January 10, 2022

SENT VIA EMAIL
foia@americanoversight.org

Mr. Austin Evers, Executive Director
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005

Subject: Freedom of Information/Privacy Act Request [20-OIG-302]

Dear Mr. Evers:

This is a final response to your July 24, 2020 Freedom of Information Act (FOIA) request to the Office of the Inspector General (OIG), seeking "[a]ll complaints submitted to the DOJ Office of the Inspector General (OIG) . . . containing allegations that concern the conduct of Attorney General William Barr." This final response supplements responses made to you on January 22, 2021, February 25, 2021, March 31, 2021, July 16, 2021 and November 5, 2021.

As I indicated in the November 5, 2021 response, all that remained of OIG's processing of your request were 34 pages of records that were undergoing consultation. Consultation concerning those pages has been completed. It has been determined that fourteen (14) pages should be withheld in full pursuant to FOIA, 5 U.S.C. § 552(b)(6) and (b)(7)(C), while certain portions of the other twenty (20) pages that are being released to you today should be withheld from disclosure pursuant to FOIA, 5 U.S.C. § 552 (b)(6) and (b)(7)(C) as follows:

- 5 U.S.C. § 552(b)(6), protects personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and
- 5 U.S.C. § 552(b)(7)(C), protects records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you are not satisfied with OIG's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: https://www.justice.gov/oip/submit-and-track-request-or-appeal. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Deborah Waller at (202) 616-0646 for any further assistance of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448.

OIG is aware this matter is currently the subject of litigation. Accordingly, please contact the trial attorney assigned to this case, Jonathan Kossak, at (202) 305-0612 or jonathan.kossak@usdoj.gov, with any questions related to this litigation.

Sincerely,

Jacqueline Lightle

Jacqueline Lightle
Office of the General Counsel

Attachment

DOJ- Office of the Inspector General CONFIDENTIAL

February 15, 2018

To: Special Agent, (b)(6); (b)(7)(C) [redacted]
U.S Department of Justice
Office of Inspector General (OIG)
500 West Madison, Suite 1101
Chicago, Illinois 60661

(b)(6); (b)(7)(C) [redacted]

cc: Federal Deposit Insurance Corp.
Special Agent, (b)(6); (b)(7)(C) [redacted]
FDIC-OIG
300 S. Riverside Plaza – Suite 1700
Chicago, Il 60606

(b)(6); (b)(7)(C) [redacted]

Fr: (b)(6); (b)(7)(C) [redacted]

Re: **We believe Caterpillar Inc. has been able to shut down three investigations of federal criminal & civil violations when investigators had significant evidence, including admissions, already in-hand. There is information that former U.S. Attorney General William P. Barr's team is pressuring the Grand Jury Investigation, which has even more evidence, and expert opinions.**

Dear Sir:

I am writing this letter to you because I have heard that interim U.S. Attorney for the Central District of Illinois (John E. Childress) is being pressured by William P. Barr's Team. Mr. Barr is counsel for Caterpillar Inc. (the Company). The pressure is undoubtedly aimed to shut down the Grand Jury investigation. The investigation involves the largest reported tax fraud in U.S. history, and other federal violations including financial reporting fraud. This case has tremendous precedential value.

This needs to be brought to your attention. It is significant because we believe the Company has been able to shut down three other federal criminal investigations of this matter. There is a pattern of undue influence used to shut down government investigations. The federal Grand Jury Investigation is no doubt now the target of this influence. The DOJ should take steps to monitor and prevent this.

I say "undue" influence because the evidence we have provided to each of these investigations is so overwhelming, and the desire of those Special Agents to move forward so evident, that a decision to shut down these investigations can only be explained by undue political influence on high-level

There has never been a better tax and financial statement fraud case for the government. It is extraordinarily unusual for Special Agents to be handed such evidence and an expert informant with first-hand inside knowledge at the beginning of their investigations. Therefore, it is unthinkable that even the attempts to properly investigate this case were shut down. An outside expert opinion concluded the following in an 85-page analysis:

> *"Caterpillar did not comply with either U.S. tax law or U.S. financial reporting rules...I believe the company's noncompliance with these rules was deliberate and primarily with the intention of maintaining a higher share price. These actions were fraudulent rather than negligent."*[1]

The Tax Division of the DOJ tries and wins cases with far less evidence than is present in this case.

I urge you to contact the following investigators to determine: (1) the strength and weight of the evidence; (2) the value of the informant; (3) why they wanted to investigate; (4) the reasons they were not allowed to proceed; (5) whether the decision to shut down the investigation based on the evidence and the law; (6) whether the decision to shut down the investigation was made in accordance with agency policy in a transparent fashion; (7) if they believe there was any undue influence or pressure of any kind on them or anyone else; and (8) if they suffered any adverse consequences as a result of their investigation.

Per IRS

- IRS Criminal Investigation #1 – (b)(6); (b)(7)(C) [redacted]
    - May 2012-Oct 2012
    - **Shut Down**
    - (b)(6); (b)(7)(C) [redacted] Supervisory Special Agent
        - (b)(6); (b)(7)(C) [redacted]
    - (b)(6); (b)(7)(C) [redacted] Special Agent
        - (b)(6); (b)(7)(C) [redacted]

- IRS Criminal Investigation #2 - (b)(6); (b)(7)(C) [redacted]
    - August 2013
    - **Shut Down**
    - (b)(6); (b)(7)(C) [redacted] Supervisory Special Agent
        - (b)(6); (b)(7)(C) [redacted]
    - (b)(6); (b)(7)(C) [redacted] Special Agent
        - (b)(6); (b)(7)(C) [redacted]

Per IRS

1 https://www.nytimes.com/2017/03/07/business/caterpillar-tax-fraud.html

- U.S. Senate Permanent Subcommittee on Investigations (PSI) - Washington, D.C.
    - May 2013-April 2014 (full investigation, report & hearing in <12 mths.)
    - **Completed**
        - Attempted influence was unsuccessful
        - Company conduct found to be illegal based on the evidence
        - Scope of investigation was civil only
    - David Katz
        - Former Senior Counsel & lead investigator
        - Former Trial Attorney - DOJ Fraud Section/Criminal Division
        - (b)(6); (b)(7)(C) [redacted]
    - It is standard protocol for PSI to investigate civil violations, and then make referrals to government agencies. We were told that we should make others aware of the dynamic of the people involved. For example, after PSI's hearing it issued a report regarding "False Testimony" by a Company executive. This is discussed in the attached Detailed Summary for the Internal Revenue Service in the paragraph discussing April 2014 on page 17-18 below.

