

2. Defendant is a court appointed receiver in a federal action and jurisdiction of the subject matter and of the person of the Defendant without ancillary appointment is premised on 28 U.S.C. § 959.

3. On July 29, 2011, and on August 29, 2011, Defendant threatened Plaintiffs and demanded recompense for alleged fraudulent transfers occurring on or before July 31, 2007. (Exhibit 1).

4. The applicable Texas law of fraudulent transfers provides for a four-year statute of repose. Tex. Bus. & Com. Code § 24.010.

5. Pursuant to 28 U.S.C. § 2201, Plaintiffs seek a declaration that the statute of repose in Tex. Bus. & Com. Code § 24.010 has extinguished any cause of action for allegedly fraudulent transfers made to Plaintiffs on or before July 31, 2007.

WHEREFORE, Plaintiffs demand that the Court adjudge:

(1) That any claim of Defendant to recover a money judgment against Plaintiffs, any or all of them, for alleged fraudulent transfers received by Plaintiffs, any or all of them, on or before July 1, 2007, is extinguished by virtue of applicable statute of repose; and,

(2) That Plaintiffs recover their attorneys' fees, costs and such other and further relief, general and special, legal and equitable to which they may show themselves to be entitled.

Respectfully submitted,

/s/ Berry Dunbar Bowen

Berry Dunbar Bowen

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State Bar No.: 02721050

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ATTORNEY IN CHARGE FOR WILLIAM
T. CORNELIUS; R. P. CORNELIUS; and
CORNELIUS & SALHAB

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to the parties listed below either via electronic means as listed on the Court's ECF noticing system or via United States first-class mail, on October 3, 2011.

Alex B. Roberts, Esq.
Beck, Redden & Secrest, LLP
1221 McKinney Street, Suite 4500
Houston, TX 77010
Attorney for R. Wayne Klein, Receiver for
Winsome Investment Trust and U.S. Ventures LC

/s/ Berry Dunbar Bowen

Berry Dunbar Bowen

WAYNE KLEIN, RECEIVER FOR
U.S. VENTURES LC AND WINSOME INVESTMENT TRUST
299 South Main, Suite 1300, Salt Lake City, UT 84111, USA (801) 534-4455
wklein@kleinutah.com

July 29, 2011

Cornelius & Salhab
2028 Buffalo Terrace
Houston, TX 77019-2408

Re: US Ventures LC, Winsome Investment Trust
CFTC v. US Ventures and Winsome Investment Trust, Case No. 2:11CV00099

Dear Sirs:

On January 25, 2011, Wayne Klein was appointed by the U.S. District Court of Utah as the Receiver for U.S. Ventures LC, Winsome Investment Trust, and the assets of Robert J. Andres and Robert L. Holloway. His appointment occurred in connection with a lawsuit filed by the U.S. Commodity Futures Trading Commission against US Ventures, Winsome, Andres, and Holloway. A copy of the order appointing him as Receiver and copies of the complaint and other documents relating to this litigation can be found on our website: <http://www.kleinutah.com/index.php/receiverships/us-ventures>.

As Receiver, our mandate from the court is to reconstruct the bank records of the Receivership Entities and determine whether any payments made by the Receivership Entities were improper and, as a result, should be recovered. We have now completed our preliminary analysis of the financial records.

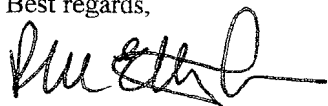
In our review of the financial records, we found several wire transfers totaling \$89,845.73 sent to you between September 27, 2006 and July 31, 2007 by Winsome Investment Trust. The descriptions on the bank documents state that these were payments for the benefit of Jerome Carter. Our investigation and financial analysis have revealed nothing to indicate that Winsome Investment Trust owed money to you or that it received any benefit from these payments to you. The funds paid to you by Winsome Investment Trust were funds derived from a Ponzi scheme and were monies stolen from investors. In addition, we have determined that Winsome was insolvent at the time these payments were made. Accordingly, these payments were fraudulent transfers that must be returned to the Receiver.

