U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530
(202) 514-3365

April 23, 2021

Austin Evers
American Oversight
foia@americanoversight.org

Re: OPR FOIA No. F20-00086

Dear Mr. Evers:

In a letter dated April 22, 2021, the Office of Professional Responsibility (OPR) informed you that OPR was producing 32 pages (Bates-numbered F20-00086 000007, F20-00086 000020, F20-00086 000366, F20-00086 000434, F20-00086 000441-000467, and F20-00086 000545) with excisions made pursuant to Exemption 3, 6, and 7(C) of the FOIA, 5 U.S.C. § 552 (b)(3), (b)(6) and (b)(7)(C). OPR's citation of Exemption 3 was incorrect; excisions were made only pursuant to Exemptions 6 and 7(C). Please refer to OPR FOIA number **F20-00086** in any correspondence pertaining to this matter.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal with the Office of Information Policy.

Sincerely,

Carmen Smith Carter

Carmen Smith Carter
Assistant Counsel for the
Freedom of Information and Privacy Acts

Enclosures

cc: Jonathan Kossak, Trial Attorney

U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530
(202) 514-3365

April 22, 2021

Austin Evers
American Oversight
foia@americanoversight.org

Re: OPR FOIA No. F20-00086

Dear Mr. Evers:

This is the third and final interim response from the Office of Professional Responsibility (OPR) to your July 24, 2020 Freedom of Information Act (FOIA) request for all complaints submitted to the DOJ Office of the Inspector General (OIG) or the Office of Professional Responsibility (OPR) containing allegations that concern the conduct of former Attorney General William Barr. Please refer to OPR FOIA number **F20-00086** in any correspondence pertaining to this matter.

In this final interim response, OPR is providing you with 32 pages of responsive records. These pages are appropriate for release with excisions made pursuant to Exemptions 3, 6, and 7(C) of the FOIA, 5 U.S.C. § 552 (b)(3), (b)(6) and (b)(7)(C). Exemption 3, 5 U.S.C. § 552(b)(3), protects records or information that are specifically exempted from disclosure by statute, including 15 U.S.C. § 78u-6(h)(2)(A). Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption 7(C) pertains to records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. These pages have been Bates-numbered F20-00086 000007, F20-00086 000020, F20-00086 000366, F20-00086 000434, F20-00086 000441-000467, and F20-00086 000545.

Please note that in OPR's first interim response, we indicated that pages Bates-numbered F20-00086 000368, F20-00086 000396, F20-00086 000398, and F20-00086 000400-000433 (37 pages) were among the pages OPR sent to other Department components or agencies for consultation (per DOJ regulations). In accordance with Department policy, we can now confirm that the OIG will process those 37 pages and respond directly to you.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal with the Office of Information Policy.

Sincerely,

Carmen Smith Carter

Carmen Smith Carter
Counsel for the Freedom of Information and Privacy Acts

Enclosures

cc: Jonathan Kossak, Trial Attorney

[redacted]

phone
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Direct: [redacted]

April 10, 2019

To:
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COMPLAINT

AG Barr is legally required to recuse himself from the investigation of Caterpillar Inc.

The Rules of Professional Conduct, case law, statutes & regulations prohibit his involvement.
Side-switching **is a patent conflict-of-interest that is *NOT waivable*.**
Screening measures are required for an effective recusal.

Dear Sir or Madam:

With all due respect; when the defense attorney becomes the top law enforcement officer overseeing the investigation of that very same case; there is a conflict-of-interest. No situation is more so. This is commonly referred to in federal case law as "*side-switching*". Disqualification is

[redacted] (b) (6)

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fax
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February 15, 2019

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COMPLAINT

William Barr is legally required to recuse himself from the investigation of Caterpillar Inc.

Dear Sir/Madam:

I am filing this complaint with the Office of Professional Responsibility (OPR) and the Office of Inspector General (OIG) calling on your Offices to promptly conduct an investigation into whether Attorney General William Barr is in violation of Department of Justice (DOJ) rules and regulations for not recusing himself from the investigation of Caterpillar Inc. He was asked

During the 8-years for 2-months [redacted] with NBC DFW was helping [redacted] get our money from the FBI. The we found out she was working with the FBI to steal the money again! NBC sent her to Chicago and denies everything was true. It is true because [redacted] was with her and her news van at the Mckinney FBI office many times. Since that happened they have closed the Mckinney FBI office.

Anyways, I would like to Sue NBC Universal for the involvements of [redacted] with the FBI. They covered it up and act like they did nothing wrong.

I also need help getting the 14.7 million that Attorney General William Barr and Christopher Wray has that belongs to us. Call the FBI Washington office and ask for [redacted] or Jennifer L Moore. They are involved and will go down for Lying also. The lie to my wife [redacted] everyday about giving us our 9-Checks!

Certification and Signature (Enter your initials here to certify and sign this form.): [redacted]

The results of this submission may be viewed at:
https://www.justice.gov/node/1019501/submission/12500636

[redacted] [redacted]

phone
fax
Direct: [redacted]

June 14, 2019

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U.S. Senator for Rhode Island
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COMPLAINT

The *Rules of Professional Responsibility, Federal Case Law & DOJ Regulations* regarding *side-switching* require AG Barr to *permanently* recuse himself *specifically* from *the investigation of Caterpillar Inc.* with *screening measures* implemented to ensure the recusal is effective.
AG Barr is NOT compliant with required ethical standards.

Dear Sir or Madam:

With all due respect, the OPR has not addressed this allegation which was presented in my letters dated February 15th[1] and April 10th[2] of 2019. It is logical that to address this allegation the OPR must address *side-switching* and the relevant *Rules of Professional Responsibility, Federal Case Law & DOJ Regulations*. Relying on documents that did not address, mention or discuss my allegation to come to a conclusion about my allegation is simply not logical, at best. This is a renewed Complaint. Again, with all due respect, please address this allegation. The public's confidence in the Department of Justice cannot be sustained if the AG does not comply with the same ethical standards required of and routinely followed by all rank-and-file attorneys at the DOJ. A significant federal investigation is needlessly being put at-risk and subjected to the claim of "taint" due to the

[1] See letter dated February 15, 2019 (copy attached), incorporated herein by reference.
[2] See letter dated April 10, 2019 (copy attached), incorporated herein by reference.

CONFIDENTIAL

[redacted], Supervisory Special Agent
[redacted], Special Agent
[redacted]

Greg Weddle
Assistant United States Attorney
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John Childress
Assistant United States Attorney
318 S. Sixth Street
Springfield, IL 62701

September 5, 2013

[redacted], Greg, and John.

Again, thank you for your time at our meeting [redacted]. I have already sent [redacted] important new documents in response to your requests. Before I send more, I want to be sure that we have a mutual understanding of the overall picture and simplicity of the case, and the evidence we summarily covered so I can efficiently respond to your requests. I want you to know what distinguishes this case from others.

This case is distinguishable from other cases in that there is substantial direct evidence including taxpayer admissions in documents and sworn testimony regarding each element of a tax evasion case, including "willfulness".

For example, Caterpillar Inc.'s Senior International Tax Manager responsible for the Swiss/CSARL transaction already testified as follows:

"*Q: So the advantage to 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 than the avoidance or deferral of income taxation at higher rates?
A: No, there was not."[1]

Thus, the person most knowledgeable at Caterpillar Inc. regarding the CSARL transaction has already admitted the CSARL transaction was *for-tax-purposes* and there was *no-business-advantage*, - thus solely for tax purposes. In other words, there is no business purpose or economic substance or utility to this transaction other than the intended tax consequences. This is the critical element of a sham transaction case and it has already been admitted-to in Federal Court testimony. This is just one of many admissions for this and the other elements of this case, in both sworn testimony and Company documents. The following pages review these admissions citing to original documents. There is more evidence further corroborating what is in this letter.

Caterpillar Inc. paid $4,667.00 (four thousand six hundred and sixty seven dollars) of federal tax in 2003.[2] This is a *sham transaction – a transaction engaged in solely for tax purposes with no business purpose or economic substance* - that was promoted to Caterpillar Inc. by PriceWaterhouseCoopers. This is NOT a "transfer pricing"/Section 482 issue in which you have a "legitimate-business-transaction" to begin with,

[1] [redacted] Deposition, p111 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures). See File - 30 Deposition of [redacted] - excerpt, p111.
[2] See File - 29 Page 1 of 2003 Corporate Tax Return.

through which the taxpayer aggressively prices to reduce taxable income. In contrast, here Caterpillar Inc. engaged in a transaction whereby it removed from its U.S. books & records, and its U.S. taxable income, an entire-stream-of-income that had previously been reported in the U.S. for more than 75 years, and instead now reports it in Switzerland. This is a transaction from which Caterpillar Inc. can never possibly earn a business profit. This is a transaction with a wholly controlled Swiss subsidiary. This is a transaction that was intended to increase the earnings reported to shareholders,[3] and did.[4, 5]

I acquired all documents within the normal course of my job responsibilities at Caterpillar Inc. I was a Senior Tax Manager for most of my career at Caterpillar Inc. in excellent standing.[6] I was not acting as an attorney for Caterpillar Inc. during any relevant time. The testimony was gathered as part of the Sarbanes-Oxley Retaliation lawsuit I filed after reporting this issue to senior executives consistent with Caterpillar policy.[7]

You will see that the following pages are extensively footnoted referencing Company testimony and Company documents. If you cannot find something that is referenced, please let me know. Also, I have not included any of my own testimony. Please call if you have any questions. I will contact [redacted] to follow-up next week.

