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Court-Appointed Receiver

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

U.S. VENTURES LC, a Utah limited liability
company, WINSOME INVESTMENT
TRUST, an unincorporated Texas entity,
ROBERT J. ANDRES and ROBERT L.
HOLLOWAY,

Defendants.

Case No. 2:11CV00099 BSJ

**TWELFTH STATUS REPORT OF
R. WAYNE KLEIN, RECEIVER
FOR PERIOD OCTOBER 16, 2013
TO JANUARY 15, 2014**

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of U.S. Ventures LC (“USV”), Winsome Investment Trust (“Winsome”), and all the assets of Robert J. Andres (“Andres”) and Robert L. Holloway (“Holloway”) (collectively, the “Receivership Entities”), hereby submits this Twelfth Status Report for the period of October 16, 2013 through January

15, 2014 (the “Reporting Period”).

I. INTRODUCTION

1. During the Reporting Period, there was significant progress in litigation filed by the Receiver, with the number of cases in active litigation now down to ten. The Receiver obtained several significant judgments during the quarter. The Receiver has proposed making an initial distribution of funds now, without waiting for resolution of the objections filed by two claimants. During the prior quarter, there were delays in the criminal cases against Holloway and Andres.

2. The status of the criminal cases are discussed in Section II. The claims process is discussed in Section III. Settlements during the Reporting Period are discussed in Section IV. Litigation developments are discussed in Section V. A financial summary is included in Section VI.

II. CRIMINAL PROSECUTIONS

3. On August 21, 2013, Robert Andres entered a guilty plea to one count of wire fraud in the U.S. District Court of Utah. His sentencing was originally scheduled for January 7, 2014, but has been postponed to February 27, 2014.

4. The criminal trial of Robert Holloway was originally set to begin October 8, 2013. Because his criminal defense attorney withdrew from representing Mr. Holloway, his trial was postponed to July 8, 2014 to allow him time to obtain new counsel (which has occurred) and to allow his new attorney to prepare for trial.

III. CLAIMS PROCESS

5. On December 20, 2012 the Receiver filed his “Report and Recommendations on

Claims Process” (“Claims Report”). (Claims Report, Docket No. 233.)

6. Three objections were filed with the Court. The objection of RCH2 was resolved by agreement with the Receiver and was approved by the Court. The objections of Roberto Penedo (seeking a claim of \$4,615,000.00) and Zaman Ali (seeking a claim of \$100,000.00) have been submitted to the Court for determination. The Court has not yet ruled on these objections. More information about these objections can be found in the Tenth Status Report and on the Receivership website.

7. The Receiver is recommending to the Court that an initial distribution be approved, without waiting for resolution of these two objections. On November 8, 2013, the Receiver filed a motion proposing a plan of distribution. (Receiver's Motion Proposing Plan of Distribution and Memorandum in Support, Doc. No. 306.) Key components of the Receiver's motion are:

a. The distribution to other investors should not be delayed due to the objections filed by Penedo and Ali. The initial distribution plan should be approved now, with a proportionate amount set aside to pay the claims of Penedo and Ali, if approved. If the Court later upholds their objections, the money that was set aside will be available to make distributions to them. If their objections are denied, the monies set aside to pay their claims can be made available for future distribution to the remaining investors.

b. The Receiver proposes an initial distribution in the amount of \$2,300,000.00. The Receiver expects that there will be additional distributions in the future.

c. The Receiver recommends that the Court adopt a hybrid distribution plan. In most cases like this, courts approve distribution of funds either using a “pro rata” distribution

methodology or a “rising tide” methodology.¹ Each methodology would result in investors receiving different amounts than they would receive under the other approach. The Receiver obtained the consent of the CFTC to recommend a hybrid approach that utilizes both approaches, to ensure that some money is distributed to every qualified claimant, but that the bulk of the distribution amount goes to investors who had received the lowest share of recovery to date.

d. If the hybrid distribution approach is adopted, every qualified claimant will receive some payment and every investor will have received at least 15.1% return of his or her verified principal loss.

e. Numerous claimants have contacted the Receiver expressing dismay at his recommendations. Most of these claimants urge the Receiver to revise his recommendation to the Court, wanting him to ask the Court to distribute all the available funds pursuant to a single methodology—with some arguing for the pro-rata approach and others advocating the rising tide methodology. Each of these claimants has argued forcefully that the particular approach he or she favors is the only “fair” approach. Thus, persons favoring opposing viewpoints assert that only their favored approach is fair. Not surprisingly, the positions favored by these claimants corresponds with the distribution methodology that would result in the highest payout to them.

f. Only one claimant, the RCH2 Receiver, has filed an objection with the Court. In his filing with the Court, the RCH2 Receiver asserts that all of the available money should be distributed using only the rising tide methodology.²

8. The Court has heard oral arguments regarding RCH2's objection and the

¹ A description of each of these approaches can be found in the Receiver's motion, which is available on the Receivership website.

² Docket No. 311.

