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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

**FOURTEENTH STATUS REPORT OF
R. WAYNE KLEIN, RECEIVER**

**FOR PERIOD APRIL 16, 2014
TO JULY 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 Fourteenth Status Report for the period of April 16, 2014 through July 15, 2014 (the "Reporting Period").

I. INTRODUCTION

1. The criminal trial of Robert Holloway began July 19, 2014, after the end of the Reporting Period. The jury convicted Mr. Holloway of all counts charged. The result of the trial will be described in the next status report. During the Reporting Period, the final two objections filed by claimants wanting a share of the distribution fund were denied by the Court. The Court approved sending initial distribution payments to verified claimants. Two additional claimants have filed motions asking the Court to grant them a share of the funds recovered. One motion has been denied and the other was denied after the end of the Reporting Period. There was significant progress in litigation filed by the Receiver, with the number of cases in active litigation now down to four. The Receiver received a favorable ruling on an action appealed to the Tenth Circuit on July 14, 2014, and he also obtained several significant judgments during the quarter and reached two settlements. Two new appeals were filed during the quarter, bringing the number of cases currently on appeal to five, although two cases may be consolidated. During the Reporting Period, the Court entered final judgments against Winsome, US Ventures, Andres, and Holloway in the civil suit filed by the Commodity Futures Trading Commission.

2. The status of the criminal case is discussed in Section II. The claims process is discussed in Section III. Settlements during the Reporting Period are discussed in Section IV. Litigation developments and appeals 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 until after conclusion of the trial of Robert Holloway so the sentencing judge can evaluate the assistance he provides in the Holloway trial.

4. The criminal trial of Robert Holloway began July 29, 2014 and concluded August 6, 2014 with convictions on all counts. The Receiver and several investors were witnesses at the trial. The next status report will describe the results of the trial.

III. CLAIMS PROCESS

5. Report Issued: On December 20, 2012 the Receiver filed his “Report and Recommendations on Claims Process” (“Claims Report”). (Claims Report, Doc. No. 233.)

6. Objections: Three objections were filed with the Court.

a. The objection of RCH2 was resolved by agreement with the Receiver and was approved by the Court.

b. Roberto Penedo filed an objection, asking the Court to grant his claim of \$4,615,000.00. On June 6, 2014, the Court issued an order denying the claim by Penedo. The Court ruled that Penedo had not provided sufficient evidence that Winsome was responsible for debts owed to Penedo or that Winsome benefitted from Penedo’s lobbying services. Penedo has appealed this order.

c. Zaman Ali filed an objection, asking the Court to grant his claim of \$100,000.00. On June 30, 2014, the Court issued an order denying Ali’s claim. The Court found that Ali failed to provide documentation proving the validity of his claim and that Ali had acted as a marketer for Winsome.

7. Initial Distribution Approved, Monies Sent to Claimants: On June 30, 2014, the Court signed an order allowing an initial distribution of \$2.3 million to 118 investors who submitted claims, which included funds that were set aside for the two objections that had not been previously resolved or were on appeal. The Court approved the hybrid distribution methodology recommended by the Receiver, by which all valid claimants would receive at least some money from the initial distribution. On July 3, 2014, the majority of the checks were mailed to claimants. A few checks were mailed a few days after the initial mailing. Since the initial mailing, the Receiver has also been dealing with checks needing to be sent to new addresses and special needs of a few claimants. The mailing of the distribution checks has also resulted in several investors—who had not filed claim forms—contacting the Receiver wanting to know how to receive some of the funds. The Receiver is informing those investors that the claims deadline was July 31, 2012 and that the Receiver cannot approve any claims at this point. Whether there will be sufficient funds to make additional distributions depends on a number of factors that cannot be determined at this time, such as: whether the Receiver wins judgments in the lawsuits he has filed which are still in litigation, how much he succeeds in collecting from judgments previously won against defendants, how the pending appeals are decided, whether additional appeals are filed (and how they are decided), and how the Court rules on motions seeking approval of late-filed claims. If there are future distributions, the funds will be allocated to claimants using only the rising tide methodology, meaning funds will be directed to those claimants who received the lowest amounts of distributions from US Ventures or Winsome.

8. Motions to Approve Late-Filed Claims: There have been two motions filed with the Court by investors asking the Court to recognize claims that were submitted to the Receiver

after the date of the Receiver's December 2012 report to the Court on the claims process.

a. Susan Johnson: On January 21, 2014, investor Susan Johnson filed a motion asking the Court to approve her claim for \$301,642.00 (Doc. No. 318). The Receiver has opposed this motion, arguing that Johnson's claim was filed almost a year after the Claims deadline, she was a marketer for Winsome, and her claim form contained false information. The Court has held several hearing on Johnson's motion and has ordered Johnson to supply copies of her bank records and other information needed by the Receiver to fully evaluate her claim. Johnson supplied the information ordered by the Court on June 9, 2014 and the Receiver filed his response on July 10, 2014. The Court decided this claim in favor of the Receiver after the Reporting Period.

b. Steve Bottorf and Daren Hamlin: On June 2, 2014, two investors, Steve Bottorf and Daren Hamlin, filed a motion with the Court, seeking to intervene in the Receivership litigation, apparently so their late-filed claim would be recognized. The Commodity Futures Trading Commission filed an opposition to Bottorf and Hamlin's motion and the Receiver also filed a brief opposing their motion. At a hearing on July 11, 2014, the Court denied their motion.