Sincerely,

[redacted]

SUMMARY OF TRANSACTIONS

Introduction

This transaction involved the purchase and resale of replacement parts. It is not publicly known that Caterpillar earns most of its profit from the sale of replacement parts, and not the sale of big yellow machines. It is not known publicly that the margins on replacement parts are multiples of those for machines. The replacement parts business is critical to all three phases of the Caterpillar Business Model.[8] A machine in the field produces a future annuity of replacement parts profit. Many people who work for the company are unaware of this. It is unlikely that the Internal Revenue Service field agents were aware of this. It was this little known source of substantial profit that was shifted to Switzerland.

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[3] Caterpillar Inc. - Answers To Requests For Admissions, No. 4.
[4] Caterpillar Inc. - Answers To Requests For Admissions, No. 27 & 29.
[5] [redacted] Deposition, p240-241 (Chief Tax Officer) - CSARL has caused earnings per share to be higher than it otherwise would have been.
[6] See, Central District of Illinois (Peoria), Case #: 1:09-cv-01208-MMM-BGC – Doc 120 - 233 page Affidavit with over 260 Exhibits filed on 092311.
[7] See, Central District of Illinois (Peoria), Case #: 1:09-cv-01208-MMM-BGC – Doc 120 - 233 page Affidavit with over 260 Exhibits filed on 092311.
[8] See File - 31 2010 Annual report excerpt re Parts Business-Seed, Grow, Harvest.

Swiss Transaction[9]

In late 1998/early 1999, the PriceWaterhouseCoopers (PwC) tax department presented the Global Value Enhancement (GloVE) program as a tax savings program to the Caterpillar Inc. tax department and then further developed it.[10] GloVE was an engagement to identify opportunities for Caterpillar in the tax area.[11] Part of the GloVE program was the Swiss Structure (a.k.a. CSARL transaction).[12] CSARL is an effort to shift profits to Swiss taxation instead of American taxation.[13] The sole benefit to Caterpillar Inc. of the CSARL transaction was to pay less federal tax, and there was no business advantage.[14]

The intent of GloVE was to reduce taxes paid[15] by reducing U.S. taxable income,[16,17] and thereby reduce tax expense on its financial statements to increase earnings per share reported to shareholders.[18] As a result, there was a material increase to earnings reported to shareholders.[19,20]

Pursuant to GloVE Caterpillar Inc. reported materially less U.S. taxable income[21] thereby materially reducing its U.S. tax,[22] and reported materially more Swiss taxable income[23] thereby materially increasing Swiss taxes.[24] More tax was then paid in Switzerland and less in the U.S.[25]

So how was the profit shifted from the U.S. to Switzerland? Over decades Caterpillar Inc. developed its intellectual property, supplier base, supply chain logistics capabilities and replacement parts distribution networks, and deducted billions of dollars of development costs on its U.S. tax return. Caterpillar Inc. would purchase replacement parts and sell them to its

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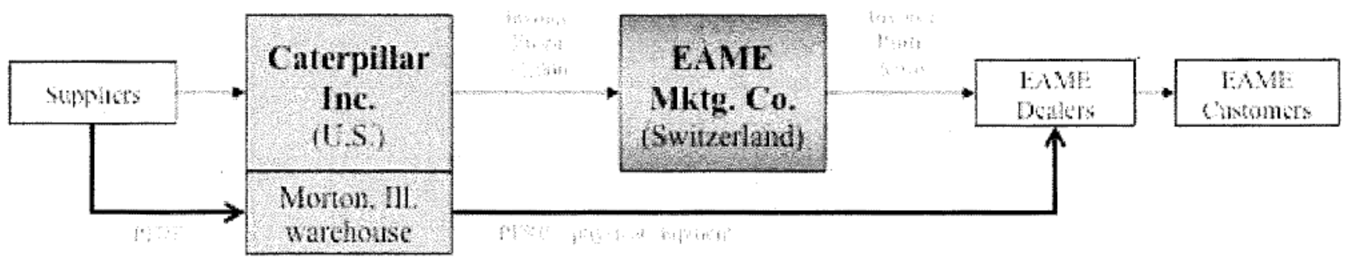
9 The charts in the body of this letter were created by me to isolate the relevant issue for simplicity and to show its impact on the tax return and financial statements. Similar charts created by the Caterpillar Inc. tax department are shown in File - 8 Benefits - Overview of Transaction - Virtual Inventory, p5-8. However, those charts have other transactions included on them that make it more complicated to understand the relevant transaction.
10 [redacted] Deposition, p45-47 (Senior International Tax Manager responsible for the Asian portion of CSARL)
11 [redacted] Deposition, p18 & 39 (Chief Tax Accountant)
12 [redacted] Deposition, p45-47 (Senior International Tax Manager responsible for the Asian portion of CSARL)
13 [redacted] Deposition, p56 (Senior International Tax Manager responsible for the Asian portion of CSARL)
14 [redacted] Deposition, p111 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)
15 Caterpillar Inc. - Answers To Requests For Admissions, No. 3 & 5.
16 Caterpillar Inc. - Answers To Requests For Admissions, No. 13.
17 [redacted] Deposition, p56 (Senior International Tax Manager responsible for the Asian portion of CSARL)
18 Caterpillar Inc. - Answers To Requests For Admissions, No. 4.
19 Caterpillar Inc. - Answers To Requests For Admissions, No. 27 & 29.
20 [redacted] Deposition, p240-241 (Chief Tax Officer) - CSARL has caused earnings per share to be higher than it otherwise would have been.
21 Caterpillar Inc. - Answers To Requests For Admissions, No. 14 & 21.
22 Caterpillar Inc. - Answers To Requests For Admissions, No. 22.
23 Caterpillar Inc. - Answers To Requests For Admissions, No. 23.
24 Caterpillar Inc. - Answers To Requests For Admissions, No. 24.
25 Caterpillar Inc. - Answers To Requests For Admissions, No. 25.

marketing companies[26] around the world including Switzerland as shown below. The replacement parts business is a material percentage of global profit[27] for Caterpillar and a significant source of cash.[28] It is considered to be like an annuity. It is critical to Caterpillar's business model.[29] The "EAME Mktg. Co." located in Switzerland in the charts below is CSARL. This chart shows the transaction flows "before" engaging in the CSARL transaction.



U.S. Tax Return

U.S. PBT	1,000
Swiss PBT	100
Taxable Income	1,100
U.S. Tax - 35%	(385)
Credit Swiss Tax	10
Net U.S. Tax Paid	(375)

Swiss Tax Return

Profit-Before-Tax	100
Swiss Tax - 10%	(10)

Global Consolidated Financial Statements

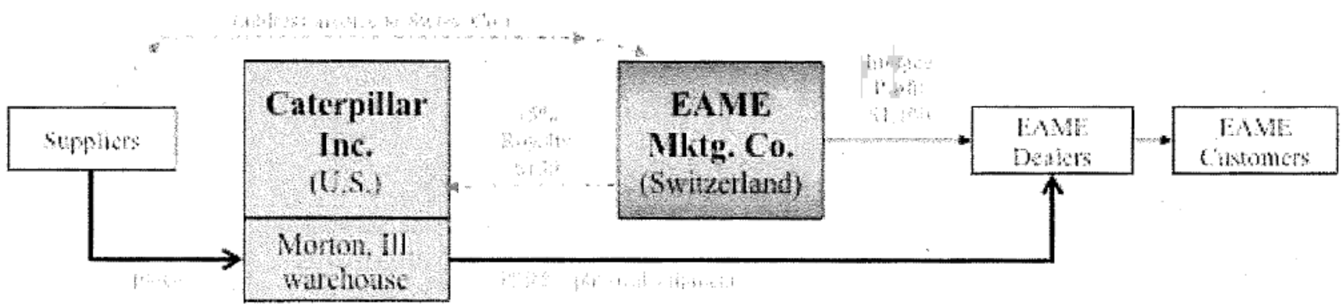
Income Statement		Assets		Liabilities & Equity	
Profit-Before-Tax	1,100	Cash	715	Earnings	715
Global Tax @ 35%	(385)				
Profit-After-Tax	715				

The Caterpillar Inc. tax department was the "driving force" behind the CSARL transaction and not any business unit.[30] CSARL was a broad corporate initiative to bring most of Caterpillar's replacement parts sales outside the US under the umbrella of CSARL in Geneva Switzerland.[31] Caterpillar put the parts business in a lower tax jurisdiction in order to have lower taxes.[32] In 1999, PwC and the Caterpillar Inc. tax department structured a transaction whereby it claims to have licensed to CSARL, Caterpillar Inc.'s right-to-buy-from-and-sell-replacement-parts-to third parties. However, CSARL had no capability to operate the replacement parts business, so CSARL merely contracted with Caterpillar Inc. to continue to operate the business the way it had always done and paid it a small royalty to do so. Nothing changed. This inherently transferred Caterpillar Inc.'s buy-sell profit that it had recorded on its books and records, and

[26] A Caterpillar Marketing Company does not market products in the "retail" sense of marketing to consumers. Instead, they tend to, assist, and administer independent, third party dealers who sell to the end-users such as construction contractors etc.
[27] Caterpillar Inc. - Answers To Requests For Admissions, No. 7.
[28] Caterpillar Inc. - Answers To Requests For Admissions, No. 8.
[29] See File - 31 2010 Annual report excerpt re Parts Business-Seed, Grow, Harvest.
[30] [redacted] Deposition, p106 & 107 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[31] [redacted] Deposition, p97 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)
[32] [redacted] Deposition, p84 (Senior International Tax Manager responsible for the Asian portion of CSARL)

as U.S. taxable income, for over 75 years in return for a royalty that was a fraction of the stream of income and profit given up.

