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INDICTMENT CHARGES 54 COUNTS OF FRAUD IN OREGON 'PHANTOM COW' INVESTMENT SCHEME; GRAND JURY ALLEGES INVESTORS LOST $100,000,000

PORTLAND, ORE.--Six defendants were indicted on 54 counts of mail fraud, bankruptcy fraud, and money laundering for their role in a long-running "phantom cow" investment scheme operated in Eastern Oregon and Sacramento, Calif., Assistant United States Attorney Allan Garten and United States Trustee Jan Ostrovsky announced today. The 52-page superseding indictment, handed down June 2 by a grand jury for the District Court of the District of Oregon, contained charges against Walter J. (Jay) Hoyt III, David Cross, Phyllis King, and Darrel Smith, all of Burns, Ore., and against David Barnes and April Barnes of Herald, Calif.

Hoyt operated many interrelated business partnerships and companies. The indictment charged that, between 1982 and the present, the defendants, led by Hoyt, conspired to defraud thousands of investors out of more than $100 million. According to the indictment, the conspirators gave false promises and representations to obtain investments in a cattle breeding program and an Individual Retirement Account (IRA).

"This is a superseding indictment raising new charges of bankruptcy fraud and money laundering," Assistant United States Attorney Garten explained. "Three of the named defendants committed bankruptcy fraud in order to conceal significant income and assets from the United States Trustee's office and numerous creditors. The indictment charges that these defendants committed bankruptcy fraud in order to perpetuate their fraudulent cattle scheme. It further alleges that the defendants violated the money laundering statute through the use of the income that was concealed from the creditors and the United States Trustee's office."

"This criminal indictment marks a significant chapter in a long, sad story with at least 3,000 victims," United States Trustee

Jan Ostrovsky stated. “Many investors’ lives were ruined financially by their involvement in the Hoyt operation. Meanwhile, the United States Trustee’s office, which serves as trustee in the pending Chapter 11 bankruptcy case of the Hoyt entities, continues to administer the bankruptcy estate and to search for assets that Hoyt may have hidden.”

The United States Trustee Program is a component of the Justice Department that oversees the administration of bankruptcy cases nationwide. Ostrovsky is the United States Trustee for Region 18, which includes Oregon, Washington, Montana, Idaho, and Alaska.

Cattle Breeding Program

The defendants sold investment interests in herds of female breeding cattle held by partnerships, the indictment stated. The cows were to be of very high quality and were guaranteed to produce high quality calves. Calf sales were supposed to generate income to cover herd expenses. The herds were to increase in size through the addition of mature breeding cows each year. The conspirators said the herd would be sold after 15 years, the indictment stated. Investment returns were to come from tax deductions and profits on the herd sale. Defendants claimed to have as many as 4,500 investors from 41 states in over 100 partnerships, according to the indictment.

In fact, the indictment charged, the defendants’ records showed that, while 38,000 adult female breeding cows were sold to investors, the defendants knew that they never had more than approximately 5,000 of such cows on hand. “In short,” the indictment stated, “Defendants sold thousands of cows they never had and which did not exist.”

Individual Retirement Account Program

The indictment stated that the defendants also sold an IRA program based upon the purchase of ranch properties by investor partnerships. Investor funds were to be used to purchase ranches and make improvements. Investors received “units” in the IRA partnerships, which were supposed to represent a portion of the combined equity of the ranches.

According to the indictment, the defendants promised to repurchase a portion of the units for cash each year to provide liquid returns to retired investors. Ranch values were supposed to increase over time as a result of improvements and appreciation. Mortgage payments and other expenses were to come through revenues generated from leasing the ranches to another business the defendants controlled, which allegedly would use the ranch land to graze the cattle breeding partnership herds.

The indictment charged that, in fact, the defendants artificially inflated ranch values through self-dealing between family members; made false representations regarding ranch values and available equity; made false promises regarding repurchase of the IRA units; and made false representations regarding ranch property ownership.

