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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

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

**FOR PERIOD JULY 16, 2013
TO OCTOBER 15, 2013**

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 Eleventh Status Report for the period of July 16, 2013 through October 15,

2013 (the “Reporting Period”).

I. INTRODUCTION

1. During the Reporting Period, there has been significant progress in litigation filed by the Receiver, with the number of cases in active litigation now down to 13. The Receiver still has not been able to make any initial distribution of fund because two claimants are still asserting rights to be paid substantial shares of the funds gathered by the Receiver. During the prior quarter, there were also significant development in the criminal cases against Holloway and Andres. The status of the criminal cases are discussed in Section II. The claims process is discussed in Section III. Notable litigation developments are discussed in Section IV. Settlements during the Reporting Period are discussed in Section V. A financial summary is included in Section VI.

II. CRIMINAL PROSECUTIONS

2. On August 21, 2013, Robert Andres entered a guilty plea to one count of wire fraud in the U.S. District Court of Utah. As part of his plea, Mr. Andres made the following statements:

a. From October 2005 through January 2011, he operated Winsome Investment Trust and he “fraudulently obtained millions of dollars from investors by (1) misrepresenting the assets and asset allocation of Winsome and (2) misrepresenting the types of investments into which [he] would place investors’ funds.”

b. He “disseminated purported Winsome ‘balance sheets’ that falsely represented that Winsome had approximately \$2.6 million in total assets and falsely represented the nature and allocation of these assets.”

c. He “falsely represented to investors and potential investors that [he] would invest all of their funds in a ‘trading program’ or ‘mostly automated trading business.’ Contrary to [his] representations, [he] diverted more than \$850,000 of investor funds in this time period for personal uses and approximately \$1.2 million to unauthorized investments and investment schemes.”

d. He “failed to disclose that new investors’ funds would be partially used to make distributions to Pre-April 2007 Winsome investors.” He “distributed ‘profits’ to Pre-April 2007 Winsome investors that were actually proceeds from new Winsome investors.”

e. He “used investors’ funds for purposes not disclosed to the investors and potential investors of Winsome, including diverting approximately \$2.2 million for personal uses.”

f. He “agree[s] that the total gain resulting from [his] actions was approximately \$3,291,310.29.”¹

3. Sentencing for Mr. Andres is set for January 7, 2014.

4. The criminal trial of Robert Holloway was set to begin October 8, 2013. Mr. Holloway’s trial was postponed based on the withdrawal of his attorney.

III. CLAIMS PROCESS

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

¹ A copy of Mr. Andres’ plea agreement can be found on the Receivership website.

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 has been working with the CFTC to determine the best distribution methodology to recommend to the Court. When the Court has ruled on the two remaining objections, the Receiver will propose a distribution plan to the Court. When the plan has been approved, the Receiver can make an initial distribution of funds to claimants.

IV. LITIGATION DEVELOPMENTS

8. Current Litigation. Since the creation of the Receivership, the Receiver has filed 88 lawsuits seeking the recovery of funds paid out improperly or damages for improper conduct. Thirteen 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. The status of the remaining lawsuits are:

a. Cornelius, William; Cornelius & Salhab: The Receiver filed suit against this Texas law firm on December 14, 2011. The lawsuit seeks a return of \$89,845.73 paid to the law firm by Winsome for the criminal legal defense of an associate of Andres. On June 15, 2012, the Court denied defendants' motions to dismiss. In May 2013, the Receiver filed a motion for summary judgment. The summary judgment motion will be heard by the Court on October 23, 2013.

b. Chiu, Warren (and other family members): The Receiver's lawsuit against

the Chius was filed on January 24, 2012. The Receiver has filed multiple motions seeking discovery information from the Chius. Jennifer Chiu and Stephen Chiu have now obtained their own attorneys and the litigation is proceeding against them. Warren and Winnie Chiu signed a consent to judgment that they agreed the Receiver could enter against them if the Chius did not provide required documents. On July 11, 2013, the Receiver filed a motion asking the Court to enter those consent judgments against Warren and Winnie Chiu. That motion is pending.

c. 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. A scheduling order has this case set for trial in 2014.

d. 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 more than a dozen motions asserting that the Receiver lacks jurisdiction to sue him and that the Court lacks authority to issue any rulings against him. On October 10, 2013, a magistrate judge issued a Report and Recommendation that recommends that the district court grant the Receiver's motion to amend the complaint to allege that Harper is liable for payments sent to Wings Over the World. The magistrate also recommends that 11 motions submitted by Harper be stricken as they all seek rulings on issues previously decided by the Court.