If you did provide value to Winsome Investment Trust or if Winsome was obligated to pay these funds to you, please provide us with the proper documentation. I have enclosed a copy of a spreadsheet showing the wire transfers that were sent to you. Otherwise, we are demanding return of the \$89,845.73 paid to you improperly.

The funds should be provided to us by August 15, 2011. If you fail to return these funds by that deadline, the receiver is authorized by the court to file suit in federal court in Utah seeking a return of these funds.

Thank you for your anticipated cooperation. Should you have any questions, please call or email me at: retherington@kleinutah.com

Best regards,



Rendell M Etherington CPA
Enc

WAYNE KLEIN, RECEIVER FOR
U.S. VENTURES LC AND WINSOME INVESTMENT TRUST
299 South Main, Suite 1300, Salt Lake City, UT 84111, USA (801) 534-4455
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August 29, 2011

Via Electronic Mail and US Mail

William T. Cornelius, Esq.
2028 Buffalo Terrace
Houston, TX 77019

Re: Payments by Winsome Investment Trust

Dear Mr. Cornelius:

I have reviewed your August 27, 2011 letter to Rendell Etherington of my office, providing an explanation and supporting documents relating to the work you did defending Jerome Carter against criminal charges in New Hampshire. Thank you for sending those documents and information about your background.

I am sorry, but the information you provided does not alter our view that you were the recipient of fraudulent transfers that must be returned to the Receiver. In essence, you were paid with stolen money and that money must be returned to the Receiver. You are free to seek payment from Carter or Andres, but are not entitled to retain the stolen money. I do not question whether you performed services for Mr. Carter or whether the compensation paid to you was fairly earned. My court-assigned duty is to recover payments made by Winsome to others that should not have been paid by Winsome.

The Uniform Fraudulent Transfer Act (UFTA) provides that payments that were fraudulent when made or payments made by an entity that was insolvent at the time the transfers were made are fraudulent transfers¹ that can be recovered on behalf of the debtor ("payor"). In this case, it appears that Winsome sent you money to pay for Carter's criminal defense. The beneficiary of your work was Carter, not Winsome. The questions then become: a) whether Winsome was operating a Ponzi scheme at the time, b) whether Winsome was insolvent at the time, and c) whether Winsome received "reasonably equivalent value" for the payments it made to you. If Winsome was operating as a Ponzi scheme or was insolvent and it did not receive reasonably equivalent value, the payments were fraudulent transfers and must be returned.

One of the best summaries of the application of the UFTA in connection with Ponzi schemes is *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008). There, the Ninth Circuit explains: "Courts have routinely applied UFTA to allow receivers or trustees in bankruptcy to recover monies lost by

¹ The statute speaks in terms of transfers made with actual fraud or constructive fraud. The result is the same for each, although the burdens of proof differ depending on whether actual fraud or constructive fraud is shown.

Ponzi-scheme investors. . . . The Ponzi scheme operator is the “debtor,” and each investor is a “creditor.” *Id.* at 767. Under the UFTA, if the Receiver can demonstrate the existence of a Ponzi scheme² or that the entity was insolvent at the time the payments were made, the burden shifts to the transferee to demonstrate that the transferor (here Winsome) received reasonably equivalent value for the transfer.³

The money that Andres sent you, from Winsome, is money that investors sent to Winsome for investment. That money was diverted and converted by Andres. In this case, Winsome took well over \$50 million from investors, promising to pay high returns from commodities trading or a variety of other investment projects that Winsome was pursuing. Andres used money sent to Winsome by investors to pay his personal expenses and to pay investment returns to other investors – the hallmark of a Ponzi scheme. The commodities trading program touted by Winsome lost close to \$11 million. Winsome spent additional tens of millions pursuing other investment programs.⁴ None of the returns paid to investors came from profits earned from these promised investment programs. Because the commodities trading lost so much money and because the promised returns were so high, Winsome was insolvent at least by November 2005.