Caterpillar Inc. shifted-a-net-profit-to-Switzerland. It was impossible for Caterpillar Inc. to ever generate a profit from this transaction. For example, how can you generate a profit from a transaction in which you transfer $1,000 of profit in return for a $150 royalty, each year in perpetuity. This chart shows the transaction flows "after" engaging in the CSARL transaction.



U.S. Tax Return	
Profit-Before-Tax	150
U.S. Tax - 35%	(53)

Swiss Tax Return	
Swiss Profit	1,100
Royalty Expense	(150)
Profit-Before-Tax	950
Swiss Tax - 10%	(95)

Global Consolidated Financial Statements

Income Statement		**Assets**		**Liabilities & Equity**	
Profit-Before-Tax	1,100	Cash	952	Earnings	952
Global Tax @ 13%	(148)				
Profit-After-Tax	952				

The transaction had the intended result of shifting billions of dollars of profit to Switzerland, reducing U.S. taxable income and tax, reducing the tax expense on the global financial statements, and increasing earnings reported to shareholders. Through 2007, the amount of benefit recorded on the financial statements was $1.130 billion.[33] The amount of profit shifted and reduction in U.S. taxable income was $4.520 billion.[34] The amount of U.S. tax reduction was $1.582 billion.[35] These amounts increase by nearly $300 million, $1.2 billion, and $420 million each year, respectively.[36] It is ongoing. These amounts do not take into account substantial increases in sales and profits reported in recent years.

[33] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. The benefit is 25% of the profit shifted which represents the US rate of 35% less the Swiss rate of 10%.

[34] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount equals the benefit of 1.130 divided by the net tax savings rate of 25% = 4.520.

[35] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount equals the income shifted of $4.520 times the U.S. tax rate of 35% = 1.582.

[36] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount based on 2007 amount conservatively rounded.

The basic issue with this transaction is that it was not-a-business-transaction-at-all. It was not-initiated-to-generate-business-profit. It was impossible for Caterpillar Inc. to generate a profit when it merely shifted a net profit to Switzerland. It was not possible for the global Caterpillar enterprise to generate a profit when it merely shifted profit from one consolidated company to another. The transaction was designed, implemented and managed by the tax department, not any business operations. It was intended to have no business impact, just the reduction of U.S. federal income tax.

Bermuda Transaction

Prior to implementing the CSARL transaction, the Chief Tax Officer told the Caterpillar Inc. executives that "they better have needs outside the U.S. for the cash generated in Switzerland or they would have to pay U.S. federal tax if they bring the cash back to the U.S. to fulfill cash needs in the U.S."[37] This issue immediately arose because a significant source of cash had been shifted to Switzerland when the major non-operational cash needs were in the U.S.: dividends, debt repayment, stock repurchases, & U.S. pension obligations.[38] Despite the Chief Tax Officer's admission that if "cash" is brought back to the U.S. they would have to pay tax, he engaged Ernst & Young to establish a Bermuda holding company structure to facilitate repatriation of non-US companies cash to the U.S.[39, 40] without paying U.S. tax. The purpose of the Bermuda entity is to stage earnings and distributions of cash until they were ready to bring those funds back to the US.[41] There are cash needs in the U.S. and the Tax Department examines whether there are any ways to bring the cash home without incurring substantial U.S. tax.[42]

There are no business operations or a physical office or employees in Bermuda. The Bermuda Company does not have its own business purpose other than as stated (i.e. repatriation without U.S. tax).[43, 44] The Bermuda structure avoided U.S. tax because the tax department created foreign subsidiary debt owed to the U.S. Company by selling certain foreign subsidiaries to other foreign subsidiaries. Then cash payments to the U.S. were characterized as debt repayments instead of taxable dividends. The Bermuda structure avoided U.S. tax because the tax department combined profitable and unprofitable subsidiaries, thereby eliminating foreign "earnings and profits". Then cash payments to the U.S. were characterized as a return of

37 Caterpillar Inc. - Answers To Requests For Admissions, No. 35.
38 [redacted] Deposition, p120-130 (Director of European Taxes)
39 [redacted] Deposition, p80 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures).
40 [redacted] Deposition, p223 (Chief Tax Officer)
41 [redacted] Deposition, p154-156 (Senior International Tax Manager responsible for the Asian portion of CSARL)
42 [redacted] Deposition, p153 (Senior International Tax Manager responsible for the Asian portion of CSARL)
43 [redacted] Deposition, p154-156 (Senior International Tax Manager responsible for the Asian portion of CSARL)
44 [redacted] Deposition, p153-155 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)

capital instead of taxable dividends. In November 2006 the Chief Tax Officer wrote to the CFO that they had repatriated "*nearly $1.5 billion of cash to the U.S. without incremental U.S. tax*."[45]

The issue with this transaction is that the sales of subsidiaries and combining of subsidiaries were not business transactions at all and thus lacked economic substance. They were not initiated to generate business profit. It was not possible for the global Caterpillar enterprise to generate a profit engaging in these transactions within the global consolidated group. The transactions were designed implemented and managed by the tax department, not any business operations. It was intended to have no business impact. It was just to avoid reporting repatriations of cash as U.S. taxable income, even though Caterpillar Inc. had dominion and control over the cash continually, and spent it to meet its obligations in the U.S.

Net Effect

Profit that was previously reported as U.S. taxable income for 75 years was shifted to Switzerland and no longer reported in the U.S. There were no changes in the business operations. The cash was brought back to the U.S. and spent on the same U.S. expenditures it had always been spent on. No U.S. tax has been paid on this income. These two transactions had the intended result of: (1) shifting profit to Switzerland to reduce U.S. tax; (2) recording the reduction as a decrease in tax expense on the global financial statements to increase earnings; and (3) accessing the cash for U.S. expenses just as if the transaction had not occurred. As of 2010, the officers and board of directors owned $913 million of Caterpillar Inc. stock.[46] The impact of these transactions on the stock price was estimated to be 15-20%.[47]

ECONOMIC SUBSTANCE

The Criminal Tax Manual Government Proposed Jury Instruction No. Misc-35 states:

> A transaction without economic substance that is entered into solely for the purpose of tax avoidance cannot properly be used to compute taxes. That is to say, the law does not allow a deduction that arises out of a transaction which has no purpose, substance, or utility apart from the anticipated tax consequences. On the other hand, a deduction is proper in this context if there is some economic substance to the transaction giving rise to the deduction beyond the taxpayer's desire to secure a deduction…If, after reviewing

[45] See File - 9 Repatriation emails re bringing back cash with no tax, p3.
[46] See File - 6 Executive Compensation - p1&2.
[47] See File - 37 CSARL impact on stock price.

> the evidence regarding a transaction, you find that the reduction of taxes was the sole purpose for entering into the transaction and that the transaction had no other substance or utility, then you may disregard the intended tax effects of the transaction....

Since 1999, despite numerous requests I have never had anyone tell me the Swiss and Bermuda transactions have economic substance, or that they were engaged in for a business purpose, or that they have any utility apart from the intended tax consequences. I have never had anyone explain to me any reasonable basis for claiming that the Swiss and Bermuda transactions have economic substance, or that they were engaged in for a business purpose, or that they have any utility apart from the intended tax consequences. I have never had anyone answer the concerns that I raised regarding these transactions. I have heard other Senior Tax Managers at Caterpillar Inc. testify under oath that the benefit to Caterpillar Inc. of the Swiss/CSARL transaction was the reduction of U.S. federal income tax and it had no business advantage (i.e. NO business purpose or economic substance or utility apart from the intended tax consequences). Caterpillar Inc. never challenged my claim in Federal Court that I had a reasonable belief this was tax fraud. It never presented any facts or evidence that my belief was unfounded.

EVIDENCE

Economic Substance Doctrine Applies

1. (Senior International Tax Manager) Nothing about US tax law concerning CSARL allows the economic substance doctrine to be disregarded.[48]

Solely for Tax Purposes

2. (Chief Tax Accountant) GloVE was an engagement to identify opportunities for Caterpillar in the tax area.[49]
3. (Senior International Tax Manager) CSARL is an effort to shift profits to Swiss taxation instead of American taxation.[50]
4. (Senior International Tax Manager) The benefit to Caterpillar Inc. of the CSARL transaction was to pay less federal tax.[51]
5. (Chief Tax Accountant) She does not know the non-tax-related reasons for the structure.[52]

No Business Advantage

6. (Senior International Tax Manager) There was no business advantage.[53]

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[48] [redacted] (b) (6) Deposition, p36 & 37 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[49] [redacted] (b) (6) Deposition, p18 & 39 (Chief Tax Accountant)
[50] [redacted] (b) (6) Deposition, p56 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[51] [redacted] (b) (6) Deposition, p111 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)
[52] [redacted] (b) (6) Deposition, p144-146 (Chief Tax Accountant)
[53] [redacted] (b) (6) Deposition, p111 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)

7. (Senior International Tax Manager) There was no benefit to the business units through increased revenues as a result of CSARL. Their revenue would have been the same.[54]
8. (Senior International Tax Manager and Chief Tax Officer) There was an understanding that there was to be no impact on "accountable profit center reporting"[55] (i.e. business results) while significant changes were made to legal entity reporting.[56, 57]

