

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Case No. 10-50494
)
FAIR FINANCE COMPANY) Chapter 7
)
Debtor.) Judge Marilyn Shea-Stonum
)

STATUS REPORT FOR JULY 10, 2012 STATUS CONFERENCE

Brian A. Bash, Trustee herein, submits the following summary of the status of the Trustee’s administration of the estate:¹

Conviction of Timothy Durham, James Cochran and Ricky Snow

On June 20, 2012, a jury in a federal court in Indiana found Timothy Durham guilty on ten (10) counts of wire fraud, one (1) count of securities fraud, and one (1) count of conspiracy to commit wire fraud and securities fraud. The same jury found James Cochran guilty on six (6) counts of wire fraud, one (1) count of securities fraud, and one (1) count of conspiracy to commit wire fraud and securities fraud. In addition, the jury found Ricky Snow guilty on three (3) counts of wire fraud, one (1) count of securities fraud, and one (1) count of conspiracy to commit wire fraud and securities fraud.

Durham, Cochran and Snow were convicted by the Indiana jury after a 10-day trial in which government prosecutors presented evidence of the massive fraud perpetuated by those individuals through Fair Finance to the detriment of thousands of innocent investors in Ohio.

Copies of the jury’s verdict forms and the related Superseding Indictment are attached to this Status Report as **Exhibit A**.

¹ The Trustee and his professionals have addressed and resolved many of the administrative issues in this matter. This list is not exhaustive, but focuses on the issues most significant to asset recovery.



Pending Litigation

The Trustee has filed a number of lawsuits for the benefit of the estate that can be categorized as follows:

a) **The Group A or “Group of 9” Cases:** The claims in this group of cases are based primarily on fraudulent transfers from the Debtor as well as aiding and abetting and conspiracy in the lawsuits filed against Textron, Fortress and Don Fair. This group of cases originally included twelve (12) cases, although the defendants in three (3) of those cases are in default of answer. The Trustee has obtained default entries against those defendants, and the Trustee is preparing motions for default judgments. As for the nine (9) remaining cases, on June 20, 2012, the Trustee filed an amended motion for a consolidated discovery and case management order. Responses to the Trustee’s amended motion were filed by four defendants on June 27, 2012, and the Trustee filed an omnibus reply in support of his motion on July 5, 2012.

The nine (9) remaining Group A cases include the following:

1. The *Textron / Fortress* litigation (more than \$1 billion in claims);
2. The *Don Fair* litigation (approximately \$150 million in claims);
3. The *Osler* and *Geist Sports* litigation (approximately \$1.2 million in claims);
4. The *BGBC* and *Somerset* litigation (approximately \$900,000 in claims);
5. Litigation against certain non-defaulting insiders, including John Head, Rick Snow and Terry Whitesell (approximately \$4.5 million); and
6. Litigation against the former legal advisor for Fair Finance, Ronald Kaffen (approximately \$180,000).

A chart listing the Group A cases is attached as **Exhibit B**.

b) **The Group B Cases:** The one hundred and eleven (111) cases in the “Group B” category of cases include claims based on non-debtor transfers, loans or preferential transfers.

These cases include the following:

1. **Fraudulent Transfer or Contract Claims:** This group of cases includes ninety-two (92) lawsuits. Of those lawsuits, approximately thirty-seven lawsuits (37) remain active and contested, including a new adversary proceeding filed by the Trustee on June 29, 2012. The Trustee has settled or otherwise resolved his claims in sixteen (16) lawsuits for a recovery for the estate in the amount of approximately \$406,000. In addition, a number of defendants in these lawsuits have defaulted, including all of the defendants in thirty-nine (39) lawsuits and some of the defendants in three (3) lawsuits, and the Trustee has sought proposed findings of fact and conclusions of law recommending the entry of default judgment against those defaulting defendants. The Trustee intends on enforcing these judgments to the extent the Trustee believes that enforcement could result in recovery of money or assets for the estate. In the thirty-seven (37) remaining lawsuits, the Trustee is seeking to recover approximately \$18 million.
2. **Section 547 Claims Against Investors:** The Trustee filed twelve (12) preference complaints against investors seeking to recover more than \$330,000. All of these complaints have been settled or otherwise resolved, for a recovery for the estate in the amount of approximately \$55,500 plus claim waivers in the aggregate amount of over \$243,000. In addition, prior to the filing of litigation, the Trustee settled potential preference claims against twelve investors for a recovery for the estate in the amount of approximately \$344,000 plus claim waivers in the aggregate amount of over \$190,000.
3. **Section 547 Claims Against Non-Investors:** The Trustee filed seven (7) complaints against non-investors receiving preferential payments from the Debtor, for total of more than \$272,000. The Trustee has settled six of those seven lawsuits for a recovery for the estate in the amount of approximately \$63,500 plus a claim waiver in the amount of \$5,600. One lawsuit remains in which the Trustee is seeking over \$66,000.00, and the Trustee has filed a summary judgment motion in connection with that claim.

A chart listing the Group B cases is attached as **Exhibit C**. The chart also includes a list of these cases that have been settled or otherwise resolved by the Trustee.

c) **Other Litigation:** The Trustee is pursuing recovery for the estate in several other lawsuits involving certain state-law claims, including loan claims and claims against certain insiders of the Debtor. This group of cases includes the only lawsuit filed by the Trustee outside of this district (the *National Lampoon* litigation filed in district court in California). These cases include the following:

1. The *Laikin* litigation (approximately \$25 million). The parties to this litigation recently attended mediation in an effort to settle the Trustee's claims. The mediation did not result in a settlement, and the Trustee recently filed a motion to reopen discovery and for sanctions. The Trustee expects the matter to proceed to trial.
2. The *National Lampoon* litigation (approximately \$9 million). The judge in the district court in California where this case is pending has set a discovery schedule and a current trial date of March 5, 2013. The parties have exchanged written discovery, and the Trustee continues to pursue the discovery necessary to support his claims.
3. The *FCS Advisors/Brevet* litigation (approximately \$2 million). The Trustee has reached an agreement in principle with FCS Advisors/Brevet which will include a payment to the estate in the amount of approximately **\$575,000**. A motion to compromise the claims in that litigation has been filed with the Court in this matter.
4. The *McKibben* litigation against insiders of the Debtor and entities they controlled, which seeks to recover all investor losses.

d) **Electronic Data Room with the Trustee's Documents:** On July 6, 2012, the Trustee filed an application with the Court for an Order (1) authorizing the Trustee to use Estate property under 11 U.S.C. section 363 to maintain an electronic data room for purposes of the adversary proceedings related to the Fair Finance Bankruptcy, (2) establishing procedures and protocols for providing defendants in the adversary proceedings access to the data room, and (3) approving and allocating the costs of maintaining the data room and of productions from the data room. The purpose of the application is to make discovery in the pending adversary proceedings more efficient and less expensive, and to give all defendants open access to the documents in the Trustee's possession, custody or control.

e) **Expert Report on Insolvency:** The Trustee's forensic accounting expert, Howard Klein, continues to prepare expert reports on the insolvency of entities associated with Fair Finance and Timothy Durham for use in the adversary proceedings filed by the Trustee. The Trustee's goal is to have those insolvency reports completed by the end of August 2012.

f) **Hardship Cases:** The Trustee continues to accept the submission of financial information and verification in those cases where a defendant claims an inability to pay due to financial or other extenuating circumstances. To date, the Trustee has approved full or partial hardship cases in nineteen (19) cases, including nine (9) cases involving preference claims against investors and ten (10) cases involving preference or fraudulent transfer claims against other persons or entities. In addition, the Trustee has taken financial capacity into consideration in certain cases by accepting reduced payments or claim waivers in settlement of the Trustee's claims.

