

FILED IN DISTRICT COURT

12-16-03
Date Time

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CLERK, U. S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

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Initials

COMMODITY FUTURES TRADING COMMISSION)
Plaintiff,)
v.)
THOMAS D. CHILCOTT d/b/a Trade Master of)
Southwest Florida, TED E. WHIDDEN, and LEONA)
WESTBROOK,)
Defendants.)

Case No.
2:02-cv-94-FTM-29DNF

FILED
JAN 16 2004
U.S. DISTRICT COURT
FORT MYERS, FLORIDA

**SUPPLEMENTAL CONSENT ORDER CONCERNING RESTITUTION
AND CIVIL MONETARY PENALTY AGAINST DEFENDANTS
THOMAS D. CHILCOTT AND LEONA WESTBROOK**

On March 6, 2002, Plaintiff Commodity Futures Trading Commission ("the Commission") filed a complaint against Thomas D. Chilcott ("Chilcott"), Leona Westbrook ("Westbrook"), and Ted E. Whidden ("Whidden") (collectively, "Defendants") seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2001), the Commission Regulations promulgated thereunder ("Regulations"), 17 C.F.R. §§ 1 *et seq.* (2002), and the Consent Final Judgment and Order of Permanent Injunction and Equitable Relief of the United States District Court for the District of Colorado in Commodity Futures Trading Commission v. Chilcott Portfolio Mgmt. Inc., et al., C.A. No. 81-F-999, Order No. 1981-9 (D. Colo. July 10, 1981) (the "1981 Order").

On March 7, 2002, this Court issued an *ex parte* statutory restraining order ("Statutory Restraining Order") that, among other things, froze the Defendants' assets, prohibited the Defendants from destroying any books and records, and scheduled a hearing of the Commission's

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request for a preliminary injunction. On March 18, 2002, this Court issued a preliminary injunction prohibiting the Defendants from violating the Act, Regulations and the 1981 Order, as alleged in the Complaint. On March 19, 2002, the Court modified the Statutory Restraining Order.

On March 29, 2002, the Commission moved this Court to issue an order appointing a receiver for the Defendants and the operation of Trade Master of Southwest Florida ("Trade Master"), which Chilcott and Westbrook opposed. The Commission and Chilcott and Westbrook subsequently agreed to the appointment of a receiver ("Receiver"). Defendant Whidden did not file a response to the Commission's motion for the appointment of a receiver, although he also subsequently agreed to the appointment of said Receiver.

On July 18, 2002, this Court entered the *Consent Order of Permanent Injunction and Other Equitable Relief As To Defendants Thomas D. Chilcott and Leona Westbrook* ("Chilcott/Westbrook Consent Order") that enjoins Chilcott and Westbrook from further violations of the Act, Regulations and the 1981 Order, as alleged in the complaint, and permanently prohibits them from, among other things, trading commodity futures contracts or options on commodity futures contracts and from seeking registration with the Commission or acting in any capacity requiring Commission registration. The Chilcott/Westbrook Consent Order also appointed a Receiver, among other things, to assume control and to effectuate the sale of the building used for the operation of Trade Master's business, the surrounding four acres of real estate upon which the building sits, and the five acre parcel adjacent thereto, located at 3701 Packinghouse Road, Alva, Florida 33902 (collectively, "Trade Master real estate"). In addition, the Chilcott/Westbrook Consent Order required Chilcott and Westbrook to pay restitution and a civil monetary penalty in an amount to be determined either by settlement, which must be reached within 90 days of the entry of the consent order, or by a court hearing to be scheduled upon the expiration of the 90 days.

On September 27, 2002, this Court entered the *Consent Order of Permanent Injunction, the Appointment of a Receiver, and Other Equitable Relief As To Defendant Ted. E. Whidden* ("Whidden Consent Order") that enjoins Whidden from further violations of the Act, Regulations and the 1981 Order, as alleged in the complaint, and permanently prohibits him from, among other things, trading commodity futures contracts or options on commodity futures contracts and from seeking registration with the Commission or acting in any capacity requiring Commission registration. In addition to appointing a Receiver, the Whidden Consent Order also required Whidden to pay restitution and a civil monetary penalty in an amount to be determined either by settlement, which must be reached within 90 days of the entry of the consent order, or by a court hearing to be scheduled upon the expiration of the 90 days.

