EXPERT WITNESS REPORT

R. WAYNE KLEIN, Receiver, vs. Capital One, N.A.

Third District Court of Utah, Case No. 100925562

Prepared by:

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INTRODUCTION

This report sets forth the opinions that I have formed regarding the activities of Ascendus Capital Management, LLC ("Ascendus") and FFCF Investors, LLC ("FFCF") that occurred during the period from 2003 through 2008. My opinions are formed based on my review of bank statements and other documents that were obtained in my capacity as the Receiver. Those documents are more particularly described in this report.

I may find it appropriate to revise or supplement my opinions, analysis, and conclusions stated herein in the future.

My Curriculum Vitae is attached hereto as Exhibit A. The publications that I have authored are described in my Curriculum Vitae. The cases in which I have testified as an expert witness are described in my Curriculum Vitae.

I am charging the rate of $250.00 per hour for my work as the Receiver and as an expert witness on this case.

OPINIONS RENDERED

OPINION #1: Ascendus was operating as a fraudulent Ponzi scheme, using funds from investors to make distribution payments to other investors.[1] These payments were without the knowledge or permission of the investors whose funds were being used to make payments to others.

OPINION #2: FFCF was operating as a fraudulent Ponzi scheme, using funds from investors to make distribution payments to other investors. These payments were without the knowledge or permission of the investors whose funds were being used to make payments to others.

[1] In other instances, Taylor caused Ascendus to transfer securities from the brokerage accounts of some investors to the accounts of other investors.

OPINION #3: Ascendus was insolvent from the early days of its existence, within ten days of taking money from its first investor.

OPINION #4: FFCF was insolvent at every point in its existence.

BASIS FOR OPINIONS

OVERVIEW

Roger E. Taylor and Richard Smith operated two companies, Ascendus Capital Management, LLC ("Ascendus") and FFCF. Ascendus and FFCF operated during different periods of time and utilized different business models, but they were affiliated as a result of having managers in common, some investors in common, and many of the funds gathered by FFCF came from customers of Ascendus.

Ascendus

The Ascendus business model involved Taylor holding himself out as a skilled investment adviser who could earn high investment returns for clients, with little risk, by trading options.[2] Most of the investors who agreed to become clients of Ascendus opened trading accounts at a Texas brokerage firm named Penson Financial Services. Investors instructed Penson to give Taylor authorization to conduct trades in their accounts. Taylor employed a single investment strategy on behalf of all clients. He bought and sold blocks of options and other securities based on the aggregate equity available in the accounts of Ascendus clients. After the block trades were executed, the trades would be allocated to the accounts of particular clients according to the amount of capital in each client account. As a result, all clients had nearly identical trading results.

In some instances, however, Taylor decided that potential clients were not investing

[2] Ascendus was formed in January 2003. In April 2003, Ascendus received a license as an investment adviser. Taylor was the designated official of the investment adviser.

enough to justify opening separate client accounts at Penson.[3] These investors were urged to send their funds directly to Ascendus to be pooled into an account called Ascendus Growth Fund ("AGF"). These smaller investors were told that their pooled funds would be traded just like the Ascendus clients that had established separate accounts at Penson. To the extent that Ascendus actually sent funds from the small investors to the AGF account at Penson, this representation was accurate; the AGF funds on deposit at Penson were traded in conjunction with monies from other Ascendus clients.

Each month, Ascendus prepared account statements for its investors, reporting on how much profit had been earned from options trading in their accounts and how much commission was owed to Ascendus as a result. During the entire time that Ascendus operated, from early 2003 through January 2006, Ascendus reported profits every month to all investors.

In reality, Ascendus was not earning profits for investors every month. Some months saw significant declines in the value of investors' accounts.[4] Despite these losses, Ascendus continued to report profits to investors and collect commissions based on these reports. The chart at Attachment #1 compares the consistently positive reports of profits sent to investors with the actual trading results as shown on the Penson account statements. The chart at Attachment #2 shows the cumulative effect of the reported profits and the actual trading results.

Ascendus was compensated by a percentage of profits it reportedly earned for investors. The commissions were on a sliding scale; the higher the profits that Ascendus earned (or reported earning), the higher the compensation that was owed to Ascendus.[5] Customers paid

[3] Generally, Ascendus required a minimum investment account of $100,000.00 to manage a separate account at Penson.
[4] At least a fourth of the months saw declines in the values of accounts being managed by Ascendus. 2004 saw a net decline in account values for the entire year.
[5] If the investment returns were under 12% a year, Ascendus would be paid 10% of the profits earned each month. Commissions of 20% were due if profits were between 12% and 24% a year. If the investment earned greater than 24% annual returns, investors owed Ascendus 30% of the profits reported to them by Ascendus.

these commissions directly to Ascendus, sometimes from their own funds or by authorizing Taylor to withdraw funds from the customer accounts at Penson.

There were 15 investors who sent money to Ascendus for participation in AGF between 2003 and 2007. The table below shows the pattern of investments:[6]

Year	# New Investors	# Prior Inv., New Money	Amount
2003	7		$145,200.00
2004	5	5	$299,365.47
2005	3	3	$572,118.49
2006		1	$10,000.00
2007		2	$45,000.00
Total	**15**	**11**	**$1,071,683.96**

<u>FFCF</u>

In late 2005, Taylor told investors that it was becoming too difficult to make consistent profits in the options markets and that he had found an alternative investment program that would pay high rates of return with no risk. Taylor paired with his brother-in-law, Jeff Roylance, to raise funds for LBS Advisors ("LBS"), a California investment advisory firm. Roylance and his company, Summit Capital Advisors, had exclusive rights to raise funds for LBS. Taylor became a sub-advisor for Summit.[7] Ascendus clients were urged to move their funds from their accounts at Penson to FFCF. Most Ascendus clients moved their funds. Between December 2005 and February 2006, 15 investors authorized Taylor to move $12,819,451.19 of their reported investment funds from Penson to FFCF.[8]

Initially, Taylor told investors that FFCF would be partnering with particular European banks or other well-known financial institutions for this investment. In the end, however, the

[6] This table reflects investment funds sent to Ascendus; it does not reflect funds withdrawn by these investors.
[7] Under his sub-advisor agreement, Taylor was to receive 66% of the management fees generated by Summit on funds Taylor raised from investors the first year. The fee dropped to 50% for monies collected in subsequent years.
[8] In reality, the actual amount of funds transferred to FFCF was substantially lower because the investment balances at Penson were lower than was being reported to investors. This is discussed later in this report.

investor funds were sent to LBS. Taylor, Smith, and others were paid commissions by Roylance and Summit Capital for the funds they gathered and sent to LBS. LBS invested the investor monies with a factoring company called GJB Enterprises ("GJB"). GJB reported high returns to LBS, which reported high returns to FFCF, which reported high returns to investors. However, GJB was itself a Ponzi scheme, which collapsed in late 2009.[9]

Appointment of the Receiver

In 2008, one of the FFCF investors filed suit against Ascendus, FFCF, Taylor, and Smith. *A. David Barnes, M.D., P.C. v. FFCF Investors, LLC et al.*, Case No. 08922273 (Third District Court, Utah). One of the remedies sought was the appointment of a receiver. On March 18, 2009, Third District Judge Denise P. Lindberg entered an order ("Order") appointing me as Receiver over Ascendus, FFCF, and Smith Holdings, LLC ("Smith Holdings").

Under the terms of the Order, I am authorized to investigate the affairs of the Receivership Entities, to marshal and safeguard their assets, and to institute legal proceedings for the benefit of the Receivership Entities against individuals or entities believed to have wrongfully or improperly received funds or other proceeds from the Receivership Entities.

As Receiver, I have obtained possession of business and banking records of the Receivership Entities. The business records have been analyzed. My office has performed a forensic accounting of the banking records to reconstruct records showing the financial activities of the Receivership Entities. This forensic reconstruction has enabled us, with a relatively high level of certainty, to determine: a) who provided funds to the Receivership Entities, b) the purposes of those payments, c) who was paid funds by the Receivership Entities, d) the reasons for those payments, and e) the relationships between the payors, recipients of funds, and the promoters.

[9] See www.fedreceiver.com/case_summary.html?15 .

As Receiver, I qualify as custodian of records for the Receivership Entities and I am competent to testify about its business operations. The opinions and analysis contained in this report consist in large part of a summary of voluminous documents and bank records I have reviewed as Receiver.

ASCENDUS AS A PONZI SCHEME

As described in the introduction, Ascendus accepted and pooled funds from some investors for participation in AGF. However, Ascendus retained significant portions of the funds sent to it by investors, instead of sending these funds to Penson for trading. This is summarized in the following table and described in more detail below.