g) **United Trailer:** The Trustee has filed a motion to compromise certain claims related to a second lien on the assets of United Trailer, the only company at Obsidian Enterprises, Inc. that continues to operate. The Trustee may seek to stay a ruling on that motion as a result of informal responses that the Trustee has received, in order to afford time for the Trustee to review potential alternatives and determine the best course for maximizing the value of this claim.

h) **Offers to Purchase Bankruptcy Claims:** ASM Capital, a company that purchases bankruptcy claims, has been contacting individual investor-creditors and offering to purchase their claims at a discount. The Trustee has received calls from investor-creditors asking how they should respond to these offers. In response to these inquiries, the Trustee has posted information on the Fair Finance bankruptcy website explaining what ASM Capital is and why it offers to purchase claims, listing some factors ASM Capital and similar companies use when deciding whether to purchase claims, and providing investor-creditors with information they may want to consider when deciding to sell their claims. On the website, the Trustee advises all investor-creditors that the decision to sell claims is a decision that must be made based on each investor-creditor's individual circumstances. The Trustee's website is located at the following address: <http://www.kccllc.net/fairfinance> or <http://www.fairfinancetrustee.com>.

Forthcoming Litigation

a) **Subsequent Transfer Claims:** The Trustee expects that some of the defendants in the loan and fraudulent transfer litigation may not have the financial ability to pay the amounts sought by the Trustee. If the Trustee's claims are successful, the Trustee will consider pursuing subsequent transferee claims against transferees of those defendants.

b) **Additional Litigation:** The Trustee continues to evaluate additional potential claims that may be pursued for the benefit of the estate, including loan and fraudulent transfer claims for which the statute of limitations will not be expiring in the near future. For example, on June 29, 2012, the Trustee filed a new adversary proceeding against seven individuals and entities in Indiana that received payments from Durham in 2008 and 2009 totaling more than \$580,000.00.

Recent Recoveries and Activities

a) Since the last status conference on May 22, 2012, the Trustee has received approximately **\$216,687.80**, including \$157,316.72 from Duvera Billing Services, LLC on account of the Debtor's receivables portfolio.

b) The remainder of the sum recovered since the last status conference is primarily payments on preference and fraudulent transfer settlements, and the Trustee has filed or will be filing motions to compromise in connection with those settlements.

Trustee's Focus in the Upcoming Weeks

a) **Continuing Litigation:** The Trustee's counsel will focus efforts on the continuing litigation of those claims that have been filed by the Trustee to date.

b) **Real Estate:** The Trustee continues to market the real property owned by the Debtor in Akron and to negotiate the sale of certain commercial real estate in Indianapolis.

c) **McKibben Litigation:** The Trustee continues to pursue settlement discussions in the *McKibben* adversary proceeding.

d) **Personal Property at the New Castle Restaurant:** The Trustee previously received this Court's authority to sell personal property and to enter into a division of proceeds agreement with West End Bank in connection with the going concern sale of a restaurant located in New Castle, Indiana. The proposed buyer, E.Z. Restaurants, has since defaulted on the purchase agreement and filed bankruptcy. The Trustee is advised that the buyer also sold personal property owned by the Trustee, and is being investigated by the Indiana police in connection with this and other alleged fraudulent activity. The Trustee's local counsel is assisting with pleadings in the buyer's bankruptcy and appropriate action to recover the personal property and prevent further dissipation of estate assets.

Date: July 9, 2012

Respectfully submitted,

/s/ Brian A. Bash

Brian A. Bash, Trustee (0000134)

Kelly S. Burgan (0073649)

Baker & Hostetler LLP

PNC Center

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Cleveland, OH 44114-3482

Telephone: 216.621.0200

Facsimile: 216.696.0740

Email: bashtrustee@bakerlaw.com

Email: kburgan@bakerlaw.com

Counsel for the Trustee

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 1

On the charge of conspiracy to commit wire fraud and/or securities fraud, as alleged in Count 1 of the Superseding Indictment,

We, the jury, unanimously find that one of the defendants committed an overt act as charged in the Superseding Indictment;

Yes No

We, the jury, unanimously find that the object of the conspiracy was:

Wire Fraud Securities Fraud

(Check any that have been proved beyond a reasonable doubt)

We, the jury, unanimously find the defendant **Timothy S. Durham**
(Check one)

Guilty Not Guilty

We, the jury, unanimously find the defendant **James F. Cochran**
(Check one)

Guilty Not Guilty

We, the jury, unanimously find the defendant **Rick D. Snow**
(Check one)

Guilty

Not Guilty

Dated: June 20, 2012



Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 2

On the charge of wire fraud, as alleged in Count 2 of the Superseding Indictment (February 13, 2007 wire transmission of \$250,000 from Fair in Akron, Ohio to FHI in Indianapolis, Indiana):

We, the jury, unanimously find the defendant **Timothy S. Durham**

(Check one)

Guilty

Not Guilty

We, the jury, unanimously find the defendant **James F. Cochran**

(Check one)

Guilty

Not Guilty

We, the jury, unanimously find the defendant **Rick D. Snow**

(Check one)

Guilty

Not Guilty

Dated: June 20, 2012



Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 3

On the charge of wire fraud, as alleged in Count 3 of the Superseding Indictment (January 28, 2008 wire transmission of \$150,000 from Fair in Akron, Ohio to FHI in Indianapolis, Indiana):

We, the jury, unanimously find the defendant **Timothy S. Durham**
(Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **James F. Cochran**
(Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **Rick D. Snow**
(Check one)

Guilty _____ Not Guilty _____

Dated: June 20, 2012



Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 4

On the charge of wire fraud, as alleged in Count 4 of the Superseding Indictment (July 9, 2008 wire transmission of Offering Circular from Indianapolis, Indiana to Columbus, Ohio):

We, the jury, unanimously find the defendant **Timothy S. Durham**
(Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **James F. Cochran**
(Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **Rick D. Snow**
(Check one)

Guilty _____ Not Guilty _____

Dated: June 20, 2012

[Redacted Signature]

Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 5

On the charge of wire fraud, as alleged in Count 5 of the Superseding Indictment (November 10, 2008 wire transmission of \$50,000 from Fair in Akron, Ohio to FHI in Indianapolis, Indiana):

We, the jury, unanimously find the defendant **Timothy S. Durham**

(Check one)

Guilty Not Guilty

We, the jury, unanimously find the defendant **James F. Cochran**

(Check one)

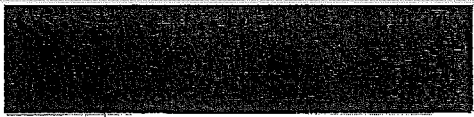
Guilty Not Guilty

We, the jury, unanimously find the defendant **Rick D. Snow**

(Check one)

Guilty Not Guilty

Dated: June 20, 2012



Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 6

On the charge of wire fraud, as alleged in Count 6 of the Superseding Indictment (October 30, 2009 wire transmission of Offering Circular from Fair in Akron, Ohio to FHI in Indianapolis, Indiana):

We, the jury, unanimously find the defendant **Timothy S. Durham**
(Check one)

Guilty Not Guilty

We, the jury, unanimously find the defendant **James F. Cochran**
(Check one)

Guilty Not Guilty

We, the jury, unanimously find the defendant **Rick D. Snow**
(Check one)

Guilty Not Guilty

Dated: June 20, 2012

[Redacted Signature]

Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT - COUNT 7

On the charge of wire fraud, as alleged in Count 7 of the Superseding Indictment (November 10, 2009 phone call between Durham in California and Snow in Indiana):

We, the jury, unanimously find the defendant **Timothy S. Durham**
(Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **James F. Cochran**
(Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **Rick D. Snow**
(Check one)

Guilty _____ Not Guilty _____

Dated: June 20, 2012

[Redacted Signature]

Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 8

On the charge of wire fraud, as alleged in Count 8 of the Superseding Indictment (November 18, 2009 phone call between Durham in California and Cochran in Ohio):

We, the jury, unanimously find the defendant **Timothy S. Durham** (Check one)

Guilty Not Guilty

We, the jury, unanimously find the defendant **James F. Cochran** (Check one)

Guilty Not Guilty

We, the jury, unanimously find the defendant **Rick D. Snow** (Check one)

Guilty Not Guilty

Dated: June 20, 2012



Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 9

On the charge of wire fraud, as alleged in Count 9 of the Superseding Indictment (November 18, 2009 phone call between Durham in California and Cochran in Ohio):

We, the jury, unanimously find the defendant **Timothy S. Durham** (Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **James F. Cochran** (Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **Rick D. Snow** (Check one)

Guilty _____ Not Guilty _____

Dated: June 20, 2012

[Redacted Signature]

Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 10

On the charge of wire fraud, as alleged in Count 10 of the Superseding Indictment (November 19, 2009 phone call between Durham in California and Cochran in Ohio):

We, the jury, unanimously find the defendant **Timothy S. Durham** (Check one)

Guilty Not Guilty

We, the jury, unanimously find the defendant **James F. Cochran** (Check one)

Guilty Not Guilty

We, the jury, unanimously find the defendant **Rick D. Snow** (Check one)

Guilty Not Guilty

Dated: June 20, 2012



Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 11

On the charge of wire fraud, as alleged in Count 11 of the Superseding Indictment (November 19, 2009 phone call between Durham in California and Cochran in Ohio):

We, the jury, find the defendant **Timothy S. Durham** (Check one)

Guilty _____ Not Guilty _____

We, the jury, find the defendant **James F. Cochran** (Check one)

Guilty _____ Not Guilty _____

We, the jury, find the defendant **Rick D. Snow** (Check one)

Guilty _____ Not Guilty _____

Dated: June 20, 2012



Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	1:11-CR-0042-JMS-KPF
)	
TIMOTHY S. DURHAM,	)	-01
JAMES F. COCHRAN, and	)	-02
RICK D. SNOW	)	-03
)	
Defendants.)	

VERDICT – COUNT 12

On the charge of securities fraud, as alleged in Count 12 of the Superseding Indictment,

We, the jury, unanimously find the defendant **Timothy S. Durham** (Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **James F. Cochran** (Check one)

Guilty _____ Not Guilty _____

We, the jury, unanimously find the defendant **Rick D. Snow** (Check one)

Guilty _____ Not Guilty _____

Dated: June 20, 2012



Foreperson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
12 FEB 14 PM 3:10
DISTRICT CLERK
JAMES F. EDIGGS

UNITED STATES OF AMERICA,)
)
v.)
)
TIMOTHY S. DURHAM,)
JAMES F. COCHRAN, and)
RICK D. SNOW,)
)
Defendants.)

Cause No. 1:11-cr-00042-JMS-KPF

-01
-02
-03

SUPERSEDING INDICTMENT

The Grand Jury charges that:

I. RELEVANT PERSONS AND ENTITIES

A. Fair Financial Services

1. Fair Financial Company was a financial services business operating in Northeast Ohio under the name Fair Financial Services ("Fair"). Fair's headquarters were in Akron, Ohio, but it maintained offices in several locations in Ohio, including but not limited to Canton, Medina, Wooster, Cuyahoga Falls, Wadsworth, Ashland, and Millersburg. Fair had operated in Ohio since 1934.

2. In or about 2002, defendants **TIMOTHY S. DURHAM** and **JAMES F. COCHRAN** purchased Fair through a holding company they owned and controlled called Fair Holdings, Inc. ("FHI").

3. When **DURHAM** and **COCHRAN** purchased Fair, its primary business was consumer financing. Fair provided financing to businesses by purchasing their customer accounts receivables (or "finance receivables") at a reduced rate. Fair provided

businesses with cash that they could use earlier than if they waited to collect the finance receivables themselves, and in return, Fair kept the difference between what it paid the businesses for their finance receivables and what it collected on them.

4. Fair raised the money it needed to buy finance receivables by selling “investment certificates” to investors. Investors who purchased certificates were entitled to regular interest payments for a set period, usually from 6 to 24 months. At the end of the period, investors were entitled to repayment of the principal investment in a single lump sum (a “redemption”), which would retire the certificate.

5. Fair marketed and sold the investment certificates through its branch offices. The investment certificates were securities pursuant to 15 U.S.C. § 78c(a)(10).

6. Fair was required to register the investment certificates with the State of Ohio Division of Securities (“Division of Securities”). In order to register the certificates, Fair was required to submit to the Division of Securities financial information about Fair and a proposed “Offering Circular.” The Offering Circular was required to contain truthful and accurate disclosures about Fair, including (a) risk factors to investors who purchased investment certificates, (b) a description of its business and financial condition, (c) its balance sheet, and (d) its income statement, so that the Division of Securities could make informed decisions in evaluating Fair’s proposed sale of investment certificates, and so that investors could rely on the Offering Circular to make informed decisions about whether to buy Fair’s investment certificates.

7. Fair could only register a specific amount of investment certificates. Once Fair sold the registered amount, Fair was required to submit new registration documents

and an Offering Circular to the Division of Securities to sell additional investment certificates.

8. Between 2002 and November 2009, Fair raised approximately \$200 million from investors through the sale of investment certificates; submitted at least five Offering Circulars to the Division of Securities, including in April 2007, July 2008, January 2009, October 2009, and November 2009; and distributed at least three Offering Circulars to investors, including those dated April 2007, July 2008, and January 2009.

B. The Defendants and the Companies They Owned or Controlled

9. From the time defendants **DURHAM** and **COCHRAN** purchased Fair in 2002 through November 2009, **DURHAM** was the Chief Executive Officer, a member of the board of directors, and responsible for managing all of Fair's financial affairs, including Fair's financial reporting obligations to the Division of Securities and to its investors.

10. From the time defendants **DURHAM** and **COCHRAN** purchased Fair in 2002 through November 2009, **COCHRAN** was the Chairman of the Board and responsible for Fair's operations and policies.

11. From shortly after **DURHAM** and **COCHRAN** purchased Fair in 2002 through November 2009, defendant **RICK D. SNOW**, a Certified Public Accountant, was the Chief Financial Officer ("CFO") of Fair. As CFO, **SNOW** was responsible for maintaining Fair's books and records. **SNOW** regularly consulted with **DURHAM** and **COCHRAN** about the financial status of Fair, including Fair's revenue and loss records, investment decisions, and the reporting of financial information to the Division of

Securities and to investors. **SNOW** maintained his principal business operations in Indianapolis, Indiana.

12. **DURHAM** and **COCHRAN** controlled Fair and FHI through another holding company called DC Investments, LLC (“DCI”). FHI and DCI maintained their principal business operations in Indianapolis, Indiana. DCI was primarily a holding company for various businesses that **DURHAM** and **COCHRAN** owned or controlled.