Per consulting agency (b)(6); (b)(7)(C) [redacted]

The current FDIC Grand Jury Investigation was not widely known until a simultaneous, multi-agency raid by over 100 Special Agents on the Company's headquarters and two computer centers executing Search & Seizure Warrants on March 2, 2017. This raid was highly reported on and publicized. Up to this point, the Company had retained various high-powered influential law firms including Sidley (formerly Sidley & Austin), Jones Day and others, all who could defend the Company in this matter. The Company also retains the most powerful lobbyists in Washington D.C. (i.e. Washington Tax & Public Policy Group, Federal Policy Group, Duberstein Group, BGR Group). The Company even has it's own lobbying office in Washington D.C. and has nearly unlimited funds to assert influence.

After the raid, the Company hired William P. Barr, not because it needed him to defend this matter, Sidley or Jones Day could do that. We believe the Company hired him because they needed his specific influence to affect the outcome in the Company's favor, specifically to shut down the Grand Jury Investigation. It is no secret that the Company, in particular the responsible executives, want this investigation shut down and do not want the evidence to be put before a judge or jury. They know how bad the evidence is and the magnitude of the consequences. They know they cannot successfully argue the facts or the law. They know their only hope is to influence the decision makers within the DOJ to shut down the Grand Jury Investigation.

So when I heard that pressure is being put on the Interim U.S. Attorney for the Central District of Illinois, it came as no surprise. One can only assume the Assistant U.S. Attorney and the Special Agents are experiencing the same. Not only should the DOJ anticipate undue influence and pressure being put upon the Grand Jury Investigation and DOJ decision makers, it should take affirmative steps to prevent this from happening.

No one should be able to subvert the Special Agent leading the investigation or the Assistant U.S Attorney in-charge and interfere with this judicial process. No one should be able to use their contacts within the DOJ to actually or endeavor to influence, obstruct, or impede the due administration of justice or due course of this investigation. To say this kind of influence is just "how the system works" and accept it is simply ignoring the law.

The DOJ-OIG should ask (b)(6); (b)(7)(C) [redacted] (FDIC-OIG (b)(6); (b)(7)(C) [redacted] (Assistant U.S. Attorney in-charge) and John Childress (Interim U.S. Attorney) about: (1) the strength and weight of the evidence; (2) the value of the informant; and (3) if they believe undue influence and pressure are present or have been attempted in this investigation. The magnitude of this case and its precedential value warrant safe guards against obstruction. This is the largest tax case in U.S. history.

Below is a brief summary of the investigations that were shut down. A more detailed summary of all the investigations is attached to this letter below along with "supporting documents & evidence".

<u>IRS Investigation #1 –</u> (b)(6); (b)(7)(C) [redacted] Per IRS [redacted]

Why did the IRS Chief Counsel's Office conceal evidence and shut down an investigation of the Company for no stated reason when the evidence was so compelling?

- <u>Dec. 2008-Apr. 2009</u>: My Client informed the IRS of the fraud and debriefed two IRS Chief Counsel attorneys and two IRS Subject Matter Experts over a 2-day period.

- <u>2009-2012</u>: IRS Chief Counsel's Office put the evidence in a drawer for nearly 4 years. Evidence put in a drawer cannot be investigated or seen by other parts of the IRS. Chief Counsel's Office erroneously considered all the evidence to be tainted even though its own Taint Analyst did not. All the evidence showed that my client, a licensed attorney, was not acting as an attorney for Caterpillar. And Caterpillar itself had not even claimed this information was privileged in a Sarbanes-Oxley lawsuit with my Client. Then suddenly in 2012, Chief Counsels Office made a second analysis and changed its conclusion even though there was no change in the facts. This occurred coincidentally just after the conclusion of the Sarbanes-Oxley lawsuit which made much of the evidence public.

- <u>Apr. 2012</u>: The Special Agents came across the evidence submitted by my Client while investigating the Company's public auditor who led the implementation of the fraud. Between April and October of 2012 these Special Agents interviewed my Client numerous times and signed him up as a Confidential Informant. They were moving forward with a criminal investigation of the Company. These Agents were at a loss regarding how evidence had been submitted in 2008, yet they had not found out about it until nearly 4 years later.

[redacted]

- Dec. 2012: We received a phone call from the Special Agents [redacted] who were investigating the matter. They informed us that the investigation was stopped. They seemed bewildered. We were given no explanation why the investigation was stopped. It seemed the Special Agents weren't either. It seemed to be a surprise to everyone involved since the investigation was progressing.

    - We were asked if we were required to inform the Company of our contacts with the investigators. We said, "Yes", as we were required to do so. The Company knew at this time that my Client was a witness in a federal investigation.
    - In response we were told that makes sense. We took this to mean that the investigators began to experience undue influence when we informed the Company of our contact with the government, this influence increased as we reported more contacts more frequently, and finally resulted in a directive to these Special Agents to shut down the investigation.
    - The Company knew when we had contacts with the investigators and could focus its undue influence in a timely manner.

IRS Investigation #2 – [redacted]

Why did the IRS Chief Counsel's Office prohibit the investigation of the Company for no stated reason when the evidence was so compelling and the Special Agents wanted to proceed?

- Aug. 2013: We met with a different group of Special Agents. They also thought it was odd that there was no investigation to-date by the IRS. We provided them with a 27-page memorandum summarizing the fraud and providing evidence for each element of tax evasion as stated in the U.S. Attorney's Manual. Nearly all of this evidence was recent sworn federal court deposition testimony by senior tax executives of the Company or actual Admissions filed by the Company in federal court during a Sarbanes-Oxley lawsuit with my Client.