Year	**Investors to Ascendus**	**Ascendus to Penson**	**Retained by Ascendus**
2003	$145,200.00	$118,800.00	$26,400.00
2004	$299,365.47	$211,613.88	$87,751.59
2005	$572,118.49	$0.00	$572,118.49
2006	$10,000.00	$0.00	$10,000.00
2007	$45,000.00	$0.00	$45,000.00
Totals	***$1,071,683.96***	***$330,413.88***	***$141,270.08***

2003 Ponzi Transactions

During 2003, investors sent $145,200.00 to Ascendus for inclusion in AGF.[10] Ascendus sent $118,800.00 of this to Penson. This means that $26,400.00 of the funds sent by investors to Ascendus was never sent to Penson. Instead, these funds were used to make payments to insiders, pay expenses of the business, and make distribution payments to other investors.

Moreover, of the $118,800.00 that Ascendus sent to Penson, $43,397.12 was withdrawn. These withdrawals were used to fund operating expenses of Ascendus, payments to insiders, and to fund a principal withdrawal payment to another investor – an investor who had put no money

[10] $20,000.00 of this amount was withdrawn by an AGF investor during 2003, leaving a net investment inflow of $125,200.

into AGF. That means that only $75,402.88 of the money sent to Penson during 2003 was left in the AGF account at Penson. In the meanwhile, Ascendus still owed the investors $125,200.00 plus the profits that Ascendus told them had been earned on their investments.

It is clear that the $43,397.12 withdrawn from the Penson account was not derived from earnings in the account.[11] The December 31, 2003 value of the AGF account was $90,126.92. When this amount is compared to the $75,402.88 of net payments from AGF to Penson, it is apparent that the $43,397.12 in withdrawals did not come from profits, but mostly represented withdrawals of principal.[12]

This information is summarized in the following tables:

AGF money sent to Penson	$118,800.00
Withdrawn from Penson	-$43,397.12
Net sent to Penson	$75,402.88
2003 investment gains	$12,755.85
12/31/03 Penson balance	$90,126.92

Net investor money to Ascendus	$125,200.00
Net amount sent to Penson	-$75,402.88
Amount owed investors but not reflected in Penson account[13]	$49,797.12

During 2003, there were two distribution payments to investors. Neither was funded (or could have been funded) by profits earned from monies provided by those investors.

1. On September 2, 2003, the $20,000.00 investment made by John Grobben on May 6, 2003 was refunded. However, this money was not taken out of the AGF account at

[11]Courts have defined this conduct as being one of the hallmarks of a Ponzi scheme: "In general, Ponzi schemes collapse on themselves because the returns paid to investors are not based on returns from the underlying business venture but from the principal of other investors." *In re Hedged-Investment Associates, Inc.*, 48 F.3d 470, 471 n.2 (10th Cir. 1995).

[12] The AGF account earned $12,755.85 during 2003. There were some other transactions in the account not relating to investor funds (primarily sales of Whole Living stock) that account for the remainder of the difference between the net payments to Penson and the end of year value of the account.

[13] This is also an indicator of insolvency, which is discussed below.

Penson. Instead, this capital return was funded by a $20,000.00 investment made by Janalyn Memmott on August 22, 2003. Before Memmott's deposit, the Ascendus bank account had a balance of ($587.16). Between Memmott's deposit and the payment to Grobben, $2,000.00 was withdrawn from the Penson account. Another $2,318.71 was deposited into the Ascendus account (commissions paid by other investors). Combined, the deposits from Penson and from investor commissions were less than a fourth of the amount needed to fund the investment return to Grobben. As a result, the payment from Grobben could have been funded only from the investment deposit of Memmott.

2. On December 5, 2003, a $34,000.00 payment was made to investor Kelly Cook. Cook was an investor who had an individual account at Penson. Cook sent no money to AGF. Nevertheless, Ascendus paid $34,000.00 to Cook from investor funds in AGF. This payment was funded by a December 1, 2003 withdrawal from the AGF account at Penson. In other words, Ascendus used monies from AGF investors to make a distribution payment to Cook.

<u>2004 Ponzi Transactions</u>

During 2004, investors sent $299,365.47 to Ascendus for investment. Ascendus sent a large part of this to Penson – at least temporarily. $211,613.88 was sent by Ascendus to Penson during 2004. This means that Ascendus retained $87,751.59. This is money belonging to investors that was not put to the use promised – and the liability to investors remained.[14]

However, Ascendus withdrew almost as much from the AGF account as it deposited. During 2004, Ascendus withdrew $202,621.45 from the AGF account. In order to know whether this was a removal of principal or a return of profits, we must look to see how much the

[14] This contributed to the insolvency of Ascendus, which is discussed in a later section of this report.

account earned in profits during 2004. In fact, the brokerage account lost money – $9,391.57.[15] The year-end value of the brokerage account was $76,692.84.

During the year, Ascendus paid out $220,357.30 in six payments to five investors. Clearly these payments did not come from profits. To the extent payments were made to investors who had not sent money to AGF, those payments were made with funds from AGF investors – in other words, they were Ponzi payments:[16] Three of the payments were possible only because Ascendus withdrew money from the AGF account at Penson to fund the payments:

1. On June 2, 2004, Ascendus paid $100,000.00 to Kathryn Rowley. The day before, June 1, the Ascendus bank account started with $56,783.52. Ascendus withdrew $75,000.00 from its AGF account, depositing the funds in the Ascendus bank account. With this deposit, Ascendus was able to make the payment to Rowley. In other words, the payment to Rowley would not have been possible without the withdrawal from the AGF account. Moreover, Rowley had put no money into AGF. This means that the distribution payment to Rowley could have come only from investment funds belonging to other (AGF) investors.

2. On July 1, 2004, Ascendus made another distribution payment to Rowley in the amount of $42,156.77. The prior day, Ascendus withdrew $42,000.00 from the AGF account at Penson. Before this deposit, the Ascendus bank account had a balance of $22,460.29 – not enough to make the payment to Rowley. Again, the payment to Rowley could have been made only with funds taken from other investors.

3. On November 30, 2004, Ascendus paid $67,385.00 to Benjamin Card. Card was

[15] In the meantime, investors were sent monthly account statements reporting profits every single month. The investors paid commissions to Ascendus based on those profits.

[16] In theory, distributions to investors could have come from income that Ascendus had earned from other legitimate sources. However, since the investor accounts lost money during 2004, none of the investors owed any commissions to Ascendus. While commissions were paid to Ascendus, they were collected on false pretenses and were not legitimately obtained or retained by Ascendus.

an investor who had an individual account at Penson; Card had not sent any money directly to Ascendus and none of his money was in AGF. Nevertheless, Ascendus used AGF money to make this distribution payment to Card. At the beginning of the day, the Ascendus bank account had a balance of $16,939.85. Ascendus withdrew $66,000.00 from the AGF account and deposited it into the Ascendus bank account. A check for $67,385.00 was then written on this bank account to Card. This check cleared only because Ascendus took money from AGF investors to pay Card.

2005 Ponzi Transactions

During 2005, investors sent $572,118.49 to Ascendus for participation in AGF.[17] None of this money was sent to Penson. All this money was used for payments to insiders, business expenses, and to make distribution payments to other investors. Funds from some of these investors were paid to other investors.

1. On September 16, 2005, Ascendus withdrew $50,000.00 from its AGF account at Penson. The next business day (Monday, September 19, 2005), Ascendus wired $50,000.00 to Elliott Packer, an investor who had an individual trading account at Penson.[18] None of his funds had been sent to the AGF account maintained by Ascendus.

2. On November 7, 2005, the Ascendus bank account had a balance of $44,916.06.

a. Between November 7, 2005 and December 8, 2005, there were deposits of $299,754.82 into this account from three types of depositors: $4,911.72 from a technology company, $19,343.10 as commission payments from existing investors, and a $275,000.00 investment from Mike Usher, a new investor.

[17] An additional $150,000.00 was sent to Ascendus by Kathryn Rowley in December 2005 for participation in FFCF.

