

FILED  
THIRD DISTRICT COURT  
SEP 10 10 PM 2:23  
SALT LAKE COUNTY  
BY \_\_\_\_\_  
DEPUTY CLERK

R. WAYNE KLEIN #3819  
RECEIVER FOR FFCF, ASCENDUS, SMITH HOLDINGS  
299 South Main, Suite 1300  
Salt Lake City, UT 84111  
Telephone (801) 534-4455  
Facsimile (801) 961-4001  
wklein@kleinutah.com

---

IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

---

A. DAVID BARNES, M.D., P.C.,

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

---

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

---

**TENTH REPORT OF  
R. WAYNE KLEIN, RECEIVER (FOR  
PERIOD ENDING DECEMBER 10, 2010)**

Case No. 080922273

Judge: Denise P. Lindberg

R. Wayne Klein, the Court-Appointed Receiver of FFCF Investors, LLC, Ascendus Capital Management, LLC, and Smith Holdings, LLC (the "Receivership Entities") submits this Tenth Report of the Receivership, for the period September 14, 2010 through December 10, 2010.

## **I. DEVELOPMENTS SINCE THE LAST REPORT**

### **A. Initial Distribution Payment to Claimants**

The Receiver is pleased to report that \$416,032.92 was paid in distributions in October.

By Order entered October 14, 2010, the Court approved the payment of initial distributions to investors. On October 19, 2010, the Receiver mailed cashier's checks totaling \$400,000.00 to ten investors. In addition, \$16,032.92 was paid to Plaintiff, A. David Barnes, as partial reimbursement of the legal fees he expended in getting a Receiver appointed.

### **B. Settlements**

Since the date of the last report, the Receiver has entered into three new settlements:

1. On September 15, Janalynn Memmott paid \$3,000.00 to the Receiver pursuant to a settlement agreement. The Receiver alleged that Memmott withdrew \$7,800.00 more from the Receivership Entities than the amount she invested and the Receiver threatened to file suit. Memmott demonstrated to the Receiver an inability to pay the \$7,800.00 that the Receiver asserted was overpaid. This settlement resolved all claims the Receiver might have asserted against Memmott.
2. The Kaighn Company paid \$7,981.05 to the Receiver on November 18, pursuant to a settlement agreement. This payment and the settlement agreement resolved claims that payments to Kaighn Company for its work as a collection agency for Allied Telesis (which settled previously) were fraudulent conveyances.
3. On November 23, Alex Murillo paid \$58,512.90 to the Receiver in settlement of the

lawsuit filed by the Receiver against Murillo. This payment was made to the Receiver after Murillo consented to an order entered by the Utah Division of Securities finding that Murillo engaged in the securities business without being licensed. This payment represents the full amount that had been paid to Murillo by the Receivership Entities. The Receiver has dismissed his lawsuit against Murillo.

### **C. Developments in Ongoing Litigation**

1. The Receiver has obtained default judgments in two lawsuits it filed in March 2010:
  - a. On October 7, 2010, Third District Judge Kennedy entered a default judgment in the amount of \$126,869.72 against Kays Creek Capital. The Receiver had sought return of these funds that the Receivership Entities paid to Kays Creek. It is unknown how much of this will be collected. The Receiver and his counsel have researched possible assets that might be sources of recovery.
  - b. On October 20, 2010, Third District Judge Fratto entered a default judgment in the amount of \$17,000.00 against Massachusetts attorney Karl Stammen. The Receiver's lawsuit had alleged Stammen was paid for legal services he provided for Superwire and other companies, when the services did not provide any benefit to Ascendus or FFCF. The Receiver and his counsel have identified properties in Massachusetts which we believe can be used to satisfy this judgment, but it will require filing a separate action in Massachusetts state court to confirm the judgment. This is expected to require spending monies to hire Massachusetts counsel.

