May 2014

In Re Metmor Financial, Inc.: The Better Approach to Post Seizure Interest Under the Comprehensive Drug Abuse Prevention and Control Act

Christopher M. Neronha

Follow this and additional works at: http://scholarship.law.nd.edu/ndlr

Recommended Citation
Available at: http://scholarship.law.nd.edu/ndlr/vol65/iss4/9

This Commentary is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.
In re Metmor Financial, Inc.: The Better Approach to Post-Seizure Interest Under the Comprehensive Drug Abuse Prevention and Control Act

Since 1970, following congressional approval of the Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act), the federal government has carried out scores of civil forfeitures under its provisions. In re Metmor Financial, Inc. is an example of a case arising from government exercise of the powers granted by the Drug Control Act in the fight against the drug trade and drug usage in this country. In fact, In re Metmor is the first federal circuit court of appeals decision addressing the award of post-seizure interest to an innocent party under the Drug Control Act. Consistent with a small contingent of district courts addressing the issue at the time, but contrary to the majority, the Fourth Circuit declared its intent to protect the "innocent owner" from the government's attempt to deny such protection.

Part I of this Comment discusses the facts of In re Metmor and its holding in favor of post-seizure interest. Part II examines the inconsistent treatment of post-seizure interest to innocent lienholders by various courts by discussing the primary district court case denying post-seizure interest, United States v. One Piece Of Real Estate. Part III discusses the legislative history and analyzes the congressional intent behind the Drug Control Act and one of its most important amendments. Part IV examines the reliance by both sides in the issue upon United States v. Stowell, a forfeiture case handed down a century ago. Finally, Part V addresses possible consequences of denying post-seizure interest to an innocent third party and concludes that the In re Metmor court's protection of post-seizure interest is the best approach.

I. Facts and Ruling of In re Metmor

In re Metmor involved an appeal of an order of forfeiture in favor of the United States government. The government seized a small horse ranch located near Dade County, Florida, after the property's owner, Paul Ackley, was implicated as a drug smuggler and declared a fugitive. The government accomplished the seizure by filing a complaint against the property with the United States Marshal's Service, pursuant to section 511 of the Drug Control Act.  

2 819 F.2d 446 (4th Cir. 1987).
4 133 U.S. 1 (1890).
5 In re Metmor, 819 F.2d at 447.
6 Id.
7 Id. Section 511 of the Drug Control Act is codified at 21 U.S.C. § 881 (1988), see infra note 32.
Metmor Financial was an assignee of a mortgage on the horse ranch prior to Ackley's purchase of it; the property was subsequently purchased by Ackley who assumed the mortgage held by Metmor Financial. Metmor Financial claimed no knowledge of Ackley's alleged connections with illegal drug activity and filed a claim with the government for an interest in the property.

The United States District Court for the District of South Carolina entered an order of forfeiture which condemned and forfeited to the government Ackley's ranch in Florida. In addition, the court stated that the real property remained subject to Metmor Financial's lien, plus interest up to the time of seizure. On appeal, the sole issue was the district court's denial of Metmor Financial's claim for post-seizure interest on the mortgage. Such interest had been accruing from the time of seizure and eventually amounted to nearly two years worth of accumulated interest.

At no time did the government deny that Metmor Financial had obtained an interest in the property, but rather, essentially acquiesced to Metmor Financial's claimed innocent lienholder status. The government did not contest the district court's forfeiture of the property subject to Metmor Financial's lien, so long as post-seizure interest was denied. The Fourth Circuit Court of Appeals subsequently reversed the district court's holding, and required that the government pay Metmor Financial post-seizure interest that had accrued from the time of seizure to the property's eventual sale.

II. *United States v. One Piece Of Real Estate* and the Controversy Over Post-Seizure Interest

*United States v. One Piece Of Real Estate* (One Piece) was the first federal district court case denying post-seizure interest to lending institutions claiming an innocent owner status. This 1983 case from the United
States District Court for the Western District of Pennsylvania is the precedent setting case for other districts adopting a “no-interest” rule.\textsuperscript{18} In \textit{One Piece}, the government sought forfeiture of various parcels of real-estate because they were purchased with the proceeds of unlawful drug transactions.\textsuperscript{19} Like \textit{In re Metmor}, several institutional lienholders filed claims under section 881 seeking to recover the unpaid principal as well as post-seizure interest.\textsuperscript{20} The government did not deny the lienholder’s right to their unpaid principal and any unpaid interest charges accrued up to the date of seizure.\textsuperscript{21} Nonetheless, the government, in what was to become their usual posture in such cases, held firm in their denial of the lienholder’s claim to any post-seizure interest.\textsuperscript{22} The court subsequently awarded the lienholder-claimants their remaining principal and interest up to the time of seizure on the liens.\textsuperscript{23} The court refused, however, to allow any recovery for post-seizure interest.\textsuperscript{24} In \textit{In re Metmor}, the Fourth Circuit states at the beginning of its decision that, “as far as we are aware, no court of appeals, and only a handful of district courts, have addressed this issue.”\textsuperscript{25} With the exception of \textit{In re Metmor}, this situation remains unchanged. Among the limited number of courts addressing this issue, districts in South Carolina, Louisiana, and Florida have opted to deny post-seizure interest to innocent lienholders while districts in Tennessee, Georgia, Pennsylvania, and Hawaii have adopted the diametric position.\textsuperscript{26} All of these decisions resolve the issue upon either one or both of the following grounds: the interpretation of the federal statute governing these seizures and subsequent forfeitures, or the relation-back doctrine as formulated in \textit{United States v. Stowell}.\textsuperscript{27} The discussion of the governing statute centers upon the interpretation of a clause purporting to protect “innocent owners.” Specifically, the dispute revolves around the extent of an innocent owner’s interest under the statute. Under the relation-back concept, the dispute arises over the ability of the doctrine to deny or protect an innocent lienholder’s post-seizure interest. Courts applying \textit{Stowell} hold that the relation-back doctrine vests the government’s interest in the forfeitable property at the time it becomes tainted from illegal activity.\textsuperscript{28} Thus, once

