

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

E-GOLD LIMITED,
GOLD & SILVER RESERVE, INC.,
DOUGLAS L. JACKSON,
BARRY K. DOWNEY and
REID A. JACKSON

Criminal No. 07-109 - RMC

related case:

In the Matter of the Seizure of
Any and all property in/underlying E-GOLD
Account **544179** and in/underlying E-GOLD
account **109243**, held by E-GOLD, Ltd. or
Gold & Silver Reserve, Inc. on behalf
of **E-GOLD, Ltd.**

CASE NUMBER:
07-167-M-01

**DEFENDANTS' STATUS REPORT AND NOTICE OF COMPLIANCE WITH THIS
COURT'S SEIZURE WARRANTS AND POST-INDICTMENT RESTRAINING ORDER**

Defendants e-gold Limited ("e-gold, Ltd."), Gold & Silver Reserve, Inc. ("G&SR"), Douglas L. Jackson, M.D., Barry K. Downey, Esquire and Mr. Reid A. Jackson, in response to the government's as yet undisclosed *ex parte* submissions and in connection with the status hearing scheduled by the Court, submit the following status report:

INTRODUCTION

This is not a story of common criminals operating surreptitiously in a netherworld to launder money and commit crimes. Rather, this case is about three respected individuals – Douglas L. Jackson, M.D., a talented medical doctor; Barry K. Downey, a prominent lawyer; and Reid A. Jackson, a gifted systems analyst -- who took seriously the rights and liberties guaranteed to them by the Constitution and laws of the United States and created an alternative global

currency and payment system for the betterment of mankind. They did so forthrightly and openly, meeting at conferences with world bankers and representatives of international monetary funds, working hand-in-hand with various agencies of the United States government and even testifying on Capitol Hill about the nature of their business enterprise. They believed – and continue to believe – that they complied with all laws and regulations applicable to their business.

e-gold Ltd. and G&SR, which represent an innovative new approach to exchanging value over the Internet in a global economy, are not subject to existing statutes and regulations drafted in an earlier day to govern “money transmitting businesses.” Nor does the mere fact that criminals have allegedly used e-gold to commit crimes – just as they use United States currency, credit cards, other traditional forms of payment or other web sites – subject Defendants to criminal liability for money laundering. Any such alleged criminal activity was committed by others without Defendants’ knowledge and despite Defendants’ continuing best efforts and systems implemented to prevent their businesses from being used by persons engaged in fraud or other illicit activities.

These criminal and forfeiture proceedings were brought because certain government agents, the prosecutors in this case, mistakenly contend that the operations of the business have failed to comply with certain federal laws and regulations. Yet strikingly, Defendants are not the only ones who disagree with many of the prosecutors’ assertions in this case. Many others in the federal government have previously stated that existing federal laws and regulations do not apply to digital age businesses such as e-gold and G&SR. For example:

- A January, 2007 United States House of Representatives Energy Committee staff report, addressing digital currencies such as e-gold, concluded that: **“Digital currencies that do business in the United States are not subject to any of the U.S. banking requirements.”** Indeed, the staff report noted **“the lack of**

regulation of digital currencies by any government entity, domestic or foreign.”¹

- A Special Agent of the FBI’s Cyber Crimes Unit, when questioned by Fox News about the government’s investigation of the e-gold business, stated that: “At this point it is not illegal, **it operates in an area of the law where there is no law.**”²
- In a December, 2005 report titled U.S. Money Laundering Threat Assessment, issued jointly by a number of government agencies, including the Department of Treasury and Department of Justice, those agencies observed that “[w]hether an **online payment system or digital currency service meets the definition of a money transmitting business pursuant to BSA regulations . . . depends upon its location and the ways in which it participates in or conducts transactions.**”³
- In its October 13, 2006 *Report on New Payment Methods*, the Financial Action Task Force (FATF) indicated that in the United States, money transmitters are among moneyservices businesses that are required to register with the FIU (FinCEN), they also are subject to AML reporting and recordkeeping requirements and are often required to be licensed on the state level. “**Whether an online payment system or digital precious metals dealer meets the definition of a money transmitter pursuant to the relevant regulations, though, depends upon its location and the ways in which it participates in or conducts transactions.**”⁴

This matter, therefore, ultimately amounts to a legal dispute about the application of a law to a particular factual situation. There are two divergent interpretations: one held by the prosecutors in this case, and the other by the Defendants, and validated by staff (and apparently

¹ http://republicans.energycommerce.house.gov/108/News/01032007_Report.pdf (last viewed May 15, 2007), pp. 29-30; [Emphasis added].