13. **DURHAM** was also an owner of Obsidian Enterprises, Inc. (“Obsidian”). Obsidian maintained its principal place of business in Indianapolis, Indiana. Obsidian was also primarily a holding company for various businesses that **DURHAM** owned or controlled. **SNOW** was Obsidian’s CFO and responsible for maintaining Obsidian’s books and records.

C. The Victims

14. Fair sold investment certificates to individual investors living in the state of Ohio.

II. THE SCHEME TO DEFRAUD

A. Overview of the Scheme

15. Between approximately February 2005, the exact date being unknown to the Grand Jury, through the end of November 2009, **DURHAM**, **COCHRAN**, and **SNOW**, and others, devised, intended to devise, and executed a scheme to defraud investors.

16. After **DURHAM** and **COCHRAN** acquired Fair, they changed the manner in which Fair operated and used its funds. Rather than using the funds that Fair

raised from investors primarily for the purpose of purchasing finance receivables, **DURHAM** and **COCHRAN** caused Fair to extend loans to themselves, to their associates, and to the businesses they owned or controlled, which caused a steady and substantial deterioration in Fair's financial condition. **DURHAM**, **COCHRAN**, and **SNOW** then deceived and defrauded investors by making and causing others to make false and misleading statements about Fair's financial condition and about the manner in which they were using Fair investor money.

B. Purpose of the Scheme

17. The purpose of the scheme was to (a) enrich **DURHAM**, **COCHRAN**, and **SNOW**; (b) solicit and obtain millions of dollars of investors' funds through false and misleading pretenses, representations and promises; and (c) conceal from the investing public Fair's true financial condition and the manner in which they were using Fair investor money.

C. The Loans from Fair to DURHAM, COCHRAN, and the Businesses They Owned or Controlled

18. Shortly after purchasing Fair, **DURHAM** and **COCHRAN** began to alter Fair's business. Instead of using the majority of the money that Fair raised from investors through the sale of investment certificates for Fair's consumer financing business, **DURHAM** and **COCHRAN** began using investor money to make loans to themselves, to their family, friends, and acquaintances, and to businesses they owned or controlled.

19. **DURHAM** and **COCHRAN** wired Fair investor money to themselves, to their family, friends, and acquaintances, and to the companies that they owned or

controlled through multiple entities connected by lines of credit, including through FHI, Obsidian, and DCI. Because many of the ultimate entities that received loans of Fair investor money did not have a direct business relationship with Fair, information about those entities and the loans that they received was kept hidden from investors.

20. Obsidian and DCI, and the businesses that **DURHAM** and **COCHRAN** owned or controlled through Obsidian and DCI, were among the primary beneficiaries of the loans. **DURHAM** and **COCHRAN** loaned money through Obsidian and DCI to a variety of struggling businesses and start-up ventures, including a car magazine, restaurants, a surgery center, trailer manufacturers, internet companies, a race car team, a replica vintage car manufacturer, a rubber reclaiming plant, and a luxury bus leasing business. After receiving loans from Fair, many of these businesses failed and were never able to repay the money they borrowed, while others, with the benefit of continued loans from Fair, struggled as unprofitable entities for years.

21. In addition to the loans that they made through DCI to their struggling businesses and to their family, friends, and acquaintances, **DURHAM** and **COCHRAN** took loans of Fair investor money for themselves through lines of credit with DCI. **DURHAM** and **COCHRAN** used a significant portion of the proceeds of these loans to maintain their lifestyles and to pay for personal expenses.

22. The loans that **DURHAM** and **COCHRAN** made to businesses that later failed and were never repaid, and the regular infusions of Fair investor money used to support **DURHAM** and **COCHRAN**'s lifestyles, personal expenses, and the businesses they owned or controlled, caused Fair's financial condition to steadily and substantially deteriorate.

D. Firing Fair's Accountants and Using Unaudited Financial Statements

23. From in or about February 2005 through in or about June 2005, Fair's accountants ("Accounting Firm A") told **DURHAM, COCHRAN, and SNOW** that the lack of repayment on the loans that they had made with Fair investor money, the continued extensions of loan maturity dates, the frequent alteration of loan terms, and the deteriorating condition of the businesses that had received loans raised significant doubts that many of the loans would be repaid.

24. In or about June 2005, after **DURHAM, COCHRAN, and SNOW** failed to convince Accounting Firm A that Fair would be able to collect on the loans that they had made with Fair investor money, **DURHAM, COCHRAN, and SNOW** terminated Accounting Firm A and hired a second set of accountants ("Accounting Firm B").

25. From in or about June 2005 through August 2006, Accounting Firm B also told **DURHAM, COCHRAN, and SNOW** that they had significant doubts that Fair would be able to collect on many of the loans that they had made with Fair investor money. Accounting Firm B told **DURHAM, COCHRAN, and SNOW** that because they had significant doubts that the loans would be repaid, the loans would need to be supported by collateral. While Accounting Firm B found that there was sufficient collateral to support the loans for 2003 and 2004, Accounting Firm B told **DURHAM, COCHRAN, and SNOW** that for 2005 (a) there was no longer sufficient collateral supporting the loans to assure that Fair would be repaid; and (b) that Fair's financial statements needed to reflect a loss.

26. In or about August 2006, **DURHAM, COCHRAN, and SNOW** terminated Accounting Firm B and hired a third set of accountants ("Accounting Firm

C”). **DURHAM, COCHRAN, and SNOW** hired Accounting Firm C to perform a review but not an audit.

27. **DURHAM, COCHRAN, and SNOW** never obtained or released audited financial statements for 2005 through September 2009. Instead, **DURHAM** signed certifications stating that Fair’s unaudited financial statements were, to the best of his knowledge, information and belief, true and correct.

28. With independent accountants no longer auditing Fair, **DURHAM, COCHRAN, and SNOW** concealed from investors that Fair’s financial condition had substantially deteriorated due to the millions of dollars in loans that they had made with Fair investor money.

E. Concealing Fair’s Financial Condition and Fair’s Use of Investor Money

29. First, **DURHAM, COCHRAN, and SNOW** made false and misleading representations about Fair’s financial condition. Instead of reducing the value of the loans, as recommended by Fair’s independent accountants, or writing the non-performing loans off altogether, **DURHAM, COCHRAN, and SNOW** falsely represented, in registration documents and Offering Circulars submitted to the Division of Securities and in Offering Circulars distributed to investors, that the loans on Fair’s books were assets that could support Fair’s sale of investment certificates when they knew in reality that the loans were (a) worthless or grossly overvalued, (b) producing little or no cash proceeds, (c) supported by insufficient or non-existent collateral to assure repayment, and (d) in part advances, salaries, and lines of credit for **DURHAM** and **COCHRAN**’s personal expenses.

30. Second, even though Accounting Firm B told **DURHAM, COCHRAN,** and **SNOW** that in order to assure that Fair could collect on the loans, the loans needed to be supported by collateral, after **DURHAM, COCHRAN,** and **SNOW** fired Accounting Firm B, **DURHAM** sold the collateral he had pledged to support the loans. In addition, by using some of the proceeds from the sale of the collateral to support **DURHAM** and **COCHRAN's** struggling businesses, **DURHAM** was able to further conceal the true financial health of those businesses from the Division of Securities and investors.

31. Third, by continually amending the terms of loans, **DURHAM, COCHRAN,** and **SNOW** concealed that **DURHAM** and **COCHRAN** and the businesses that they owned or controlled did not have the ability to make payments on their loans to Fair. When loans were about to mature or had already matured and the entities could not make payments to Fair, **DURHAM, COCHRAN,** and **SNOW** amended the terms of the loans by increasing the amount that the entities could borrow from Fair and by extending the time that the entities had to pay Fair back.

