

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff-Appellee,

v.

CHARLES D. SCOVILLE,

Defendant-  
Appellant,

and TRAFFIC MONSOON, LLC,

Defendant.

Case No. 17-4059

**REPLY TO OPPOSITION TO RECEIVER'S MOTION FOR LEAVE TO  
FILE AMICUS CURIAE BRIEF**

**DORSEY & WHITNEY LLP**

Peggy Hunt, Utah Bar No. 6060

Michael F. Thomson, Utah Bar No. 9707

John J. Wiest, Utah Bar No. 15767

111 S. Main St., 21st Floor

Salt Lake City, UT 84111

Telephone: (801) 933-7360

Facsimile: (801) 933-7373

[hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)

[thomson.michael@dorsey.com](mailto:thomson.michael@dorsey.com)

[wiest.john@dorsey.com](mailto:wiest.john@dorsey.com)

*Attorneys for Receiver Peggy Hunt*

**REPLY TO OPPOSITION TO RECEIVER’S  
MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

Pursuant to Fed. R. App. P. 27(a)(4), Receiver Peggy Hunt hereby files this *Reply* to the *Opposition* filed by Appellant Charles D. Scoville (the “Scoville Opposition”) to the *Receiver’s Motion for Leave to File Amicus Curiae Brief* (the “Motion”).<sup>1</sup> For the reasons set forth in the Motion and below, the Receiver respectfully submits that the Motion should be granted, and the Court should permit the Receiver to file the proposed brief (the “Amicus Brief”) filed concurrently with the Motion.

**REPLY**

This Court may grant an amicus leave to file a brief when the amicus provides the Court with unique information and perspective. *See Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997), *cited in* Motion at 4. For the reasons set forth in the Motion, the Receiver has met this standard and, therefore, the Motion should be granted.

Mr. Scoville maintains that the Court should deny the Motion either because the Receiver allegedly is raising issues in the Amicus Brief not raised below, or because the Receiver does not provide unique information or perspective. Scoville Opposition at 1. The first argument is not only irrelevant but incorrect, and the

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<sup>1</sup> Unless stated otherwise, capitalized terms are as defined in the Motion.

second argument is without merit.

**I. The issue of what was raised below is irrelevant to consideration of the present Motion and, even if it is relevant, the Receiver's information aids the Court, thus supporting granting the Motion.**

Mr. Scoville maintains that the Court should deny the Motion because the propriety of Mr. Scoville bringing an appeal on behalf of Traffic Monsoon was not raised in the District Court. Scoville Opposition at 1-3. This argument, which goes to the merits of the issues raised in the Amicus Brief, is irrelevant to whether the Court should grant the Motion. Accordingly, Mr. Scoville's Opposition should be overruled and the Motion should be granted.

Even assuming, for the sake of argument, that it is proper at this juncture for the Court to consider the timeliness of the issue of whether Traffic Monsoon was properly named an appellant in this appeal, the fact that this issue was not raised in the opening briefs of the parties actually weighs in favor of granting the Motion. It is precisely because neither party mentioned the fact that Traffic Monsoon was improperly included as a party to this appeal that the Receiver seeks to appear as an amicus and bring this important matter to the Court's attention. Furthermore, this issue did not arise until the appeal was filed when Mr. Scoville caused the *Notice of Appeal* to name Traffic Monsoon as an appellant. In the District Court, Mr. Scoville did not presume to control Traffic Monsoon or to act on its behalf and, in fact, affirmatively represented to the District Court that he was not taking

actions on behalf of Traffic Monsoon. *See* Amicus Brief at 6. Thus, when Mr. Scoville improperly named Traffic Monsoon as a party, the Receiver sought to correct this error by filing the Motion and seeking leave to file the Amicus Brief. The Motion is timely under Fed. R. App. P. 29(a)(6), and should be granted.