\begin{itemize}
  \item \textsuperscript{18} \textit{Id. See infra note 26.}
  \item \textsuperscript{19} \textit{United States v. One Piece Of Real Estate, 571 F. Supp. 723, 724 (W.D. Tex. 1983).}
  \item \textsuperscript{20} \textit{Id.}
  \item \textsuperscript{21} \textit{Id.}
  \item \textsuperscript{22} \textit{Id.}
  \item \textsuperscript{23} \textit{Id. at 726.}
  \item \textsuperscript{24} \textit{Id.}
  \item \textsuperscript{25} \textit{In re Metmor Fin., Inc., 819 F.2d 446, 448 (4th Cir. 1987).}
  \item \textsuperscript{27} \textit{United States v. Stowell, 135 U.S. 1, 16-17 (1890).}
  \item \textsuperscript{28} \textit{United States v. One Piece Of Real Estate, 571 F. Supp. 723, 725 (W.D. Tex. 1983).}
\end{itemize}
title to the property vests in the government, others, including innocent lienholders, may not acquire a superior interest or increase their already present interest.29 Here, the dispute arises over the ability of the relation-back doctrine to deny or protect an innocent lienholder’s post-seizure interest. This Comment analyzes these two concepts and discusses how both the In re Metmor and One Piece courts apply them in justification of their opposing positions on this issue.

III. The Drug Control Act

In 1970, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act to curb what was found to be a growing problem of drug abuse and addiction in this country.30 A House report states that one of the principal purposes of the bill, "was to deal in a comprehensive fashion with the growing menace of drug abuse in the United States . . . through providing more effective means for law enforcement aspects of drug abuse prevention and control."31

The seizures in In re Metmor and One Piece, as well as those in the other district court cases, were executed pursuant to the civil forfeiture provisions of the Drug Control Act, codified at 21 U.S.C. § 881.32

29 Id.
31 Id.
32 21 U.S.C. § 881 (1988). Subsection (a) of § 881 reads as follows:

§ 881. Forfeitures
(a) Subject property.
The following shall be subject to forfeiture to the United States and no property right shall exist in them:
(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.
(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.
(3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).
(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9), except that—
(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter;
(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State; and
(C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.
(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.
(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance
tion 881 permits the federal government to seize by forfeiture numerous items, including real property, which were purchased with the proceeds of illegal narcotics trafficking or were used to facilitate the manufacture or distribution of illegal narcotics.\textsuperscript{33} Since these are civil forfeiture proceedings, a criminal conviction is not a prerequisite.\textsuperscript{34} The proceedings are in rem actions that are based upon the legal fiction that the property itself is guilty of wrongdoing.\textsuperscript{35} Congress designed section 881 primarily to take the profit out of the drug trade and, as is readily apparent, it provides the means to do just that.\textsuperscript{36}

Until Congress amended section 881 in 1978, no basis existed for bringing a lawsuit under that section to recover post-seizure interest. After reviewing the success of the 1970 statute, Congress became concerned that the government could forfeit a person's property even though that person was in no way connected to the wrongdoing that had triggered the forfeiture. For instance, prior to the amendment, under certain circumstances a person could forfeit his automobile to the gov-

\begin{itemize}
  \item In violation of this subchapter, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.
  \item (7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.
  \item (8) All controlled substances which have been possessed in violation of this subchapter.
  \item (9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this subchapter or subchapter II of this chapter.
\end{itemize}

\textit{Id.}


33 21 U.S.C. § 881 (1988). \textit{See United States v. Reynolds, 856 F.2d 675, 676 (4th Cir. 1988)} (holding that an entire tract of property is subject to forfeiture even though only a small part of it was used for illicit purposes). In referring to 21 U.S.C. § 881(a)(7), the Reynolds' court stated, "Congress expressly contemplated forfeiture of an entire tract based upon drug-related activities on a portion of a tract. The statute is so clear that resort to extrinsic aids to seek its meaning are unnecessary." \textit{Id.}


36 \textit{See supra} notes 30-35 and accompanying text.
ernment even though he never engaged in any illegal activity. If the vehicle happened to be stolen, was used to transport controlled substances, and then recovered, it could eventually be forfeited because it was used to facilitate the crime. As the One Piece court points out, prior to 1978, the statute itself offered no remedy, and the owners only remedy was to petition the Attorney General of the United States for remission or mitigation—a so-called act of executive clemency.\footnote{37} This process could be highly arbitrary, being governed not by a court of law but by the government itself, the original seizer of the property.\footnote{38}

The government presently rejects petitions for executive clemency because the congressional amendment of 1978 provides an alternative remedy.\footnote{39} The new provision, commonly deemed the "innocent owner" defense, states in part that, "no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner."\footnote{40}

This amendment is at the heart of the opposing decisions in In re Metmor and One Piece. It is not the application of the defense that creates the controversy, however, but the scope of the defense that proves troublesome. In both cases the government did not even challenge the

\footnote{37} United States v. One Piece Of Real Estate, 571 F. Supp. 723, 724 (W.D. Tex. 1983). The One Piece court stated:

Historically, the remedy of the innocent holder of a lien interest in property forfeited under \(\text{section} \ 881\) and other statutes has been to petition the Attorney General of the United States for remission or mitigation, an act of executive clemency. Thus, although innocent lienholders could not prevent forfeiture of their interests, they could request an administrative determination that certain properties be returned or a portion of the proceeds of sale be paid to them.

\footnote{Id.}

\footnote{38} 19 U.S.C. \(\text{§} \ 1618\) (1988) governs remission and mitigation proceedings. The relevant portions state:

\[\text{[T]he Secretary of the Treasury ... if he finds that such fine, penalty, or forfeiture was incurred without willful negligence ... or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto.}\]

\footnote{Id. (emphasis added).}

The courts have consistently held that it is solely within the Attorney General's discretion whether property should be returned. United States v. One 1973 Buick Riviera Auto., 560 F.2d 897, 900 (8th Cir. 1977). Remission under \(\text{§} \ 881\) is also considered a matter of grace, not right. United States v. One Clipper Bow Ketch Nisku, 548 F.2d 8, 11-12 (1st Cir. 1977). As a result, a district court has no jurisdiction to consider the Attorney General's determination. United States v. One Volvo Sedan, 393 F. Supp. 843, 846-847 (C.D. Cal. 1975).