Receiver's Motion Proposing Plan of Distribution in a hearing on February 4, 2014 to consider arguments on whether to approve the Receiver's motion. The Court took the matter under advisement.

IV. SETTLEMENTS

9. One additional settlement was reached during the Reporting Period. On January 3, 2013, the Court approved a settlement with JoAnn Holly and her two companies: Holly's Day in Heaven and A Day in Hollywood. The settlement recognizes that Holly lacks any income or assets to pay any amount to the Receivership and provides that the lawsuit against her will be dismissed.

V. LITIGATION DEVELOPMENTS

10. Overview. Since creation of the Receivership, the Receiver has filed 88 lawsuits seeking the recovery of funds paid out improperly or damages for improper conduct. Ten of these cases remain in litigation and another is on appeal. Prosecuting these lawsuits is consuming much of the time that the Receiver is spending on this case and almost all of the time that Receiver's counsel is spending on this case, albeit less time than in prior periods.

11. Cases Decided During Quarter. The Courts issued orders resolving a number of the cases during the Reporting Period. These include:

a. Payton, Kathryn. On October 30, 2013, the Court granted the Receiver default judgment against Kathryn Payton. Judgment was in the amount of \$455,125.00. It is not known if the Receiver will be able to find assets that can satisfy the judgment.

b. Cornelius, William; Cornelius & Salhab. On November 13, 2013, the Court granted summary judgment to the Receiver against this Texas attorney and his law firm.

Judgment is in the amount of \$89,845.73 plus costs, fees, and interest. The Court found that monies paid by Winsome to Cornelius for the criminal defense of Jerome Carter was a fraudulent transfer and that Winsome received no benefit from the transfer. Cornelius has not yet paid the judgment and has asked the Court to reverse its ruling in a motion that the Court denied.

c. Chiu, Warren; PacificWin Investments. On November 18, 2013, the Court entered a default judgment against PacificWin in the amount of \$160,000.00. The Court also granted judgments against Warren and Winnie Chiu for their failure to comply with discovery obligations. On November 26, 2013, the Court fixed the judgment amount against Warren Chiu at \$767,570.63 and against Winnie Chiu at \$110,000.00.

d. Bruno, Nunzio. On November 25, 2013, the Court granted summary judgment against Bruno. The Court also denied motions by Bruno to disqualify the judge. On January 3, 2014, the Court denied Bruno's motion to vacate the summary judgment order and affixed the amount of the judgment against Bruno at \$203,052.66.

e. Patterson, Connie. On October 31, 2013, the Court entered a final judgment against Patterson in the amount of \$1,966,417.00. The Receiver has not yet identified assets that can be seized to satisfy this judgment.

12. Current Litigation. The status of the remaining lawsuits are:

a. Chiu, Stephen; Chiu Jennifer: The Receiver's lawsuit against the Chius (and others) was filed on January 24, 2012. During the Reporting Period, the Receiver obtained judgments against Warren and Winnie Chiu and PacificWin Investments, leaving only Jennifer Chiu and Stephen Chiu in the litigation.

b. Georges, Lou: The Receiver sued Georges on January 18, 2012 seeking to

recover \$186,291.00 in payments he received from US Ventures. The Court denied Georges' motion to dismiss the lawsuit. The parties have extended discovery at the request of Georges because of issues with his health. The Receiver has explained to Georges that the latest extension is the last one to which he will stipulate.

c. Harper, Terry: Suit was filed against Harper and Wings Over the World Ministries on January 9, 2012 seeking the recovery of \$561,326.32 paid to them. The Receiver previously obtained a default certificate against Wings Over the World. Harper has filed dozens of motions seeking to defeat the Receiver's lawsuit against him. The Receiver has asked for sanctions in the form of default against Harper based on Harper's unwillingness to comply with the Court's orders. The Court has issued several rulings denying all of Harper's motions. These rulings have included:

i. October 25, 2013: The Court adopted the report and recommendations of a federal magistrate and ruled that motions filed by Harper were frivolous. Harper was ordered to cease filing motions addressing issues that had already been ruled on by the Court.

ii. November 22, 2013: The Court granted the Receiver's motion to strike five new frivolous motions filed by Harper. The Court also ordered Harper to pay the attorneys' fees incurred by the Receivership in responding to Harper's motions.

iii. December 18, 2013: The Court issued an order finding that Harper had failed to respond to discovery requests issued by the Receiver. Harper was ordered to provide the discovery within 15 days.

d. McGraw, Forres: The Receiver filed suit against McGraw on January 20,

2012, seeking \$123,598.54 paid to McGraw for his role in preparing account statements sent to investors. McGraw filed a motion to dismiss which he later withdrew. In September 2013, the Court allowed McGraw's attorney to withdraw.