No Intention of Business Profit

9. (Director of European Taxes) The "economic activities" of the company are reflected in profit-before-tax.[58] He agrees that whether Caterpillar Inc. or CSARL is selling replacement parts around the world there is no impact on profit-before-tax.[59]
10. (Senior International Tax Manager) Nothing he ever worked on re CSARL ever increased profit-before-tax on the Caterpillar income statements. He did do things related to CSARL that increased profit-after-tax on the Caterpillar income statements.[60]
11. (Controller & Chief Accounting Officer) She agrees the influence of CSARL on the financial statements would be after consolidated profit-before-taxes (i.e. on profit-after-tax).[61]
12. (Controller & Chief Accounting Officer) Her knowledge of the royalty is that it's a royalty paid from CSARL to Cat Inc. related to the CSARL structure - She should know more but that's about it. When asked your knowledge doesn't go (further)--she interrupted and said, "it really doesn't (matter). It's an intercompany transaction".[62] (i.e. intercompany transactions between subsidiaries are not important to someone producing global consolidated statements because the effects of the transactions are suppose to net out to nothing-"zero".)
13. (Controller & Chief Accounting Officer) Regarding whether results that are reported on a consolidated (SEC) basis would be the same now as they would be if there was no CSARL - she says that tax expense is different, results before the tax line would be the same. She worked on a special assignment in 2000 to assure that consolidated operating profit wasn't affected as a result of CSARL.[63]

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[54] [redacted] Deposition, p116 (Senior International Tax Manager responsible for the Asian portion of CSARL)

[55] Accountable Profit Center Reporting (APCR) is the accounting income statement for each Vice-President's profit center. The profit center is the portion of actual business operations that he is responsible for managing. He is measured by comparing his forecasted income statement vs. his actual income statement. If there is no impact on APCR, there is no impact on the business and, therefore, no economic substance, business purpose, or utility apart from the intended tax consequences.

[56] [redacted] Deposition, p97 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures) - An impact on accountable profit or business reporting that measures the actual business activity of the VPs and their resulting profit-before-tax would be an indication of business/economic substance. The intent was for there to be no such impact. This is why VPs were reimbursed for costs related to CSARL that otherwise would have impacted their accountable profit. I have written evidence of reimbursements.

[57] [redacted] Deposition, p226 (Chief Tax Officer)

[58] [redacted] Deposition, p37-38 (Director of European Taxes)

[59] [redacted] Deposition, p117-118 (Director of European Taxes)

[60] [redacted] Deposition, p87-88 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)

[61] [redacted] Deposition, p168-169 (Controller & Chief Accounting Officer)

[62] [redacted] Deposition, p134-135 (Controller & Chief Accounting Officer)

[63] [redacted] Deposition, p39-43 (Controller & Chief Accounting Officer)

No Third-Party Transaction

14.(Chief Tax Accountant) She does not know if Caterpillar would engage in the same transaction with an unrelated third party.[64] (This is because no one would give an unrelated third party a right to receive $1,000 in return for $150 royalty. Rational business people do not transfer net profits to unrelated third parties with no possibility to make a profit from the transaction.)

Who Initiated, Executed, Paid-For & Manages the Transactions

15.(Senior International Tax Manager) The Caterpillar Inc. tax department was the "driving force" behind CSARL and not any business unit.[65]

16.(Senior International Tax Manager) Don't know if anyone from business units participated in the planning for GloVE or CSARL.[66]

17.(Senior International Tax Manager) Tax Counsel and McDermott Will & Emry (outside Tax Counsel) prepared the agreements, not the Caterpillar legal department.[67]

18.(Senior International Tax Manager and Chief Tax Officer) PriceWaterhouseCoopers (PwC) set the royalty rates.[68] The royalty was established by the Caterpillar Inc. tax department and PwC economists.[69]

19.(Senior International Tax Manager) PwC established markup percentages for services performed as part of CSARL structure.[70]

20.(Senior International Tax Manager) The Tax Council (i.e. Senior Tax Managers[71]) makes sure contracts between Caterpillar Inc. and CSARL are up to date and amended. To her knowledge the business units do not become involved in managing the contracts at all.[72]

21.(Senior International Tax Manager) Caterpillar Inc. paid all the tax consulting fees to PwC, E&Y & MWE for the Swiss and Bermuda structures with no reimbursement from CSARL.[73]

Were the Transactions Negotiated By Business Personnel

22.(Senior International Tax Manager) She is not aware of any negotiation between anybody on the business side and CSARL regarding service contracts or license agreements.[74]

23.(Director of European Taxes) He does not recall if he has seen any negotiations with respect to

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[64] [redacted] Deposition, p144-146 (Chief Tax Accountant)

[65] [redacted] Deposition, p106-107 (Senior International Tax Manager responsible for the Asian portion of CSARL)

[66] [redacted] Deposition, p85 (Senior International Tax Manager responsible for the Asian portion of CSARL)

[67] [redacted] Deposition, p105-108 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)

[68] [redacted] Deposition, p131 (Senior International Tax Manager responsible for the Asian portion of CSARL)

[69] [redacted] Deposition, p61-62 (Chief Tax Officer)

[70] [redacted] Deposition, p99-104 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)

[71] [redacted] Deposition, p31-32 (Chief Tax Officer)

[72] Stiles Deposition, p141-142 (Senior International Tax Manager responsible for the Asian portion of CSARL)

[73] [redacted] Deposition, p108 & 110-111(Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)

[74] [redacted] Deposition, p132 (Senior International Tax Manager responsible for the Asian portion of CSARL)

any agreement or royalty conducted by anyone at Caterpillar besides the Tax Department and Tax Department consultants.[75]

24.(Chief Tax Accountant) She does not know who negotiated the transaction besides [redacted] (Chief Tax Officer) and [redacted] (Senior International Tax Manager).[76] Both work for Caterpillar Inc.

Paper Changes, No Changes to the Business

25.(Chief Tax Officer) Other than paper changes were there any other changes to the physical flow of the replacement parts? His answer was probably not substantially.[77]

26.(Chief Legal Officer) He does not know of any changes in the business operations that were made as a result of implementing the CSARL structure.[78]

27.(Chief Financial Officer) There were no manufacturing facilities, or facilities to handle parts in Geneva Switzerland. He does not recall anyone who became involved in the distribution of replacement parts.[79]

28.(Controller & Chief Accounting Officer) She didn't hear anybody discussing "any changes that were made in the way that business was actually conducted as a result of CSARL".[80]

29.(Director of European Taxes) He states he does not know the location of the people who pay the suppliers for the replacement parts owned by CSARL, but they could be in Peoria, they could be employees of Caterpillar Inc., and he is not sure who's cash is used to pay for the replacement parts, but ultimately it is accounted for as CSARL.[81]

30.(Director of European Taxes) Purchasing systems have not changed due to the inception of CSARL.[82]

31.(VP for EAME region in Switzerland) While in Geneva (1995-2004 / before & after CSARL) he never had to do anything different when CSARL started.[83] He says it was the same when he got there (in 1995) and when he left (in 2004).[84] As VP of EAME nothing changed in the business operations he was responsible for (his profit center) as a result of implementing CSARL in 1999 and forward. He does not know if when he left (in 2004) CSARL was buying replacement parts from suppliers. He does not know if at some point CSARL started purchasing replacement parts directly from suppliers.[85] When asked his opinion regarding what the "business substance" of the CSARL program is he said it's the business structure of our non-US businesses. He was then asked other than the fact that legal entities have been created, is there anything more to the structure and he answered not that he was

75 [redacted] Deposition, p104-107 (Director of European Taxes)
76 [redacted] Deposition, p144-146 (Chief Tax Accountant)
77 [redacted] Deposition, p171 (Chief Tax Officer)
78 [redacted] Deposition, p120-124 (Chief Legal Officer)
79 [redacted] Deposition, p48 (Chief Financial Officer)
80 [redacted] Deposition, p73-74 (Controller & Chief Accounting Officer)
81 [redacted] Deposition, p92-93 (Director of European Taxes)
82 [redacted] Deposition, p172-173 (Director of European Taxes)
83 [redacted] Deposition, p77 (Group President & Chief Financial Officer)
84 [redacted] Deposition, p109-110 (Group President & Chief Financial Officer)
85 [redacted] Deposition, p122-123 (Group President & Chief Financial Officer)

aware of.[86]

32.(Manager in the Replacement Parts Business-Product Support) He is familiar with the CSARL entity.[87] He says it's a legal entity based in Switzerland..."but it's not an operating entity. So, frankly, those of us that were just kind of running the business day-to-day, it was really not a factor".[88]

33.(VP for Replacement Parts Business-Product Support) He was not involved in the creation of CSARL.[89] He is not aware of any changes in his accountable profit center reporting[90] (i.e. business profit center) responsibilities as a result of CSARL. His business functions did not change after the establishment of CSARL.[91] Nothing else changed in his area of responsibility as a result of the establishment of CSARL. CSARL did not have any influence on the decisions that he made based on the responsibilities he had from 2002 to 2006, or through 2009.[92] His group (profit center) did not incur any expenses for the creation of CSARL. He did not have to assign anybody to CSARL or to work on it. He did not have to review or sign any contracts between Caterpillar Inc. and any of the entities that had to do with CSARL. He is not aware of any business units that proposed CSARL.[93]

Management & Control

34.(Manager in the Replacement Parts Business-Product Support) The VP for Parts Business-Product Support has always been located in the US.[94] (Thus, management and control is not in Geneva.)

35.The location of Management is also an indication of the location of "management & control". The relevant company organization charts are dominated by Peoria, Illinois, phone numbers.[95]

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[86] [redacted] Deposition, p178-179 (Group President & Chief Financial Officer)

[87] [redacted] Deposition, p45 (Manager in Parts Business)

[88] [redacted] Deposition, p46 (Manager in Parts Business)

[89] [redacted] Deposition, p30-31 (VP of Parts Business-Product Support)

[90] Accountable Profit Center Reporting (APCR) is the accounting income statement for each Vice-President's profit center. The profit center is the portion of actual business operations that he is responsible for managing. He is measured by comparing his forecasted income statement vs. his actual income statement. If there is no impact on APCR, there is no impact on the business and, therefore, no economic substance, business purpose, or utility apart from the intended tax consequences.