e. Holly, Joann: The Receiver sued Holly and two of her companies on January 17, 2012 seeking the return of \$434,733.81 paid to them by Winsome. Holly successfully avoided service for many months. The Receiver finally published the summons in the newspaper and Holly retained an attorney who is now representing her.

f. 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.

g. Payton, Kathryn. The Receiver sued Payton on January 17, 2012 seeking the return of \$455,125.00 in fraudulent transfers. The Receiver had to issue a subpoena to Payton's bank to get information about her location. She was served in May 2013, but failed to file an answer. On August 14, 2013, the court clerk entered a default certificate against Payton. On August 18, 2013, the Receiver filed a motion for default judgment against Payton. That motion is pending.

h. 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 have filed motions for summary judgment. As noted above, Penedo also has filed a claim in the claims process, seeking a portion of the amounts recovered by the Receiver. Those motions are pending.

i. 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.

j. 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.

k. 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.

l. 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. On February 15, 2012, Sternheim signed a settlement agreement in which he agreed to repay the excess profits. The settlement was approved by the Court. However, Sternheim failed to make any of the required payments and is now asserting that he is not obligated to make payments required by the settlement agreement. Litigation has resumed on this matter.

m. 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.

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

a. Andres, Ursula. On September 10, 2013, the Court granted summary judgment to the Receiver against Andres' wife, Ursula Andres. The Court ruled that Winsome was acting as a Ponzi scheme and that payments to Mrs. Andres were made with actual intent to defraud. The Court also found that payments made to Mrs. Andres did not provide value to Winsome and that she did not demonstrate that she acted in good faith. The Court awarded a

judgment of \$311,075.00 to the Receiver.

b. Bruno, Nunzio. At a hearing on October 7, 2013, the Court granted the Receiver's motion for summary judgment and denied Bruno's motion for summary judgment.

c. Cook, Robert; Onti Management. On July 16, 2013, the Court issued a default judgment against Cook and Onti, in favor of the Receivership. The default was entered after the Receiver unsuccessfully had attempted to serve Cook, then published the summons in the newspaper. The judgment is in the amount of \$26,366.00.

d. Ison, William. The Receiver was granted a default judgment against William Ison on August 23, 2013. The judgment is in the amount of \$185,501.03.

e. King & King & Jones. Both the Receiver and this Georgia law firm filed motions for summary judgment. The Court heard arguments on the competing motions on July 22, 2013. On August 19, 2013, the Court issued an order granting the Receiver's motion for summary judgment and denying the defendant's motion. The Court found that Winsome was acting as a Ponzi scheme and that transfers to King were made with an intent to defraud creditors. The Court held that monies sent to the law firm were for the benefit of Enrique Baca, not Winsome. Judgment was granted to the Receivership for \$25,000.00. King has filed an appeal.

f. Patterson, Connie. On July 17, 2013, the Court entered an order granting the Receiver's motion for summary judgment against Patterson. The Court granted judgment of \$1,472,425.96 in favor of the Receivership. A separate order is expected to grant prejudgment interest against Patterson.

g. Scogin, Lewis. The court entered a judgment against Scogin in the

amount of \$1,116,317.78 on September 6, 2013. Under the judgment, Scogin must provide annual financial information to the Receiver and is required to make payments toward the judgment if his income exceeds \$50,000.00 in any year.

10. The majority of the judgments described above were obtained after the defaults of the defendants. It is unknown how much, if any, the Receiver will be able to collect from these default judgments.

11. 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.

V. SETTLEMENTS

12. Six additional settlements were reached during the Reporting Period. These have all been approved by the Court:

a. Gerald Nowak: On September 5, 2013, the Court approved a settlement agreement by which Nowak will pay \$11,000.00 to the Receivership. Nowak is a friend of Andres who loaned \$35,000.00 to Andres and was repaid by Winsome, using investor monies. The reduced settlement amount reflects verified financial information provided by Nowak showing financial hardship and an inability to pay the full amount.

b. Jose Sarmiento: The Court approved a settlement with Sarmiento for \$5,000.00. Sarmiento was involved in several business ventures with Andres. The Receiver had sued Sarmiento to recover \$25,000.00 paid to him. The reduced settlement amount reflects verified information provided by Sarmiento demonstrating an inability to pay the full amount.

