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CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
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6 UNITED STATES DISTRICT COURT
7
8 DISTRICT OF ARIZONA

9 NATIONAL UNION FIRE INSURANCE)
10 COMPANY OF PITTSBURGH,)
PENNSYLVANIA, a Pennsylvania)
11 Corporation,)
12 Plaintiff,)
13 vs.)
14 UNITED STATES HOLDINGS, L.L.C., a)
15 Delaware Limited Liability Corporation;)
16 JEFFREY A. MATZ; and G.J. SKIBBEE,)
17 Defendants.)
18

CIV '01 0657 PHX JWB
Case No. _____

COMPLAINT

(Rescission; Declaratory Relief; Fraud)

THIS DOCUMENT IS NOT IN PROPER FORM ACCORDING
TO FEDERAL AND/OR LOCAL RULES AND PRACTICES
AND IS SUBJECT TO REJECTION BY THE COURT.

REFERENCE: STLR 1.9(a)(3)
(Rule Number/Section)

19 Plaintiff National Union Fire Insurance Company of Pittsburgh, Pennsylvania
20 ("Plaintiff") for its Complaint against Defendants, hereby alleges as follows:

21
22 PARTIES, JURISDICTION AND VENUE

23 1. Plaintiff is a Pennsylvania Corporation with its principal place of business in
24 Pittsburgh, Pennsylvania. Plaintiff is a citizen of Pennsylvania, pursuant to 28 U.S.C. §
25 1332(c)(1).

26 2. At all times material hereto, Plaintiff was engaged in the business of issuing
27 fidelity bonds and other types of insurance contracts in Maricopa County, Arizona.
28

1 acting at Matz's behest, provided Plaintiff information and documentation indicating the
2 following:

- 3
- 4 a. USH was a legitimate start-up investment firm that would hire
5 employees in the near future;
- 6 b. USH would utilize the services of an established accounting firm;
- 7 c. Said accounting firm would accept funds from USH clients into an
8 escrow account, and, upon notice and approval of USH clients, transfer
9 those funds to various investment opportunities;
- 10
- 11 d. The purpose of the fidelity bond was to protect the funds invested by
12 USH clients from theft or misappropriation by the accounting firm.
- 13
- 14 e. In the alternative, funds invested by USH clients could be maintained in
15 an attorney trust account, the fidelity bond could protect the funds from
16 theft or misappropriation while in a trust account, and in this case, such
17 funds would not be transferred or released without written authorization
18 of the client.
- 19
- 20 f. The funds invested by USH clients would be deposited directly into
21 brokerage accounts at Smith Barney, Smith Barney would supervise and
22 manage said brokerage accounts, and said brokerage accounts were
23 heavily insured.
- 24

25 These representations made by Matz and Skibbee in the course of applying for the fidelity
26 bond for USH proved to be fraudulent, inaccurate and/or misleading.

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1 11. Based on the information and documentation provided by Matz and Skibbee on
2 behalf of USH, and based on the above-described representations therein, National Union
3 issued Commercial Crime Policy No. 856-69-28 (the "Bond") to USH. A copy of the Bond
4 is attached as Exhibit 1 to this Complaint and incorporated herein by this reference.
5

6 12. The Bond's policy period was August 13, 1998 to August 13, 1999, the Bond's
7 coverage limit was \$5,000,000.00, and the Bond's deductible was \$10,000.00. See Exhibit 1.
8

9 13. Beginning on or about October 5, 1998, and extending to November, 1998,
10 Matz, through Resource Bonding, Inc., communicated the desire to increase USH's fidelity
11 coverage to \$10,000,000.00 by obtaining an excess bond for USH.

12 14. During the course of applying for the excess bond on behalf of USH, Matz
13 provided Plaintiff information and documentation indicating the following:
14

- 15 a. Investments with USH would be conducted as standard loan program
16 arrangements.
- 17 b. The USH investors' right to recovery under the Bond would be entirely
18 derivative of USH's right to recovery and would depend on the
19 satisfactory adjustment of a covered loss with USH.
- 20 c. In order to verify this characterization of their rights vis a vis the Bond,
21 USH investors would have the opportunity to review the Bond and
22 discuss the Bond with the authorized agent for American Insurance
23 Group, Plaintiff's parent corporation.
- 24 d. USH's relationship with Smith Barney had terminated, and the USH
25 investors' funds would instead be deposited directly into an attorney-
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1 client trust account, overseen by the American Bar Association, and
2 then maintained in a brokerage account at Bank One for safekeeping
3 during the life of the investment contract.
4

5 e. In any case, the USH investment funds' purpose was to buy and sell
6 negotiable instruments, no funds would be withdrawn except upon
7 direction, permission and consent of the investor, and nobody at USH
8 would handle any investor funds.
9

10 These representations made by Matz and Skibbee in the course of applying for the excess
11 bond for USH proved to be fraudulent, inaccurate and/or misleading.

