IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application under Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Vasudeva Nanayakkara
Attorney-at-Law
Advisor to His Excellency the President
Secretary, The Democratic Left Front
49 1/1, Vinayalankara Mawatha
Colombo 10.

Petitioner

SC FR Application No. 209/2007

Vs

1. K.N. Choksy P.C., M.P.
   Former Minister of Finance
   23/3, Sir Ernst De Silva Mawatha
   Colombo 7.

2. Karu Jayasuriya, M.P.
   Former Minister of Power & Energy
   2, Amarasekera Mawatha
   Colombo 5.

3. Ranil Wickremesinghe M.P.
   Former Prime Minister
   115, 5th Lane
   Colombo 3.

4. Chandrika Bandaranaike Kumaratunga
   Former President of Sri Lanka
   Horagolla Walawwa
   Horagolla.

5. Milinda Moragoda M.P.
   Former Minister of Economic Reform
   3/2, Allen Methiniyarama Road
   Colombo 5.

6. Sripathy Sooriyarachchi, AAL, M.P.
   Former Minister, Public Enterprise Reforms
   22, Niwasa Mawatha
   Rilaulla
   Kadana.

7. Charitha Ratwatte
   Former Secretary to the Treasury
   16, Jawatte Road
   Colombo 5.

8. P.B. Jayasundera
   Secretary to the Treasury / Former Chairman,
   Public Enterprises Reform Commission (PERC)
   Secretariat
   Colombo 1.

9. P. Weerahandi
   Former Secretary
   Ministry of Power & Energy
   410/7, Baudhaloka Mawatha
   Colombo 7.

10. Daham Wimalasena
    Former Chairman
    Ceylon Petroleum Corporation
    Member, Technical Evaluation Committee
    22/11, Subadra Mawatha
    Madiwela.

11. Upali Dahanayake
    Former Director, Ministry of Finance
    Member, Technical Evaluation Committee
    32, Peiris Avenue, Idama
    Moratuwa.

12. A.W.C. Perera
    Former Addl. Secretary
    Ministry of Economic Reforms
    Member, Technical Evaluation Committee
    57/2, Rajamaha Vihara Road
    Pita Kotte.

13. Shamalee Gunawardene
    Attorney-at-Law
    Former Director Legal, PERC
    500/111, Thimbirigasyaya Road
    Colombo 5.

14. DFCC Bank
    73/5, Galle Road
    Colombo 3.

15. Commissioner of Lands
    Land Commissioner's Department
    7, Gregory's Avenue
    Colombo 7.

16. Sri Lanka Ports Authority
    19, Church Street
    Colombo 1.

17. Ceylon Petroleum Corporation
    109, Rotunda Tower
    Galle Road
    Colombo 3.

18. John Keells Holdings Ltd.
    130, Glennie Street
    Colombo 2.

19. Lanka Marine Services Ltd.
    69, Walls Lane
    Colombo 15.

20. Susantha Ratnayake
    Chairman
    John Keells Holdings Ltd.
    130, Gleniiie Street
    Colombo 2.

21. V. Lintotawela
    Former Chairman
    John Keells Holdings Ltd.
    55, Abdul Caffoor Mawatha
    Colombo 3.

22. Nihal Sri Ameresekere
    Former Chairman, PERC
    167/4, Vipulasena Mawatha
    Colombo 10.

23. W.M. Bandusena
    Former Chairman, PERC
    XB 1/2/2, Edmonton Houses
    Kirulapona
    Colombo 5.

24. W.A.S. Perera
    Chairman, PERC
    West Tower, 11th Floor
    World Trade Center
    Colombo 11

25. Channa De Silva
    Director General
    Securities & Exchange Commission of Sri Lanka (SEC), Level 11-01, East Tower
    World Trade Center
    Echelon Square
    Colombo 1.

26. Lalith Weeratunga
Secretary to His Excellency the President
Presidential Secretariat
Colombo 1.

27. Wijeyadasa Rajapakshe P.C., M.P.
Chairman, Parliamentary Committee on Public Enterprises (COPE)
17, Wijeba Mawatha
Off Nawala Road
Nugegoda.

28. Inspector General of Police
Police Headquarters
Colombo 1.

29. Deputy Inspector General of Police
Criminal Investigation Department
4th Floor, New Secretariat Building
Colombo 1.

30. Chairman
Commission to Investigate Allegations of Bribery or Corruption
36, Malalasekera Mawatha
Colombo 7.

31. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

32. Sri Lanka Shipping Company Limited
46/5, Nawam Mawatha
P.O. Box 1125
Robert Senanayake Building
Colombo 2.

33. Lanka Maritime Services Limited
3rd Floor, Robert Senanayake Building
46/5, Nawam Mawatha
Colombo 2.

34. Lanka Services (Pvt) Ltd.
1st Floor, Robert Senanayake Building
46/5, Nawam Mawatha
Colombo 2.

Added-Respondents

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS THE OTHER HONOURABLE JUSTICES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

WRITTEN SUBMISSIONS OF THE 22ND RESPONDENT

Upon the conclusion of the Arguments on 27.3.2008 Your Lordships' Court directed that Written Submissions, if any, be filed on or before 9.5.2008 on matters arising from submissions already made in Court. Accordingly, these Written Submissions are being respectfully tendered to Your Lordships' Court.

NOTES SUBMITTED WITH ORAL SUBMISSIONS MADE ON 26.2.2008

It is respectfully submitted that the under-mentioned Notes, tendered to Your Lordships' Court, with Oral Submissions on 26.2.2008, be read and construed, as part and parcel of these Written Submissions.

Note 1 – PERC Act No. 1 of 1996
Note 2 – Overall Issues
Note 3 – DFCC Business Valuation of 19th Respondent, LMSL
Note 4 – Observations on Affidavit of 8th Respondent, Secretary to the Treasury
Note 5 – Detail Note in relation to salient marked Documents

DOCUMENTS SUBMITTED WITH A BRIEF NOTE ON 14.3.2008

It is also respectfully submitted that the under-mentioned Documents Numbered 1, 2, 3, 4 and 5 tendered to Your Lordships' Court on 14.3.2008, together with a Brief Note thereon, also be read and construed, as part and parcel of these Written Submissions.

Document No. 1 – Guidelines on Government Tender Procedures, as set out in Public Finance Circulars
Document No. 2 – PERC Annual Report 2004
Document No. 3 – PERC Report dated 27.10.2006 on the divestiture of the 19th Respondent, LMSL submitted by the 23rd Respondent, then Chairman PERC, for the COPE Investigation
Document No. 4 – Site Lease No. 161 dated 6.8.1999 between 16th Respondent, SLPA and SAGT
Document No.5 – New Revenue Proposals & Estimated Expenditures - 2008

WRITTEN SUBMISSIONS DATED 22.10.2007

It is respectfully further submitted that the Written Submissions tendered to Your Lordships' Court on 22.10.2007, prior to the commencement of the Argument, be also read and construed, as part and parcel of these Written Submissions.

SUBMISSIONS IN CONCLUSION

These submissions in conclusion are respectfully submitted under the under-mentioned 'Headings':

A) Purported transfer of Land 8A 2R 21.44P at Bloemendhal Road, Colombo 13, is *ab-initio* null and void, and fraudulent

1. a) It was well and truly established that, under and by virtue of Section 23 of the Sri Lanka Ports Authority Act No. 51 of 1979, as amended by Sri Lanka Ports Authority (Amendment) Act No. 7 of 1984, the Land in issue was rightfully and lawfully the freehold property of the 16th Respondent, Sri Lanka Ports Authority (SLPA).

   b) i) The aforesaid Document No. 4, i.e. Site Lease No. 161 dated 6.8.1999 by and between the 16th Respondent, SLPA and South Asia Gateway Terminals (Pvt) Ltd., (SAGT) undisputedly established the foregoing,

   ii) the 18th, 19th, 20th and 21st Respondents in their Statement of Objections at paragraph 96(f) have admitted that the 18th Respondent, John Keells was the leading promoter and is the single largest shareholder of SAGT, and

   iii) therefore, the 18th, 19th, 20th and 21st Respondents are thus estopped from pleading otherwise; and if they so plead, would it not then be an assertion on their part, that the SAGT transaction is *ab-initio* null and void ?!

2. a) SLPA Act No. 51 of 1979, as amended, has not conferred power on the SLPA to sell any Land vested in the SLPA, inasmuch as Gazette No. 396/9 of 9.4.1986, *inter-alia*, schedules the Land in issue, as coming within the Port of Colombo in terms of Section 2 (3) of the SLPA Act No. 51 of 1979 defining the limits of the Port of Colombo.

   b) Hence, the said Land necessarily and exclusively has to be used solely for the requirements of the Port of Colombo, *with the SPLA having no legal right, whatsoever, to sell and/or alienate the same.*

3. Accordingly, the 'purported transfer' of the said Land by Instrument of Grant **(P30)** dated 19.1.2005 (i.e. long after the Share Sale & Purchase Agreement **(P19(c))** was executed on 20.8.2002) is *ab-initio* null and void, and furthermore **(P30)** had been a knowingly falsified, fraudulent, as well as an invalid document; no title having or could have passed thereon, in that:

   a) The 16th Respondent, SLPA, as the real owner, had no legal right to have transferred and/or alienated the said Land.

   b) Instrument of Grant **(P30)** on which the 4th Respondent had been caused to place the Public Seal of the Republic, under the power and function conferred by Article 33(d) of the Constitution, purporting to transfer the said Land, on the wrongful presumption, that it was State Land, was unconstitutional, in that;

- transfer of State Land is governed by Article 154 (G) in the 13th Amendment to the Constitution, with List I of the Ninth Schedule ("Provincial Council List") at Item 18 thereof, pertaining to Land, referring to the extent set out in Appendix II thereto, on Land and Land Settlement, which at Section 1:3, subjects that the powers conferred by Article 33(d) and any written law governing the matter of alienation or disposition of State Land within a Province to any citizen or organization by the President, shall be on the advice of the relevant Provincial Council, in accordance with the laws governing the matter.

c) Though it is *clearly stated* in **(P30)** that consideration of Rs. 1,199,362,500/- had been paid by the 19th Respondent, LMSL on 19.1.2005 to the Government, and that the same had been duly acknowledged therein as having been received on 19.1.2005 by the Government;

i) there had been no such payment made on 19.1.2005, as disclosed by the 19th Respondent, LMSL Accounts for the year ended 31.3.2005 **(P10(a)),** and no such payment had been received on 19.1.2005 by the Government, as per Letter dated 18.8.2005 **(P31(b))** of the Director General, Department of Treasury Operations.

ii) payment by the 18th Respondent, John Keells *(one corporate body)* made to the 17th Respondent, CPC on 20.8.2002 as consideration for 90% Shareholding of the 19th Respondent, LMSL, cannot in any manner, whatsoever or howsoever, be deemed and/or interpreted and/or construed *nearly 2½ years thereafter*, **also** to be a payment by the 19th Respondent, LMSL *(another corporate body)* to the Government on 19.1.2005 as consideration for the Land !

4. a) The 18th, 19th, 20th and 21st Respondents, acting collusively, seeking refuge under Mano Tittawela, Senior Advisor to the 4th Respondent, significantly refrained and avoided from submitting to PERC, a copy of the 19th Respondent, LMSL Accounts for year ended 31.3.2005 **(P10(a))** (*which had been required by PERC for a 'survey' carried out of all privatizations, as disclosed at pages 1, 2, 3 and 4 of PERC Annual Report 2004 i.e. aforesaid Document No. 2*), as referred to at paragraph 8 in my Affidavit dated 7.9.2007, together with Letter **(P32 / 22R1)**, which fact had not been denied by the aforesaid Respondents.

b) Such suppression of the 19th Respondent, LMSL Accounts for the year ended 31.3.2005 **(P10(a))** could only have been in view of the fact that the 18th, 19th, 20th and 21st Respondents *had been well and truly aware*, that they had caused the illegal falsified fraudulent Document **(P30)** to be executed on 19.1.2005, which is a date during the Financial Year ended 31.3.2005, and which said Accounts **(P10(a))** discloses that no payment as referred to in **(P30)** had been made by the 19th Respondent, LMSL on 19.1.2005 to the Government for the said Land.

5. Such illegal and fraudulent purported transfer of the said Land had been, notwithstanding my refusal, as then Chairman PERC, to comply with the request made by the 8th Respondent, Secretary to the Treasury, that the said Land be immediately transferred, as referred to at paragraph 7(c) of my Affidavit dated 7.9.2007, together with Letter **(22R6),** which fact had not been denied by the 8th Respondent, Secretary to the Treasury *whereby it stands to reason that it is the 8th Respondent, Secretary to the Treasury, who had caused the illegal and fraudulent purported transfer of the said Land.*

B) Sale of 90% Shares of 19th Respondent, LMSL and the 'Process'

6. It was well and truly established that the following '*instantaneous*' decisions had been made long before the Cabinet Memorandum **(P12)** of the Minister of Power & Energy **had even been circulated** to the Cabinet of Ministers, as evidenced by 4th Respondent, then President's Cabinet Memorandum of 7.8.2002 **(P14)**, opposing the proposal to privatize the 19th Respondent, LMSL, confirming therein that the Cabinet Memorandum **(P12)** had been received only on 6.8.2002.

   a) The '*instantaneous*' offer of the 90% Shares of the 19th Respondent, LMSL by the 8th Respondent, as then Chairman PERC and acceptance thereof by the 18th Respondent, John Keells / 20th Respondent, Susantha Ratnayake on 12.7.2002 **(P15(a) / P16),** and

   b) The finalization of the transaction, with the following 'special concessions' '*instantaneously*' granted by the 8th Respondent, then Chairman PERC to the 18th Respondent, John Keells at a Meeting had on 2.8.2002 with the 20th Respondent, Susantha Ratnayake **(P18(a) / (P18(b))**, which 'special concessions' were contrary to the RFP **(P5),** as confirmed by the Minutes of the Pre-Bid Conference **(P4),** chaired by the 8th Respondent, as then Chairman PERC, himself;

      i) confirmation that all marine fuel / bunkers, within the Port of Colombo are handled and transported using the CUF, managed and controlled by the 19th Respondent, LMSL, which resulted in additional Clause 8.2 being surreptitiously included by the 13th Respondent, Director Legal PERC in the CUF Agreement **(P19(a)).** (*This was subsequently struck down by the Court of Appeal by Judgment dated 1.8.2005 in CA 829/2005* ***(P22))*** !

      ii) Taking over by the Government of a Claim against the 19th Respondent LMSL of US $ 9.2 Mn. *(equivalent to about Rs. 920 Mn., whilst the payment to the Government for 90% Shares of LMSL was only Rs. 1200 Mn. !)*

      iii) Stamp Duty payable on the transfer of the Land to be borne by the Government or CPC, *(whereas Stamp Duty is normally borne by the Purchaser)* !

7. It was also well and truly established that:

   a) the Minutes of the Cabinet Approval had been confirmed only on **21.8.2002 (P13)** and had been received only on **27.8.2002** by the Ministry of Power & Energy, as per the 'date stamp' thereon. In fact, significantly, the heading of Cabinet Memorandum **(P12)** is titled:

      "Privatisation of Lanka Marine Services (Pvt) Limited: Sale of 90% of Shares on the 'All or None' Window of the Colombo Stock Exchange", and

   b) Agreements **(P19 (a)/(b)), (P19 (c))** and **(P27)** had been entered into **previously** on **20.8.2002**.

c) i) The draft of the Shares Sale & Purchase Agreement had been circulated with the RFP **(P5)** in April 2002, and signed as accepted by the parties as stipulated at Section 8.1 (e) on page 22 of the RFP **(P5)** in May 2002.

ii) Hence, the above **undue 'special concessions' had been surreptitiously included thereafter**.

8. a) Public Finance Circulars

i) No. FIN – 358 dated 2.7.1998 @ page 14 of the aforesaid Document No. 1, and

ii) No. FIN – 358(4) dated 29.11.1999 @ page 37 of the aforesaid Document No.1, *(which had been issued under the own hand of the 8th Respondent, as then Secretary to the Treasury !),*

had required that the entire transaction process be handled by a CATB, assisted by a TEC.

(A specimen of a Letter of Appointment of a CATB and TEC issued by the Department of Public Finance of the Treasury, was included with aforesaid Document No. 1)

b) The above had been flagrantly violated by the 8th Respondent, as then Chairman PERC, acting in concert and collusion with the 7th Respondent, as the former Secretary to the Treasury, who was also at the same time an *ex-officio* Member of PERC, whilst the 8th Respondent was its Chairman.

c) The 8th Respondent in issuing **(P5)** nominating the 10th Respondent, then Chairman of 17th Respondent, CPC, to be the Chairman of the TEC had flagrantly violated Public Finance Circular No. 352(10) dated 24.8.2000 @ page 67 of the aforesaid Document No. 1, given under the own hand of the 8th Respondent, as the then Secretary to the Treasury !

9. All the matters referred to herein, more particularly those pertaining to the process of Sale of the 90% Shares of the 19th Respondent LMSL, any transfer or alienation of Land, the Valuations of the said Shareholding and the said Land, Tax and other Concessions granted, and the Agreements pertaining to the foregoing, came under the ambit, scope, purview and responsibility of the CATB, assisted by a TEC, *which process had been knowingly and flagrantly violated in this instance*.

C) Agreements (P19(a)) /(b), (P19(c)) and (P27), including the Sale of 90% Shares of the 19th Respondent, LMSL are *ab-initio* null and void, and fraudulent

10. Agreements **(P19(a)) /(b), (P19(c))** and **(P27),** including the Sale of 90% Shares of 19th Respondent LMSL to 18th Respondent John Keells, are *ab-initio* null and void, and fraudulent, in that;

a) i) they had been executed without the sanction of Cabinet, with 'special concessions' granted in contravention of the RFP **(P5),** as confirmed by Minutes of the Pre-Bid Conference **(P4),** chaired by the 8th Respondent, as then Chairman PERC, whereas subsequent approval of the Cabinet had been for Bids to be called on the Colombo Stock Exchange.

ii) In fact, Cabinet Memorandum **(P12)** is titled – **'Privatisation of Lanka Marine Services (Pvt) Limited: Sale of 90% of Shares on the 'All or None' Window of the Colombo Stock Exchange'**.

iii) It is not the practice when competitive bids are solicited on the Colombo Stock Exchange for 'Bid Bonds' previously to be called for. The Stock Exchange operates successfully without any such 'Bid Bonds', and hence the question arises, as to why 'Bid Bonds' were called for, when the recommendation was to call for competitive bids on the Colombo Stock Exchange !

iv) In the case of Trans Asia Hotel, the Government Shares therein, placed for Sale on the Colombo Stock Exchange, was withdrawn twice in view of not receiving the expected price, and was subsequently sold at the third time, at a price in excess of the expected price !

b) the 'process' in perpetrating the transaction had been in flagrant violation of stipulations contained in the Public Finance Circulars referred to above.

c) i) The 8th Respondent, as then Chairman, PERC could not have acted, as an Agent of the Government, in terms of Section 5(t) of the PERC Act No. 1 of 1996, as stated by him at paragraph 10(d) of his Affidavit dated 27.9.2007, to justify his actions and/or decisions.

ii) Cabinet Approvals for this transaction had not authorized PERC to act as an Agent of Government, whereas Section 5(t) specifically stipulates that PERC could act as an Agent of the Government, if so authorized by the Government.

iii) It is respectfully submitted that in any case, Section 5(t) is only an 'incidental power' granted by discretion to PERC, to act as an Agent in the discharge of its primary powers and duties set out in Section 5, which is essentially to make recommendations to the Government, in this instance *vis-à-vis* Section 5(e) which is to make recommendations to the Government on the sale or disposal of Shares of the Government in Companies.

iv) That too, only PERC as the duly constituted 'Commission', if so authorized by the Government, within the ambit and scope of the PERC Act, could have acted as an Agent of the Government, and not the 8th Respondent, as Chairman of PERC.

v) The *'instantaneous'* decisions made on 12.7.2002 **(P15(a)) / (P16)** and 2.8.2002 **(P18(a)) / (P18(b)**, by the 8th Respondent, as then Chairman PERC, demonstrate that the PERC Commission had not been consulted for decisions to have been made by the Commission, and Agreements **(P19(a)) /(b), (P19(c))** and **(P27),** to have been executed accordingly.

vi) PERC Commission had not delegated to the 8th Respondent, its powers, duties and functions, as required by Item 7 of the Schedule to the PERC Act No. 1 of 1996, and in any case, the matters dealt with warranted deliberations and decisions by the PERC Commission.

vii) It is respectfully submitted that PERC cannot arrogate to itself, powers, duties and functions of CATBs and TECs, which are stipulated in Public Finance Circulars contained in the aforesaid Document No. 1, whilst PERC is only a facilitating Agency of the Government, essentially to have advised and made recommendations, as stipulated in the PERC Act.