² Interview available at: <http://www.myfoxla.com/myfox/pages/Home/Detail.jsessionid=CE5F83220C1D2F0AA947712455408CDF?contentId=2521038&version=3&locale=EN-US&layoutCode=VSTY&pageId=1.1.1> (last visited May 15, 2007).

³ http://www.treasury.gov/press/releases/reports/js3077_01112005_MLTA.pdf (last visited May 15, 2007), p. 27.

⁴ <http://www.fatf-gafi.org/dataoecd/30/47/37627240.pdf> (last visited May 16, 2007), p.39. While not technically a federal department or agency, the FATF is an inter-governmental body which sets standards and develops and promotes policies to combat money laundering and terrorist financing; see, www.fatf-gafi.org.

members) of the United States House of Representatives, FBI agents, United States Department of Treasury and Department of Justice staff, the FATF, and many others. It is not about audacious or furtive acts committed to advance a criminally intentioned enterprise. And this is certainly not a typical money laundering case.

Defendants eagerly await the opportunity to present their arguments and to prevail at trial. In the meantime, however, given the legitimacy of Defendants' interpretation of the applicable law, as validated by others in the United States government, it is unconscionable that the prosecutors in this case – on an *ex parte* basis, before trial and, indeed, before even *any* opportunity for Defendants to be heard – seek to effectively destroy and permanently end Defendants' business.⁵ The travesty of that action is compounded only by the fact that, to obtain the seizure warrants, the government apparently failed to advise the Court of this good faith disagreement about the application of the law to the business.

Likewise, the government, in its unbridled zeal to seize assets, also presumably failed to apprise the Court of the continuing cooperation that Defendants have provided during the course of the government's nearly three-year investigation. The government also, in suggesting that the e-gold "might become worthless," presumably failed to explain to the Court that every ounce of e-gold in circulation is secured by actual gold bullion and other precious metals held in allocated storage repositories, certified by the London Bullion Market Association, under the terms of a

⁵ To the extent there is any uncertainty that such is the government's true objective, one need look no further than the opening lines – and continuing theme – of the government's indictment: "One of the earliest issuers of digital currency **WAS** e-gold, Limited..., which **OPERATED** via the Internet....E-GOLD **WAS** widely accepted as a payment mechanism...." *See*, Indictment, at ¶ 2. [Emphasis added]. The Defendants therefore question whether an ulterior, improper purpose – i.e. to unilaterally, without trial or anything even resembling due process, shut down and permanently destroy an ongoing business enterprise – stands at the root of the Indictment and subsequent *ex parte* requests.

protected trust subject to the authority of a third party escrow agent. Both of these latter factors would have lessened any perceived need for seizure warrants.

Finally, the government apparently failed to advise the Court that the almost certain consequence that will follow from the Court's seizure warrants is the complete destruction of the businesses. Indeed, it appears that in its *ex parte* applications, the government persuaded the Court to enter seizure warrants and restraining order upon two central representations: (a) "the alleged "need to preserve the availability of the subject property through the entry of the order requested" and (b) the suggestion that "the order requested is narrowly tailored to allow orderly continuation of defendants' business activities as well as the ability of the defendants' customers to access their funds through it." *See* Post Indictment Restraining Order, at ¶ 7. Neither representation is even remotely true.

**E-GOLD, LTD. AND GOLD & SILVER RESERVE, INC.
OPERATE INNOVATIVE AND LAWFUL BUSINESSES**

A. The medium of exchange called "e-gold"

There is no dispute that e-gold is an innovative undertaking. It is the world's first electronic currency designed for borderless, electronic business transactions over the Internet. e-gold, Ltd. issues the e-gold currency which enables the worldwide use of gold as money.

