

STATE OF LOUISIANA		19 TH JUDICIAL DISTRICT COURT
VERSUS		PARISH OF EAST BATON ROUGE
BARRY L. BELLUE SR.		STATE OF LOUISIANA
4847 DONEGAL RD.		DEPARTMENT OF JUSTICE
WOODVILLE, MS 39669		DOJ CASE: 11-2247
W/M, D.O.B. 7/13/1942		
S.S.N. XXX-XX-2220		

WARRANT OF ARREST

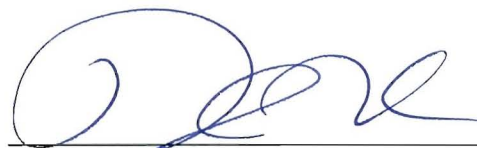
TO: ANY LAW ENFORCEMENT OFFICER

An Affidavit having been made by Special Agent Ernest Green of the Louisiana Bureau of Investigation, Louisiana Department of Justice, that in the Parish of East Baton Rouge, State of Louisiana, the offender, Barry L. Bellue Sr. W/M, D.O.B. 7/13/1942, did commit the crime(s) of:

Theft by Fraud **2cts (felony / over \$174,000)** as defined by La R.S. 14:67, and Criminal Conspiracy **2cts** as defined by La R.S. 14:26, in that he/she did knowingly, intentionally, and unlawfully, engage in the commission of the aforesaid crime(s).

You are, therefore, commanded forthwith to arrest the said offender and take him/her forthwith to be booked and charged in accordance with the law.

Dated in Baton Rouge, Louisiana, this 15th day of February, 2018



~~DISTRICT COURT JUDGE~~
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE *Ad hoc*
STATE OF LOUISIANA

STATE OF LOUISIANA		19 TH JUDICIAL DISTRICT COURT
VERSUS		PARISH OF EAST BATON ROUGE
BARRY L. BELLUE SR. 4847 DONEGAL RD. WOODVILLE, MS 39669 W/M, D.O.B. 7/13/1942 S.S.N. XXX-XX-2220		STATE OF LOUISIANA DEPARTMENT OF JUSTICE DOJ CASE: 11-2247

AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared, Ernest Green, Special Agent for the Louisiana Bureau of Investigation, Louisiana Department of Justice, Baton Rouge, Louisiana, who, having been duly sworn, did depose and say that BARRY L. BELLUE SR., did violate La R.S. 14:67 titled Theft by Fraud **2cts (felony / over \$174,000)**, and La R.S. 14:26 titled Criminal Conspiracy **2cts**, in the Parish of East Baton Rouge, State of Louisiana.

OVERVIEW

On or about May 4, 2016, the Louisiana Bureau of Investigation (LBI) opened a criminal investigation concerning Thinkstream Incorporated of Delaware f/k/a Thinkstream Incorporated of Colorado (hereinafter "Thinkstream") formerly headquartered at 6146 Crestmount Dr. Baton Rouge, LA, based on allegations of fraud. The U.S. Department of Labor, Employee Benefits Security Administration (EBSA), also provided assistance in this investigation.

THE INVESTIGATION

Pursuant to this matter, LBI Agents learned of allegations that Barry Bellue Sr., former CEO, and Morris Alexander, former CFO, had misappropriated Thinkstream's employees' 401(k) retirement contributions. Thinkstream and Bellue, agents learned, had been sued by the U.S. Department of Labor (hereinafter "DOL") for mismanagement of employees' 401(k) pension plan. The lawsuit resulted in a federal consent judgment, on or about June 4, 2014, which ordered Thinkstream and Bellue, personally, to repay approximately \$126,631.58 to the employees' retirement plan. Thinkstream's employees, DOL officials said, suffered initial losses in the amount of approximately \$81,047.07 during the period between January 1, 2003 and December 31, 2005 as their retirement contributions were withheld but not remitted to the said pension plan. Subsequent violations increased losses to the said \$126,631.58.