11. a) Addl. Solicitor General having been instructed by the 8th Respondent, Secretary to the Treasury, that the IMF had 'pressurized' the conclusion of this transaction is sheer *'tommyrot'*, in that, IMF does not impose such conditions, whilst on the contrary, *the IMF requires adherence to norms of good governance, and condemns fraud and corruption.*

b) *There was no such pressure, whatsoever, from the IMF* for the purported transfer of the Land in 2005, when I was Chairman PERC; nor for any one of the new Assignments which were being handled by PERC, as set out at pages 8 and 9 of PERC Annual Report 2004, i.e. aforesaid Document No. 2.

c) In fact, on the contrary, supported by the World Bank, with the concurrence of IMF, during my tenure as Chairman, PERC carried out a 'survey' of all privatizations done previously, to review success / failure, as had been disclosed at pages 1, 2, 3 and 4 of PERC Annual Report 2004 i.e. aforesaid Document No 2.

12. a) It was established that the Chief Valuer had been questionably 'short circuited', and the 14th Respondent DFCC Bank, *appointed without due process*.

b) As morefully set out hereinbelow, the 14th Respondent DFCC Bank's 'Business Valuation', as admitted by the DFCC Bank, had been well below the real market value of the 90% Shareholding of the 19th Respondent sold for only Rs. 1200 Mn., whereas as admitted by 14th Respondent DFCC Bank, and more particularly, as demonstrated hereinbelow, such sale price had been based on a 'valuation', which is a sheer 'mockery', whereby the Government had been cheated and deceived, *rendering the transaction to be fraudulent*.

c) The 'bona-fides' of the 14th Respondent, DFCC Bank is in serious question in view of the blatant falsehoods stated in their Letter dated 12.10.2004 **(8R3),** as morefully demonstrated hereinbelow, moreso particularly, when they had been 'put on notice' by PERC by Letter dated 5.10.2004 **(P28(b)),** with a 'material query', thereby giving rise to 'suspicion' that such Letter **(8R3)** had been written by the 14th Respondent, DFCC Bank, *with intent to mislead and cover-up.*

D) 14th Respondent, DFCC Bank's 'Business Valuation'

13. The 14th Respondent DFCC Bank by Affidavit dated 11.10.2007, through its Senior Vice President, Tyronne De Silva, **had not denied** paragraphs 11, 22 and 33(b)(12) of the Petition, which are reproduced below for easy reference of Your Lordships' Court.

"11 The Business Valuation of LMSL (19th Respondent) prepared by DFCC Bank (14th Respondent) appears to be erroneous, in that,

a) The discounted Cash Flow had erroneously reckoned the Assets of LMSL (19th Respondent) including the Bloemendhal Land 8A 2R 21.44P at a present value of Rs. 29,000,000/- to Rs. 49,000,000/- at discount rates of 22% p.a. and 18% p.a., respectively, whereas the Chief Valuer, as far back as July 1993, had valued the Assets of LMSL at Rs. 342,000,000/- including the said Land valued at Rs. 83,000,000/-.

b) On the basis of earnings of 8-years and 10-years, the Business Valuation of LMSL (19th Respondent) had been given to be of Rs. 1,400,000,000/- and Rs. 1,750,000,000/-, whereas LMSL (19th Respondent) Profits for the 4 years to 31.3.2006 is reported to be a total of Rs. 2,300,000,000/-.

c) **Market value of the uniquely situate and valuable Bloemendhal Land 8A 2R 21.44P had not been taken into reckoning**.

d) **In valuing an ongoing business, both the Market Value of its Assets, as well as a Business Valuation is carried out, prior to placing a value for the Sale of such business**".

"22. a) Petitioner understands that when COPE had confronted DFCC Bank (14th Respondent) with the issue of the 'monopoly clause' having been granted to LMSL (19th Respondent), after the Business Valuation of LMSL (19th Respondent) had been submitted on 10.6.2002, DFCC Bank had reneged on the said 'Business Valuation', which had been based on the premise of a liberalised competitive market and **had submitted a new Report stating that given such a monopoly their Business Valuation would have indicated a 'benchmark / floor price' of Rs. 2,400,000,000/-, and not Rs. 1,200,000,000/- for bidding of 90% of LMSL (19th Respondent).**

b) **Furthermore, DFCC Bank (14th Respondent) had intimated that had they been required to give an 'Assets Valuation' of LMSL (19th Respondent), that they would have engaged the services of a professional Valuer for such purpose**."

"33 (b) 12 Consequently, being confronted with the above monopoly clause, DFCC Bank reneged on their 'business valuation' of LMSL of Rs. 1,200,000,000/- and confirmed in writing that on the basis of a 'monopoly' their 'business valuation' is Rs. 2,400,000,000/-, confirming that had they been required to give a 'net assets valuation' they would have engaged the services of a professional real estate valuer for the Land 8A 2R 21.44 P." *(Paragraph quoted from COPE Report to Parliament contained in Hansard (P35)*

14. a) PERC, on my direction as its then Chairman, addressed Letter dated 5.10.2004 **(P28(b))** to 14th Respondent DFCC Bank, querying, as to whether the Land had been included in the 14th Respondent DFCC Bank's Valuation of the 19th Respondent LMSL.

b) To the said Letter of PERC, 14th Respondent DFCC Bank had responded by Letter dated 12.10.2004 **(8R3)**, signed by its Executive Vice President (Corporate Finance) Dayantha De Mel, confirming that;

i) 'Cash flows were projected for 15-Years and at the end of the period a terminal value of the business was computed'.

ii) 'Value of the Land was placed at Rs. 150,000/- per perch and assumed that its value would appreciate by 9% p.a. for inflation over the 15-Year period'.

iii) 'On this basis, projected value of the property was estimated at approximately Rs. 699 Mn. at the end of Year 15'.

iv) 'It was assumed that by the end of Year 15, LMSL would have acquired freehold title to the Bloemendhal property'.

15. During the Oral Submissions, it was demonstrated, that the foregoing statements in **(8R3)** by 14th Respondent DFCC Bank, particularly that Land had been included in the projected valuation, **was blatantly false**, in that;

a) On the assumption of Rs. 150,000/- per perch for the Bloemendhal Land 8A 2R 21.44P i.e. a total of 1381.44P, the total value for the said Land would be **Rs. 207.0 Mn.,** which is also stated by the 8th Respondent, Secretary to the Treasury at paragraph 13(k) of his Affidavit dated 27.9.2007.

b) The 14th Respondent DFCC Bank's Valuation Report marked **"A"** to its Affidavit dated 11.10.2007 at page 6 of the Schedules attached thereto, setting out the cash-flow projections, gives the opening Fixed Assets of the 19th Respondent LMSL under Year 2 (Year 1 assumed to be without any operations) as **Rs. 24.208 Mn**., which is the level of Book Value of the Fixed Assets of the 19th Respondent LMSL as at 31.3.2002 given as Rs. 24.958 Mn. on page 3 of **(P10(a))**, whereby it is clearly proven that the Land value of **Rs. 207.0 Mn.,** had not been included, as blatantly and falsely stated in **(8R3).**

c) Similarly, at page 20 of the aforesaid Schedules of the 14th Respondent, DFCC Bank's Valuation Report marked **"A"**, the Fixed Assets of the 19th Respondent LMSL at end of Year 18, had been projected as **Rs. 109.43 Mn**., thereby clearly proving that projected value for the said Land of **Rs. 699 Mn**., as per **(8R3)** had not been included in the cash flow projections, as blatantly and falsely stated in **(8R3).**

d) Thus and thereby **no value, whatsoever, of the said Land had been included in the 14th Respondent, DFCC Bank's Business Valuation of the 19th Respondent LMSL**, thereby giving the lie to what had been stated by 14th Respondent DFCC Bank in their Letter **(8R3).**

e) **Therefore, no valuation, whatsoever, of the Land had been made, either by the Chief Valuer or by a private Valuer, in this instance 14th Respondent, DFCC Bank !**

f) Though **(8R3)** and the 14th Respondent, DFCC Bank Valuation Report marked **"A"** to its Affidavit, has stated that the cash-flow projections had been for a period of 15 Years, the aforesaid Schedules attached to the Valuation Report reveal, that the cash-flow projections had been for a period of 18 Years, with Year 1 showing no operational data, except that on pages 1, 2 and 3 of the Schedules some data having been indicated, whilst on pages 4, 5, 6 and 7 thereof no data has been given in respect of Year 1 !

16. a) It is borne out from the foregoing, that upon PERC querying on **5.10.2004** by Letter **(P28(b))** from the 14th Respondent DFCC Bank, *as to whether Land had been included in their valuation*, that 14th Respondent DFCC Bank had '*mysteriously*' replied by Letter dated **12.10.2004 (8R3),** with blatant falsehoods to '*cover-up*' !

b) Significantly, immediately thereafter, by Letter dated **3.11.2004 (P29(a)),** by-passing PERC, the 18th Respondent, John Keells had written to the Ministry of Power & Energy requiring the transfer of the said Land, which had been '*instantaneously*' acted upon by the 9th Respondent, Secretary, Ministry of Power & Energy, by his Letter also dated 3.11.2004 **(P29(b))** to initiate the surreptitious, expeditious, illegal and fraudulent transfer of the said Land.

17. Though in the 14th Respondent DFCC Bank's Valuation Report **"A"** at Items 5 'bullet' 5 and Item 14 of Annex 1, it has been stated that the 'Residual Value' of 19th Respondent LMSL i.e. at the end of the cash-flow period, has been taken only as the 'Residual Value' of the Land, which as per **(8R3)** was said to be Rs. 699 Mn., page 20 of the aforesaid Schedules, under Year 18, which does not include such Land as aforesaid, has however shown a Net Current Assets of Rs. 1,396.8 Mn. and Fixed Assets of Rs. 109.4 Mn, thereby giving the lie to the aforesaid reckoning of 'Residual Value' !

18. a) As per page 3 of **(P10(a)),** the Net Current Assets of the 19th Respondent LMSL as at 31.3.2002 is given as Rs. 375.1 Mn. and the Book Value of the Fixed Assets as aforesaid as Rs. 24.9 Mn., giving a total Book Value of Rs. 400 Mn., without taking into reckoning, the 'market value' of the said Fixed Assets (which excluded the Land).

b) Similarly as per page 3 of **(P10(a)),** the Profits for the Year 2002/03 of the 19th Respondent LMSL had been Rs. 508.7 Mn.

c) 19th Respondent LMSL had been sold for only Rs. 1200 Mn. during the Year 2002/03 on 20.8.2002. The purchaser i.e. the 18th Respondent John Keells had immediately got Assets over Rs. 400 Mn. and Profits of over 500 Mn. during the year of purchase itself ! i.e. a total of over Rs. 900 Mn. in comparison to the payment made to the Government of Rs. 1200 Mn. ! **This is excluding the Land** !!

d) In the 14th Respondent DFCC Bank's Valuation Report marked **"A"** to its Affidavit dated 11.10.2007 at page 2, the 'Earnings Basis Valuation' has been based on an estimated Profits for the Year 2002/03 of only Rs. 175.7 Mn., whereas the actual Profits for the Year 2002/03, as per page 3 of **(P10(a))** had been Rs. 508.7 Mn., thereby making such valuation a 'mockery' !

e) It is evident from the foregoing that the purchase price of Rs. 1200 Mn. upon taking into reckoning the Assets of over Rs. 400 Mn. acquired, and the level of Profits during the year of acquisition of over Rs. 500 Mn., would be fully recovered within approximately 1 year of such acquisition; **with no payment for the 8 ½ acres of valuable Land in the Colombo City** !.

E) Joint-Objections by the 18th, 19th, 20th and 21st Respondents

19. a) A joint Statement of Objections has been filed on behalf of the 18th Respondent, John Keells, 19th Respondent, LMSL, 20th Respondent, Susantha Ratnayake and 21st Respondent, V. Lintotawela, with two identical Affidavits by the 20th and 21st Respondents, the Chairman and former Chairman of the 18th Respondent, John Keells, respectively, without any reference, whatsoever, in the said joint Statement of Objections to the said Affidavits, and *vice-versa*

b) The said Respondents in their joint Statement of Objections have significantly failed to expressly traverse the averments in the Petition, as they are required to have done, in terms of the provisions of the Civil Procedure Code !

c) Clearly, the said Respondents have been unable to so traverse the averments in the Petition, simply because the facts stated therein, *cannot in any manner whatsoever be denied and/or refuted by them*, whereby the veracity of the facts averred in the Petition, stand unrefutedly admitted by the said Respondents.

20. a) Though at paragraph 1 of their Statement of Objections, the 18th, 19th, 20th and 21st Respondents have made a general denial of the averments in the Petition, save and except those averments, which they state are expressly admitted, they have failed to expressly controvert any of the averments, or to have enumerated those averments, which they state are specifically admitted.

b) Though it is stated by the said Respondents at paragraph 3 of their Statement of Objections that the Petition is replete with inaccuracies and falsehoods, the said Respondents have significantly failed to point out any such inaccuracies or falsehoods in the Petition.

c) Notwithstanding the 18th Respondent, John Keells being a corporate, at paragraph 96 of the said Statement of Objections, claiming acumen and international status and standing, the said Respondents have miserably failed and *have been clearly unable to traverse the averments in the Petition*, as they ought to have !

d) The said Respondents having so failed, have peurilely sought refuge in defences in preliminary objections at paragraphs 8, 100, 101, 102 and 103 of their Statement of Objections, particularly, that the Petitioner is time barred, and that he has no status, and that he has no right to have filed this action in the interest of the public of this country !

21. a) The 18th, 19th, 20th and 21st Respondents at paragraphs 32, 33, 34, 35, 36, 39, 80, 81 and 83 of their Statement of Objections have laboured to justify the 'questionable selection' of the 14th Respondent, DFCC Bank, as an *'eminently qualified party'* for the valuation, raising the suspicion, as to whether the 18th, 20th and 21st Respondents had, in fact, been instrumental in getting the 14th Respondent DFCC Bank appointed *violating established procedure* !

b) at paragraph 80 of the Statement of Objections the said Respondents have stated that they verily believe that the Chief Valuer *does not have experience in valuation of Shares in companies,* such as the 19th Respondent LMSL !

c) The said Respondents at paragraphs 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47 of their Statement of Objections *had endeavoured at length to justify the methodology of valuation*, and also justify the valuation itself, which the said Respondents are not competent to have done !

d) Simply put, the 18th, 20th and 21st Respondents being the Buyer/Buyer's Chairmen, cannot *'dictate terms and the price'* to the Seller, the Government, which necessarily must duly act independently, and strictly in conformity with the proper and due procedure laid down in the public service; *which the said Respondents ought to have been well and truly aware of*.

22. The 14th Respondent DFCC Bank's Letter dated 12.10.2004 **(Z3)** referred to at paragraph 39 of the Statement of Objections of the 18th, 19th, 20th and 21st Respondents is the identical Letter marked by the 8th Respondent as **(8R3)**, which has been demonstrated to be **false and misleading**, and also questionable, in the light that the 14th Respondent DFCC Bank having been put on notice by PERC, with a query, by Letter dated 5.10.2004 **(P28(b))**, which had been replied by the said Letter of the 14th Respondent DFCC Bank **(Z3/8R3)**; *clearly to 'cover-up'*.

23. a) The Statement of Objections of the 18th, 19th, 20th and 21st Respondents is merely a story, akin to a 'fairy tale' related to a 'babe' !

b) The very fact that the said Respondents had been unable to expressly traverse or controvert the averments of the Petition, alone demonstrates that their narration is nothing but a 'fairy tale' !

c) The 'stance' taken by the 18th, 19th 20th and 21st Respondents, as per paragraphs 49 to 67 under the Heading – 'The "Alleged" Monopoly', of their Statement of Objections, that the surreptitiously included additional Clause 8.2 in CUF Agreement **(P19(a)),** did not confer a 'monopoly', is given the lie by the litigations by other parties, who were prevented from carrying out bunkering business, resulting in the Judgment dated 1.8.2005 of the Court of Appeal **(P22)**, as morefully stated in paragraph 20 of the Petition !

24. a) From the documents marked referred to at paragraphs 60, 70 and 93(iii) of the Statement of Objections of the 18th, 19th, 20th and 21st Respondents, it is revealed that 18th, 20th and 21st Respondents have had a *'cosy and close'* relationship with PERC and/or the 8th Respondent, as then Chairman PERC particularly *vide* -

i) PERC Letter **10.5.2002 (Z14) / (Z18),** with an **unsigned** Schedule, which is contradictory to PERC Letter dated **8.5.2002 (Z13)** forwarding copies of the Minutes of the Pre-Bid Conference, whereat several parties had been present as disclosed therein, and wherein at Minute No. 3.2 it has been clearly stipulated that **additional payment would have to be made** for the Land in issue by the 19th Respondent LMSL

ii) It is indeed 'intriguing' that just **two days after** the PERC Letter dated 8.5.2002 **(Z13)** that PERC had written another Letter dated 10.5.2002 **(Z14) / (Z18),** with an **unsigned** Schedule *inter-alia* indicating that **no additional payment has to be made for the Land in issue ;** *thereby raising the question, as to whether this vital matter had been considered by the TEC, which was handling the transaction at that time ?*

iii) 8th Respondent, Chairman PERC's Letter dated **15.8.2002 (Z25)** to the 20th Respondent, Susantha Ratnayake confirming that the Cabinet had granted approval, whereas the Cabinet Meeting had been held on **14.8.2002,** and the Cabinet Minutes had been approved and confirmed only on **21.8.2002** and received by the Ministry of Power & Energy only on **27.8.2002** as per the 'date stamp' on Cabinet Minutes **(P13)**.

Cabinet Decisions until confirmed at the next Cabinet Meeting are not communicated by the Secretary to the Cabinet. The Secretary to the Cabinet declined to inform me, as Chairman PERC of decisions on Cabinet Memorandum initiated by me, prior to confirmation thereof, and even then, communicated the same only to the Secretary to the President, since PERC at that time functioned under the President, and which Cabinet Decision was thereafter forwarded to me by the Secretary.

Therefore, it would appear, that the above Cabinet Decision had been 'leaked' by an interested Minister to the 8th Respondent, then Chairman PERC, for him to have sent **(Z25)** to the 20th Respondent, Susantha Ratnayake the very next day after the Cabinet Meeting.

b) In addition, the said Respondents have *questionably* failed and have been unable to explain, as to how they had '***instantaneously*' exchanged materially important Letters** with the 8th Respondent, as then Chairman PERC,

i) on 12.7.2002 *vide* – **(P15(a)) / (P16),** and

ii) on 2.8.2002 *vide* - **(P18(a)) / (P18(b))**.

25. a) Though at paragraph 96 of the Statement of Objections of the 18th, 19th, 20th and 21st Respondents, it has been 'claimed' that the 18th Respondent John Keells has international status and standing, including as an UN Global Compact Company, (*which is a company committed to combat fraud and corruption)*, the conduct of the said Respondents, as borne out in these proceedings, demonstrate that such status and standing is a *'fabulous facade'*, and has been blatantly *transgressed*.

b) In any event, such international status and standing 'claimed', cannot in any manner, anywise or howsoever, grant any 'special privilege' and/or 'immunity' and/or 'shield', for the 18th Respondent John Keells and its past and present Directors, including the 20th and 21st Respondents, its Chairmen, to be 'above the law' or 'beyond the reach of the law', in that, all persons, whomsoever, stand to be dealt with equally before the law.

26. The 'plea' headlining paragraphs 104, 105, 106, 107, 108, 109, 110 and 111 of the Statement of Objections of the 18th, 19th, 20th and 21st Respondents, that grave and irreparable loss would be caused to the 18th Respondent John Keells, if the transaction in issue is 'reversed',

a) is akin to a party claiming to retain property, which has been wrongfully and/or unlawfully and/or fraudulently obtained and/or misappropriated, which is alien to known law, and is unworthy and not in keeping with the aforesaid *'international status'* !

b) such apprehension of 'reversal' of the transaction in issue, by itself demonstrates the said Respondents' admission that the said transaction in issue is wrongful and/or unlawful and/or fraudulent !

F) BOI Approval granting Import Duty Concessions and Tax Holidays to 19th Respondent, LMSL

27. a) With the further Counter Affidavit dated 26.12.2007, the Petitioner has tendered Letter dated 1.11.2007 from the Chairman / Director General, BOI, annexing several documents thereto, compendiously marked as **(P36).**

b) It is evident from the 18th Respondent John Keells' Application to the BOI dated **as far back as 20.3.2002,** signed by the 20th Respondent, Susantha Ratnayake that the 19th Respondent LMSL had already been identified by the 18th Respondent John Keells, to be acquired, including the said Bloemendhal Land 8A 2R 21.44P, as specifically stipulated in the said Application and Annexures thereto.

c) i) PERC had advertised the Sale of 90% Shares of the 19th Respondent, LMSL on 8.2.2002 / 11.2.2002 **(P2(b)] / [P2(c))**.

ii) RFP **(P5)** had been issued only in April 2002.

iii) Pre-Bid Conference had been held on 30.4.2002 **(P4)**

iv) TEC Report **(P11)** had been made on 6.6.2002.