[91] [redacted] Deposition, p35 (VP of Parts Business-Product Support)

[92] [redacted] Deposition, p39 (VP of Parts Business-Product Support)

[93] [redacted] Deposition, p52-53 (VP of Parts Business-Product Support)

[94] [redacted] Deposition, p55 (Manager in Parts Business-Product Support)

[95] See Files - 32 org chart Chairman-GrpPres-VP - Sept 2010; - 33 org chart GrpPres-[redacted] direct reports - Oct 2010; - 34 org chart VP-[redacted] direct reports - Oct 2010 (this is the Product Support group); and - 35 org chart VP-[redacted] direct reports - Oct 2010.

ELEMENTS OF TAX EVASION

All of the statements regarding the elements come from the DOJ Criminal Tax Manual. They are then supported by direct evidence. To establish a violation of section 7201, the following elements must be proved:

1. An attempt to evade or defeat a tax or the payment thereof,
2. An additional tax due and owing; and
3. Willfulness.

1. ATTEMPT TO EVADE OR DEFEAT

Section 7201 expressly provides that the attempt can be "in any manner." The only requirement is that the taxpayer take "some affirmative action". The general rule is that "any conduct, the likely effect of which would be to mislead or to conceal" for tax evasion purposes constitutes an attempt. Even an activity that would otherwise be legal can constitute an affirmative act, so long as it is carried out with the intent to evade tax. Although the government must prove some affirmative act constituting an attempt to evade, it need not prove each act alleged, only a single act is required. Filing a false return is the most common method of attempting to evade the assessment of a tax. However, the requirement of an attempt to evade is met by any affirmative act with a tax evasion motive, regardless of whether a false return has been filed. The Supreme Court "by way of illustration, and not by way of limitation," has set out examples of what can constitute an "affirmative willful attempt" to evade including:

> False statements to the IRS, keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or to conceal.

EVIDENCE

Motive and Intent

1. (Corporate Document) Caterpillar Inc. spent approximately $200 million to set up the Swiss and Bermuda Structures[96] involving hundreds of individual acts. A list of the high level acts for each structure is shown in File 11,[97] and each then composed of many other acts.

[96] See file - 10 Consulting Fees , taxpayer document showing amount of tax consulting fees spent on each structure.
[97] See File - 11 Summary of Tax Restructuring & Cash Repatriation, taxpayer document showing high-level mile stones for each structure.

Several dozen of the acts taken to effectuate the Swiss Structure alone are set out in File 12.[98]

2. (Admissions in Court) The intent of GloVE was to reduce taxes paid[99] by reducing U.S. taxable income,[100, 101] and thereby reduce tax expense on its financial statements to increase earnings per share reported to shareholders.[102] As a result, there was a material increase to earnings reported to shareholders.[103, 104]
3. (Admissions in Court) Pursuant to GloVE Caterpillar Inc. reported materially less U.S. taxable income[105] thereby materially reducing its U.S. tax,[106] and materially increased taxable income reported in Switzerland thereby materially increasing Swiss taxes.[107] More tax was then paid in Switzerland and less in the U.S.[108]
4. (Senior International Tax Manager) He was responsible for the Swiss/CSARL Structure and testified that there was no business advantage from the structure, the benefit was lower federal taxes.[109]
5. See generally the section above entitled, "ECONOMIC SUBSTANCE".

<u>Double Set of Books: Virtual Inventory - Solely For Tax Purposes</u>

6. At that time, Caterpillar Inc.'s largest and primary global warehouse for replacement parts was located in Morton, Illinois. In order to carryout the Swiss/CSARL transaction the Caterpillar Inc. inventory in Morton would have to be split into two inventories: one for Caterpillar Inc. for U.S. sales and one for CSARL for global non-US sales. To replicate the warehousing, systems, people and processes that Caterpillar Inc. already had in-place in order to create an actual inventory for CSARL would have cost over $100 million dollars and was cost prohibitive. It would have disrupted business operations. It also would have had negative impacts on the suppliers of the replacement parts. The business personnel would not allow this and the tax department's goal was zero impact on the business. Instead, the tax department and PwC initiated a "Virtual Inventory Method" whereby there would be NO changes to the actual inventory management at all, just rearranging the inventory numbers differently among legal entities, solely for tax purposes. A new system was developed that would use sales data after-the-fact to

[98] See File - 12 List of transactions - with labels, detailed list of transactions for Swiss Structure.
[99] Caterpillar Inc. - Answers To Requests For Admissions, No. 3 & 5.
[100] Caterpillar Inc. - Answers To Requests For Admissions, No. 13.
[101] [redacted] Deposition, p56 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[102] Caterpillar Inc. - Answers To Requests For Admissions, No. 4.
[103] Caterpillar Inc. - Answers To Requests For Admissions, No. 27 & 29.
[104] [redacted] Deposition, p240-241 (Chief Tax Officer) - CSARL has caused earnings per share to be higher than it otherwise would have been.
[105] Caterpillar Inc. - Answers To Requests For Admissions, No. 14 & 21.
[106] Caterpillar Inc. - Answers To Requests For Admissions, No. 22.
[107] Caterpillar Inc. - Answers To Requests For Admissions, No. 23 & 24.
[108] Caterpillar Inc. - Answers To Requests For Admissions, No. 25.
[109] [redacted] Deposition, p111 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)

retroactively estimate what the inventories should-have-been. The system was called the Inventory Tracking & Accounting System (ITAS). So a single bin of homogeneous parts located in Illinois was "virtually" deemed to belong to both Caterpillar Inc. and CSARL merely because the tax department said so – when nothing had actually changed.

7. (Chief Tax Officer) The "virtual parts inventory" was created by people that worked for him (i.e. Tax Department or Tax Consultants), among others. If you looked in the bin or outside the bin you wouldn't know which organization owned the parts in the bin. You would not tell the difference between CSARL and Caterpillar Inc. parts.[110]
8. (Controller & Chief Accounting Officer) She has heard of "virtual inventory" in the context of CSARL and that its a method by which a single bin of parts might be regarded as having some owned by CSARL and some owned by Caterpillar Inc. She understands that if you looked in the bin you wouldn't know which parts are owned by which entity.[111]
9. (Company Document) The warehouse personnel had no knowledge of the Virtual Inventory, they just picked parts to fill orders the same way they had done prior to CSARL – no change. A problem arose for the tax department when a warehouseman went to a bin of parts to fill an order for Caterpillar Inc. but the virtual system indicated that all the parts belonged to CSARL. This was not a problem for the warehouseman because there were parts in the bin to fill the order he had, which he would fill like he had always done. He had no knowledge of the virtual inventories or CSARL. To remedy the situation for tax purposes, the tax department devised a way to have Caterpillar Inc. and CSARL virtually share the virtual inventories by issuing virtual IUO's to each other.[112]
10. <u>Concealment</u>: (Company Document) Changes in Accounting Methods are required to be reported to the IRS on Form 3115, including changes in inventory methods. The tax department was concerned that if the IRS discovered the Virtual Inventory, it would revoke Caterpillar Inc.'s LIFO Inventory Election for not having followed the mutually agreed method as stated in the election. This would cost the company $750 million in tax. This risk is set forth on page 2 of File 13 – Tax Risk Guard Rails (TRGRs), the fourth column from the right with the heading "ITAS".[113] The columns on the page represent the most important tax risks for Caterpillar Inc. for which tax reserves were established on the financial statements. If a Form 3115 had been filed with the IRS notifying them of this change, there would have been no risk and no need for a reserve.
11. (Company Document) The TRGRs are discussed in more detail below. The Senior Tax Managers rated the "Virtual Inventory Method" as a "high-tax-risk" for the categories of: Consistency with Industry Practice; Business Purpose and Economic Substance;

[110] [redacted] Deposition, p57-60 (Chief Tax Officer)
[111] [redacted] Deposition, p52-53 (Controller & Chief Accounting Officer)
[112] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p10-12.
[113] See File - 13 Tax Risk Guard Rails. There is no amount at the top of this column. It shows in the 15th column from the right with the heading LIFO that represents the normal risks associated with a LIFO Election. So there was no reason to double count the number in both columns. ITAS was a new and unusual risk and, therefore, called out in its own column.

Magnitude of Cash Impact; Impact on Financial Statements; and Functional Alignment with the way the business is run.

Double Set of Books: Partnership Books - Solely For Tax Purposes

12. CSARL is represented to be a partnership, solely for U.S. tax purposes. Nowhere at Caterpillar had they previously done partnership accounting. They only did corporate accounting. Thus, there was no system available to perform the partnership accounting so they had to acquire the ER system discussed below. The partnership books were only presented to the IRS for tax purposes, not to the SEC or shareholders for business purposes. Nor were they used for internal Accountable Profit Center Reporting.[114]
13. (Director of European Taxes) The Enterprise Reporting (ER) system is used to prepare Swiss and US accounting reports for CSARL and its Swiss partners or shareholders. ER prepares an allocation of income to CSARL partners (for US tax purposes) that is not part of the 10-K consolidation[115] (for financial statements filed with the SEC).
14. (Controller & Chief Accounting Officer) She does not know how partnership accounting is performed for CSARL. It's different from what's reported at corporate accounting (for financial statements filed with the SEC). CSARL is not treated as a partnership on the SEC disclosures.[116] She agreed the partnership accounting is performed solely for tax purposes and she is not aware it's done for other reasons.[117]

2. ADDITIONAL TAX DUE AND OWING

A tax deficiency is a critical element of an evasion case. If the defendant has not assessed his own tax deficiency by filing a return, it is not essential that the Service has made an assessment of taxes owed and a demand for payment in order for tax evasion charges to be brought. There is no need to make a formal assessment of tax liability when government finds tax due and owing.

