

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CHARLES A. AIKEN and  
AIKEN CONTINENTAL, L.L.C.,

Defendants.

Civil Action No. 5:11-1018

Jury Trial Demanded

**COMPLAINT**

The United States Securities and Exchange Commission (the “Commission”) alleges as follows:

**Nature of the Action**

1. This case involves fraudulent misrepresentations and omissions by Charles A. Aiken (Aiken) and Aiken Continental, L.L.C. (“Aiken Continental”) in connection with the 2006 offer and sale of \$2.96 million of industrial development revenue (“IDR”) bonds issued by Raleigh County, West Virginia (the “Bonds”). In October 2006, Raleigh County issued the Bonds in three series to facilitate defendant Aiken Continental’s acquisition of Continental Casket, Inc., a casket manufacturing facility located in Raleigh County (the “Transaction”). The Bonds were conduit bonds, which allow private entities to obtain municipal bond financing for projects that boost economic development for a particular locale. Aiken Continental, the conduit borrower, had been formed by Charles Aiken in August 2006 for the sole purpose of acquiring Continental Casket’s assets, and was responsible for making principal and interest payments on

the Bonds. The Bonds were underwritten and sold to investors by a financial services firm based in Atlanta, Georgia (the “Underwriter”). The sales took place in October 2006 and in the fall of 2007.

2. In the months leading up to the Bonds’ issuance, defendants Aiken and Aiken Continental concealed from the key participants to the Transaction -- including the Underwriter, Underwriter’s counsel, trustee for the bondholders (the “Trustee”), bond counsel, and Raleigh County -- material information concerning Aiken’s 2005 criminal indictment in the Southern District of Georgia for financial fraud. Aiken signed a plea agreement shortly after the Bonds were issued, and received a sentence in April 2007 that included three months’ incarceration and another three months of home detention.

3. In the weeks prior to the Bonds’ issuance, Aiken and Aiken Continental also failed to disclose to the key participants to the Transaction material facts concerning a \$200,000 loan from Infrastructure Technical Services, LLC (“ITS”) to Aiken and Aiken Continental, which was made to facilitate the closing of the Transaction (the “Loan”). The Loan required Aiken and Aiken Continental to repay the full \$200,000 plus \$100,000 interest by May 2007. If the Loan plus interest was not repaid by then, the Loan agreement required Aiken to convey to ITS a twenty percent equity interest in Aiken Continental as collateral.

4. Material information concerning Aiken’s indictment and the Loan was not disclosed in the Bonds’ Official Statement, which was distributed to investors. Representations in the Official Statement concerning Aiken’s background were materially misleading due to the omission of information concerning Aiken’s indictment. Certain financial projections and debt coverage information in the Official Statement were materially misleading due to the lack of disclosure regarding the Loan.

5. Aiken and Aiken Continental knew, or were reckless in not knowing, that Aiken's indictment and arrest and the terms of the Loan were not disclosed in the Official Statement. Aiken signed the Official Statement on behalf of Aiken Continental and approved its dissemination to investors.

6. Following the close of the Transaction, Aiken pled guilty to a single count of misprision of felony, 18 U.S.C. § 4, in the Southern District of Georgia. He was sentenced to 90 days incarceration at a Federal Bureau of Prisons facility, 90 days home confinement, one year supervised release, and was ordered to pay \$102,607.94 in restitution.

7. Aiken served the 90-day incarceration, and served the 90-day home detention in Georgia. By the time he returned to West Virginia, Continental Casket was declining and struggling to meet its obligations.

8. The IDR Bonds are now in default and the entire principal amount and accrued interest on all of the outstanding Bonds is due.

9. Aiken and Aiken Continental knowingly or recklessly engaged in the conduct described in this Complaint, and violated Section 17(a)(2) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a)(2), Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b) and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b).

### **Jurisdiction and Venue**

10. The Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act, 15 U.S.C. §§ 77t and 77v, and Sections 21 and 27 of the Exchange Act, 15 U.S.C. §§ 78u and 78aa. Defendants have, directly or indirectly, made use of the means and instrumentalities of transportation or communication in interstate commerce and of the mails, in

connection with the acts, transactions, practices and courses of business alleged in this Complaint.

11. Venue is proper in this judicial district pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because many of the acts, transactions and courses of business constituting the violations alleged in this Complaint occurred within the jurisdiction of the United States District Court for the Southern District of West Virginia.