[18] Packer is one of a group of investors who recognized that the Ascendus accounts statements were false and demanded that Ascendus compensate them for the losses in their Penson accounts. Ascendus made payments to several of these investors totaling $5,815.53 in 2004, and $115,109.64 in 2005.

b. During this same time period, there were eight distribution payments to investors totaling $210,798.85.[19]

c. These distribution payments could not have been made from existing funds of the company. Combining the existing funds of the company with new deposits from commission payments and the technology company would have yielded an account balance of only $69,170.88, still not enough to fund the payments to investors. The only way these payments could have been made to investors was by using new investor funds from Mike Usher.[20]

2006 Ponzi Transactions

As noted earlier, at the end of 2005, Taylor and Smith told investors that Ascendus was terminating its options trading program. Investors with individual investment accounts at Penson were encouraged to move their money from Penson[21] to FFCF.[22] Notwithstanding that the options trading program concluded in January 2006, the AGF account remained open, albeit inactive, until July 2006.[23]

Funds from Investors in FFCF Were Used to Pay Ascendus Investors

Some of the money that FFCF received from investors in early 2006 was paid to Ascendus, where it was used to make payments to Ascendus investors, for business expenses, and for payments to insiders. Ponzi payments to these Ascendus investors are listed in the table

[19] Six of these were payments directly to investors. Two were deposits into the individual Penson of a non-AGF investor.
[20] As noted earlier, none of the funds received by Ascendus from investors during 2005 were sent to Penson for investment.
[21] In many instances, investor funds were moved directly from Penson to FFCF or to another bank account controlled by Smith or Taylor.
[22] The FFCF bank account was opened on February 15, 2006. A number of investors transferred their money to the control of FFCF before this account was opened. In most instances, the funds were sent to Consilium, Inc., a company controlled by Smith. After the FFCF bank account was opened, the funds were transferred from Consilium to FFCF.
[23] The $39,237.81 balance in the AGF account was withdrawn in July 2006 and sent to Ascendus, where it was used for business operations. None of this was sent to investors, despite owing $843,811.96 in net principal to AGF investors (plus promised profits).

below. These payments would not have cleared but for the transfer of the investor funds from FFCF to Ascendus:

1. On March 1, 2006, Ascendus received $84,566.90 from FFCF.[24] This money was used to make Ponzi payments to other investors for Ascendus liabilities:

Date	Amount	Investor
3/6/06	$6,000.00	James, David
3/8/06	$1,838.42	Kelly Cook
3/9/06	$3,161.58	Alex Bankhead
3/14/06	$4,611.15	Kathryn Rowley
3/23/06	$38,110.21	Tripod Holdings
Total	***$53,721.36***	

2. FFCF sent another $50,000.00 to Ascendus on April 10, 2006. Again, these funds came from FFCF investors. On April 18, 2006, Ascendus paid $3,326.30 to investor Rodney Hulse. Before this payment was made, the bank account balance was $48,170.93. But for the $50,000.00 FFCF deposit, the account would not have had sufficient funds to clear this check.

3. On May 8, 2006, FFCF sent another $50,000.00 to Ascendus. Some of this money was used to make payments to other investors as follows:

Date	Amount	Investor
5/8/06	$16,557.21	Annette Kay Donnell
5/9/06	$1,228.00	Al Wirth
5/9/06	$710.25	Alex Bankhead
5/9/06	$4,424.25	Doug Osburn
5/10/06	$29,000.00	David James
5/15/06	$4,769.60	Kathryn Rowley
Total	***$56,689.31***	

4. On May 18, 2006, FFCF sent a $50,000.00 payment to Ascendus. This was used

[24] FFCF's only source of revenue at this time was funds paid to it by investors. Before this deposit, the Ascendus bank account had a balance of $15,054.66.

to fund a $51,000.00 distribution to AGF investor Gerald Millard on May 22, 2006. The payment to Millard would not have cleared but for the infusion from FFCF.

5. FFCF had sent a deposit of $41,200.00 to Ascendus on May 16, 2006. By May 25, 2006, the Ascendus bank account had dropped below $40,000.00, meaning that payments after that time could have cleared only because of the funds from FFCF. Payments that went to investors after this date – that could have been funded only with investor funds from FFCF[25] – included:

Date	**Amount**	**Investor**
6/7/06	$3,981.75	Doug Osburn
6/13/06	$750.00	Annette Kay Donnell
6/15/06	$915.82	Steven James
6/16/06	$10,000.00	John Grobben
Total	***$15,647.57***	

6. Ascendus received a $30,000.00 deposit from FFCF on June 21, 2006. The Ascendus bank account fell below $30,000.00 on June 23, 2006, meaning all payments after that date could have been funded only with the FFCF monies. Payments to investors after that date, that could have cleared only because of the FFCF monies, were:

Date	**Amount**	**Investor**
6/23/06	$7,000.00	Aaron Smith
6/11/06	$4,122.00	Doug Osburn
Total	$11,122.00	

7. On July 11, 2006, Ascendus withdrew the remaining funds from its AGF account at Penson. This $39,237.82 was deposited into the Ascendus bank account. These funds, along with the amounts remaining from the June 21, 2006 FFCF deposit, were used to make payments to the following investors:

[25] There were no intervening deposits during the time period of the payments described below.

Date	Amount	Investor
7/14/06	$1,065.56	Steven James
7/17/06	$25,000.00	Mike Usher
7/18/06	$2,231.35	Roy Molina
7/19/06	$4,272.31	Kathryn Rowley
7/31/06	$6,272.03	Rod Hulse
Total	***$38,841.25***	

8. FFCF sent another $15,000.00 to Ascendus on August 1 and 4, 2006. These funds were necessary to fund all expenditures of Ascendus after August 7. Much of this money was used to make payments to investors:

Date	Amount	Investor
8/7/06	$3,917.27	Doug Osburn
8/8/06	$5,072.31	Kathryn Rowley
Total	***$8,989.58***	

9. On August 10, 2006, $20,000.00 from FFCF was deposited into the Ascendus bank account. Some of these funds were used to make payments to the following investors:

Date	Amount	Investor
8/10/06	$6,203.23	Lighted Candle Society
8/10/06	$1,710.22	Mike Usher
Total	***$7,913.45***	

10. By August 31, 2006, the Ascendus bank account was overdrawn. FFCF sent $10,000.00 to Ascendus on September 6, 2006, $18,035.16 on September 12, 2006, and $11,500.00 on September 19. Some of these funds were used to make payments to Ascendus investors as follows:

Date	Amount	Investor
9/12/06	$4,267.29	Doug Osburn
9/13/06	$4,284.32	Kathryn Rowley
9/27/06	$15,710.22	Mike Usher
Total	***$24,261.83***	

11. Another $20,000.00 was deposited into Ascendus on October 4, 2006 from FFCF. Some of these funds were used to make payments to the following investors:

Date	Amount	Investor
10/6/06	$4,000.00	Aaron Smith
10/12/06	$4,353.22	Doug Osburn
Total	***$8,353.22***	

12. FFCF sent another $37,000.00 to Ascendus on October 17, 2006. From this deposit, $12,456.12 was paid to investor Alex Bankhead.

13. FFCF sent $20,000 to Ascendus on November 2, 2006. These funds were used to make the following payments to investors:

Date	Amount	Investor
11/8/06	$2,651.41	Roy Molina
11/8/06	$4,781.00	Aaron Smith
Total	***$7,432.41***	

14. $20,000.00 was deposited into the Ascendus account from FFCF on November 14, 2006. The bank balance before this deposit was $3,400.75. The FFCF funds were necessary to pay $8,384.11 to Kathryn Rowley on November 15, 2006.[26]

15. On December 11 and 22, 2006, an additional $30,000.00 was deposited into Ascendus from FFCF. These funds were used to make the following payments to investors:

Date	Amount	Investor
12/11/06	$5,727.00	Doug Osburn
12/26/06	$4,584.22	Kathryn Rowley
1/3/07	$4,877.00	Lighted Candle Society
Total	***$15,188.22***	

[26] As an example of how these investor funds were also used for personal expenses, $3,781.48 of the money deposited from FFCF was used by Richard Smith to purchase a Christmas gift for his wife.

2007 Ponzi Transactions

During 2007, Ascendus continued to take funds from FFCF and use them to make payments to investors.

1. On January 10, 2007, FFCF sent $10,000.00 to Ascendus. These funds were used to make the following payments to investors:

Date	**Amount**	**Investor**
1/10/07	$5,475.00	Doug Osburn
1/25/07	$1,022.17	Mike Usher
Total	***$6,497.17***	

2. $20,000.00 was transferred from FFCF to Ascendus on February 2, 2007. This was used to pay $8,712.22 to Steven James on February 5, 2007.

3. $10,000.00 was transferred from FFCF to Ascendus on February 13, 2007. This was used to pay $5,275.00 to Doug Osburn on February 13, 2007.

4. $25,000.00 was transferred from FFCF to Ascendus on March 22, 2007. This was used to pay $5,000.00 to investor Jamey West on March 28, 2007.

5. $13,000.00 was transferred from FFCF to Ascendus on May 16, 2007. This was used to pay $5,984.22 to Kathryn Rowley on May 22, 2007.

On June 27, 2007, John Grobben invested $25,000.00. This money was deposited into the Ascendus bank account. The same day, $25,000.00 was paid by Ascendus to Stan Petersen, an AGF investor.

PONZI TRANSACTIONS BY FFCF

Summary of Investor Funds sent to FFCF

FFCF began operations in early 2006. In December 2005, Taylor and Smith began soliciting Ascendus investors to move their funds from Penson to FFCF. One investor sent funds in December 2005. The other Ascendus investors moved funds to FFCF beginning in February 2006.[27] The FFCF bank account was opened on February 15, 2006. Over the next several months, as funds were received from investors, most – but not all – of the investor funds were forwarded to LBS for investment.