It is not necessary to charge or prove the exact amount of the tax that is due and owing. It is enough to prove that the defendant attempted to evade a substantial income tax, even though the actual amount of tax that he owes may be greater than the amount charged in the criminal case. As long as the amount proved as unreported is substantial, it makes no difference whether that amount is more or less than the amount charged as unreported in the indictment. Whether

[114] Accountable Profit Center Reporting (APCR) is the accounting income statement for each Vice-President's profit center. The profit center is the portion of actual business operations that he is responsible for managing. He is measured by comparing his forecasted income statement vs. his actual income statement. If there is no impact on APCR, there is no impact on the business and, therefore, no economic substance, business purpose, or utility apart from the intended tax consequences.

[115] [redacted] Deposition, p135-137 (Director of European Taxes)

[116] [redacted] Deposition, p34-38 (Controller & Chief Accounting Officer)

[117] [redacted] Deposition, p43-44 (Controller & Chief Accounting Officer)

a tax deficiency is substantial or not is a jury question and the cases suggest that relatively small sums can be deemed substantial.

EVIDENCE

1. (Admission in Court) Pursuant to GloVE Caterpillar Inc. reported materially less U.S. taxable income[118] thereby materially reducing its U.S. tax,[119] and materially increased taxable income reported in Switzerland thereby materially increasing Swiss taxes.[120] More tax was then paid in Switzerland and less in the U.S.[121]
2. (Company Document) Through 2007, the amount of benefit recorded on the financial statements was $1.130 billion.[122] The amount of profit shifted and reduction in U.S. taxable income was $4.520 billion.[123] The amount of U.S. tax reduction was $1.582 billion.[124] These amounts increase by over $300 million, $1.2 billion, and $420 million each year, respectively.[125] These amounts do not take into account substantial increases in sales and profits reported in recent years.

3. WILLFULNESS

Willfulness has been defined by the courts as a voluntary, intentional violation of a known legal duty. Therefore, the taxpayer must be shown to have been aware of his or her obligations under the tax laws. Willfulness is determined by a subjective standard, thus the defendant is not required to have been objectively reasonable in his misunderstanding of his legal duties or belief that he was in compliance with the law. The inquiry, therefore, must focus on the knowledge of the defendant, not on the knowledge of a reasonable person. However, the jury may "consider the reasonableness of the defendant's asserted beliefs in determining whether the belief was honestly or genuinely held." "Willfully" connotes a voluntary, intentional violation of a known legal duty, and it does not require proof of any other motive such as bad faith or evil intent. Good motive is not a defense to a finding of willfulness, and the Supreme Court has upheld as proper a jury instruction that "'[g]ood motive alone is never a defense where the act done or omitted is a crime,' and that consequently motive was irrelevant except as it bore on intent."

[118] Caterpillar Inc. - Answers To Requests For Admissions, No. 14 & 21.
[119] Caterpillar Inc. - Answers To Requests For Admissions, No. 22.
[120] Caterpillar Inc. - Answers To Requests For Admissions, No. 23 & 24.
[121] Caterpillar Inc. - Answers To Requests For Admissions, No. 25.
[122] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. The benefit is 25% of the profit shifted which represents the US rate of 35% less the Swiss rate of 10%.
[123] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount equals the benefit of 1.130 divided by the net tax savings rate of 25% = 4.520.
[124] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount equals the income shifted of $4.520 times the U.S. tax rate of 35% = 1.582.
[125] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount based on 2007 amount conservatively rounded.

The element of willfulness can be the most difficult element to prove in an evasion case. Absent an admission or confession, which is seldom available, or accomplice testimony, willfulness is rarely subject to direct proof and must generally be inferred from the defendant's acts or conduct. Once the evidence establishes that the tax evasion motive played any role in a taxpayer's conduct, willfulness can be inferred from this conduct, even if the conduct also served another purpose.

EVIDENCE

Motive and Intent

(See generally above the section entitled: "1. ATTEMPT TO EVADE OR DEFEAT".)

Were They Aware of the Economic Substance & Business Purpose Doctrine?

1. (Senior International Tax Manager) Nothing about US tax law concerning CSARL allows the economic substance doctrine to be disregarded.[126]
2. (Senior International Tax Manager) He has never read any case law on the doctrine of economic substance. He says he has an understanding of it.[127]
3. (Chief Tax Officer) He has read case law re economic substance doctrine over the course of his career. He did not read the cases [redacted] gave him "end-to-end".[128]
4. (Chief Tax Accountant) She had been involved since 1999 when she was still working at PriceWaterhouseCoopers (PwC). She was the "project manager" at PwC for CSARL. While at PwC she knew that there was a doctrine of economic substance. She could not recall how she knew of it. She had never studied it or read case law. She knew that just complying with Code sections would not mean economic substance was present.[129]
5. (Senior International Tax Manager) She knew merely relying on code sections might be insufficient if there was not business or economic substance.[130]

Notice: Were They Aware There Was an Issue?

6. 1999: (Company Document) I raised concerns to [redacted] (Chief Tax Officer) to which he replied, "The structure as planned is solid…but we are trying to be careful as to how this is presented, and as you are getting to the 'general public' stage of the project we want to be extremely cautious as to what is put on paper….[131]
7. (Controller & Chief Accounting Officer) Generally she was in meetings where the issue came up

[126] [redacted] Deposition, p36 & 37 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[127] [redacted] Deposition, p141-142 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)
[128] [redacted] Deposition, p240 (Chief Tax Officer)
[129] [redacted] Deposition, p48-55 (Chief Tax Accountant)
[130] [redacted] Deposition, p110-114 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[131] See File - 14 March 1, 1999, email from Chief Tax Officer responding to [redacted] concerns.

over the years.[132]

8. 2004: (Company Document) An anonymous letter was sent by a member of Caterpillar Inc. tax department to the CEO and the Tax Counsel raising concerns about the CSARL transaction and a lack of substantial business purpose other than tax avoidance (i.e. no economic substance). The letter called for an independent outside investigation by someone other than PriceWaterhouseCoopers (the company auditor who promoted, planned, and audited the transaction) and outside Tax Counsel (McDermott Will & Emry). As a result, [redacted] (Chief Tax Officer) sent a memo to the CEO, CFO, Chief Legal Officer, and the Tax Counsel in which he states there is no need for an investigation, but never addresses the fact that the CSARL transaction was engaged in solely-for-tax-purposes as claimed in the anonymous letter and confirmed in the deposition testimony of the Senior International Tax Manager responsible for the CSARL transaction[133] and others (see above).
9. 2005: I raised the issue of economic substance prior to the implementation of the Bermuda structure.
10. 2006-2008: Formal, Written Internal Risk Assessment of CSARL
    a. The risk assessment process was called the Tax Risk Guard Rails (TRGRs) and was created by the Senior Tax Managers, the Senior Tax Accountant, and the Chief Tax Officer.
    b. (Chief Financial Officer) He testified the TRGRs were a "methodology to identify tax risks and develop process improvements to mitigate the risk".[134] He expected the Tax Department to use the TRGRs to identify risks and mitigate them.[135]
    c. (Senior International Tax Manager responsible for the Swiss/CSARL structure) He testified the TRGRs were a goal of the tax department and the assessment of risk was an honest-good-faith effort.[136]
    d. (Chief Tax Officer) He testified that when assigning risks there was an effort to reach consensus[137] and CSARL was rated high risk.[138]
    e. (Company Document) The CSARL transaction was rated High Risk regarding economic substance and business purpose. The TRGR definition of "High-Risk" regarding economic substance and business purpose is that:
        i. "Business units or service centers participated little or not at all in the implementation of the structure or transaction. (and)
        ii. Significant change was required by the business unit for the structure or transaction to have substance. (and)

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132 [redacted] Deposition, p73-74 (Controller & Chief Accounting Officer)
133 [redacted] Deposition, p111 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)
134 [redacted] Deposition, p23 (Chief Financial Officer)
135 [redacted] Deposition, p32 (Chief Financial Officer)
136 [redacted] Deposition, p115-118 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)
137 [redacted] Deposition, p32 (Chief Tax Officer)
138 [redacted] Deposition, p37-38 (Chief Tax Officer)

iii. The structure or transaction does not mirror the way the business is run in several significant respects. (or)
iv. The business units or service centers refer to this as a "Tax" transaction. (or)
v. We are relying on the form (legal documents, etc.) of the structure or transaction to provide the substance".[139]

(All of the above were true with particular emphasis on "v" (i.e. Form-without-Substance))

f. Concealment: (Senior International Tax Manager responsible for the Swiss/CSARL structure) He testified that he did not want people outside the tax department to understand that tax positions sometimes have risk associated with them.[140]
g. Concealment: (Company Document) In a meeting in 2008, the Tax Counsel wanted to "change" the risk rating for CSARL regarding economic substance and business purpose from "High" to "Medium". When I asked him and the other Senior Tax Managers what changed factually to warrant changing the rating they had no response, so the rating remained as "high-risk".[141]