One article notes:

\[\text{[W]hile a petition for remission or mitigation is an important avenue to ameliorate the harshness of the forfeiture statute, it is purely a matter of grace ... since no guidelines have been published by the Attorney General's Office, there is no framework provided by which an individual's rights can be protected ... [t]he petition to the Attorney General should be considered equivalent to a criminal pardon.}\]


\footnote{39} One Piece, 571 F. Supp. at 725. The court notes that the remedy of an innocent owner today, instead of filing a remission or mitigation petition (although this is still a viable avenue), is to file a claim in the forfeiture proceeding and establish the existence of his "ownership" interest and his innocence. \textit{Id.} "When this showing is made, the claimant's interest survives forfeiture and may be returned to him in the manner provided by the Court." \textit{Id.}

lienholder’s assertion that it was an innocent owner. In fact, the court in One Piece was one of the first to acknowledge that a lienholder qualified as an innocent owner.\textsuperscript{41} Citing the Congressional Record, the One Piece court states that the term owner, “should be broadly interpreted to include any person with a recognizable interest in the property seized.”\textsuperscript{42} Another court subsequently held that a credit corporation, as lienholder with a security interest in real property subject to forfeiture proceedings, was an “owner” according to the statute and, therefore, had standing to contest the forfeiture action to the extent of its interest in the property.\textsuperscript{43}

In addition to recognizing that lienholders could stake a claim using the innocent owner defense, the cases illustrate that the government will not challenge the lienholder’s recovery of the principal owed to them or in the interest accrued up to the time of seizure.\textsuperscript{44} The controversy concerning interpretation of the statute therefore comes down to one question: is the statute, and more specifically the 1978 amendment, broad enough to allow innocent lienholders post-seizure interest on their investment? This is of utmost importance, for if post-seizure interest is protected under section 881(a)(6) it becomes, as the One Piece court states, “statutorily exempt from forfeiture.”\textsuperscript{45} Examining the legislative history of the 1978 amendment is the only way to determine the scope of the innocent owner defense for two reasons. First, the plain language of the statute does not indicate whether the defense is broad enough to encompass post-seizure interest. Second, courts have not yet construed the statute in a manner that would assist in resolving this issue. Without such guidance, the only alternative is a thorough examination of the amendment’s legislative history.

The In re Metmor court uses this method very persuasively throughout its decision. The court finds that the issue before it is the extent of Metmor Financial’s interest in the property and the right the government has to invade such an interest.\textsuperscript{46} In response to their own question, the court declares that the legislative history of the amendment shows strong congressional recognition that the government could not disrupt Metmor Financial’s right to the mortgage and the continually accruing interest, and that a forfeiture cannot change the nature of Metmor Financial’s rights as an innocent mortgagee.\textsuperscript{47} Citing to the Congressional

\textsuperscript{41} One Piece, 571 F. Supp. at 725.
\textsuperscript{42} Id. (quoting 124 Cong. Rec. 17,649, 12,792 (1978)).
\textsuperscript{44} One Piece, 571 F. Supp. at 725.
\textsuperscript{45} Id. at 726 (emphasis added).
\textsuperscript{46} In re Metmor Fin., Inc., 819 F.2d 446, 450 (4th Cir. 1987).
\textsuperscript{47} Id. at 450. See United States v. Real Property Titled In the Name Of Shashin, Ltd., 680 F. Supp. 332 (D. Haw. 1987). In discussing a similar fact pattern to the In re Metmor case, the Shashin, Ltd. court stated:

Under the typical loan agreement which constitutes the basis for a lien, the claimant is entitled to receive interest until the loan is paid, together with any other charges or costs provided for in the loan agreement. To interpret section 881 to compel the claimant to take any less flies in the face of the statute. It may be true that the forfeiture actually occurs at the moment of the illegal use and that no third party could thereafter acquire a legally recognizable interest in the property, but [the innocent party] had already acquired a legally
Record, the court highlights language from the amendment’s legislative history which states that, “no property would be forfeited . . . to the extent of the interest of any innocent owner . . . .”48 Two congressional leaders specifically noted the amendment’s purpose. Representative Rogers stated, “[the Senate amendment] expands the rights of innocent parties who own or have an interest recognized by the law in the seized property, to assert their claim in court to the extent of their interest in that property . . . .”49 Even more revealing is the testimony of Senator Nunn, the sponsor of the amendment, concerning the amendment’s purpose:

[We] did add a provision . . . to make it clear that a bona fide party who has no knowledge or consent to the property he owns having been derived from an illegal transaction, that party would be able to establish that fact . . . and forfeiture would not occur. That is the purpose of the wording added to the modification, in addition to some other wording in the modification making the amendment broader than it otherwise would have been.50

This language explains the purpose of the amendment: to protect and enlarge a legally recognizable interest which, in the past, had been marginally protected by archaic administrative practices of remission and mitigation.

If no dispute exists as to the propriety of allowing an innocent lienholder to assert the innocent owner defense, that defense should protect the lienholder’s entire interest as it would any other interest falling under the defense. If this interest includes a mortgage granting rights to a principal monetary amount and continuing interest payments, then that is the interest to be protected; not just the principal and some interest, but the principal and all the interest rightfully due. Just as owners are entitled to have their entire automobile returned, so too should mortgagees be provided with the full value of their mortgages.51

recognizable interest in the property, represented by the lien, which secured all the rights and obligations provided in the agreement.

Id. at 336 (emphasis added). See also United States v. Real Property In Sevier County, Tenn., 703 F. Supp. 1306 (E.D. Tenn. 1988). The Real Property court stated, “I agree that denying the lienholder entitlement to post-seizure interest . . . would result in a diminution of the lienholders’ interest, and that such a result would be contrary to the statute, 21 U.S.C. § 881(a)(6).” Id. at 1313.

