading; a pleading that has been verified by the DOJ.

2. The SOF&L set forth that Appellants' case is part of a much larger case [¶62(i)] with an unlimited budget [¶62(o)]. Additionally, the Appellants are under the boot of the DOJ [¶62(q)]. A more apt description is that the Appellants are a "pawn" – Appellants' efforts expose corruption.

3. One Federal agency has described the Appellants' case as an *integral part of a much larger case.*

4. Appellant Raynor drafted the SOF&L based upon his knowledge of the facts; however, Appellant Prosser hesitated to file the document. In response to Mr. Prosser's hesitation, on June 26, 2023, the proposed SOF&L was sent to a member of the 'overwhelming Federal presence' [¶62(o)]. With knowledge of

[6] "SOF&L" means the Appellants' *STATEMENT OF FACTS & LAW*, filed in this proceeding on 7/8/2023 as ECF 10-2.

Appellant Prosser's hesitation, on July 6, 2023, the individual executed a declaration about the SOF&L which stated:

> Based upon my knowledge of the criminal investigations and their status, which is direct knowledge or knowledge of reliable sources with firsthand knowledge, the facts outlined in the SOF&L [Statement of Facts and Law] are in accord with, and not inconsistent with, my understanding of the subject DOJ criminal investigations. ("Verified SOF&L").

The Appellant Raynor has confirmed that execution of the declaration was authorized by one or more individuals of the DOJ's task force charged with managing the larger criminal case; hence, the description, the Verified SOF&L.

5. Given the above circumstances, the Appellants' SOF&L must be treated with the same weight and effect as if the DOJ had filed the SOF&L.

6. BAD FAITH: An impartial adjudicator needs to look no further than the first two paragraphs of the Verified SOF&L [Exhibit 4, ¶¶ 1 & 2 of the SOF&L] to understand that the DOJ's Response must be stricken from the record for many reasons, including, but not limited to, the DOJ's concurrence that "the VIDC erred in not performing its affirmative duties to investigate Fraud Upon the Court and to interdict Color of Law violations." The Doctrine of Estoppel forecloses the DOJ's Response, as filed.

7. 1ST WAIVER: Appellants on January 4, 2024, filed a Motion[7] [ECF 27-1] to which the DOJ did not respond. After 30 days, ample time for a DOJ response, this Court entered its Feb. 5, 2024, Order denying relief [ECF 29]. Appellants assert the gravamen of the Motion (the requested relief) was that the VIDC Judge was removed from another case because of the influence of an extra-judicial source [¶ 2]; that the reason for the VIDC Judge's removal relates directly to this Appeal, *e.g.*, the extra-judicial source had an personal interest[8] in Appellants' proceedings [¶ 2]; and that it should be assumed the extra-judicial source had influenced the proceedings below [¶ 3]. Plain speak - the VIDC Judge was not impartial; the influencer had a stake in Appellants' proceedings below; and the proceedings below were under the Color of Law. The DOJ, having waived a response to the Appellants' Motion cannot now rely upon the proceedings and adjudications of the same VIDC Judge. The DOJ's Response is estopped by facts deemed admitted by the DOJ's 1ST Waiver.

[7] *Motion for Limited Abatement of the Stay, Motion for Forthwith Relief and Objection to Appellees' Status Report.*

[8] Appellants were and are seeking documents which involve bribes taken by the extra-judicial source.

8. 2ND WAIVER: In the VIDC proceedings below, the Appellants filed Motions which sought to have all the Bankruptcy adjudications declared void *ab initio*, after discovering *Khanh Phuong Nguyen v. United States*, 539 U.S. 69 (2003). See Exhibit 1, the Appellants' *Motion for Forthwith Relief*, which was filed June 20, 2022, and Exhibit 2, the Appellants' *Motion for a Stay Pending Resolution of a Threshold Issue*, which was filed 6/29/2022. The DOJ did not respond to the foregoing motions. See Exhibit 3, the Appellants' *Motion for Default Judgment*, which was filed September 27, 2022. The Doctrine of Waiver/Forfeiture apply; hence, the DOJ has waived/forfeited their opportunity to object in the VIDC proceedings. That waiver/forfeiture binds these proceedings. Additionally, the failure of the DOJ to contest the Unlawfully Constituted Issue cannot be said to be a mere oversight.

9. 3RD WAIVER: The DOJ promptly responded to Appellants' *Motion for Expedited, Extraordinary Relief* [ECF 10-1, 7/8/2023] by filing a *Notice of No Objection* [ECF 12] on July 14, 2023. The least favorable position sought by Appellants was a requested stay while another panel addressed Unlawfully Constituted Issue in the *Prosser v Gerber* appeal, Case No. 22-

3456. On August 3, 2013, this Court entered a Stay Order [ECF 13], thereby, formally acknowledging the link between these proceedings and the legal issues presented by *Prosser v. Gerber* proceeding [Case No. 22-3456] to this proceeding. The July 14, 2023, DOJ response of No Objection, waives the DOJ's right to object to Appellant's reassertion of the Unlawfully Constituted Issue.

## ARGUMENT

But for the DOJ's verification, the Appellants would not have filed the SOF&L. Not because Appellants were not confident of the facts. Rather, Courts have not been receptive to anything filed by the Appellants. On the other hand, the Appellants are not working for the DOJ, *e.g.*, thus, the self-description of pawn. The Verified SOF&L clearly sets out an adversarial relationship between the Appellants and the DOJ, *e.g.*, the Appellants as under the DOJ's boot [¶62(q)].

The purpose of Appellants Complaint is set forth; to obtain documents which support setting aside VIBC adjudications thereby enabling the Appellants to seek damages. Complaint, ECF 38-2, p. 4 (This action seeks only to obtain the EVIDENCE withheld from

the Plaintiffs depriving the Plaintiffs of their ability to set aside their corruptly obtained subjugation and to enable the Plaintiffs to seek redress for all the damages). Vacating VIBC adjudications is related to the stated purpose of the Appellants' complaint.

Appellants assert that the VIDC Judges' ruling relied upon DOJ is demonstrative evidence that VIDC Judge was not impartial. Why the DOJ would rely upon that opinion is beyond Appellants' knowledge. However, the end thereof would continue to keep Appellants under the DOJ boot.

It is time justice and equity prevail. It is just and proper for this Court to strike the DOJ's Response from the record.

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WHEREFORE, the Appellants move this Court to strike the DOJ's Response from the record.

Dated: April 25, 2024

[Signatures & COS were on a separate page]

No. ___

Jeffrey J. Prosser, pro se, and John P. Raynor, pro se

v.

Gretchen C.F. Shappert, Virgin Islands USA, in her official capacity,
and
Merrick B. Garland, the U.S. Attorney General, in his official capacity.

## CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.2, I certify that the APPLICATION FOR A STAY in the above-entitled case complies with the typeface requirement of Supreme Court Rule 33.2, being prepared in New Century Schoolbook 12 point for the text and this brief, pages 1 through 39, contains 8351 words.

/s/ John P. Raynor
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