32. Fourth, when the businesses that **DURHAM** and **COCHRAN** owned or controlled failed, **DURHAM** assumed those businesses' loans personally. **DURHAM, COCHRAN,** and **SNOW** then represented in registration documents and Offering Circulars submitted to the Division of Securities and in Offering Circulars distributed to investors that the loans **DURHAM** had assumed were still assets available to Fair even though they knew that **DURHAM** was rarely making payments on his loans.

33. Fifth, **DURHAM** and **COCHRAN** caused Fair's sales representatives to make false and misleading representations to prospective investors and investors about Fair's business and its use of investor money. **DURHAM** and **COCHRAN** knew that:

(a) they had changed Fair's primary business from purchasing finance receivables to making loans to **DURHAM** and **COCHRAN**, to their family, friends, and acquaintances, and to the businesses that they owned or controlled; and (b) after Fair's financial condition had deteriorated Fair was primarily using investor funds to pay other investors and not to purchase finance receivables. Nevertheless, they allowed Fair's sales representatives to continue falsely representing to prospective investors and investors that Fair used investor money only to purchase finance receivables.

F. Concealing Fair's Severe Cash Flow Crisis

34. When **DURHAM** and **COCHRAN** purchased Fair in 2002, Fair reported debts to investors from the sale of investment certificates of approximately \$37 million and income-producing assets in the form of finance receivables of approximately \$48 million. By November 2009, Fair's debts to investors from the sale of investment certificates had increased to approximately \$200 million while Fair's potential income-producing assets consisted only of (a) the loans to **DURHAM** and **COCHRAN**, to their family, friends, and acquaintances, and to the businesses that they owned or controlled, which they claimed were worth approximately \$240 million, and (b) finance receivables of approximately \$24 million. Because the loans were producing little or no income for Fair, and because the income Fair had from its finance receivables portfolio could not alone support Fair's obligations to more than 5000 investors holding approximately \$200 million worth of investment certificates, Fair did not have sufficient cash flow available to meet its obligations to investors.

35. **DURHAM**, **COCHRAN**, and **SNOW** concealed from investors Fair's severe cash flow problems.

36. First, **COCHRAN** made false and misleading statements to concerned investors who either had not received principal or interest payments on their certificates from Fair or who were worried about Fair's financial health. **COCHRAN** contacted investors at **DURHAM**'s direction and later discussed with **DURHAM** whether the false and misleading statements he had made quelled investor concerns. **DURHAM** also participated with **COCHRAN** in creating the false and misleading statements and discussed with **COCHRAN** additional false and misleading statements that they could give to the Division of Securities if investors reported irregularities at Fair.

37. Second, **DURHAM** requested daily reports on Fair's cash needs in order to limit payments to investors. When Fair did not have enough cash flow to meet its obligations to investors who were owed interest or principal payments on their certificates, **DURHAM** and **COCHRAN** directed Fair's employees not to pay investors the money that Fair owed to them.

38. During Fair's cash flow crisis, **DURHAM** and **COCHRAN** continued to funnel Fair investor money to themselves for their personal expenses, to their family, friends, and acquaintances, and to the struggling businesses that they owned or controlled, all while making continued misrepresentations and misleading statements about Fair's true financial condition and about how they were using investor money.

III. THE CHARGES

COUNT ONE Conspiracy to Commit Wire and Securities Fraud (18 U.S.C. § 371)

39. Paragraphs 1 through 38 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

40. Between approximately February 2005, the exact date being unknown to the Grand Jury, through the end of November 2009, in the Southern District of Indiana and elsewhere, the defendants **TIMOTHY S. DURHAM, JAMES F. COCHRAN** and **RICK D. SNOW**, and others known and unknown to the Grand Jury, did knowingly and willfully conspire and agree with each other and others to commit certain offenses against the United States, namely:

- (a) wire fraud, that is, to knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and transmitting and causing certain wire communications to be transmitted in interstate and foreign commerce, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1343;
- (b) securities fraud, that is, to willfully and knowingly, by the use of means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, directly and indirectly, in connection with the purchase and sale of securities, use and employ manipulative and deceptive devices and contrivances in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a) and Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing a device, scheme and artifice to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging

in acts, practices and courses of business which operated and would operate as a fraud and deceit upon purchasers of Fair's investment certificates.

PURPOSE OF THE CONSPIRACY

41. The Grand Jury realleges and incorporates by reference Paragraph 17 of this Superseding Indictment as a description of the purpose of the conspiracy.

MANNER AND MEANS

42. The Grand Jury realleges and incorporates by reference Paragraphs 18 through 38 of this Superseding Indictment as a description of the manner and means of the conspiracy.

OVERT ACTS

In furtherance of the conspiracy and to achieve its objects and purposes, at least one of the conspirators committed and caused to be committed, in the Southern District of Indiana and elsewhere, at least one of the following overt acts, among others:

43. On or about December 30, 2006, **DURHAM, COCHRAN, and SNOW** caused FHI to amend the terms of its loan made to Obsidian to increase Obsidian's borrowing capacity from FHI and to extend the date that Obsidian had to repay FHI.

44. On or about January 1, 2007, **DURHAM, COCHRAN, and SNOW** caused FHI to amend the terms of its loan made to DCI to increase DCI's borrowing capacity from FHI and to extend the date that DCI had to repay FHI.

45. On or about January 8, 2007, **DURHAM, COCHRAN, and SNOW** caused Fair to amend the terms of its loan made to FHI to increase FHI's borrowing capacity from Fair and to extend the date that FHI had to repay Fair.

46. On or about February 9, 2007, **DURHAM, COCHRAN, and SNOW** caused FHI to amend the terms of its loan made to U.S. Rubber, an Obsidian subsidiary, to increase U.S. Rubber's borrowing capacity from FHI and to extend the date that U.S. Rubber had to repay FHI.

47. On or about February 13, 2007, **DURHAM** caused \$250,000 of Fair's money to be wired to FHI so that **DURHAM** could use the funds to remodel his garage.

48. On or about January 28, 2008, **DURHAM** caused \$150,000 of Fair's money to be wired to FHI so that **DURHAM** could use the funds at a casino.

49. On or about July 9, 2008, **SNOW** caused to be sent by electronic mail an Offering Circular for Fair containing false and misleading statements about its financial condition and the manner in which **DURHAM, COCHRAN, and SNOW** were using investor money.

50. On or about July 28, 2008, **DURHAM, COCHRAN, and SNOW** caused to be sent to the Division of Securities an Offering Circular for Fair containing false and misleading statements about its financial condition and the manner in which they were using investor money.

51. On or about November 10, 2008, **DURHAM and COCHRAN** caused \$50,000 of Fair's money to be wired to FHI so that **COCHRAN** could use the funds to pay country club fees.

52. On or about January 16, 2009, **DURHAM, COCHRAN, and SNOW** caused to be sent to the Division of Securities an Offering Circular for Fair containing

false and misleading statements about its financial condition and the manner in which they were using investor money.