Dr. Douglas Jackson left the practice of medicine at the peak of his career, giving up a successful radiation oncology practice and the only source of steady income that he had, because he had a vision: to establish a currency that could be designed with a governance model rendering it immune to debasement by even those administering it, and to bring new opportunities to the global economy and to persons throughout the world who most needed such a monetary and payment system. Since being launched in 1999, e-gold has gained worldwide

acceptance. The e-gold digital currency has been lauded by knowledgeable and forward-thinking publications such as Barron's, The Financial Times and Wired magazine.^{6 7 8}

e-gold is unique in that every ounce is secured by actual gold bullion held in allocated storage at repositories certified by the London Bullion Market Association. Title to that bullion is held by the E-Gold Bullion Reserve Special Purpose Trust, which exists for the express "purpose of holding precious metal bullion on behalf of and for the exclusive benefit of all e-metal account holders collectively, pursuant to the e-gold, e-silver, e-platinum, and e-palladium currency contracts." Declaration of Trust, The E-Gold Bullion Reserve Special Purpose Trust ("Trust Agreement"), § 4.1; see, <http://www.e-gold.com/contracts/egold-spt-111899.htm>. A previously scheduled audit of all bullion subject to the Special Purpose Trust took place on Monday, April 30, 2007 and confirmed that e-gold is what it purports to be, i.e. "100% backed at all times by gold bullion in allocated storage." See, <http://www.e-gold.com/unsecure/qanda.html>.

As such, the e-gold in the e-gold system is insulated from physical, legal and political risks. The gold and other precious metal is – and, particularly under the terms of the Court's

⁶ "e-gold is the only electronic currency that has achieved critical mass on the web... For merchants, e-gold has a further bonus: unlike credit cards, which are liable to chargebacks, the system guarantees payment once ordered." "When gold may make a lot of cents", *The Financial Times*, July 13, 1999.

⁷ "With the global expansion of the Internet and eCommerce, the world needs a new type of currency. It needs an asset backed, high-tech monetary standard, without the political machinations that hobble the euro, the dollar, the yen and all other traditional currencies... One company, e-gold, already allows online users to settle payments using its currency, which is 100% backed by gold." "Making New Money," *Barron's*, April 23, 2001.

⁸ "Invulnerable to government manipulation and subject to the kinds of market forces only a worldwide, 24/7, open-ended network can bring to bear, e-gold promises not simply better money but the best: a money supply kept so straight and narrow that it has room for neither bubbles or crashes." "In Gold We Trust", *Wired*, January 2002.

restraining order, always will be – available to satisfy any forfeiture order that the government may seek, in the unlikely event it were to prevail at the conclusion of this case.

There are currently about 143,000 e-gold account holders in nearly 165 countries with existing account balances. Prior to the government's seizure, approximately 60,000 "spends," comprising about \$5,000,000 of total value, were settled by the e-gold system each weekday as part of lawful and legitimate business and personal exchange transactions.

The total amount of e-gold in circulation prior to the execution of the latest seizure warrants was 3.49 million grams. At applicable exchange rates, that was the equivalent of more than Eighty Million U.S. Dollars (\$80,000,000). This was backed (prior to the seizure) by physical gold bullion reserves in the Special Purpose Trust, which exceeded the official gold reserves of Mexico or Canada.

Users acquire and maintain e-gold balances in their e-gold accounts. Account holders use their e-gold to make payments (called "spends") directly from their e-gold accounts to other e-gold account holders who accept e-gold as medium of exchange for a given transaction. Thus, an account holder may acquire e-gold to fund his or her account by receiving a "spend" either from another account holder or by purchasing e-gold from an exchange provider (as explained more fully below) and receiving a "spend" from that service.

There are many significant reasons why the e-gold business model has attracted so many account holders. First and foremost, e-gold was designed to serve the global economy and to afford people the opportunity to send a currency worldwide, immediately and with minimal cost. Indeed, it does just that.

For example, according to a recent news story, "[f]or an immigrant earning the minimum wage in New York City, it takes a full week of work to pay off the fees Western Union charges

during a year of sending money home.” <http://www.thenation.com/doc/20070528/thompson> (last visited May 15, 2007); *see also, e.g.*, Global Economic Prospects 2006, World Bank Report,⁹ (“an important benefit to developing countries is the receipt of remittances or transfers from income earned by overseas emigrants”). In contrast, the same worker using e-gold may transfer as much value that he or she has in an e-gold account for a maximum fee of 5 centigrams of gold, which is the equivalent \$1.06 at current exchange rates.