The consent judgment, DOL officials said, was the result of Bellue and Thinkstream's continued failure to honor repeated demands for repayment of the retirement funds. Bellue, in

his capacity as fiduciary of the pension plan, had primary responsibility for management of the employees' retirement contributions. Bellue, as mandated by federal law, was required to remit contributions withheld from employees' wages to the said retirement plan. Despite multiple judgments, agents learned, only a fraction of the monies was returned.

Beginning on or about June 10, 2009, following a civil investigation that began in or about March 2008, DOL officials issued notifications of law to Bellue and Thinkstream requiring restitution of the said retirement contributions. Bellue, as he requested repayment plans or extensions, told DOL officials Thinkstream did not have the financial resources to repay the funds. On or about October 25, 2012, as the retirement funds remained unpaid, DOL officials obtained a consent judgment in which the federal courts ordered Bellue and Thinkstream to repay the said funds. On or about June 4, 2014, after continued failure to repay the funds, DOL officials returned to the federal courts and obtained the aforesaid 2014 consent judgment.

Pursuant to the 2014 judgment, records disclosed, Bellue's fiduciary relationship with the retirement plan was terminated. The 2014 judgment also required full restitution of the retirement contributions by December 31, 2014. Bellue and Thinkstream, however, did not return the monies. Throughout the aforesaid demands, DOL officials said, Bellue maintained that Thinkstream was financially unable to repay the retirement monies. As a result, approximately \$97,880.92 of Thinkstream's employees' retirement contributions was not returned. Thinkstream, as DOL officials continued efforts to retrieve the said funds, was eventually forced to declare bankruptcy on or about July 9, 2015. The company, on or about said date, was also removed from Bellue's control and placed under the management of a bankruptcy trustee.

Further investigation of this matter has disclosed that DOL officials and Thinkstream's employees had been deceived. Bellue and Alexander, agents learned, had knowingly participated in an elaborate and continuing scheme which involved the misappropriation of employees' 401(k) retirement contributions.

LBI Agents, through review of financial records, learned the said retirement monies had been maintained in the general assets of Thinkstream's corporate accounts. The retirement funds, which should have been submitted to the said pension plan, were subsequently diverted for, among other things, Bellue's personal benefit. In the aforesaid period between January 1, 2003 and December 31, 2005, financial records disclosed, Bellue had authorized multiple transfers of funds from Thinkstream's corporate accounts to an account under the control of his private

aviation company. BLB Aviation South Carolina, LLC (hereinafter “BLB Aviation”), owned by Bellue and his son, had received approximately \$78,487.60 in the said period. During this same period, records disclosed, Bellue also received at least \$20,000 in cash advances and authorized electronic transfers in the amount of approximately \$320,406.89 from Thinkstream’s accounts to pay his personal credit cards. Bellue, in subsequent financial statements provided to support loans from Thinkstream’s creditors, claimed he had diverted funds to other accounts under his control to pay (Thinkstream) business expenses. The said business expenses, Bellue claimed, included travel and entertainment.

Federal law prohibits the misappropriation of employee retirement benefits, specifically, ERISA section 403(c)(1), states in pertinent part: “ the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.”

Bellue, among other things, had also used funds from Thinkstream’s corporate accounts to pay travel expenses for civil litigation associated with his private aviation company. In one example, agents learned, on or about June 21, 2011 Bellue attended a deposition in Omaha, Nebraska, associated with a civil lawsuit. The lawsuit, records disclosed, pertained to a dispute between BLB Aviation and a company known as Jet Linx Aviation, LLC (hereinafter “Jet Linx”). Bellue, agents learned, traveled to the said deposition in one of the aircrafts registered to BLB Aviation. Bellue, although the lawsuit did not pertain to Thinkstream, subsequently authorized approximately \$5,066.86 from Thinkstream’s accounts to his personal credit card for reimbursement of travel expenses which included meals, hotel stays, rental vehicle, and aviation services. Additionally, records disclosed, Bellue used a pilot employed by Thinkstream to fly the said plane to Nebraska for the deposition. In this same month, June 2011, Bellue also transferred approximately \$57,120 from Thinkstream’s accounts to BLB Aviation.