Time Period	**Funds from Investors**	**Amount sent to LBS**	**Amount Retained**	**Cumulative Amt. Retained**
2/17/06 – 2/21/06	$5,778,865.13[28]	$5,100,000.00	$678,865.13	$678,865.13
2/22/06 – 2/24/06	$1,290,034.12	$1,200,000.00	$90,034.12	$768,899.25
2/28/06 – 3/1/06	$465,700.65	$1,100,000.00	-$634,299.35	$134,599.90
3/2/06 – 3/29/06	$351,350.21	$0.00	$351,350.21	$485,950.11
5/17/06	$98,000.00	$0.00	$98,000.00	$583,950.11
6/2/06 – 6/7/06	$200,000.00	$197,550.00	$2,450.00	$586,400.11
7/14/06 – 7/20/06	$401,000.00	$0.00	$401,000.00	$987,400.11
11/1/06 – 11/22/06	$647,329.93	$430,000.00	$217,329.93	$1,204,730.04
3/16/07 – 3/19/07	$432,309.76	$0.00	$432,309.76	$1,637,039.80
4/25/07 – 4/26/07	$300,000.00	$0.00	$300,000.00	$1,937,039.80
7/11/07	$300,000.00	$0.00	$300,000.00	$2,237,039.80
11/16/07	$100,000.00	$0.00	$100,000.00	$2,337,039.80
4/4/08	$55,000.00	$0.00	$55,000.00	$2,392,039.80
Totals	***$10,419,589.80***	**$8,027,550.00**	***$2,392,039.80***	

2006 Ponzi Transactions

As shown in this table and discussed above, significant amounts that investors sent to FFCF for investment were not sent to LBS. Instead, the money was diverted by FFCF and paid to Ascendus, where much of the FFCF money was used to make payments to Ascendus investors.

Fifteen Ascendus investors sent money to FFCF between December 2005 and February 2006 to participate in the LBS investment program.[29] Seven more Ascendus and AGF investors

[27] Fourteen investors sent funds to FFCF in February. One additional investor sent money to FFCF in November 2006. By June 2006, other investors – who had not participated in Ascendus – began sending funds to FFCF.
[28] There was $5,978,865.13 deposited into the FFCF bank account during this period. However, $200,000.00 of this was charged back on February 27, 2006.
[29] Two other investors were given credits for account balances at LBS, but no funds were paid from them to FFCF. In both cases, these investors were told that their account values from AGF were being transferred to LBS. In

sent money to FFCF between March 2006 and November 2007 for inclusion in the LBS program. While most of these investors agreed to let their profits accumulate at LBS, some investors instructed FFCF to make regular distributions to them. The funds used to make these distributions were from: a) initial investor deposits delivered to FFCF that were never sent to LBS (summarized in the table above), b) new investor deposits sent to FFCF that were not forwarded to LBS, c) withdrawals of supposed profits from LBS, and d) withdrawals of principal from LBS.

Examples of the substantial amounts of investor funds that were retained by FFCF and used to make payments to other investors include:

Date	**Amount**	**Investor**
4/11/06	$210,000.00	Brad Holmes[30]
4/19/06	$21,765.27	RC Troy
4/27/06	$29,270.00	Al Wirth
5/1/06	$9,686.14	Robert Workman
Total	***$270,721.41***	

Withdrawals from LBS

By July 2005, FFCF was already withdrawing funds previously sent to LBS Advisors. This money was used to pay insiders, for business expenses, and to make payments to investors. On July 20, 2006, FFCF withdrew $131,607.31[31] from LBS. This money, along with initial investment funds retained by FFCF, were used to make the following payments to investors:

reality, no funds were transferred and the total account value of AGF was less than a fourth of the amount of credit given these two investors.

[30] This was a distribution based on a $170,000.00 investment Holmes made in AGF. Because Holmes had received $40,000.00 more than his investment and because his investments did not earn $40,000.00 in profits, this excess amount could have been paid only with funds taken from other investors.

[31] The LBS fund indicated that this amount represented earnings from May 15, 2006 to June 30, 2006.

Date	Amount	Investor
7/21/06	$27,159.71	Robert Workman
7/21/06	$27,159.71	Doug Anderson
7/21/06	$47,259.71	Annette Kay Donnell
7/21/06	$101,159.71	Al Wirth[32]
7/27/06	$2,000.00	David Young
7/31/06	$22,000.00	Sharon Wilcox
8/10/06	$22,210.00	Wayne Mortensen
8/21/06	$20,000.00	Steven James
9/1/06	$6,000.00	Aaron Smith
Total	***$274,948.84***	

On October 6, 2006, FFCF withdrew another $177,230.94[33] from the investment account at LBS. This withdrawal was used to send money to Ascendus (to make the investor payments described above) and to make payments to FFCF investors. Payments to FFCF investors were:

Date	Amount	Investor
10/17/06	$20,000.00	Annette Kay Donnell
10/18/06	$28,450.00	Doug Anderson
10/18/06	$41,221.30	Robert Workman
10/24/06	$24,622.00	Sharon Wilcox
10/30/06	$20,000.00	Al Wirth
Total	***$134,293.30***	

With this payment to Wirth, the FFCF bank account balance was $66.05.

2007 Ponzi Transactions

On January 12 and 18, 2007, FFCF withdrew $375,000.00 from the investment account at LBS. Records at LBS recorded these as capital withdrawals. This money was used to make payments to FFCF investors. Payments to FFCF investors were:

[32] The amounts of the four payments made on July 21, 2006 provide separate evidence of the Ponzi scheme. These four investors (Workman, Anderson, Donnell, and Wirth) all had different principal investment amounts at FFCF. Despite these differences, the exact same amount was paid to Workman and Anderson. Moreover, the payments to all four had the identical last four digits of the payment amounts. This indicates that the amounts reported and paid to investors were based on fictitious account statements, not based on actual trading.

[33] LBS reported to FFCF that these were earnings in August and September.

Date	Amount	Investor
1/16/07	$5,000.00	Jamey West
1/16/07	$25,095.00	Sharon Wilcox
1/18/07	$4,122.00	Rod Hulse
1/18/07	$30,000.00	Annette Kay Donnell
1/18/07	$78,500.00	Al Wirth
1/26/07	$275,000.00	Robert Workman
1/30/07	$22,462.00	Doug Anderson
Total	***$440,179.00***	

During February 2007, FFCF withdrew $746,279.41 from the investment account at LBS. Records at LBS recorded $651,151.32 as capital withdrawals and $95,128.09 as interest. This money was used to make payments to the following FFCF investors:

Date	Amount	Investor
2/2/07	$2,821.00	Roy Molina
2/5/07	$150,000.00	Robert Workman
2/12/07	$7,500.00	Vince Frates[34]
2/12/07	$20,000.00	Mike Usher[35]
2/12/07	$195,165.18	RC Troy
2/12/07	$125,000.00	Robert Workman
2/20/07	$8,031.66	Sharon Wilcox
2/22/07	$480.34	Sharon Wilcox
2/22/07	$6,000.00	Stan Hulse
Total	***$514,998.18***	

<u>Payment to Investor Robert Workman</u> During March 2007, FFCF withdrew $302,348.76 from the investment account at LBS. Records at LBS recorded $200,000.00 of this as a capital withdrawal and $102,348.76 as interest. This money was used to pay $517,652.96 to Robert Workman on March 14, 2007.[36] After the payment to Workman, the FFCF bank account had a balance of only $757.49.

This payment to Workman is direct evidence of the FFCF Ponzi in operation. This

[34] Frates was an Ascendus investor who filed suit against Taylor and Ascendus. This was one many payments made to settle that lawsuit.
[35] Usher was an AGF investor.
[36] This is in addition to the payments to Workman listed in the tables above.

payment resulted in Workman receiving substantially more in distributions than he had invested.

Robert Workman Transactions	Amount
Amount Sent to FFCF for Investment	$720,336.94
Amount of Withdrawals	$1,145,420.11
Total Amount Overpaid	***$425,083.17***

While the "overpaid" amount was reported to Workman as profits, the profits were illusory – existing only on the fictitious account statements sent to Workman. The bulk of this overpaid amount – $279,663.06 – represents profits that Ascendus had told Workman had been earned in his investment account at Penson and carried over into FFCF. The remaining amount represents profits supposedly earned at LBS. In reality, Workman's account at Penson lost money and there were no profits at LBS. The withdrawals from LBS to pay Workman exhausted Workman's principal investment amount and took $425,083.17 from investment principal of other investors.[37]

Additional Ponzi Payments On March 16, 2007, Earl Knight sent $332,309.76 to FFCF for investment in LBS. Three days later, investor Sharon Wilcox sent an additional $100,000.00 to invest. Before these deposits, the FFCF bank account balance was $757.49. None of this money was sent to LBS for investment. Instead it was used for the operation of FFCF and Ascendus and to make distribution payments to other investors. The payments to other investors were:

Date	Amount	Investor
3/21/07	$71,662.36	David Young
3/21/07	$200,000.00	Rod Hulse
3/28/07	$160,000.00	Rod Hulse[38]
Total	***$431,662.36***	

[37] Other instances of investors being overpaid are discussed in a subsequent section of this report.
[38] After this payment to Rod Hulse, the FFCF bank account balance was down to $844.89.