28. As per the documents compendiously marked **(P36):**

a) By Letter dated 11.7.2002, BOI had granted approval to the 18th Respondent John Keells for the establishment of an entirely new enterprise, without involving an existing business, with new plant and equipment, incorporating a new Company.

i) 8th Respondent, then Chairman PERC on 12.7.2002 had made award for the Sale of 90% Shares of the 19th Respondent LMSL to the 18th Respondent John Keells **(P15(a)) / (P16)**

ii) 8th Respondent then Chairman PERC on 2.8.2002 had granted wrongful undue 'special concessions' to the 18th Respondent John Keells / 19th Respondent LMSL **(P18(a)) / (P18(b))**

iii) 8th Respondent, then Chairman PERC and 13th Respondent then Director Legal PERC caused Agreements **(P19(a)) / (b), (P19(c))** and **(P27)** to be executed on 20.8.2002.

b) On 25.9.2002, Minister G.L. Peiris, in charge of BOI, signed Regulations published in Gazette Extra-ordinary No. 1256/22 dated 1.10.2002 amending the BOI Regulations to include any existing enterprise engaging in business, *inter-alia*, relating to petroleum for **additional investments**.

c) By Letters dated 4.10.2002 and 24.10.2002, 18th Respondent John Keells informed BOI that it had purchased 90% Shares of 19th Respondent, LMSL, and had forwarded changes to be effected to the BOI Letter of Approval dated 11.7.2002 and BOI Draft Agreement dated 16.9.2002.

d) By Letter dated 31.10.2002, BOI granted amended approval for a 5-Year Tax Holiday and Import Duty Exemption for an initial investment to be made by 18th Respondent John Keells **in** 19th Respondent, LMSL **stipulating that the plant, machinery and equipment to be used should be new**, subject to importation of used plant, machinery and equipment to be permitted on a valid certification of quality and value.

e) On 2.12.2002 BOI signed Agreement with 19th Respondent LMSL.

f) **19th Respondent LMSL a 'Tax paying' company, purportedly 'transforms' itself into a 'Non-tax paying' company, also with the benefit of Import Duty exemptions, thereby causing considerable losses to the State** !

29. a) In any event, the aforesaid Gazette Extra-ordinary No. 1256/22 dated **1.10.2002** has to apply for BOI Approvals for investments made **after** the said Gazette Notification of 1.10.2002 and cannot in any manner, whatsoever or howsoever, be applicable **retrospectively**.

b) As per Section 24(2) of the Greater Colombo Economic Commission Law No. 4 of 1978, as amended, Regulations made by the Minister **shall come into operation only upon publication in the Gazette or on a later date specified in the Regulation**.

c) **Therefore, in any case, the Regulations of Gazette Notification of 1.10.2002 cannot apply to the 19th Respondent, LMSL and/or the 18th Respondent, John Keells, in that, the 'so called investment' by 18th Respondent John Keells to purchase 90% Shares of the 18th Respondent, LMSL had been made previously on 20.8.2002 long prior to the Regulations published in the said Gazette Notification of 1.10.2002 !**

d) If such BOI Approvals and concessions are to be granted to investments made previously, then the logical question arises, *as to how many years back could and would the BOI go*, making such decision making 'ludicrous' and a 'mockery' !

30. a) The Gazette Extra-ordinary No. 1256/22 of 1.10.2002 does not in any manner, whatsoever or howsoever, grant a new investor i.e. party 'A', BOI concessions of Import Duty exemptions and Tax Holidays, *merely and purely on the premise* of the cost of acquisition or investment made by "party A" to purchase Shareholding of a Company 'X Ltd' from the State.

b) If the foregoing is not the interpretation of the aforesaid Gazetted Regulations, then,

i) party 'A' would be able to acquire 'X Ltd' and enjoy BOI Import Duty concessions and Tax Holidays for the specified period, and

ii) thereafter transfer in trust such Shareholding in 'X Ltd.' to party 'B', whereby 'X Ltd.' would similarly be so entitled to enjoy BOI Import Duty concessions and Tax Holidays for the specified period, and

iii) thereafter transfer in trust such Shareholding in 'X Ltd' to party 'C', whereby 'X Ltd' would similarly be so entitled to enjoy BOI Import Duty concessions and Tax Holidays for the specified period, and

iv) thereafter transfer back such Shareholding to original party 'A', whereby 'X Ltd' would similarly be so entitled to enjoy BOI Import Duty concessions and Tax Holidays !

c) Thus and thereby 'X Ltd' could enjoy BOI Import Duty concessions and Tax Holidays **in perpetuity**, which is an 'absurdity' and a sheer 'mockery', and obviously is not and cannot be the intention of the Statute / Regulations of the Government !

31. What the aforesaid Gazette No. 1256/22 of 1.10.2002 enables is for 'additional' investment to be made **into** an existing company, to be entitled for BOI Import Duty concessions and Tax Holidays for such 'additional' investment made **into** such company, **or** for a new company to acquire assets from an existing company, as opposed to setting up new infrastructure, inasmuch as BOI approves even the import of second hand plant and machinery for the establishment of BOI Projects; and thereby create additional exports and employment.

32. a) It is *ludicrous and absurd* for the Government to sell a 'profitable tax paying company' to a party, and grant further Import Duty concessions and exempt it from continuing to pay Taxes to the Government, **for the mere purchase of the Shares of such company** !

b) 19th Respondent, LMSL since 2002/03 to 2005/06 enjoying a wrongful 'monopolistic' status, as per page 3 of **(P10(a))** had made total **profits of Rs. 2,458.5 Mn**., **on which Income Tax ought to have been paid to the State.** It has been wrong and unlawful as aforesaid for the 19th Respondent LMSL to have been purportedly granted a Tax Holiday, denying the collection of legitimate State revenues, and thereby causing grave loss and damage to the State and the public.

c) If at all, only if, additional investments had been made **into** the 19th Respondent LMSL, **after** the said Regulations in Gazette No. 1256/22 of **1.10.2002**, had been made at the levels stipulated therein, only then and only upon such ***additional*** investments made after **1.10.2002**, could the 19th Respondent LMSL be entitled to Import Duty concessions and Tax exemption on '***additional profits'*** generated by such additional investment made **into** the 19th Respondent LMSL for further development, which is the very intention of granting Approval under Section 17 of the BOI Law.

G) Questionable conduct of those holding 'selected public office'

33. The 7th Respondent, as then Secretary, Ministry of Finance & Treasury, who had also been an *ex-officio* Member of PERC at the relevant time, and who had appointed only a TEC without a CATB, and had executed this transaction in issue, and who ought to have been fully conversant with the duty and obligation to have adhered to the aforesaid Public Finance Circulars, *had 'intriguingly' evaded filing Affidavit*, whereas he stood and stands accountable and responsible.

34. a) The 10th Respondent, then Chairman of the 17th Respondent CPC,
b) The 11th Respondent, then Director Ministry of Finance, and
c) The 12th Respondent, then Addl. Secretary, Ministry of Economic Reforms, *under which PERC functioned*,

- ***having functioned as Chairman and Members, respectively, of the TEC***, which functioned wrongfully, irregularly and unlawfully, without a CATB, but purporting also to be a 'CATB',

had 'intriguingly' evaded to file Affidavits,

i) in the face of the averments in the Petition pertaining to this transaction in issue handled by them, and,

ii) also notwithstanding that matters referred to at paragraph 9 hererinabove, i.e. *Sale of the 90% Shares of the 19th Respondent LMSL, any transfer or alienation of Land, the Valuations of the said Shareholding and the said Land, Tax and other Concessions granted, and the relevant Agreements,* had been matters, which came under the ambit, scope, purview and responsibility of a CATB, assisted by a TEC, and in this instance, they as a TEC, purporting to be also a 'CATB', had not even dealt with the said matters.

35. a) It is immediately after PERC, on my direction as then Chairman thereof, had addressed Letter dated 5.10.2004 **(P28(b))** to 14th Respondent DFCC Bank, querying, *as to whether the said Land had been included in the 14th Respondent DFCC Bank's Valuation of the 19th Respondent LMSL*, that on 3.11.2004, the 18th Respondent, John Keells, *behind the back of PERC*, had written Letter **(P29(a))** to the Ministry of Power & Energy seeking the transfer of said Land.

b) In response thereto on the very same day i.e. 3.11.2004 'instantaneously' the 9th Respondent, then Secretary, Ministry of Power & Energy, had telephoned the Addl. Secretary to H.E. the President forwarding his Letter also dated 3.11.2004 **(P29(b)),** to initiate the illegal and fraudulent purported transfer of the said Land, which had been '*expeditiously*' acted upon, as set out in paragraph 26 of the Petition.

c) The 9th Respondent, then Secretary, Ministry of Power & Energy, who had initiated as aforesaid the illegal and fraudulent purported transfer of the said Land *had intriguingly avoided filing an Affidavit* to explain his conduct, for which he stood and stands accountable and responsible !

36. The 13th Respondent, then Director Legal, who,

a) had formulated Agreements **(P19(a)) /(b), (P19(c))** and **(P27),**

b) had caused Clauses to be included in the said Agreements to accommodate 'special concessions' granted to the 18th Respondent, John Keells referred to hereinbefore

c) had caused the said Agreements to be signed by the parties thereto on 20.8.2002, as was evidenced by the Board Minutes of the 16th Respondent SLPA read out in Your Lordships' Court, and

d) who ought to have ensured due adherence to the Government Tender Procedure / Public Finance Circulars, aforesaid,

had 'intriguingly' evaded filing Affidavit, in the face of the averments pertaining to the foregoing in the Petition, for which the 13th Respondent stood and stands accountable and responsible.

37. The 15th Respondent, Commissioner of Lands had also 'intriguingly' failed to file Affidavit in the face of the averments in the Petition, particularly in paragraphs 26, 27, 28, 29, 30 and more particularly paragraph 31, pertaining to the wrongful, unlawful and fraudulent transfer of the Land in issue, whereas as the Commissioner of Lands he ought to have known the law pertaining to the ownership and alienation of the said Land !

38. a) The Addl. Solicitor General, appearing on behalf of the 8th Respondent, former Chairman PERC and present Secretary to the Treasury, endeavouring to justify and defend such illegal and fraudulent purported transfer of the said Land, in effect admits that the illegal and fraudulent purported transfer of the said Land had been done by and/or at the behest of 8th Respondent, as the Secretary to the Treasury.

b) The 8th Respondent, as the Secretary to the Treasury, whilst being an *ex-officio* Member of PERC, had done so *surreptitiously* 'behind the back' of PERC, who had handled this privatization transaction, and who, on my direction, as then Chairman PERC, had queried the valuation of the said Land, and *had refused to take action to initiate the transfer of the same.*

c) Likewise the 8th Respondent, as then Chairman PERC, had acted without authority,

i) to have 'instantaneously' agreed on 12.7.2002 **(P15(a))/ (P16)** to award the Sale of 90% Shares of the 19th Respondent LMSL to the 18th Respondent John Keells, and

ii) thereafter had 'instantaneously' agreed on 2.8.2002 **(P18(a)) / (P18(b))** to grant undue wrongful 'special concessions' to the 18th Respondent John Keells,

as morefully set out hereinbefore.

d) The 8th Respondent, as then Chairman PERC, had *curiously* submitted *'in undue haste'* Letter dated 15.8.2002 **(Z25)** to the 20th Respondent, Susantha Ratnayake, confirming a Cabinet Decision made on 14.8.2002, prior to confirmation thereof by the Cabinet on 21.8.2002, and communication thereof by the Secretary to the Cabinet only thereafter.

As per the submissions of the Addl. Solicitor General, on the instructions of the 8th Respondent, Secretary to the Treasury, the pertinent question arises, as to whether the reason for such 'undue haste' was also due to 'IMF pressures', or due to pressures / influences from other quarters ?

e) The 8th Respondent, Secretary to the Treasury's **Affidavit** dated 27.9.2007 **contains misleading and false statements**, as morefully set out in **Note 4** tendered with my Oral Submissions.

f) It would appear that the 8th Respondent, as Secretary to the Treasury, has caused two public officers, coming under his purview, direction and control, namely,

i) W.M. Bandusena, the 23rd Respondent, who as then Chairman PERC had submitted to COPE, the PERC Investigation Report dated 27.10.2006 i.e aforesaid Document No. 3, and who is now the Addl, Secretary, Ministry of Public Administration & Home Affairs, with the 2nd Respondent, as the Minister thereof, and

ii) K.P. Indran, Director, Department of Public Enterprises, Ministry of Finance, who had submitted **(P31(b))** included in the aforesaid PERC Investigation Report dated 27.10.2006 to COPE,

to give Affidavits to the 8th Respondent to be appended as **(8R12)** and (**8R13)**, respectively, to the 8th Respondent's Affidavit, to support the 8th Respondent, Secretary to the Treasury's *futile* attempt to cover-up the illegal and fraudulent transaction, *with the said two public officers retracting on the position taken by them in the aforesaid Investigation Report dated 27.10.2006 submitted to COPE* – i.e. aforesaid Document No. 3.

39. However, the 23rd Respondent, as then Chairman PERC, having submitted the PERC Investigation Report dated 27.10.2006 on the divestiture of 19th Respondent LMSL to COPE i.e. aforesaid Document No.3, 'intriguingly' has not filed an Affidavit, directly in Your Lordships' Court, traversing the averments in the Petition, as he ought to have; and more 'intriguingly' has 'refrained' from tendering to Your Lordships' Court, the PERC Investigation Report dated 27.10.2006 submitted to COPE i.e. aforesaid Document No.3 !

40. It is indeed even more 'intriguing', that;

a) the 16th Respondent SLPA had filed similar Affidavit through its Chairman, Saliya Wickramasuriya, moving to have the Petitioner's Application dismissed, whereas on the other hand, the 16th Respondent SLPA ought to have acted to protect the interest of SLPA, *vis-à-vis*, the illegal and fraudulent purported alienation of its own Land, giving rise to 'speculation', as to the circumstances in which, the Chairman of the 16th Respondent SLPA had signed such Affidavit, inasmuch as the circumstances in which a former Chairman SLPA had signed Agreement dated 20.8.2002 **(P19(a) / (b))** was disclosed by the then Board Minutes of SLPA read out in Your Lordships' Court.

b) likewise the 17th Respondent CPC had filed similar Affidavit through its Chairman, Ashantha de Mel, moving to have the Petitioner's Application dismissed, whereas the 17th Respondent CPC, ought to have acted to protect the interest of CPC, *vis-à-vis*, the wrongful and fraudulent alienation of its Shares in the 19th Respondent LMSL, at a value far below its 'real value', as morefully set out hereinbefore, giving rise to 'speculation', as to the circumstances in which the Chairman of the 17th Respondent CPC had signed such Affidavit.

41. a) The 24th Respondent, who was Chairman PERC at the time of the Petitioner instituted this action, with PERC having tendered the Investigation Report dated 27.10.2006, i.e. aforesaid Document No. 3 to COPE, has also 'intriguingly' evaded filing Affidavit, and has 'avoided' tendering the said PERC Investigation Report to Your Lordships' Court, *as he ought to have.*

b) The 25th Respondent, who, as Director General, Securities & Exchange Commission (SEC), is responsible in terms of Section 46 of the SEC Act No. 36 of 1987, as amended, to, *inter-alia*, investigate into 'the professional conduct or activities of listed public companies' i.e. in this instance, 18th Respondent, John Keells, has also 'intriguingly' refrained from filing Affidavit.

H) 26th Respondent, Secretary to H.E. the President has not opposed Petitioner's Application

42. The Addl. Solicitor General had also marked appearance for the 26th Respondent, Lalith Weeratunga, Secretary to H.E. the President.

a) The 26th Respondent, however, on the other hand, very 'significantly' had not filed Affidavit in the manner aforesaid as the 8th, 16th and 17th Respondents, praying that the Petitioner's Application is flawed and be dismissed !

b) The 26th Respondent, as the Secretary to H.E. the President, is well and truly aware of the documents and facts pertaining to the illegal and fraudulent purported transfer of the said Land, as more particularly had been pleaded at paragraphs 26 and 27 of the Petition, wherein it is disclosed that the said matter of the purported transfer of the Land *had been handled by the Presidential Secretariat*.

I) Shirking of responsibility by those holding 'elected public office'

43. The Petitioner, acting in the public interest, to protect public property, held in trust on behalf of the people, and to prevent the pillage and plunder thereof, illegally and fraudulently, in this instance, in the privatization of the 19th Respondent LMSL, which the 8th Respondent, as then Chairman PERC, at paragraph 21(b) of his Affidavit dated 27.9.2007 has stated, **had originated from the Economic Sub-Committee of Cabinet,** and which said privatization transaction, as demonstrated hereinbefore, had caused colossal loss and damage to the State and the public; and *in the face of the startling disclosures* made in the Petition -

a) The 1st Respondent, as then Minister of Finance, had filed an evasive Affidavit, more particularly, admitting in paragraphs 5 and 6 thereof, his 'incapability' to have effectively supervised the Secretaries of his Ministry, and avoiding responsibility for this transaction executed by his Ministry; whilst also having been a Member of the Economic Sub Committee of the Cabinet, and having also admitted that the 18th Respondent, was a Client of his; the 1st Respondent could not be an 'evasive' party, in the face of the aforesaid 'startling disclosures', moreso particularly, having been the Finance Minister, at the relevant time this transaction is issue had been perpetrated, *causing colossal loss and damage to the State and the public*.

b) The 2nd Respondent, then Minister of Power & Energy, whose Cabinet Memorandum **(P12)** had been acted upon, *even prior to its circulation to the Cabinet of Ministers* and approval therefor by the Cabinet, has 'intriguingly' evaded filing Affidavit, notwithstanding the responsibility to have ensured, the due and proper implementation of his own Cabinet Memorandum; and in any case, could not be a silent and an evasive party, in the face of the *startling disclosures* made in the Petition, moreso particularly, as a person 'espousing' the cause of 'good governance' in the public domain, but however *clearly unwilling to ensure the same vis-à-vis this transaction is issue*, which had been fraudulently perpetrated in blatant violation of all norms of 'good governance', *causing colossal loss and damage to the State and the public* !

c) i) The 3rd Respondent, then Prime Minister at paragraph 21 of his Affidavit had stated that this transaction in issue **was not considered by the Economic Sub-Committee of the Cabinet** during his term of Office as Prime Minister, whilst the 8th Respondent, as then Chairman PERC, at paragraph 21 (b) of this Affidavit has stated **that this transaction originated from the Economic Sub-Committee of the Cabinet**; which is further buttressed by the 8th Respondent's Letter dated 15.8.2002 **(P20)**, copied to R. Paskaralingam, *Advisor to the 3rd Respondent*, 7th Respondent, Secretary to the Treasury and 10th Respondent, Chairman CPC & TEC.

ii) The 3rd Respondent, then Prime Minister, who had chaired the Economic Sub-Committee Meetings of the Cabinet, had filed Affidavit attempting to prevent inquiry into this matter by Your Lordships' Court, by endeavouring to take 'refuge' under Parliamentary privilege of a pending inquiry by COPE, as morefully stated at paragraphs 2 to 8 of his Affidavit; whereas COPE having completed investigations is yet to recommend the action that ought been taken, whilst the 3rd Respondent *advocating to combat fraud and corruption* and holding the Office of Vice Chairman, International Democrat Union, ought to have readily co-operated with the inquiry into this matter by Your Lordships' Court, regardless of the parties concerned, moreso particularly, as the then Prime Minister, under whose regime, this transaction in issue had been perpetrated, *causing colossal loss and damage to the State and the public*.

d) The 5th Respondent, then Minister of Economic Reforms, under whose purview, direction and control PERC and the 8th Respondent, as then Chairman PERC, functioned, and who had been a Member of the Economic Sub-Committee of the Cabinet, and who in the given circumstances ought to have taken full responsibility for this transaction in issue, could not be a silent and an evasive party, intriguingly evading from filing Affidavit, whereas he ought to have co-operated in this inquiry before Your Lordships' Court, moreso particularly since this transaction in issue had been handled by an Agency i.e. PERC under his own purview, control and direction, *causing colossal loss and damage to the State and the public*, for which the 5th Respondent stood and stands responsible and accountable, as the Minister, who had been in charge of PERC, which had perpetrated this transaction in issue as aforesaid.

e) The 4th Respondent, then President, as per her Cabinet Memorandum **(P14),** having opposed the privatization of 19th Respondent, LMSL, has intriguingly failed and neglected to explain, as to *who had caused the Public Seal of the Republic to be placed on Instrument of Grant* **(P30),** *causing her to have placed her signature thereon*, and how and why it had been so done, thereby *causing colossal loss and damage to the State and the public* !