48 In re Metmor, 819 F.2d at 449 (quoting 124 CONG. REC. 36,948 (1978)).

49 Id. (emphasis added) (quoting 124 CONG. REC. 36,946 (1978)) (Statement of Rep. Rogers, then Chairman of the Subcommittee on Health and the Environment of the House Committee on Interstate and Foreign Commerce). The One Piece court was not unaware of this quote, but they have misinterpreted it. The One Piece court claims that, “[no member of Congress] made any reference to any right to greater financial recovery under Subsection (a)(6) than was already available,” and that the amendment’s purpose was merely to allow an innocent party to assert their claim in court. One Piece, 571 F. Supp. at 726 n.3. This clearly ignores the amendment’s other legislative history. See supra note 48 and accompanying text and infra note 50 and accompanying text.

50 In re Metmor, 819 F.2d at 449 (emphasis added) (quoting 124 CONG. REC. 36,946 (1978)) (Statement of Sen. Nunn, sponsor of the amendment). See also Note, An Analysis of Federal Drug-Related Civil Forfeiture, 34 MS. L. REV. 435 (1982). Subsection 881(a)(6) was designed to “avoid inequities present in prior legislation.” Id. at 438. In referring to the class the new subsection protects, the author notes that now, “a broader class can claim relief from forfeiture. These protections indicate a congressional awareness of the punitive effects of the forfeiture laws.” Id. at n.31.

51 A common definition of a mortgage is, “a pledge or security of particular property for the payment of a debt.” BLACK’S LAW DICTIONARY 911 (5th ed. 1979). The debt in this context would have to be the full value of all the principal and interest outstanding that would be paid to the
The language of section 881 does not grant more protection to individuals in certain circumstances and limit it in others. If Congress had intended to distinguish interests, for example, by granting more protection for automobile owners and less for lienholders, they would have so specified. Alternatively, if Congress intended such a distinction, once it became aware the distinction was not self-evident, Congress should have amended the statute again to make such a distinction apparent. Congress, however, has not responded in this manner. It is, therefore, more likely that Congress is content with the broad protection granted by the 1978 amendment. Thus, absent a clear legislative prohibition against such a practice, a lienholder's entire interest should be protected as would any other interest of an innocent owner.

The *One Piece* court, while highlighting this legislative history, fails to recognize its importance in reaching its final conclusion. In *One Piece*, the court states that the legislative history “reveals only a concern about protecting the 'interest' of innocent owners, with no precise explanation as to what the interest represents . . . [and] if in the absence of any legislative . . . guidance . . . the [c]ourt looks to the nature of civil forfeiture actions . . . used prior to the enactment of [s]ubsection (a)(6).” Obviously, the *One Piece* court decided that the statute's legislative history was valueless in determining the scope of the innocent owner defense. Yet, when legislative language is vague or ambiguous it is standard practice to look to the legislative history for guidance. The legislative history of the amended

mortgagee out of the proceeds from a judicial sale of the mortgaged property. To claim otherwise, that the debt includes the principal and only a portion of the interest, is ridiculous.

52 Beginning in 1983 and continuing to the present, the disagreement in the courts over the amendment's protection of post-seizure interest is readily apparent. See *supra* note 26 and accompanying text.

The *In re Metmor* court noted that the government was attempting to find legislative history supporting its contention of the fact that, in its 1978 and 1984 legislative enactments relating to forfeitures, Congress chose not to disturb either the ruling in *Stowell* or the administrative practice of denying post-seizure interest. 819 F.2d at 449 n.6. The *In re Metmor* court, in response to the government, stated that, “there is no indication that Congress was aware of the administrative practice of denying post-seizure interest, such that a failure explicitly to eliminate the practice [from the legislative enactments] could be viewed as an endorsement [of the prior administrative practice].” *Id.* The *In re Metmor* court then stated that even if one assumes congressional awareness, the legislative history of the 1978 amendment is clear that it intended to “expand[] the rights of innocent parties.” *Id.* The language of the statute itself, (no property shall be forfeited . . . to the extent of the interest of an [innocent] owner), “plainly covers all aspects of an innocent owner's stake in otherwise forfeitable property.” *Id.* The United States v. Real Property Titled In the Name Of Shashin, Ltd. court also addressed this issue. 680 F. Supp. 332, 336 (D. Haw. 1987). The *Shashin, Ltd.* court, in response to the *One Piece* court's claim that the prior administrative practice should be followed, noted that:

[in my opinion, by adding subsection (a)(6), Congress specifically provided for a procedure differing from the administrative process previously followed by requiring the government, in the event it wishes to retain the property, to pay to the claimant just compensation for such possession as determined by the court based upon applicable damage standards. In this case such compensation should consist of principal in full, interest, including that acquired post-seizure . . . .]

*Id.*

53 The legislative history of the amendment clearly shows that the statute should be broadly interpreted. See *supra* notes 48-50 and accompanying text.


55 The notion that in the interpretation of statutes legislative history is the controlling factor has been well established. See generally 73 Am. Jur. 2d Statutes §§ 142-146 (1974).
ment clearly shows the congressional intent to protect all the rights that an innocent party may have in a piece of forfeitable property. By refusing to recognize this, the One Piece court does an injustice to the proponents and drafters of the amendment and ignores the congressional intent in passing the amendment.

IV. United States v. Stowell

Both the One Piece and In re Metmor courts, however, do not end their examination with the scope of the innocent owner defense. Rather, both courts proceed to place great reliance upon a case the Supreme Court handed down a century ago. United States v. Stowell established the doctrine known today as the "relation-back" doctrine.

Stowell stands for the proposition that when property is subject to forfeiture due to its involvement in an illegal act, forfeiture takes place immediately upon the commission of the act. At the time the act occurs, title vests in the government, transferring ownership of that property to the government. Actual judicial condemnation of the property—forefeiture—is only used to formalize the transfer. The basis for such reasoning was, "to prevent any subsequent alienation [by the offender] before seizure and condemnation," thereby avoiding some of the consequences of his wrongdoing. Thus, no third party could acquire a legally valid interest in the property after the activity that subjects it to forfeiture occurred. Considering the prior automobile hypothetical as an example, the relation-back doctrine applies to the situation in which an owner uses his vehicle to transport an illegal substance and then attempts to sell the vehicle to a third party. Under Stowell, the third party purchaser could not acquire a valid interest in the vehicle because the prior owner did not have the right to transfer title; the title to the vehicle vested with the government at the time of the illegal activity.