On April 9, 2007, FFCF withdrew another $83,297.14 from the LBS account.[39] On April 11, 2007, FFCF sent $40,000.00 as a distribution payment to Vince Frates. The payment to Frates would not have cleared but for the withdrawal of funds from the LBS account. Frates had been an investor in Ascendus, but had sent no funds to FFCF and none of the funds sent to him were his own funds. The balance of the LBS withdrawal was used to partially fund an April 18, 2007 distribution payment of $56,130.70 to Richard Young.

On April 26, 2007, the FFCF bank account had a balance of $2,971.33 when investor Galen Nelson sent $200,000.00 to FFCF. The next day, this exact amount was wired to investor Richard Young; none of the funds went to LBS. The payment to Richard Young could not have been made except from funds provided by Nelson.

Transfer of LBS Interests to Investor Al Wirth When FFCF began operations in early 2006, Taylor and Smith told Al Wirth that his investment account at Penson had grown to $3,675,466.43 in value. Taylor and Smith told Wirth that this was his opening account balance at FFCF and Taylor and Smith managed to get Penson to transfer the funds in Wirth's account at Penson directly to FFCF. However, the actual value of Wirth's account at Penson at the time of the transfer was only $1,849,596.71. The difference of $1,825,869.72 is a fiction that Taylor and Smith created at the time of FFCF's formation and maintained during FFCF's existence. In fact, the size of this illusory profit continued to increase while Wirth's funds were invested through FFCF.

On April 16, 2007, FFCF told Wirth that the value of his accounts at LBS was $3,855,027.25. At Wirth's insistence, FFCF instructed LBS to transfer this amount from FFCF's account at LBS to a separate account in the name of and controlled by Wirth.

At this point in time, FFCF had told investors that the principal value of their

[39] This is the amount of earnings that LBS reported to FFCF for March.

investments at FFCF was more than $16 million (not including profits that had accrued since February 2006). However, the value of FFCF's account at LBS was much lower due to several factors:

- FFCF had actually received only $10.8 million from investors,
- Only a portion of the money that FFCF received from investors was sent to LBS, and
- FFCF had withdrawn substantial amounts from LBS for personal uses and to make distributions. The effects of these factors are shown in the table below:[40]

Account values reported to investors	$15,772,551.71
Amount actually received from investors	$10,377,572.22
Amount FFCF sent to LBS	$8,027,550.00
Withdrawals from LBS in excess of earnings[41]	-$1,045,673.24
LBS value before Wirth transfer[42]	$6,981,876.76
Wirth transfer	$3,855,027.25
Net reported value of FFCF investment	$3,126,849.51

However, all of the other investors were still being told that their investments, valued at over $11.9 million (the total values reported to investors less the Wirth transfer), were still intact at LBS – and growing. What had started in February 2006 as a $5.4 million difference between what investors *expected* and what FFCF *actually* owned had now become an $8.8 million difference. To make matters worse, because the size of the investment pool had shrunk so much, FFCF was earning even less revenue. Notwithstanding this large discrepancy, FFCF continued to report to investors that their funds were intact and were earning high profits. And, FFCF kept using investor funds to make payments to other investors.

The table at Attachment #3 shows the extent of the differences between the amount that

[40] This is as of April 16, 2007.
[41] These withdrawals came from principal.
[42] This amount is taken from the LBS account statement.

Ascendus told investors to *expect* their account values to be and the amount that was *actually* sent to FFCF on behalf of these investors (as of February 2006).

Continuing Ponzi Payments   On June 4, 2007, FFCF's bank balance was down to $3,159.71. FFCF withdrew $37,179.53 from LBS – representing interest that LBS said had been earned. The LBS funds were used by Taylor and Smith for other business ventures and to make payments to the following investors:

Date	**Amount**	**Investor**
6/15/07	$9,511.71	Sharon Wilcox
6/15/07	$8,500.00	Vince Frates[43]
6/15/07	$2,999.80	Galen Nelson
6/18/07	$4,100.00	Doug Osburn
6/21/07	$5,000.00	Jamey West[44]
Total	***$30,111.57***	

On July 11, 2007, two investors sent an additional $300,000.00 to FFCF. None of this money was sent to LBS. Instead, it was used to make a $300,000.00 distribution payment to investor Richard Young on July 17, 2007.

On July 11, 2007, FFCF also withdrew $35,980.19 from LBS. This money was used to make payments to the following investors:

Date	**Amount**	**Investor**
7/17/07	$9,511.71	Sharon Wilcox
7/17/07	$2,999.80	Galen Nelson
7/18/07	$4,300.00	Doug Osburn
7/19/07	$5,000.00	Jamey West
7/23/07	$5,000.00	David Young
Total	***$26,811.51***	

Transfer of LBS Interests to Richard Young   On July 31, 2007, Richard Young requested that his interests in the LBS fund be segregated from the balance of the FFCF funds at

[43] As noted earlier, Frates was not an investor with FFCF.
[44] This payment reduced the FFCF bank account balance to $652.73.

LBS. Taylor agreed to transfer to Young the full amount reflected on account statements that FFCF had sent to Young.[45] The effect of this transfer was to decimate the remaining balance of the FFCF account at LBS.

LBS value before Young transfer	$3,126,849.51
Young transfer	-$1,545,000.00
Net reported value of FFCF investment[46]	***$1,581,849.51***

As had been the case with Al Wirth, even after this transfer, FFCF continued to report to investors that their investment funds were intact – and growing. With this transfer to Young, the investors other than Wirth and Young were being told that their investment principal was a combined $10.4 million. However, FFCF had only $1.5 million left in its investment account at LBS – only 14.4% of the amount being reported to investors. And even this amount was soon dissipated.

Continuing Ponzi Transactions On August 15, 2007, FFCF received a $18,808.84 interest distribution from LBS. Before this withdrawal, the FFCF bank account had a balance of $1,016.84. This money was used to make distribution payments to the following investors:

Date	Amount	Investor
8/15/07	$9,511.71	Sharon Wilcox
8/15/07	$2,999.80	Galen Nelson
8/23/07	$5,000.00	Jamey West
Total	***$17,511.51***	

On November 8, 2007, FFCF received a distribution from LBS in the amount of $18,808.84. The balance before this deposit was $282.13. This money was used to make

[45] Because this represented almost half of the LBS balance, I believe Taylor agreed to this transfer to avoid having the Ponzi scheme exposed.
[46] The July 31, 2007 account statement from LBS to FFCF reported this amount as $1,681,849.51 in one location and $1,581,849.52 in another spot. The discrepancy between the number in the table above and the LBS statement is due to a mathematical error by LBS, not additional funds sent to LBS by FFCF. This error was corrected in the August 31, 2007 account statement from LBS.

payments to the following investors:

Date	Amount	Investor
11/15/07	$9,511.71	Sharon Wilcox
11/15/07	$2,999.80	Galen Nelson
11/28/07	$5,000.00	Jamey West
Total	***$17,511.51***	

On December 10, 2007, FFCF took an $18,202.10 interest distribution from LBS. This was used to make distribution payments to the following investors:

Date	Amount	Investor
12/18/07	$9,510.27	Sharon Wilcox
12/18/07	$5,000.00	Jamey West
12/18/07	$2,999.80	Galen Nelson
Total	***$17,510.07***	

Liquidation of LBS Account On December 24, 2007, $1,500,000.00 was withdrawn from the FFCF account at LBS, leaving a balance of $81,849.51.[47] This $1.5 million was transferred to Taylor Holdings, LLC, a company controlled by Roger Taylor. Taylor retained $100,000.00 and then transferred $1.4 million to the bank account of FFCF.

2008 Ponzi Transactions

Final Ponzi Payments Before the $1.4 million transfer to FFCF, the FFCF bank account had a balance of $4,917.49. The $1.4 million, along with $14,206.10 in interest from LBS, was used to make the following distribution payments to investors:

[47] On August 1, 2008, Taylor withdrew this final amount, using $80,000.00 to hire a defense attorney in California.