11. 2007: (Company Document) I reported this to the Chief Tax Officer and the Tax Counsel, and explained what they were relying on was incorrect.[142]
12. 2007: (Chief Tax Accountant) She became aware that I was communicating concerns about economic substance, directly from me. She believes she raised the issue to [redacted] (Controller & Chief Tax Officer). Her discussion with [redacted] was that I "had the education and experience of being at CSARL from the start so if I was having concerns about economic substance, I was the best person to push that through and to have a discussion with [redacted] ([redacted]-Chief Tax Officer)"[143] She thought I was the "second highest tax person at Caterpillar".[144]
13. Concealment: (Chief Tax Accountant) She discusses her knowledge of me, our relationship, and her decision to limit our interactions after I raised the issue of economic substance to her.[145] She made the decision to exclude me from quarterly "tax provision" meetings.[146]

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[139] See File - 16 Tax Risk Guard Rails, p3 - 4th criteria from top of page entitled "Business Purpose & Substance", then 3rd column to right headed "high" risk.
[140] [redacted] Deposition, p115-118 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)
[141] See File - 38 08 0319 email to [redacted] re his AudComm presentation - TRGRs not shown to Board - purpose of TRGRs was to explain risk to Board which has not been done.
[142] See File - 19 07 0119 email to [redacted]-Caviness that the case law raises many issues - following "letter of the Code" is not enough - legal documents are not enough - risk is not royalty rate adjustment but rather total denial. See File - 20 07 0119 [redacted] re CSARL not issue re 'clear application of existing law' unless something truly artificial. See File - 21 07 0122 email to [redacted] that following letter of law is not sufficient - its question of economic substance not respecting legal entity.
[143] [redacted] Deposition, p48-55 (Chief Tax Accountant)
[144] [redacted] Deposition, p160-165 (Chief Tax Accountant)
[145] [redacted] Deposition, p160-165 (Chief Tax Accountant)
[146] [redacted] Deposition, p142-144 (Chief Tax Accountant)

14. 2007: (Company Document) I reported this issue to the Chief Legal Officer.[147]
15. 2007: (Company Document) I reported this issue to the Office Of Business Practices.[148]
16. 2008: (Company Document) I reported this to a fellow Senior Tax Manager.[149]
17. 2008: (Company Document) I discussed this issue in detail with the Chief Tax Officer. I told him this was the "pink-elephant issue worth a Billion dollars on the balance sheet".[150]
18. 2008: (Company Document) I reported this issue to Executive Office including the current CEO and then CFO.[151]
19. (Director of European Taxes) He became aware that I had concerns about the economic substance for CSARL re replacement parts, but doesn't remember when, how, or ever discussing it with me.[152]
20. (Senior International Tax Manager) She did not read the case law I sent her or do anything with it. She knew merely relying on code sections might be insufficient if there was not business or economic substance.[153]
21. Concealment-2008: (Company Document) [redacted] (Chief Tax Officer) told me he was taking "poetic license" by making changes to a presentation to be given to the Audit Committee of the Board of Directors regarding the risk associated with CSARL.[154] I told him that discussing CSARL in this manner was misleading.[155]
22. Concealment-2008:
    a. I received a threat-to-move-or-be-fired if I did not move from the Tax Department into the Information Technology (IT) department.[156]
    b. (Company Document) In September 2008, I was asked to sign a "CONFIDENTIAL RELEASE AND SETTLEMENT AGREEMENT" which required me to:
        i. Confirm I had not contacted, discussed, or had been contacted by any governmental agency regarding CSARL;
        ii. Turn over all documentation I had regarding CSARL;
        iii. Release and waive any claim that Caterpillar had violated federal law;
        iv. Never say anything negative about Caterpillar in court; and
        v. Never to talk about this agreement.[157]

Did They Ever Analyze or Investigate the Issue?

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[147] See File - 17 07 0814 email to [redacted] with 9 page summary for meeting with them, p9-10.
[148] See File - 18 07 0911 formal complaint to OBP, [redacted] & [redacted] re Swiss Structure.
[149] See File - 22 Email to Senior Tax Mgr. providing 7th Cir. case law.
[150] See File - 23 08 0401 email to [redacted] - CSARL is $1B pink elephant on balance sheet.
[151] See File - 24 Memo sent to Executive Office on May 1, 2008. See File - 25 Return-Receipt for [redacted] See File - 26 Return-Receipt for [redacted] The return receipts designate when they opened the email at their personal computers.
[152] [redacted] Deposition, p125 (Director of European Taxes)
[153] [redacted] Deposition, p110-114 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[154] See File - 27 08 0401 discussion w [redacted] - taking poetic license with Audit Committee presentation - substance issue was dealt with but won't say how & I cannot see the material due to fear of having to turn them over to PwC & IRS.
[155] See File - 23 08 0401 email to [redacted] - CSARL is $1B pink elephant on balance sheet.
[156] See, Central District of Illinois (Peoria), Case #: 1:09-cv-01208-MMM-BGC – Doc 120 - 233 page Affidavit with over 260 Exhibits filed on 092311.
[157] See File - 28 Sep 2008 Confidential Release & Settlement Agreement.

23.(Senior International Tax Manager) Never seen any documents analyzing the adequacy of the business or economic substance of CSARL. Economic substance just happened here. It wasn't even really something you would have looked at throughout the formation of this structure. She understood all along that it was a judicial doctrine.[158]

24.(Senior International Tax Manager) No one ever investigated whether there was economic substance to CSARL's handling of replacement parts.[159]

25.(Chief Tax Accountant) She does not know if there were any investigations whether the replacement parts component of CSARL structure had economic substance.[160]

26.(Chief Legal Officer) The legal department did investigate once, but it used McDermott Will & Emry[161] (who was outside Tax Counsel for creating both the Swiss and Bermuda Structures). He does not remember if he became aware of the structure in detail and can't remember if he talked to [redacted] (Tax Counsel) about the CSARL issues.[162] He does not know what steps were taken re the investigation of the judicial doctrine of economic substance (re CSARL).[163]

27.(Controller & Chief Accounting Officer) No one specifically discussed with her the issue of economic substance and the CSARL replacement part structure.[164] She is not aware that the tax department has ever provided to people in the tax provision meeting an explanation of why there is economic substance (in CSARL parts structure). She does not recall anybody ever discussing the issue of economic substance in CSARL other than her vague recollection that its come up before - she is not an integral part of that determination. She does not specifically recall anybody giving an explanation for why they thought there was economic substance - she says, "it's very vague".[165]

28.(Director of European Taxes) He does not recall ever seeing a memo or analysis evaluating the economic substance for the sale of the replacement parts by CSARL.[166] He does not believe he has ever seen an analysis regarding economic substance and the sale of replacement parts by CSARL.[167]

29.(Chief Tax Accountant) She cannot recall talking to the auditors (PriceWaterhouseCoopers) about specifics to economic substance. She never formed an opinion when the financial statement reserve was lowered as part of the FIN48 adoption as to whether there was economic substance to the CSARL transaction re replacement parts.[168] She never heard anyone discuss the issue of economic substance re CSARL and replacement parts in the

[158] [redacted] Deposition, p107-109 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[159] [redacted] Deposition, p143 (Senior International Tax Manager with overall responsibility for the Swiss (CSARL) and Bermuda Structures)
[160] [redacted] Deposition, p144-146 (Chief Tax Accountant)
[161] [redacted] Deposition, p75-76 (Chief Legal Officer)
[162] [redacted] Deposition, p120-124 (Chief Legal Officer)
[163] [redacted] Deposition, p120-124 (Chief Legal Officer)
[164] [redacted] Deposition, p73-74 (Controller & Chief Accounting Officer)
[165] [redacted] Deposition, p78-80 (Controller & Chief Accounting Officer)
[166] [redacted] Deposition, p125 (Director of European Taxes)
[167] [redacted] Deposition, p140-141 (Director of European Taxes)
[168] [redacted] Deposition, p66-72 (Chief Tax Accountant)

process of determining the tax reserve on the financial statements.[169]

30.(Senior International Tax Manager) She did not read the case law I sent her or do anything with it. She knew merely relying on code sections might be insufficient if there was not business or economic substance.[170]

The Supreme Court has furnished excellent guidance on the type of evidence from which willfulness can be inferred. The Supreme Court, by way of illustration and not by way of limitation, set forth the following as examples of conduct from which willfulness may be inferred:

> [K]eeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or to conceal.

EVIDENCE

Double Set of Books

(See generally above: "1. ATTEMPT TO EVADE OR DEFEAT" – Double Set of Books.)

Concealment

(See generally all of the above.)

There are no artificial limits on the type of conduct from which willfulness can be inferred, and that evidence is admissible of any conduct at all, as long as the "likely effect" of the conduct would be to mislead or conceal.

Willfulness may be inferred from evidence of a consistent pattern of underreporting large amounts of income. *EVIDENCE:* Through 2007, the amount of benefit recorded on the financial statements was $1.130 billion.[171] The amount of profit shifted or reduction in U.S. taxable income was $4.520 billion.[172] The amount of U.S. tax reduction was $1.582 billion.[173]

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[169] [redacted] Deposition, p78-79 (Chief Tax Accountant)

[170] [redacted] Deposition, p110-114 (Senior International Tax Manager responsible for the Asian portion of CSARL)

[171] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. The benefit is 25% of the profit shifted which represents the US rate of 35% less the Swiss rate of 10%.

[172] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount equals the benefit of 1.130 divided by the net tax savings rate of 25% = 4.520.

[173] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount equals the income shifted of $4.520 times the U.S. tax rate of 35% = 1.582.

These amounts increase by nearly $300 million, $1.2 billion, and $420 million each year.[174]

Willfulness may be inferred from evidence of repetitious omissions of items of income, *e.g.*, income from various sources not reported. *EVIDENCE:* Here the taxpayer removed from its U.S. books & records, and its U.S. taxable income, an entire-stream-of-income that had previously been reported in the U.S. for more than 75 years, but instead is now reported in Switzerland.