IV. SETTLEMENTS

9. There were two new settlements reached during the Reporting Period. These settlements were approved by the Court.

a. Jennifer Chiu: The Receiver sued Jennifer Chiu on June 18, 2012, seeking the return of \$39,000.00 paid to her by Winsome when she was not an investor. Jennifer Chiu explained that the payments to her were reimbursement of expenses she paid for her father, Warren Chiu. Jennifer Chiu provided verified financial information to the Receiver asserting

that she lacked the financial ability to repay the entire amount she received. Under the settlement agreement, Jennifer Chiu has repaid \$31,200.00, or 80% of the amount she received from Winsome. The Receiver already has a judgment against Warren Chiu.

b. Stephen Chiu: The Receiver sued Stephen Chiu on June 18, 2012, seeking the return of \$12,000.00 paid to him by Winsome when he was not an investor. Stephen Chiu explained that the payments to him were reimbursement of expenses he paid for his father, Warren Chiu. Stephen Chiu also provided verified financial information to the Receiver asserting that he lacked the financial ability to repay the entire amount he received. Under the settlement agreement, Stephen Chiu has agreed to repay \$9,800.00, or 80% of the amount he received from Winsome. The Receiver already has a judgment against Warren Chiu.

V. LITIGATION DEVELOPMENTS

10. The Civil Enforcement Action by the CFTC. This case started on January 24, 2011 when the U.S. Commodity Futures Trading Commission (“CFTC”) filed a civil lawsuit against Robert Andres, Robert Holloway, US Ventures, and Winsome. On April 21, 2014, the CFTC filed a motion asking the Court to enter default judgments against the four defendants. On June 6, 2014, the Court entered the judgment against the defendants that was requested by the CFTC.

a. Summary Judgment Findings. The judgment includes multiple findings regarding the activities of Andres and Holloway, ruling that:

- i. Winsome and Andres fraudulently solicited investors,
- ii. Andres, Holloway, and the companies misappropriated investor

funds,

iii. US Ventures and Holloway sustained significant overall trading losses,

iv. The defendants used false account statements to conceal their misappropriation and trading losses, and

v. The defendants violated the commodities laws by engaging in fraudulent practices.

b. Remedies. The Court ordered that the defendants cease violating commodity laws, pay \$12 million in restitution, and pay a civil penalty of \$32.3 million. If Andres or Holloway are ever found to have assets, those assets can be seized to be applied to this judgment.

11. Overview of Receivership Litigation. Since creation of the Receivership, the Receiver has filed 88 lawsuits seeking the recovery of funds paid out improperly or damages for improper conduct. Four of these cases remain in litigation. An additional four litigation cases are on appeal.¹ Prosecuting these lawsuits and defending the appeals 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.

12. Significant Litigation Rulings During the Quarter. The Courts issued significant orders in several cases during the Reporting Period which will advance the litigation in these matters. These rulings include:

a. Petty, Michele. The Court denied Petty's motion to dismiss and also

¹ A fifth appeal has been filed by Roberto Penedo regarding the denial of his claim in the claims process.

granted the Receiver's motion to strike Petty's amended answer and jury demand. This case is now proceeding toward trial.

b. Wings Over the World, Terry Harper. On May 30, 2014, the judge hearing this case entered judgment against Terry Harper and Wings Over the World for \$336,470.07. Harper has filed an appeal of that judgment.

c. McGraw, Forres. On April 15, 2014, the Court issued findings of fact and conclusions of law relating to the summary judgment granted against McGraw. The same day, the Court issued a judgment against McGraw in the amount of \$123,598.00. McGraw filed a motion to vacate the judgment. On May 21, 2014, the Court denied McGraw's motion to vacate the judgment. The Receiver will try to locate assets that can be used to satisfy the judgment.

d. Mykal Pitts. On May 9, 2014, the Court entered judgment against Pitts in the amount of \$332,298.00. The Receiver will try to locate assets that can be used to satisfy the judgment.

