

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO. 1:08-cr-132-01-WJG-RHW

**GREGORY BRENT WARR and
LAURA JEAN WARR**

MOTION FOR BILL OF PARTICULARS

The Accused, Gregory Brent Warr, moves the Court to direct the United States of America to file a Bill of Particulars as to Counts 13 - 16 and in support would show the following:

1.

The subject Indictment was filed on January 22, 2009. Counts 13 - 16, encompassing five (5) paragraphs and a chart of alleged payments, trigger an alleged violation of Title 18 Sections 1341 and 2 of the United States Code. Under Rule 7(f) of the Federal Rules of Criminal Procedure, the Court may direct the filling of a Bill of Particulars when necessary to prevent unfair surprise at trial. The Defendant joins herein his argument of law in accordance with *U. S. v. Linn*, 889 F.2d 1369 (5th Cir. 1988) which supports this Motion that the Bill of Particulars is necessary to aid in the preparation of the defense to Counts 13 – 16.

Specifically, the Accused, Gregory Brent Warr moves this Court to direct the filing of a Bill of Particulars to the following:

PARAGRAPHS 2 AND 4 UNDER COUNTS 13 - 16

A. It is charged in Paragraph 2, under Counts 13 – 16, that: “As part of the scheme to defraud the defendants, Gregory Brent Warr and Laura Jean Warr made material misrepresentations to Lexington Insurance Company regarding personal property located in the insured dwelling.”

B. The Accused cannot, based upon language in Paragraph 2, formulate a defense or prepare for the anticipated proof to be offered by the United States of America. To be sure, a reading of Paragraph 2 implicates five possible scenarios: (a) Does Paragraph 2 intend to charge that the Defendants misrepresented the quantity and/or value of the personal property located in the insured dwelling on August 29, 2005; (b) Does Paragraph 2 intend to charge that certain personal property claimed by the Accused to be located in the insured dwelling was not located within the insured dwelling on August 29, 2005; (c) Does Paragraph 2 intend to charge that the personal property never existed; (d) Does Paragraph 2 intend to charge that certain personal property represented to be located in the insured dwelling on August 29, 2005 was located elsewhere and was damaged or destroyed; (e) Does Paragraph 2 intend to charge that certain personal property represented to be located in the insured dwelling on August 29, 2005 was located elsewhere and was not damaged or destroyed?

C. In a similar vein, Paragraph 4 charges: “It was further part of the scheme that defendants Gregory Brent Warr and Laura Jean Warr misrepresented to Lexington Insurance Company the extent of renovations and damage caused by Katrina to the insured dwelling.”

D. Paragraph 4, as is the case with Paragraph 2, raises multiple scenarios. For example, the following interpretations can be derived from reading Paragraph 4: (a) Does Paragraph 4 intend to charge that the renovations made by Gregory Brent Warr and Laura Jean Warr after the purchase of the home in 2004 but prior to August 29, 2005 were not made; (b) Does Paragraph 4 intend to charge that the renovations made to the subject home by Gregory Brent Warr and Laura Jean Warr after the purchase of the home in 2004 but prior to August 29, 2005 were misrepresented as to scope and cost; (c) Does Paragraph 4 intend to charge that Gregory Brent Warr and Laura Jean Warr misrepresented the scope and cost of the renovations made after Hurricane Katrina hit; (d) Does Paragraph 4 intend to charge that the claimed damage to the structure caused by Hurricane Katrina on August 29, 2005 did not occur; (e) Does Paragraph 4 intend to charge a combination of the above, that is, the scope and cost of the renovations prior to Hurricane Katrina was inflated or did not occur and the scope and cost of the damage caused by Katrina was inflated or did not occur?

DATE AND AMOUNT CHART UNDER COUNTS 13 - 16

A. It is charged in Paragraph 5 under Counts 13 – 16, that the Defendants for the purpose of carrying out a scheme to defraud and attempting to do so, knowingly caused to be sent or delivered by the United States Postal Service and private or commercial interstate carriers certain items, each item constituting a separate account herein as follows. Thereafter, a chart designated item; from; date and amount is set forth.