#### **Defendants**

12. **Charles A. Aiken**, age 38, resides in Columbus, Georgia. From 2002 through 2005, Aiken was self-employed as a consultant through his one-man consulting firm, GlobalNet.Services, Inc. Aiken was the sole shareholder of GlobalNet.Services.

13. **Aiken Continental, L.L.C.** was a Georgia limited liability corporation formed in 2006 solely for the purpose of acquiring Continental Casket, Inc. GlobalNet.Services was its sole member. Due to its administrative dissolution on July 9, 2005, GlobalNet.Services was defunct at the time of Aiken Continental's formation. Aiken Continental was administratively dissolved in September 2010, but legally continues to exist.

#### **Related Entities**

14. **Continental Casket, Inc.** was a West Virginia corporation with its principal place of business in Raleigh County, West Virginia. Its charter was revoked in December 2008.

15. **County Commission of Raleigh County, West Virginia** ("Raleigh County Commission") is a public corporation and the governing body of Raleigh County, West Virginia. Raleigh County acts by and through the County Commission of Raleigh County to issue IDR bonds.

## **FACTS**

### **Aiken's Indictment**

16. In 2004, Aiken was self-employed as a business consultant. He performed consulting services through his one-man, Atlanta-based entity, GlobalNet.Services. He assisted clients with securing credit or capital and with business development.

17. In July 2004, Aiken was hired as a consultant by Superior Ventures, LLC, a construction consulting business. On November 2, 2005, a federal grand jury in the Southern District of Georgia returned a twelve-count indictment against Aiken and nine other individuals relating to Superior Ventures and its scheme to defraud payroll companies. *See United States v. Niblack, et. al.*, CR405-331 (S.D. Ga. filed Nov. 2, 2005). The indictment named Aiken in three counts, for conspiracy to commit bank fraud, conspiracy to commit money laundering, and bank fraud.

18. At the time of his indictment, Aiken was employed with Continental Casket, Inc., a family-owned casket manufacturer based in Beckley, West Virginia. Aiken had joined the casket company in September 2005 and was responsible for sales, among other duties.

19. On January 24, 2006, Aiken was arrested by federal authorities in connection with his November 2005 indictment. Aiken never informed Continental Casket's owner of the indictment and arrest.

### **The Proposed IDR Bond Issuance**

20. In late 2005, Aiken and an associate made a failed attempt to acquire Continental Casket. Aiken's negotiations with Continental Casket's owner resumed in early 2006.

21. In April 2006, Aiken agreed in writing to acquire Continental Casket for an initial \$1.5 million cash payment and \$700,000 of receivables to be paid upon collection, for a total of \$2.2 million.

22. Aiken did not personally have the resources to acquire Continental Casket. He had been unsuccessful in securing a bank loan, and private equity investors were not a viable source of funding. In June 2006, Aiken retained the services of a financial consultant (the "Consultant") to help him obtain financing. The Consultant identified the use of conduit municipal bonds as a possible financing vehicle for Aiken's proposed acquisition of Continental Casket.

23. In a conduit municipal bond issuance, a municipality issues debt securities usually known as IDR bonds on behalf of a private entity, or conduit borrower, for the acquisition, construction, rehabilitation, or equipping of manufacturing facilities. The conduit borrower is responsible for repayment of the amount borrowed, typically pursuant to a lease agreement. Purchasers of the bonds receive interest payments for a specified period of time, which are made by the conduit borrower through a bondholders' trustee.

24. In Aiken's case, the proceeds from the proposed conduit, or IDR, bond issue would be used to acquire Continental Casket. The Consultant began assembling a team of professionals to facilitate the proposed transaction.

25. The Consultant enlisted the assistance of two business associates, Associate A and Associate B, who had experience with IDR bond transactions. Associate A was hired to conduct due diligence related to Aiken and Continental Casket in or around May 2006. His due diligence efforts included speaking with Aiken and obtaining financial information from him and Continental Casket, among other things. Associate B was a municipal securities investment

banker and bond salesman, and was affiliated with the Georgia-based financial services firm that was to serve as the Underwriter. The Trustee was also chosen. Aiken retained counsel for himself and Aiken Continental in connection with the Transaction.

26. In the course of his due diligence, Associate A asked Aiken if he had ever been arrested. Aiken responded that he had, in fact, been arrested, but that the arrest was related to a traffic offense. Aiken failed to disclose to Associate A his arrest and indictment for bank fraud and money laundering.