12 15. Based on the information and documentation received from Matz and USH, and
13 on the representations contained therein regarding the nature of USH's business, Plaintiff
14 issued Commercial Crime Policy No. 857-37-90 (the "Excess Bond") to USH, with a policy
15 period of November 20, 1998 to November 20, 1999, a policy limit of \$5,000,000.00 and a
16 deductible of \$5,000,000.00. A copy of the Excess Bond is attached as Exhibit 2 to this
17 Complaint and incorporated herein by this reference.
18
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20 16. Other than the policy period and deductible, the language in the Bond and
21 Excess Bond is identical. See Exhibits 1 and 2.

22 17. The Bond and Excess Bond contained a condition voiding the Bond in the case
23 of intentional concealment of misrepresentation of a material fact concerning the Bond and
24 application thereof. See Exhibits 1 and 2 at General Condition 1.a.
25

26 18. The Bond and Excess Bond also contained a Loss Payable Rider, whereby third
27 parties could be named as Loss Payees. However, under the express terms of the Loss
28

1 Payable Rider, all losses were to be adjusted with and paid to the Named Insured (USH), all
2 Loss Payee claims would therefore be dependent on adjustment of loss with the Named
3 Insured (USH), and no rights or benefits were bestowed on Loss Payees other than a payment
4 of a loss that was derivative of the Names Insured's loss. See Exhibits 1 and 2 at
5 Endorsement 4.
6

7 19. The language in the Bond and Excess Bond also provided that the Bonds
8 operated only to the benefit of the Named Insured (USH) and provided no rights or benefits to
9 any third parties. See Exhibits 1 and 2 at General Condition 14.
10

11 20. The information provided by Matz and Skibbee on behalf of USH led Plaintiff
12 to believe, consistent with the purpose of and language in the Bond and Excess Bond, that
13 USH was a legitimate start-up investment company and that investors in USH were protected
14 by the Bond and Excess Bond only to the extent that USH sustains a covered loss and files a
15 satisfactory claim under the Bond and Excess Bond.
16

17 21. Contrary to representations made to Plaintiff, USH, upon information and
18 belief, is merely a conduit for a ponzi scheme involving Prime Bank Instrument ("PBI")
19 markets.
20

21 22. Upon information and belief, Matz, on behalf of USH, enticed investors to
22 provide substantial loans to USH with the promise of a low-risk, high-yield investment
23 opportunity in a PBI program.
24

25 23. No mention of such PBI programs was made to Plaintiff during the course of
26 USH's application for the Bond and Excess Bond.
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1 24. Upon information and belief, Matz falsely represented to investors that their
2 funds would be used as collateral in order to fund such low-risk, high-yield trades in a secret
3 PBI market abroad. In fact, such PBI markets do not exist.
4

5 25. Upon information and belief, Matz, through such representations, caused
6 investors to enter into loan agreements with USH.
7

8 26. Upon information and belief, all such loan arrangements provided that the
9 invested principal would be unavailable for a period of thirteen (13) months and that the
10 investor would receive regular monthly interest payments at a rate of at least fifteen percent
11 (15%).
12

13 27. Upon information and belief, Matz provided some USH investors assurances
14 that their invested funds would be used to purchase a United States Treasury Bill and that
15 their investments would be secured by ownership of an undivided percentage interest in the
16 Treasury Bill. In reality, Treasury Bills are issued only to a named party, and individuals
17 cannot own an undivided percentage interest in such Treasury Bills.
18

19 28. Upon information and belief, these investors' funds were not used to purchase
20 Treasury Bills. Instead, Matz purchased the Treasury Bills with funds borrowed on a line of
21 credit from a securities firm and collateralized by the Treasury Bill itself. Matz then provided
22 investors with documentation confirming the existence of the Treasury Bills, after which
23 Matz defaulted on the securities firm loans, causing ownership of the Treasury Bills to revert
24 back to the securities firm. Meanwhile, the investors' funds would remain at Matz's disposal.
25 No mention of such Treasury Bill arrangements was made to Plaintiff.
26
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1 29. Upon information and belief, Matz provided other USH investors assurances
2 that their invested funds would be maintained in client trust accounts, that the funds would
3 never leave Matz's control, and that the funds would not be transferred or withdrawn without
4 the investors' consent. Matz provided investors with documentation supporting these false
5 beliefs.
6