This *Supplemental Consent Order Concerning Restitution and Civil Monetary Penalty Against Defendants Thomas D. Chilcott and Leona Westbrook* ("Supplemental Order") sets out the appropriate amount of restitution and civil monetary penalty to be paid by Chilcott and Westbrook as determined by the parties.

I.

CONSENTS AND AGREEMENTS

1. To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits or any further judicial proceedings, Chilcott and Westbrook consent to the entry of this Supplemental Order.
2. Chilcott and Westbrook admit that this Court has jurisdiction over them and the subject matter of this action.
3. Chilcott and Westbrook admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (2001).

4. In addition, Chilcott and Westbrook waive: (a) all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.*, to seek costs, fees and other expenses relating to, or arising from, this action; (b) the entry of findings of fact and conclusions of law in this action as provided by Rule 52 of the Federal Rules of Civil Procedure, except as provided below in Section II; (c) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (d) all rights of appeal from this Order.

5. By consenting to the entry of this Supplemental Order, Chilcott and Westbrook neither admit nor deny any of the findings made in the Chilcott/Westbrook Consent Order or the allegations contained in the Complaint except as to jurisdiction and venue, which they admit. However, Chilcott and Westbrook agree that the allegations of the Complaint and all of the findings of fact made by this Court in the Chilcott/Westbrook Consent Order are taken as true and correct and shall be given preclusive effect without further proof only for the purpose of any subsequent bankruptcy proceeding filed by, on behalf of, or against Chilcott and Westbrook for the purpose of determining whether their restitution obligation, civil monetary penalty and/or other payments ordered herein are excepted from discharge. Chilcott and Westbrook also shall provide immediate notice of any bankruptcy filed by, on behalf of, or against them in the manner required by Part IV, paragraph 1 of this Supplemental Order.

6. Chilcott and Westbrook agree to relinquish any right, title, interest or privilege they may possess in any of the assets frozen by this Court, including funds in trading and banking accounts. In addition, Chilcott and Westbrook agree to relinquish any right, title, interest or privilege they may possess in the Trade Master real estate.

7. Chilcott and Westbrook agree that neither they nor any of their agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Chilcott/Westbrook Consent Order, the Whidden Consent Order or this Supplemental Order or creating, or tending to create, the impression that the Complaint, the Chilcott/Westbrook Consent Order, the Whidden Consent Order or this Supplemental Order is without a factual basis; provided, however, that nothing in this provision shall affect Chilcott's and Westbrook's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Chilcott and Westbrook shall take all necessary steps to ensure that all of their agents, servants, employees, contractors and attorneys understand and comply with this agreement.

8. Chilcott and Westbrook agree that they have read this Supplemental Order and agree to this Supplemental Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Supplemental Order, other than as set forth specifically herein.

9. Chilcott and Westbrook consent to the continued jurisdiction of this Court in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with the Chilcott/Westbrook Consent Order, the Whidden Consent Order and this Supplemental Order.

10. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Supplemental Order and that there is no just reason for delay. The Court therefore directs the entry of equitable relief, pursuant to § 6c of the Act, 7 U.S.C. § 13a-1 (2001), as set forth herein.

II.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (2001).

3. This Court has personal jurisdiction over Chilcott and Westbrook, each of whom has acknowledged service of the Complaint and consented to the Court's jurisdiction over each of them.

4. The Commission and Chilcott and Westbrook have agreed to this Court's retention of continuing jurisdiction over each of them for the purpose of enforcing the terms of the Chilcott/Westbrook Consent Order, the Whidden Consent Order and this Supplemental Order.

5. Chilcott and Westbrook agree to relinquish any right, title, interest or privilege they may possess in any of the assets frozen by this Court, including funds in trading and banking accounts. In addition, Chilcott and Westbrook agree to relinquish any right, title, interest or privilege they may possess in the Trade Master real estate.