44. a) The foregoing Respondents, being holders of 'elected public office', ought to have acted to uphold public interest uppermost, and the constitutional duty and obligation to protect public property, which is held in trust for the people by a Government, in which they were responsible Cabinet Ministers / President, and accordingly ought to have co-operated in the Inquiry before Your Lordships' Court; but notwithstanding such duty and obligation as holders of 'elected public office', have failed and neglected to so co-operate, *where grave loss and damage has been caused to the State and the public*.

b) i) The 1st, 2nd, 3rd and 5th Respondents were prominent senior Members of the Economic Sub-Committee of the Cabinet, which mooted, crafted and cause the enactment of the perverse 'Tax Amnesty' by Act No. 10 of 2003, which was pronounced by a 5-Member Bench of Your Lordships' Court, **as having defrauded public revenue, causing extensive loss to the State**, and *to be violative of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.*

ii) Disregarding such pronouncement of Your Lordships' Court, and the subsequent endorsement thereof in Your Lordships' Court's Determination on the 'Inland Revenue (Regulation of Amnesty) Bill' communicated to the Hon. Speaker of Parliament, the said Respondents voted against and caused others to vote against the repeal of the said perverse 'Tax Amnesty' by Act No. 10 of 2004, which was enacted into law, *respecting such pronouncement and Determination of Your Lordships' Court*, by a majority of around 50 votes in Parliament.

J) COPE Report to Parliament submitted by the 27th Respondent, Chairman COPE on the Sale of 90% Shares of 19th Respondent, LMSL, not disputed by the 27th Respondent

45. a) COPE Report to Parliament on 12.1.2007 **(P35)** had been submitted by the 27th Respondent, Chairman COPE, after investigations having been carried out over a considerable period of time and with a PERC Investigation Report dated 27.10.2006 i.e. aforesaid Document No. 3, submitted by the 23rd Respondent then Chairman PERC, referred to at paragraph 32 (a) of the Petition, whilst PERC functioned at that time under the purview, control and direction of the 6th Respondent, deceased Minister, who was also a Member of COPE.

b) COPE had comprised of 30 Members of Parliament, representing several political parties, as per Hansard of 12.1.2007, included in aforesaid Document No. 3, and COPE had been assisted by the Auditor General and Director General, Public Enterprises, Treasury, in making its Report to Parliament.

c) The 27th Respondent, Chairman COPE, a President's Counsel has not disputed the said COPE Report, nor the averments in the Petition of the Petitioner.

d) My Letter dated 5.1.2007 **(P34)** was submitted, as required of me by COPE, as a former Chairman PERC, on the aforesaid PERC Report dated 27.10.2006.

46. The statement at paragraph 32 of the Affidavit dated 27.9.2007 of the 8th Respondent, Secretary to the Treasury containing a belated statement made in Parliament on 21.2.2007 i.e. *6 weeks after the above COPE Report to Parliament* on 12.1.2007, made by one Member of COPE, Deputy Minister Hussain Baila, has not been concurred upon by other Members of COPE, whilst the said Member was one, who was 'most critical' of this transaction in issue, during the investigations before COPE !

47. The 8th Respondent, Secretary to the Treasury, at paragraph 32 of his Affidavit has stated that the COPE investigations have not been completed, whereas no further Report has forthcome from COPE after 12.1.2007, now for a **period of 1 year and 4 months** !

K) Role of the Hon. Attorney General and his Officials

48. I respectfully reiterate the submissions contained in my Written Submissions dated 22.10.2007 made on this matter, prior to the commencement of Argument.

49. The 31st Respondent, Hon. Attorney General, is a party noticed in terms of Article 134 of the Constitution.

50. The Petitioner in his Counter-Affidavit dated 4.10.2007 at paragraph 7 thereof has stated as follows:

> "7. a) I verily believe that the 31st Respondent had prepared the Affidavits of the 8th Respondent, the two other aforesaid Affidavits **(8R12 & 8R13)** attached thereto, the Affidavits of the Chairman of the 16th Respondent and the Chairman of the 17th Respondent.
>
> b) I verily believe that Saliya Wickramasuriya, Chairman of the 16th Respondent and Ashantha de Mel Chairman of the 17th Respondent have signed the aforesaid Affidavits, without the respective Board of Directors of the 16th Respondent and 17th Respondent, having had prior deliberations to consider the merits of my Petition, and without they having received prior approval from their respective Board of Directors to sign such Affidavits"

51. a) The 8th, 16th and 17th Respondents have stated identically as follows, at the end of their respective Affidavits:

> "I am further advised to state that:
>
> (a) the fundamental rights of the Petitioner have not been violated,
> (b) the application has been filed out of time,
> (c) the application of the Petitioner is misconceived in law,
> (d) the Petitioner is not entitled to the reliefs prayed for"

b) The 23rd Respondent, now Addl. Secretary, Ministry of Public Administration & Home Affairs and former Chairman PERC, who had submitted the PERC Investigation Report dated 27.10.2006 to COPE, i.e. aforesaid Document No. 3, having not filed an Affidavit directly in Your Lordships' Court, and having not tendered a copy of the aforesaid PERC Report dated 27.10.2006 given to COPE, however, has 'curiously' given an Affidavit to the 8th Respondent, Secretary to the Treasury to support the stances taken by the 8th Respondent with the 23rd Respondent, *retracting on the position taken by him before COPE*.

c) K.P. Indran, Director Department of Public Enterprises, Ministry of Finance has similarly given an Affidavit to the 8th Respondent, Secretary to the Treasury to support the stances taken by the 8th Respondent with the said Public Officer, *retracting on the position taken before COPE, particularly, vis-à-vis his Letter dated 18.8.2005* **(P31(b)).**

52. The 8th Respondent, Secretary to the Treasury, whose **Affidavit** dated 27.9.2007 **contains misleading and false statements**, as morefully set out in **Note 4** tendered with my Oral Submissions, at paragraph 19(d) of his said Affidavit, states that the 31st Respondent, Hon. Attorney General's 'views on their legality had been obtained prior to signing those Agreements' i.e. Agreements **(P19(a)) / (b), (P19(c))** and **(P27)**.

53. Though the 8th Respondent, Secretary to the Treasury, at paragraph 21(b) of his Affidavit dated 27.9.2007 has stated that the privatisation of 19th Respondent LMSL, had originated from the Economic Sub-Committee of Cabinet, *the relevant Minutes of the Economic Sub-Committee of Cabinet were not tendered to Your Lordships' Court*, to have disclosed, as to what had transpired and who had been responsible for decisions made thereat, in regard to this scandalous privatisation of the 19th Respondent LMSL, which has been detrimental to the interest of the country and the public, *causing grave loss and damage to the State and the public*.

54. Perpetrating a fraud on the State, defrauding the public is indeed, no doubt, a grave crime, but would not endeavour to cover-up, be far worse, *warranting very stringent and deterrent action in that regard* ?

55. The Petitioner in his further Counter Affidavit dated 26.12.2007 at paragraph 6(b) thereof has stated as follows:

> "6 (b) marked **"P37"** my Letter dated 24.12.2007 forwarded to the Ceylon Chamber of Commerce, pointing out that their actions to award the Award for Best Corporate Citizen for Corporate Social Responsibility to the 18th Respondent is an affront to Court. Furthermore, if it be true, that the 31st Respondent, as I understand, had become a party to such action, whilst this matter was pending before Your Lordships' Court, I am appalled".

56. Elucidating the 'role' of the Hon. Attorney General, Your Lordship the Chief Justice, whilst, as the then Hon. Attorney General, at the National Law Conference 1997, had, *inter-alia*, stated as follows:

> "In civil proceedings also, the Attorney General's function is to assist the Court to reach the correct decision and not to endeavour to somehow obtain a judgment in favour of the State. When appropriate, it is his duty to promote conciliation of disputes between government department and citizens if that would meet the ends of justice.
>
> In advising the government, he has to form his opinion after considering the legal principles as well as the practical effect of his advice. This does not mean that his advice should besides being correct be somehow favourable to the government. Thus where any question in respect of which his advice is sought has arisen out of political, controversy or has political overtones, his opinion should be objective and fair to the parties affected. No doubt he must have due regard to the desire of any government to realise its legitimate aspirations and the political problems ministers have to contend with. However, it is his duty to advise the government to act within the law in implementing its policies."

57. In a public interest action of this nature, that too, involving colossal amounts of State funds and/or large extent of public property, ought not the Hon. Attorney General and his Officials, in the interest of protecting State funds and public property, and preventing colossal losses being caused to the State, act independently to enforce the 'rule of law', irrespective of the status and standing of the parties concerned, as had been elucidated by Your Lordship the Chief Justice, as per the *citation* aforesaid ?

58. The cogent and very important question also arises, as to whether any of the 'selected public officers' have been 'coerced' and/or had been 'inhibited' from acting independently, in signing Affidavits against the cause of public interest, put in issue by the Petitioner, and as to whether thereby, even '*good and honest public officers'* are being stymied and compromised, which is not only detrimental to the 'norms of good governance' required of them, but also detrimental to the future of our country ?

L) Privatisation in our Country !

59. I respectfully reiterate the Oral Submissions made by me on the matter of privatisation carried out in our country, and the statements pertaining thereto contained in Note 2 tendered to Your Lordships' Court with my Oral Submissions.

60. Pages 5, 6 and 7 of the PERC Annual Report 2004 i.e. aforesaid Document No. 2 set out the unbelievably innumerable and complicated **'post-divestiture issues'** and **'post-divestiture litigations',** arising out of 98 divestitures set out on pages 2, 3 and 4 thereof !

61. a) I respectfully submit that what has been carried out by successive Governments in the name of '**privatisation'**, have been only – **'very private transactions'** !

b) That too, they have been carried out negligently and/or deliberately, without providing for the warranted 'safeguards' and 'regulatory framework' to control quality and price, particularly in monopolistic situations, *whereby the country and the public have been held to ransom*.

c) Privatisation of public utilities and essential public services, internationally provide for 'step-in' Clauses in the Agreements, to enable the Government, in warranted situations, to 'step-in', takeover and operate such privatized facilities, to ensure uninterrupted continuous provision of such public utilities and/or services to the public, which a Government is responsible and duty bound to provide.

d) The privatization of the 19th Respondent LMSL and the utilization of the said Land is an example of a vital national requirement, which cannot have a break down or the Government held to ransom, with the 'stoppage' in a dispute, *as has happened in certain other cases, 'blackmailing' the Government* !

e) The foregoing has completely 'eroded' employee and public confidence, not only in privatisation, but even in warranted re-structuring processes, and this 'catastrophic impediment' urgently needs to be somehow rectified, in the interest of the development of the economy of our country, which requires the mobilization and involvement of a **responsible** and **accountable** private sector.

62. This transaction in issue, *vis-à-vis,* the privatization of 19th Respondent LMSL, **which has clearly been exposed to be a strategically maneuvered pre-planned 'fix',** is just only one case, among many, and amply demonstrates how dubiously and damagingly **'privatization transactions'** have been perpetrated in our country, resulting in the justified **'erosion'** of public confidence in privatization, which is detrimental to the economic development of our country, and the consequent upliftment of the quality and standard of life of the people.

63. a) In another case, a very 'lucrative' operation had been 'intriguingly' handed over to a pre-selected party, *devoid of any competitive bidding*, on the basis of a valuation by a private party for US $ 75 Mn., including public properties not valued by the Chief Valuer, for which only around 50% of such consideration was brought into the country in foreign exchange, and not the 100%, *as had been the condition*.

i) In addition, a right which had been valued at US $ 30 Mn. had been granted, without recovery of any consideration, whatsoever, therefor, whilst on the contrary frustrated endeavours had been made to attempt to re-structure CEB, around the same time, to raise funding of only US $ 30 Mn. from the ADB !

ii) This 'profitable operation' had also been granted BOI Approval for Import Duty exemptions and Tax Holidays, as in the instant divestiture of the 19th Respondent LMSL, and also had been further granted dubious 'subsidies' on a 'questionable formula', which was successfully challenged, saving, I believe, around Rs. 3,000 Mn.; whereas the operations do not earn foreign exchange for the country to have justified any BOI Tax Holidays !

iii) Outside the principal business of this privatized operation, the BOI Agreement has permitted services, such as **automatic car wash, car service, department stores, internet cafes, ATMs, food courts, etc.**, profits from which local businesses, also as a consequence of BOI Approval, would enjoy the 10-Year Tax Holiday granted and a continuous tax rate of 15% in perpetuity, with no apparent Regulation therefor; *thereby also **violating the fundamental rights** of those other persons in society, who are engaged in such businesses* **!**

b) Almost the entirety of the 'privatisation process' has similarly been replete with 'unequal treatment before the law', favouring a privileged few, eroding equitable social justice, and with the scandalous pillage and plunder of public resources, which rightfully belong to the poor people, further impoverishing them, and such pillaged and plundered resources, are consequently endeavoured to be replaced, under 'poverty reduction programs', invariably funded by 'borrowings', which had to be re-paid from State Revenues, or from 'further borrowings' !

64. **In comparison to the foregoing and to**

a) the value of the Land in issue of 1381.44P in the City of Colombo, bordering with a wide road frontage to the Bloemendhal Road and Walls Lane (if at Rs. 3 Mn. per Perch Rs. 4144 Mn.), and

b) the total Profits of the 19th Respondent LMSL for the 4 Years 2002/03 to 2005/06 of Rs. 2458 Mn. and the continuing Annual Profits thereafter, that too, on the basis of Tax Holidays and the grant of Import Duty Exemption, *foregoing public revenues*,

both **granted to just one 'corporate party',** the kind attention of Your Lordships' Court is respectfully drawn to aforesaid Document No. 5 wherein the following are disclosed:

i) the volumes of money in the **additional / new** Revenue Proposals for 2008 in the Budget presented to Parliament in November 2007, totaling a sum of only Rs. 24,910 Mn. for the **entire country to be recovered from the public at large**. The proposals are to collect Annual Revenues and Taxes of only Rs. 60 Mn, Rs. 250 Mn., Rs. 300 Mn., Rs. 400 Mn, Rs. 500 Mn., Rs. 1000 Mn., Rs. 1500 Mn., Rs. 2000 Mn., etc.

ii) the volumes of expenditure **for all the people of the country** i.e. for example - Tourism Rs. 1,831 Mn, Post and Telecommunication Rs. 6,843 Mn., Justice & Law Reforms Rs. 8,702 Mn., Healthcare and Nutrition Rs. 57,800 Mn, Transport 38,185 Mn., Social Services Social Welfare Rs. 834 Mn. Education Rs. 25,824 Mn., Plantation Industries Rs. 6,021 Mn., Indigenous Medicine Rs. 1,329 Mn. Higher Education Rs. 20,535 Mn. – *these are also mere provisions* and as to what would be *actually expended expenditure* would only be known later !

M) Conclusion

65. In the given facts and circumstances, none of the parties involved in the divestiture of the 19th Respondent LMSL could in any manner, whatsoever or howsoever, be heard to plead that they had acted *'bona-fide'* and in *'utmost good faith'*.

66. a) Furthermore, the RFP **(P5)** at page 2 thereof had cautioned and put the 'prospective parties' on notice thus:

> **"Bidders shall conduct and are solely responsible for conducting their own independent research ……. Bidders shall conduct and are solely responsible for conducting their own due diligence ……. No written or oral information provided shall be considered legally binding by the Bidders"**

b) The 18th Respondent John Keells had admitted this at Clauses 3.9 (a) and (b) of the Sale & Purchase Agreement dated 20.8.2002 **(P19(c))**, and *is thus estopped from pleading otherwise*.

c) In the given facts and circumstances, anybody whomsoever, who has misappropriated public property cannot be heard to say, that loss and damage would be caused to it, if such property is restored to its rightful owner, in this instance, statutory bodies of the State !

d) Would not any person in possession of property wrongfully and/or unlawfully obtained and/or stolen **be liable to be promptly arrested**, and such **property confiscated**, *and such person subjected to prosecution and punishment ?*

67. a) In terms of Article 28 of the Constitution it is a 'fundamental duty' of every person to preserve and protect public property, and to combat the misuse and waste of public property.

b) Both 'elected' and 'selected' public officers have taken an oath or affirmation to uphold and defend the Constitution.

c) In Judgment in SC FR Applications Nos. 10/07 – 13/07, Your Lordships' Court held that the limitation of the, 'not justiciable stipulation in Article 29 of the Constitution', *would not be a bar to interpret other provisions of the Constitution*.

d) In this instance, it is respectfully submitted, that likewise, in enforcing the provisions of the Offences Against Public Property Act No. 12 of 1982, and the provisions in Chapter X and Chapter XI of the Penal Code on the Contempt of Lawful Authority of Public Servants, and False Evidence and Offence Against Public Justice, duty and obligation mandated in Article 28 of the Constitution would be relevant and applicable.

68. a) The Offences Against Public Property Act No. 12 of 1982, as amended by Act No. 28 of 1999, stipulates that any person, whether public servant **or otherwise**, is liable for the following Offences:

1. Mischief to public property.
2. Theft of public property
3. Robbery of public property
4. Misappropriation or criminal breach of trust of public property
5. Cheating, forgery or falsification in relation to public property
6. Attempting to commit any one of the above offences

b) Punishment for any one of the above Offences is **imprisonment not exceeding 20 years and a fine of 3 times (i.e. 300%) the value of the public property in respect of which such offence was committed**.

c) "Public property" is defined in the said Act No. 12 of 1982 thus – *" 'Public property' means the property of the Government, any department, statutory board, public corporation, bank, co-operative society or co-operate union."*

d) In this instance, the said Land in issue is the property of 16th Respondent SLPA, a statutory authority / board, and the Shares of the 19th Respondent LMSL was the property of the 17th Respondent CPC, which is a public corporation.

69. a) Both 'elected' and 'selected' public officers, and all those of the private sector would be liable for punishment in terms of the Offences Against Public Property Act No. 12 of 1982 and the applicable Sections of the Penal Code, for any proven commission of any such offences, in relation to the perpetration of the transaction in issue.

b) Since the Offences Against Public Property Act No. 12 of 1982 is applicable to any citizen, then in the case of a corporate body, in this instance, the 18th Respondent John Keells, it is respectfully submitted, that relevant Directors of such corporate body would carry the liability for punishment for any proven commission of any such offences stipulated in the said Act, as well as in the applicable Sections of the Penal Code; so also would it be applicable to the 14th Respondent DFCC Bank, and its Directors and/or the BOI, and Members of its Commission, to the extent of any proven negligence and/or collusion on their part.

c) It is respectfully submitted that the perpetration of fraud on the Government and the public and/or the misappropriation of public property and/or collusion therewith or any attempt to have done so are grave crimes warranting deterrent punishment, and any attempt to have covered-up such crime would be a far graver crime, also warranting deterrent punishment.

70. It is respectfully submitted that the given facts and circumstances disclosed warrant, and accordingly in the national and public interest, I respectfully plead that Your Lordships' Court be pleased to;

a) cancel and annul the Sale of the 90% Shares of the 19th Respondent LMSL, including the purported transfer of the said Bloemendhal Land 8A 2R 21.44P, an integral part of the Colombo Port, as a 'signal lesson' to all those others, and to thereby initiate the restoration of public confidence, that public property would not be permitted to be 'pillaged and plundered' by a socio-politically influential privilege few, which is detrimental to the socio-economic development of our country,

b) cancel and annul the BOI approval granted to the 18th Respondent John Keells and/or 19th Respondent LMSL, inasmuch as the same is wrongful and unlawful, and accordingly, direct the 31st Respondent, Hon. Attorney General, to cause all State Revenues, which had been legitimately due to the State, to be duly recovered by the relevant authorities, namely, Director General Customs and the Commissioner General Inland Revenue, *together with applicable penalties thereon*,

c) direct the 31st Respondent, Hon. Attorney General, to cause the recovery by the State of all monies directly appropriated from and/or indirectly withdrawn by way of charges made from the 19th Respondent LMSL by the 18th Respondent John Keells and/or all those holding under the 18th Respondent John Keells,

d) give consideration to 'bar' and/or 'suspend' the corporates and/or any of the persons involved, from being given any State contract for work and/or services and/or approval of any project by the State, for a given period of years, as to Your Lordships' Court shall seem meet,

e) direct the 31st Respondent, Hon. Attorney General, 28th Respondent, Inspector General of Police and the 29th Respondent, Deputy Inspector General of Police (CID), to cause investigations to be carried out and prosecutions to be instituted, against all those persons involved in the perpetration of and/or who attempted to cover-up this transaction in issue, including those holding 'elected' and 'selected' public office, and those persons of the private sector, including the corporates involved and their Directors, who have been culpable and/or negligent, to be severely dealt with and/or caused to be so dealt with, strictly enforcing the rule of law, *inter-alia*, under and in terms of the provisions of

   i) the Offences Against Public Property Act No. 12 of 1982, where on conviction, fines of 3 times the value of the public property in respect of which offences have been committed and/or attempted, could be imposed, with sentences of imprisonment for a period not exceeding 20 years, and

   ii) Chapter X and Chapter XI of the Penal Code dealing with Contempt of the Lawful Authority of Public Servants, and False Evidence and Offences Against Public Justice,

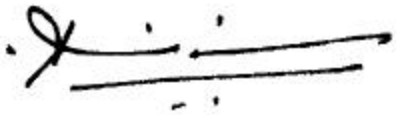
   as severe and stringent action to arrest conduct and actions, which are detrimental to the interest of our country and the people, and to thereby restore equitable social justice, ensuring that all persons are *equal before the law* and that no one is *beyond the reach of law*.

f) direct the 30th Respondent, Chairman, Commission to Investigate Allegations of Bribery or Corruption, to investigate all those persons involved in the perpetration of and/or who attempted to cover-up this transaction in issue, and upon such investigation, where warranted, to cause prosecutions to be instituted under and in terms of the provisions of the Bribery Act, including Section 70 thereof dealing with the offence of Corruption.

g) give consideration to require the 26th Respondent, Secretary to H.E. the President, who appoints the Commission of the BOI, in terms of the BOI Law, to cause the BOI to make known to the public, by way of Gazette Notifications, the names of the enterprises to whom BOI Approvals have been granted and are being granted, disclosing the dates and details pertaining to the Import Duty concessions and the Tax Holidays afforded / being afforded to each such enterprise.

h) give consideration to recommend the appointment of a Presidential Commission, to sit for a considerable period of time, to examine and investigate into all privatizations hitherto carried out, including State Lands alienated in any manner, whatsoever, including by way of rental and/or lease, without any valuation from the Chief Valuer, and recommend warranted rectification and/or modifications thereto or the cancellation and annulment thereof, and the recovery of public property, wrongfully and unlawfully pillaged and plundered from the State, and penalize and punish all those, who had committed or caused such wrong-doings and unlawful acts to be perpetrated, causing loss and damage to public property, *thereby restoring public confidence, and ensuring the just and equitable socio-economic development of our country*.