Date	Amount	Investor
1/9/08	$843,777.31	JS Geldt, LLC[48]
1/9/08	$85,000.00	Lighted Candle Society
1/9/08	$124,035.11	Bary Jones
1/10/08	$55,000.00	Lane Bailey
1/15/08	$30,000.00	Annette Kay Donnell
1/15/08	$9,510.27	Sharon Wilcox
1/15/08	$4,300.00	Douglas Osburn
1/15/08	$2,999.80	Galen Nelson
1/15/08	$5,000.00	Jamey West
1/18/08	$18,000.00	Alex Bankhead
1/18/08	$3,600.00	Roy Molina
1/24/08	$9,000.00	Stan Hulse
Total	***$1,190,222.49***	

While these distributions reduced FFCF's liability to its investors by approximately $1 million, the withdrawal of the majority of the funds from LBS laid bare the insolvency of FFCF and the effects of the Ponzi scheme. FFCF still owed investors $9.9 million, but had a mere $81,849.51 to cover that liability. The funds owed to these investors had been used to make payments to other investors (as well as diverted by Taylor and Smith for other purposes).

With the LBS funds depleted, Taylor and Smith had difficulty making distributions that were promised to investors. They used multiple tactics, including obtaining money from other business ventures that they were exploring,[49] giving excuses to investors as to why payments were being delayed, and soliciting additional money from investors.

On April 4, 2008, investor Brad Holmes sent an additional $55,000.00 investment to FFCF. Before receipt of his funds, FFCF had $53.31 in its bank account. None of Holmes funds were sent to LBS. A portion of his investment funds was used to make distribution payments to other investors:

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[48] JS Geldt is an Idaho hard money lender that had loaned $750,000.00 to Smith on November 6, 2007. The $750,000.00 was used to fund a $750,000.00 capital withdrawal by investor Wayne Mortensen. The $843,777.31 payment in January represented repayment of the loan, plus interest.

[49] This included $3 million from Time Warner company for a planned cable television venture. Time Warner sued Taylor, as did some other companies that provided funds for other business ventures.

Date	Amount	Investor
4/7/08	$4,700.00	Douglas Osburn
4/11/08	$7,122.17	Mike Usher
4/11/08	$2,999.80	Galen Nelson
Total	***$14,821.97***	

With the payment to Nelson, the bank balance was down to $601.56. By August, the FFCF Ponzi scheme had collapsed. On August 1, Taylor withdrew the balance of funds from LBS.[50] On August 29, 2008, FFCF closed its bank account, withdrawing its $85.02 balance.

Overpaid Investors

Another way of demonstrating the existence of a Ponzi scheme is the number of investors who received payments in excess of the principal amount of their investments. Considering that: a) the Ascendus trading did not result in profits for the investors, b) LBS was operating as a Ponzi scheme, and c) the profits reported by Ascendus, FFCF, and LBS were fictitious – meaning that none of the profits reported to investors were accurate, any payments that investors received in excess of their principal investments came from the funds invested by others. The following investors were overpaid:

ASCENDUS CAPITAL MANAGEMENT			
Investor	**Amount In[51]**	**Amount Paid**	**Overpayment**
Card, Benjamin	$0.00	$70,182.54	$70,182.54
Cook, Kelly	$160,833.24	$345,650.93	$184,817.69
Frates, Vince	$0.00	$95,357.29	$95,357.29
FUMC Trust	$0.00	$94,119.29	$94,119.29
Memmott, Janalyn	$22,200.00	$30,000.00	$7,800.00
Optimus Prime	$0.00	$13,325.48	$13,325.48
Packer, Elliott	$0.00	$165,593.66	$165,593.66
Phillips, TR	$0.00	$28,995.26	$28,995.26
Rogers, Steven	$33,672.00	$45,009.76	$11,337.76
Rowley, Kathryn	$150,000.00	$384,205.88	$234,205.88
Smith, Aaron	$20,000.00	$23,781.00	$3,781.00
Total	***$386,705.24***	***$1,296,221.09***	***$909,515.85***

[50] LBS itself later collapsed as it was revealed to be a Ponzi scheme.
[51] This amount does not include payments made by the investors to Ascendus as commissions as these were not investments.

FFCF INVESTORS			
Investor	**Amount In**	**Amount Paid**	**Overpayment**
Freeland, Judy	$0.00	$5,000.00	$5,000.00
Hulse, Rod	$464,713.84	$490,664.30	$25,950.46
James, Steven	$40,679.59	$76,915.60	$36,236.01
Jones, Bary	$98,000.00	$168,640.10	$70,640.10
Osburn, Doug	$147,329.93	$215,003.01	$67,673.08
Wirth, Albert[52]	$1,852,053.38	$4,273,472.66	$2,421,419.28
Workman, Robert	$720,336.94	$1,145,720.11	$425,383.17
Yamagata, Gene	$0.00	$120,200.00	$102,200.00
Young, David	$101,685.31	$186,162.36	$84,477.05
Young, Richard	$1,719,065.42	$2,333,183.15	$614,117.73
Young, Vern	$0.00	$130,544.25	$130,544.25
Total	***$5,143,864.41***	***$9,127,505.54***	***$3,983,641.13***

Because Ascendus did not earn profits, the $909,515.41 overpaid to Ascendus investors came from the principal investment amounts of other investors. Similarly, the $3,983,641.13 overpaid to FFCF investors came from the funds of other investors.

<u>Summary of Ponzi Payments</u>

The following tables show the enormous amount of Ponzi payments made by Ascendus and FFCF.

ASCENDUS	
Year	**Total Ponzi Payments**
2003	$54,000.00
2004	$209,541.77
2005	$260,798.85
2006	$303,336.50
2007	$54,468.61
Total	***$884,145.73***

[52] The amount of net overpayment and more was lost by Wirth when the LBS fund collapsed.

FFCF	
Year	**Total Ponzi Payments**
2006	$690,963.55
2007	$8,010,106.56
2008	$1,205,044.46
Total	***$9,906,114.57***

INSOLVENCY OF ASCENDUS

Ascendus and FFCF also were insolvent during all, or almost all of their existence. Some of the insolvency was a natural outgrowth of operating a Ponzi scheme where high returns were promised and investors were paid fictitious profits. In the case of Ascendus and FFCF, however, the insolvency was exacerbated by amounts taken by insiders for their personal use and used by the insiders for other business ventures.

There are two means of demonstrating the insolvency of an entity – whether it is unable to pay its debts as they become due and whether, on an overall basis, the entity's liabilities exceed its assets. Ascendus was insolvent from its inception under both criteria.

A number of factors caused Ascendus to become insolvent:

- False account statements were sent to investors, causing Ascendus to owe more to investors than its net worth. Ascendus lacked the net assets to pay investors the amount by which the "reported" account values exceeded the "actual" account values. Attachment #2 dramatically illustrates the effect of the false account statements.
- A significant number of investors had recognized that the account statements were inaccurate and demanded refunds from Ascendus. Some filed suit or threatened to sue. For a number of these investors, Ascendus paid them the full amount of their

investment, promised profits, and/or return of commissions.[53] These were funded with funds from other investors. These payments decreased the company's capital and net worth.

- High commissions were collected that were not legitimately earned. This caused Ascendus to become liable to investors for improperly-collected commissions.

- Ascendus accepted investors into the investment program who did not meet the net worth standards required as part of Ascendus' investment advisory license. As a result, Ascendus was liable to repay all investors who did not have $750,000.00 under management by Ascendus or who did not have a net worth of more than $1.5 million. This is discussed in more detail below.

As these huge liabilities accrued, Ascendus lacked the financial capacity to satisfy these obligations. The final reckoning was delayed by using monies that investors sent to FFCF.

2003 Financial Condition

Ascendus Became Insolvent on May 16, 2003.

Ascendus opened its first bank account on May 6, 2003. By May 16, 2003, Ascendus was insolvent. The date of insolvency can be identified with precision because the company's assets and liabilities are easily identified. By May 16, Ascendus had taken $40,000.00 from investors. On May 16, Ascendus made the decision to retain $1,200.00 for its own purposes, sending $38,800.00 to Penson for the AGF investment account. This created a $1,200.00 liability to investors. The only way this liability could be offset would be from trading profits

[53] In at least one case, Taylor used FFCF monies to reimburse an investor who had lost money in an investment made through Taylor's father, Newton Taylor. In another case, Taylor was personally liable on a judgment. He transferred money from FFCF to his personal bank account and used those funds to make the settlement payments.

earned in the AGF account.[54] However, Ascendus never earned enough profits from AGF trading to cover this liability.[55] Thus, when Ascendus retained the $1,200.00 from the first investor deposits and did not have sufficient trading profit or other revenue to cover the amount retained, the company became insolvent. This is demonstrated by the data in the following table.