Both the One Piece and In re Metmor courts interpret and place different levels of significance upon the Stowell decision. The One Piece court notes that a lienholder’s argument for post-seizure interest is untenable in light of Stowell. It states, "to hold that an innocent lienholder’s interest continues to grow, necessarily at the expense of the government, results in a diminution of the government’s forfeited interest... [which] is contrary to the holding in Stowell that the interest of the government is fixed as of the date of the illegal act." The court then further claims

56 Supra notes 49-50 and accompanying text.
58 United States v. Stowell, 133 U.S. 1, 16 (1890).
59 Id. at 17.
60 Id.
61 Id. at 17-18.
63 Id. Obviously, if an innocent lienholder takes a portion of the seized property’s worth there will be less left for the government, but if the whole mortgage were ignored the government receives even more. This, however, should not be the way to rationalize the government’s interest, for their rights in a particular piece of seized property should be set. And here, that interest should be set at what the government acquired through drug enforcement: the property value minus the lien an inno-
that, under a strict reading of Stowell, an innocent third party's interest would be cut off at the date when property is purchased with drug money or used illegally, not at the time of seizure.\textsuperscript{64}

The One Piece court then reasons, however, that the lienholder's interest will only be cut off at the time of seizure, and not when the illegality occurs. The court emphasizes the generosity of the government in detailing how the government has chosen to afford lienholders greater protection than what they are entitled to.\textsuperscript{65} The court bases this statement on the government's practice of remission and mitigation used prior to the enactment of the section 881(a)(6) amendment. The One Piece court states, however, that although Congress enacted subsection (a)(6), nothing has changed because Congress made no effort to "provide some specific guideline supporting a different interpretation when enacting [the amendment] . . . ."\textsuperscript{66} This is where the One Piece court's disregard for the legislative history of the amendment fails them. For if the amendment serves no purpose except to legislatively codify the government's previous actions, why would there be such a clamoring by the members of Congress to protect the innocent owner's interest?\textsuperscript{67} According to the One Piece court it is already protected.\textsuperscript{68} This view fails to explain subsequent congressional action. While the court mentions that the amendment was enacted to remove the arbitrariness of the prior executive actions, surely the statements from the members of Congress show their intent to exempt from forfeiture not just a part of an innocent owner's interest, but his entire interest in the forfeitable property.

The In re Metmor court interprets Stowell differently and declares that the case actually supports and upholds Metmor Financial's claim to post-seizure interest. In fact, the court demonstrates how the positions of the innocent lienholders in both cases are similar. The In re Metmor court recognizes that, in Stowell, the plaintiff also obtained a mortgage interest in the property before the illegality occurred.\textsuperscript{69} According to the In re Metmor court, it is, therefore, imperative to the decision that the innocent lienholder acquired his or her interest prior to any illegality.\textsuperscript{70}

In Stowell, where the lienholder was able to recover his mortgage, the Supreme Court held that, "the mortgage is valid as against the United States, and . . . so far as concerns the real estate, the judgment of con-

\textsuperscript{64} Id..

\textsuperscript{65} Id. at 726. \textit{See supra} note 52.

\textsuperscript{66} Id.\textsuperscript{67} \textit{See supra} notes 49-50 and accompanying text.

\textsuperscript{68} United States v. One Piece Of Real Estate, 571 F. Supp. 723, 725 (W.D. Tex. 1983).

\textsuperscript{69} \textit{In re} Metmor Fin., Inc., 819 F.2d 446, 448 (4th Cir. 1987).

\textsuperscript{70} Id.
demnation must be against the equity of redemption only.” 71 The *In re Metmor* court interprets this as allowing the government to succeed only to the interest that belonged to the wrongdoer. 72 “[Since] Ackley purchased the property encumbered by Metmor’s secured note, with interest accruing . . . [h]is equity was subject to an obligation to repay the borrowed principal and to pay interest on the unpaid balance until all of the principal was repaid.” 73 Essentially, the court holds that legally, the government only had an ownership interest equivalent to that which belonged to Ackley: a stake in property carrying a pre-existing mortgage with continually accruing interest. 74

As was the case in *Stowell*, Metmor Financial was entitled to complete satisfaction of its mortgage, which included the continually accruing interest, with the government’s “equity” interest being the remainder. 75 This is entirely consistent with *Stowell’s* emphasis upon not diminishing any rights of the innocent lienor. The innocent owner in *Stowell*, with whom the Court eventually sides, gave an amusing example that is analogous to a current innocent lienholder scenario:

Suppose that a person drives his horse upon premises secretly used as a distillery for some innocent and legitimate purpose and while there the distillery and the horse are seized, cannot he claim it? . . . [I]t

71 *Id.* (emphasis added) (quoting United States v. Stowell, 133 U.S. 1, 20 (1890)). There was no mortgage interest at stake in *Stowell*, and therefore the court did not address the issue.

72 *In re Metmor*, 819 F.2d at 448-49.

73 *Id.* at 449. Examined through another approach it is easy to see how the government in these cases never owned more than that which belonged to the wrongdoer. When the wrongdoer took title to the property he assumed certain obligations to the lending institution. The government upon taking title should not now be able to say that they will take free of these obligations. The government seeks to impose a fictional freeze period wherein the government owns the property but is exempt from the incidents of ownership. When the government succeeded to the property just as the wrongdoer did, the interest bearing lien should have remained unchanged. To hold otherwise is to say that the government succeeded to a larger interest than its predecessor, i.e., that the government is capable of transforming notes with interest accruing into interest free notes.

74 *Id.* See *United States v. All That Tract & Parcel Of Land*, 602 F. Supp. 307 (N.D. Ga. 1985). The court found the *One Piece* court’s reading of *Stowell* erroneous and declared:

As this court reads *Stowell*, that case does not prohibit allowing an innocent lienholder to recover interest on a loan up to the date the principal is paid off when the secured property is forfeited. The lienholder’s property interest at the time of the seizure amounts to the unpaid principal and interest on the principal until the principal is fully paid (the “loan interest”); the government’s forfeited interest is the equitable interest which remains. Contrary to what the *One Piece* court suggests, the lienholder’s property interest does not grow at the expense of the government’s forfeited interest by allowing the lienholder to recover the loan interest to which it was entitled all along. (Perhaps the *One Piece* court confused the distinction between the two types of “interest.”)

