

MANNING CURTIS BRADSHAW
& BEDNAR LLC
David C. Castleberry [11531]
dcastleberry@mc2b.com
Aaron C. Garrett [12519]
agarrett@mc2b.com
136 East South Temple, Suite 1300
Salt Lake City, UT 84111
Telephone (801) 363-5678
Facsimile (801) 364-5678

Attorneys for Plaintiff R. WAYNE KLEIN, the
Court-Appointed Receiver

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

U.S. COMMODITY FUTURES
TRADING COMMISION,

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.

**FOURTH APPLICATION FOR
FEES AND EXPENSES OF
THE RECEIVER**

**FOR THE PERIOD
FEBRUARY 1, 2012 TO
FEBRUARY 28, 2013**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of 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 Entities,” hereby submits this Fourth Fee Application, seeking payment for the fees and expenses of the Receiver and his firm for the period of February 1, 2012 through February 28, 2013 (the “Fee Application Period”).

BACKGROUND

1. This action commenced on January 24, 2011 with the filing of an enforcement action by the Commodity Futures Trading Commission (CFTC) alleging that US Ventures, Winsome, Andres, and Holloway were operating fraudulent commodity investment programs in violation of federal commodities laws. The Receiver was appointed the next day. (Dkt. # 15)

2. Since imposition of the Statutory Restraining Order in January 2011, the Court has entered a variety of additional orders against the defendants, imposing preliminary injunctions and entering defaults.

3. The Court granted a partial fee award to the Receiver and his counsel on December 15, 2011 (Dkt. # 90). This was for services of the Receiver and his counsel for the period from January 25, 2011 through April 30, 2011. The Court approved payment of \$130,000.00 out of the initial application for \$156,818.66.

4. A second fee application was filed on March 6, 2012 (Dkt. #112). This sought recovery for fees and expenses of Manning Curtis Bradshaw & Bednar, counsel for the Receiver, for the period May 2, 1011 to January 31, 2012. The second application also sought authorization to pay the Receiver the balance of the First Fee Application. The Court granted the second application on April 12, 2012 (Dkt. #131).

5. The Receiver's Third Fee Application was filed on May 31, 2012 for work done during the nine-month period from May 2011 to January 2012 (Dkt. #161). The Court approved this request on July 9, 2012 (Dkt. #171).

6. The Receiver has not been paid for any of his work or reimbursed for any expenses since January 31, 2012 and now requests payment for work performed and expenses advanced during that period. This request includes reimbursement of expenses of \$2,537.34,

fees of \$157,747.50 for the work of the Receiver, and fees of \$118,401.75 for the forensic accounting and investigative work of employees of Klein & Associates. This reflects \$29,730.00 worth of work performed by the Receiver and his staff, but not billed and another 10% discount (\$30,583.25) off the total amount of fees billed.

SERVICES PERFORMED

1. Since February 1, 2012, the Receiver has filed four additional status reports with the Court. These were for the period ending March 15, 2012 (Dkt. #124), June 15, 2012 (Dkt. #169), September 15, 2012 (Dkt. #216), and December 15, 2012 (Dkt. # 235).

2. During the Fee Application Period, the Receiver, the Receiver's professionals, and counsel for the Receiver have focused their efforts in four primary areas: negotiating settlements, prosecuting litigation, creating a claims process, and obtaining and investigating document on Winsome computers.

- a. The recovery efforts have included 28 settlements that have been approved by the Court. An additional eight settlements were approved by the Court on March 28, 2013 (Dkt. #253). During the Fee Application Period, \$1,048,606.22 in settlement payments were paid to the Receiver. The eight settlements approved on March 28, 2013 will bring more than \$2.4 million in additional funds into the Receivership Estate
- b. While many defendants have settled with the Receiver, others have aggressively sought to have the lawsuits against them dismissed or to obtain summary judgment against the Receiver. During the Fee Application Period, the Receiver has briefed and argued many dismissal motions. He has received favorable court rulings on motions filed by Cornelius, Abdulbaki, Scogin, Georges, Ravkind, and

Patterson. He has obtained numerous default judgments against other defendants. An additional lawsuit was filed during this period. This lawsuit, against Wright Lindsey Jennings, will result in the payment of \$1,750,000.00 to the Receivership Estate. The Receiver has also assisted criminal prosecutors in their actions against Andres, Holloway, and other affiliates of Winsome who have been charged with crimes.

