

**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

RECEIVER'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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Pursuant to Fed. R. App. P. Rule 29(a)(3), Peggy Hunt, the court appointed receiver (the “Receiver”) of Traffic Monsoon, LLC (“Traffic Monsoon”) and the assets of Charles D. Scoville (“Mr. Scoville”) that were obtained directly or indirectly from Traffic Monsoon, by and through her counsel of record, hereby files this Motion (the “Motion”) requesting leave to file an amicus curiae brief (the “Amicus Brief”), filed concurrently herewith. In support hereof, the Receiver states as follows:

I. The Receiver, in her capacity as a court-appointed officer charged with protecting assets of the receivership estate for the benefit of investors, has positions relevant to this appeal.

The Receiver was appointed by the District Court “for the purpose of marshaling and preserving all assets of Traffic Monsoon, LLC and all assets of Charles D. Scoville that were obtained directly or indirectly from Traffic Monsoon.” Appellant App. 2112. As a court-appointed officer of the Court, the Receiver has an interest in the outcome of this appeal inasmuch as she is charged with protecting the assets of the receivership estate for the benefit of defrauded investors. *See SEC v. Wing*, 599 F.3d 1189, 1197 (10th Cir. 2010) (“[I]n a case involving a Ponzi scheme, the interests of the Receiver are very broad and include not only protection of the receivership *res*, but also protection of defrauded investors.”). She has been in control of and investigating Traffic Monsoon since

July 2016, and currently holds over \$49 million that cannot be equitably distributed to the many thousands of Traffic Monsoon investors who lost money in this fraudulent enterprise until after this appeal is resolved. As such, the Receiver's position as a representative and custodian of the receivership estate is relevant to this appeal.

II. The Amicus Brief is relevant to the disposition of this appeal.

The Receiver maintains that the Amicus Brief is relevant and should be helpful to the Court's consideration of this appeal on two points. First, the Amicus Brief should assist the Court in understanding the fact that Traffic Monsoon was not properly named as a party in this appeal. Second, the Amicus Brief is important to provide the Court with the Receiver's perspective about Mr. Scoville's claim that the District Court "erred by concluding that Traffic Monsoon's traffic exchange business constitutes a Ponzi scheme, due to the lack of legal and factual support." Appellants' Opening Br. 2. As set forth in the Amicus Brief, the Receiver's extensive, independent investigation leads her to conclude that Traffic Monsoon was a Ponzi scheme primarily because Traffic Monsoon paid investors with funds obtained from other investors. The Receiver therefore believes she is compelled to take a position that serves to protect the assets of the receivership estate for the benefit of those investors who lost money in their dealings with Traffic Monsoon.

III. Argument

Fed. R. App. P. 29 permits an amicus curiae to file a brief “by leave of the court or if the brief states that all parties have consented to its filing.” The Receiver contacted both parties to the appeal prior to the filing of this Motion informing them of her intent to seek leave to file the Amicus Brief and requesting their consent. The Securities and Exchange Commission responded that it consented to the Receiver filing an amicus brief. Mr. Scoville responded that he may not object to the Receiver filing an amicus brief depending on the content. This Motion was provided to the parties concurrently with its filing. The Receiver will promptly contact Mr. Scoville and notify the Court when she is informed of Mr. Scoville’s position.

To the extent that Mr. Scoville does not consent, the Court should grant the Receiver leave to file the Amicus Brief. “An amicus brief should normally be allowed . . . when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997). The Receiver, as the officer of the Court protecting the interests of the receivership estate and defrauded investors, has unique information and perspective that can help the Court in this appeal. She requests that the Court grant her leave to file the attached Amicus Brief.

IV. Conclusion

For the reasons stated above, the Receiver respectfully requests that the Court grant this Motion and grant leave to file the Amicus Brief.

Dated this 23rd day of October, 2017.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt
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)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 10th Cir. R. 32(b), this document contains 748 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 October 23, 2017, and according to the program are free of viruses.

Date: October 23, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 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