Bellue, pursuant to the aforesaid civil litigation, testified BLB Aviation owned two airplanes that were managed by Jet Linx for purposes of chartered flights. The said companies, records disclosed, had agreed to contract terms which included chartered flight services for one year in or about the periods between July 2007 and July 2008. Bellue, in the said litigation, testified that in accordance with the said agreements BLB Aviation expected to receive a minimum of \$47,100 in monthly compensation for Jet Linx’s use of the planes. Bellue insisted, however, BLB Aviation had lost a significant amount of money on the deal as payments from Jet

Linx were far below the expected revenues. Bellue, as he testified the airplanes were delivered to Jet Linx and remained primarily in the custody and management control of the company, also complained of excessive repair bills. Bellue said numerous claims of mechanical problems, which frequently kept the planes grounded, contributed to the lack of flights needed to attain the expected (\$47,100) monthly revenues.

Bellue, as the civil proceedings continued, also testified that one of the airplanes managed by Jet Linx was specifically purchased by BLB Aviation, at a cost of approximately \$1.4Million, in anticipation of an extended business relationship with Jet Linx. The airplane, identified by its registration number as N400GK, was purchased on or about August 10, 2007 through a loan with Capitol One Bank. Bellue, as he testified that BLB Aviation had a monthly (\$15,000) loan obligation on the N400GK plane, confirmed the anticipated deal did not materialize. Bellue, who claimed BLB Aviation paid over \$100,000 in maintenance and repairs during the aforesaid period, also testified the revenues from Jet Linx was not sufficient to consistently cover the said (\$15,000) monthly loan payments.

Agents, through review of financial records, learned Bellue had transferred a significant amount of funds from Thinkstream's corporate accounts to BLB Aviation during the period when the said planes were primarily in the custody and control of Jet Linx. In the period between July 2007 and July 2008, records disclosed, Bellue issued multiple checks totaling approximately \$154,860.78 from Thinkstream's accounts to BLB Aviation. Among those funds, approximately \$73,188.97 covered overdrafts on behalf of BLB Aviation.

Financial records, through further examination, disclosed that after (July 2008) the said agreement ended and the planes were retrieved, from Jet Linx, Bellue continued to transfer significant amounts of money to BLB Aviation. In the period between January 1, 2003 and July 9, 2015, as the said retirement contributions were misappropriated and amid federal consent judgments demanding repayment, Bellue directed approximately \$1,322,574.28 from Thinkstream's accounts to BLB Aviation. Among those funds, records disclosed, approximately \$741,370.54 covered overdrafts on behalf of BLB Aviation. In this same period, agents learned, Bellue also authorized approximately \$1,511,269.23 from Thinkstream's accounts to pay his personal credit cards. As stated, Bellue claimed the said funds were used to pay (Thinkstream) business expenses which included travel and entertainment.

Bellue's credit card records, through further examination, also disclosed approximately \$254,418.79 of the said (\$1.5Million) reimbursements paid for additional aviation services and

commercial flights. In addition, records disclosed, the said credit card payments included an estimated \$168,166.83 for numerous meals at various high-end restaurants.

Bellue, agents learned, also transferred funds from Thinkstream's accounts to an account associated with personal property (ranch) he owned in Mississippi. In the period between March 2012 and May 2015, records disclosed, Bellue authorized transfers in the amount of approximately \$235,313 to the said account. Again, Bellue claimed the transfers were for (Thinkstream) business expenses.

Federal law prohibits the retaining, for use by the employer, of employee contributions in the employer company's general assets, specifically, ERISA section 406(a)(1)(D) states in pertinent part: "A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect... transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan." In addition, federal law also identifies the employer company and plan fiduciary as parties in interest, particularly, ERISA section 3(14)(A) and (C) provide in relevant parts: "The term 'party in interest' means, as to an employee benefit plan: (A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan; (C) an employer any of whose employees are covered by such plan."

Continuing the investigation, agents learned, Alexander had assisted Bellue as the executives knowingly submitted financial declarations, to DOL officials, which contained materially false representations. DOL officials, as both Bellue and Alexander had made continued requests for payment arrangements or extensions due to Thinkstream's purported inability to repay the said retirement contributions, required financial affidavits for Thinkstream and Bellue, personally. The purpose of the declarations, DOL officials said, was to identify Bellue and Thinkstream's true income, expenses, assets, and liabilities.