53. On or about September 11, 2009, **DURHAM, COCHRAN**, and **SNOW** caused a Fair sales representative to make the following false and misleading statements to an undercover agent posing as an investor:

- (a) “Basically what we do is we do small business to business loans. So say if you went to, say to ten thousand, just a number. The minimum is two thousand. Um, so you give me a check for ten thousand In that two year time we would take your ten thousand dollars and we would go to like Craftmatic and we’d say hey look we have ten thousand dollars. We want to buy ten thousand dollars worth of the loans that you’ve issued. . . . So the ten thousand dollars we give them is up front so they don’t have to wait the two years to collect on people that are buying a bed or a year and a half, however long the loans are. But that’s basically what we do and then the loans that we do buy are small short term loans that aren’t over three thousand dollars and don’t go. . . I think the longest will go two years that we’ll actually do a loan for.”
- (b) Fair “never missed an interest payment. We’ve never had any problems. Like I said, the loans that we do, uh, invest in are small term so people are more likely to pay a years worth of

twenty dollars a month versus, you know, thirty years of six hundred dollars for a house.”

(c) Fair has been “doing the same thing since 1934.”

54. On or about October 29, 2009, **DURHAM** signed a certification stating that Fair’s balance sheet, income statement, stockholders’ equity, and cash flows for 2007 and 2008 were to the best of his knowledge, information, and belief, true and correct.

55. On or about October 30, 2009, **DURHAM**, **COCHRAN**, and **SNOW** caused to be sent to the Division of Securities an Offering Circular for Fair containing false and misleading statements about Fair’s financial condition and the manner in which they were using investor money.

56. On or about November 9, 2009, **DURHAM** and **COCHRAN** had a telephone conversation during which they discussed whether they could replace certain Fair employees while seeking reauthorization from the Division of Securities. **COCHRAN** stated that they needed to retain the employees regardless of their competence because “these guys know a little bit too much. They can take it and bust us.” **DURHAM** agreed stating “No. We can’t. We’ve got to get through this.”

57. On or about November 12, 2009, **DURHAM** and **COCHRAN** had a telephone conversation during which **COCHRAN** discussed falsely telling investors that **DURHAM** and **COCHRAN** had not used investor money for personal expenditures such as the purchase of houses and cars.

58. On or about November 12, 2009, **DURHAM** and **COCHRAN** had a telephone conversation during which they discussed an accounting strategy to make

millions of dollars of “bad debt loans” that they would otherwise have to disclose to the Division of Securities and to investors “literally disappear.”

59. On or about November 13, 2009, **DURHAM** and **SNOW** had a telephone conversation in which they planned to “wipe off” millions of dollars in bad debts so that they would not have to explain or justify the debts to the Division of Securities.

60. On or about November 17, 2009, **DURHAM** and **COCHRAN** had a telephone conversation during which they discussed how a substantial infusion of Fair investor money “buys us more time” to make interest and redemption payments to existing investors.

61. On or about November 18, 2009, **DURHAM** and **COCHRAN** had a telephone conversation during which they planned to give a false and misleading explanation to an investor about why the investor could not redeem an investment certificate.

62. On or about November 18, 2009, **DURHAM** and **COCHRAN** had a telephone conversation during which **COCHRAN** told **DURHAM** that the false and misleading explanation that **COCHRAN** had given to the investor appeared successful. **DURHAM** responded by telling **COCHRAN** “you are the best at this.”

63. On or about November 19, 2009, **DURHAM** and **COCHRAN** had a telephone conversation during which they planned to give another false and misleading explanation to an investor about why the investor could not redeem an investment certificate. **DURHAM** advised **COCHRAN** to “use the same reason you used yesterday

with the other guy” but cautioned **COCHRAN** not to “use that explanation too often because it’s not really true.”

64. On or about November 19, 2009, **DURHAM** and **COCHRAN** had a telephone conversation during which they discussed whether investors were going to call the Division of Securities to report payment irregularities at Fair and then discussed false and misleading explanations they could give to the Division of Securities if investors complained.

65. On or about November 24, 2009, **DURHAM**, **COCHRAN**, and **SNOW** caused to be sent to the Division of Securities an Offering Circular for Fair containing false and misleading statements about Fair’s financial condition and the manner in which they were using investor money.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH ELEVEN

Wire Fraud

(18 U.S.C. §§ 1343 and 2)

66. Paragraphs 1 through 38 and 43 through 65 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

67. Between approximately February 2005, the exact date being unknown to the Grand Jury, through the end of November 2009, in the Southern District of Indiana and elsewhere, the defendants, **TIMOTHY S. DURHAM**, **JAMES F. COCHRAN** and **RICK D. SNOW**, aided and abetted by each other and others known and unknown to the Grand Jury, did knowingly and with intent to defraud devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent

pretenses, representations and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made.

PURPOSE OF THE SCHEME AND ARTIFICE

68. The Grand Jury realleges and incorporates by reference Paragraph 17 of this Superseding Indictment as a description of the purpose of the scheme and artifice.

THE SCHEME AND ARTIFICE

69. The Grand Jury realleges and incorporates by reference Paragraphs 15 through 16 of this Superseding Indictment as a description of the scheme and artifice.

USE OF THE WIRES

70. On or about the dates specified as to each count below, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, as more particularly described below:

COUNT	APPROXIMATE DATE	DESCRIPTION OF WIRE COMMUNICATION
2	February 13, 2007	Wire transmission of \$250,000 from Fair in Akron, Ohio to FHI in Indianapolis, Indiana.
3	January 28, 2008	Wire transmission of \$150,000 from Fair in Akron, Ohio to FHI in Indianapolis, Indiana.
4	July 9, 2008	Wire transmission of Offering Circular from Indianapolis, Indiana to Columbus, Ohio.
5	November 10, 2008	Wire transmission of \$50,000 from Fair in Akron, Ohio to FHI in Indianapolis, Indiana.
6	October 30, 2009	Wire transmission of Offering Circular from Fair in Akron, Ohio to FHI in Indianapolis, Indiana.
7	November 10, 2009	Phone call between DURHAM in California and

		SNOW in Indiana.
8	November 18, 2009	Phone call between DURHAM in California and COCHRAN in Ohio.
9	November 18, 2009	Phone call between DURHAM in California and COCHRAN in Ohio.
10	November 19, 2009	Phone call between DURHAM in California and COCHRAN in Ohio.
11	November 19, 2009	Phone call between DURHAM in California and COCHRAN in Ohio.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT TWELVE

Securities Fraud

(15 U.S.C. §§ 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5; 18 U.S.C. § 2)

71. The allegations set forth in Paragraphs 1 through 38 and 43 through 65 of this Superseding Indictment are realleged as though fully set forth herein.

72. Between approximately July 2008 through the end of November 2009, within the Southern District of Indiana and elsewhere, **TIMOTHY S. DURHAM**, **JAMES F. COCHRAN** and **RICK D. SNOW**, did willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, in connection with the purchase and sale of securities, use and employ manipulative and deceptive devices and contrivances in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a) and Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud

and deceit upon purchasers of Fair's investment certificates, to wit, **DURHAM**, **COCHRAN**, and **SNOW** made false and misleading representations about Fair's true financial condition and the manner in which they were using Fair investor money.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5; Title 18, United States Code, Section 2.

FORFEITURE ALLEGATION

73. Pursuant to Federal Rule of Criminal Procedure 32.2, the United States hereby notifies **TIMOTHY S. DURHAM**, **JAMES F. COCHRAN** and **RICK D. SNOW** that it will seek forfeiture of property pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 1956(c)(7)(A), 1956(c)(7)(D), 1961(1), and Title 28, United States Code, Section 2461(c) as part of any sentence imposed.

74. If convicted of any of the offenses set forth in the Superseding Indictment, defendants **TIMOTHY S. DURHAM**, **JAMES F. COCHRAN** and **RICK D. SNOW**, shall forfeit to the United States:

- (a) any property, real or personal, constituting or derived from proceeds the defendants obtained directly or indirectly as the result of the offenses of which they are convicted; or
- (b) a sum of money equal to the total amount of the proceeds of the offenses.