*Id.* at 313 n.11 (emphasis in original). If the government is really interested in acquiring proceeds through the forfeiture process, they could always speed up the forfeiture proceedings (which in *In re Metmor* took two years from the time of seizure) thus allowing the government to payoff the lienholders earlier.

The *In re Metmor*, court, in an alternative theory, examined the awarding of post-seizure interest through a fifth amendment takings perspective. 819 F.2d at 450. The court noted that under such an argument:

[A] plaintiff is entitled to ‘just compensation’—typically defined as ‘fair market value of the property on the date it is appropriated’—the government must pay Metmor the fair market value of the mortgage as of the date of the transfer of title, a value which would include the interest that accrues under the mortgage terms.


75 *In re Metmor*, 819 F.2d at 451.
ought to be enough to simply state our position. If a man leaves his property and parts with control of it for a legal and proper purpose, no act of the tenant, unknown to him, and without his consent, can deprive him of his property.76

The purpose of forfeiture laws is to discourage an underlying illegal act by denying the wrongdoer the fruits of his illegal enterprise.77 In these cases, the innocent owner's interest predated that of the wrongdoer, therefore, no purpose exists for depriving the innocent owner of a part of its property. The wrongdoer receives no benefit if the innocent owner continues to receive its rightful interest. As such, the innocent owner should not be denied its continuing interest on the mortgage because of the wrongdoer's presence. It would be inconsistent with Stowell to deny such interest. Even under Stowell, the innocent lienholder's mortgage interest remains unaffected by the forfeiture proceedings. In Stowell, the Court noted that the mortgaged estate, even after the illegal activity, remained exactly the same as it was prior to the illegal act.78

One final note, relating to Stowell, concerns the 1984 amendment to section 881, subsection (h). It states, “[a]ll right, title, and interest in [forfeitable] property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.”79 This unmistakably incorporates the relation-back doctrine into the statute.80 However, some would go further and state

76 United States v. Stowell, 133 U.S. 1, 9, 19-20 (1890).
77 When the forfeiture statutes are viewed in their entirety, it is manifest that they are intended to impose a penalty only upon those who are significantly in a criminal enterprise.” United States v. United States Coin & Currency, 401 U.S. 715, 721-722 (1971).
78 Stowell, 133 U.S. at 19.
80 Prior to this amendment there was a considerable lack of consensus as to the application of the relation-back doctrine to 21 U.S.C. § 881. The dispute revolved around the permissiveness of the language in § 881. According to the court in United States v. Thirteen Thousand Dollars In United States Currency, 733 F.2d 581, 584 (8th Cir. 1984), the relation-back doctrine was inapplicable to cases involving 21 U.S.C. § 881. The court juxtaposed § 881 against the forfeiture statute in Stowell which mandatorily required that upon the commission of a specified act certain property shall be forfeited. Id. The Thirteen Thousand Dollar court then posed the notion that since § 881 uses the language “shall be subject to forfeiture,” it was a permissive statute and hence the relation-back doctrine was inapplicable. Id. (emphasis in original). See United States v. Currency Totalling $48,318.08, 609 F.2d 210, 213 (5th Cir. 1980) (Although a different statute other than 21 U.S.C. § 881 was at issue, the court used the same reasoning that with a permissive statute the relation-back doctrine as announced in Stowell does not apply where the statute provides only for possibility of subsequent forfeiture). Accord United States v. A Fee Simple Parcel Of Real Property, 650 F. Supp. 1534, 1542 (E.D. La. 1987); United States v. $319,820.00 in United States Currency, 634 F. Supp. 700, 703 (N.D. Ga. 1986). But see Eggleston v. Colorado, 873 F.2d 242 (10th Cir. 1989), cert. denied, 110 S. Ct. 1112 (1990) (where the Tenth Circuit in a well written opinion seemed to clarify the dispute). In overturning the district court decision, the court denied the Colorado Department of Revenue's contention that § 881 is permissive and therefore the relation-back doctrine is inapplicable. Id. at 243. In arriving at their decision, the court set down four rationales for holding that the relation-back doctrine applies to § 881. First, the Eggleston court states that the language of 21 U.S.C. § 881(a), “the following . . . shall be subject to forfeiture to the United States and no property right shall exist in them,” makes it clear that property rights are divested immediately at the moment such property is used in a manner or context prescribed by § 881. Id. at 246. "The language 'subject to forfeiture' is merely used in this statute to give notice of the scope of property that shall be forfeited." Id. Second, the court notes that since there is no option for the government to institute forfeiture proceedings the statute cannot be permissive. Id. (referring to United States v. Grundy & Thornburgh, 7 U.S. (3 Granch) 336, 350-52 (1806)). “Although the government apparently could choose to forgo forfeiture altogether . . . governmental discretion that is not founded on explicit
that this amendment would deny Metmor Financial's post-seizure interest because the illegal act predated Metmor Financial's actual date for receiving any post-seizure interest. It does nothing of the sort. It does not destroy the innocent owner defense, but merely says what the In re Metmor court recognized—that a third party cannot acquire a valid interest in forfeitable property after an illegality occurs. This does not impact upon an interest, whether it be a mortgage with continuing interest payments or otherwise, acquired and vested prior to the illegality.

Here again, the legislative history of the amendment is helpful. The Senate report explaining the amendment shows that Congress relied upon the common-law "taint" theory in enacting subsection (h); property is considered tainted from the time of its prohibited use or acquisition. It states, "[a]s discussed above, [the 'relation-back' doctrine] is well established in the current law." The discussion referred to merely relates what Stowell holds, and states that the purpose of the provision is to "close a potential loophole in current law whereby the . . . forfeiture sanction could be avoided by transfers that were not 'arms length' transactions." Obviously, its concern was post-illegality transfers and not pre-illegality acquired interests. Thus, the 1984 amendment does nothing to diminish or cast doubt on the In re Metmor decision.

V. Ramifications of Denying Post-Seizure Interest

This final Part discusses some of the unique issues arising from the award of post-seizure interest. First, it focuses on the government's dubious contention that an innocent lienholder who is denied his post-seizure interest still has another means of recourse. Second, it briefly touches upon the problems a lending institution would face if the courts follow the One Piece rationale and deny post-seizure interest to innocent lienholders. Third, this Part examines what the government receives...
under both the *One Piece* and *In re Metmor* scenarios. Finally, it examines the future of the post-seizure interest issue.