The Defendants

Walter J. (Jay) Hoyt III was a partner and operator of numerous partnerships related to the breeding, ranching, transportation and sale of cattle. The indictment stated that Hoyt led, controlled, and supervised the overall business activities of what he called the Hoyt's Vertically Integrated Cattle Enterprise. The indictment charged that Hoyt "organized and led the conspiracy."

David Barnes was a general partner in some of the partnerships controlled and operated by Hoyt, the indictment stated. He also managed and supervised the Hoyts' General Partner's Office and later another business called Action Livestock Limited, which offered cattle and sheep for sale to investors.

April Barnes, David Barnes' wife, was a general partner in some of the partnerships controlled and operated by Hoyt, the indictment stated. With her husband, she supervised and managed the General Partner's Office in Elk Grove, Calif.

David Cross was an employee and associate of some of the Hoyt companies and partnerships, according to the indictment. He worked as a ranch hand, bull manager, and salesperson for several of the businesses controlled by Hoyt, and became managing general partner of Hoyt & Sons Certificate Sales Co. The indictment charged that Cross was instrumental in covering up the "severe and pervasive cow shortage" in the cattle investment program.

Darrel Smith was the managing general partner of the IRA ranch real estate operations and general partner for the Hoyt & Sons Ranch Properties IRA partnerships, the indictment stated.

Phyllis King was the office manager for Hoyt's offices, according to the indictment. She was not charged with conspiracy or mail fraud.

The Charges

Count 1 of the indictment charged Hoyt, David and April Barnes, Cross, and Smith with conspiracy to commit mail fraud, in violation of 18 USC § 371.

Counts 2 through 32 charged Hoyt, David and April Barnes, Cross, and Smith with mail fraud in violation of 18 USC § 1341 and § 2.

Counts 33 through 37 charged Hoyt, Barnes, and King with bankruptcy fraud in violation of 18 USC § 152 and 18 USC § 2. In February 1997, creditors filed involuntary bankruptcy petitions against two Hoyt entities. United States Trustee Jan Ostrovsky of Seattle was appointed trustee of these cases and assumed control over the business debtors' assets, income, and operations. The indictment alleged that the defendants continued to sell cattle to new investors, using new names to conceal their activities and to divert income from the trustee and creditors. Specifically, Count 33 charged that Hoyt, Barnes, and King knowingly concealed property belonging to the bankruptcy estate, including over $1.6 million in note payments; Count 34 charged that Hoyt knowingly testified falsely in the bankruptcy proceedings under penalty of perjury; Count 35 charged that King knowingly testified falsely in the bankruptcy proceedings under penalty of perjury; Count 36 charged that Barnes knowingly submitted false bankruptcy schedules and documents; and Count 37 charged that Hoyt knowingly submitted false bankruptcy schedules and documents.

Counts 38 through 54 charged Hoyt, Barnes, and King with money laundering in violation of 18 USC § 1957 and § 2. The indictment alleged that the defendants concealed from the bankruptcy trustee more than $1.6 million in note payments after the Bankruptcy court entered orders for relief on June 5, 1997. On 17 different dates, according to the indictment, the named defendants "did knowingly engage and attempt to engage in monetary transactions, in or affecting interstate commerce, in criminally derived property of a value greater than $10,000, by depositing, withdrawing, transferring or exchanging funds, by, through, or to a financial institution, such property having been derived from a specified unlawful activity, that is mail fraud and bankruptcy fraud. ..."

An indictment contains only allegations and is not evidence of guilt. The defendants are presumed innocent and are entitled to fair trials at which the government has the burden of proving guilt beyond a reasonable doubt.

The case is being prosecuted by Assistant United States Attorney Allan Garten and Ronald Scott Taylor, Trial Attorney, Criminal Division, Department of Justice. The case was referred to the United States Attorney's office by United States Trustee Jan Ostrovsky.

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