Bellue, in a personal affidavit submitted on or about April 21, 2014, knowingly concealed personal debt and his affiliation to BLB Aviation. The affidavit, in section seven (7), specifically asked "**Debts;** Attach copies of documents evidencing debt to declarant, including original applications for loans or other extensions of credit, as Exhibit F collectively." Bellue, in response, omitted personal debt in the amount of approximately \$1,142,567.24. Bellue and BLB Aviation, on or about July 25, 2012, had defaulted on aircraft loans issued by Prosperity Bank headquartered in El Campo, TX, which resulted in a lawsuit filed on or about November 26, 2014. Bellue, who was personal guarantor on the said aircraft loans, had continued financial

obligations pertaining to the loans during the period when the said declaration was submitted. Prosperity Bank, records disclosed, was subsequently awarded a judgment in the aforesaid amount, on or about June 22, 2015, against Bellue and BLB Aviation.

Bellue's disclosure form, in section nine (9), also asked in relevant part: "**Personal Property and other assets**; Attach all financial statements for the past five (5) years for all corporations, unincorporated companies, and partnerships in which you or your spouse have any type of financial interest to this Declaration as Exhibit G collectively." The document, in this same section, also asked for disclosure of any "airplanes" or "other motor vehicles of any nature." Bellue, in response, listed "None" indicating he had no financial interest in any other companies and no associated assets (i.e. airplanes) during the requested five (5) year period.

Agents learned, however, in addition to his obligation as personal guarantor on the said loans, Bellue had identified himself as a member of BLB Aviation during testimony given on or about February 7, 2012 in the civil trial associated with the aforesaid Jet Linx lawsuit. Additionally, in an affidavit submitted pursuant to the said Prosperity Bank lawsuit, agents learned, Bellue had identified himself as "owner of the aircraft" and "Manager of BLB Aviation South Carolina, LLC." Bellue, in the said affidavit submitted to the 19th Judicial District Court on or about April 28, 2015, told the court he was "very familiar with the books and records of the company." Bellue, in the affidavit, also recounted examples of BLB Aviation's alleged attempts to resolve its financial problems during multiple failed transactions over the course of previous years.

Alexander, in Thinkstream's affidavit which was also submitted on or about April 21, 2014, knowingly concealed Thinkstream's affiliation to BLB Aviation. The affidavit, in relevant part of section five (5), specifically asked; "List **all affiliated or closely related companies** including but not limited to any parent companies, holding companies or subsidiaries. Identify stating name(s), state(s) of incorporation of such subsidiaries or affiliates, nature of relationship including ownership interest if applicable, name(s) of principal(s), Employer Identification Number, address, principal business place, and telephone number." Alexander, in response, listed "N/A" (Not Applicable) indicating Thinkstream did not have any relationships with affiliate or closely related companies.

Thinkstream's declaration, in pertinent part of section six (6), also asked; "**Transfers of Property for the previous five (5) years**: A. List all sales or transfers of **any or all assets**, real or personal, made by this business entity to a related party if the asset value individually

exceeded \$500 (names, addresses, dates, description and value of property transferred, basis for valuation, consideration and disposition of consideration.)” Alexander, in response, listed “N/A” (Not Applicable) indicating Thinkstream did not transfer assets to any related parties during the requested five (5) year period.

As previously mentioned, financial records disclosed substantial amounts of Thinkstream’s assets (monetary) had been transferred to BLB Aviation during the listed period. Alexander, who had joined Thinkstream’s executive management team in or about August 2010, was well aware and had authorized transfers from Thinkstream’s accounts to BLB Aviation. Alexander, agents learned, was also among the witnesses who signed Bellue’s aforementioned affidavit submitted during the Prosperity Bank lawsuit. Financial statements submitted to Thinkstream’s creditors also identified BLB Aviation as an affiliate or closely related entity. In addition to the said related party transactions, records disclosed, Bellue and his son were common principals in both Thinkstream and BLB Aviation.