- These Special Agent's also believed, based on the evidence, that this case should be investigated. They sent the evidence to Criminal Tax Counsel within the Chief Counsels Office. My Client was told that the Chief Counsels Office was the hold up. The Special Agents planned to meet with Criminal Chief Counsel attorneys, present the evidence, argue their case, and get permission to investigate. This group of Special Agents wanted to move forward with a criminal investigation of the Company. They were not allowed to investigate.

[redacted]

Per consulting agency

Page 06 of 34

Withheld pursuant to exemption

(b)(6) ; (b)(7)(C)

of the Freedom of Information and Privacy Act

Per consulting agency [redacted]

(b)(6); (b)(7)(C) [redacted]

Finally, William P. Barr is of-counsel to the law firm of Kirkland & Ellis (K&E). K&E represented PriceWaterhouseCoopers (PwC) in the Sarbanes-Oxley lawsuit with my client in which the Company was the defendant. K&E has represented PwC in many matters. PwC architected and implemented the tax and financial statement fraud for the Company, and audits the Company's financial statements. There is a *conflict-of-interests* between the Company and its shareholders, with those of PwC. K&E can hardly give the Company objective advice regarding the actions of one of K&E's largest clients, PwC. Why would the Company hire an attorney to defend it who has such an obvious conflict of interest? Again, K&E was not hired to just defend or represent the Company. We believe Mr. Barr and K&E were hired to shut down the Grand Jury investigation on behalf of the Company executives, and PwC.

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2 https://www.law360.com/articles/973176; https://www.law360.com/articles/973176/caterpillar-seeks-end-to-tax-raid-tri ,

My client is available to meet with you or anyone else upon your request. We can provide you with all the evidence we have provided to the Grand Jury Investigation. We will travel if necessary.

I encourage you to contact FDIC Special Agent, (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Detailed Summaries below:

Internal Revenue Service, page 9.

Per consulting agency (b)(6); (b)(7)(C)

Detailed Summaries

Internal Revenue Service

(the term "Taxpayer" below refers to "the Company")

Tax Issue

Materiality: This is the largest reported tax fraud in U.S. history – more than $5 Billion of tax and more than $11 Billion with interest and penalties.[3] It is ongoing and increases each quarter.

Corporate Equivalent of the UBS Tax Fraud: In the UBS case, taxpayers hid income in Switzerland, brought the cash back to the U.S. concealed in suitcases, and never reported the income for U.S. tax purposes. In this case, the Taxpayer shifted U.S. taxable income to Switzerland, brought the cash back to the U.S. disguised as non-taxable transactions, and never reported the income for U.S. tax purposes. How can you earn income and spend it in the U.S. without reporting it for tax purposes? You cannot! Individuals who do this, but have no influence on the IRS, are routinely prosecuted.

Profit, Taxable Income & Cash Shifted To Switzerland: This is a simple fraud in which the public auditor, outside tax-counsel and the Taxpayer's Tax Department simply decided that they would divert billions of dollars of income, which had been reported for over 75 years in the U.S., to Switzerland. The Executives were told this could be done without any impact on the business operations – in other words, nothing would change but-for U.S. tax paid. There is no purpose, substance or utility to this transaction other than the reduction of U.S. tax paid. Senior Tax Managers have admitted to this under oath in federal court testimony, and in internal documents. One example is the following testimony of the Senior Tax Manager primarily responsible for the fraud.

> Q: So the advantage to the Caterpillar, Inc., would be that it would pay less federal income tax?
> A: Yes.
>
> Q: Was there any business advantage to Caterpillar, Inc., to have this arrangement put in place other that the avoidance...of income taxation...?
> A: No, there was not.
>
> Caterpillar Counsel: Let's take a break.

Counsel for the Taxpayer immediately took a break because he knew they just admitted to fraud.

Cash Brought Back To and Spent in the U.S.: As a U.S. multi-national the Taxpayer needed the cash generated from the profits shifted to Switzerland to meet cash needs in the U.S., as it had in the past. A series of transaction and shell companies were used to disguise this taxable income as nontaxable

[3] See IRS Doc-1102, a computation based on Taxpayer information of the tax, interest and penalty through 2015 only.

payments. However, as above there is no purpose, substance or utility to these transactions other than the reduction of U.S. tax paid.

Like all frauds, the shifting of profit and return of cash is covered-up within a very complex scheme, involving hundreds of transactions and dozens of shell companies. How can the Taxpayer earn billions of dollars of income and spend it in the U.S. without paying U.S. tax? It cannot! This is an Abusive Tax Avoidance Transaction (ATAT). For a more detailed discussion of the fraud, see the attachment "IRS Doc-1103".[4] This is a 27-page memorandum provided to IRS Special Agents, which organized evidence according to the elements of tax fraud as set out in the U.S. Attorney's Manual.

Chronology

Oct. 1999: The scheme was first put into effect and began reporting U.S. profits in Switzerland. Although unknown at the time, Taxpayer appears to not even pay Swiss tax on large amounts of the shifted profits resulting in a concept referred to by the Taxpayer, and its public auditor who promoted the ATAT, as "nowhere income".

Dec. 2008: Ten years ago, my Client filed a whistleblower claim regarding a simple tax fraud covered up by the elaborate scheme perpetrated by the Taxpayer involving hundreds of transactions and dozens of shell companies. At this time a taint analysis[5] was submitted as part of the claim, which stated that my Client was NOT acting-as-an-attorney for the Taxpayer.

Apr. 2009: IRS Agents spent 2 full days debriefing my Client regarding the facts and evidence of this fraud. He presented significant credible evidence. IRS personnel present at this meeting were:

- Laurie Nasky, Chief Counsel Attorney (taint analyst)
- Danielle Gold, Chief Counsel Attorney
- Per IRS (b)(6); (b)(7)(C) [redacted] Revenue Agent
- (b)(6); [redacted] Revenue Agent

My Client was NOT acting-as-an-attorney for the Taxpayer. This is important because the Chief Counsel's Office concealed this evidence from other parts of the IRS based on the supposition that all of the information in the claim was subject to attorney-client privilege (see explanation below on "Feb 2013"). Since my Client was NOT acting-as-an-attorney for the Taxpayer there simply was no attorney-client relationship between my Client and the Taxpayer.