6. Based upon principles of equity, there is good cause for entry of an order directing Chilcott and Westbrook to make restitution to the investors in the commodity pool operated by Chilcott ("the Pool") in the amount of \$2,107,092.37, together with prejudgment interest in the amount of \$133,085.66 as of May 14, 2003 as calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2), plus post-judgment interest as

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calculated at the statutory rate provided for by 28 U.S.C. § 1961, for distribution to investors in a manner approved by the Court.

7. There is good cause for entry of an order requiring Chilcott to pay a civil monetary penalty in an amount of \$1,320,000, which represents \$110,000 per violation charged in the Complaint.

8. There is good cause for entry of an order requiring Westbrook to pay a contingent civil monetary penalty in an amount of up to \$110,000.

III.

ORDER FOR EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

A. CHILCOTT AND WESTBROOK PAY RESTITUTION TO POOL PARTICIPANTS

1. Restitution: Chilcott and Westbrook are jointly and severally liable to pay restitution of customer funds in the amount of \$2,107,092.37 ("Restitution Obligation"), plus pre-judgment interest thereon from March 6, 2002 to the date of this Supplemental Order in the amount of \$133,085.66 as of May 14, 2003. Pre-judgment interest is to be calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). Post-judgment interest shall accrue on the Restitution Obligation at the statutory rate provided for by 28 U.S.C. § 1961.

2. Payment of Restitution: The persons to whom restitution shall be made ("pool participants") are identified in Attachment A, which includes the names and last known addresses the pool participants who are owed restitution who are identified to date. The parties hereto acknowledge that Attachment A may be incomplete for various reasons including, without limitation, that records have not been provided to the Commission, records are missing, or have

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been destroyed. The parties agree that omission from Attachment A shall in no way limit the ability of any pool participant from seeking recovery Chilcott and Westbrook, if that pool participant petitions the Court to be included on Attachment A within 6 months of the date of entry of this Order. The parties also agree that any pool participant listed on Attachment A may remove him or herself from Attachment A by voluntarily executing a Waiver of Right to Restitution form within sixty (60) days of the date of this order. The amounts contained in Attachment A as of the date of the entry of this Order shall not limit the ability of any pool participant from proving that a greater amount is owed from Chilcott and Westbrook, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant that exist under common law.

3. The National Futures Association shall be designated as Monitor ("Monitor") for the period beginning with the date of entry of this Supplemental Order and continuing until distribution of the last payment called for by this Supplemental Order.

4. Upon the entry of this Supplemental Order, the provisions of the Chilcott/Westbrook Consent Order entered on July 18, 2002, continuing a freeze on the Chilcott's and Westbrook's assets shall no longer be in effect. All financial institutions and other entities holding frozen funds or other property previously controlled by Chilcott and Westbrook shall tender same to the Monitor within ten (10) calendar days after being served with copies of this Supplemental Order after entry by the Court. However, Mark V. Silverio, Esq. (the, "Receiver"), appointed by this Court pursuant to the Chilcott/Westbrook Consent Order and Whidden Consent Order (collectively, "Consent Orders"), shall continue to execute his duties and responsibilities pursuant to the provisions of the Consent Orders. Furthermore, pursuant to the terms of the Consent Orders, the Receiver shall be entitled to file with the Court and serve on the parties, requests for payment of compensation

pursuant to the Consent Orders. Upon completion of these duties and responsibilities, the Receiver shall provide a final report to the Court regarding the execution of his duties and responsibilities. Thereafter, the Receiver shall turn over all remaining proceeds to the Monitor. The Monitor shall distribute these funds as restitution payments to the pool participants listed in Attachment A. Based upon the amount of funds available, the Monitor may defer distribution in accordance with the procedures set forth in Part III, Section A, Paragraph 5c below.