Bellue and Alexander, as a result of the said misrepresentations, were able to conceal any connections to BLB Aviation. DOL officials, unaware of the aviation company, insisted Thinkstream and Bellue’s (personal) affiliation to BLB Aviation was material information that should have been disclosed.

Louisiana law defines and prohibits criminal conspiracy, specifically, La R.S. 14:26, provides in relevant part: “A. Criminal conspiracy is the agreement or combination of two or more persons for the specific purpose of committing any crime; provided that an agreement or combination to commit a crime shall not amount to a criminal conspiracy unless, in addition to such agreement or combination, one or more of such parties does an act in furtherance of the object of the agreement or combination.”

LBI Agents, as the investigation continued, learned Bellue and Alexander had ignored the aforementioned (June 2014) DOL Consent Judgment and furthered the scheme through additional misappropriation of employees’ retirement contributions. Beginning on or about July 1, 2014 and continuing through July 9, 2015, agents learned, the said executives withheld or caused the withholding of approximately \$48,119.58 from employees’ wages but did not remit the funds to the said pension plan. Again, the retirement contributions were maintained in the general assets of Thinkstream’s corporate accounts and subsequently diverted to, among other things, Bellue’s aforementioned related party accounts. This incident increased the said fraud to approximately \$174,751.16. Thinkstream, after the company declared bankruptcy on or about

July 9, 2015, as stated, was removed from Bellue's control and placed under the management of a bankruptcy trustee. The bankruptcy trustee, in court filings, noted Thinkstream had less than \$5,000 in its corporate bank accounts upon his appointment. Consequently, agents learned, the bankruptcy trustee made efforts to restructure financial operations and obtain loans for purposes to repay, among other things, a portion of the misappropriated pension funds.

As stated, in the period between June 10, 2009 and July 9, 2015, Bellue and Alexander received notifications of law and multiple demands for repayment. The said executives, as they did not return the misappropriated monies, also as mentioned, told DOL officials Thinkstream did not have the financial resources to repay the retirement contributions.

Alexander, in an interview with LBI on or about November 30, 2017, admitted he was aware Thinkstream's employees' retirement contributions had been unlawfully diverted. Alexander said, although the first incident occurred prior to his employment with Thinkstream, he had participated in efforts to repay the retirement monies after he joined the company. Alexander acknowledged, pursuant to requests for installments or extensions, Thinkstream had provided financial declarations to DOL officials. The requests for extensions, Alexander claimed, were submitted because Thinkstream did not have the financial resources to repay the said funds.

Alexander, as he confirmed Thinkstream had paid BLB Aviation for purported travel expenses, claimed he did not know if Thinkstream's financial relationship to Bellue's private aviation company had been disclosed to DOL officials. Alexander, who claimed Thinkstream only used Bellue's private aircrafts occasionally, estimated BLB Aviation had received less than \$100,000 in travel payments during his (5yrs) tenure as Thinkstream's CFO. Alexander, as he also said Bellue's property in Mississippi was used to entertain Thinkstream's clients, purported the company did not pay Bellue's land account for the said entertainment services. Instead, Alexander claimed, Bellue used personal funds to pay for the services on behalf of Thinkstream.

Alexander, who admitted he and Bellue had knowingly diverted employees' retirement contributions during the aforementioned (2014-2015) second incident, claimed the money was used for "payroll and rent." Regarding both instances, Alexander said, he and Bellue had discussed and agreed full restitution should be made to the employees' pension plan. Alexander, throughout the said interview, maintained Thinkstream did not have the financial resources to repay the misappropriated retirement funds.

Financial records disclosed, however, Alexander aided Bellue as the executives had authorized transfers totaling approximately \$635,384.80 from Thinkstream's accounts to BLB Aviation during his (Alexander) tenure (5yrs) as CFO. In addition, although Alexander claimed Bellue had donated use of his personal property for entertainment services, records disclosed approximately \$235,313 was transferred from Thinkstream's accounts to Bellue's (MS) land account during Alexander's tenure as CFO.