While my Client is a licensed attorney, at no time relevant to his claim or the tax issue in question was he acting-as-an-attorney for the Taxpayer. It is a common occurrence for licensed attorneys at the Taxpayer to occupy non-legal positions in which they are not acting as attorneys for the Taxpayer. This provides broader opportunities for advancement outside the Legal Department.

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[4] See, IRS Doc-1103 -- 090513 - Caterpillar Inc. direct evidence of tax fraud-pdf.

[5] IRS Doc-1116 -- Taint Analysis

The Chief Legal Officer at the time was Jim Buda who had a clear "policy" that all personnel acting as attorneys for the Taxpayer must report within his organization up to him. My Client did NOT report within the Legal Department's chain of command. His position was in the Finance Department reporting up to the Chief Financial Officer.

Specific evidence[6] was presented to the IRS in this debriefing documenting that my Client was NOT acting-as-an-attorney for the Taxpayer. This included his chronological work history, evidence that both he and other people believed he was NOT acting-as-an-attorney for the Taxpayer, and the fact that he was evaluated as a leader and NOT a lawyer.

At all relevant times, there were other individuals acting as in-house tax lawyers for the Taxpayer who reported within the Legal Department and up to the Chief Legal Officer.

2009-2012: Chief Counsel's Office put my Client's claim and its evidence in a proverbial drawer (see explanation below on "Feb. 2013") whereby it was not provided to the field Exam Team nor discoverable by other parts of the IRS such as the Criminal Division (see explanation below on "Apr. 2012").

2009-2012: My Client reported the tax fraud to the Taxpayer's executives pursuant to company policy regarding employees aware of fraud. As a result, he was then told he had to move from the Tax Department to the IT Department or he would be fired. My Client had no training in IT. He filed a Sarbanes-Oxley retaliation lawsuit. One of the elements he had to prove was that he had a reasonable belief there was tax fraud. So, there was a lot of discovery regarding the tax fraud including Requests for Admissions, and depositions of senior tax personnel and officers of the company. The discovery in this case created a significant public record regarding the tax fraud. The Federal Judge ruled for my Client on a motion to dismiss and the case was reported as settled in February 2012.

Never did the Taxpayer provide an explanation to my Client as to why this matter did not constitute a fraud. Never did the Taxpayer claim that the information my Client has is confidential or privileged, even while it was being put into the public record.

Apr. 2012: At this time, my Client no longer worked for the Taxpayer. We were contacted by a group of IRS Special Agents (b)(6); (b)(7)(C) [redacted] This included:

Per IRS [redacted]

- (b)(6); (b)(7)(C) [redacted] Supervisory Special Agent
- Special Agent
- (b)(6 [redacted] Special Agent

These Special Agents somehow came across my Client's claim and evidence. They were already investigating the promoter of the ATAT. However, they did not have a client of the promoter to investigate an actual implementation of the ATAT. So they were pleased to come across my Client who could provide them with significant inside, first-hand information, documents and Taxpayer

[6] IRS Doc-1104 -- 05 - 041309 Claimant's Relationship with Taxpayer

testimony about the implementation of the ATAT by the Taxpayer. Between April and October of 2012 these Special Agents and others interviewed my Client several times and signed him up as a Confidential Informant.[7] By all appearances this group of Special Agents was moving forward with a criminal investigation of the Taxpayer.

These Agents did seem at a loss regarding how my Client's claim had been filed in 2008, yet they had not found out about it until nearly 4 years later. We were already concerned that we had not had any contact from the IRS Civil Exam Team, some who knew my Client professionally and knew him to be knowledgeable and credible. We also knew that the Taxpayer had always had a very strong lobbying effort with nearly unlimited funds for this use. Within the Taxpayer there was a belief that the Taxpayer would get its way with the IRS, because of the influence of its lobbyists. The Taxpayer lobbied the IRS hard in the past where much less was at stake and would do anything it could to get the IRS to look the other way in this case because this was a question of tax evasion and financial statement fraud, which could have dire consequences for the Taxpayer and individuals involved. The public auditor who promoted the ATAT and the outside law firm were also at risk. The lobbying effort within the IRS and other parts of the government who could influence the outcome would be a relentless, all-out effort. Lobbying within the IRS was greatly facilitated by the "revolving-door". Thus, it appeared that something improper was occurring within the IRS. This caused us concern and led to the 2 letters directly below.

<u>Oct. 2012</u>: We sent a letter[8] to the following IRS personnel:

- Richard Weber, Chief of Criminal Investigations Division
- Douglas Schulman, IRS Commissioner
- Steven Miller, Deputy Commissioner
- Heather Maloy, Commissioner (LB&I)
- Michael Danilack, Deputy Commissioner (international)
- Stephen Whitlock, Director of IRS Whistleblower Program
- Per IRS [redacted] (b)(6); (b)(7)(C) [redacted] Supervisory Special Agent

This letter was sent by (b)(6); (b)(7)(C) [redacted] and Jeff Jensen (former FBI Agent, former Assistant U.S. Attorney, and current U.S. Attorney for the Eastern District of Missouri). This letter informed these people that:

- The IRS had been given all the evidence it needed to investigate and prosecute the Taxpayer including *admissions* in the form of Federal Court filings and sworn testimony, and including evidence of criminal intent.
- The Taxpayer had engaged numerous parties to influence the IRS, whose influence within the IRS comes from the "revolving-door" at high levels between the IRS, and private law and accounting firms.