Second, e-gold “spends” are, under almost all circumstances, irreversible. While the government asserts that this may make the system attractive to persons engaged in fraud, the finality of settlement is equally important and attractive to legitimate business people. It allows a merchant selling a product to know that he or she has been paid, irrevocably, before merchandise is shipped. As Magistrate Judge John Facciola aptly noted in articulating his initial impressions of the e-gold model:

And I explained to these [government agents] that I didn’t quite understand why, if I understood the situation correctly, why there was any governmental concern about an instrument that struck me as being fairly common in the marketplace. That is, I could conjure up a situation in which a gentleman in Argentina, for example, who was a merchant, would buy goods from France. Since in Argentina his currency might be fluctuating wildly, I could understand why the merchant in France would be unwilling to be paid in pesos, and therefore would be willing to be paid in an international instrument like this.¹⁰

There are many other reasons why e-gold is as popular as it is – not the least of which is that a substantial segment of the world economy still desires to trade in currency still backed by

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<http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/GEPEXT/EXTGEP2006/0,,menuPK:1026834~pagePK:64167702~piPK:64167676~theSitePK:1026804,00.html> (last visited May 15, 2007)

¹⁰ *See, Case No. 05-02497, DE 31, at p.6.*

gold – and the Defendants look forward to educating the Court about these reasons throughout the course of this case.

B. The OmniPay system

e-gold account holders hold an ownership interest in gold and may transfer that ownership interest (or portions thereof) to other e-gold accounts holders. However, to make payments to persons or businesses who do not yet accept e-gold directly, customers may use an exchange provider. OmniPay, owned and operated by G&SR, is but one such provider. Thus, G&SR, and other exchange providers like it, facilitate the operation of e-gold, Ltd.

G&SR does not deal in cash or cash-equivalents, and does not sell money orders or send money by wire. It merely affords people the opportunity to buy or sell e-gold, the liability of e-gold, Ltd. representing the value of an amount of gold bullion owned by and titled to the Special Purpose Trust. Thus, G&SR has never operated an unlicensed or otherwise illegal money transmitting business, because G&SR was not, and is not, operating a money transmitting business in the first place. OmniPay, and other exchange providers, simply extend the usefulness of e-gold by seamlessly integrating it with existing payment systems.

C. The Exchange Orders that OmniPay processes

There are three types of exchange orders that OmniPay processes:

1. "InExchange" (National Currency to e-metal):

A user remits national currency (for example, USD) to OmniPay via the banking system. Upon receipt of remittance, OmniPay pays the User in e-gold via the e-gold system, according to the terms of the exchange order.

2. "Metal-to-Metal" (e-metal to e-metal):

A user remits e-metal (for example, e-silver) to OmniPay via the e-gold system. Upon

receipt of remittance, OmniPay pays the user in a different e-metal (such as e-gold) via the e-gold system, according to the terms of the exchange order.

3. "OutExchange" (e-metal to National Currency):

A user remits e-gold to OmniPay via the e-gold system. Upon receipt of remittance, OmniPay pays the Payee, as specified by user, in national currency (for example, USD) via the banking system, according to the terms of the exchange order.

**DEFENDANTS HAVE FOR YEARS WORKED
COOPERATIVELY WITH THE GOVERNMENT**

Since the earliest days of operations, e-gold, Ltd. and G&SR have worked hand-in-hand with government agents – including investigators from the Federal Bureau of Investigation (FBI), United States Postal Service, Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), and Assistant United States Attorneys and local prosecutors throughout the nation – to root out fraud and illicit activity perpetuated by people using the e-gold system for improper purposes. They have provided records of transactions, affidavits and certifications to help further such investigations and assist in the prosecutions of criminals using the e-gold system.¹¹

Defendants also initiated a dialogue with the United States Secret Service to discuss further measures that could be implemented to locate abusers of the e-gold system. *See* e-mails between Dr. Jackson and officials of the Secret Service and Department of Justice from November – December, 2004, attached as Exhibit A hereto. In 2004, Dr. Jackson personally arranged to visit Secret Service headquarters in Washington, D.C. to teach the Secret Service

¹¹ On January 13, 2006, during a hearing before this Court in Case No. 05-02497, undersigned counsel provided records of **more than 300 instances** of such subpoena compliance to counsel for the government. Such subpoenas are complied with and maintained in the ordinary course of e-gold, Ltd.'s business.

