

The Inaugural Financial Fraud Lemons of the Week Award Goes to DOJ

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The Bank Whistleblowers United announce the inaugural Financial Fraud Lemons of the Week award. There can be no more fitting recipient than the ironically named Department of Justice (DOJ). The “lemon” is used in the economics and criminology literature to refer to a car of surpassingly terrible quality. The quality is so bad that the car can only be sold through fraud. We will award it each week to an example of dishonesty or cowardice about financial fraud that is worthy of public ridicule. We want to leave room in our scale for truly spectacular examples, so this first award will only receive **Four Lemons**. The first award is for what has become a routine example of dishonesty and cowardice by DOJ. Its conduct should be a scandal of national proportions, but by now everyone expects DOJ to embarrass our Nation when it deals with elite bankers.

DOJ wins the inaugural award for picturing its humiliating settlement with Morgan Stanley as a triumph. This first column in a series we will do on DOJ’s refusal to prosecute the scores of senior bankers that led Morgan Stanley’s criminal enterprise will focus on DOJ’s press release. In the course of the series we will see that state and federal investigators, the Financial Crisis Inquiry Commission, and Clayton’s (not very) “due diligence” reviews have repeatedly documented that Morgan Stanley was one of the largest criminal enterprises in the world and committed tens of thousands of acts of fraud that cost the American people billions of dollars in losses.

But you would never guess that from the DOJ settlement with Morgan Stanley, which at least partially explains why readers were presented by article titles that are themselves worthy of our weekly lemons awards. The [New York Times](#) entitled its story “Morgan Stanley to Pay \$3.2 Billion Over Flawed Mortgage Bonds.” Headline writers are normally hired to craft bold titles that will grab the reader’s attention, but this was one written to be a snorer. The [Wall Street Journal’s](#) title was even more somnolent: “Morgan Stanley to Pay \$3.2 Billion to End Government Mortgage Probes.” The mortgages weren’t even worthy of the euphemistic “flawed.” The *WSJ* title portrayed it as if it were a settlement of an extortionate nuisance suit.

There was no moral content in either title, even though they are reporting one of the most destructive financial fraud schemes in history. Neither article used the “f” word, though at least four governmental investigations found massive fraud at Morgan Stanley in its sale of mortgage paper.

The [DOJ press release](#) on the case partially explains why the newspapers were not forced to use the “f” word in their coverage. DOJ refused to make clear statements about Morgan Stanley’s

massive fraud schemes. This column focuses on only four, spectacularly dishonest aspects of DOJ's press release, each of which earned them a lemon.

“Today's settlement holds Morgan Stanley appropriately accountable for misleading investors about the subprime mortgage loans underlying the securities it sold,” said Acting Associate Attorney General Stuart F. Delery. “The Department of Justice will not tolerate those who seek financial gain through deceptive or unfair means, and we will take appropriately aggressive action against financial institutions that knowingly engage in improper investment practices.”

“Those who contributed to the financial crisis of 2008 cannot evade responsibility for their misconduct,” said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department's Civil Division. “This resolution demonstrates once again that the Financial Institutions Reform, Recovery and Enforcement Act is a powerful weapon for combatting financial fraud and that the department will not hesitate to use it to hold accountable those who violate the law.”

The first lemon is for the not-so-artful attempt at a slight of hand. How can a *bank* be held “appropriately accountable” for tens of billions of dollars in fraudulent mortgage sales? We can't imprison a bank or shame it. The bank is inherently incapable of being held “appropriately accountable” because that is a moral concept and a bank has no soul to damn.

The second lemon is for failing to admit that DOJ held no Morgan Stanley official “appropriately accountable” while claiming that its settlement did the opposite. Delery claims that DOJ “will not tolerate those who seek financial gain through deceptive or unfair means.” The settlement proves the opposite, for DOJ “tolerated” Morgan Stanley's senior officers being made wealthy through leading a massive fraud scheme – with zero accountability imposed on those officers. Delery claims DOJ “will take appropriately aggressive action against financial institutions that knowingly engage” in fraud. A “financial institution,” cannot “knowingly engage” in fraud except through vicarious liability for the actions of its officers. Delery is admitting that Morgan Stanley's officers “knowingly engage[d]” in fraud and became wealthy by doing so, but DOJ took no “action against” those officers, much less “aggressive” prosecutions.

The third lemon was awarded for Mizer's claim that DOJ's settlement with Morgan Stanley proves that “those who contributed to the financial crisis of 2008 cannot evade responsibility for their misconduct.” There is the small discordant note that the settlement meant that those senior Morgan Stanley officers that led the epidemic of fraudulent sales of mortgage product that were one of the three great fraud epidemics that caused the financial crisis have, as with every DOJ settlement, entirely “evade[d] responsibility for their misconduct.” DOJ, once more, refused to prosecute these elite frauds, did not require that they be fired, did not require them to give back their bonuses and other compensation that they received due to fraud, did not sue them, and did not even name them. Mizer then extended his lie by claiming that “the department will not

hesitate to use [the law] to hold accountable those who violate the law.” True, DOJ did not “hesitate” to apply the rule of law to elite bankers – they once again refused to do so. Morgan Stanley could only “violate the law” vicariously – through the actions of its officers. If Morgan Stanley violated the law DOJ could, and should, have prosecuted those officers.

The fourth lemon is awarded for unintentional honesty in the midst of trying to mislead the public.

Today’s settlement is part of the ongoing efforts of President Obama’s Financial Fraud Enforcement Task Force’s RMBS Working Group, which has recovered billions of dollars arising from misconduct related to the financial crisis. The RMBS Working Group is a federal and state law enforcement effort focused on investigating fraud and abuse in the RMBS market that helped lead to the 2008 financial crisis.

We have agreement from DOJ, collectively through its pathetic settlements, that Bernie Sanders’ charge is correct. Agencies of the United States, after investigation, have confirmed at virtually every enormous bank that the business plan was fraud. Moreover, DOJ admits that the fraud epidemics by the world’s largest banks were leading causes of the financial crisis and the Great Recession. The Bank Whistleblowers United have confirmed both of these points.

Read closely the first sentence of the relevant portions of the paragraph quoted above. The paragraph, with minor variations, is a standard part of DOJ’s press releases on the big bank settlements. It is a paragraph designed to brag about the accomplishments of the “RMBS Working Group” which was tasked with prosecuting a particular crime – “fraud” – in the RMBS market. Collectively, the settlements demonstrate that the fraudulent sale of mortgage product through false representations and warranties dominated this secondary markets. As the reader can see, DOJ is big into bragging and this is the key task force that they brag about.

So, which prosecutions of elite Wall Street bankers who led this fraud epidemic do they brag about? What prosecutions of non-elite Wall Street bank officers do they brag about? What prosecutions of non-elite non-Wall Street officers such as New Century’s middle-level officers do they brag about? They cannot find a single prosecution to brag about. Instead, they are reduced to trying to brag about “billions of dollars” in fines paid not by the officers leading the frauds, but by the shareholders. We award our fourth lemon to this attempt to mislead the reader into believing that the greatest strategic failure to prosecute in modern DOJ history represents a triumph.

In the second column in this series we ask President Obama to end these humiliating failures to prosecute the senior executives leading the largest and most financially destructive criminal enterprises in the world by implementing our plan to restore the rule of law to Wall Street. We stress that he can do so without any new legislation or rules and we offer to help implement the plan. We urge the public to join in asking Obama to implement our plan.