Date	**Cumulative Trading Profits**	**Investor Funds Retained**	**Expenses to Date**	**Net insolvency Amount**
5/16/03	$0.00	($1,200.00)	($153.18)	($1,353.18)
5/31/03	$2.16	($1,400.00)	($649.20)	($2,047.04)
6/30/03	$3,576.06	($2,377.52)	($1,948.70)	($750.16)
7/31/11	($4,791.19)	($3,920.12)	($4,873.34)	($13,584.65)
8/31/11	($2,137.52)	($25,920.12)	($12,398.21)	($40,455.85)

This insolvency trend continued each month, leading to a year-end insolvency of ($145,244.69). The year-end insolvency analysis is described below.

Expenditures Exceeded Earnings.

While Ascendus earned profits from the AGF trading in June 2003, those profits did not eliminate Ascendus' insolvency because those profits belonged to investors and because Ascendus was still expending more than it earned in profits. As a result, these expenditures could have been funded only from the investment capital of investors. The expenditures of Ascendus for 2003 are summarized in the following table:

During 2003, Ascendus expended $192,320.63[56] as follows:

[54] In theory, Ascendus could also cover this deficiency with other business revenue. However, as discussed below, the commissions that Ascendus took from investors were collected improperly and were not legitimately assets of the company.

[55] Moreover, any profits earned from AGF trading did not belong to Ascendus; those reported profits represented a liability owed to investors.

[56] This does not include $41,742.00 paid to Robert Alsop as the proceeds of the sale of Whole Living stock he delivered to Ascendus to sell for him and $118,800.00 that Ascendus sent to Penson to fund the AGF account.

Payments to insiders	$95,689.44
Profit sharing with traders	$39,830.84
Business operating expenses	$2,800.35
Payments to other investors	$54,000.00
Total	***$192,320.63***

Sources of funds available to Ascendus during 2003 were as follows:

Deposits from insiders	$150.00
Commission from sale of stock[57]	$1,303.70
Commissions from investors[58]	$152,933.47
Converted investor funds[59]	$6,400.00
Funds withdrawn from Penson[60]	$43,397.12
Total	***$204,184.29***

However, all but $1,453.00 of funds deposited into Ascendus either belonged to investors or was taken as commissions from investors using false pretenses. As such, the only way Ascendus could make $39,830.84 in payments to traders, send $54,000.00 in distributions to investors, pay themselves $95,689.44, or even cover operating expenses was by either using funds that belonged to investors or taking commissions from investors based on false reports of profits.

Commissions Were Collected Illegally

Ascendus not only calculated and collected commissions incorrectly, but it failed to satisfy state and federal rules governing the charging of performance-based fees. Rule 164-2-1(D)(1)(a) under the Utah Securities Act provides that performance-based fees can be collected

[57] Ascendus agreed to sell 60,000 share of Whole Living stock for insider Robert Alsop. Ascendus retained $1,3030.70 from the proceeds of the sale.
[58] These commissions were charged to, and collected from, investors based on false reports of trading profits.
[59] During 2003, investors sent Ascendus $145,200.00 for participation in the Ascendus Growth Fund. $20,000.00 of this was returned to an investor, making a net total of $125,200.00 sent to Ascendus for investment. Ascendus only sent $118,800 of this to Penson, retaining $6,400.00 at Ascendus. This $6,400.00 is in addition to the $20,000.00 that Ascendus took from one investor to fund the return of investment to the other investor (described in the Ponzi section, above).
[60] Ascendus withdrew $43,397.12 from Penson. These funds belonged to investors, but were withdrawn and retained by Ascendus.

only from clients that have more than $750,000.00 under management by Ascendus. Of the 18 investors who had Penson accounts and the 15 investors in AGF, only six appear to have met this criterion.

Utah Rule 164-2-1(E)(1)(c) provides that no performance-based fees can be charged or collected until the account has been traded for at least one year[61] and requires that the commissions must be based on actual gains minus losses – calculated in accordance with a formula contained in the rule. Ascendus did not comply with this Rule in calculating commissions.

SEC Rule 205(b) under the Investment Advisers Act of 1940 says no performance-based fees can be collected unless the amount under management exceeds $1 million. Only four Ascendus investors met this threshold.

Because the commissions collected by Ascendus did not comply with state and federal rules governing management of investment funds, Ascendus had collected these commissions unlawfully.

Summaries of Liabilities and Assets

As noted in the Ponzi discussion above, at the end of 2003 Ascendus owed investors $60,697.12 – a liability that could not be satisfied by the $12,755.85 in earnings from the brokerage account at Penson or the $42,761.86 bank account balance.

Moreover, Ascendus' insolvency went beyond the $60,697.12 owed to investors. The types of transactions and volume of payments to insiders caused the insolvency of Ascendus to grow even larger. The extent of insolvency is shown by the following table:

[61] By the time the one-year period had expired for the first seven investors in AGF (or investors with Penson accounts), the trading conducted by Ascendus had begun losing money.

Ascendus Balance Sheet – December 31, 2003		
Assets	Bank account balance	$42,761.86
	Brokerage account balance	$90,126.92
	Total	**$132,888.78**
Liabilities	Investors in AGF (net of withdrawals)	($125,200.00)
	Improper investor commissions	($152,933.47)
	Total	**($278,133.47**
Net Total		**($145,244.69)**

Thus, by the end of 2003 – after only eight months of operations – Ascendus already had liabilities that exceeded assets by $145,244.69.

2004 Financial Condition

As noted in the Ponzi discussion above, during 2004, Ascendus retained $87,751.59 of the funds sent to it by investors. Ascendus owed this amount to investors – plus the amounts that Ascendus told the investors had been earned on their investment. However, Ascendus did not put this $87,751.59 to productive use. Instead it was spent on payments to insiders and operating expenses.

During 2004, investors paid Ascendus $810,212.81 in commissions supposedly on profits earned by these investors in their Penson accounts. However, during 2004, the trading that Ascendus conducted for investors resulted in net losses for the year. That means that Ascendus was not entitled to earn or keep any commissions. All commissions paid to Ascendus during 2004 were undeserved and the investors had a legal right to get them returned due to the net investment losses and the fact that the commissions were not calculated or collected in compliance with legal requirements.

Ascendus Balance Sheet – December 31, 2004		
Assets	Bank account balance	$31,603.33
	Brokerage account balance	$76,692.84
	Total	**($108,296.17)**
Liabilities	Investors in AGF	($419,565.47)
	2004 investor commissions	($810,212.81)
	Prior commissions owed	($152,933.47)
	Total	**($1,382,711.75)**
Net Total		**($1,274,415.58)**

By December 31, 2004, the insolvency of Ascendus had increased from ($145,244.69) to ($1,274,415.58). Ascendus also had at least one occasion where it was unable to pay obligations as they became due. Between June 11, 2004 and June 17, 2004, the Ascendus bank account was overdrawn, causing checks to be dishonored.

<u>2005 Financial Condition</u>

During 2005, investors paid Ascendus $423,535.32 in commissions on trades. For the reasons explained above, none of these commissions were legitimately earned. The illegitimate commissions plus the ever-increasing amount owed to investors caused Ascendus' insolvency to increase again.

Ascendus Balance Sheet – December 31, 2005		
Assets	Bank account balance	$129,049.53
	Brokerage account balance	$43,368.71
	Total	**$172,418.24**
Liabilities	Investors in AGF	($858,811.96)
	2005 investor commissions	($423,535.32)
	Prior commissions owed	($963,146.28)
	Total	**($2,245,493.56)**
Net Total		**($2,073,075.32)**

By the end of 2005, the insolvency of Ascendus had increased to $2,073,075.32.

2006 Financial Condition

Not surprisingly, the company's financial condition worsened in 2006.

Ascendus Balance Sheet – December 31, 2006		
Assets	Ascendus bank balance	$12,491.02
	Brokerage account balance	$0.00
	Total	**$12,491.02**
Liabilities	Investors in AGF[62]	($732,920.78)
	2006 investor commissions[63]	($14,844.78)
	Prior commissions owed	($1,386,681.60)
	Total	**($2,134,447.16)**
Net Total		**($2,121,956.14)**

The company's year-end negative net worth was ($2,121,956.14). During 2006, Ascendus' bank account became overdrawn on September 1, 2006 by a $3,500.00 payment to Susan Smith, the wife of Richard Smith. The overdraft was resolved on September 6, 2006 when Smith transferred $10,000.00 to Ascendus from FFCF.

2007 Financial Condition

In April 2007, the insolvency of Ascendus was greatly increased by Ascendus taking advantage of a bank error. On April 11, 2007, Matthew White wired $27,214.20 to Ascendus. However, Far West Bank mistakenly credited Ascendus' bank account with $272,142.00. The officers of Ascendus moved quickly to exploit this bank error. By April 23, 2007, Ascendus had spent all of these funds. However, the funds were not the property of Ascendus and Ascendus was liable to Far West Bank for the return of these funds.