7 30. Upon information and belief, as a result of USH's activities in conjunction with
8 one PBI program, Smith Barney received various unusual and suspicious financial
9 instruments, including false or worthless instruments. Consequently, Smith Barney
10 conducted an internal fraud investigation, and USH's Smith Barney account was frozen.
11 Matz did not disclose this information to Plaintiff when indicating, during his request for
12 increased fidelity coverage, the termination of USH's relationship with Smith Barney.
13
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15 31. Upon information and belief, Matz, without notice to investors or consent or
16 knowledge of investors, transferred the USH investors' funds among trust accounts,
17 commingled said funds, withdrew some such funds, and ultimately arranged for the transfer
18 of said funds to various foreign accounts, to be disbursed to co-conspirators in the PBI
19 schemes. No mention of such account arrangements was ever made to Plaintiff.
20

21 32. Upon information and belief, any returns realized by investors in the PBI
22 programs were comprised entirely of funds invested in the PBI programs by subsequent
23 investors.
24

25 33. Upon information and belief, USH investors' funds were consequently
26 depleted, lost and/or stolen as a result of the PBI schemes.
27
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1 34. The United States Government has seized approximately \$9 million in funds
2 associated with one of the PBI programs (the "Isle of Man Program") involving USH, and the
3 United States Attorney's Office has instituted a Civil Forfeiture Action in the United States
4 District Court for the District of Arizona, Case No. CIV 00-0291-PHX-LOA to forfeit the
5 interest of any identified PBI program co-conspirator in the seized funds, to identify the
6 innocent victims of the PBI program, and to equitably disburse the seized funds among the
7 identified innocent investors. Such disbursement efforts have continued through the date of
8 this Complaint, though they will not fully reimburse all potential claimants under the Bond
9 and Excess Bond.
10

11
12 35. The Civil Forfeiture Action has named Matz as a co-conspirator in the PBI
13 program and has identified USH as a conduit to perpetuate the PBI program.
14

15 36. The allegations in the Civil Forfeiture Action are the result of an extensive,
16 several month long investigation performed by the Securities Division of the Arizona
17 Corporation Commission, in cooperation with the United States Attorney's Office. The
18 allegations made by the United States Attorney in the Civil Forfeiture Action support the
19 allegations in this Complaint.
20

21 37. Meanwhile, the Arizona Attorney General's office has explored civil forfeiture
22 proceedings regarding funds seized in conjunction with another of the PBI programs (the
23 "Hammersmith Trust Program") involving USH.
24

25 38. While soliciting investors for the PBI programs, Matz, upon information and
26 belief, used the Bond and Excess Bond as a selling point for the PBI investments.
27
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1 39. Upon information and belief, Matz represented to prospective USH investors
2 that coverage under the Bond and Excess Bond would provide additional security for their
3 investments by allowing them, in the event of a loss on the investments, to pursue recovery
4 under the Bond and Excess Bond.
5

6 40. Upon information and belief, Matz buttressed his assurances of security under
7 the Bond by promising USH investors that they would be named as Loss Payees under the
8 Bond and Excess Bond.
9

10 41. Upon information and belief, despite his assurances to all USH investors that
11 they would be named as Loss Payees under the Bond and Excess Bond, Matz, through
12 Resource Bonding, Inc., requested Plaintiff's local underwriter to add certain USH investors
13 to the Loss Payable Rider as Loss Payees under the Bond and Excess Bond, while other USH
14 investors were not added as Loss Payees.
15

16 42. Upon information and belief, Matz advised USH investors to refrain from
17 contacting Plaintiff regarding the Bond and Excess Bond.
18

19 43. Upon information and belief, Matz did not provide certain USH investors with
20 a copy of the Bond, despite assurances that investors would be given the opportunity to
21 review the Bond.
22

23 44. Upon information and belief, and unbeknownst to Plaintiff, Matz falsely
24 represented to several USH investors that they were all named as loss payees under the Bond
25 and Excess Bond and that, as such, they could file direct claims under the Bond and Excess
26 for losses incurred in the USH investments, whether or not any such losses were adjusted as a
27 loss with the Named Insured (USH).
28

1 45. Upon information and belief, and unbeknownst to Plaintiff, Matz falsely
2 represented to other USH investors that they were Named Insureds under the Bond and
3 Excess Bond, even though USH was, in fact, the only Named Insured.
4

5 46. In August, 1999 Plaintiff informed Matz and USH that the Bond and Excess
6 Bond were being cancelled.