This agreement was also approved by the Court on September 5, 2013.

c. Judith Bassett: Bassett is a friend of Holloway who made personal loans to Holloway and was repaid \$33,007.94 by US Ventures, using investor funds. As part of the settlement, Bassett has paid \$25,000.00 in settlement. This reduced settlement amount reflects demonstrated financial hardship by Bassett. This agreement was approved by the Court on September 5, 2013.

d. Jacki Barrientes: On October 10, 2013, the Court approved a settlement agreement with Barrientes. Barrientes is a relative of a third-party marketer of Winsome. Andres had Winsome pay \$20,000.00 to Barrientes when she had not made any investments herself. Under the settlement, Barrientes will pay \$10,000.00 to the Receivership in regular payments over the next year. The reduced settlement is based on demonstrated financial hardship by Barrientes.

e. Arnel Cruz, Phoebus Group, SA2, Inc.: Cruz was the original owner of the entity US Ventures, LC. Holloway later became a partner with Cruz and subsequently bought out Cruz's interest in US Ventures. Holloway caused US Ventures to pay \$99,678.00 to Cruz and his companies. In the Receiver's lawsuit against him, Cruz asserted financial hardship. The Receiver required that Cruz provide substantial documentation demonstrating his financial condition, including sworn affidavits for him and various companies he controls and tax returns. As part of the settlement, Cruz provided documents relating to his role with US Ventures, including emails from Holloway showing Holloway's knowledge of losses and that account statements were false. Cruz also agreed that the companies that received funds would conduct no future business and will cooperate with the Receiver and law enforcement agencies

in continuing investigations. The Court approved this settlement on October 10, 2013. The lawsuit against Cruz will be dismissed.

f. Cindy Moore, Lincoln Moore: Cindy Moore is a friend of Andres.

Winsome spent over \$3 million trying to recover “inheritance funds” supposedly due to Moore. The Receiver believes this was a Nigerian fraud scheme. Moore claims that most of the funds sent to her and her son Lincoln were wired to Africa and elsewhere to facilitate the release of the inheritance. Cindy Moore and Lincoln Moore provided financial information demonstrating their inability to make any payments to the Receivership, including that Cindy Moore is undergoing cancer treatment and lacks funds to pay for her medical treatment. Under the settlement agreement, the Moores agreed to provide the Receiver with documents relating to Winsome. The Court approved this settlement on October 10, 2013 and Receiver will dismiss his lawsuit against the Moores.

13. The Receiver has had settlement discussions with a few of the remaining defendants. If new settlements are reached, they will be submitted to the Court for approval.

VI. FINANCIAL REPORT

A. Recoveries for the Receivership

14. A total of \$36,272.12 was recovered for the Receivership Estate during the Reporting Period.

Category	Amount
Settlement Recoveries	36,209.28
Bank: Interest Earned	62.84
<i>Total</i>	<i>36,272.12</i>

B. Expenditures by the Receivership

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

Category	Amount
Deposition Transcripts	985.25
Bank Fees	0.00
Outside Copying Costs	0.00
<i>Total</i>	<i>985.25</i>

16. The Receivership bank account balance, as of October 15, 2013, was \$2,773,303.16.

17. There were no payments to the Receiver or his counsel during the Reporting Period. On October 9, 2013, the Receiver and his counsel submitted an application for payment of fees and expenses for the five-month period from May through September 2013. A copy of the fee application can be found on the Receivership website.

VII. OTHER

18. During the Reporting Period, the Receiver provided information and assistance to officials from the U.S. Department of Justice who are prosecuting the criminal charges against Andres and Holloway.

19. The Receiver has been preparing information needed to submit tax returns for the Receivership. The Receiver does not expect that any taxes will be due, but there will be tax preparation expenses.

VIII. NEXT STEPS

20. The next steps the Receiver expects to pursue are:

a. Resolve the two remaining objections to the claims process and present a distribution plan to the Court for approval. Then, make an initial distribution of funds to

investors;

- b. Continue prosecuting the lawsuits filed by the Receiver that are still pending and defend the appeal that has been filed; and
- c. Assist prosecutors in the criminal trial of Holloway.

IX. CONCLUSION

The Receiver respectfully submits this Eleventh Status Report for the period from July 16, 2013 through October 15, 2013.

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 21st day of October, 2013.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **ELEVENTH STATUS REPORT OF R. WAYNE KLEIN, RECEIVER FOR PERIOD JULY 16, 2013 TO OCTOBER 15, 2013** to be served in the method indicated below to the Defendant in this action this 22nd day of October, 2013.

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