Financial records also disclosed, as mentioned, in the aforesaid period between January 1, 2003 and July 9, 2015, when employees' retirement contributions were misappropriated and amid demands for restitution, approximately \$3,089,156.51 was transferred from Thinkstream's accounts to fund Bellue's personal credit cards, private aviation company, and personal property (ranch) in Mississippi. As stated, despite DOL officials' continued efforts to retrieve the said misappropriated funds, approximately \$97,880.92 remains unreturned.

Agents, during interviews with some of the affected 401(k) participants, confirmed employees did not authorize the aforesaid misappropriation of their retirement contributions. Thinkstream's former employees, some of whom had previously communicated with DOL officials, became suspicious after company management ceased the issuance of itemized paystubs. Instead, agents learned, employees were told they had been reclassified as independent contractors. Thinkstream's management, however, continued to withhold retirement contributions from employees' wages. At least one employee, agents learned, never discovered his retirement contributions had been taken. The employee, who lost more than \$10,000 as a result of the said scheme, insisted he was unaware his retirement contributions had been taken.

Louisiana law prohibits the crime of Theft by Fraud, specifically, La R.S. 14:67, provides in pertinent part: "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential."

Additionally, state law establishes guidelines for criminal prosecution of certain matters that pertain to misappropriation of money by individuals who have fiduciary responsibilities, specifically, La. C.Cr.P. art. 573 provides in pertinent part: "The time limitations established by Article 572 shall not commence to run as to the following offenses until the relationship or status involved has ceased to exist when: (1) The offense charged is based on the misappropriation of any money or thing of value by one who, by virtue of his office, employment, **or fiduciary**

relationship, has been entrusted therewith or has control thereof.” As stated, Bellue remained in the capacity as fiduciary of Thinkstream’s employees’ retirement plan until at least June 4, 2014 when the said fiduciary relationship was terminated pursuant to the federal consent judgment. *Note: Bold emphasis included by writer for clarification purposes.*

In addition to the aforesaid transfers from Thinkstream’s accounts, agents learned, Bellue also received an average annual salary of approximately \$308,275.00 during the period when the said scheme continued. Alexander, records disclosed, benefited through continued employment as Thinkstream’s CFO with an average annual salary of approximately \$110,118.39. Bellue and Alexander, DOL officials confirmed, were not among the affected participants in the aforementioned 401(k) retirement plan.

Conclusion:

Evidence discovered in this investigation and as set forth in the foregoing paragraphs has disclosed that Barry Bellue Sr., former CEO, and Morris Alexander, former CFO, Thinkstream, knowingly engaged in an elaborate criminal conspiracy which operated as a deceit and fraud upon Thinkstream’s employees. As stated, during the period between January 1, 2003 and July 9, 2015, through illicit transactions and fraudulent business practices, evidence disclosed, the said executives defrauded Thinkstream’s employees’ 401(k) retirement plan of approximately \$174,751.16. In this same period, evidence disclosed, Bellue and Alexander also deceived DOL officials who attempted to retrieve the misappropriated retirement monies. As a result of the said executives’ unlawful actions and despite the bankruptcy trustee’s subsequent efforts to repay a portion of the misappropriated funds, as mentioned, approximately \$97,880.92 remains unreturned.

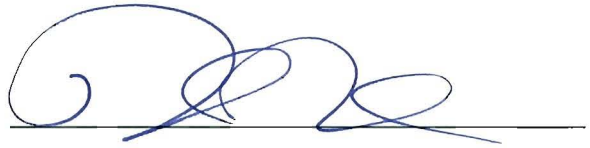
Probable cause has been shown that BARRY L. BELLUE SR. did violate La R.S. 14:67, Theft by Fraud **2cts (felony / over \$174,000)**, and La R.S. 14:26, Criminal Conspiracy **2cts**, in the Parish of East Baton Rouge, State of Louisiana.

THEREFORE, for the above stated reasons, Affiant prays for the issuance of a Warrant of Arrest for BARRY L. BELLUE SR.



AFFIANT

SWORN TO AND SUBSCRIBED before me, this 15th day of February, 2018, in Baton Rouge, Louisiana.



~~DISTRICT COURT JUDGE~~
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

ad hoc