The message was the same as in the current DEA case recently reported by the Washington Post and 60 Minutes – given the significant evidence there is no logic to what is going on here other than the presence of improper influence. IRS management did nothing. The IRS had the evidence for 4 years. However, Chief Counsel's Office put my Client's claim and its evidence in a proverbial drawer (see

7 IRS Doc-1101 -- 12 0703 CI Agreement

8 IRS Doc-1106 -- 20121031 Letter to Weber

explanation below on "Feb. 2013") whereby it was not provided to the field Exam Team nor discoverable by other parts of the IRS such as the Criminal Division (see explanation below on "Apr. 2012"). If no one can see the evidence, the case cannot be investigated.

Nov. 2012: We sent a letter[9] to the following IRS personnel:

- Stephen Whitlock, Director of IRS Whistleblower Program
- Steven Miller, Acting Commissioner
- Heather Maloy, Commissioner (LB&I)
- Michael Danilack, Deputy Commissioner (international)
- Richard Weber, Chief (CID)
- Samuel Maruca, Director
- Per IRS (b)(6); (b)(7)(C) [redacted] Analyst

This letter informed these personnel that there was a taint review performed as part of the debriefing of my Client in April 2009, without any concerns (see explanation below on "Feb. 2013"). It also informed them that "if" the information in this case was initially considered tainted by the IRS, then now this information should NOT be since it was part of the public record created by my Client in his Sarbanes-Oxley retaliation lawsuit against the Taxpayer. The lawsuit was filed after the IRS initially debriefed my Client in April 2009.

The letter informed these individuals that the evidence included Taxpayer *admissions* to the key facts related to the fraud. It also informed them that my Client was NOT acting-as-an-attorney for the Taxpayer and that evidence supporting this statement had already been presented to the IRS as part of the debriefing of my Client in April 2009.

December 2012: We received a phone call from the Special Agents Per IRS (b)(6); (b)(7)(C) [redacted] who were investigating the matter. They informed us that the investigation was stopped. This investigation was stopped despite significant overwhelming evidence, including Taxpayer *admissions* in federal court testimony, court filings and internal documents, and also a high-level inside informant with first-hand knowledge. We were given no explanation why the investigation was stopped. It seemed to be a surprise to everyone involved as the investigation was now progressing with a Taxpayer who had actually implemented the ATAT.

Given the amount and weight of the evidence of fraud and the fact that all matters go through the Chief Counsel's Office this investigation was stopped at the direction of Chief Counsel's Office, which less than a year later prevented another group of Special Agents from investigating this same matter (see explanation below on "Sep. 2013"). At this point, our concerns regarding improper influence discussed above seemed to have become a reality.

December 2012: The IRS Civil Exam Team and the Taxpayer settled the tax years 2000 through 2006.[10] The Exam Team did not have access to the evidence or my Client.

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[9] IRS Doc-1105 -- SUPPLEMENT 14

[10] IRS Doc-1107 -- 12 1231 Form 10K IRS Settlement Disclosure for 2000-2006

Feb. 2013: We became aware from the IRS Whistleblower Office[11] that in the initial debriefing in April 2009, Laurie Nasky (Chief Counsel attorney & taint analyst) determined a couple documents to be tainted. We had provided her these couple documents in a sealed envelope pursuant to IRS protocols. The rest of the information presented at that time was NOT considered to be tainted. Recall in April 2009 we presented to her evidence that my Client was NOT acting-as-an-attorney for the Taxpayer.

However, the Chief Counsel's Office, in particular Tom Kane's group, considered the entire claim to be tainted as privileged information and put my Client's claim in a proverbial drawer for 4 years. However, as had previously been explained to the IRS, my Client was NOT acting-as-an-attorney for the Taxpayer so there was NO attorney-client privilege. This is why we presented evidence at the debriefing in April 2009 documenting that my Client was NOT acting-as-an-attorney for the Taxpayer. All of the evidence in the hands of the IRS at this point in time proved that my Client was NOT acting-as-an-attorney for the Taxpayer. Chief Counsel's Office ignored the evidence it had, and didn't listen to or overruled its own attorneys who did the debriefing and taint analysis in April 2009. Recall, in the Sarbanes-Oxley retaliation lawsuit, the Taxpayer didn't even claim the information my Client had and provided to the IRS to be either Confidential or Privileged.

We were also informed that the Whistleblower Office recently requested a second look at the taint issue at which time my Client's claim was determined NOT to be tainted after all. My client's claim was supposedly tainted for 4 years and, therefore, withheld from the Special Agents and the Civil Exam Team. Then suddenly it was no longer tainted, yet the relevant facts and the documentation in the hands of the IRS had not changed. Significant evidence regarding the largest reported tax fraud in history was concealed for nearly 4 years while the fraud continued and the Civil Exam Team closed more tax years.

At this point in time we understand my Client's claim was finally released to the field Exam Team whose audit for the tax years 2007, 2008 and 2009 was wrapping up. The previous audit cycles had closed without the IRS addressing this issue because Chief Counsel's Office withheld the evidence from the IRS Exam Team.[12] We were also told that Chief Counsels Office would not let the Exam Team work with my Client, despite the fact that the treasury regulations allowed the IRS to work with whistleblowers pursuant to a 6103(n) contract (i.e. a non-disclosure agreement), and my Client is the only person with inside knowledge as to why this is a fraud.

May 2013: The Senate Permanent Subcommittee on Investigations (PSI) became aware of this case due to the public record created by my Client's Sarbanes-Oxley retaliation lawsuit. The key PSI staff involved included:

- Elise Bean, Chief Counsel
- Robert Roach, Senior Counsel
- David Katz, Senior Counsel

[11] This was Bob Gardner (Program Manager for IRS WB Office) and Steve Whitlock (Director of IRS WB Program). Tom Pliske discussed this issue with them by phone and in person at their office in Washington, D.C.

[12] IRS Doc-1107 -- 12 1231 Form 10K IRS Settlement Disclosure for 2000-2006

- Daniel Goshorn, Counsel

For years the PSI had been investigating various companies for shifting U.S. profits offshore violating U.S. tax law. However, the PSI had never before had a case in which there was a high-level inside informant with taxpayer documents and sworn testimony *admitting* to the elements of tax fraud. Although the PSI had a full-plate, it immediately grasped the credibility of my Client and the magnitude and significance of the evidence, particularly the *admissions*. It began to investigate right away. The PSI and its independent experts knew it was extraordinary to have a high-level inside informant and *admissions* at the beginning of an investigation. The PSI issued subpoenas and interviewed witnesses, and in less than 10 months issued a full report and held a 1-day hearing (see below on Apr. 2014).

