

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAY 16 2003

DAVID J. MALONE, CLERK
BY
DEPUTY _____

UNITED STATES OF AMERICA §
 §
V. § NO. 9:02CR34
 § (Judge Hannah)
 §
JOHN ALLEN WHEELER

ORDER APPOINTING RECEIVER

CAME ON to be considered the Government's Motion for Appointment of a Receiver,
and the Court, after considering same, makes the following findings:

1. On February 10, 2003, the Defendant, John Allen Wheeler, pleaded guilty to an
Information charging Wheeler with wire fraud. Thereafter, the Court signed a Preliminary Order
of Forfeiture forfeiting Wheeler's interest in the following property to the United States of
America:

CURRENCY

1. \$3,224,300.00 in United States currency plus any accrued interest which is currently on deposit in the Court Registry System; and
2. \$1,000,000.00 in United States currency plus any accrued interest which is currently on deposit in an account controlled by the District Court in the District of Arizona.

PERSONAL and MISCELLANEOUS PROPERTY

1. Miscellaneous personal property and furniture more completely described in Attachment A which is incorporated herein.
2. 18 X 80 Fleetwood mobil home
3. Horse trailer - Trailer Connection
4. Ranger 195SVS bass boat w/trailer - Terry's Marine, Nacogdoches, TX
5. New Holland tractor
6. Schulte cutter

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7. New Holland loader
8. Versa Tech Grader
9. Polaris ATV
10. Polaris SC 90 ATV
11. Polaris Ranger 6X Mule
12. Polaris SM 500 ATV
13. Hay King
14. Kawasaki PR 650 ATV
15. Polaris SM 700 ATV

2. The Government in this case has advised that it will not seek to finalize the forfeiture of the property to the United States of America. The Government has requested that the property be utilized as restitution to the approximately 800 victims of Defendant's fraudulent conduct. The total losses suffered by these victims has not been precisely determined, but is without question in excess of twenty million dollars.

3. Determining which victims will be entitled to what will be a time consuming and laborious task. In that the United States Attorney's Office and United States Probation Office are not staffed or funded to accomplish such work, the Court finds that the most timely and efficient means to accomplish restitution in this case is the appointment of a Receiver pursuant to 18 U.S.C. § 3664. Accordingly, the Court after considering the Government's Motion for Appointment of a Receiver, finds it has merit and should be granted.

It is, therefore, **ORDERED** that Robb Evans of Robb Evans & Associates LLC, 11450 Sheldon Street, Sun Valley, California is appointed as the Receiver in this matter. The Receiver shall oversee and administer claims made against the property. The Receiver shall notify this Court within thirty (30) days of appointment of his plan to administer restitution of the property. Such plan should address the liquidation of assets that are not in cash.

In directing the Receiver to formulate a plan to administer the Property described herein, the Court hereby **ORDERS** the following to facilitate said plan:

1. The Receiver's appointment is for the purposes of receiving the Subject Property, managing the Subject Property, and liquidating the Subject Property for the benefit of the victims. The Receiver shall have the power to transfer, assign, turnover or otherwise convey the Subject Property, with directions and authority to accomplish the following:
 - a. Assume and maintain full control of the Subject Property.
 - b. Collect, marshal, maintain and take custody, control, and possession of the Subject Property, wherever located, including the income and profits therefrom, and all sums of money now or hereafter due or owing.
 - c. Perform all acts necessary in any jurisdiction to protect, conserve, preserve, and prevent from waste or dissipation the funds, property, premises, accounts, and other assets of the Subject Property in order to insure that funds are available for restitution to the victims.
 - d. Enter into agreements in connection with administration of the Subject Property, including, but not limited to: (1) the retention and employment of managers, agents, investigators, attorneys or accounts of the Receiver's choice, including, without limitation members and employees of the Receiver's firm, to assist, advise, and represent the Receiver; (2) the movement and storage of any equipment, furniture, records, files or other physical property relating to the Subject Property; and (3) the retention of

auctioneers or other professionals to assist in the liquidation of the Subject Property.

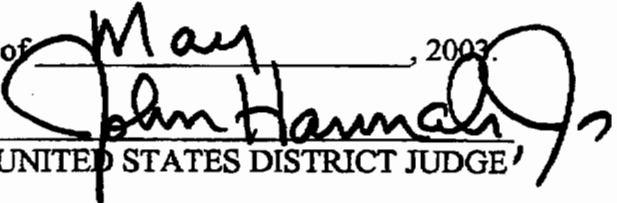
- e. Liquidate the Subject Property and all assets transferred to the Receiver in accordance with the terms of this Order or any prior or subsequent order of this Court; and to transfer the Subject Property to storage facilities, cancel leases, terminate and enter contracts.
- f. Execute all bills of sale and deeds to personal property coming into the possession of the Receiver.
- g. Prepare and submit periodic reports, as necessary, to this Court and to the United States, describing the Receiver's efforts to comply with the terms of this Order.
- h. The Subject Property shall be liquidated, held and maintained by the Receiver pending further Order of this Court. The property may be liquidated by the Receiver in accordance with Receiver's plan to administer the restitution property. In the interest of maximizing the potential restitution fund available for the victims, the Court has approved the Receiver's plan, which includes a variation to 28 U.S.C. § 2001.
- i. If, in the course of executing his duties, the Receiver discovers or has reason to believe the existence of other assets not identified in the preliminary order of forfeiture, the Receiver shall notify counsel for the United States who shall take any action deemed appropriate under the circumstances.

- j. The Receiver shall identify potential claimants and their claim amounts. It is the desire of this Court that all victims will be treated equally; accordingly, all distributions will be pro rata.
- k. The Receiver shall provide to this Court and to the United States Attorney's Office his recommendation for a distribution of the restitution fund to the victims. No distribution will occur without the express authorization of this Court.
- l. The Receiver and those he employs are entitled to reasonable compensation for the performance of duties pursuant to this Order, and for the costs of actual out-of-pocket expenses incurred by them, including ordinary and necessary expenses incurred by the Receiver for professional and other services. Such payments shall have priority over all other distributions from the Subject Property assets. The quarterly reports to the Court shall include information regarding the Receiver's fees and out-of-pocket expenses. The Court's approval shall be required for payment of all expenses except payments to clerical staff and payments to third parties whose immediate services are necessary to liquidate or sell assets, e.g., property appraisers.
2. The Receiver is directed to file quarterly reports with this Court from the date of this Order advising the Court of its progress and for payment of the Receiver's fee and out-of-pocket expenses for the Court's approval, except that prior approval for payment of the expenses outlined in paragraph 1., above, shall not be

required.

3. The United States Attorney's Office and relevant federal law enforcement agencies shall provide the Receiver access to documents, records, computers and other materials seized during the investigation of this matter to assist the Receiver in the performance of his duties.

Signed this 15th day of May, 2003.


UNITED STATES DISTRICT JUDGE