On this 9th day of May 2008



22nd Respondent

Encl:

As a Member of the International Consortium on Governmental Financial Management, International Association of Anti-Corruption Authorities, and the Association of Certified Fraud Examiners, I receive information on instances in other countries of fraud, involving well known corporates, and actions taken thereon by the relevant law enforcement authorities, **disclosing that international corporate status and/or standing and/or reputation, is no bar and/or shield against investigation, prosecution and punishment by the law enforcement authorities**. I annex reports on the 'internet' in relation to some of such instances, for the kind attention of Your Lordships' Court.

ANNEXURES

REPORTS ON THE INTERNET ON SOME INTERNATIONAL INSTANCES OF FRAUD, SOME INVOLVING 'WELL KNOWN' CORPORATES

- EU fines Microsoft record US $ 1.4 billion
- Former bankers sentenced to 37 months in Enron case
- France : SocGen controls failed, ignored
- Barings Bank - What it's like to lose millions of dollars
- Parmalat - 'Europe's Enron' trial opens amid concerns
- Mitsui to shut Singapore operations after alleged fraud, police report filed
- World Bank 'uncovers India fraud'
- Scandal-Plagued Samsung Chairman Quits
- UK £ 36 million fine for Severn Trent over false data
- Aventis to pay US $ 190 million to settle drug-price fraud case
- Saudi prince 'received arms cash'
- Swiss prosecutors says FIFA's former marketing partner paid bribes
- Serious Fraud Office to pursue Goldshield price-fixing case
- Bureaucrat guilty in $145 million Canadian Department of National Defence invoicing fraud
- Trusted Australian banker siphoned off $1.4 million, Court told
- Ex-banker convicted in major Dominican fraud case of US $ 2.2 billion
- SEC Plans to Fine Nortel in Enforcement Policy Test
- SEC Fines Jailed U.S. Hedge Fund Manager $20 million
- US authorities say stock fraud cost overseas investors $ 50 million
- Feds Investigate Wall Street's Mortgage Mess, involving Goldman Sachs & Morgan Stanley
- UK Insurance bosses jailed for fraud
- S.C. Economist Pleads Guilty in Fraud in US $ 90 million Investment Fraud Case in the US
- Dell : Cooked Books and Computers
- Indicted CFO : 'PwC Knew We Backdated'
- Accounting scandal rocks Alfred McAlpine
- Woman boss gets death penalty for fraud in east China

BBC NEWS

EU fines Microsoft record $1.4bn

The European Commission has fined US computer giant Microsoft for defying sanctions imposed on it for anti-competitive behaviour.

Microsoft must now pay a record 899m euros ($1.4bn; £680.9m) after it failed to comply with a 2004 ruling that it abused its dominant market position.

The ruling said that Microsoft was guilty of not providing key code to rival software makers.

EU regulators said the firm was the first to break an EU anti-trust ruling.

The fines come on top of earlier fines of 280m euros imposed in July 2006, and of 497m euros in March 2004.

"Microsoft was the first company in 50 years of EU competition policy that the Commission has had to fine for failure to comply with an antitrust decision," Competition Commissioner Neelie Kroes said in a statement.

Future improvements?

An investigation concluded in 2004 that Microsoft was guilty of freezing out rivals in products such as media players, while unfairly linking its Explorer internet browser to its Windows operating system at the expense of rival servers.

The European Court of First Instance upheld this ruling last year, which ordered Microsoft to pay 497m euros for abusing its dominant market position.

DISPUTE TIMELINE

March 2004: EU fines Microsoft 497m euros and orders it to release key Windows code to rival software developers
September 2004: Microsoft tries to have the ruling temporarily suspended
April 2006: Microsoft appeals the ruling in the European Court of First Instance
September 2007: Microsoft loses its appeal

Last week, the firm announced that it would open up the technology of some of its leading software, including Windows, to make it easier to operate with rivals' products.

"As we demonstrated last week with our new interoperability principles and specific actions to increase the openness of our products, we are focusing on steps that will improve things for the future," Microsoft said.

Further cases

But the firm is still being pursued by Brussels.

Last month, the European Commission launched two new anti-competition investigations against Microsoft into similar issues.

The first will look at whether there are still problems regarding Microsoft abusing its dominance of the PC market to grab market share of the internet.

The Commission will also investigate the continued interoperability of Microsoft software with rival products.

Below is a selection of your comments:

Why should Microsoft have to pay fines for something like this? All manufacture and trade is competition whether you want to accept it or not. If you fine Microsoft for competition then you have to fine every company and firm in Europe for competing with other companies and trying to be better than them. Some are always going to be better and you can't stop it from happening.
Elias Lammi, Vammala, Finland

Last time I checked Microsoft was worth somewhere in the region of $350bn, so a fine of $1.3bn is nothing; it's less than 0.3% of their overall wealth and hardly a deterrent. Should the EU feel the need to do this again, they should strive to impose a fine that has a more noticeable effect on the company's turnover. Something that would make the board members and share holders sit up and take notice.
Stephen Sweeney, London

Microsoft have every right to compete the way they want. If they reveal the key window code, how can they sustain competitiveness. Did any other company teach them the code? No, it is one of the rare resource, where others failed in acquiring such ideas and intellectual capital. I hope EU is not going to fine Microsoft for not helping its competitors to acquire working culture which embedded down the company.
zubair, Melbourn/Australia

Not enough. Microsoft has been getting away with uncompetitive behaviour for far too long. They should no longer be allowed to sell any product without publishing every line of source code.
Brian Beesley, UK

I think it is a bad ruling because Microsoft is being charged for not sharing their OWN code they wrote. Microsoft has every right not to share what they wrote. There's many other platforms out there for companies to write code for. There are many alternatives to web browsers and media players to download off the internet to begin with, so I don't see how this is a problem.
Nathan Vorgang, West Lafayette, IN, USA

I believe that the fine is too small for Microsoft.
Mohammad Bashir, Philadelphia, PA USA

I find it amazing that we have such ridiculous laws!! Why are we punishing a company for being good?? It's not Microsoft's fault that no-one else has come up with products that can compete...
Andy, Bracknell

Microsoft MUST be brought to account for its' practice of dominating by exclusion. If the company, Microsoft, continues to practice in a manner which refuses to be competitive, then it should be excluded from the EU. Nicholas Carton, USA
Nicholas Carton, Saint Louis, Missouri USA

I find it amazing that the EU can put sanctions on a company, who are to them "anti-competition" Yet have a complete monopoly on money in the form of the Euro. If it didn't make me laugh, it'd make me cry!
Richard Wilkins, Westbury, Wiltshire, Uk.

Definitely agree with the European Commission, even though I am employed as a microsoft .net developer.
Iain, Truro/UK

I very much agree with the decision of the European Commission. Microsoft, throughout its history, has been guilty of abusing its de facto dominance of pc operating systems. The US Federal Government has always favoured the company's interests over the customers and so the market abuse has continued. Microsoft must learn to compete rather than try to snuff out or take over competitors and companies with technology that they want.
R W Bater, Sutton Coldfield, West Midlands

I do not agree with the EU. Whom is the judgement awarded too? The EU or does it go to the Microsoft competitors? What happened to innovations and property protection? Like a number of things coming out of Brussels it does not make sense.
Hans K Vieregge, Aviemore , Great Britain

I am glad that Microsoft have been fined, if they had made the code open suorce, then they would not have been the main target for hackers,and may have ended up with a better product. How many times have you heard of Linux software being hacked? its not!! as all the lines of code are open source. If you have a problem with Linux you can actually converse with the person who wrote the code. This is not possible with Windows. If you use Linux or a Unix based operating system, you will be less likely to be hacked.
Ian, London

I think the fines are ridiculously high and that the EU is going after Microsoft because its a good American business. Sure Microsoft was a little arrogant but the fines are way to high.
Charles Parker, Des Moines Ia. USA

Energy

Feb. 22, 2008, 1:48PM

Former bankers sentenced to 37 months in Enron case

By KRISTEN HAYS

Three former British bankers were sentenced to three years and a month in prison today for participating in a scheme with former Enron finance chief Andrew Fastow to bilk their London employer out of millions of dollars more than seven years ago.

Federal sentencing guidelines recommended 41 months to 51 months for David Bermingham, Giles Darby and Gary Mulgrew. But U.S. District Judge Ewing Werlein noted that both sides "strongly urge" the 37 months the ex-bankers had already agreed to serve and said he considered that punishment to be appropriate.

The men also will repay the $7.3 million they gained from the scheme.

Werlein told the trio that to fully redeem themselves, they would have to repay "every dollar."

"I'm counting on you to do that," the judge said. "I'm confident that you'll probably never be before a court again."

The defendants each pleaded guilty last December to a count of wire fraud, just weeks before they were slated to go to trial on seven such counts. They were transported to the United States in June 2006 after losing a lengthy extradition fight and have been free since then on bonds that restrict them to the Houston area.

"On one level it's been absolute hell," Bermingham said after the hearing. But he said he and his co-defendants had gained support in Houston during their time away from home.

"I could think of a lot worse places we could be, given the support we've had," Bermingham said.

Dick DeGuerin, Darby's lawyer, said after the hearing that the men chose to plead guilty after fighting the charges for a year and a half after weighing the risk of losing a trial against the certain outcome included in a plea deal.

"These men just want to put this behind them," DeGuerin said. "Andy Fastow and the culture of greed at Enron corrupted everyone and everything it came in contact with. These guys are victims as much as anyone else."

The three men were charged in June 2002 with seven counts of wire fraud for colluding with Fastow and his former top lieutenant, Michael Kopper, to convince their employer, Greenwich NatWest, to sell its stake in a Fastow-run partnership for less than it was worth. In their guilty pleas, they admitted to failing to disclose that they had invested in an entity related to the partnership.

The bank, which is now part of the Royal Bank of Scotland, sold its stake for $1 million. But Fastow had arranged for Enron to pay about $19 million, and divvied up most of that amount among himself, the bankers and others.

RESOURCES

ENRON DEFENDANTS

Ken Lay: Enron founder who died July 5, guilty on all charges. Conviction vacated Oct. 17.

Jeff Skilling: Former CEO guilty of 19 of the 28 counts. Sentenced to 24 years in prison.

ENRON EXTRAS

Enron verdict, count by count

Gallery of key Enron players

Finally, justice in Enron case?

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Full Enron coverage

Today, they stood before Werlein and apologized to their friends, family and colleagues for their actions and the consequences. They have been largely separated from their families except for visits in Texas, though Darby was allowed to return to London briefly last year to attend his father's funeral.

"A long time has passed since the events" that led to the criminal case against them, Darby told Werlein. "I realize now that our involvement was wrong I deeply regret that."

Mulgrew said he believed that he had exercised "a lack of integrity in my decisions," and apologized to anyone harmed by those decisions.

"I'm just very glad this is over now," Bermingham said outside of court.

Once incarcerated in a U.S. prison, the three aim to apply for transfer to a United Kingdom lockup under the Bureau of Prisons' international prisoner transfer program.

Luke Tolaini, a British lawyer who is chairman of the Confederation of British Industry's working group on extradition, said in an interview this week that unlike the federal prison system in the U.S., the British system allows for "license" parole once inmates have served half of their sentences.

"As soon as they hit the halfway mark, they will automatically be released on license," Tolaini said. "They are not dangerous criminals."

Werlein ordered Bermingham and Darby to submit $500,000 each upon their surrender to prison, while Mulgrew must pay $250,000. The remaining $6.1 million will be paid upon approval of an order to do so imposed by a British court. That order has been prepared and was awaiting filing upon Werlein's approval of the plea deal.

The judge also approved the defendants' request to surrender voluntarily to prison, a process likely to take three to six weeks. Also at men's request, Werlein will recommend that they report to the Allenwood federal prison complex in White Deer, Pa.. The defense lawyers said they hoped the men would be sent to that prison because it's near New York City, where they would go to be transported to a British prison.

The Bureau of Prisons has final say over where they will go. They likely will serve between six months to a year in a U.S. prison before they are transferred.

Their case generated a storm of publicity in the United Kingdom because the three were extradited under a treaty that the U.S. hadn't signed at the time. Also, they had cooperated with British authorities, who filed no charges.

"The issue there, from the UK perspective, was why they were sending British citizens to America to be prosecuted for a crime against a British company," Tolaini said.

When the trio was initially charged, the criminal complaint against them noted the deal and took aim at Kopper and Fastow. Kopper cut a plea deal with prosecutors in August that year, and Fastow did the same in January 2004.

That left Bermingham, Mulgrew and Darby little to offer federal prosecutors by the time they were arrested in April 2004. Their case had sat dormant until their arrest.

Fastow is serving a six-year term in Oakdale, La., while Kopper is serving a three-year, one-month term in Texarkana.

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COMMENTS

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Most recommended comments

1u4got2K wrote:
"As soon as they hit the halfway mark, they will automatically be released on license," Tolaini said. "They are not dangerous criminals."

Really? So because white collar crime usually doesn't involve violence, that makes it some how better? Why don't they just hand out free get out of jail cards for all the CEOs in the world, just to expediate the process.

Obviously the huge ammounts of money being transfered back and forth is just too tempting to people. If ever there was a reason for government regulation, this proves it. Mere mortals just can't be trusted.
2/22/2008 11:59:50 AM
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UncleBert wrote:
Let me understand this . They took part in a conspiracy that swindles million upon millions of dollars.They do 3 years and they pay restitution? Right!!

The real sentencing was the people who worked years to get ripped and now will work years to the rest of their lives trying to recoup the losses.

Strip them of every dime and asset, put them in prison and release them just shy of their 65 birthday , Old and broke now that is justice..
2/22/2008 1:10:10 PM
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jachari wrote:
"They are not dangerous criminals."

Tell that to the people who's lives they destroyed.
2/22/2008 1:26:59 PM
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AMERICARULES wrote:
"As soon as they hit the halfway mark, they will automatically be released on license," Tolaini said. "They are not dangerous criminals."

18.5 MONTHS
Year and a half in a Limey prison.
2/22/2008 11:53:17 AM
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ManlyWeasel wrote:
All of the armed robberies and burglaries commited in the US, ever, combined, would certainly total less than the $70 billion white-collar crime perpetrated by a few dozen Enron executives and their bankers. And yet look at the lenient sentences they get. Basically, in white collar crime, the punishment is that you have to give back some of what you stole. Look at Andy Fastow: he kept megamillions.

The earth cries out for justice.

2/22/2008 2:32:56 PM
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France: SocGen controls failed, ignored

- Story Highlights
- French minister says controls at Societe Generale failed or were ignored
- Bank faces crisis after trader lost over $7 billion in European index futures
- Christine Lagarde said bank followed market rules in unwinding trader's deals
- But she urged greater controls on banks in France and worldwide

PARIS, France (AP) -- French Finance Minister Christine Lagarde said Monday that some internal controls at Societe Generale failed or were ignored before the banking giant announced massive losses attributed to a single trader.

Lagarde, who submitted a report on the case to the French prime minister Monday, also said the bank followed market rules in unwinding the trader's transactions. But she urged greater controls on banks in France and worldwide.

In a bombshell announcement January 24, Societe Generale said that it had lost 4.82 billion euros ($7.09 billion) in cleaning up unauthorized transactions by trader Jerome Kerviel.

The bank says Kerviel overstepped his authority and bet 50 billion euros ($73 billion) -- more than the bank's market value -- on futures in European equity markets. Kerviel told investigators that his superiors had turned a blind eye to his activity, a claim the bank's lawyer called false. Watch more about Kerviel »

Lagarde's report did not assign blame but highlighted lessons to be learned from the scandal, which has deeply shaken France's banking sector and prompted speculation that Societe Generale could be bought out or broken up.

"Very clearly, certain mechanisms of internal controls of Societe Generale did not function, and those that functioned were not always followed by appropriate modifications," Lagarde told reporters after submitting her report.

The bank says the losses were so staggering because of bad timing: Just as it discovered Kerviel's activity and started closing his positions, world financial markets fell. Some have speculated the bank's actions in liquidating Kerviel's moves may have helped send stock markets down.

But Lagarde said Societe Generale's management of the transactions was "in conformity with the existing regulations."

"The unwinding of the positions at the source of the loss on January 21, 22 and 23 was done in a professional way in difficult market conditions that could not be attributed to Societe Generale," Lagarde said in a statement.

Lagarde urged closer study of trading risks linked to human error or fraud and suggested tighter and more consistent banking controls.

"France will propose ... that discussions at a European and international level be accelerated so that international standards can be applied to all the actors," the report said.

The loss wiped out the bulk of the bank's net profit for 2007 and brought pressure on its top executives to resign.

Investigating judges have filed preliminary charges against Kerviel for forgery, breach of trust and unauthorized computer activity.

BBC NEWS

What it's like to lose millions of dollars

Nick Leeson is known around the world for his rogue trading
Leeson interview

It might be a dubious title to hold, but whether he likes it or not, Nick Leeson is still the world's most famous rogue trader.

Now the painful insight of this former financial trader is in demand once again, as the banking world tries to comprehend the "massive fraud" uncovered by French bank Societe Generale.

The bank says alleged activity by a Paris-based trader caused it to incur a loss of 4.9bn euros ($7.1bn; £3.7bn). The damage, the bank says, was based on simple transactions, but concealed by "sophisticated and varied techniques".

These losses are four times greater than those made by Mr Leeson, the rogue trader who famously brought down Barings Bank in 1995, for which he was sentenced to six-and-a-half years in a Singapore jail.

Mr Leeson is, of course, expertly placed as to how the perpetrator of this latest bout of rogue trading will be personally affected by the situation.

"The thing that I wanted, and I'm sure the thing this guy wanted, was success," he told the BBC.

He survived for one day, he survived for a week, he survived for a month and eventually you start to believe that, okay, it's not quite as bad as it was
Nick Leeson

That's certainly what I tried to do at Barings and that would have been his motivation. This isn't about

"Success was the thing that drove him on. It's a fundamental part of the markets and the people that work within it.

"Probably his biggest fear is the fear of failure, as it was mine, as it probably still is today. When he got himself into the situation there would have been a degree of panic.

"He survived for one day, he survived for a week, he survived for a month and eventually you start to believe that, okay, it's not quite as bad as it was.

You've got a degree of time to try and unfurl yourself from this situation.

"That's certainly what I tried to do at Barings and that would have been his motivation. This isn't about him getting rich, or getting rich quick."

Mr Leeson said there were times during his rapidly-deteriorating situation at Barings that he "wanted to shout from the rooftops... this is what the situation is, there are massive losses, I want it to stop.

"But for some reason you're unable to do it."

This was in part, he suggested, because "everybody around you, your nearest and dearest, gets caught up in the success story" and it becomes so very difficult to admit failures.

Loopholes remain

Mr Leeson said he was "shocked" by the size of the losses involved, but not by the fact that a rogue trader had been discovered.

"I think rogue trading is probably a daily occurrence amongst the financial markets," he said.

"I get asked this question a lot, about whether these sort of things can occur again.

"There are occasions where these sorts of scandals will occur in different banks and in different financial institutions, but I never for one minute believed that it would get to this degree of magnitude and this degree of loss."

Mr Leeson dismissed any suggestion that banks had introduced sufficient measures to prevent rogue traders from doing their considerable damage.

"They haven't closed down the loopholes. The banks... focus on making the money, they're not too interested in trying to save it.

"The money gets thrown at the front end of the business where the money is being made, at the traders and the systems that they're trading with.

"Not enough focus goes on those risk management areas, those compliance areas, those settlement areas, that can ultimately save them money.

"It's a very, very difficult thing to get across... to a board, when you're trying to convince them that if you invest now in these controls and in these systems, that it will ultimately repay you.

"What they're looking for is profit, they're looking for that profit now, and that tends to be where the money is directed."