B. A close review of the chart, specifically the amounts set forth therein, apparently ties back to the allegations set forth in Paragraphs 2 - 4 under counts 13 – 16. However, it is impossible to formulate a defense or prepare for the anticipated proof to be offered by the United States of America because Paragraphs 2 – 4 reference personal property; ALE and structural

damage. The amounts set forth in the chart, specifically the counts designated 13, 14 and 15, represent a part of the payment made by Lexington to Gregory Brent Warr and Laura Jean Warr. The Defendants are entitled to know which of the payments set forth in the chart, designated Counts 13 – 15, relate to personal property and which payments relate to additional living expense and/or structural damage. Furthermore, if the amount set forth in the chart, designated Count 16, relates to an amount paid, then it is impossible to determine if that amount (\$25,200.00) relates to personal property, additional living expense or structural damage. If, on the other hand, it relates to an amount that was, in fact, not paid by Lexington but was an amount sought by the Defendants under a letter from Brent Warr dated March 7, 2007, then it is imperative that the Government particularize if the amount set forth (\$25,200.00) relates to personal property, additional living expense or structural damage.

C. Structural damage, typically referred to as Coverage A, personal property, typically referred to as Coverage C and ALE, typically referred to as Coverage D, are separate and distinct coverages and the payment of any of those particular coverages vary in terms of the adjusting process, the scope of the adjusting process and the amount an insurance company would typically pay. Thus, without a Bill of Particulars, it will be impossible for these Defendants to differentiate between the various coverages and the amounts set forth in the chart designated in Counts 13 – 16.

3.

This Court should grant a Motion for Bill of Particulars when necessary to prevent unfair surprise at trial. It is imperative that this Court strike a prudent balance between the legitimate interests of the government and those of the Defendant(s). If a Bill of Particulars will properly and fairly add clarification to an Indictment that, by its verbiage, potentially charges multiple

scenarios, this Court should not hesitate in directing the filing of a Bill of Particulars in accordance Rule 7(f) of the Federal Rules of Criminal Procedure and *U. S. v. Linn*, 889 F.2d 1369 (5th Cir. 1988).

WHEREFORE, premises considered, the Accused, Gregory Brent Warr, moves this Court to direct the United States of America to file a Bill of Particulars as to the paragraphs and chart in question articulated under Counts 13 – 16 of the subject Indictment.

Respectfully submitted this 5th of February, 2009.

GREGORY BRENT WARR

BY: OWEN, GALLOWAY & MYERS

/s/ JOE SAM OWEN, MSB #3965

OWEN, GALLOWAY & MYERS, PLLC
1414 25th Avenue
Post Office Drawer 420
Gulfport, Mississippi 39502-0420
Telephone: (228) 868-2821
Facsimile: (228) 864-6421
E-Mail: jso@owen-galloway.com

CERTIFICATE OF SERVICE

I, JOE SAM OWEN, of the law firm of Owen, Galloway & Myers, PLLC, counsel for BRENT WARR, do hereby certify that I have this date electronically filed the above and foregoing Motion for Bill of Particulars with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

SO CERTIFIED THIS 5th day of February, 2009.

/s/ JOE SAM OWEN, MSB #3965

OWEN, GALLOWAY & MYERS, PLLC
1414 25th Avenue
Post Office Drawer 420
Gulfport, Mississippi 39502-0420
Telephone: (228) 868-2821
Facsimile: (228) 864-6421
E-Mail: jso@owen-galloway.com

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO. 1:08-cr-132-01-WJG-RHW

**GREGORY BRENT WARR and
LAURA JEAN WARR**

GOOD FAITH CERTIFICATE

I, Joe Sam Owen, counsel for Gregory Brent Warr, do hereby certify that I have conversed with the United States of America (Annette Williams, AUSA), who advises that she objects to the Motion for Bill of Particulars.

SO CERTIFIED THIS the 5th day of February, 2009

/s/: JOE SAM OWEN, MSB #3965

OWEN, GALLOWAY & MYERS, PLLC
1414 25th Avenue
Post Office Drawer 420
Gulfport, Mississippi 39502-0420
Telephone: (228) 868-2821
Facsimile: (228) 864-6421
E-Mail: jso@owen-galloway.com