2. On November 11, the Receiver filed a motion for summary judgment against TDI Energy, seeking judgment for the \$190,000.00 paid to it by Receivership Entities. We are awaiting a response by TDI.
3. The Receiver filed a garnishment claim against the bank account of Steven James, pursuant to a default judgment previously obtained against him. The Receiver and his counsel continue to look for other assets belonging to James that can be used to satisfy the default judgment.
4. At the request of the National Credit Union Administration, the Receiver granted additional time for the NCUA to evaluate the claim the Receiver filed against Heritage West Credit Union (formerly Tooele Federal Credit Union) to recover payments made for the benefit of Jennifer Taylor.
5. Family First Credit Union also was taken over by the NCUA. The Receiver is continuing its litigation against the credit union, but may have to dismiss the lawsuit and submit a claim with the NCUA.
6. The U.S. Bankruptcy Court granted a bankruptcy discharge against Matthew White, who was sued by the Receiver on March 18. The Receiver continues to seek recovery from other parties sued in the same action as White.
7. The Receiver and his counsel have engaged in significant discovery efforts in connection with the cases filed by the Receiver. This has included sending discovery requests, responding to discovery requests, and sending and receiving initial disclosures. The

Receiver also has reviewed information produced in connection with federal litigation, including expert reports prepared on behalf of one of the investors in the federal action.

8. Based on the information obtained from defendant Robert Alsop, the Receiver plans to take his deposition regarding his roles with the Superwire and Extream TV companies, the services he provided to the Receivership Entities, and his status as an insider.
9. Substantive settlement discussions have been held with the defendants in several other lawsuits filed by the Receiver. The discussions are too preliminary to be able to predict whether settlement agreements will be reached with these defendants.
10. The Receiver is working to have all outstanding lawsuits filed by the Receiver transferred to Judge Quinn. On November 16, this Court issued a ruling giving instructions on how the Receiver should notify the court clerk's office of cases that should be assigned. On November 30, the Receiver lodged with the Court a list of eight outstanding cases that should be assigned to Judge Quinn and three cases in which default judgments have been obtained.
11. Litigation filed by the Receiver is continuing against Roger Taylor, Family First Federal Credit Union, Logistic Management, Robert Alsop, Sancuro Wound Care Systems, Richard Smith, Susan Smith, TDI Energy, Tripod Holdings, Kathryn Rowley, and Courtney Smith. Several of these lawsuits have multiple defendants.

**D. Analysis Performed** Analysis performed since September 14, 2010 has included:

1. Obtaining records of additional cashier's checks and wire transfers made from the bank

accounts of Receivership Entities. With these records and other information learned by the Receiver, the Receiver was able to identify the beneficiaries of several significant payments whose purpose was previously unknown.

2. Understanding payments made by Receivership Entities for credit cards in the names of other persons. The Receiver has requested information from some of these credit card issuers and may file suit seeking return of these payments.
3. Reviewing documents produced by Robert Alsop, who was the attorney for Ascendus. Many of those documents related to work performed by Alsop for Superwire, Extream TV, and other entities unrelated to the investment programs created by Ascendus and FFCE. These documents were compared to financial records of the Receivership Entities to determine the extent to which Alsop's legal services benefitted the Receivership Entities. The Receiver also gathered information showing that Alsop was an officer of some of these entities, enabling the Receiver to argue that payments made to Alsop were not received in good faith.
4. Obtaining a better understanding of the relationship of Superwire and Extream TV to Ascendus, including the roles played by Taylor, Smith, and Alsop in the promotion of these companies. The Receiver also learned the purpose of many of the payments made by Receivership Entities for the benefit of these companies.
5. Making contact with and obtaining information from several investors who had previously not responded to requests from the Receiver.

6. Learning how the Trade Center Program was used by Ascendus and Touchtrade to provide trading information to investors and how that platform was used to disseminate inaccurate information to investors.
7. Researching the securities licensing records of Touchtrade and the brokers who worked for Touchtrade, Great Eastern Securities, and Kays Creek Capital. The Receiver obtained copies of disciplinary orders previously entered against Touchtrade and Chad Miller, including the termination of Touchtrade's brokerage license.
8. Creating an index of topics covered in documents delivered to the Receiver.<sup>1</sup>

#### **E. Documents Obtained from James Warner**

California attorney James Warner represented Ascendus, FFCF, and Roger Taylor at an earlier stage of this litigation, opposing appointment of a receiver. When the Receiver made a demand for return of the \$80,000.00 in fees paid to him, Warner asserted that he was counsel only for FFCF and did not represent Taylor personally. The Receiver reviewed billing records from Warner to Taylor, examining the types of work performed by Warner.

