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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

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

**FOR PERIOD JULY 16, 2015
TO OCTOBER 31, 2015**

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 Nineteenth Status Report for the extended period of July 16, 2015 through October 31, 2015 (the “Reporting Period”). Because significant developments occurred during the last two weeks of October, the Receiver has extended this Reporting Period to cover three and a half months, to October 31, 2015. Future status reports are expected to cover three-month periods.

I. INTRODUCTION

1. There are three matters needing to be resolved in order to conclude the Receivership: a) resolution of a single remaining litigation case, b) collection on judgments granted to the Receiver, and c) distribution of funds to allowed claimants. The Receiver is endeavoring to complete these remaining matters quickly and with as little expense as possible so the Receivership Estate can be terminated and remaining funds distributed to investors. Several significant developments on these matters occurred during the Reporting Period, particularly the last two weeks of October.

II. LITIGATION

2. The last of the 89 cases filed by the Receiver seeking recovery of funds is close to resolution. On August 26, 2015, Judge Waddoups issued a decision and order requiring Peter and Laurie Widmark to repay \$191,000.00 in excess profits to the Receiver. This is the full amount of excess payments to them. The Widmarks have opposed the Receiver’s motion for entry of judgment, asserting that they should not be required pay pre-judgment interest. The Receiver has filed his reply and the issue was submitted to the court for decision on October 20, 2015.

III. APPEAL STATUS

3. The Tenth Circuit Court of Appeals recently issued its ruling on the last case still

pending on appeal. On October 27, 2015, the appeals court affirmed the trial court, ruling that Winsome Investment Trust was not responsible to pay the debts of another company, RIO Systems, Inc. As a result, the appeals court said Roberto Penedo's claim in the amount of \$4,418,000.00 was properly denied by the Receivership Court. With this ruling, the Receiver no longer needs to keep funds in reserve to pay Mr. Penedo's denied claim.

IV. COLLECTION, ASSET RECOVERY EFFORTS

4. The Receiver has been awarded 32 judgments that have not yet been satisfied.¹ Many of these judgments were obtained by default, suggesting that the defendants may have few assets available to satisfy these judgments. Other judgments are against corporations and entities that have ceased their existence, making recovery more doubtful.

5. One of the most vexing decisions the Receiver must make is how much of his effort to expend and how much money to spend trying to collect judgments where there is a significant risk that nothing will be recovered or that the costs of collection will exceed the amounts recovered.

6. Two of these 32 judgments were assigned to a Texas law firm to collect, with the Receiver paying an hourly rate to the law firm. Due in part to that collection litigation, the Receiver obtained complete control over the home of Robert Andres and his wife, Ursula. The disposition of the home is discussed below. Since the home was Mrs. Andres' primary asset, the Receiver has withdrawn this case from the hourly-rate agreement and will assign it to a collection attorney who works only on contingency.

¹ This does not include the judgment debt owed by Robert Penedo that was discharged in his bankruptcy.

7. The second hourly-rate collection case seeks recovery of the approximately \$89,000.00 judgment the Receiver was awarded against Texas attorney William Cornelius. Cornelius is continuing to resist collection efforts, recently defying a notice to appear for a deposition. The Receiver recently obtained a court order requiring Cornelius to appear at a deposition and disclose his assets within 60 days.

8. Another four collection cases have been assigned to law firms in Texas and Georgia that have agreed to pursue collection efforts for a share of the funds recovered.² The remaining 26 cases were recently assigned to a law firm in New Jersey that specializes in collecting these types of judgments. The New Jersey law firm advances all expenses and will be compensated only from a share of proceeds recovered.

9. On July 29, 2015, Ursula Andres notified the Receiver that she was vacating the home she owned with Robert Andres. This decision was apparently prompted by the judgment that the Receiver has against her and a foreclosure sale scheduled for August 4, 2015 by the mortgage holder on the home. The Receiver already has an agreement with the mortgagor regarding division of proceeds from the sale of the home. The Receiver took the following steps:

- a. He took control of the home and hired a property manager to maintain the home pending the foreclosure sale;
- b. He obtained agreement by the lender to postpone the foreclosure sale two months, to allow the Receiver to determine whether the furniture and other assets in the home had value; and

² These law firms have reported to the Receiver that some limited funds have been recovered to date.

c. He had pictures taken of the furniture and other assets and compiled an inventory of assets. These were provided to two auctioneers to determine their interest in conducting an auction of the home's contents. Ultimately, both auctioneers indicated the asset values did not justify attempts to sell the assets at an auction.

