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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 26, 2013

VIA ELECTRONIC TRANSMISSION

Joyce R. Branda
Deputy Assistant Attorney General
Civil Division, Commercial Litigation Branch
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Deputy Assistant Attorney General Branda:

On February 5, 2013, you appeared before Congressional staff to provide information regarding the Department's involvement in the decision of the City of St. Paul, Minnesota, to withdraw its petition for certiorari in *Magner v. Gallagher*.¹ The briefing was provided to the Majority and Minority staff of the Senate Committee on the Judiciary. It is my understanding you provided a similar briefing to staff for the House Committee on the Judiciary and the House Committee on Oversight and Government Reform on December 5, 2012.

In the February 5 briefing, you told Committee staff: "We didn't decline to intervene in exchange" for St. Paul withdrawing *Magner*. On multiple occasions in the briefing, you disputed the characterization that it was an exchange. At the time, the Department was withholding documents about this matter from Congress.

However, documents since produced by the Department show that on March 8, 2012, you received a list of significant cases from Michael Granston, then Deputy Director in the Commercial Litigation Branch's Fraud Section, a direct subordinate to you.² Twenty-five minutes later, you forwarded the document to Jonathan Olin in the Civil Division front office, writing: "St. Paul updated and edited for clarity[.]"³ The portion of the document relating to U.S. v. City of St. Paul read:

¹ See *Magner v. Gallagher*, 132 S. Ct. 1306 (Feb. 14, 2012) (dismissing writ of certiorari).

² E-mail from Michael Granston to Joyce Branda (Mar. 8, 2010, 3:25 PM) [HJC/HOGR STP 001402-001404].

³ E-mail from Joyce Branda to Jonathan F. Olin (Mar. 8, 2010, 3:51 PM) [HJC/HOGR STP 001402-001404].

Government declined to intervene in Newell, and has agreed to decline to intervene in Ellis, in exchange for defendants withdrawal [sic] of cert. petition in Gallagher case (a civil rights action).⁴

Accordingly, I ask that you explain why your assertions to Congressional staff were directly contrary to the documentary record.

Sincerely,



Charles E. Grassley
Ranking Member

ATTACHMENT

cc: The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

The Honorable Bob Goodlatte, Chairman
U.S. House of Representatives, Committee on the Judiciary

The Honorable John Conyers, Jr., Ranking Member
U.S. House of Representatives, Committee on the Judiciary

The Honorable Darrell Issa, Chairman
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

⁴ "Significant Affirmative Civil and Criminal Matters," updated Mar. 8, 2012 [HJC/HOGR STP 001404] [emphasis added].

Attachment

From: Branda, Joyce (CIV) </O=USDOJ/OU=CIVIL/CN=RECIPIENTS/CN=MAILBOXES/CN=JBRANDA>
Sent: Thursday, March 8, 2012 3:51 PM
To: Olin, Jonathan F. (CIV) <RC-1>
Cc: Granston, Michael (CIV) <RC-1>
Subject: FW: Significant Cases
Attach: Significant Ongoing Affirmative Matters.xlsx

Jon:

RC-2: Non-responsive text in multi-subject document.

St. Paul updated and edited for clarity

Let me know if you need anything further.

From: Granston, Michael (CIV)
Sent: Thursday, March 08, 2012 3:25 PM
To: Branda, Joyce (CIV)
Cc: Yavelberg, Jamie (CIV) <RC-1>
Subject: Significant Cases

Joyce,

Here is an updated version for the significant cases list. A couple of notes:

1) **RC-2: Non-responsive text in multi-subject document.**

2)

3)

4)

5)

Michael D. Granston
Deputy Director
Fraud Section, Civil Division
U.S. Department of Justice
Tel: 202-RC-1
Email: RC-1

	A	B	C	D
1	Significant Affirmative Civil and Criminal Matters			Updated March 8, 2012
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3	Party	USAO	Subject	Status as of March 8, 2012
4	RC-2: Non-responsive text in multi-subject document.			
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28	U.S. v. City of St. Paul, Minn. (involves two different qui tam cases)		Mortgage fraud	Relators allege in Newell that the City of St. Paul falsely certified that it was in compliance with Section 3 of the Housing Act (incentives for low and very low income citizens) when it obtained HUD community development block grants (CDBG program, etc.). The Ellis case alleges that the City of Minneapolis is inappropriately condemning and knocking down low-income housing, which has a disparate racial impact. Government declined to intervene in Newell, and has agreed to decline to intervene in Ellis, in exchange for defendants withdrawal of cert. petition in Gallagher case (a civil rights action).
29		D. Minn.		
30	RC-2: Non-responsive text in multi-subject document.			
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