The United States will show that the total amount of proceeds obtained by the defendants as a result of the criminal activity alleged herein is two hundred seven million, two hundred forty-six thousand, three hundred and twenty-nine dollars (\$207,246,329.00).

75. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), the Court shall order the forfeiture of any other property of the defendants, up to the value of any property described in paragraph 74, if, by any act or omission of the defendants, the property described in paragraph 74, or any portion thereof:

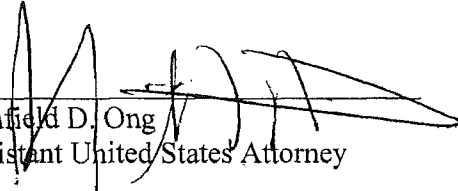
- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value;
- (e) or has been commingled with other property which cannot be subdivided without difficulty;

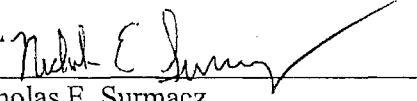
it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendants up to the value of all forfeitable property as described in paragraph 74.

A TRUE BILL: 


FOREPERSON

JOSEPH H. HOGSETT
United States Attorney

By: 
Winfield D. Ong
Assistant United States Attorney

By: 
Nicholas E. Surmacz
Assistant United States Attorney

DENIS J. MCINERNEY
Chief
Fraud Section, Criminal Division
U.S. Department of Justice

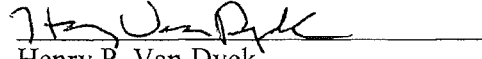
By: 
Henry P. Van Dyck
Trial Attorney
Fraud Section, Criminal Division
U.S. Department of Justice

EXHIBIT B

THE "GROUP A" CASES

GROUP A ACTIVE AND CONTESTED ACTIONS			
#	Case Name	Bankruptcy Case No.	District Case No. (if applicable)
1	Bash v. Ricky D. Snow	12-5096	12-00980
2	Bash v. John J. Head; Head Consulting Group, Inc.	12-5097	12-00981
3	Bash v. Textron; Fortress; Fair Facility	12-5101	12-00987
4	Bash v. BGBC Partners, LLP	12-5102	12-00989
5	Bash v. Somerset CPAs, P.C.	12-5108	12-00992
6	Bash v. Terry Whitesell; Julia Whitesell	12-5109	12-00993
7	Bash v. Ronald O. Kaffen; Kaffen & Zimmerman	12-5149	12-00994
8	Bash v. Donald R. Fair	12-5152	12-00996
9	Bash v. Dana Osler; Geist Sports Academy, LLC; Elizabeth McClure	12-5158	12-00997
GROUP A ACTIONS WITH DEFENDANTS IN DEFAULT OF ANSWER			
#	Case Name	Bankruptcy Case No.	District Case No. (if applicable)
1	Bash v. James Cochran; Susan Cochran	12-5098	12-00988
2	Bash v. Fair Holdings, Inc.; DC Investments, LLC	12-5103	12-00990
3	Bash v. Timothy Durham	12-5107	12-00991

EXHIBIT C

THE "GROUP B" CASES

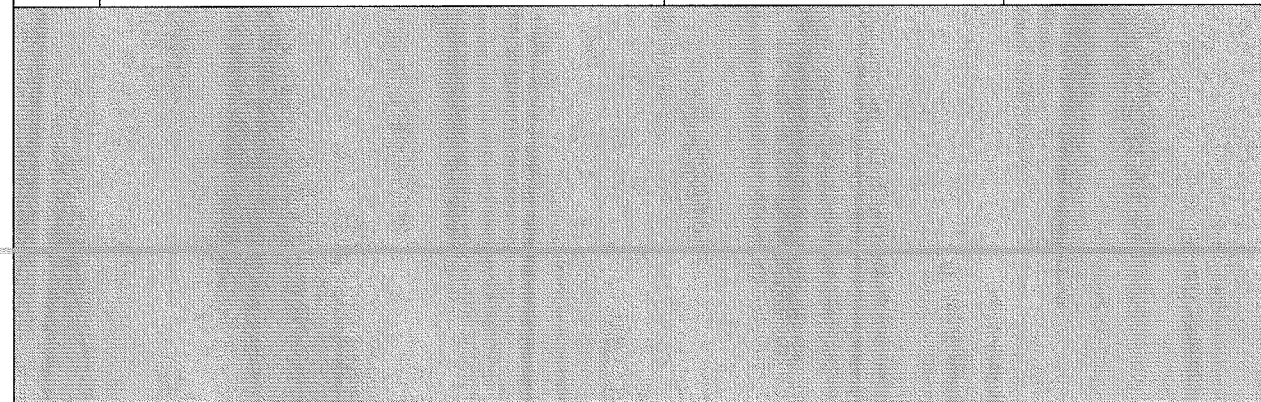
GROUP B ACTIVE AND CONTESTED ACTIONS			
#	Case Name	Bankruptcy Case No.	District Case No. (if applicable)
1	Bash v. Obsidian Conference and Catering Center, LLC	11-5230	12-00983
2	Bash v. Etelco Services, Inc. et al.	11-5233	12-00984
3	Bash v. Durham Whitesell & Associates, LLC	11-5240	N/A
4	Bash v. Car Collector Magazine, LLC; Jeffrey Broadus; RM Classic Car Production, Inc.	12-5017	12-01155
5	Bash v. Alternate Billing Corporation	12-5020	12-00999
6	Bash v. Cindy Landeen	12-5026	12-01152
7	Bash v. Erika Lookadoo Jiles	12-5029	N/A
8	Bash v. Mitza Durham	12-5032	N/A
9	Bash v. Table Moose Media, LLC	12-5035	N/A
10	Bash v. Neil Lucas	12-5046	12-00998
11	Bash v. Balint and Associates; Raymond W. Balint (Preference Claim)	12-5049	N/A
12	Bash v. Stephen Blaising	12-5057	12-00977
13	Bash v. Mercho, Wells & Masterson, Inc. and Hassan Mercho	12-5059	N/A
14	Bash v. Henri Najem; Najem Durham Enterprises, LLC; Najem Management, Inc.; Najem Enterprises, Inc.; Najem Durham Investments, LLC	12-5061	N/A
15	Bash v. Benjamin Harrison Presidential Site, Inc. dba Benjamin Harrison Home	12-5068	N/A
16	Bash v. Bennett Productions, Inc.	12-5069	12-00982

17	Bash v. Dennis Barsky	12-5071	N/A
18	Bash v. Disturbing Tha Peace Touring, Inc.	12-5072	N/A
19	Bash v. Joseph Hennigin	12-5078	12-00979
20	Bash v. Ludacris Foundation, Inc.	12-5081	N/A
21	Bash v. Stonefield Josephson nka Marcum LLP	12-5086	N/A
22	Bash v. Obsidian Capital Co., LLC; Timothy Durham; Terry Whitesell	12-5090	N/A
23	Bash v. Speedster Motorcars Inc.; SpeedsterMotorcarSales, Inc.; Timothy Durham	12-5091	N/A
24	Bash v. Bernard Durham aka B.J. Durham	12-5104	12-01153
25	Bash v. Courtney Durham	12-5105	N/A
26	Bash v. Joan Servaas	12-5106	12-01154
27	Bash v. Bruce Long	12-5110	12-00986
28	Bash v. Dalinger Designs, Inc.	12-5111	N/A
29	Bash v. Phillip Press, Inc.	12-5113	N/A
30	Bash v. Cornelius Alig	12-5141	N/A
31	Bash v. Melissa McDowell	12-5142	N/A
32	Bash v. Michael Reardon	12-5143	N/A
33	Bash v. Shannon Connor Design, Inc.	12-5144	12-01156
34	Bash v. DW Trailer, LLC; Terry G. Whitesell	12-5147	N/A
35	Bash v. Shannon Frantz	12-5151	N/A
36	Bash v. Plopper and Partners, LLC	12-5156	N/A
37	Bash v. Edward Morris	12-5163	N/A
38	Bash v. 77 th Street Partners. et al.	12-5212	N/A