The *In re Metmor* court refers to a government suggestion that Metmor Financial can always collect their post-seizure interest from other sources. One of these sources would obviously be Ackley, the wrongdoer, who was a fugitive at the time Metmor Financial attempted to collect its money. It is ironic that the government offers this as an alternative when the government admits that Ackley's assets, "would probably be unavailable to Metmor even if he could be found." The *In re Metmor* court makes this assessment based on the fact that the government had seized or was in the process of seizing the remainder of Ackley's property. Since Metmor Financial would not have an interest superior to the government's interest in this other property, it is an unrealistic alternative.

The court also notes that even if Metmor Financial could pursue other sources that had not been tainted through illegal use, they are essentially transformed from a secured to an unsecured creditor. To impair innocent lienholder's rights in their collateral was clearly not the intent of the drafters of section 881(a)(6), nor the purpose of the forfeiture laws.

A second issue to consider is how the decision in *One Piece* effects the business of lending institutions. To what extent is the court going to burden the innocent lienholders in their efforts to prevent future losses? Apparently, in addition to the usual background checks required before money is lent, a bank would be forced to constantly monitor a person and his property for illegal activity. For instance, if a lending institution has a mortgage on a piece of property and no illegal activity has occurred, must they monitor it every day in fear that if it becomes tainted, the government will seize the property and deny the bank any interest on their mortgage? Under the *One Piece* decision, the bank will still receive their principal and interest up until the date of seizure, as long as the bank is "innocent." However, the bank will face a significant loss if not allowed to collect post-seizure interest. A bank's only option to avoid this loss is to anticipate illegal activity and foreclose on the mortgage. Of course, the difficulty lies in the bank attempting to foreclose on a mort-

---

86 In re Metmor Fin., Inc., 819 F.2d 446, 450 (4th Cir. 1987).
87 Id.
88 Id. The *In re Metmor* court notes that as an alternate theory to awarding post-seizure interest, Metmor Financial's enforceability rights had been impaired and therefore constituted a fifth amendment taking. Id. See generally Armstrong v. United States, 364 U.S. 40 (1960).
89 In re Metmor, 819 F.2d at 451. If such a transformation from secured to unsecured creditor did occur, Metmor Financial, or any innocent lienholder, would be in no better position than someone contesting the forfeiture who had no interest in the property. See United States v. One 1965 Cessna 320C Twin Engine Airplane, 715 F. Supp. 808 (E.D. Ky. 1989). "The federal courts have consistently held that an unsecured creditor has no standing to contest the forfeiture of seized property." Id. at 812. "Under the civil forfeiture statute, [21 U.S.C. § 881] which requires a greater degree of ownership interest in seized property, an unsecured creditor does not have a legally cognizable interest in the property sufficient to challenge the forfeiture." Id. at 813.
90 See supra notes 48-49 and accompanying text and note 77 and accompanying text.
91 See Note, supra note 57, at 189-99 (for a discussion concerning the reasonable precautions necessary to remain an "innocent owner").
92 See infra note 97.
gage upon the mere *speculation* of impending illegal activity. If, however, banks were to wait for the illegal act to occur and then attempt to foreclose, even if they were to foreclose within twenty-four hours, the application of the relation-back doctrine would nevertheless deny the bank its post-seizure interest on the mortgage.

Thirdly, what would the government receive under both the *One Piece* and *In re Metmor* decisions? As the *In re Metmor* court accurately points out, under a *One Piece* analysis, the government is essentially receiving the benefit of an interest-free loan.\[^{93}\] As the court states, "[a]lthough no formal loan from Metmor has been obtained, the government has use of the mortgaged property, without paying the interest due on the mortgage, until such time as it chooses to sell."\[^{94}\] It is widely held that governmental delay in instituting forfeiture proceedings after seizure of such property can violate the due process clause of the fifth amendment, if the delay is substantial or unreasonably long.\[^{95}\] However, there has been no uniformity as to what constitutes an unreasonable length of time. At least one court has held that a forty-eight month delay did not violate the claimant's due process rights.\[^{96}\] Thus, despite the fact a lending institution's ability to survive is based upon interest earned from money lent, under the *One Piece* decision, the institution would receive no income while the government took its time to institute forfeiture proceedings.\[^{97}\]

On the other hand, under *In re Metmor*, the government receives only what it is entitled to—the wrongdoer's interest in the property. If the *In re Metmor* decision is followed to its logical result, an innocent owner's lien will be respected in its entirety. This respect is not the result of the government's generosity. Instead, it is a *statutory* right, existing since the 1978 amendment to the Drug Control Act, to receive what rightfully belongs to the innocent owner. The government usually sells the property, but is entitled to only that which belonged to the guilty party. The statute states, "no property shall be forfeited . . . to the extent of the interest

\[^{93}\] *In re Metmor*, 819 F.2d at 451. The *In re Metmor* court noted that, "the only purpose served by retaining an innocent lienor's mortgage interest is to boost the federal treasury." *Id.* at 450 n.7.

\[^{94}\] *Id.* at 451.


\[^{96}\] United States v. $10,755.00 In United States Currency, 523 F. Supp. 447, 449-50 (D. Md. 1981). While in this case the property at issue was currency, the case is illustrative of the fact that the government is granted considerable discretion in their decisions to institute forfeiture proceedings or continue to keep the property in a state of "limbo."

\[^{97}\] Lending institutions are in the *business* of lending money and charging for its use over time. The government in these forfeiture cases wants to use that money without paying interest, although lending institutions must continue to pay third parties for the use of the funds until the government eventually forfeits the property and pays them their principal. Meanwhile, the government's "equity" interest continues to grow through appreciation. Essentially, the procedure is a money maker for the government, not at the expense of a drug dealer but rather at the expense of an innocent third party.
of an owner." The reasoning of the *In re Metmor* court will protect this interest.