7 47. According to their terms, the Bond and Excess Bond provide coverage for
8 losses discovered within one year from the end of the policy period.
9

10 48. On or about April 21, 1999, USH investors, based, upon information and belief,
11 on Matz's representations, began contacting Resource Bonding, Inc. and Plaintiff, indicating
12 that they have not realized the promised returns on their investments with USH, that their
13 invested funds have been lost, and that they intended to file a claim under the Bond and
14 Excess Bond.
15

16 49. Plaintiff received such demand letters, notices of claim and/or similar
17 correspondence identifying potential claims from at least nine USH investors, extending from
18 April 1999 through December 2000.
19

20 50. At present, USH investors have issued correspondence to Plaintiff identifying
21 claims for losses associated with USH investments totaling in excess of \$1.8 million.

22 51. Upon information and belief, Plaintiff continues to receive similar demand
23 letters and may receive similar correspondence from other USH investors in the future.
24

25 52. Meanwhile, on or about August 10, 2000, Matz, on behalf of USH and
26 purportedly for the benefit of the Loss Payees, submitted to Plaintiff a Notice of Claim in the
27
28

1 amount of \$9,000,000.00 for losses related to investments with USH in the PBI Programs. A
2 copy of the Notice of Claim is attached as Exhibit 3.

3
4 53. Matz did not provide any documentation in support of his Notice of Claim,
5 instead submitting the following paragraph as USH's Proof of Loss:

6 From my understanding, the evidence that is being utilized to
7 prove the claimed losses and to establish that the losses were via
8 criminal conduct [theft(s)], as defined by your policies (listed
9 above) is being developed by various law enforcement agencies
10 around the United States, and elsewhere. Details of this evidence
11 are voluminous, estimated in just one of the two incidents as
12 exceeding 260,000 pages of documentary evidence and more than
13 115 witnesses from all over the world. It is therefore not practical
14 to encapsulate that evidence within the confines of this letter.

15 See Exhibit 3.

16 54. Upon information and belief, and contrary to representations and implications
17 made by Matz and Skibbee on behalf of USH, USH has never served any purpose other than
18 to facilitate and perpetuate the PBI programs.

19 55. Upon information and belief, and contrary to Matz's representations to Plaintiff,
20 USH has never hired any employees and, has not observed corporate formalities, has not
21 earned any income not associated with the PBI programs, and, in fact, has not maintained an
22 identity separate from Matz and other conspirators in the PBI programs.

23 56. Matz has been named as a defendant in criminal proceedings in the United
24 States District Court, Northern District of Florida (Pensacola, Florida), in conjunction with
25 his involvement in one of the PBI programs (the "Hammersmith Trust Program") and USH
26 transactions connected with said PBI program. Matz's criminal trial is presently being
27 conducted.
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COUNT I
(RESCISSION)

57. Plaintiffs hereby incorporate Paragraphs 1 through 56 of this Complaint herein by this reference.

58. Upon information and belief, Matz, Skibbee and/or USH falsely represented to Plaintiff:

- a. That USH was a start-up investment firm that planned to solicit legitimate investments in negotiable instruments;
- b. That USH investors' funds would be safely maintained in trust and/or brokerage accounts and would not be transferred or withdrawn without notice to and express authorization by said investors;
- c. That USH investors would have an opportunity to review the Bond and discuss the Bond with Plaintiff, in order to understand their rights as Loss Payees under the Bond; and
- d. That USH planned to hire employees in the near future.

59. Upon information and belief, Matz, Skibbee and/or USH intentionally and fraudulently failed to disclose to Plaintiff:

- a. That its Smith Barney account had been frozen due to the receipt of improper and suspicious instruments in conjunction with USH investments;
- b. All information regarding USH's involvement in PBI programs and the securities promised by Matz and USH in conjunction with those programs; and

1 c. That USH investors would be informed that they could claim directly
2 and in their own right under the Bond, regardless of whether a loss was
3 adjusted with USH.
4

5 60. The circumstances regarding the freezing of USH's Smith Barney account, the
6 information related to the PBI programs, and the information regarding Matz's
7 representations to investors concerning their rights as Loss Payees, were material, and
8 Plaintiff was entitled to rely on Matz's nondisclosure of such information while applying for
9 the Bond and Excess Bond for USH.
10