GROUP B ACTIONS THAT HAVE BEEN SETTLED OR RESOLVED

#	Case Name	Bankruptcy Case No.	District Case No. (if applicable)
1	Bash v. Mathie Construction, Ltd. (Preference Claim)	12-5013	N/A
2	Bash v. Rubin & Levin Professional Corporation (Preference Claim)	12-5014	N/A
3	Bash v. Sanders Group of Indianapolis, Inc. (Preference Claim)	12-5015	N/A
4	Bash v. Voyles Zahn Paul Hogan & Merriman (Preference Claim)	12-5016	N/A
5	Bash v. Robert Shoemake	12-5019	N/A
6	Bash v. Scott Solem and Limitless Yachting, Inc.	12-5034	N/A
7	Bash v. Billie Dennie & Ann Dennie	12-5045	N/A
8	Bash v. Michael Rypel	12-5047	N/A
9	Bash v. Kevin James	12-5094	N/A
10	Bash v. Carlile Patchen & Murphy LLP (Preference Claim)	12-5050	N/A
11	Bash v. Michael Durham	12-5060	N/A
12	Bash v. American Legends Publicity, Inc.	12-5065	N/A
13	Bash v. Auburn Automotive Heritage, Inc. dba Auburn Cord Deussenberg Museum	12-5067	N/A
14	Bash v. Girls, Inc.	12-5074	N/A
15	Bash v. Green Lantern Partners, Ltd.	12-5075	N/A
16	Bash v. Jamie Ferrell	12-5076	N/A
17	Bash v. Kato Kaelin	12-5079	N/A
18	Bash v. Kathryn James & The Charles L. James Trust	12-5080	N/A
19	Bash v. Mitch for Governor	12-5126	N/A

20	Bash v. Fragola & Fragola Limited Partnership; Albert Fragola; The Estate of Nunzie Fragola (Preference Claim)	12-5129	N/A
21	Bash v. H. Joanne Allen, Trustee (Preference Claim)	12-5130	N/A
22	Bash v. Hazel Cossey (Preference Claim)	12-5131	N/A
23	Bash v. The Doe Trust; James O. Pigg (Preference Claim)	12-5132	N/A
24	Bash v. Joseph P. Spohn (Preference Claim)	12-5133	N/A
25	Bash v. Julie Imhoff (Preference Claim)	12-5134	N/A
26	Bash v. Marie Ebert; Clyde Ebert (Preference Claim)	12-5135	N/A
27	Bash v. Schippers (Preference Claim)	12-5136	N/A
28	Bash v. Scot W. Kingan; Donald W. Kingan (Preference Claim)	12-5137	N/A
29	Bash v. Thomas O'Neal (Preference Claim)	12-5138	N/A
30	Bash v. Revocable Trust of Victoria Scaia, Vicktoria Scaia; Lorainne Brienza (Preference Claim)	12-5139	N/A
31	Bash v. William Barton (Preference Claim)	12-5140	N/A
32	Bash v. Davis & Davis Electric, LLC	12-5146	N/A
33	Bash v. Jaffe & Asher LLP (Preference Claim)	12-5150	N/A
34	Bash v. Misty Rice-Baniewicz	12-5154	N/A



GROUP B ACTIONS WITH DEFENDANTS IN DEFAULT OF ANSWER

#	Case Name	Bankruptcy Case No.	District Case No. (if applicable)
1	Bash v. Cedric Rashad	11-5203	12-01236
2	Bash v. Alexander Talbott, Inc.	11-5204	12-01237
3	Bash v. Pointe Leasing, LLC	11-5205	12-01238
4	Bash v. Square One design, Inc.	11-5207	n/a
5	Bash v. CargoTrailerUSA.com	11-5209	12-01239
6	Bash v. Obsidian Conference and Catering Center, LLC (2 of 3 Defendants)	11-5230	12-00983
7	Bash v. Blair Kiel Partners Inc.	11-5231	n/a
8	Bash v. Durham Capital Corporation	11-5232	12-01241
9	Bash v. Etelco Services, Inc.	11-5233	12-00984
10	Bash v. Guyer Durham, LLC	11-5234	12-01242
11	Bash v. J Blanton LLC	11-5235	12-01243
12	Bash v. My Ghetto Holdings, LLC	11-5237	12-01244
13	Bash v. Medical Collections Group, LLC	11-5239	12-01246
14	Bash v. Durham Whitesell & Associates (2 of 3 Defendants)	11-5240	n/a
15	Bash v. Indianapolis Concours, Inc.	12-5018	n/a
16	Bash v. Bad Boyz Toy Shop, LLC	12-5021	12-01194
17	Bash v. Black Rock Acquisition Corporation	12-5022	12-01195
18	Bash v. Cannonball World Evens, LLC	12-5023	12-01196
19	Bash v. Chairman Cigars, LLC	12-5024	n/a
20	Bash v. Champion Trailer Acquisition, LLC; Champion Trailer Company LP; Champion Trailer, Inc.	12-5025	12-01197
21	Bash v. Durco Leasing, LLC	12-5028	12-01198

22	Bash v. Fashion House, LLC	12-5030	12-01199
23	Bash v. Rated X Custom Garage, LLC	12-5033	12-01200
24	Bash v. Vizion Enterprises, LLC	12-5036	12-01201
25	Bash v. Waterway Group Realty, LLC	12-5037	12-01202
26	Bash v. DC Investments Leasing, LLC	12-5038	n/a
27	Bash v. DW Leasing Company, LLC	12-5039	n/a
28	Bash v. Evaco Acquisition Corporation	12-5058	n/a
29	Bash v. Pyramid Coach, Inc.	12-5062	n/a
30	Bash v. Timothy Porter and Nina Porter	12-5063	N/A
31	Bash v. Aaron Landau	12-5064	12-01203
32	Bash v. Social Connects	12-5085	12-01204
33	Bash v. Strategic Sports Agency, Inc.	12-5087	12-01205
34	Bash v. Obsidian Capital Company, LLC; Timothy Durham	12-5090	n/a
35	Bash v. Speedster Motorcars, Inc.; SpeedsterMotorSales Timothy Durham	12-5091	n/a
36	Bash v. Obsidian Leasing Company, Inc.	12-5092	12-01206
37	Bash v. Playa del Racing, Inc.	12-5093	n/a
38	Bash v. Four Leaf Management	12-5112	n/a
39	Bash v. Aesthetic Surgery Center, LLC; Beeson Aesthetic Surgery Institute, LLC	12-5145	n/a
40	Bash v. DW Trailer, LLC (1 of 2 Defendants)	12-5147	n/a
41	Bash v. US Rubber Reclaiming, Inc.	12-5148	n/a
42	Bash v. Impressive Interiors and Designs, Inc.	12-5153	n/a

601407459

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via ECF or regular, U.S. Mail, on July 9, 2012,
on the attached service list.

/s/ Brian A. Bash

Brian A. Bash

SERVICE LIST

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