

MANNING CURTIS BRADSHAW

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Court-Appointed Receiver

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

U.S. VENTURES LC, a Utah limited liability
company, WINSOME INVESTMENT
TRUST, an unincorporated Texas entity,
ROBERT J. ANDRES and ROBERT L.
HOLLOWAY,

Defendants.

**RECEIVER'S NINTH MOTION AND
MEMORANDUM SEEKING
APPROVAL TO FINALIZE
SETTLEMENT AGREEMENTS**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver¹ in this matter (the “Receiver”), by and through his counsel of record, notifies the Court that he has entered into two additional preliminary settlement agreements of lawsuits he has filed and moves the Court for approval to finalize those settlements.

MEMORANDUM IN SUPPORT

BACKGROUND

On January 25, 2011, the Court entered an Order Granting Plaintiff’s Ex Parte Motion for Statutory Restraining Order, Expedited Discovery, Accounting, Order to Show Cause re Preliminary Injunction and Other Equitable Relief (the “Receivership Order”). (Doc. #15) With the Receivership Order, the Court placed U.S. Ventures, Winsome, and all the assets of Andres and Holloway under the control of the Receiver. (*See generally id.*) In the Receivership Order, the Court directed and authorized the Receiver to investigate the activities of the Receivership Defendants. (Doc. #15) In carrying out his responsibilities, the Receiver was authorized to: “Initiate, defend, compromise, [or] adjust . . . any actions . . . necessary to preserve or increase the assets of the Defendants . . . or to recover payments made improperly by the Defendants.” (*Id.* ¶ 27(i)).

As a result of the financial analysis and investigation conducted to date, the Receiver has made demand on numerous parties for the return of payments improperly paid by Receivership Defendants. The Receiver has already filed suit against many parties, seeking the recovery of

¹ The Receiver has been appointed over U.S. Ventures LC (“USV”), Winsome Investment Trust (“Winsome”), and all the assets of Robert J. Andres (“Andres”) and Robert L. Holloway (“Holloway”), (collectively, the “Receivership Defendants.”)

improperly made payments. The following two settlements will resolve lawsuits the Receiver has already filed and bring some funds into the Receivership Estate. The Receiver seeks confirmation of the following settlements (collectively defined as the "Settlement Agreements"):

1. John Cook, Barrington Capital Portfolio Management, LLC. The Receiver filed a clawback suit against Cook and Barrington on January 24, 2012 seeking the return of \$100,000.00 that the Receiver alleges was sent by Winsome to Central America for the benefit of Cook and Barrington. Cook has told the Receiver that these funds did not come to him and that he received no benefit from the payment. On December 30, 2012, a settlement agreement was signed pursuant to which Cook will pay \$12,000.00 to the Receiver and provide documents and information about his dealings with Winsome and others and the purpose of the funds sent to Central America. This amount will be paid to the Receiver by January 2014. Cook also will provide assistance in the future when requested by the Receiver. If the Court approves the settlement, the Receiver will dismiss the lawsuit against Cook and Barrington.

2. Emmanuel K. Mbobi. The Receiver sued Mbobi on December 2, 2011, seeking the return of \$125,650.00 sent to him by Winsome and related entities. Mbobi informed the Receiver that all funds he received from Winsome were wired to Nigeria, at the instructions of others. Mbobi was criminally charged for his role in participating in structuring overseas payments in a manner to avoid detection. None of the monies sent to Nigeria were returned to Mbobi or Winsome. On December 21, 2012, a settlement agreement was reached between the Receiver and Mbobi. As part of the settlement, Mbobi provided verified information demonstrating that he has declared bankruptcy, owes unpaid tax liens, is unemployed and has no income, and is financially unable to repay any of the amounts sought by the Receiver. Mbobi is

agreeing to provide to the Receiver copies of all documents he has relating to Winsome and Andres and provide assistance requested by the Receiver. Based on the sworn information, the Receiver has determined that Mbobi did not retain any of the funds he received, he lacks the ability to repay the funds he received, and further litigation would deplete the Receivership Estate without any reasonable expectation of recovering funds from him. The Receiver will dismiss the lawsuit against Mbobi.

ANALYSIS

The Receiver requests that the Court allow him to finalize these Settlement Agreements. Courts recognize that a "receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit." *SEC v. Bancorp*, 2001 WL 1658200 *2 (S.D.N.Y. 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959). "In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find that the settlement is fair, adequate and reasonable and is not the product of collusion between the parties." *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 325 (10th Cir. 1984). The *Jones* court explained:

In assessing whether the settlement is fair, reasonable and adequate the trial court should consider: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.

Id.

Here, each of the Settlement Agreements is "fair, adequate, and reasonable" – primarily because there is limited prospect of a significant financial recovery. The settlements are designed to avoid the Receivership having to expend more time and expenses in pursuing these lawsuits. At the same time, the Receiver will obtain information from each defendant that may be of assistance in his continuing litigation against other defendants. Each of the Settlement Agreements was negotiated fairly and honestly, and is the result of an arm's length transaction. In light of these factors, the Receiver believes these settlement agreements are just and fair and should be approved.

A proposed Order Approving Settlement Agreements is attached hereto as Exhibit A.

CONCLUSION

For the foregoing reasons, the Receiver asks the Court to authorize the Receiver to finalize the Settlement Agreements described in this memorandum.

DATED this 4th day of January, 2013.

MANNING CURTIS BRADSHAW
& BEDNAR, LLC

/s/ David C. Castleberry
David C. Castleberry
Aaron C. Garrett
*Attorneys for R. Wayne Klein, Court-
Appointed Receiver*

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **RECEIVER'S NINTH MOTION AND MEMORANDUM SEEKING APPROVAL TO FINALIZE SETTLEMENT AGREEMENTS** to be served in the method indicated below to the Defendant in this action this 4th day of January, 2013.

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
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