Finally, three years have passed since the court handed down the *In re Metmor* decision and, surprisingly, there has been little activity in the courts concerning the post-seizure interest issue. However, two district courts rendered important decisions on the issue in 1989. One of these cases implies that the post-seizure interest issue no longer exists.

In *United States v. Parcel Of Real Property,* the District Court for the Western District of Pennsylvania faced a situation much like the one in *In re Metmor* and in *One Piece.* In the government’s forfeiture proceeding against a rental property, an innocent lienholder of the property moved for summary judgment and sought an order entitling them to post-seizure interest. After examining all relevant authority, the *Parcel Of Real Property* court agreed with the *In re Metmor* court and allowed the lienholder to collect its post-seizure interest. The court noted that, "to conclude otherwise would be to allow the United States the benefit of an interest-free loan at [the bank’s] expense." This case, decided in July, 1989, two years after *In re Metmor,* demonstrates that the government is still challenging innocent lienholder’s claims to post-seizure interest. This challenge, however, should not be taken as the automatic response of the United States Justice Department and all United States Attorneys as to this issue.

Another district court case, handed down in April, 1989, indicates that the post-seizure interest issue has now been resolved. In *United States v. Certain Real Property,* the district court held that a Justice Department regulation, 28 C.F.R. § 9, allowed for the awarding of post-seizure interest to innocent lienholders. This regulation is titled "Remission or Mitigation of Civil and Criminal Forfeitures." Nonetheless, the court held that the section was applicable for determining the "interest" of an innocent owner under section 881. Whether this regulation

---

100 Id. at 1325.
101 Id. at 1326.
102 Id. While the court went on to note that to deny post-seizure interest would be particularly disturbing in light of the fact that the government had been accumulating rent monies for managing and maintaining the property, the court emphasized that their decision to award post-seizure interest was not dependent on that fact. Id.
104 Id. at 796. Note, that this same court previously held that an innocent lienholder was not entitled to post-seizure interest. United States v. Escobar, 600 F. Supp. 88 (S.D. Fla. 1984).
105 Remission or Mitigation of Civil and Criminal Forfeitures, 28 C.F.R. § 9 (1989). Subsection 9.2(h) states as a definition:

The term 'net equity' means the amount of a lien-holder’s monetary interest in property subject to forfeiture. Net equity is to be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the notification granting the petition . . .

106 *United States v. Certain Real Property,* 710 F. Supp. 792, 796 (S.D. Fla. 1989). In 1983, the *One Piece* court attempted a similar argument by claiming that in the absence of any case law addressing the issue, "the [c]ourt looks to the nature of civil forfeiture actions under Section 881 and to the practice that was used to protect an innocent lienholder’s interest prior to the enactment of Subsec-
governs claims filed by innocent lienholders under section 881 remains debatable. Nonetheless, it is noteworthy that the government recognizes a right to post-seizure interest if a remission or mitigation petition is filed, but does not explicitly recognize such a right if an innocent owner files a claim at a forfeiture proceeding. This puzzling stance of the government is irrelevant considering the position that post-seizure interest is statutorily protected under section 881, as this Comment advocates. Nevertheless, the government's stance illustrates the government's failure to recognize the innocent lienholder's right to claim post-seizure interest and its insistence, despite In re Metmor and its progeny, to treat post-seizure interest as a grace conferred at the government's discretion. In addition, the government's confusing position permits dissimilar treatment of the post-seizure interest issue by the United States attorneys.\footnote{107} If some decide that post-seizure interest is protected either under section 881 or 28 C.F.R. § 9, then no problem exists. If however, a United States attorney takes the converse position and argues that such interest is not protected, then an innocent owner has only the courts to protect his interest—courts that are themselves in disagreement over the issue. This issue is, therefore, just as controversial today as when the One Piece court handed down their decision, and accordingly, should not yet be dismissed as resolved.

VI. Conclusion

Until the Fourth Circuit handed down its In re Metmor decision in 1987, no other federal appellate court had confronted the issue of awarding or denying post-seizure interest to an innocent owner under the Drug Control Act. Some district courts follow a Texas district court's decision denying such interest.\footnote{108} A few others take the position announced in In re Metmor.\footnote{109} The issue is significant to many aspects of our legal system today because it confronts the issues of property rights and property interests, as well as our society's current war against drugs.\footnote{107} It is clear that some United States attorneys will continue to challenge innocent owners claims to post-seizure interest. In talking to the government attorney in the Parcel Of Real Property case it was this author's impression that although the attorney lost the post-seizure interest issue in court, he would continue to challenge claims to post-seizure interest if they continued to arise. Telephone interview with James J. Ross, Assistant United States Attorney, Chief of Erie Division, Western District of Pennsylvania (Mar. 16, 1990). Conversely, in talking to the Office of Asset Forfeiture in Washington, at least one attorney there stated that he advised United States attorneys not to contest post-seizure interest for purely equitable reasons. Telephone interview with Roger Weiner, Trial Attorney, Asset Forfeiture Office, Criminal Division, Department of Justice (Mar. 16, 1990). Another United States attorney in Los Angeles stated that she merely cited to In re Metmor in concluding that the awarding of post-seizure interest would not be challenged. Telephone interview with Carolyn Reynolds, Assistant United States Attorney, Special Counsel for Real Property Forfeitures, Los Angeles, California (Mar. 15, 1990).

\footnote{108} See supra note 26.  
\footnote{109} Id.
The *In re Metmor* court’s decision invites a comprehensive examination of an innocent owner's right to post-seizure interest, which is sure to come soon. The *In re Metmor* court correctly determined that an innocent owner's interest should be protected to its fullest extent. The court's decision holds true to the legislative intent behind the Comprehensive Drug Abuse Prevention and Control Act, and attends to Congress' concern with the plight of the innocent owner in our society's war on drugs. Also, the *In re Metmor* decision clearly falls in line with the decision in *Stowell*, and does nothing to compromise the validity of the relation-back doctrine. Further, if the government recognizes and awards post-seizure interest to those parties granted a petition for remission or mitigation, such protection and recognition should also be extended to those filing claims at the forfeiture proceeding. In the future, courts should follow the lead of *In re Metmor* in upholding an innocent owner's *statutorily protected* interest and abandon the misguided approach of the *One Piece* court.

*Christopher M. Neronha*