The result of this is that in order to avoid returning the funds paid to you by Winsome, you must either defeat the Receiver’s effort to prove the existence of a Ponzi (or insolvency)⁵ or you must demonstrate that Winsome received reasonably equivalent value for the payments it sent you. We feel very confident we can prove that Winsome was operating as a Ponzi scheme and that it was insolvent.

I am sorry for the impact this has on you. It is a result of you accepting payment from Winsome for a debt owed by Carter. However, the case law is clear that payments made by a fraudulent operation to satisfy the debts of others, such as Mr. Carter, do not constitute value to the entity making fraudulent payments.

In *Dahnken v. Wilmarth*, 726 P.2d 420, 422 (Utah 1986), the Utah Supreme Court emphasized: “Satisfaction of an obligation owed the transferee by a third party does not qualify as fair consideration under §25-1-4 [Utah’s Uniform Fraudulent Transfer Act].” That principle applied to this case means that you gave no consideration to Winsome for the payments you received from Winsome. Similarly, in *Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995), Judge Posner said funds given to a company (like Winsome) “should have been used for the stated purposes of the corporations’ sale of interests in the limited partnerships, which was to trade commodities. Instead, [the promoter] caused the corporations to pay out the money they received to himself, his ex-wife, his favorite charities, and an investor” The opinion also explains: “The three sets of transfers removed assets from the corporations for an unauthorized purpose and by doing so injured the corporations.” *Id.* In *SEC v. Elmas Trading Corp.*, 683

² Courts routinely, if not universally, hold that the existence of a Ponzi scheme is itself proof of actual fraud.

³ “Value” as used in Section 8(b) of the Uniform Fraudulent Transfer Act means there must be value *to the debtor*.

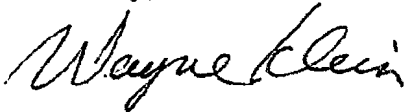
⁴ Substantial information about this case, including copies of the CFTC’s lawsuit against Andres and Winsome can be found on our website. In particular, I direct your attention to the most recent status report filed with the Court. <http://www.kleinutah.com/wp-content/uploads/2011/02/Report-CourtSecond-June15111.pdf>.

⁵ In matters such as this, the courts use summary proceedings to determine whether transfers were fraudulent (as the court did in *Donell v. Kowell*).

F.Supp.743, 752 (D. Nev. 1987), the court allowed a receiver to impose a constructive trust on \$90,000 paid from receivership funds to satisfy a debt owed by someone other than the corporation.⁶

I encourage you to review the fairly unique case law that applies to receivership proceedings such as this.⁷ In any event, our position remains the same: you are obligated to return all payments made to you by Winsome Investment Trust. Please send a check made payable to Wayne Klein, Receiver for US Ventures and Winsome, by September 16, 2011. If we have not received payment by then, this matter will be referred for litigation in the US District Court in Utah.

Sincerely,



WAYNE KLEIN

Receiver

⁶Additional cases include: *Newbro v. Freed*, 409 F.Supp.2d 386, 397 (S.D.N.Y. 2006), aff'd, 2007 WL 642941 (2nd Cir. 2007) (summary order) ("one who receives money from a thief in satisfaction of a pre-existing debt does not have a defense against the person from whom the money was stolen") (quoting *Eisenberg v. Grand Bank For Sav. FSB*, 207 F.Supp.2d 553, 559 (S.D. Miss. 2002), aff'd 70 Fed. Appx. 765 (5th Cir. 2003)); *Bonded Financial Services, Inc. v. European American Bank*, 838 F.2d 890 (7th Cir. 1988) (a fraudulent enterprise made payments to a bank, to pay the debt of another); and *U.S. v. Rivieccio*, 661 F.Supp.281 (E.D.N.Y. 1987).

⁷A site that you may find useful is www.receiverinfo.com. This site contains an excellent summary of the case law on a variety of receivership topics, such as those identified in this letter.