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

a. Georges, Lou: The Receiver sued Georges on January 18, 2012 seeking to recover \$186,291.00 in payments he received from US Ventures and Winsome. The Court denied Georges' motion to dismiss the lawsuit. The parties extended discovery at the request of Georges because of issues with his health. A scheduling order is now in effect and the Receiver took the deposition of Georges on April 23, 2014.

b. 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. During the Reporting Period, the Court denied Petty's most recent motion to dismiss

the Receiver's lawsuit. This case is now proceeding towards trial.

c. 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. On May 9, 2014, the Receiver filed a motion for summary judgment, asking the Court to enter judgment in the amount of \$50,000.00. The briefing on this motion is now complete and the Receiver is awaiting a ruling from the Court.

d. Widmark, Peter: On December 2, 2011, the Receiver sued Widmark seeking to recover \$291,000.00 in payments he received from Winsome. In June 2013, the Court denied Widmark's motion to dismiss. During the Reporting Period, attorneys for Widmark took the deposition of the Receiver. This matter is now proceeding towards trial.

14. Collection Efforts. The Receiver has hired collection professionals in other states to collect on judgments that have been entered in favor of the Receivership. This often requires hiring private investigators to locate assets that might be seized. In the case of William Cornelius, the Receiver hired a law firm in Texas to record the judgment with the Texas courts. Cornelius has filed papers opposing the Receiver's efforts and trying to re-litigate the judgment that was entered by the federal court in Utah. The Receiver expects that the Texas courts will honor the judgment that previously was entered.

15. Appeals. Five appeals have been filed by defendants. Four of these seek to overturn judgments entered against them.

a. King & King & Jones. On September 12, 2013, this law firm filed an appeal of the \$25,000.00 judgment the Receiver obtained against it. On July 14, 2014, the Tenth Circuit Court of Appeals affirmed the summary judgment entered in favor of the Receiver. In

this case, the Receiver sued a law firm that received transfers from Winsome in exchange for legal services provided to a third party. Because the law firm did not provide any value to Winsome in exchange for the transfers and because Winsome operated as a Ponzi scheme at the time of the transfers, the Tenth Circuit held that the transfers at issue to the law firm from Winsome were fraudulent and must be returned to the Receiver.

b. William Cornelius, Cornelius & Salhab. On February 25, 2014, Cornelius filed a notice of appeal on the \$89,845.73 judgment entered against him and his law firm. The parties engaged in mediation efforts, which were unsuccessful. The Receiver's appeal brief is due September 1, 2014.

c. Roberto Penedo (Judgment). On March 31, 2014, Penedo appealed the judgment against him in the amount of \$197,000. The briefing has not yet been filed because the parties engaged in mediation efforts, which ultimately were unsuccessful. The appeals court will set a briefing schedule.

d. Roberto Penedo (Claim Denial). On April 1, 2014, Penedo filed an appeal of the Court's provisional order denying Penedo's claim. The appeals court initially dismissed the appeal because the district court had not issued a final order. The district court's final order was issued on June 6, 2014. On June 30, 2014, Penedo refiled his appeal of the order. The appeals court will now set a briefing schedule, and this appeal may be consolidated with the other appeal filed by Penedo.

e. Terry Harper. On June 23, 2014, Harper filed an appeal of the judgment entered against him. The appeals court is evaluating whether Harper's appeal is proper.

VI. FINANCIAL REPORT

A. Recoveries for the Receivership

16. A total of \$38,343.04 was recovered for the Receivership Estate during the Reporting Period. The money came from the following sources:

Category	Amount
Settlement Recoveries	\$38,283.67
Bank: Interest Earned	\$59.37
Total	\$38,343.04

B. Expenditures by the Receivership

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

Category	Amount
Deposition, tax, copies	\$1,665.40
Fee: Asset Search Firm	\$4,200.00
Total	\$5,865.40

18. On May 21, 2014, the Court approved the fee application of the Receiver and his counsel for work during the six-month period from October 2013 through May 2014. Fees for the Receiver were \$36,408.50; fees and expenses for counsel for the Receiver were \$121,647.51.

19. The Receivership bank account balance, as of July 15, 2014, was \$2,587,231.71. This balance does not reflect the payment of any distribution payments that were mailed on July 3, 2014.

VII. OTHER

20. During the Reporting Period, the Receiver responded to multiple inquiries from investors, primarily inquiries regarding when the initial payments distribution might be sent.

VIII. NEXT STEPS

21. The next steps the Receiver expects to pursue are:
- a. Continue prosecuting the four lawsuits filed by the Receiver that are still in litigation. This includes concluding discovery, defending against motions to dismiss, filing motions for summary judgment, and otherwise preparing for trial;
 - b. Defend the five appeals that have been filed to date;
 - c. Evaluate the judgments obtained and continue efforts to collect on the judgments on defendants located around the country; and
 - d. Assist prosecutors in the criminal trial of Holloway (which occurred after the conclusion of the Reporting Period).

IX. CONCLUSION

The Receiver respectfully submits this Fourteenth Status Report for the period from April 16, 2014 through July 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 and actions taken during the Reporting Period.

DATED this 12th day of August, 2014.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **FOURTEENTH STATUS REPORT OF R. WAYNE KLEIN, RECEIVER FOR PERIOD APRIL 16, 2014 TO JULY 15, 2014** to be served in the method indicated below to the Defendant in this action this 12th day of August, 2014.

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