5. Westbrook shall pay her Restitution Obligation as follows:

- a. Within five (5) calendar days after entry of this Supplemental Order, Westbrook shall inform the Monitor whether she has commenced or is planning to commence any claim with the Internal Revenue Service or any state tax or revenue authority to recover taxes based on the false profits and/or losses they reported on income tax returns. Westbrook shall inform the Monitor at the semi-annual times at which she provides financial information as to the status of any claim with the Internal Revenue Service or any state tax or revenue authority. If Westbrook is able to obtain any funds from the Internal Revenue Service or any state tax or revenue authority based on a claim as described above, she shall relinquish these funds to the Monitor for distribution to the pool participants.
- b. Westbrook shall pay the remaining restitution amount, as follows:
 - i. Westbrook shall make an annual payment to an account designated by the Monitor on or before July 31 of each calendar year (the "Annual Restitution Payment"), beginning in calendar year 2004 and continuing for ten years¹ (or until full restitution is made or otherwise discharged, whichever occurs first). At the end of the ten-year payment period, the Westbrook's only remaining restitution obligation shall be pursuant to Part III, Section B, Paragraph 6. The amount of Westbrook's Annual Restitution Payment shall consist of a portion of: (1) her adjusted gross income (as defined by the Internal Revenue Code) earned or received by Westbrook during the preceding calendar year, plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by

¹ Westbrook's ten-year restitution period shall run from January 1, 2003 through December 31, 2012. Restitution payments for a calendar year shall take place by July 31st of the following year. Therefore, the final restitution payment for the year 2012 will occur on or before July 31, 2013.

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"Adjusted Gross Income" section (currently lines 23-33 of Form 1040) truly, accurately and completely identifies all deductions that Westbrook has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that she is entitled to claim on the joint tax return; provided, however, that she may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely hers. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings required to be submitted to any state tax or revenue authority. Westbrook shall also provide her sworn financial statements on December 31st of each calendar year, starting on December 31, 2003, and continuing through and including December 31, 2012. The financial statements shall provide:

- i. A true and complete itemization of all of Westbrook's rights, title and interest (or claimed in) any asset, wherever, however and by whomever held;
 - ii. An itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Westbrook over the preceding twelve-month interval; and
 - iii. A detailed description of the source and amount of all of the Westbrook's income or earnings, however generated.
- e. Based on the information contained in the Westbrook's tax returns (and, to the extent they are provided, her sworn financial statements), the Monitor shall calculate the Annual Restitution Payment to be paid by Westbrook for that year and the specific amounts payable to each of the pool participants. If the Monitor determines that an Annual Restitution Payment is due, then the Monitor will increase the amount of the remaining restitution payments by post-judgment interest calculated to the date of payment based on the total remaining obligation pursuant to 28 U.S.C. § 1961. On or before July 31st of each year, the Monitor shall send written notice to Westbrook with instructions to immediately pay the Annual Restitution Payment to the Monitor.

6. Nothing in this Supplemental Order shall diminish or limit the Restitution Obligation of Chilcott.

B. CHILCOTT AND WESTBROOK TO PAY A CIVIL MONETARY PENALTY

1. Civil Monetary Penalty: Chilcott shall pay a civil monetary penalty in an amount of \$1,320,000, commencing upon his fulfillment or discharge of his Restitution Obligation as set

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forth in Part III, Section A, Paragraphs 1 through 4 above.

2. Westbrook shall pay a contingent civil monetary penalty in an amount up to \$110,000, commencing upon her fulfillment or discharge of her Restitution Obligation as set forth in Part III, Section A, Paragraphs 1 through 5 above.

3. Westbrook shall pay the contingent civil monetary penalty in annual installment payments ("Annual CMP Payment") following her satisfaction or other discharge of her Restitution Obligation, and continuing until July 31, 2013 (or until the full civil monetary penalty is paid in full, if that happens first). Should the amount due under the payment plan for any Annual Restitution Payment be greater than the balance due on the Westbrook's restitution obligation, that amount shall constitute Westbrook's first annual CMP Payment and be paid in accordance with the payment schedule set forth in Part III, Section A, Paragraph 5 above. The Annual CMP Payment shall be calculated by the Monitor in accordance with the payment schedule set forth in Part IV, Section A, Paragraph 5 above. After satisfaction of the Restitution Obligation, should funds remain that same year pursuant to the restitution payment schedule, such funds shall immediately be paid as part of the civil monetary penalty payment. Westbrook shall make each such Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Westbrook and the name and docket number of the proceeding; Westbrook shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor, and to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address:

1155 21st Street, NW, Washington, D.C. 20581. Westbrook's contingent civil monetary penalty obligation will terminate at the end of the ten-year payment period.