11 61. Based on the above described misrepresentations and material nondisclosures,
12 Plaintiff issued the Bond and Excess Bond to USH under the false pretenses that USH was a
13 legitimate investment enterprise and that investors could not claim under the Bond and
14 Excess Bond unless and until a loss had been adjusted with USH.
15

16 62. The information that Defendants misrepresented and/or failed to disclose to
17 Plaintiff was material to Plaintiff's acceptance of the risk of insuring USH.
18

19 63. Plaintiff, in good faith, would not have issued the Bond and Excess Bond, or
20 would have issued the Bond in a far less amount, if the true facts had been made known to
21 Plaintiff regarding the identity of USH, the nature of USH's business, the involvement or
22 planned involvement of Matz and USH in PBI programs, and Defendants' purpose behind
23 naming individuals as Loss Payees under the Bond and Excess Bond.
24

25 64. As a direct and proximate result of issuing the Bond and Excess Bond under
26 false pretenses, Plaintiff has been forced to address claims made by several USH investors, at
27
28

1 considerable time and expense. As a result of the PBI programs, Plaintiff has incurred
2 significant expenses in addressing such claims under the Bond and Excess Bond.

3
4 65. Because the information provided to Plaintiff by Matz and Skibbee in the
5 course of applying for the Bond and Excess Bond was inaccurate, incomplete and/or untrue,
6 because the information was material to Plaintiff's decision to insure USH, and because
7 Plaintiff would not have otherwise issued the Bond and Excess Bond, Plaintiff is entitled to
8 rescind the Bond and Excess Bond.

9
10 66. Because the information provided to Plaintiff by Matz and Skibbee in the
11 course of applying for the Bond and Excess Bond was material and inaccurate, incomplete
12 and/or untrue, Plaintiff is entitled to reimbursement for the expenses incurred in addressing
13 the claims made under the Bond and Excess Bond, discounted by any premiums paid by
14 Defendants to Plaintiff for the Bond and Excess Bond, in order to restore Plaintiff to the
15 position it occupied prior to issuing the Bond and Excess Bond.

16
17 67. Should the Court find that Plaintiff is not entitled to reimbursement for
18 expenses incurred as a result of the claims made under the falsely procured Bond and Excess
19 Bond, or should the Court find that the amount of such expenses are exceeded by the
20 premiums paid by Defendants, Plaintiff is ready and hereby offers to return the premium paid
21 by Defendants for the Bond and Excess Bond, or the difference between said premiums and
22 the expenses incurred by Plaintiff as a result of claims made under the Bond and Excess
23 Bond.
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1 WHEREFORE, Plaintiff prays that the Court enter judgment as follows:

- 2 A. For a decree and order that the Bond and Excess Bond are void, according to
3 their terms;
4
5 B. For reimbursement of all expenses, in an amount to be determined at trial,
6 resulting from Plaintiff's need to address claims made under the Bond and
7 Excess Bond, discounted by premiums paid by Defendants for the Bond and
8 Excess Bond, in order to place the parties in the position they would have
9 occupied had the Bond and Excess Bond never been issued;
10
11 C. For Plaintiff's costs and reasonable attorney's fees incurred herein; and
12
13 D. For such other and further relief as the Court deems proper.

14 **COUNT III**
15 **(FRAUD)**

16 72. Plaintiffs hereby incorporate Paragraphs 1 through 71 of this Complaint herein
17 by this reference.

18 73. By engaging in the conduct described above, the Defendants, and each of them,
19 by fraudulent means, false pretenses, deceit and/or dishonesty, directly and proximately
20 caused Plaintiff to incur substantial expenses associated with handling claims under the
21 aforementioned bonds.
22

23 74. Defendants' fraudulent conduct has damaged Plaintiff, and Defendants, and
24 each of them, knew and/or intended that it would.


25 75. Defendants' fraudulent, dishonest and/or deceitful conduct warrants the
26 imposition of punitive damages.
27

28 WHEREFORE, Plaintiff prays that the Court enter judgment as follows:

- 1 A. For compensatory damages, in an amount to be determined at trial, to reimburse
2 Plaintiff for the expenses incurred in handling claims under the Bond and
3 Excess Bond, which were procured under false pretenses;
4
5 B. For punitive damages in an amount deemed by the Court to be appropriate
6 under the circumstances of this action;
7
8 C. For Plaintiff's costs incurred herein; and
9
10 D. For such other and further relief as the Court deems proper.

DATED this 12th day of April, 2001.

DYER, MANN, BERENS & WISNER LLP

By 

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