10. The Andres home was sold at a foreclosure sale on October 6, 2015. There were no bids higher than the mortgage holder's debt, so the mortgagor took title to the home. The mortgagor is in the process of preparing the home for sale. When the home is sold, the Receiver will be able to determine whether any net proceeds are due to the Receivership.

V. DISTRIBUTION OF FUNDS TO ALLOWED CLAIMANTS

11. Of the 118 distribution checks sent to investors in July 2014, one check, in the amount of \$9,060.00 remains uncashed. This investor died in 2014. The Receiver has contacted potential heirs, inviting proof that any heir is entitled to her share of the distribution. No proof has been provided, so the Receiver expects to recommend that her claim be deemed abandoned and these unclaimed funds be allocated among the remaining investors in the next distribution.

12. With the appeals court ruling that the Receiver does not have to pay any funds to Penedo, the Receiver expects to recommend that a second interim distribution be made to allowed claimants in the near future. He has requested the CFTC's support for this recommendation. If a second interim distribution is made in the near future, the Receiver expects that he will wait until mid-2016 to determine what funds can be recovered from collection efforts, then sell the outstanding judgments to a buyer and ask the Court to close the Receivership.

13. As noted in the Seventeenth Report, the Receiver received a single \$400.00

restitution payment from Robert Holloway in March 2015. No other funds have been received from the Department of Justice. The Receiver is working with the Department of Justice to get a large amount of forfeited funds that the Department of Justice is holding released to the Receiver for distribution. The Receiver learned that Holloway has appealed his criminal conviction and that the forfeited funds cannot be released until Holloway's appeal is decided.

VI. FINANCIAL REPORT

A. Recoveries for the Receivership

14. During the Reporting Period, the Receivership received \$128.36 in interest on the funds in the Receivership bank account.

B. Expenditures by the Receivership

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

Category	Amount
Collection Fees, Expenses	\$18,619.28
Property management, fees	\$879.45
Other (bank fees, tax filing)	\$134.52
<i>Total</i>	<i>\$19,633.52</i>

16. On October 22, 2015, the Court granted a fee application for the Receiver and his counsel for the six-month period from March 1, 2015 to August 31, 2015. This was paid on October 26, 2015. The fees were \$10,755.00 for the Receiver and \$39,561.69 in fees and expenses for Receiver's counsel.

17. The Receivership bank account balance, as of October 31, 2015, was \$684,350.37. This amount includes \$9,060.00 from the one uncashed distribution check. This balance does not include the \$400.00 in criminal restitution the Receiver is holding in a separate

account for distribution for the U.S. Department of Justice.

VII. NEXT STEPS

18. The next steps the Receiver expects to pursue are:
- a. Obtain and collect on the judgment in the Widmark case.
 - b. Continue collection efforts on judgments previously obtained.
 - c. Seek Court permission to make a second interim distribution of funds to claimants.
 - d. Determine whether the Department of Justice wants the Receiver to distribute funds it has recovered in forfeiture actions.

VIII. CONCLUSION

The Receiver respectfully submits this Nineteenth Status Report for the extended period from July 16, 2015 through October 31, 2015. 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 2nd day of November, 2015.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **NINETEENTH STATUS REPORT OF R. WAYNE KLEIN, RECEIVER, FOR PERIOD JULY 16, 2015 THROUGH OCTOBER 31, 2015** to be served in the method indicated below to the Defendants in this action this 2nd day of November, 2015.

☐ VIA FACSIMILE
☐ VIA HAND DELIVERY
☒ VIA U.S. MAIL
☐ VIA FEDERAL EXPRESS
☐ VIA EMAIL
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/s/ Melissa Aguilar