4. Westbrook shall cooperate fully with the Monitor and the Commission in explaining her financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission. Westbrook shall also cooperate fully and expeditiously with the Monitor and the Commission in carrying out all other aspects of her obligations described in this Supplemental Order.

5. Westbrook shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any family member or any other person for the purpose of concealing such funds or property from the Court, the Monitor or the Commission.

6. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant is explicitly deemed an intended third-party beneficiary of this Supplemental Order and, after the date of the last payment called for by this Supplemental Order is due, may enforce obedience of this Supplemental Order to obtain satisfaction of any portion of the Restitution Obligation which has not been paid, to ensure continued compliance with any provision of this Supplemental Order and to hold Chilcott and Westbrook in default and/or contempt for any past violations of the Supplemental Order.

8. Default: Any failure by Chilcott to carry out any of the terms, conditions or obligations under any paragraph of this Supplemental Order shall constitute an Event of Default.

If any Event of Default occurs, the Commission (or its designee) shall be entitled to:

- a. move the Court for imposition of all other available remedies, including, but not limited to, an order holding Chilcott in contempt for violation of this Supplemental Order; and/or

- b. pursue Chilcott for any and all additional claims and causes of action of any nature, in law or in equity, which the Commission may have or may have had against Chilcott.

8. Upon the occurrence of an Event of Default, Chilcott will be barred from asserting the defenses of: expiration of any statute of limitations, waiver, estoppel or laches, or any defense where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of Chilcott's consent to this Supplemental Order or while this Supplemental Order remains in effect.

9. Default: Any failure by the Westbrook to carry out any of the terms, conditions or obligations under any paragraph of this Supplemental Order shall constitute an Event of Default. If any Event of Default occurs, the Commission (or its designee) shall be entitled to:

- a. an order requiring immediate payment of any unpaid Annual Restitution Payments and/or CMP Payments, or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the restitution amount and/or civil monetary penalty set forth above in Part III, Section A, Paragraph 1 and Part III, Section B, Paragraph 2 above; and/or
- b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding Westbrook in contempt for violation of this Supplemental Order.

10. Upon the occurrence of an Event of Default based upon a claim or cause of action that Westbrook failed to make any Annual Restitution Payments and/or Annual CMP Payments when due, Westbrook will be barred from asserting the defenses of: expiration of any statute of limitations, waiver, estoppel or laches, or any defense where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of Westbrook's consent to this Supplemental Order or while this Supplemental Order remains in effect. The only issue that Westbrook may raise in defense

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is whether she has made the Annual Restitution Payments and/or Annual CMP Payments as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph requiring payment of less than the full amount of the restitution and/or civil monetary penalty, set forth in Part III, Section A, Paragraph 1 and Part III, Section B, Paragraph 2 above, or any acceptance by the Commission of partial payment of the Annual Restitution Payments and/or Annual CMP Payments made by Westbrook, shall not be deemed a waiver of the Commission's right to require Westbrook to make further payments pursuant to the payment plans set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance, or any unpaid portion, of the restitution amount and/or civil monetary penalty set forth in Part IV, Section A, Paragraph 1 and Part III, Section B, Paragraphs 2 above.

11. Based upon Westbrook's sworn representations in her Financial Disclosure Statements and other evidence provided by Westbrook to the Commission regarding her financial condition, the Commission has agreed that this Supplemental Order would not require her immediate payment of the entire Restitution Obligation and civil monetary penalty. The Commission's determination not to require immediate payment of the entire Restitution Obligation and civil monetary penalty is contingent upon the accuracy and completeness of Westbrook's Financial Disclosure Statements and other evidence provided by Westbrook regarding her financial condition. If at any time following the entry of this Supplemental Order, the Commission obtains information indicating that her representations to the Commission concerning her financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may move this Court for an order requiring Westbrook to make immediate payment of her entire restitution obligation and/or civil monetary penalty, or of any portion thereof, the amount of which shall be determined by the Commission. In

