

United States District Court
Middle District of Tennessee
Nashville Division

Federal Trade Commission, and

State of Tennessee, *ex rel.*
Robert E. Cooper, Jr., Attorney General and
Reporter,

Plaintiffs,

v.

United States Benefits, LLC, a limited liability
company, also d/b/a United States Health, United
Benefits of America, LLC, UBA, United Benefits,
United Health Benefits, Health Care America,
HCA, National Benefits of America, Insurance
Specialty Group, and Adova Health,

Timothy Thomas, individually and as an officer
of United States Benefits, LLC, also d/b/a United
States Health, United Benefits of America, LLC,
UBA, United Benefits, United Health Benefits,
Health Care America, HCA, National Benefits of
America, Insurance Specialty Group, and Adova
Health,

Defendants, and

Kennan Dozier, also d/b/a Kennan Dozier
Thomas, Accentuate Designs, and Accentuate
Your Home, LLC,

Relief Defendant.

Case No. 3-10 0733

**PLAINTIFFS' NOTICE
OF WITNESS RECEIVER ROBERT
H. WALDSCHMIDT AND
SUMMARY OF EXPECTED
TESTIMONY TO BE USED IN
PRELIMINARY INJUNCTION
HEARING**

Identification of Witness

Plaintiffs Federal Trade Commission and State of Tennessee hereby file notice pursuant to the Court's August 4, 2010 Temporary Restraining Order (TRO) identifying the court-appointed Receiver Robert H. Waldschmidt as a witness who may testify at the August 18, 2010, preliminary injunction. Mr. Waldschmidt's contact information is as follows:

Robert H. Waldschmidt
Howell & Fisher, PLLC
300 James Robertson Parkway
Nashville, TN 37201-1107
tel.: (615) 244-3370
fax: (615) 259-2179

Summary of Expected Testimony

If called to testify at the August 18, 2010, preliminary injunction hearing, Receiver Robert H. Waldschmidt may testify as follows:

Mr. Waldschmidt was appointed Temporary Receiver in the above-captioned matter on August 4, 2010.

Mr. Waldschmidt may describe his educational background and work experience. He may also discuss his prior experience as a Chapter 7 Bankruptcy Trustee for the Middle District of Tennessee and his receivership work in other cases.

Mr. Waldschmidt may testify about the steps he took to establish a receivership over the Defendants' business beginning August 5, 2010. He may describe his initial meeting with defendant Timothy Thomas the morning of August 5, 2010. He may testify about his review of the Court's August 4, 2010, temporary restraining order ("TRO") with Mr. Thomas and may describe Mr. Thomas' acknowledgment of receipt of the TRO and his understanding of the terms of the TRO, including, in particular, the terms of the court-ordered asset freeze.

Mr. Waldschmidt may testify about his meeting with the Defendants' employees on August 5, 2010, his collection of the employees' information, and his coordination of the return of certain employees' personal effects.

Mr. Waldschmidt may describe certain events which took place subsequent to his initial August 5, 2010, meeting with Mr. Thomas, regarding steps taken by Mr. Thomas and his wife Kennan Dozier to withdraw and transfer assets. Mr. Waldschmidt may testify that shortly after meeting with Mr. Thomas on August 5, 2010, he discovered that Mr. Thomas went into his office and was packing away a netbook computer into his briefcase. Mr. Thomas was also attempting to pack away documents that were lying on his desk. Mr. Thomas surrendered this property upon being requested to do so by Mr. Waldschmidt.

Mr. Waldschmidt may also testify that at the time Mr. Thomas surrendered the netbook computer and notes to Mr. Waldschmidt, Mr. Thomas also had in his possession checks from benefits association International Association of Benefits ("IAB") totaling approximately \$411,000. Mr. Thomas did not tell Mr. Waldschmidt that he had \$411,000 on him, but, instead, quickly left the premises and took the \$411,000 with him when he left.

Mr. Waldschmidt may testify about his initial inspection and review of the defendants' offices, his inventory of defendants' assets, his changing of the locks, and his discussion of the defendants' rental space with the leasing agent for the landlord.