Willfulness may be inferred from evidence of false statements to agents; false exculpatory statements, whether made by a defendant or instigated by him. To be discussed upon request regarding IRS and depositions. For example, compare this testimony of a Senior Tax Manager with the email sent by the Chief Tax Officer to the Chief Financial Officer.

> (Testimony of a Senior Tax Manager) Cash has been brought back to the US only to the degree it was taxed in the US when brought back. The company paid tax at US rates when it came back into the US.[175] She says that any cash that's repatriated to the US has at one time had US tax paid on it, or tax paid at the time of repatriation.[176] She says we would not bring millions of dollars to the US unless we were certain we had already paid US tax on it.[177]
>
> (Email sent by the Chief Tax Officer to the Chief Financial Officer) In November 2006 the Chief Tax Officer wrote to the CFO that they had repatriated "nearly $1.5 billion of cash to the U.S. without incremental U.S. tax."[178]

Willfulness may be inferred from evidence of making or using false documents, false entries in books and records, false invoices, and the like. *EVIDENCE:* See generally the section entitled "ECONOMIC SUBSTANCE" above. The contracts entered into between Caterpillar Inc. and CSARL have been relied upon as genuine business documents supporting representations of these transactions in the tax returns. (Controller & Chief Accounting Officer) CSARL is not treated as a partnership on the SEC disclosures.[179] She agreed the partnership accounting is performed solely for tax purposes and she is not aware it's done for other reasons.[180]

Willfulness may be inferred from evidence of Nominees-Placing property or a business in the name of another. *EVIDENCE:* See generally the section entitled "ECONOMIC SUBSTANCE" above. In essence, the Caterpillar tax department placed, Caterpillar Inc.'s

[174] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount based on 2007 amount conservatively rounded.
[175] [redacted] Deposition, p90-91 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[176] [redacted] Deposition, p127 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[177] [redacted] Deposition, p129 (Senior International Tax Manager responsible for the Asian portion of CSARL)
[178] See File - 9 Repatriation emails re bringing back cash with no tax, p3.
[179] [redacted] Deposition, p34-38 (Controller & Chief Accounting Officer)
[180] [redacted] Deposition, p43-44 (Controller & Chief Accounting Officer)

right to receive billions of dollars of profits from the purchase and sale of replacement parts, in the name of CSARL. (Chief Tax Officer) The Cat Inc. Corporate Treasury Department performs daily global cash sweeps.[181] (Chief Financial Officer) Cash is swept from one account to another depending where things are needed.[182] Caterpillar Inc. never lost dominion-and-control over the cash resulting from the profits shifted to Switzerland. It spent significant amounts of the cash in the U.S.

Willfulness may be inferred from evidence of unorthodox accounting practices with deceptive results. *EVIDENCE:* The Virtual Inventory Method was rated by the Senior Tax Managers as a "high risk" for purposes of the Tax Risk Guard Rails. This meant either "they were not aware of other companies in their industry who had engaged in a similar transaction" and/or the "transaction represents a novel application of the law, regulations, and/or court decisions".[183] The results of the Virtual Inventory after-the-fact calculations were presented on the tax returns as being just as legitimate as any other actual physical inventory kept by Caterpillar or routinely kept in the industry, when the virtual inventories by definition did not exist.

Willfulness may be inferred from evidence of defendant's attitude toward the reporting and payment of taxes generally. *EVIDENCE:* (To be discussed upon request.) The Senior Tax Manager responsible for the Swiss/CSARL structure/transaction and the Bermuda structure authored a 2008 Tax-White-Paper[184] on the state of taxation at Caterpillar Inc. to be provided to the executives. The general context and message of this paper was that further tax reduction would require actually changing the business (i.e. actual business purpose and economic substance). Or in other words, all the tax reduction done through the Swiss and Bermuda transactions was without business purpose and economic substance. It is stated many times above in the direct testimony that the intent was not to affect or impact the business.

Willfulness may be inferred from evidence of background and experience of the defendant. General educational background and experience of defendant can be considered as bearing on defendant's ability to form willful intent. *EVIDENCE:* All of the people involved are college educated, seasoned business professionals, each with decades of experience, and working for a Fortune 50 Company. Their annual performance reviews will highlight their opinion of their background and expertise.

Willfulness may be inferred from evidence of offer to bribe a witness or government agent. *EVIDENCE:*

[181] [redacted] Deposition, p108-114 (Chief Tax Officer)
[182] [redacted] Deposition, p155 (Chief Financial Officer)
[183] See File - 13 Tax Risk Guard Rails, p3 – 3rd criteria from top of page entitled "Industry Practice", then 3rd column to right headed "high" risk.
[184] See File - 36 Tax Dept. White-Paper.

Willful Blindness

It is a defense to a finding of willfulness that the defendant was ignorant of the law or of facts which made the conduct illegal, since willfulness requires a voluntary and intentional violation of a known legal duty. However, if the defendant deliberately avoided acquiring knowledge of a fact or the law, then the jury may infer that he actually knew it and that he was merely trying to avoid giving the appearance (and incurring the consequences) of knowledge. Even if the defendant successfully avoided actual knowledge of the fact, "[t]he required knowledge is established if the accused is aware of a high probability of the existence of the fact in question unless he actually believes it does not exist." In such a case, the use of an "ostrich instruction" -- also known as a deliberate ignorance, conscious avoidance, willful blindness, or a ***Jewell*** instruction (see ***United States v. Jewell,*** 532 F.2d 697 (9th Cir.), *cert. denied,* 426 U.S. 951 (1976) -- may be appropriate. A number of courts have approved the use of such instructions under proper circumstances. The deliberate ignorance instruction set forth in ***United States v. Fingado,*** 934 F.2d at 1166, appears to be suitable for a criminal tax case.

EVIDENCE

See generally all of the above.

STATUTE OF LIMITATIONS

The statute of limitations is six years "for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof." The general rule is that the six-year period of limitations begins to run from the last affirmative act constituting an attempt to evade. In all evasion cases, affirmative acts of evasion carried out after the statutory due date renew the limitations period and allow it to extend beyond six years from the time filing was required or unpaid taxes were due. To hold otherwise would only reward a defendant for successfully evading discovery of his tax fraud for a period of six years subsequent to the date the returns were filed. (Affirmative acts of both placing assets in names of nominees and conducting business in cash within six years prior to indictment made indictment timely, even though taxes evaded were due and payable over six years ago.)

Through 2007, the amount of benefit recorded on the financial statements was $1.130 billion.[185] The amount of profit shifted or reduction in U.S. taxable income was $4.520 billion.[186] The amount of U.S. tax reduction was $1.582 billion.[187] These amounts increase by

[185] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. The benefit is 25% of the profit shifted which represents the US rate of 35% less the Swiss rate of 10%.
[186] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount equals the benefit of 1.130 divided by the net tax savings rate of 25% = 4.520.

nearly $300 million, $1.2 billion, and $420 million each year, respectively.[188]

So the amount of tax involved for the most recent six years would be $2.520 billion.[189] This does not take into account the significant increase in sales and profits reported in recent years.

NOTE

I have substantially more direct evidence beyond what was presented herein regarding each element to be proven, including the direct knowledge of the individuals involved, and pointed discussions with individuals regarding that this was wrong and why.

END

[187] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount equals the income shifted of $4.520 times the U.S. tax rate of 35% = 1.582.
[188] See File - 8 Benefits - Overview of Transaction - Virtual Inventory, p1. Amount based on 2007 amount conservatively rounded.
[189] $420 million per year * 6 years = $2.520 billion.

From:	Ragsdale, Jeffrey (OPR)
To:	Birney, William J (OPR); Drouet, Suzanne (OPR); McCarty, Margaret S (OPR)
Cc:	Lyles, Shamelle (OPR); Robertson, Jacqueline T (OPR); Boykin, Evonne (OPR)
Subject:	FW: Letter from Senators Feinstein and Warner
Date:	Friday, April 17, 2020 12:50:54 PM
Attachments:	2020.04.17 DF and MRW Letter to DOJ OPR and DOJ OIG.docx.pdf

Fyi. Please assign this to me for the time being.

Jeff

From: [redacted] (b) (6)
Sent: Friday, April 17, 2020 12:16 PM
To: Ragsdale, Jeffrey (OPR) <Jeffrey.Ragsdale@opr.usdoj.gov>; [redacted] (b) (6)
Cc: [redacted] (b) (6)
Subject: Letter from Senators Feinstein and Warner

All:

Attached is a letter from Senators Feinstein and Warner.

Among other things, the letter notes a recent interview on Fox News, which was illustrative of the pattern of troubling misstatements by Attorney General Barr regarding matters that involve President Trump's interests. The letter contains some of the key statements from that interview, but we want to note that those were not the only problematic statements during that interview or the Attorney General's tenure overall.

For example, the Attorney General again discussed the ongoing investigation being conducted by U.S. Attorney John Durham at the Attorney General's request. Of that investigation, the Attorney General said that his "own view is that the evidence shows that we're not just dealing with a mistake or sloppiness, there was something far more troubling here." [Fox News 4/9/2020] It is concerning that the Attorney General is discussing an ongoing investigation at all and, further, that he is openly declaring his expectation that there will be a finding of criminal wrongdoing; in addition, as we get close to the election, it also further implicates the concerns identified in the June 2018 Inspector General report regarding the handling of the Clinton email investigation.

Please let us know if you have any questions. Thank you.

Best,
(b) (6) [redacted]

[redacted] (b) (6)
Counsel