IRS Chief Counsels Office had the same evidence available for 4 years and Special Agents Per IRS (b)(6); (b)(7)(C) [redacted] who had begun an investigation and wanted to move forward, but Chief Counsels Office instead shut down the investigation and concealed the evidence.

There was no finding of taint by PSI. Importantly, the Taxpayer did not claim any privilege or taint. The report and over 1000 pages of documents have been made public.

Aug. 2013: We met with the following IRS Special Agents Per IRS (b)(6); (b)(7)(C) [redacted]

Per IRS
- (b)(6); (b)(7)(C) [redacted] (b)(6); (b)(7)(C) Supervisory Special Agent
- [redacted] Special Agent

These Special Agents also thought it was odd that my Client's claim had been filed so long ago (4 years) with no action by the IRS. My Client also told them about the evidence that neither he, nor others, thought he was acting as an attorney for the Taxpayer.[13]

We subsequently provided them with a 27-page memorandum[14] summarizing the ATAT and providing evidence for each element of tax evasion as stated in the U.S. Attorney's Manual. Nearly all of this evidence was recent sworn federal court deposition testimony by senior tax executives of the Taxpayer or actual admissions filed by the Taxpayer in federal court. It is extraordinary to have such evidence handed to an investigator. And this was only part of the evidence available.

These Special Agent's also believed, based on the evidence,[15] that this case should be investigated. They sent the evidence[16] to Criminal Tax Counsel within the Chief Tax Counsels Office. This evidence was a 27-page binder outlining the sworn testimony of Taxpayer executives and senior finance personnel by each element of fraud as stated in the U.S. Attorney's Manual.

The "story" that was going to be told to the IRS to cover-up the simple fraud was discussed within the Taxpayer far in advance. The public auditor actually had a conversation with my Client about this story as a cover-up. The first question/rebuttal raised by Criminal Tax Counsel to the Special Agents,

13 IRS Doc-1108 -- 13 0920 -- Dan email re CI believes something to this case

14 See, IRS Doc-1103 -- 090513 - Caterpillar Inc. direct evidence of tax fraud-pdf.

15 See, IRS Doc-1103 -- 090513 - Caterpillar Inc. direct evidence of tax fraud-pdf.

16 See, IRS Doc-1103 -- 090513 - Caterpillar Inc. direct evidence of tax fraud-pdf.

"coincidentally", was the primary avenue of cover-up and diversion planned by the Taxpayer and the public auditor for presenting to the IRS Exam Team.[17] The Taxpayer intended to rely upon the fact that they actually had an office in Switzerland for decades. They intended to point to this fact as business purpose and economic substance to support the fraudulent scheme. My Client (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) is intimately familiar with it and its operations. This office was and always had been a regional marketing office. It was documented as such in the annual transfer pricing documentation provided to the IRS. As part of the fraud the Taxpayer now represents to the IRS that this office is the global headquarters for the very profitable replacement parts business, even though nothing, literally nothing, changed in the operations of the office in Switzerland. There was significant evidence in the binder provided to Chief Counsel's Office that this notion was merely cover for the fraud.

My Client was told that the Criminal Tax Counsel of the Chief Counsel's Office was the hold up.[18] The Special Agents planned to meet with Criminal Tax Counsel,[19] present the evidence,[20] argue their case, and get permission to investigate. By all appearances this group of Special Agents wanted to move forward with a criminal investigation of the Taxpayer. They were not allowed to investigate.[21] The discussions with IRS upper management (i.e. Chief Counsel's Office) determined that this was best left in the hands of the Civil Exam Team, and they weren't even sure whether Civil would take up the matter.[22] Ironically, Chief Counsel's Office had shelved the evidence and kept it away from the Civil Exam Team for years (see explanation above on Feb. 2013).

This is the second time within a year that Chief Counsel's Office either stopped a criminal investigation or denied permission to proceed with an investigation of this case by Special Agent's, and despite voluminous overwhelming evidence, including Taxpayer *admissions* in federal court testimony, court filings and internal documents, and also a high-level inside informant with first-hand knowledge. How could this situation not warrant investigation by Chief Counsel's Office?

Per IRS

Dec. 2013: We met with the IRS Exam Team for approximately 4-5 hours (b)(6); (b)(7)(C) IRS personnel attending the meeting included:

Per IRS

- Theresa Newton, International Manager
- (b)(6); (b)(7)(C) (b)(6); International Issue Specialist
- Acting Team Manager
- Jan Lamartine, STA Senior Counsel (by phone)
- (b)(6); (b)(7)(C) Sr. Program Analyst & WB Program Subject Matter Expert
- Mariann Bostiam, Taint Attorney (by phone)

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[17] IRS Doc-1109 -- 13 0927 -- Email to re CI appears to want to move forward. While it is true there were operations in Switzerland, they were not relevant to the fraud, just a cover for it. This rebuttal is tantamount to saying that deductions for expenses for your daughter's pony (a hobby) are proper because you are a farmer or rancher. The fact that your daughter's hobby takes place on the same property as a legitimate business does not mean the hobby losses somehow magically become ordinary and necessary business expenses.

[18] IRS Doc-1108 -- 13 0920 -- Dan email re CI believes something to this case

[19] IRS Doc-1108 -- 13 0920 -- Dan email re CI believes something to this case

[20] IRS Doc-1103 -- 090513 - Caterpillar Inc. direct evidence of tax fraud-pdf.