On May 7, 2007, Far West Bank discovered its error and seized the balance of funds in the account, $5,798.47. Over the next several months, all deposits into the bank account were

[62] This reduction from the prior year was a result of Ascendus paying $135,891.18 to reduce the principal investment amount owed to AGF investors. As noted above, virtually all of this money came from the investment funds of other investors.
[63] These commissions were for profits that Ascendus claimed to have earned in investor accounts during 2005.

seized by Far West Bank to reduce the $244,927.80 that had been erroneously credited to the account of Ascendus. During this time, the account was overdrawn multiple times and Ascendus was at all times unable to pay its obligations as they became due because Far West Bank was seizing any funds deposited into the account.[64]

Ascendus opened a new bank account at Zions Bank on September 11, 2007 with $2,082,700.37 deposited from the Far West account. However, by October 11, 2007, Ascendus checks were being returned because the account had insufficient funds to clear the checks. These were:

Date	**Payee**	**Amount**	**Bank Balance when Check was Written**
10/31/07	Mortensen	$750,000.00	$39,406.21
11/5/07	Lighted Candle	$85,000.00	$5,725.66
11/7/07	Lighted Candle	$85,000.00	$2,210.66
11/27/07	Jonesco Enterp.	$123,035.11	$1,418.95
11/28/07	Superwire, Inc.	$80,000.00	$1,418.95
12/5/07	Superwire, Inc.	$150,000.00	$1,448.43
12/6/07	Jones, Bary	$55,533.35	$1,448.43
12/10/07	Jones, Bary	$55,533.35	$1,448.43
12/11/07	Unknown	$7,133.52	$1,448.43
12/13/07	TDI, LLC	$60,000.00	$1,448.43
12/17/07	Leucadia Prop.	$7,133.52	$1,448.43
Total		***$1,458,368.85***	

By the 2007 year end, the insolvency of Ascendus had increased again, as shown in the following table:

[64] The deficiency was finally repaid on August 28, 2007 with a deposit into Ascendus from a non-investor source. Far West Bank required Ascendus to close its account. Ascendus then opened a bank account at Zions Bank.

Ascendus Balance Sheet – December 31, 2007		
Assets	Ascendus bank balance	$0.00
	Brokerage account balance	$0.00
	Total	**$0.00**
Liabilities	Investors in AGF	($743,186.39)
	Prior investor commissions	($1,401,526.38)
	Total	**($2,144,712.77)**
Net Total		**($2,144,712.77)**

2008 Financial Condition

During 2008, Ascendus continued to write checks on the Zions Bank account that bounced because the account had insufficient funds to cover those checks. These bounced checks were:

Date	Payee	Amount	Bank Balance when Check was Written
2/15/08	Anderson	$1,114,400.25	$719.70
3/4/08	Unknown	$40,000.00	$556.15
3/10/08	Donnell	$115,000.00	$556.15
3/14/08	Donnell	$115,000.00	$556.15
3/28/08	Lighted Candle	$109,012.00	-$1,007.57
3/31/08	White	$38,000.00	-$1,007.57
4/2/08	Lime	$5,000.00	-$1,006.94
4/4/08	Usher	$7,122.17	-$1,006.94
4/4/08	Lighted Candle	$109,012.00	-$1,006.94
Total		***$1,652,546.42***	

By March 21, 2008, the Zions bank account was overdrawn. The account was never brought back to a positive balance and the bank closed the account on April 24, 2008.

INSOLVENCY OF FFCF

2006 Financial Condition

As investor funds were sent to LBS and FFCF began to receive account statements from LBS claiming profits were being earned, FFCF had to report to investors profit on the $12.8

millon the investors *thought* they had, rather than the $7.6 million they *actually* invested.[65] The monthly account statements sent to investors by FFCF reflected this illusion. The entire difference between the actual amount invested and the reported account balance reflected amounts owed to investors – amounts that increased the insolvency of FFCF.

The earnings from LBS were not sufficient to pay the disbursement requests being submitted to FFCF. FFCF's solution was to immediately redistribute new investment funds coming into FFCF, instead of forwarding those new funds to LBS. Many of these transactions were described above.

The following table shows the liabilities and assets of FFCF as of December 31, 2006, the end of the company's first year of operations. At first glance, the company appeared to be in good financial condition, as it had a significant bank balance and a large account balance at FFCF. However, the amounts owed to investors – especially the gap between the amounts promised to investors and the amounts of actual funds in the investment account – represented an enormous liability to the company.

FFCF Balance Sheet – December 31, 2006		
Assets	FFCF bank balance	$138,863.84
	LBS account balance	$8,227,823.05
	Total	**$8,366,686.89**
Liabilities	Investors in FFCF	($14,165,360.65)
	Total	**($14,165,360.65)**
Net Total		**($5,798,673.76)**

<u>2007 Financial Condition</u>

2007 brought a dramatic change in the company's financial condition. The value of assets dropped precipitously: the bank balance was under $5,000.00 and the value of the LBS

[65] See Attachment #3.

investment account dropped by 99%. However, the liabilities of the company did not show a corresponding drop.[66]

FFCF Balance Sheet – December 31, 2007		
Assets	FFCF bank balance	$4,917.49
	LBS account balance	$81,849.52
	Total	**$87,767.01**
Liabilities	Investors in FFCF	($12,756,875.00)
	Total	**($12,756,875.00)**
Net Total		**($12,670,107.99)**

The $12.6 million negative net worth for the company was simply a manifestation of the fact that it had been operating as a Ponzi scheme since its inception. The FFCF bank account was also overdrawn in 2007. On February 22, 2007, the account was $56,366.91 in the red, representing an inability to pay obligations when incurred.

2008 Financial Condition

The company's financial condition in 2008 was much the same. However, the elimination of nay assets and the lack of new investment funds coming in culminated in the cessation of its operations in August 2008 (described above). An FFCF balance sheet for August 29, 2008 would show the following:

[66] The transfers of LBS account values to Al Wirth and Richard Young had a much more dramatic impact on the assets of the company than the liabilities. These transfers represented direct reductions of assets. The reductions in liabilities were not as pronounced for two reasons. First, $1,247,070.29 in additional investment funds were received by FFCF during 2007. This increased the company's liabilities, but did not increase its assets – as none of this money was sent to LBS or retained in the company's bank account. Second, the transfers to Wirth and Young represented amounts greater than the principal amounts of their investments. As a result, they were paid "reported" profits that exceeded the amounts reflected in the table above. (The liabilities in these tables reflect the initial amount by which expected investment amounts exceeded actual investment amounts [see Attachment #3] but do not reflect profits that had accrued since January 2006).

FFCF Balance Sheet – December 31, 2008		
Assets	FFCF bank balance	$85.02
	LBS account balance	$0.00
	Total	**$85.02**
Liabilities	Investors in FFCF[67]	($12,122,587.66)
	Total	**($12,122,587.66)**
Net Total		**($12,122,502.64)**

The FFCF bank account was overdrawn several times during 2008, including:

Date	Amount overdrawn
5/16/08	$34,804.70
6/6/08	$37,295.77
6/12/08	$36,356.55

The information in the tables below dramatically illustrates the extent to which Ascendus and FFCF were insolvent and how the insolvency grew each year:

ASCENDUS	
Year	**Assets as % of Liabilities**
2003	47.78%
2004	7.83%
2005	7.68%
2006	0.59%
2007	0.00%
2008	0.00%

FFCF	
Year	**Assets as % of Liabilities**
2006	59.06%
2007	0.68%
2008	0.00%

[67] This number is lower than 2007 as the company paid $701,819.51 in distribution payments to investors during 2008, before the company's collapse. A substantial portion of the funds used to make these distributions came from money transferred to Ascendus by Time Warner, Inc. as part of another business venture of Taylor and Smith.

As shown by the tables above, the net worth of Ascendus and FFCF was diminished by every excess distribution to investors. The net worth was also diminished by every payment made to Taylor and Smith (and their family members) and every expenditure on behalf of Taylor and Smith that used funds from Ascendus and FFCF bank accounts.[68]

CONCLUSION

Ascendus operated as a Ponzi scheme, using funds from new investors to make distribution payments to other investors. The Ponzi payments began in September 2003, just four months after Ascendus began managing funds for investors. The Ponzi payments continued through the entire existence of Ascendus. FFCF operated as a Ponzi scheme from the beginning.

Ascendus was insolvent by May 16 2003, which insolvency continued through its entire existence. FFCF was insolvent from its 2006 inception through its collapse in August 2008.

DATED this 25th day of November, 2011.

/s/
WAYNE KLEIN, Receiver

[68] These included over $160,000.00 in credit card payments to American Express and $34,000.00 to Capital One.