**II. The Receiver’s analysis is unique, independent, and important.**

Mr. Scoville also maintains that the Court should deny the Motion because the Receiver does not have a unique perspective or information. Scoville Opposition at 1, 3-4. This argument also is without merit. The Amicus Brief raises issues about Traffic Monsoon improperly being named as a party in the appeal, which is unique and, as Mr. Scoville acknowledges in Section II.A of the Scoville Opposition, was not raised by the parties. Furthermore, in the Amicus Brief, the Receiver states her position about this appeal which is a unique perspective. The Receiver is the only appointed officer of the court charged with protecting assets for the benefit of Traffic Monsoon investors who lost money, and in that capacity, she has conducted an independent, extensive investigation of Traffic Monsoon. Indeed, as a court-appointed receiver, the Receiver firmly believes that she has a responsibility to provide this Court with her perspective as part of her duty to protect the assets of the receivership estate. *See SEC v. Wing*, 599 F.3d 1189, 1194 (10th Cir. 2010) (focus of equitable receivership is “to safeguard the assets, administer the property as suitable, and to assist the district

court in achieving a final, equitable distribution of the assets if necessary”). This is especially so in light of the fact that the Receiver’s ongoing investigation makes it clear that Traffic Monsoon was operated as a Ponzi scheme.

While the Receiver agrees with the SEC that this Court should affirm the District Court, this is not improper. In fact, “there is no rule that amici must be totally disinterested.” *Funbus Sys., Inc. v. Cal. Pub. Utils. Commerce*, 801 F.2d 1120, 1125 (9th Cir. 1986). Fed. R. App. P 29(a)(4) requires that an amicus state, on the cover of its brief, which party the amicus supports and “whether the brief supports affirmance or reversal.” This is precisely what the Receiver has done here—she is urging the Court to affirm the District Court because Traffic Monsoon was operated as a Ponzi scheme.

### **III. Conclusion**

For the reasons stated above, the Receiver respectfully submits that she has unique information and perspective that can help this Court in its consideration of this appeal. Accordingly, the Receiver requests that the Court grant the Motion and grant her leave to file the Amicus Brief.

Dated this 2nd day of November, 2017.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt*

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Peggy Hunt

Michael F. Thomson

John J. Wiest

*Attorneys for Receiver Peggy Hunt*

## **CERTIFICATE OF COMPLIANCE**

I hereby certify with respect to the foregoing:

- 1) This document complies with the word limits of Fed. R. App. P. 27(d)(2)(C) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 10th Cir. R. 32(b), this document contains 933 words.
- 2) This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14 point font.
- 3) All required privacy redactions have been made per 10th Cir. R. 25.5.
- 4) No paper copies of this document are required by the Court.
- 5) This document has been scanned for viruses with the most recent version of a commercial virus scanning program, McAfee Agent, Version 5.0.4.470, last updated November 2, 2017, and according to the program are free of viruses.

Date: November 2, 2017

### **DORSEY & WHITNEY LLP**

/s/ Peggy Hunt

Peggy Hunt, Utah Bar No. 6060

Michael F. Thomson, Utah Bar No. 9707

John J. Wiest, Utah Bar No. 15767

111 S. Main St., 21st Floor

Salt Lake City, UT 84111

Telephone: (801) 933-7360

Facsimile: (801) 933-7373

[hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)

[thomson.michael@dorsey.com](mailto:thomson.michael@dorsey.com)

[wiest.john@dorsey.com](mailto:wiest.john@dorsey.com)

*Attorneys for Receiver Peggy Hunt*



**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2017, I electronically filed the foregoing **RECEIVER’S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF** with the Clerk of the Court of the United States Court of Appeals for the Tenth Circuit using the court’s CM/ECF system that will send a notice of electronic filing to the CM/ECF participants listed immediately below:

- Amy J. Oliver
- William K. Shirey
- Daniel J. Wadley
- D. Loren Washburn
- Micah S. Echols
- John E. Durkin
- Michael F. Thomson
- Peggy Hunt

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Peggy Hunt