27. On August 1, 2006, Aiken and his counsel appeared before the Raleigh County Commission and requested that it authorize approximately \$3,000,000 of conduit IDR bonds to finance Aiken's acquisition of Continental Casket. Aiken failed to disclose his criminal indictment and arrest to the Raleigh County Commission. On August 28, 2006, Aiken formed Aiken Continental, L.L.C. to act as the conduit borrower in the proposed IDR bond issuance. Aiken Continental was essentially Aiken's alter ego, because he was the sole owner, principal, officer, and director of Aiken Continental and Aiken Continental had no employees or operations prior to the Transaction's close.

28. On September 9, 2006, the Raleigh County Commission approved the issuance and sale of \$3,000,000 aggregate principal face amount of IDR Bonds to finance Aiken's acquisition of Continental Casket. Pursuant to the terms of the Bonds' issuance, Aiken Continental was responsible for payment of principal and interest on the Bonds. The Raleigh County Commission agreed to lease Continental Casket's assets to Aiken Continental with an option to buy the assets in the future if certain conditions detailed in a written lease agreement were met. The company continued to operate under the name of Continental Casket.

**Material Omissions in the IDR Bonds' Official Statement**

**Omissions Concerning Aiken's Criminal Indictment**

29. Counsel for the Underwriter took a lead role in drafting many of the Bonds' documents, including the Official Statement. The Underwriter used the Official Statement to offer and sell the IDR Bonds to investors. Bond counsel also participated in reviewing and drafting the Official Statement. The final draft of the Official Statement was dated October 13, 2006, and posted to the Electronic Municipal Market Access website of the Municipal Securities Rulemaking Board on October 19, 2006.

30. Aiken failed to disclose his indictment and arrest for bank fraud and money laundering to the Underwriter, the Consultant, Associate A, Associate B, the Trustee, Underwriter's counsel, the Raleigh County Commission, or bond counsel prior to the Transaction's close.

31. Aiken Continental is identified throughout the Official Statement as the "Lease-Purchaser." The Official Statement stated at page 31 that "[t]he Lease-Purchaser has reviewed the information set forth herein which relates to it and its property and operations, and has authorized all such information for use in this Official Statement." The Official Statement also stated in its cover pages that "[t]he information in this Official Statement has been supplied by the Lease-Purchaser." Aiken signed the Official Statement on behalf of Aiken Continental, and authorized its dissemination to investors.

32. The Official Statement contained a section at page 3 entitled "The Lease-Purchaser," which disclosed information about Aiken Continental. A sub-section provided detailed biographical information about Aiken, including his age, place of birth, education, prior work experience, and membership in certain business and service organizations.

33. Aiken drafted language for this section and submitted it to counsel for the Underwriter for inclusion in the Official Statement. In the draft, Aiken omitted material information about his arrest and criminal indictment for financial fraud. Aiken and Aiken Continental failed to disclose this information in the preliminary and final versions of the Official Statement.

34. Aiken's omission of material information about his arrest and criminal indictment for financial fraud made relevant portions of "The Lease-Purchaser" section of the Official Statement misleading. Aiken and Aiken Continental (through Aiken) knew, or were reckless in not knowing, that the omission of this information rendered those portions of the Official Statement misleading.

35. The Official Statement also contained a section at page 25 entitled "Litigation," which stated that the "Lease-Purchaser has advised the Underwriter that no litigation or proceedings are pending or, to its knowledge, threatened against it which might have a material adverse effect on it."

36. While no litigation or proceedings were pending against Aiken Continental, the section excluded material information about Aiken's arrest and criminal indictment. In the weeks prior to the issuance of the Official Statement, Aiken, through counsel, was negotiating a plea agreement that included a term of imprisonment, in order to resolve his criminal indictment. Aiken was Aiken Continental's sole principal and knew, or was reckless in not knowing, that this pending criminal proceeding would have a material, adverse effect on Aiken Continental.

37. Aiken's omission of material information about his arrest and criminal indictment for financial fraud made information contained in the "Litigation" section of the Official Statement misleading. Aiken and Aiken Continental knew, or were reckless in not knowing, that

the omission of details about the criminal proceeding rendered certain portions of the “Litigation” section of the Official Statement misleading. These omissions were material.

### **Omissions Concerning the Loan**

38. The Underwriter required Aiken to provide a personal guaranty for repayment of the Bonds, and to contribute \$200,000 as borrower’s equity at the Transaction’s closing. The Underwriter viewed the equity contribution as important because it signaled that someone other than the bondholders had “skin in the game,” and that the borrower had a vested interest in the success of the IDR bond issue. Neither Aiken nor Aiken Continental had the financial resources to make the equity contribution.