Mr. Waldschmidt may testify about his contact with all of the defendants' known banks and financial institutions, his provision of a letter and a copy of the TRO to each such bank and financial institution, and his follow-up with each such bank or financial institution throughout the day and the course of the following week.

Mr. Waldschmidt may testify that one of the many phone calls he received during the day

on August 5, 2010, from the various banks and lending institutions, included a telephone call from Morgan Keegan, advising that earlier that day Mr. Thomas had “cleared out” his Morgan Keegan account of approximately \$115,000.00 and had attempted to cash the check. Mr. Waldschmidt may testify about similar asset withdrawals by Mr. Thomas and Ms. Dozier which occurred later that day and up to the time of the August 18, 2010, preliminary injunction hearing.

Mr. Waldschmidt may also testify about the events surrounding his discovery of an email from Mr. Thomas dated August 5, 2010, at 9:45 a.m., to Morgan Keegan, requesting that Morgan Keegan send someone to pick up \$411,000.00 for deposit into one of Mr. Thomas’ financial accounts. These funds still had not been disclosed to Mr. Waldschmidt by Mr. Thomas. Mr. Waldschmidt may describe his contact with benefits association IAB and his efforts to secure the \$411,000 pursuant to the TRO.

Mr. Waldschmidt may describe his work throughout the week of August 9, 2010, trying to address inquiries from various employees of defendants, drafting a claims list of potential creditors, and working up the payroll through August 5, 2010. He may describe his meeting with defendants’ comptroller Jim Christatos, on August 10, 2010, to obtain additional information about the operations and, in particular, the employee payroll information.

Mr. Waldschmidt may testify that on August 10, 2010, he was contacted by Nashville attorney David Raybin, who advised that he might possibly be representing the Defendants. Nashville attorney Mike Abelow also contacted Mr. Waldschmidt during this time period, concerning his representation in the case.

Mr. Waldschmidt may testify that Messrs. Raybin and Abelow offered to assist in recovering some of the assets removed by Mr. Thomas and Ms. Dozier from various bank and financial accounts. He may describe a subsequent meeting with Mr. Abelow, at which time Mr.

Abelow tendered to Mr. Waldschmidt, nine checks written to Mr. Thomas totaling \$123,156.89; these checks are being held by Mr. Waldschmidt pending further direction from the Court.

Mr. Waldschmidt may testify that on August 17, he learned that Mr. Thomas withdrew from the Accentuate Design account of First Bank of Tennessee \$19,500 at approximately 1:43 pm on August 5—\$10,400 in cash and a cashiers check for \$9,100. Currently, this money has not been handed over to Mr. Waldschmidt. Mr. Waldschmidt may testify about other monies due to the receivership estate which remain missing and have not been accounted for, by any of the Defendants.

Mr. Waldschmidt may testify that he has taken an inventory of all physical assets on the premises on 1283 Murfreesboro Road, Nashville, Tennessee and that an inventory will be filed with the Court at a later date. He may describe his work identifying assets related to the Defendants, as more fully described in his Report and Exhibits thereto.

Mr. Waldschmidt may testify about the website he created at:

<http://www.trusteblogs.com/ReceiverUSH.aspx>

which has a mechanism to allow creditors to send claims forms to the Receiver. This website is being monitored, and information is updated.

Respectfully submitted,

Dated: August 17, 2010

/s/ Arturo A. DeCastro
Arturo A. DeCastro, DC Bar # 992023
Kelly Horne, CA Bar # 242675
Federal trade Commission
600 Pennsylvania Avenue, NW, H-286
Washington, DC 20580
(202) 326-2747 (DeCastro)

(202) 326-3031 (Home)
(202) 326-3395 (Fax)
adecastro@ftc.gov
khome@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

/s/ Olha N.M. Rybakoff
Olha N.M. Rybakoff, TN Bar # 24254
T.Jay Warner, TN Bar #26649
Assistant Attorneys General
Office of the Attorney General
Consumer Advocate and Protection Division
425 5th Avenue North, 3rd Floor
Nashville, TN 37243
Phone: (615) 532-2590
Fax: (615) 532-2910
olha.rybakoff@ag.tn.gov
t.jay.warner@ag.tn.gov

Attorneys for Plaintiff
STATE OF TENNESSEE