You're still looking at a situation where the systems and controls aren't good enough, the people in place to look after those systems and controls simply aren't good enough either
Nick Leeson

BBC Business Editor Robert Peston said that, according to Societe Generale, the fraud was carried out in "plain vanilla futures hedging on European equity market indices".

But our correspondent said that bankers cannot understand how this could have happened, as for a trader in "plain vanilla" index futures to exceed his limits to that extent should be impossible, because of existing controls.

Mr Leeson offers a simple explanation.

"You're still looking at a situation where the systems and controls aren't good enough, the people in place to look after those systems and controls simply aren't good enough either."

Mr Leeson suggested that there must have been a number of staff within the bank's system who "weren't doing their jobs properly", and he also scotched reports that the losses had been incurred over a brief period of time.

"It can't have done. The guy was apparently trading CAC futures and DAQ futures which are exchange traded products, that everybody can see the positions that are open on the exchange.

"I don't think this was the only thing that he was trading, but this has to have happened over a long period of time."

He went on to say that the same scenario occurred at Barings, and that his own "incompetence and negligence" was "at the forefront of that".

After his early release from prison in 1999, Mr Leeson returned to the UK, split up with his first wife, took up speaking engagements to help rebuild his life and settled in Galway, later became commercial director of Galway United football club.

He also wrote a book, and said that he still does not take up "everything I'm offered", only taking up those opportunities he is "comfortable with", so he clearly is still a man for whom the banking world and media still holds a fascination.

But Barings ceased to exist, unable to recover from the £850m that Mr Leeson lost it.

This rogue trader's life was re-fashioned, then - but the fate of Societe Generale's member of that dishonourable club, and of the bank itself, is still unfolding.

Story from BBC NEWS:
http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/7207628.stm

Published: 2008/01/24 19:55:37 GMT

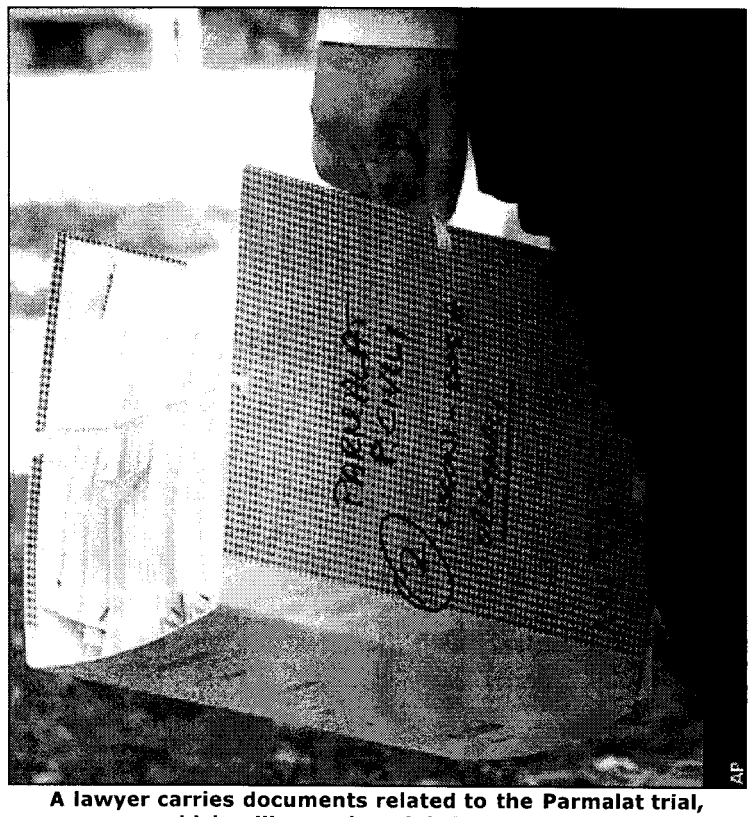
'Europe's Enron' trial opens amid concerns

By Malcolm Moore in Rome
Last Updated: 6:23am GMT 14/03/2008

The trial involving Parmalat starts today, almost five years after the Italian dairy company collapsed in one of Europe's biggest-ever accounting scandals.

- **The latest news and analysis from the banking and financial services sector**

More than 50 defendants, including Calisto Tanzi, the company's former chief executive, his brother Giovanni and the chief financial officer, Fausto Tonna, face charges of fraud and criminal association.



A lawyer carries documents related to the Parmalat trial, which will stretch Italy's legal system

Tanzi's children, Francesca and Stefano, have already negotiated lighter prison terms, after one of the associated trials that have already been held. If convicted, Tanzi, 70, faces up to 15 years in jail.

The scandal, dubbed "Europe's Enron", came to light in 2003 when the company was forced to admit that £11bn had disappeared from its balance sheet. The subsequent bankruptcy wiped out the savings of around 135,000 Italians.

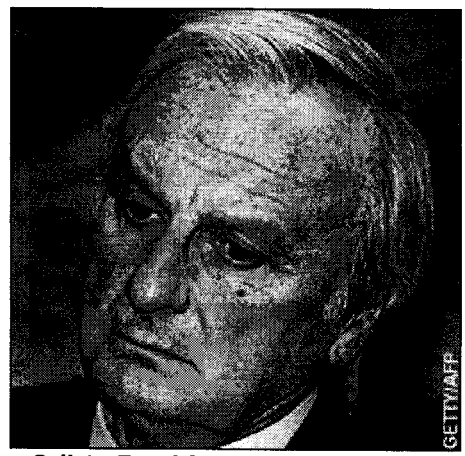
The trial in Parma will stretch Italy's frail legal system to the limit. More than 125 hearings have been scheduled as the court tries to take in 10m pages of documents and to hear the 34,000 defence witnesses that Tanzi has called.

One of Italy's youngest magistrates, the 29-year-old Marco Vittoria, will be among the judges. The prosecution only has five years to finish the trial, and to hear two appeals, before Italy's statute of limitations excuses the defendants of any wrongdoing. However, Gerardo La Guardia, the chief prosecutor, said the trial was "doable".

Fabio Belloni, a lawyer for Tanzi, said: "We are perfectly aware of the seriousness of the accusations against our client but we are optimistic." He added that his strategy would be to point the finger at Parmalat's lending banks.

"We want to show that the company's problems arose from its bonds. We want to make people understand that it was the structure of the bonds which led to the outflow of these millions," he said. He added that Tanzi himself "would definitely not be in the courtroom. His health is very precarious".

A separate trial into five major foreign banks, Citigroup, Morgan Stanley, Bank of America, UBS and Deutsche bank, opened last month in Milan.



Calisto Tanzi faces charges of fraud

The five banks are accused of share price manipulation since they allegedly knew that Parmalat was bankrupt but continued to lend to it. **and criminal association**

They are suspected of organising bond issues, taken up by small savers, with the goal of using fees earned in the operation to reduce their losses if Parmalat failed.

All five banks have strongly denied any wrongdoing.

SINGAPORE NEWS

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Mitsui to shut Singapore operations after alleged fraud, police report filed

Photos 1 of 1 < | II | >

SINGAPORE: Mitsui has decided to wind down the operations of its Singapore subsidiary Mitsui Oil Asia in the wake of an embarrassing financial scandal.

Mitsui's Singapore arm suffered US$81 million loss last year, after suspected fraudulent trading by one of its traders in the naphtha market.

It has completed an internal investigation and reported the findings to the Singapore police.

The police have confirmed that Noriyuki Yamazaki is assisting them with their investigations.

Mitsui intends to implement measures to reinforce the controls and procedures over its group-wide commodity trading operations based on the recommendations from the internal investigation.

Mitsui is targeting to shut the Singapore unit by March next year.

But it has yet to decide the fate ot its 26 staff, including 22 locals.

In the meantime, it will substantially downsize its activities, ceasing new contracts, except for those required to liquidate outstanding inventories.
- CNA/ir

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AP

Singapore Police Arrest Mitsui Trader

Friday February 16, 4:57 am ET

Singapore Police Arrest Mitsui Trader Who Allegedly Concealed Losses of $80 Million in Losses

SINGAPORE (AP) -- Police in this city-state have arrested a trader with the Singapore unit of Japan's Mitsui & Co. on suspicion he tried to cover up 9.6 billion yen, or $80.3 million, in losses, the Japanese company said Friday.

The trader with Mitsui Oil (Asia), the Japanese company's Singapore crude and oil products trading unit, was arrested and questioned by police Wednesday over allegations he concealed losses in physical and futures naphtha trading last year, Mitsui said in a statement on its Web site. The trader had been released on bail, it said.

Police in Singapore said that Noriyuki Yamazaki, a senior naphtha trader at Mitsui's Singapore unit, was "currently assisting police with investigations," but gave no further details.

Tokyo-headquartered Mitsui & Co. spokesman Yoshihiro Yamanaka said Friday the company would not disclose the name of the trader, but added the trader was dismissed on Wednesday, the same day he was arrested.

Naphtha is a liquid derived from crude oil that is used as a raw material in the petrochemical industry, and also for making some fuels.

Mitsui said it filed a police report on Monday with the Commercial Affairs Department -- the city-state's white-collar crime unit -- alleging that "significant losses from physical and futures trading of naphtha had been deceptively concealed."

The company also said it will close its Singapore unit in the next fiscal year ending March 2008.

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BBC NEWS

World Bank 'uncovers India fraud'

The World Bank has said it has uncovered "serious incidents of fraud and corruption" in a review of five health projects it has backed in India.

The multi-million dollar projects, some of which date back to 1997, involve HIV/Aids, malaria and tuberculosis.

"The probe has revealed unacceptable indicators of fraud and corruption, said World Bank head Robert Zoellick.

India's government said it took the findings seriously and would punish anyone found guilty of wrongdoing.

The evidence of fraud was revealed in a newly released Detailed Implementation Review, begun by the World Bank in 2006.

That review was prompted by an investigation into a World Bank-backed reproductive and child health programme in 2005, which found evidence of corrupt practices by two pharmaceutical firms.

'Eradicate corruption'

The projects involved in the latest review included a $193.7m (£99m) programme to tackle HIV/Aids, a $124.8m tuberculosis scheme and a $114m malaria programme.

The World Bank has said it and the Indian government will cooperate to ensure the scrutiny and transparency of ongoing and future projects.

Mr Zoellick, who took over as World Bank president in July, said he appreciated the Indian government's "resolute commitment" to pursuing criminal wrongdoing.

He said: "These problems have to be fixed. I am committed to cleaning this up. I have spoken to Finance Minister [Palaniappan] Chidambaram and he feels the same way.

"The results of this World Bank Review show we must keep pressing to eradicate corruption from our projects. Fraud and corruption are not acceptable."

A statement from India's finance ministry said: "Necessary action under the relevant laws, rules and regulations would be taken against those suspected of wrongdoing and, if found guilty, they will be visited with exemplary punishment."

Story from BBC NEWS:
http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/7184345.stm

Published: 2008/01/11 22:11:00 GMT

BusinessWeek

GLOBAL April 22, 2008, 7:27AM EST

Scandal-Plagued Samsung Chairman Quits

Lee Kun Hee steps down after being charged with tax evasion. Reaction among watchers is mixed; shares didn't budge

by Moon Ihlwan

It was one of the most stunning scenes in the history of South Korean business. Standing in front of reporters packing a basement conference room at Samsung's Seoul headquarters on the morning of Apr. 22, Lee Kun Hee, for decades the most powerful businessman in the country, announced his resignation as chairman of Korea's largest conglomerate, the Samsung Group, and chairman and co-CEO of Samsung Electronics, the world's largest maker of memory chips, liquid-crystal-display panels and TVs, and the second-largest cell-phone maker only after Nokia (NOK). Bowing deeply, Lee apologized to the nation for corporate governance problems that have been the focus of investigators for more than three months. "I'll take responsibility for all the flaws of the past," said the disgraced chairman, who was charged last week (BusinessWeek.com, 4/17/08) by a special prosecutor with tax evasion and breach of fiduciary trust.

Nobody disputes the tremendous success Samsung achieved in the past two decades under Lee's leadership. The $160 billion Samsung Group is a source of Korea Inc.'s pride, accounting for 21% of the country's total exports. The electronics unit has transformed itself from a second-tier producer of TVs and appliances into a design powerhouse and a trend-setter of the planet's information technology industry.

Yet investors and longtime watchers of Korea's chaebol, or conglomerates, responded with a relative calm over the unexpected resignation. "I don't think there will be a fundamental change in Samsung," said Ahn Young Hoe, chief investment officer at Seoul-based fund manager KTB Asset Management, which owns some $500 million in Samsung Electronics. "Lee Kun Hee will remain as a major shareholder and his family will wield influence in one way or another."

Perhaps reflecting such sentiments, Samsung Electronics shares stayed little changed, closing 0.1% higher at $678 on Apr 22. In fact, the stock has risen 20.5% so far this year against a 5.8% fall in the benchmark Kospi index on the Seoul bourse, as investors have believed the probe into Samsung could improve the company's independent management from the group while not affecting its finances. Although Lee Kun Hee is the chairman, management of the electronics unit has been firmly in the hands of respected Vice-Chairman and Chief Executive Yun Jong Yong and his team of talented professional managers who have steered the company's rise.

Shareholder activists have criticized the 66-year-old Lee and his relatives for what the activists assert is the Lee family's near-absolute control of Samsung's 59 affiliates ranging from insurance and credit-card services to shipbuilding and chipmaking, even though the Lees only have a sliver of shares of the group. The family managed to retain the tight grip because reforms in the past decade have tackled accounting and governance in listed companies but have done little to limit the founding family's control via tangled cross-shareholdings of affiliates, some of them held privately.

Critics of Samsung acknowledge Lee's resignation and other reform steps could open the way to improving Samsung's governance system. Samsung will disband the powerful Strategic Planning Office, or SPO, which

prosecutors have alleged arranged illegal business deals to benefit the Lee family at the expense of other shareholders. Chairman Lee's son, Lee Jae Yong, an heir apparent, will step down as Samsung Electronics' chief customer officer and will stay overseas for building up experiences, according to Samsung officials.

Special prosecutor Cho Joon Woong on Apr. 17 accused the SPO of arranging an illegal 1996 transaction to give the junior Lee, who turns 40 in June, and his sister a combined 64% stake in Samsung Everland, which was later made a de-facto holding company of Samsung Group. Lee Jae Yong and his three sisters paid $9.9 million to exercise warrants converting bonds they held into shares of Everland, an unlisted amusement park and real estate company, at just one-eleventh of the market value.

Then in a private placement, Everland allegedly was able to buy 18.4% of shares in unlisted Samsung Life Insurance that had once belonged to the founder, Lee Kun Hee's father, but had been transferred into accounts controlled by Samsung executives. Samsung Life, in turn, owns 7.3% of Samsung Electronics. Therefore by controlling Everland, Lee Jae Yong now controls the biggest block of shares in the electronics giant.

Cho also accused Lee Kun Hee of owning some $4.5 billion worth of stock in Samsung Life, Samsung Electronics and other companies that were hidden in nearly 1,200 brokerage accounts in the name of former and current executives. Such holdings, prosecutors say, were kept secret to avoid paying hefty taxes. Samsung officials say those shares, which were held that way to help Lee protect his management rights, will now be held under the name of Lee, who will pay taxes that were avoided.

Samsung execs say the reform measures announced Apr. 22 are "just the beginning" to make group companies more transparent and independent. "We will actively pursue changes if there are such needs in the future," says Vice Chairman Lee Hak Soo, head of the SPO, who also vowed to step down by the end of June.

Some activists argue the reforms fall short of guaranteeing the prevention of the family's return. "The problem is the son can always be elevated to the chairman and assume near-absolute control unless a system is built to guard against such practices," says Korean National Open University economist Kim Ki Won, who has studied the chaebol for two decades. "My hunch is that there's only a 30% chance of Samsung achieving a good governance system in view of the lack of reference to the son's illegally earned benefits."

Others, though, are more hopeful. "I respect today's move by Chairman Lee, who unlike other chaebol chiefs, personally took responsibility for wrongdoings," says Jang Ha Sung, dean of Business Administration College at Korea University and a longtime promoter of shareholder rights. "What's still needed is to build a sustainable system enforcing transparency and accountability."

Moon is BusinessWeek's Seoul bureau chief.

£36m fine for Severn Trent over false data

By Angela Monaghan
Last Updated: 12:50am BST 09/04/2008

Severn Trent, one of Britain's largest water companies, has been fined almost £36m for providing false information to the regulator and for poor customer service standards.

The fine, the biggest ever imposed by regulator Ofwat, was levied after Severn Trent knowingly misreported customer service data to cover up its true performance.

Separately, Severn Trent also pleaded guilty yesterday to two separate charges brought by the Serious Fraud Office (SFO) at the City of London Magistrates' Court, relating to under-reporting leakages in 2001 and 2002 which resulted in higher bills.

The matter will now be passed to the Crown Court for sentencing, when a further fine is likely to be imposed. A third charge, relating to incorrect leakage reporting in 2000, has been dropped.

Tony Wray, Severn Trent chief executive, said he had no idea what fine might be imposed. "This is uncharted territory. I am in the hands of a judge and his or her opinion at that time," he said.

The Ofwat fine was calculated as 3pc of Severn Trent's turnover. The water company must pay £34.7m for deliberately misreporting data and £1.1m for providing sub-standard services.

- **More on the biggest utility companies**

Ofwat said that the fine must be paid by the company and its shareholders and must not be passed on to customers. It relates to the period June 2005 to June 2006, when the new BAA boss, Colin Matthews, was chief executive, and Mr Wray was managing director.

The problems began before they took over, but Ofwat only gained the power to fine in April 2005 and cannot impose retrospective penalties. Severn Trent brought the problems to the regulator's attention in March 2006.

Severn Trent said that it was lowering bills to ensure it did not profit from the misreporting. It has pledged to cut bills by £10.6m, or £2.40 per household, over the next two years.

Mr Wray said a "comprehensive root and branch" review had now been completed. Distancing himself and his team from the old regime, he said: "It was because of my watch and my team that we unearthed this and marched straight to our regulator.

"There is no doubt that the previous regime and culture ... from 2000 to 2004 was overly bureaucratic and lacked sufficient controls and procedures. Those responsible for the customer relations mistakes are no longer with us and we apologise to our customers for their failings."

Regina Finn, Ofwat chief executive, said the fine showed Severn Trent and other water companies that it would take decisive action to protect customers from a monopoly industry.

She said: "The size of the proposed fine reflects how seriously Ofwat takes the deliberate misreporting of information." Read

Aventis to pay $190 million to settle drug-price fraud case

By Rex Nutting
Last update: 9:59 a.m. EDT Sept. 10, 2007

WASHINGTON (MarketWatch) -- Aventis Pharmaceuticals Inc. has agreed to pay $190 million to the federal government and several states to settle allegations of drug-pricing fraud, the Justice Department announced Monday. The government accused Aventis, a unit of Sanofi Aventis (SNY) , of inflating the price of Anzemet, a drug to treat nausea in patients undergoing treatment for cancer. The case was launched by a whistleblower suit filed by Ven-A-Care of Florida Keys Inc., which will receive $32 million as its share of the settlement.

BBC NEWS

Saudi prince 'received arms cash'

Arms deals with the Saudis have been worth billions to the UK
BBC investigation

A Saudi prince who negotiated a £40bn arms deal between Britain and Saudi Arabia received secret payments for over a decade, a BBC probe has found.

The UK's biggest arms dealer, BAE Systems, paid hundreds of millions of pounds to the ex-Saudi ambassador to the US, Prince Bandar bin Sultan.

The payments were made with the full knowledge of the Ministry of Defence.

Prince Bandar "categorically" denied receiving any improper payments and BAE said it acted lawfully at all times.

The MoD said information about the Al Yamamah deal was confidential.

Sir Raymond Lygo, a former chief executive of BAE, told the BBC's World Business Report that there had been "nothing untoward" about the arms deal.

"I was the one who won the contract," he said. "I don't know anything about him (the prince) at all. I would have remembered that name."

All that BAE has ever rejected is any suggestion that the commission payments were illegal
Robert Peston
BBC Business Editor

When asked about the secret payments, Sir Lygo said that it was not going on when the deal was signed.

"I would have known if it was going on at the time. I was not aware of it, so as far as I am concerned it was not occuring.

"Yes, we paid agents. Nothing illegal about that. It was absolutely in accordance with the law at the time... there was nothing untoward about the deal whatsoever."

Private plane

The investigation found that up to £120m a year was sent by BAE Systems from the UK into two Saudi embassy accounts in Washington.

There wasn't a distinction between the accounts of the embassy or official government accounts... and the accounts of the royal family
David Caruso
American bank investigator

The BBC's Panorama programme has established that these accounts were actually a conduit to Prince Bandar for his role in the 1985 deal to sell more than 100 warplanes to Saudi Arabia.

The purpose of one of the accounts was to pay the expenses of the prince's private Airbus.

David Caruso, an investigator who worked for the American bank where the accounts were held, said Prince Bandar had been taking money for his own personal use out of accounts that seemed to belong to his government.

He said: "There wasn't a distinction between the accounts of the embassy, or official government accounts as we would call them, and the accounts of the royal family."

Mr Caruso said he understood this had been going on for "years and years".