39. Aiken and Aiken Continental borrowed the full \$200,000 equity contribution from ITS, an entity which was partially owned by the lawyer that Aiken and Aiken Continental had retained as counsel in the Transaction. ITS, Aiken, and Aiken Continental (by Aiken) executed a written agreement on October 19, 2006 detailing the terms that would govern the Loan.

40. According to the terms of the Loan, Aiken and Aiken Continental agreed to repay the full \$200,000 loan plus \$100,000 in interest by May 1, 2007. If Aiken or Aiken Continental failed to pay according to these terms, they would be required to convey to ITS a twenty percent interest in Aiken Continental as collateral.

41. Underwriter’s counsel and other parties to the Transaction were aware that Aiken was borrowing the \$200,000 from a third party. However, they were not aware that the Loan was coming from an entity in which counsel to Aiken and Aiken Continental had an ownership interest, that ITS stood to gain a twenty percent ownership interest in Aiken Continental if Aiken

and Aiken Continental did not repay \$300,000 within six months of the Transaction's close, or that Aiken Continental was obligated to repay the Loan.

42. Aiken knew, or was reckless in not knowing, that the terms of the Loan were material and should have been disclosed. For example, in an email dated September 28, 2006, he wrote that conveying an equity interest in Aiken Continental as collateral for the Loan would be imprudent for a number of reasons, including "the representation of the corporate structure per bond documents (which allows me to borrow), future coverage liability , [sic] the liability in accruing debt based on the LLC format and bond restrictions..."

43. Aiken and Aiken Continental failed to disclose the terms of the Loan to the key participants involved in the Transaction, including the Underwriter, Underwriter's counsel, the Raleigh County Commission, the Trustee, and bond counsel. Aiken and Aiken Continental knew, or were reckless in not knowing, that the Loan and its terms were not disclosed in the Official Statement.

44. The defendants' failure to disclose the Loan resulted in several materially misleading statements in the Official Statement sent to bondholders. The Official Statement contained a "Plan of Financing" section at page 10 which did not incorporate details of the Loan. The only disclosure in the Official Statement concerning Aiken's equity contribution was a table in the "Estimated Sources and Uses of Funds" sub-section of the "Plan of Financing" section, which listed \$200,000 of "Equity Proceeds" under the "Estimated Sources" column.

45. Projected financial statements for Aiken Continental for December 31, 2007, 2008, and 2009 were attached to the Official Statement. Portions of the projected financial statements were materially misleading because of the defendants' failure to include the Loan or its repayment in the calculations. The projected financial statements included "Projected

Statements of Revenues, Expenses and Member's Capital" that did not take into account Aiken Continental's obligation to repay \$300,000 according to the terms of the Loan in the projected net income calculation. This calculation was then used to calculate a projected debt service ratio. If the \$300,000 payment had been included in the projected financials, the net income and debt service ratios would have been materially lower. The projected financial statements also included "Projected Statements of Assets, Liabilities and Members Capital" that did not include the Loan as a liability.

46. The Underwriter used the Official Statement to offer and sell the IDR bonds to investors. The defendants' failure to disclose information concerning the criminal matter pending against Aiken and the existence and terms of the Loan made the Official Statement materially misleading. Aiken and Aiken Continental knew, or were reckless in not knowing, that the omission of this information rendered the Official Statement misleading. The omissions were material.

#### **Post-Transaction Events**

47. The Transaction closed on October 24, 2006, and Raleigh County issued unrated IDR Bonds for the Continental Casket acquisition in three series: Series 2006A, \$2 million face amount, Series 2006B, \$360,000 face amount, and Series 2006C, \$600,000 face amount. The Series 2006A and 2006B Bonds were sold in 2006, and the Series 2006C Bonds were sold in 2007. Approximately \$200,000 in proceeds from sales of the Series 2006A and 2006B Bonds were deposited into an Aiken Continental bank account in 2006.

48. On November 2, 2006, less than two weeks after the close of the Transaction, Aiken signed a plea agreement in which he pled guilty to one count of misprision of felony, 18 U.S.C. § 4 ("Aiken's guilty plea"). Aiken's guilty plea was entered on April 18, 2007 and Aiken

was sentenced to 90 days imprisonment, 90 days home confinement, and ordered to pay \$102,607.94 restitution.