In October, the Receiver requested that Warner deliver to him copies of all documents in his files that were created by the law firm or received in connection with its representation of FFCF, including all billing records, e-mails, and retainer agreements. This request was made under professional conduct rules governing California lawyers. Because Warner indicated he represented only FFCF, the Receiver asserted that he was entitled to obtain a copy of the legal

---

<sup>1</sup> This is an ongoing project. The Receiver is not billing for the time being spent reviewing these documents and creating an index.

files maintained by Warner. On November 18 and 20, Warner delivered to the Receiver 880 pages of documents that he said represents all of its records relating to its representation of FFCF. The bulk of these documents consist of e-mails between Roger Taylor and Warner.

These e-mails provide significant insight into the discussions between Taylor and Warner between July 2008 and March 2009. Examples of information learned from these e-mails are:

- Roger Taylor was the author of the letter that was made to appear as if it was written by Richard Smith following his suicide. While Taylor says he consulted with Susan Smith, the letter was written by Taylor.
- James Warner suggested changes to the post-suicide-attempt letter, to disguise Taylor's role as author of the letter.
- In September 2008, Taylor expressed to Warner the view that he would not oppose appointment of a Receiver so long as the receiver was a person Taylor could choose, he would retain control, and the receiver would insulate Taylor from liability. He suggested a means of misleading investors as to how his choice of receiver would be selected.
- Taylor maintained a personal journal in which he recorded information about his activities on behalf of Ascendus and FFCF. In one e-mail to Warner, Taylor expressed concern that the Receiver might seek copies of those journals.

The Receiver had made a request to Taylor's attorney for copies of those journals.

## **F. Penson Financial Services**

Penson Financial Services is the brokerage firm that held the funds and securities of



customers that were traded by Taylor and Ascendus. Most of the investors opened accounts at Penson and authorized Taylor to conduct trades in their individual brokerage accounts. The Receiver has conducted a careful examination of transactions: i) between Receivership Entities and Penson, and ii) between customers and Penson. That examination revealed a number of deficiencies in how Penson handled the investor accounts and how it transferred funds, including:

- Penson withdrew funds from customer accounts or made transfers from customer accounts based on what appear to be forged customer authorizations;
- Penson transferred funds and securities between the accounts of different investors without written authorizations;
- Penson transferred funds based on customer requests that appear to have been altered;
- Penson withdrew money from customer accounts and paid the money to companies controlled by Taylor and Smith, without the knowledge or permission of the customers;
- Ascendus gave money to Penson to put into customer accounts, which were designed to hide or had the effect of hiding trading losses in the accounts;
- Penson sent account statements and other documents to customers which contained materially false information about the value of and transactions in the accounts; and
- Penson paid commissions to Ascendus when these types of commissions were not permissible and when Penson knew the accounts were losing money.

On October 8, the Receiver issued a subpoena to Penson, requesting documents relating

to the problems identified by the Receiver. After Penson refused to honor the subpoena, the Receiver met with an attorney for Penson and showed him the documents compiled by the Receiver. After this meeting, Penson still refused to provide the documents listed in the subpoena.

On October 22, the Court granted the Receiver's motion and issued an order authorizing the Receiver to investigate the actions of Penson and file suit if he found grounds to seek recovery against Penson.

The Receiver has identified numerous transactions by Penson relating to the accounts of customers that appear to have been improper. These transactions resulted in the transfer of over \$7 million to Ascendus and other companies controlled by Taylor and Smith. Sixteen of these investors agreed to assign their claims against Penson to the Receiver. On December 10, the Receiver filed a lawsuit against Penson, seeking recovery for funds and securities handled and transferred improperly.

The Receiver also provided his findings and copies of the key Penson documents to the Utah Division of Securities.