"Hundreds of thousands and millions of dollars were involved," he added.

Investigation stopped

According to Panorama's sources, the payments were written into the arms deal contract in secret annexes, described as "support services".

They were authorised on a quarterly basis by the MoD.

It remains unclear whether the payments were actually illegal - a point which depends in part on whether they continued after 2001, when the UK made bribery of foreign officials an offence.

The payments were discovered during a Serious Fraud Office (SFO) investigation.

The SFO inquiry into the Al Yamamah deal was stopped in December 2006 by attorney general Lord Goldsmith.

Prime Minister Tony Blair declined to comment on the Panorama allegations.

But he said that if the SFO investigation into BAE had not been dropped, it would have led to "the complete wreckage of a vital strategic relationship and the loss of thousands of British jobs".

The SFO's inquiry is thought to have angered Saudi Arabia, to the point where there was a risk that BAE could lose a contract to sell the new Typhoon fighter to Riyadh.

Prince Bandar, who is the son of the Saudi defence minister, served for 20 years as US ambassador and is now head of the country's national security council.

Panorama reporter Jane Corbin explained that the payments were Saudi public money, channelled through BAE and the MoD, back to the Prince.

The SFO had been trying to establish whether they were illegal when the investigation was stopped, she added.

She believed the payments would thrust the issue back into the public domain and raise a number of questions.

'Bad for business'

Labour MP Roger Berry, head of the House of Commons committee which investigates strategic export controls, told the BBC that the allegations must be properly investigated.

If there was evidence of bribery or corruption in arms deals since 2001 - when the UK signed the OECD's Anti-Bribery Convention - then that would be a criminal offence, he said.

He added: "It's bad for British business, apart from anything else, if allegations of bribery popping

around aren't investigated."

Liberal Democrat Treasury spokesman Vince Cable said that if ministers in either the present or previous governments were involved there should be a "major parliamentary inquiry".

"It seems to me very clear that this issue has got to be re-opened," Mr Cable told BBC Radio 4's The World Tonight.

"It is one thing for a company to have engaged in alleged corruption overseas. It is another thing if British government ministers have approved it."

Panorama will be broadcast on Monday 11 June 2007 on BBC One at 2030 BST

Story from BBC NEWS:
http://news.bbc.co.uk/go/pr/fr/-/2/hi/business/6728773.stm

Published: 2007/06/07 18:09:12 GMT

INTERNATIONAL
Herald Tribune

Swiss prosecutors say FIFA's former marketing partner paid bribes

The Associated Press
Tuesday, March 11, 2008

ZUG, Switzerland: Swiss prosecutors accused FIFA's former marketing arm Tuesday of funneling millions of Swiss francs (dollars, euros) in bribes through a Liechtenstein foundation.

Prosecutors opened their court case by alleging that six executives of ISL/ISMM paid about 18 million Swiss francs (US$18 million; 11.5 million) to people involved in negotiating rights deals for major sporting events.

It was the first time state prosecutors in the Swiss canton of Zug explicitly accused the company of bribery. They said ISL/ISMM used a foundation registered in the principality of Liechtenstein to funnel the money.

The six executives, who have not been named because of Switzerland's strict privacy rules, deny all charges. Responding to the prosecution, the defendants said ISL/ISMM had a cash crisis after FIFA decided to pull out of a joint project. This led to the company's collapse, they said.

No current or former FIFA officials are among the accused.

ISL/ISMM, FIFA's marketing partner for almost two decades, left an estimated debt of US$300 million (196 million) when it collapsed in 2001.

The bankruptcy led to bitter clashes between soccer's world governing body FIFA and European body UEFA, which questioned FIFA president Sepp Blatter's handling of marketing deals.

Prosecutors said the six executives knew about the payments. The six are charged with embezzlement, fraud, fraudulent bankruptcy, damaging creditors and falsification of documents. They face between three and 4 1/2 years in prison if convicted.

In total, the criminal mishandling at ISMM amounted to more than 100 million Swiss francs (US$98 million; 64 million), prosecutors said.

ISMM, the parent company of ISL, owned the television and marketing rights to the 2002 and 2006 World Cups.

Shortly after the bankruptcy, FIFA lodged a criminal complaint against ISL/ISMM over irregularities in accounts. The Zurich-based sports body later withdrew the complaint, but launched a civil case to recover 125 million francs (US$122 million; 80 million) it claimed it was owed.

ISL/ISMM was the focus of a tense power struggle at FIFA between Blatter and his former No. 2, Michel Zen-Ruffinen, and former UEFA president Lennart Johannson. Zen-Ruffinen accused Blatter of engaging in irregular payments in connection with marketing deals. Blatter denied any wrongdoing and was re-elected in 2002 for a second term as president of one of the world's most powerful sports bodies.

FIFA spokesman Andreas Herren said the soccer body was only one of ISL/ISMM's clients. Others included UEFA, the International Association of Athletics Federations and the Association of Tennis Professionals.

A verdict in the trial is expected later this year.

TIMESONLINE

From Times Online

April 21, 2008

Serious Fraud Office to pursue Goldshield price-fixing case

Lilly Peel

The Serious Fraud Office (SFO) will continue a prosecution against Goldshield, the drug distribution group, over allegations involving generic medicines despite a ruling by the House of Lords that price-fixing does not amount to conspiracy to defraud.

The company said that the SFO had decided to amend its case and continue with the prosecution.

The decision to go ahead with the case will be a boost for the SFO after Robert Wardle, its former director, was criticised after dropping an investigation to BAE, the British defence company, and its deals with Saudi Arabia.

The criminal prosecution is part of Operation Holbein, the SFO's biggest case to date, which so far has cost more than £14 million and has required hundreds of staff and its own computer database to sift through millions of files seized in raids.

In total, five companies are accused of price-fixing on NHS drugs under Operation Holbein. The other companies include Ranbaxy, the Indian generic drug giant, and three private businesses — Norton Healthcare, Kent Pharmaceuticals and Generics UK.

Keith Hellawell, the Goldshield chairman, said: "We are clearly disappointed, following the clear decision from the House of Lords, that the SFO still wishes to pursue its case against the company. We will continue to defend our position rigorously."

The company has already reached financial settlements with health services in England, Scotland and Ireland without admission of liability.

Last June it agreed to pay £4 million to the NHS to settle a claim related to the alleged price-fixing of generic medicine.

The SFO brought criminal charges against Goldshield and the four other companies after raids on 30 homes and offices on April 10, 2002.

Shares in the company fell by 8.77 per cent to a four-month low of 260p this morning.

A preliminary hearing has been set for April 28 at Southwark Crown Court.

NATIONAL POST

Monday, July 23, 2007

Bureaucrat guilty in $145M DND invoicing fraud

James Bagnall , CanWest News Service
Published: Monday, July 23, 2007

OTTAWA -- An invoicing heist perpetrated on the Department of National Defence took an unexpected turn yesterday as Paul Champagne -- the man accused of orchestrating it -- pleaded guilty to fraud and breach of trust.

Over the course of nearly a decade ending late in 2003, Champagne had funneled more than $100-million into bank accounts he controlled -- payments for goods and services that were never delivered.

The scheme was complicated, but Champagne gained enough authority within DND to order goods and direct payments through intermediaries to a company he controlled.

"I am accepting responsibility for my actions," Champagne said yesterday. His sentencing hearing has been set for January.

The *National Post* first reported the story about the massive fraud in March, 2004.

At the time, Champagne denied wrongdoing and insisted he became a multi-millionaire through stock market investments and luck at Las Vegas gaming tables.

But it was revealed that Champagne amassed more than $20-million worth of investments and residential real estate in Canada, Florida and the Caribbean, including a $2-million beachfront mansion in the Turks and Caicos.

His home in Ottawa was in an exclusive gated community with tennis courts, a gym and a pool. His third, three-car garage home in Hudson, Fla., was on a lush golf course development and also had a pool.

During an interview with CanWest News Service yesterday, Champagne expressed surprise he had been able to run the scheme as long as he did.

One consideration involved the amount of money he saved DND by reorganizing the way the department managed its computer maintenance contracts.

With his experience at high-tech firms, he was able to show DND how to save substantial sums by replacing old computers. This advice allowed him to build up a considerable amount of goodwill and trust within DND.

Then, starting in about 1995, Champagne made the federal budgeting system work to his advantage.

"We found ways to justify the spending of year-end allocations," he said. "If we didn't use it, we'd lose it," he added in reference to DND budgets that, like all federal departments, have a March 31 fiscal year-end.

Departments generally cannot transfer money left over from one year to the next, providing great incentive to spend on goods and services during the final weeks of the fiscal year. The rush of year-end contracts made it easier to disguise illegitimate deals.

In the private sector, senior managers are often rewarded for coming up with ideas that save their employers lots of money, as he had done with DND's computer maintenance deals. Champagne, 49, said "there was an element of this" in his thinking.

"As time went on, it got easier to justify what we were doing."

An agreed statement of facts between the Crown prosecutor and Champagne offers an insight into how Champagne played the system. The statement notes that Champagne arranged for business colleagues Peter Mellon (who owned the Baxter Group) and Cholso Manso (proprietor of Avemore) to hire senior DND employees and supervisors at "lucrative" rates.

"The high turnover in staff contributed to inexperienced staff replacements," the statement noted, "and facilitated Champagne's influence within the procurement section."

Champagne, Mellon and Manso were all charged by the RCMP with fraud and other crimes in January, 2006.

Neither Mellon nor Manso appeared in court yesterday. Their cases are scheduled to be heard Sept. 17.

The statement of facts released in the Champagne case suggests the unusual pattern of invoices was first picked up by Hewlett Packard, which noticed its accounts receivables had become unusually high. The statement provided no timeline but HP's revelation likely occurred in 2000 or 2001.

After trying to resolve matters directly with Champagne, HP took up matters with DND, precipitating the massive government audit that uncovered the scheme.

smh.com.au
The Sydney Morning Herald

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Trusted banker siphoned off $1.4m, court told

Les Kennedy
April 10, 2008

A ST GEORGE Bank employee, Veronica Yee Fong, had the power to give customers in financial crisis unsecured short-term overdrafts of between $5000 and $10,000.

She had worked at the bank for 21 years and such was the trust placed in her that she was made a senior lending officer at a busy branch.

But that trust was shattered this month when it was discovered that over eight years she had siphoned off $1.4 million to her personal accounts, Central Local Court heard yesterday.

Police said the money Fong allegedly stole, by approving overdrafts for herself that had never been repaid, could not be found. Nor had police been able to establish how the money had been spent.

Fong, 46, from Redfern, appeared before the magistrate Julie Huber charged with 21 counts of having obtained money by deception from St George Bank between 2000 and February this year.

Police alleged Fong used the authority given to her by the bank to approve overdrafts for customers to carry out her fraud.

This was in breach of a bank rule signed by all employees that they could not carry out their own account transactions or update their personal accounts or those of relatives on the computer system.

But for eight years no one noticed that Fong was using her employee number and password to approve extraordinary overdraft loans in her name, and those of her aged father and her former husband.

The transactions began in 2000 with two unsuccessful attempts in February and March to give herself overdrafts of $ 10,000 and then $55,000, police told the court.

REUTERS

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Ex-banker convicted in major Dominican fraud case

Sun Oct 21, 2007 4:18pm EDT

SANTO DOMINGO (Reuters) - A prominent former banker was convicted on Sunday in a $2.2 billion fraud case that drove the Caribbean nation into an economic tailspin four years ago.

Ramon Baez Figueroa, former president of Banco Intercontinental SA, was the first official convicted in connection with its collapse in May 2003, when it was the third-largest bank in the Dominican Republic.

The spectacular meltdown of the bank, known as Baninter, sent the Dominican peso into a free fall and triggered massive capital flight.

It was prompted, as detailed at length in the trial before a three-judge panel that opened in April 2006, by a scandal involving debt writeoffs and sweetheart loans or other financial deals suspected of having favored leading politicians and others.

Baez Figueroa, who maintained his innocence, was sentenced to 10 years in prison and ordered to pay restitution and damages totaling more than $31 million. His defense attorneys said they would appeal.

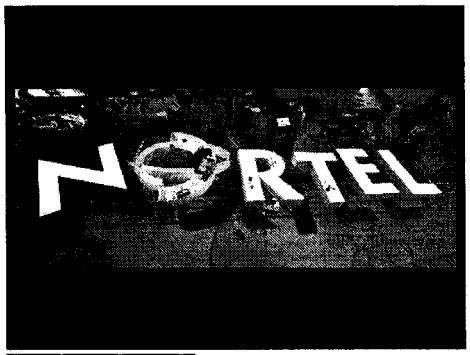
Another suspected mastermind of the Baninter fraud, financier Luis Alvarez Renta, was also convicted and sentenced like Baez Figueroa to 10 years in prison.

Charges against two other defendants in the case, including a former Baninter vice president, were dismissed for lack of evidence.

Bloomberg.com

SEC Plans to Fine Nortel in Enforcement Policy Test (Update3)

By Otis Bilodeau



Enlarge/Details

June 8 (Bloomberg) -- The U.S. Securities and Exchange Commission plans to fine Nortel Networks Corp. for accounting fraud in the first test of a policy that gives the agency's commissioners more say in corporate penalties, four people with direct knowledge of the matter said.

SEC attorneys got the commissioners' approval last month to seek a fine of less than $100 million from Nortel, North America's largest telephone-equipment maker, according to one of the people, who declined to be identified because the decision isn't public. Staff lawyers previously could negotiate settlements without having to obtain permission in advance.

The case may provide a sign of what penalties to expect from the SEC amid concerns that Chairman Christopher Cox is favoring companies at the expense of investors. Fines for accounting fraud varied under the SEC's old policy. Xerox Corp. agreed to pay $10 million in 2002, a record at the time, to settle allegations that the company overstated revenue by $3 billion. The regulator extracted $750 million from WorldCom Inc. the following year.

``This was an easy case for the SEC to buy into imposing a penalty because the facts were so terrible,'' said James Cox, who teaches securities law at Duke University in Durham, North Carolina. He's not related to the SEC chairman.

Nortel shares rose 16 cents to C$27.54 in trading on the Toronto Stock Exchange. They're down 12 percent this year.

Scotia Capital analyst Gus Papageorgiou said in a note to clients that at less than $100 million Nortel's fine would be half as big as some investors expected.

Revenue Inflated

The SEC opened a formal investigation into Nortel's accounting in 2004. The Toronto-based company restated its financial results the next year, admitting it had inflated revenue by $3.4 billion. In March the regulator sued former Chief Executive Officer Frank Dunn and three other ex-officials, accusing them of manipulating earnings from 2000 to 2004 to meet analysts' expectations and trigger bonus payments.

SEC spokesman John Nester in Washington and Jay Barta, a spokesman for Nortel, declined to comment.

The SEC's five commissioners are political appointees. Three, including the 54-year-old Cox, are Republicans. Two are Democrats.

Commissioner Roel Campos, the senior Democrat, in April questioned whether the new policy will ``disrupt a process that has served the commission and investors well for many years.'' Campos didn't reply to a request for comment on the Nortel case.

The full effect of the approvals system won't become clear until the SEC uses it in more cases, especially ones in which the misconduct is less flagrant, said Cox, the Duke professor.

The SEC's Cox defended the change in an April 13 speech, saying it would discourage staff lawyers from ``hedging their bets'' by negotiating small fines for fear commissioners might ``cut them off at the knees.''

Investor Advocate

Cox also has rejected complaints from organizations such as the Consumer Federation of America that he's pushing the SEC to be more friendly to business. U.S. Representative Barney Frank, the Democratic chairman of the House Financial Services Committee, last month called a hearing to examine the SEC, saying, ``There are enough questions in the air.''

``We are relentless advocates for investors,'' Cox told reporters in Washington after a May 10 speech. ``Every day we come to work, that's our priority.''

Nortel, which agreed to pay about $2.4 billion to settle lawsuits filed by shareholders, tried to persuade the SEC to drop its accounting probe without imposing a fine, according to the people familiar with the case. The company said a financial penalty wasn't warranted because it fired top executives, including Dunn, 53, sued them to recoup bonuses and cooperated with investigators.

Ontario Investigation

The Ontario Securities Commission, which conducted a parallel investigation, stopped short of levying a fine. Nortel settled with the Canadian regulator last month by agreeing to pay C$1 million ($940,000) to cover the cost of the probe. The OSC said it didn't want to penalize the company for the conduct of former executives.

Nortel didn't admit or deny wrongdoing under the accord.

Lawrence Iason, a lawyer for Dunn, declined to comment on the SEC's lawsuit. Dunn said in a March 12 statement that the U.S. agency should have ``deferred'' to Ontario regulators ``in what is really a Canadian matter.''

Neither Dunn nor the other defendants in the SEC case, Douglas Beatty, Michael Gollogly and MaryAnne Pahapill, have filed a response to the agency's allegations in court.

Susan Necheles, an attorney for Pahapill, declined to comment. Lawyers for Beatty and Gollogly didn't reply to requests for comment.

To contact the reporter on this story: Ole Bilodeau in Washington at obilodeau@bloomberg.net.

Last Updated: June 8, 2007 16:58 EDT

INTERNATIONAL
Herald Tribune

SEC files civil charges against four former Nortel executives

By Christopher Mason
Monday, March 12, 2007

TORONTO: The U.S. Securities and Exchange Commission filed civil charges Monday against four former Nortel Networks executives ? including the former chief executive, Frank Dunn ? who are accused of committing accounting fraud to meet earnings forecasts and industry expectations.

Besides Dunn, the former chief financial officer, Douglas Beatty, the former controller, Michael Gollogly, and the one-time assistant controller, MaryAnne Pahapill, are named in the civil charges.

Following an investigation of nearly three years by the SEC, the former executives are accused of altering Nortel's finances between September 2000 and January 2004 to present a rosier image of the company's true performance.

"The defendants charged today all disregarded accounting principles and disclosure requirements designed to provide investors with a clear and accurate picture of a company's performance," the associate director of the SEC's division of enforcement, Christopher Conte, said.

The SEC also said the defendants received performance bonuses as a result of the manipulated financial results.

The issues sent Nortel into a financial turmoil that the company continues to struggle with. This month, Nortel announced it would have to restate its results for the fourth time in four years.

The first restatement came near the end of 2003. Dunn, Beatty and Gollogly were put on leave in March 2004 when a second restatement was announced. They were fired a month later. Pahapill left Nortel in 2005.

Nortel went to great lengths to distance itself from the former employees as it struggled to recover from a sharp drop in its stock values and several shareholder lawsuits.

A Nortel spokesman, Jay Barta, said Monday that the company would not comment on the SEC proceedings.

Dunn, Beatty and Gollogly are also the subject of an investigation by the Ontario Securities Commission. The OSC announced Monday that a hearing in the inquiry would take place May 1.

In a statement, Dunn did not address the SEC charges.

Notes:

SEC Fines Jailed Hedge Fund Manager $20 Million

The SEC has closed its case against a hedge fund manager it claims swindled investors, including former NFL players, out of $185 million.

By Aaron Seward

A federal judge in Georgia has fined Atlanta-based hedge fund manager Kirk S. Wright $20 Million for his part in an offering fraud that robbed at least 500 investors, some of them professional football players, of as much as $185 Million.

In addition to the $20 Million in disgorgement and monetary penalties, the court issued a restraining order and an injunction against Wright, prohibiting him from future violations.

For the time being, however, Wright remains in jail. Last May, after three months on the lam, authorities arrested Wright in South Florida. They charged him with 23 counts of money laundering and 24 counts of mail and securities fraud. The criminal trial is scheduled to begin on May 14th.

The civil charges against Wright arose from an SEC complaint filed last year. The regulator claimed that from early 1997, Wright operated two Atlanta-based investment advisers, International Management Associates and International Management Associates Advisory Group, to sell investments in seven hedge funds he controlled.

According to the SEC, since at least 2004, Wright and his companies provided investors with quarterly statements that wildly misstated both the amount of assets in the funds and their rates of return.

For example, an International Management Associates account statement showed one client's investment appreciating 20% from 2004 to 2005. But the SEC claims that by 2005, the assets in the respective funds had been largely dissipated, a fact that Wright did not disclose to investors.

Instead, Wright lied even more. When, in October 2005, several investors demanded to see the brokerage account statements for Wright's hedge funds, the stock promoter produced four statements purporting to be from broker-dealer Ameritrade. In fact, three of the statements were total fabrications and the fourth pertained to an account not managed by Wright.

As time went on, and more and more clients demanded verification of their investments, Wright buried himself deeper in falsehood. When one investor sent a representative to check on his funds in February 2006, Wright showed him a computer screen that featured what appeared to be Ameritrade's website. The page listed the purported balances of three of Wright's funds. These, again, were total fabrications and did not reflect the funds' assets at that time.

Likewise, during the first four months of 2005 two of Wright's funds suffered $10

million in trading losses, a substantial portion of their total assets. But the account statements that Wright sent to investors in the funds stated positive rates of return and falsely inflated assets.