[21] IRS Doc-1110 -- 13 1121 -- Email fr (b)(6); re they will not proceed

[22] IRS Doc-1110 -- 13 1121 -- Email fr (b)(7)(C) re they will not proceed Per IRS

Topics covered in the meeting included: overview of the fraud both shifting the profit to Switzerland and returning the cash to the U.S.; there is direct evidence for everything discussed including testimony admissions and documents; this was a marketed tax shelter and things were done to avoid the tax shelter regulations that came out in the late 1990's; intent is admitted to; there was no economic substance or business purpose and this was done solely for tax purposes; the Taxpayer wants them to address this as a Section 482 issue which the Taxpayer knows they will win in IRS Appeals; etc. We also offered to cooperate with them and to give them all the evidence because what we covered was a fraction of the evidence in my Client's possession. We told them we were certain they did not have all the evidence my Client possessed and that a complete understanding of this matter can only come about through more significant discussion. Following the meeting we provided them with the information we had provided to the Special Agents (b)(6); (b)(7)(C) [redacted][23] Per IRS and some of the other evidence.

Dec. 2013: IRS Civil Exam Team issued a Notice of Proposed Adjustment (NOPA) to the Taxpayer for 2007, 2008 & 2009. The NOPA rejects the tax issue in this case and refers to it as an "abusive corporate tax shelter".[24] Subsequently the Exam Team issued a Revenue Agent's Report (RAR) to the same effect for 2007-2009 and later for 2010-2012, each for approximately $1 Billion dollars of tax. These two RARs have now been sent to IRS Appeals, which the IRS' own TIGTA report documented, has historically reduced assessments on appeal by more than 90%. Recall it is Chief Counsels Office who thought this case should not be investigated criminally.

The Exam Team was never able to get all the evidence that my Client has available which would serve to make it more difficult for IRS Appeals to reduce this assessment. Additionally, the fact that IRS Civil is still actively working the case means that IRS Criminal management is still sitting on the sidelines, given the standard protocol for Civil to withdraw when there is a Criminal investigation.

My Client will attest that the plan between the Taxpayer and its public auditor was to avoid criminal and stay with Civil because IRS Appeals will not sustain a large assessment. The Chief Tax Officer even testified that he recorded a 5% "nuisance" reserve on the financial statements to give the IRS as a token settlement.[25]

Apr. 2014: In less than 10 months, the U.S. Senate Permanent Subcommittee On Investigations (PSI) issued a report[26] and held a daylong hearing[27] on this matter. Yet for 5 years, Chief Counsel had the same evidence and did nothing. During the hearing this matter was discussed as being illegal.

After the hearing PSI released a memo regarding *false-testimony* on the part of the Taxpayer.[28] The Taxpayer received a Notice Of Proposed Adjustment (NOPA) regarding this matter on *December 23,*

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[23] See, IRS Doc-1103 -- 090513 - Caterpillar Inc. direct evidence of tax fraud-pdf.

[24] IRS Doc-1111 -- Transcript exhibit re False Testimony

[25] Deposition available upon request

[26] IRS Doc-1112 -- Doc-22 -- Senate Hearing Report

[27] IRS Doc-1113 -- Doc-16 -- Senate PSI Hearing Transcript

[28] IRS Doc-1111 -- Transcript exhibit re False Testimony

2013.[29] The 70-page NOPA strongly objected to this fraud, proposed a substantial tax adjustment, and indicated the intent to impose substantial penalties for the use of an "abusive corporate tax shelter". However, while under oath at the hearing on *April 1, 2014*, the Chief Tax Officer (Mr. Beran) testified that the IRS had "proposed no adjustments". His testimony is as follows:[30]

> Q: Senator McCain. And they [the IRS] have not claimed you are in violation of IRS regulations?
>
> A: Mr. Beran. Each year's return provides substantial information, including transfer pricing information related to our international businesses. They proposed no adjustments.
>
> Later, when asked by Subcommittee Member Senator Ron Johnson about whether the IRS had "given their blessing" to Caterpillar's actions, Mr. Beran again concealed the IRS NOPA filed three months earlier:
>
> Q: Senator Johnson. In the closed-out audits, you said they looked to transfer pricing. I mean, that encompasses this entire relationship with CSARL and, again, because they [the IRS] have proposed no adjustments, they have basically given their blessing to what you have done here from the standpoint of compliance with the tax law, correct?
>
> A: Mr. Beran. That is the way I have taken it. There is extensive documentation that is provided every year, and we know they ask questions about it.

The PSI found this testimony to be "False Testimony". Also present at the hearing during this testimony were: PriceWaterhouseCoopers, the Taxpayer's public auditor and promoter of the ATAT; outside legal counsel; and additional individuals from the Taxpayers Tax Department. Yet no one interrupted the hearing to inform the subcommittee that Mr. Beran's testimony was false, and that the IRS had issued a NOPA three months earlier "proposing adjustments" on this very issue. You can just imagine how the hearing would have taken a different course at this point had someone just stood up and told the truth.

Oct. 2014: In response to the lack of enforcement within the IRS and the revolving-door between IRS and industry top management a whistleblower [redacted] raised these issues within the IRS.[31] [redacted]

Oct. 2014: In response to the PSI report and hearing the Taxpayer raised a number of defenses that were baseless. We sent a memo to the IRS Exam Team outlining each defense and why it was baseless based on the facts and the case law.[32]

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29 IRS Doc-1111 -- Transcript exhibit re False Testimony, p1 of 16

30 IRS Doc-1111 -- Transcript exhibit re False Testimony, p1-2 of 16

31 IRS Doc-1117 -- 20141019_[redacted]-IRS-Letter [redacted]

32 IRS Doc-1114 -- 20141023 Supplement-v17 FINAL 2

Feb 2015: A Grand Jury Investigation into this matter was commenced in the Central District of Illinois. For information regarding this investigation, please contact FDIC-OIG (b)(6); (b)(7)(C) [redacted] (b)(6); (b)(7)(C) [redacted] whose information is on the front page of this letter.

May 2015: My Client testified before the Grand Jury regarding this matter.