### **G. Informing Investors**

1. The Receiver has continued to post information and court filings on its website to keep investors informed of progress in this case.
2. At their request, information has been provided to a number of investors and attorneys.

This has included sending a letter that an investor could use to justify the claim of loss for

tax purposes.

3. The Receiver has continued to provide information to governmental authorities during the period.

## **F. Financial Developments**

1. Since September 14, the Receiver has recovered \$69,493.95 as a result of the settlements described above.
2. The Receiver has expended \$62,687.81 of Receivership funds since the date of the last report – in addition to the \$416,032.92 in distributions. These expenses are:

<b>Date</b>	<b>Amount</b>	<b>Recipient</b>	<b>Purpose</b>
9/15/10	\$64.25	American West Bank	Copies of cashier's checks, research
10/11/10	\$13,059.24	Manning Curtis law firm	Partial legal fees, September 2010
11/18/10	\$9,278.75	Manning Curtis law firm	Balance of legal fees, Sept. 2010
11/24/10	\$19,096.74	Manning Curtis law firm	Legal fees, October 2010
12/9/10	\$21,188.83	Manning Curtis law firm	Legal fees, November 2010
<b>Total</b>	<b>\$62,687.81</b>		

3. On November 16, 2010, the Court approved the Receiver's third fee and expense application, totaling \$98,714.92.<sup>2</sup> This approval was for services rendered by the Receiver from April 1, 2010 to September 30, 2010. The Receiver has not paid himself any of this amount, as the receivership has insufficient funds to make this payment.
4. After accounting for the deposits and expenditures described above, the current balance in the Receivership bank account is \$41,510.58.<sup>3</sup>

---

<sup>2</sup> In his third fee application, the Receiver identified an additional \$118,442.75 in services that were being donated to the Receivership effort, because there are not sufficient funds being recovered to pay for all of the time being spent by the Receiver and his staff in recovering assets.

<sup>3</sup> An additional \$500.00 is in a savings account at Wells Fargo Bank.

## **G. Areas of Focus for Ongoing Research and Analysis.**

1. The next phase of the Receiver's investigation will focus on:
  - a. Continuing a review of documents obtained from James Warner and seeking the journals of Roger Taylor relating to the activities of Ascendus and FFCF; and
  - b. Taking the deposition of Robert Alsop.
2. The Receiver expects to determine soon whether grounds exist to file suit against credit card issuers, to recover payments from Receivership Entities.
3. The Receiver expects to initiate litigation against Penson Financial Services for improper transactions with customers and receivership entities.

## **II. TOPICS FOR DECEMBER 16, 2010 STATUS HEARING**

The Receiver requests that the Court set another status hearing in April 2011 to provide a further progress report and seek any direction from the Court.

## **III. CONCLUSION**

The Receiver respectfully submits this Tenth Report for the period from September 14, 2010 through December 9, 2010.

The Receiver verifies under penalty of perjury that the foregoing is true and correct.

DATED this 10<sup>th</sup> day of December, 2010.

  
\_\_\_\_\_  
WAYNE KLEIN, Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of December, 2010, a true copy of the foregoing

Tenth Report of Receiver was mailed to the following:

Jerome H. Mooney  
Weston, Garrou, Walters & Mooney  
50 West Broadway, Suite 1000  
Salt Lake City, UT 84101  
*Counsel for Roger E. Taylor*

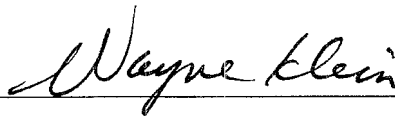
Dr. A. David Barnes  
4822 Holladay Blvd., #170  
Holladay, UT 84117

SuetWan Chan Bostrom Young  
302 West 1310 North  
Orem, UT 84057

Richard T. Smith  
443 North 750 East  
Orem, UT 84097

Craig R. Madsen  
1112 North 700 East  
Springville, UT 84663  
*Counsel for Kathryn Rowley*

Anthony W. Schofield  
Kirton & McConkie  
518 West 800 North, Suite 204  
Orem, UT 84057  
*Counsel for T. Courtney Smith*

  
\_\_\_\_\_