e. Penedo, Roberto: On January 17, 2012, the Receiver sued Penedo and Fundacion Guatemalteco Americana seeking to recover \$962,000.00 paid to them by Winsome. Both the Receiver and Penedo filed motions for summary judgment. On December 26, 2013, the Receiver and Penedo submitted a stipulation to the Court narrowing the matters in dispute in the summary judgment motions. Penedo stipulated that Winsome was operating as a Ponzi scheme and the Receiver agreed to not seek recovery from Penedo for amounts Winsome paid to Fundacion Guatemalteco. The Court granted summary judgment in favor of the Receiver in a minute order, and asked the Receiver's counsel to prepare a proposed memorandum decision. The Receiver has submitted the proposed memorandum decision to which Penedo lodged an objection. As noted above, Penedo also has filed a claim in the claims process, seeking a portion of the amounts recovered by the Receiver.

f. Petty, Michele: The Receiver sued Petty on December 12, 2011, seeking the recovery of \$51,000.00 paid to her by US Ventures for legal services she provided to Holloway. On September 15, 2013, the Court denied Petty's motion to dismiss, ruling that the Court has personal jurisdiction over her. Petty has attempted to amend her pleadings, and has filed a renewed motion to dismiss. The Receiver will respond to Petty's motion to dismiss and her attempt to amend her pleadings.

g. Pitts, Mykal. The Receiver sued Pitts on October 13, 2011 seeking to recover \$332,298.00 paid to him by Winsome. Pitts was served, but failed to answer. On April

6, 2012, a default was entered against Pitts. A default judgment has not yet been entered.

Because it appears that Pitts is in the military, the Court has appointed an attorney to contact Pitts and represent him in responding to the Receiver's request for a default judgment. The Receiver has attempted to contact the court-appointed counsel without success, and will begin moving the case to judgment.

h. Ravkind Associates: The Receiver sued this Texas law firm on January 9, 2012 to recover \$50,000.00 paid to the law firm by Winsome for the criminal defense of an associate of Andres. In January 2013, the Court denied Ravkind's motion to dismiss. Discovery is ongoing.

i. Sternheim, Leonard: The Receiver filed a lawsuit on December 2, 2011 against Sternheim, seeking \$153,730.00 in excess profits paid to him by Winsome. During the course of discovery, evidence obtained by the Receiver from the defendant and from third parties revealed that there was not sufficient evidence to support the Receiver's claims against Sternheim. As a result, the parties agreed to dismiss this matter without prejudice.

j. Widmark, Peter: On December 2, 2011, the Receiver sued Widmark seeking to recover \$291,000.00 in payments he received from Winsome. Widmark filed a motion to dismiss. On June 13, 2013, the Court denied Widmark's motion. Discovery is ongoing in this matter.

13. Appeal. King & King & Jones has appealed the judgment entered against it. This appeal is to the Tenth Circuit Court of Appeals. While this appeal will result in a delay in collecting on this judgment and additional expense, the appeals court ruling is expected to assist in the Receiver's ongoing litigation against three other law firms.

VI. FINANCIAL REPORT

A. Recoveries for the Receivership

14. A total of \$54,441.24 was recovered for the Receivership Estate during the Reporting Period. The money came from the following sources:

| Category | Amount |
|-----------------------|-------------------------|
| Settlement Recoveries | 54,379.10 |
| Bank: Interest Earned | 62.14 |
| <i>Total</i> | <i>54,441.24</i> |

B. Expenditures by the Receivership

15. Expenditures from the Receivership bank account, for operating expenses of the Receivership, were:

| Category | Amount |
|---------------------|----------------------|
| Surety Bond Renewal | 100.00 |
| <i>Total</i> | <i>100.00</i> |

16. On November 25, 2013, the Court approved payment of fees and expenses for the Receiver and his counsel for work during the five-month period from May through September 2013. The Receiver was paid \$42,885.73 in fees and expenses and \$145,104.30 was paid to counsel for the Receiver.

17. The Receivership bank account balance, as of January 15, 2014, was \$2,639,758.67.

VII. OTHER

18. During the Reporting Period, the Receiver provided information to Holloway's defense counsel and officials from the Arkansas Supreme Court. The Receiver also responded to multiple inquiries from investors.

VIII. NEXT STEPS

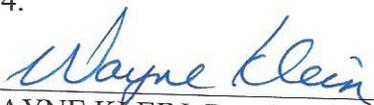
19. The next steps the Receiver expects to pursue are:
- a. Resolve the two remaining objections to the claims process;
 - b. Seek Court approval of a distribution plan and make an initial distribution of funds to investors;
 - c. Continue prosecuting the lawsuits filed by the Receiver that are still pending and defend the appeal that has been filed; and
 - d. Assist prosecutors in the criminal trial of Holloway.

IX. CONCLUSION

The Receiver respectfully submits this Twelfth Status Report for the period from October 16, 2013 through January 15, 2014.

The Receiver verifies under penalty of perjury that the foregoing is a true and correct summary of information he has discovered to date in his investigation.

DATED this 10th day of February, 2014.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **TWELFTH STATUS REPORT OF R. WAYNE KLEIN, RECEIVER FOR PERIOD OCTOBER 16, 2013 TO JANUARY 15, 2014** to be served in the method indicated below to the Defendant in this action this 10th day of February, 2014.

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
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