

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff

v.

Civil Action No. 2:10-1087
(Lead action)

\$88,029.08, MORE OR LESS,
IN UNITED STATES CURRENCY,

Defendant

UNITED STATES OF AMERICA,

Plaintiff

v.

Civil Action No. 2:11-0101
(Consolidated action)

\$27,671.50, MORE OR LESS,
IN UNITED STATES CURRENCY

Defendant

Interested parties:

Katherine Anne Hoover, M.D.

John F. Tomasic

MEMORANDUM OPINION AND ORDER

Pending is the United States' motion for a certificate of reasonable cause, filed October 16, 2012, and the interested parties' motion to recuse, filed November 1, 2012.

Prior to the United States' filing its response to the motion to recuse or its reply respecting its motion for a certificate of reasonable cause, the interested parties noticed an appeal on November 21, 2012, of the September 28, 2012, Judgment. Federal Rule of Civil Procedure 62.1(a) provides pertinently as follows:

(a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

- (1) defer considering the motion;
- (2) deny the motion; or
- (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

Fed. R. Civ. Proc. 62.1(a).

Pending disposition of the appeal, the court ORDERS that the motion for a certificate of reasonable cause be, and it hereby is, denied without prejudice. Respecting the motion to recuse, the interested parties appear to assert that inasmuch as the \$88,029.08 and \$27,671.50 ("seized funds") at issue in this action were originally on deposit at WesBanco, and that WesBanco appears on the recusal list of the undersigned, disqualification is required.


WesBanco is not a party to this action. According to the return on the applicable seizure warrant, which was filed March 30, 2010, in In re Seizure of Proceeds on Deposit in Account No.

XXXXXX3002 and Account No. XXXXXX7905, Wesbanco Bank, Inc. Wheeling WV, in the name of Katherine A. Hoover, 2:10-mj-29, a WesBanco manager paid over the seized funds to the United States Marshal's Service on March 2, 2010. The lead and consolidated actions were then assigned to the undersigned months later, respectively on September 29, 2010, and February 11, 2011.

There is no indication that WesBanco continues to have any interest in the seized funds. The institution is not listed as either a claimant or an interested party herein. There is thus no basis for disqualification. The court, accordingly, ORDERS that the motion to recuse be, and hereby is, denied.

The Clerk is directed to transmit a copy of this written opinion and order to the appropriate case manager at the Clerk's Office in the United States Court of Appeals for the Fourth Circuit, all counsel of record, and any unrepresented parties.

DATED: January 18, 2013



John T. Copenhaver, Jr.
United States District Judge