

United States v. Hi-Tech Pharmaceuticals Inc.

1:06cr382-JTC

Appeal to Judge Camp on Motion to Return Assets Not Properly Seized

Judge Walker's Order #389

Exhibit 2

(Affidavit of Forensic Accountant James F. Hart)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,

v.

Criminal Case No.
1:06-cr-382-JTC

JARED ROBERT WHEAT,
STEPHEN D. SMITH ,
TOMASZ HOLDA,
SERGIO OLIVEIRA,
DAVID BRADY,
DAVID JOHNSON,
DAVID WATKINS,
STEVEN BLINDER,
MICHELE YOUNG,
GUILLERMO PECH, and
HI-TECH PHARMACEUTICALS, INC.
d/b/a Planet Pharmacy, Target Data,
Target Data Processing, Pegasus Resources,
Global Pharmacy, and Generic Limited,
Defendants.

AFFIDAVIT OF JAMES F. HART, MBA, CPA/ABV, CIRA, CFE

I, JAMES F. HART, after being duly sworn, do hereby affirm and state the following:

1. I am over eighteen (18) years of age and am fully competent to give this Affidavit.

2. I am a licensed Certified Public Accountant in the State of Georgia and hold the following additional certifications: Certified Fraud Examiner (CFE),

Certified Insolvency and Restructuring Advisor (CIRA), and Accredited in Business Valuation (ABV).

3. I have been appointed by federal and state courts in the State of Georgia as a receiver and as an auditor. I have been appointed receiver in North and South Carolina. I have served as a private arbitrator and mediator in Georgia. In addition, I have served as a court-approved accountant and consultant in numerous bankruptcy cases in the United States Bankruptcy Court for the Northern District of Georgia.

4. A current copy of my curriculum vitae is attached to this Affidavit as Exhibit A to further expand upon my work history and experience.

5. I and my assistant, Vicki Boswell, have examined the financial and business records of Hi-Tech Pharmaceuticals, Inc. ("Hi-Tech") for the period July 2006 through September 2006, including: monthly bank statements and the contents of Wachovia Bank account number 2000032674266 ("the Hi-Tech Operating Account"), merchant account statements for Hi-Tech related to American Express, Discover, and NOVA (Visa/MasterCard) settlements, deposit slips, bank adjustment advices, Hi-Tech invoices and screen prints for customer sales, credit card slips, customer payment check copies, and certain customer check remittance documentation.

6. My examination of Hi-Tech's Wachovia bank statements of the Hi-Tech Operating Account also took into consideration two large debits (withdrawals) from this bank account on September 13, 2006 and September 19, 2006 in the amounts of \$1,500,000.00 and \$1,582,203.77, respectively. The \$1,500,000.00 check, number 7845, which cleared Wachovia bank on September 13, 2006, was written to Mr. Jared Wheat, President and, it is my understanding, sole owner of Hi-Tech, as an owner's distribution and, further it is my understanding, was taken partially to help pay a planned September 15, 2006 quarterly estimated payment to the IRS (hereinafter the "Distribution Amount"). It is further my understanding that this check was deposited into Mr. Wheat's Wachovia Bank Account Number 1000346974365 (hereinafter the "Wheat Personal Account") on September 13, 2006. Thereafter, it is my understanding that an amount totaling \$1,771,170.06, including the \$1,500,000.00 distribution from the HI-Tech Operating Account, was seized from the Wheat Personal Account pursuant to a seizure warrant (hereinafter "Seizure Amount One") obtained by the United States Drug Enforcement Administration in the United States District Court for the Northern District of Georgia on September 14, 2006. The second amount was a debit in the amount of \$1,582,203.77, which it is my understanding, was also seized on September 19, 2006 from the Hi-Tech operating account pursuant to the seizure warrant (hereinafter "Seizure Amount Two").

7. In examining the above-referenced Hi-Tech records, I noted that the following balance and deposit and withdrawal activity occurred in the Hi-Tech Operating Account during this period (see Table 1):

Table 1

Hi-Tech Pharmaceuticals, Inc.

Wachovia Bank Account No.: 2000032674266

	<u>Beginning Balance</u>	<u>Deposits</u>	<u>Withdrawals</u>	<u>Ending Balance</u>
July 2006	\$1,545,971.50	\$2,445,525.99	\$1,623,280.85	\$2,368,216.64
August 2006	\$2,368,216.64	\$3,230,812.53	\$2,132,375.29	\$3,466,653.88
September 2006	\$3,466,653.88	\$1,627,681.04	\$5,105,957.38	-\$11,622.46

8. The information in Table 1 was examined in order to help identify the ultimate source of the Distribution Amount deposited to the Wheat Personal Account (and which comprised the bulk of Seizure Amount One) as well as Seizure Amount Two, both taken by the U.S. Drug Enforcement Administration from the Wheat Personal Account and the Hi-Tech Operating Account, respectively, on September 19, 2006. The details of these deposits were also examined in order to determine whether or not any of the deposits into the Hi-Tech Operating Account originated in the country of Belize.

9. As Table 1 illustrates, during July 2006 the amount withdrawn, \$1,623,280.85, exceeded the beginning balance for this month, \$1,545,971.50; therefore, since cash is fungible, the July beginning balance was effectively consumed by subsequent withdrawals made later in the month. Further, to the

extent that any July withdrawals were funded by July deposits, the sources of the July deposits, as well as those of August and September 2006,¹ which total \$7,304,020, are identified and discussed below.

10. This \$7,304,020 total amount deposited into the Hi-Tech Operating Account for the period July through September 2006 was principally derived from checks, credit cards and bank adjustments, as shown below in Table 2.

Table 2
HI-Tech Pharmaceuticals, Inc.
Wachovia Bank Account Number: 2000032674266
Total Deposits: July 2006 through September 2006

	<u>Checks</u>	<u>Credit Cards</u>	<u>Bank Adjustments</u>	<u>Total Deposits</u>
July 2006	\$1,884,389.07	\$536,300.24	\$24,836.68	\$2,445,525.99
August 2006	2,663,056.11	566,779.46	976.96	3,230,812.53
September 2006	1,178,603.29	448,412.75	665.00	1,627,681.04
Totals	\$5,726,048.47	\$1,551,492.45	\$26,478.64	\$7,304,019.56
	78.4%	21.2%	.4%	100.0%

11. I have personally examined each of the checks included in the Check column of Table 2 above (\$5,726,048.47 in total)². My assistant, Vicki Boswell, acting under my direction and supervision, examined each of the credit card

¹ It should also be noted that there was only one deposit included in the September 2006 deposit total of \$1,627,681.04 (see Table 1) that was dated after September 18, 2006; it was a \$665.00 deposit on September 21, 2006.

² With the exception of one check pending for \$309.62 in July 2006.

deposits and bank adjustments in Table 2 above (\$1,577,971.09 in total). Together, we examined the source of all deposits made into the Hi-Tech Operating Account during July 2006 through September 2006. Based on our examination, we did not find a single check, credit card or adjustment included in the \$7,304,020 total amount deposited into the Hi-Tech Operating Account during this period that came from Belize. Accordingly, since this total deposit amount was the source of the \$1,500,000 Distribution Amount that was included in Seizure Amount One, none of this \$1,500,000 came from Belize. Similarly, since the source of the funds taken in Seizure Amount Two (in the amount of \$1,582,203.77), also came from this same \$7,304,020, none of the funds included in Seizure Amount Two came from Belize.

Pursuant to Title 28, United States Code, Section 1746, I certify under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NOT.

/s/ James F. Hart

JAMES F. HART, MBA, CPA/ABV, CIRA, CFE