Mar. 2017: Nearly 100 Special Agents from several government agencies publicly raided the Taxpayer's headquarters and data centers serving Search and Seizure Warrants.[33] I am sure you appreciate the level of scrutiny a government agency must endure and the depth of evidence it must have to even get approval to pursue search warrants, and then actually have them granted by a Federal Judge. This is particularly true for such a high-profile raid on a blue-chip company. Recall, IRS Chief Counsel's Office contended this was not enough evidence to even allow IRS Special Agents to investigate? For information regarding this investigation, please contact FDIC-OIG (b)(6); (b)(7)(C) [redacted] (b)(6); (b)(7)(C) [redacted] whose information is on the front page of this letter.

Mar. 2017: After the raid the New York Times reported that it had obtained a report regarding this matter from an expert hired by the government. The 85-page report concluded:

> *"Caterpillar did not comply with either U.S. tax law or U.S. financial reporting rules...I believe the company's noncompliance with these rules was deliberate and primarily with the intention of maintaining a higher share price. These actions were fraudulent rather than negligent."*[34]

Caterpillar has acknowledged receiving a copy of this report.

Today: Where is the IRS? Will this end up like the DEA case, recently reported by the Washington Post and 60 Minutes, in that the IRS has had more than enough evidence to investigate the Taxpayer for years, and has had Special Agents who were doing their job until prevented from doing so by high-level management subject to improper influence?

Multiple Investigations

Below are some of the many investigations into this matter. The Taxpayer has conducted 3 or more itself. Why is the Taxpayer engaging different entities to perform successive, duplicative investigations?

1. 2007: The Taxpayer's internal Legal Department investigates and finds no wrongdoing. They did not interview my Client.
2. 2012:

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33 See generally: Google Search, Caterpillar Inc. raid, and https://www.nytimes.com/2017/03/02/business/caterpillar-raid-tax-practices.html

34 https://www.nytimes.com/2017/03/07/business/caterpillar-tax-fraud.html

Per IRS
   a. (b)(6); (b)(7)(C) Special Agents pursue investigation. They <u>did</u> interview my Client.
   b. Chief Counsel's Office stops investigation. They <u>did not</u> interview my Client.
3. 2013:

Per IRS
   a. (b)(6); (b)(7)(C) Special Agents pursue investigation. They <u>did</u> interview my Client.
   b. Chief Counsel's Office stops investigation. They <u>did not</u> interview my Client.

4. 2014: Sidley and Austin is hired and finds no wrongdoing. They <u>did not</u> interview my Client.
5. 2014: Senate Permanent Subcommittee on Investigations investigates and finds the Taxpayer's actions illegal. They <u>did</u> interview my Client.
6. 2015: Grand Jury commences investigation. It is proceeding. It <u>did</u> interview my Client.
7. October 2015: The Taxpayer's Board of Directors hires the Jones Day Law Firm to conduct an internal investigation to satisfy shareholders lawsuit demands.[35] In the last 10 days of a more than 1-year investigation, Jones Day attorneys purportedly interviewed my Client in September 2016. They allowed only 2-3 hours for the interview before they had to catch their return flight. They <u>did not</u> even ask my Client why the Taxpayer's actions are illegal. It was my Client's belief that the attorney's conducting the interview were not competent in international tax law and financial reporting. Jones Day found no wrongdoing. Jones Day <u>did not</u> conduct a substantive, meaningful interview of my Client. In essence, Jones Day <u>did not</u> interview my Client.
8. March 2017: Government agencies raid the Taxpayer's headquarters and data centers executing Search and Seizure Warrants. They <u>did</u> interview my Client.
9. April 2017: The Taxpayer hires former US Attorney General William P. Barr and the law firm of Kirkland & Ellis. Will they conduct yet another investigation? Kirkland & Ellis has represented PwC in several matters, including particularly as part of my Client's retaliation lawsuit against the Taxpayer. How can Kirkland & Ellis be independent when PwC is also a defendant in the shareholder lawsuits?

You should ask yourself, "Why every inquiry by the Taxpayer into this matter finds no wrong doing, but doesn't interview the one person who said there is tax fraud – my Client?"

You should ask yourself, "Why every inquiry into this matter that interviewed the one person who said there is tax fraud – my Client – has found the Taxpayer's actions to be illegal, or is in the midst of a criminal investigation using extraordinary measures (i.e. Search & Seizure Warrants)?"

You should ask yourself, "Why won't the Chief Counsel's Office interview and engage with my Client, or allow the Special Agents to investigate?"

<u>Attachments re IRS</u>

IRS Doc-1101 -- 12 0703 CI Agreement.pdf
IRS Doc-1102 -- 15 0609 -- 20150601 Calculations by Tom
IRS Doc-1103 -- 090513 - Caterpillar Inc. direct evidence of tax fraud-pdf
IRS Doc-1104 -- 05 - 041309 Claimant's Relationship with Taxpayer
IRS Doc-1105 -- SUPPLEMENT 14

[35] IRS Doc-1115 -- 111515 Shareholder lawsuit Stipulation and Proposed Order

IRS Doc-1106 -- 20121031 Letter to Weber
IRS Doc-1107 -- 12 1231 Form 10K IRS Settlement Disclosure for 2000-2006
IRS Doc-1108 -- 13 0920 -- Dan email re CI believes something to this case
IRS Doc-1109 -- 13 0927 -- Email to re CI appears to want to move forward
IRS Doc-1110 -- 13 1121 -- Email fr (b)(6); (b)(7)(C) re they will not proceed Per IRS
IRS Doc-1111 -- Transcript exhibit re False Testimony.pdf
IRS Doc-1112 -- Doc-22 -- Senate Hearing Report.pdf
IRS Doc-1113 -- Doc-16 -- Senate PSI Hearing Transcript.pdf
IRS Doc-1114 -- 20141023 Supplement-v17 FINAL 2.pdf
IRS Doc-1115 -- 111515 Shareholder lawsuit Stipulation and Proposed Order
IRS Doc-1116 -- Taint Analysis
IRS Doc-1117 -- 20141019_(b)(6); (b)(7)(C)-IRS-Letter
Per IRS

Per consulting agency

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Withheld pursuant to exemption

(b)(6) ; (b)(7)(C)

of the Freedom of Information and Privacy Act

per consulting agency

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of the Freedom of Information and Privacy Act

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of the Freedom of Information and Privacy Act