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connection with any such motion, the only issues shall be whether the financial information provided by Westbrook was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its motion, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Westbrook to pay funds or transfer assets or directing the forfeiture of any assets, and the Commission may also request additional discovery. Westbrook may not, by way of defense to such motion, challenge the validity of her consent or this Supplemental Order, or contest any of the findings of fact or conclusions of law set forth in the Chilcott/Westbrook Consent Order or this Supplemental Order, assert that payment of restitution and/or a civil monetary penalty should not be ordered, or contest the amount of the restitution or civil monetary penalty to be paid. If in such motion, the Commission moves for, and the Court orders, payment of less than the full amount of the restitution obligation or the full amount of civil monetary penalty, such motion will not be deemed a waiver of the Commission's right to require Westbrook to make further payment pursuant to the payment plans set forth above.

12. If any provision of this Supplemental Order or the application of any provision or circumstance is held invalid, the remainder of this Supplemental Order, and the application of the provision to any other person or circumstance, shall not be affected by the holding.

13. Upon being served with copies of this Supplemental Order after entry by the Court, the Defendants shall sign an acknowledgment of such service and serve such acknowledgment on the Commission within seven (7) calendar days.

14. This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with this Supplemental Order.

IV.

MISCELLANEOUS PROVISIONS

1. All notice required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to the Commission:

Eugene Smith, Esq.
Division of Enforcement
Three Lafayette Centre
1155 21st St. N.W.
Washington, D.C. 20581

Notice to the Monitor:

Daniel A. Driscoll
Executive Vice President, Chief Operating Officer
National Futures Association
200 West Madison Street
Chicago, IL 60606

Notice to the Defendants:

Frank C. Razzano, Esq.
Dickstein Shapiro Morin & Oshinsky
2101 L Street, NW
Washington, DC 20037

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2. In the event that Chilcott and Westbrook change their residential or business telephone number(s) and/or address(es) at any time, they shall provide written notice of the new number(s) and/or address(es) to the Monitor and to the Commission within ten calendar days thereof.

SO ORDERED, this 18th day of December, 2003, at Fort Myers, Florida

John E. Steele
Hon. John E. Steele
UNITED STATES DISTRICT JUDGE

Defendants:

Thomas D. Chilcott
Thomas D. Chilcott

Dated: 11/26, 2003

Leona Westbrook
Leona Westbrook

Dated: 11/26, 2003

Counsel for the Defendants:

Thomas D. Chilcott

Leona Westbrook

By:

Frank C. Razzano
Frank C. Razzano, Esq.

Dickstein Shapiro Morin & Oshinsky

2101 L Street, NW

Washington, DC 20037

(202) 785-9700 phone

(202) 887-0689 facsimile

Counsel for the Plaintiffs:

Commodity Futures Trading Commission

By:

Eugene Smith
Eugene Smith, Esq.

1155 21st Street, NW

Washington, DC 20036

202) 418-5371 phone

(202) 418-5531 facsimile

Local Counsel:

Gregory J. Bosseler, Esq.

McQuagge Bosseler & Morgan LLP

1617 Hendry Street

Suite 316

Fort Myers, FL 33901

(941) 334-4455 phone

(941) 334-4426 facsimile

Dated: December 15, 2003

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F I L E C O P Y

Date Printed: 12/18/2003

Notice sent to:

- Leanna L. Saler, Esq.
Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st St., N.W.
Washington, DC 20581

2:02-cv-00094 sll
- Eugene Smith, Esq.
Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st St., N.W.
Washington, DC 20581

2:02-cv-00094 sll
- Paul G. Hayeck, Esq.
Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st St., N.W.
Washington, DC 20581

2:02-cv-00094 sll
- Peter M. Haas, Esq.
Three Lafayette Centre
1155 21st St., N.W.
Washington, DC 20581

2:02-cv-00094 sll
- Benjamin R. Ogletree, Esq.
Dickstein, Shapiro, Morin & Oshinsky, LLP
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Washington, DC 20037-1526

2:02-cv-00094 sll
- Frank C. Razzano, Esq.
Dickstein, Shapiro, Morin & Oshinsky, LLP
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2:02-cv-00094 sll
- Gregory J. Bosseler, Esq.
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