Wright's companies filed registration forms with several states in January 2006, stating that they controlled approximately $185 million, all of which was in Ameritrade accounts. The SEC said, however, that at this time Wright's accounts at Ameritrade showed less than $500,000.

A group of NFL players, including Denver Broncos wide receiver Rod Smith, New York Giants linebacker Carlos Emmons, and former Broncos safety Steve Atwater, sued Wright last year when they couldn't retrieve money from their accounts.

While trading losses certainly accounted for a large portion of Wright's funds' losses, there is evidence that suggests he spent investors' money on own lavish lifestyle. The evidence includes the $55,000 engagement ring his bride wore, the entertainment suites he maintained at Atlanta Falcon football games and Atlanta Hawk basketball games, as well as the Bentley, Jaguar, Aston Martin, BMW, and Lamborghini that he kept in his garage.

INTERNATIONAL
Herald Tribune

US authorities say stock fraud cost overseas investors $50 million

The Associated Press
Friday, March 21, 2008

NEWARK, New Jersey: Overseas investors lost more than $50 million (□32.4 million) over the past three years through a stock fraud operation that was based in Brazil and included a company supposedly based in Trenton, New Jersey, authorities said.

The scope of the scheme became known this week with the indictment of two Florida men on money laundering charges. They and 18 people in Brazil, including the suspected ringleader, had been arrested in February.

Over $2 million (□1.3 million) has been seized by authorities to be returned to hundreds of victims, primarily from Britain, Justice Department spokesman Paul Bresson said Friday.

Officials said securities regulators in New Jersey uncovered the fraud in 2005 after distressed investors called from around the world regarding money placed with Heritage Financial Inc. of Trenton. The company was merely a front.

"When this operation utilized false New Jersey entities, victims thought they were calling their broker located in Trenton or Newark when in fact, they were calling the con artists who were operating 'boiler rooms' all over the world," said Gregory Paw, director of the state Division of Criminal Justice.

Heritage Financial was among a series of fictitious companies that offered to buy nearly worthless stock from investors by paying much more than the stocks were worth. Before the transaction took place, however, the "broker" would require the victim to pay an advance fee, supposedly for taxes, escrow payments or other services that are not required, authorities said.

"Many foreigners investing in American stocks were quickly confused by elaborate ploys conceived by this criminal organization that served to provide an air of legitimacy," said Vincent J. Oliva, chief of the New Jersey Bureau of Securities.

After the fees were wired into bank accounts, mostly in Miami, the brokers abandoned the transaction. If investors called brokers to ask about their money, the brokers would often cheat them of additional money by telling the investors the broker had located warrants □ the rights to purchase more shares. The warrants did not exist. The brokers would offer to pay huge premiums for warrants, if the investor sent more advance fees, authorities said.

The Brazilian suspects created realistic Web sites to persuade victims that they were legitimate securities brokers. The suspects stole the identities of real U.S. brokers and created others, authorities said.

The bogus brokers used Internet telephone service to give them U.S. phone numbers even though they were actually in Brazil and other countries, authorities said.

Indicted on money-laundering charges by a federal grand jury on Thursday were two Florida men, Rodrigo Molina and Marcos Macchione. Messages left Thursday and Friday for their attorneys were not returned. The charges carry up to 20 years in prison.

The indictment also seeks any money in several bank accounts linked to laundering proceeds from the

stock scheme.

The Brazilian suspects were arrested when Brazilian Federal Police raided a Sao Paulo hotel and found the telemarketers working the phones, U.S. authorities said.

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On the Net:

New Jersey Bureau of Securities: http://www.njconsumeraffairs.com/bos.htm

Justice Department release: http://www.usdoj.gov/opa/pr/2008/March/08_crm_221.html

Notes:

Forbes.com

Credit Crunch

Feds Investigate Wall Street's Mortgage Mess

Liz Moyer, 01.29.08, 5:34 PM ET

Goldman Sachs and Morgan Stanley are fielding questions from several regulators about subprime mortgages, mortgage securities and derivatives as Washington scrambles to make sense of the credit crunch.

Meanwhile, the FBI has opened a criminal fraud inquiry into 14 companies related to mortgage securitization, which is the business of buying the loans, packaging them into bundles and selling them to investors.

Wall Street banks, which enthusiastically pushed the securitization business to record levels in the last two years, got stuck holding billions of mortgage-related securities and derivatives that declined sharply in value in last summer's subprime meltdown. So far, the biggest banks have written down more than $100 billion worth of their holdings.

Several home lenders have gone bankrupt in the last year. The federal investigation is focused on accounting fraud and insider trading. The FBI did not identify the companies being investigated. The investigation was disclosed at a press briefing Tuesday.

Wire services quoted Neil Power, chief of the agency's financial crimes division, as saying at the press briefing, "We're looking at the accounting fraud that goes through the securitization of these loans. We're dealing with the people who securitize them and then the people who hold them, such as the investment banks."

Washington has been scrambling to respond to the growing credit crisis. Lawmakers introduced an economic stimulus package this week, and several have been demanding investigations into alleged predatory lending that led to the current housing crisis. Foreclosures rose 75% last year, according to a study released Tuesday by RealtyTrac. Consumer delinquencies, not just in home loans but also in credit cards and auto loans, are on the rise. (See: "America's Hardest-Hit Foreclosure Spots.")

The Federal Reserve's Open Market Committee last week made an emergency 75-basis-point cut in the short-term federal funds rate to calm jittery stock markets and try to revive the credit markets. It is expected to cut again at its regularly scheduled hearing this week. Word of a cut would come Wednesday at 2:15 p.m. Eastern time.

Sen. Christopher Dodd, head of the Senate Banking Committee (and erstwhile presidential candidate), said last week that he had met several times with U.S. Treasury Secretary Henry Paulson to come up with ideas to "right the country's economic ship."

The Banking Committee is holding a hearing Thursday on how to prevent mass home foreclosures. Meanwhile, the U.S. Securities and Exchange Commission has been probing the mortgage business.

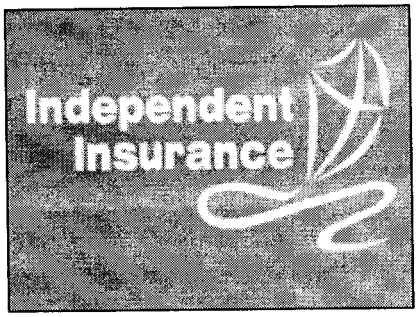
Goldman Sachs and Morgan Stanley disclosed the inquiries into their mortgage businesses in their annual financial statements, filed Tuesday with the SEC. They didn't say which regulators had sent them questions, but they did say the questions were coming from more than one agency and self-regulatory organization, which in the case of brokerage firms would be the NASD and the stock exchanges.

They join Merrill Lynch, which said last November that the SEC had initiated an inquiry into its subprime mortgage portfolio. Merrill, as did Goldman and Morgan Stanley, said it was cooperating.

BBC NEWS

24 Oct 07 11:05 12:05 UK

Insurance bosses jailed for fraud



A former insurance chief has been jailed for seven years after being convicted of defrauding investors.

Michael Bright, 63, was in charge of Independent Insurance when it collapsed in 2001 in one of the industry's most high-profile insolvencies.

Finance director Dennis Lomas received a four-year sentence. Deputy manager Philip Condon was given three years.

A jury had heard how the trio masked the firm's financial problems by withholding details of claims.

Probe

About 1,000 jobs were lost in the collapse of the company - which had previously been regarded as a financial success story.

The three men were charged in December 2005 after a probe by the Serious Fraud Office and City of London police into the firm's closure.

The SFO said that the insurer's accounts for 2000 showed a £22m profit when they should have indicated a loss of at least £180m.

London's Southwark Crown Court heard that the trio knew that the market value of the company would drop "dramatically" if full details of the firm's losses were known.

Bright, of Smarden, Kent was convicted of two counts of conspiracy to defraud.

Lomas, 56, of Haywards Heath, West Sussex, was found guilty of the same offences.

Meanwhile Condon, 48, from Sevenoaks, Kent, was convicted of one conspiracy to defraud charge and cleared of another.

Bright and Lomas were also found guilty of "making incomplete disclosure" of its reinsurance agreements between 1998 and 2001.

Damning audit

The court heard the trio hid the company's ailing health from fellow directors, professional advisers and investors in a bid to protect their reputations, jobs and salaries.

Undisclosed liabilities were "buried", figures manipulated and "bad" reinsurance contracts concealed.

Jurors were told they even "suppressed" a damning internal audit which highlighted major concerns a year before the company went under.

The three men insisted they only ever did their job openly, honestly and to the best of their abilities.

Some of the firm's 500,000 private and corporate policyholders have been given a total of £357m from the

ABC NEWS

S.C. Economist Pleads Guilty in Fraud

Former S.C. Economist Pleads Guilty in $90M Investor Fraud Case; Had Claimed Amnesia

By BRUCE SMITH

The Associated Press

CHARLESTON, S.C.

A former economist pleaded guilty Friday for his role in swindling investors out of an estimated $90 million, which authorities said he used to purchase a half-dozen homes, swanky cars and jewel-encrusted pens.

Al Parish, 50, admitted to two counts of fraud and lying to investigators. He faces up to 45 years in prison.

Parish was known for his flashy clothes and a Web site that depicted him in a superhero costume, a large "E" for "Economan" emblazoned on his chest. But prosecutors say he defrauded about 500 people, and while the exact amount of losses was still being calculated, investors reported losing a total of $90 million.

Appearing before U.S. District Judge David Norton on Friday in a conservative charcoal suit and maroon tie, Parish was asked if he knew why he was at the hearing. He had originally faced 11 charges.

"I'm changing my plea on three of the charges, from not guilty to guilty," he told the judge.

Parish claimed he had amnesia when authorities announced their investigation in April.

Authorities said Parish was not registered with the state or with the Securities and Exchange Commission to deal in securities, and that he promised investors returns well beyond Wall Street's wildest ambitions. He was fired from his job as economics professor at Charleston Southern University when the scandal broke.

Parish did not speak to reporters after the hearing. Parish attorney Andy Savage said his client was worried about serving time, and that a maximum sentence would essentially mean life in prison.

"The plea represents the truth and Al has always been interested in getting this behind him," Savage said. "Prison time is inevitable in this case."

In July, a court-ordered auction of Parish's estate brought in about $2.35 million, only a fraction of the money that Parish is said to have lost.

The items sold included more than 100 high-end watches and a Fender Stratocaster guitar said to have

been played by Jimi Hendrix on his record "Foxy Lady." There were also gnome statues by sculptor Tom Clark and cases of hot sauce bearing the label Al Parish Bottle of Death.

While other items and real estate remain to be sold, investigators said that in the end, they expect to recover less than 10 percent of the missing money. At least $1 million has already gone to pay for the search and sale of the estate by a team of attorneys, accountants and appraisers.

Outside the courthouse, retired antiques dealer Carolyn Hooffstetter, 78, said she lost her $300,000 in life savings by investing with Parish.

"I always asked his opinion and I was very confident that what he was saying was the truth," she said. "I am here to make sure they make him pay for what he has done."

Parish will be sentenced after probation officers complete a sentencing report for the judge. No sentencing date was set.

At a hearing in May, a psychiatrist testified that Parish suffered amnesia resulting from extreme stress, but she also said Parish's memory improved after he learned amnesia was not a defense to the criminal charges.

Parish was known in Charleston to cut a flashy figure in his colorful suits and offered investment tips at speaking engagements. He offered regular economic forecasts for the Charleston Area Metro Chamber of Commerce and wrote periodic columns for The Post and Courier.

Last November, Parish purchased a diamond-studded fountain pen worth $170,000. He put it on display at a Charleston store along with others from his $1.2 million pen collection.

(This version CORRECTS that Parish originally faced 11 charges, not 10.))

Forbes.com

Market Scan

Dell: Cooked Books and Computers

Joshua Lipton, 08.17.07, 5:00 PM ET

Just a year ago, **Dell** had to worry about cooked computers. Now it has an even bigger problem: cooked books.

Delltold Wall Street that its concluded a long probe into accounting problems that kicked off last August, a dramatic investigation that involved more than 375 professionals looking over 5 million documents.

The conclusion of the investigation isn't pretty: Dell will now reduce more than four years' worth of earnings because it mislead auditors.

"The investigation identified evidence that certain adjustments appear to have been motivated by the objective of attaining financial targets," the company said in a statement.

Net income for the restatement period--from 2003 through 2006 and the first quarter of 2007--will be reduced by between $50 million and $150 million, or 2 cents to 7 cents per share.

In its response Dell also said: "The investigation found evidence that ... account balances were reviewed, sometimes at the request or with the knowledge of senior executives, with the goal of seeking adjustments so that quarterly performance objectives could be met. The investigation concluded that a number of these adjustments were improper ... The investigation found that sometimes business unit personnel did not provide complete information to corporate headquarters and, in a number of instances, purposefully incorrect or incomplete information about these activities was provided to internal or external auditors."

Round Rock, TX-based Dell said that the largest percentage changes in quarterly net income and earnings per share are expected to be in the first-quarter of fiscal 2003 and the second-quarter of fiscal 2004, each with expected reductions of between 10% and 13%.

The investigation began as a result of concerns raised by documents and information discovered in the course of responding to requests from the U.S. Securities and Exchange Commission. The company added that the SEC investigation is ongoing.

Dell said the findings will not have a material impact on second-quarter results, due out on Aug. 30. The company has reported only preliminary financial results for the four most recent quarters. It hasn't filed its annual report for the fiscal year ended Feb. 2 because of ongoing probes.

Dell had dealt with a string of problems over the last year. In June 2006, one of the company's notebook computers appeared to spontaneously combust at a conference in Osaka, Japan. In response, the company moved to recall 4.1 million of its notebook computer batteries because of a fire risk. (See: "Dellfire.")

On Feb. 1, Michael Dell returned to the company, taking the job back from Kevin Rollins, who had been struggling to turn the computer-maker around.

What will the real impact of this latest news out of Dell mean for the firm?

"Dell's year long process of limited financial information is finally coming to a close," wrote, Laura Conigliaro, analyst at Goldman Sachs, in a client note.

She said that her analysis shows that Dell did not perform as well as it had reported, but investors are now more likely to focus on Dell's ability to reinstate its share buyback program, eliminate expenses associated with its internal audit, and raise its investor profile through more frequent interactions with management.

Conigliaro said that she think there is a reasonably good chance that Dell starts its buyback program even before it re-files in November.

The analyst said she views Dell as a turnaround story. She rates the company a "Buy" with a 12-month price target of $32.

Investors seemed to agree. Dell shares rose 1.5% on Friday, or 39 cents, to $26.32.

Tom Smith and Clyde Montevirgen, analysts at Standard & Poor's, reiterated a "Hold" opinion on shares of Dell.

"The restatements are expected to include annual revenue reductions of less than 1% from previously stated results and a cumulative net income reduction of $50M-$150M ($0.02-$0.07 EPS), among other changes in quarterly results, balance sheets and cash flows," Smith wrote. "We think this news will reduce concerns, but that market share performance remains the main story."

The Associated Press contributed to this article.

CFO.com

Indicted CFO: PwC Knew We Backdated

A former finance chief says that because his company shared information with its audit firm about misdated option grants, the feds have no case against him.

Sarah Johnson, CFO.com | US
July 5, 2007

Former executives caught up in the backdating scandal have either deflected blame onto other employees or claimed the practice of assigning an earlier date to a stock option grant is not illegal. Now, the ex-CFO of a defense contractor claims he shouldn't be charged for fraudulently backdating options because his audit firm knew what the company was doing.

In a motion to dismiss the criminal case against Gary Gerhardt, the former CFO of Engineered Support Systems, his lawyers say the fact that PricewaterhouseCoopers accountants were aware that stock options had been granted "in the money" proves that Gerhardt hadn't concealed the erroneous grant dates. Hence, "there was no attempt to avoid detection by the public, no attempt to deprive investors or the public of accurate information, and no attempt to defraud investors," the lawyers wrote in the motion filed with a U.S. District Court in Missouri earlier this week.

The attorneys claim that since the executives shared information about the options dating with PwC, ESSI executives can't be charged with trying to hide the backdating, as the indictment alleges. Further, because the grand jury was unaware that PwC knew that ESSI had backdated and repriced stock options, its indictment of Gerhardt is invalid, the lawyers added.

The question of whether a company's audit firm knew about backdating doesn't matter if shareholders were still kept in the dark, according to investor advocates. "It's got to be disclosed, it's a material fact," says Charles Elson, director of the Weinberg Center for Corporate Governance at the University of Delaware.

PwC was ESSI's audit firm until the engineering company was acquired by DRS Technologies in 2006. The audit firm does not comment publicly on "client matters," a PwC spokesman told CFO.com.

Gerhardt was indicted in March on 10 counts of securities fraud, including one count of falsifying documents and four counts of making false statements in regulatory filings. Federal prosecutors claim Gerhardt told his controller, Steven Landmann, to backdate stock options on eight occasions between December 1996 and August 2002.

The prosecutors accuse ESSI executives of trying to hide that fact by changing the dates on options award letters to make it seem as if they were mailed earlier. Gerhardt and other executives also allegedly did "double-backdating" by cancelling options that had been misdated and issuing new ones to take advantage of a new low in the stock's exercise price. Gerhardt's lawyer did not return CFO.com's request for comment.

Earlier this year, Landmann pleaded guilty to one count of providing false statements to the Securities and Exchange Commission in an annual report. Facing a maximum sentence of five years, he is slated to be sentenced in September. He also settled similar charges from the SEC by agreeing to pay $886,557 in penalties. The regulator had accused him of personally gaining $518,972 in the backdating scheme.

Unlike Landmann &#8212 who is expected to testify against his former boss — Gerhardt still faces civil charges by the SEC. He allegedly gained $1.9 million for himself, while six other executives and directors also profited from the alleged backdating. The scheme resulted in overstatements of ESSI's aggregated pretax operating income by $26 million, or 21 percent, according to the SEC.

February 26, 2007

Accounting scandal rocks Alfred McAlpine

Two managers are suspended over accounting irregularities at the operation supplying slate to Buckingham Palace

Steve Hawkes

Alfred McAlpine, the support services group, has been rocked by a £13 million accounting scandal that threatens nearly to halve pre-tax profits for 2006.

The shares plunged by almost a fifth to 499p by lunchtime after the group revealed that it had uncovered "material accounting irregularities" at its Welsh-based subsidiary Slate, the world's largest producer of natural slate and a supplier to Buckingham Palace and the Welsh Assembly.

Two senior managers have been suspended and McAlpine said it believed that the actions of those responsible were deliberate and involved a possible fraud dating back to 2003.

"An internal investigation has uncovered a systematic misrepresentation of production volumes and sales for a number of years by a number of senior managers at the Slate subsidiary," the group said in a Stock Exchange statement this morning.

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BACKGROUND

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- McAlpine shares fall by 5% as cost of old contracts bites

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"In addition, those involved sought to conceal the financial implications of their actions through the pre-selling of slate at substantially discounted prices."

Profits at Slate will be £13 million lower than expected for 2006, before any restructuring or writedowns are taken into account. McAlpine had been predicted to make £43 million.

The group also warned that the "historic actions" of those involved would have a material impact on Slate in the current financial year, with the subsidiary expected to report an increased pre-tax loss.

The scandal was uncovered at the end of last week as the company put the finishing touches to annual results due on March 15.

Alfred McAlpine today would say only that the results would be published before April 30, while an independent team of forensic accountants investigates Slate's accounts for the past four years.

An interim management team has been appointed at Slate, reporting directly to Ian Grice, the McAlpine chief executive.

Slate, taken over by Alfred McAlpine 43 years ago, runs three quarries in North Wales including Penrhyn Quarry, Bethesda, which dates back to the 13th century. Its slate has been used to roof Buckingham Palace, the British Library, the Welsh Assembly and Harvard University in the US.

Last month, McAlpine said it expected to beat pre-tax profit targets for 2006 after record orders. At the time, Mr Grice said: "We are well placed to build on the momentum of the last 12 months."

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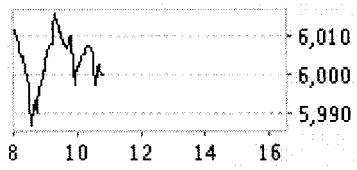

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CHINA / Top News

Woman boss gets death penalty for fraud in east China

(Xinhua)
Updated: 2008-03-22 15:24

HANGZHOU - A woman boss of a beauty parlor has been sentenced to death in east China's Zhejiang Province, convicted of fraud and illegally raising fund of more than 700 million yuan (100 million US dollars), a local court has said.

Du Yimin, 43, was charged with collecting the huge amount of money illegally by promising high returns to her 67 creditors from 2003 to July 2006, according to the Intermediate People's Court in Lishui, Zhejiang.

In addition, hundreds of other investors had been attracted by the lucrative returns -- ranging from 1.8 to 10 percent per month -- and channeled funds into Du's company through her 67 creditors, the court heard.

Many victims had not even seen Du, who was nicknamed "Little Girl", before she was arrested in July 2006, it heard.

Du spent much of the money she had amassed on purchasing apartments and cars and on other luxury items, the court heard.

Du said she would lodge an appeal.