49. The dates on the signature pages of Aiken's guilty plea -- October 20, 2006 and November 2, 2006 -- indicate that the plea agreement was struck prior to the October 24, 2006 close of the Transaction. Aiken did not disclose his guilty plea to any of the participants in the Transaction, nor did defendants ever disclose the status of any plea negotiations before the Transaction closed.

50. Aiken was incarcerated on May 17, 2007. Aiken was released from prison on August 10, 2007, and thereafter served 90 days of home confinement in Georgia.

51. In an effort to maintain control of Continental Casket during his incarceration, Aiken left two individuals in charge of the business, one of whom had never worked at Continental Casket before and had little to no experience with the casket manufacturing business. Aiken continued to receive a salary from Continental Casket during his incarceration and home detention.

52. By June 2007, Continental Casket employees were trying unsuccessfully to contact Aiken and did not know where he was. In a letter dated July 23, 2007, the plant manager, who was also the former owner's son, expressed frustration at being unable to reach Aiken for weeks to discuss inventory and manufacturing issues. The plant manager quit Continental Casket because of ongoing communication problems while Aiken was incarcerated.

53. Aiken's incarceration negatively affected the operations of Continental Casket. Aiken was the primary decision-maker for Continental Casket, and its primary salesman and distributor of caskets, and he was not present to execute those duties for six months while he was incarcerated and serving home confinement.

54. Aiken Continental made five biannual interest payments on the Series 2006A and 2006B Bonds from 2007 through 2009. It did not make any interest or principal payments thereafter due to the decline in Continental Casket's operations that was a result of Aiken's incarceration. The owners of the Series 2006C Bonds have never received an interest payment.

55. The Trustee sent notices to Aiken Continental throughout 2009 regarding, among other things: a) Aiken Continental's failure to provide quarterly financial statements and audited annual financial statements, and b) its failure to deposit designated amounts for interest and principal payments on the Series 2006A and 2006B Bonds.

56. On November 4, 2009, the Trustee sent a notice to Aiken Continental declaring the entire principal amount and accrued interest of all of the outstanding bonds immediately due and payable. No payments were made by Aiken Continental in response.

57. In 2010, the Trustee and the Raleigh County Commission filed suit against Aiken Continental seeking the appointment of a special receiver to protect its interests in certain real estate, rents, and profits obtained by Aiken Continental through the Transaction.

58. On August 5, 2011, the Raleigh County Commission's request was granted and a special receiver was authorized to sell the operations and assets of Aiken Continental to satisfy debts owed to the bondholders and the Trustee.

**Claims for Relief**

**First Claim**

***Against Defendants Charles A. Aiken and Aiken Continental, L.L.C.  
for Violations of Section 17(a)(2) of the Securities Act***

59. The Commission realleges and incorporates by reference paragraphs 1 through 58 as if fully set forth herein.

60. Aiken and Aiken Continental, in the offer or sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, obtained money or property by means of untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

61. Aiken and Aiken Continental knowingly or recklessly engaged in the fraudulent conduct described above.

62. By engaging in the conduct described above, Aiken and Aiken Continental have violated Section 17(a)(2) of the Securities Act, 15 U.S.C. §§ 77q(a)(2).

**Second Claim**

***Against Defendants Charles A. Aiken and Aiken Continental LLC  
for Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Thereunder***

63. The Commission realleges and incorporates by reference paragraphs 1 through 58 as if fully set forth herein.

64. Aiken and Aiken Continental, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce or of the mails, directly or indirectly, made untrue statements of material fact, and omitted 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.

65. Aiken and Aiken Continental knowingly or recklessly engaged in the fraudulent conduct described above.

66. By engaging in the conduct described above, Aiken and Aiken Continental violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b).

**Prayer for Relief**

WHEREFORE, the Commission respectfully requests that the Court:

**I.**

Permanently enjoin Defendant Aiken from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

**II.**

Permanently enjoin Defendant Aiken Continental from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

**III.**

Order Defendants Aiken and Aiken Continental to disgorge the ill-gotten gains that they received from the violations alleged herein, including prejudgment interest thereon;

**IV.**

Order Defendants Aiken and Aiken Continental to pay civil penalties pursuant to Section 20 of the Securities Act, 15 U.S.C. § 77t, and Section 21 of the Exchange Act, 15 U.S.C. § 78u;

and

V.

Grant such other relief as the Court deems appropriate or necessary.

**Jury Demand**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury on all issues so triable.

Dated: December 29, 2011

Respectfully Submitted,

/s/ James A. Kidney

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