- c. The claims process was begun and mostly completed during the Fee Application period. The Receiver filed his report on the claims process on December 20, 2012 (Dkt. #233). Three objections have been filed. The Receiver has responded to those objections and participated in several hearings addressing those objections. Additional evidentiary hearings are scheduled.
- d. The Receiver succeeded in overcoming objections to his efforts to access data on the hard drives of the Winsome computer and has reviewed and indexed those documents. The Receiver has also worked with criminal prosecutors to obtain Winsome documents that had been seized by a storage unit owner for non-payment of rent and sold to a buyer. The Receiver now has a copy of those documents.

STATUS OF THE RECEIVERSHIP BANK ACCOUNT

3. As of February 28, 2013, the Receivership bank account had \$610,779.46. The amount of this bank balance, together with the funds that will be coming to the Receivership Estate as a result of settlements approved on March 28, 2013 will allow payment of this Fourth Fee Application while still leaving a large balance in the Receivership account. The Receiver intends to seek approval to distribute the bulk of those funds as soon as the claims objections are

resolved.

REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

4. The Order Granting the Statutory Restraining Order [Dkt. # 15] provides:

The Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the Defendants. The Receiver shall file with the Court and serve on the parties, including the Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than one hundred and twenty (120) days after the date of this Order. The Commission may object to any part of a request within thirty (30) calendar days of service of a request. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

Appointment Order at p. 14, ¶ 33.

5. This Application is being submitted pursuant to these provisions.

Summary of Fees and Expenses Incurred

6. Through this Application, the Receiver and his firm are requesting approval of compensation for services provided to and reimbursement of expenses incurred by the Receiver for operation of the Receivership Estate between February 1, 2012 and February 28, 2013 in the amounts described below.
7. During this thirteen-month period, the Receiver and his firm provided investigative, analytical, and receivership services totaling \$305,832.50. This does not include 131.2 hours of work that the Receiver and his staff performed, but which are not being billed. This time is valued at \$20,730.00. In addition, the Receiver has determined to reduce his fees by an additional 10%. This reduction is valued at \$30,583.25. The net fee the Receiver is requesting for himself and his staff is \$275,249.25.

8. The Receiver has also advanced expenses of \$2,537.34. The following categories of expenses were incurred in connection with this litigation:

- a. Travel expenses: \$826.04
- b. Research to find defendants: \$28.03
- c. Outside copying expenses: \$136.25
- d. Shipping and postage \$185.02
- e. Computer hard drives: \$185.02
- f. Publication of summonses: \$1,093.84
- g. Surety bond renewal fee: \$100.00

9. Exhibit A contains a breakdown of the fees and expenses incurred during the Application Period. Detailed invoices describing the work performed on a daily basis are being provided to the CFTC and filed with the Court under seal as Exhibit B. The detailed invoices are not being made public because they include investment and personal information about investors, describe negotiating stances and legal theories being pursued by the Receiver, identify persons providing assistance to the Receiver, and reference investigative information of governmental agencies.

CONCLUSION

The Receiver respectfully submits this Fourth Fee Application for fees and expenses incurred by the Receiver and his company in providing the services summarized in Exhibit A.

A proposed Order is attached hereto as Exhibit C.

Pursuant to paragraph 32 of the order appointing the Receiver, the Court should wait thirty days before ruling on this application, to give the CFTC an opportunity to determine whether it wishes to express any objections.

The Receiver verifies under penalty of perjury that the foregoing is true and correct.

DATED this 3rd day of April, 2013.

/s/ Wayne Klein

WAYNE KLEIN, Receiver

MANNING CURTIS BRADSHAW
& BEDNAR, LLC

/s/ David C. Castleberry

David C. Castleberry

Aaron C. Garrett

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **FOURTH APPLICATION FOR FEES AND EXPENSES OF THE RECEIVER FOR THE PERIOD FEBRUARY 1, 2012 TO FEBRUARY 28, 2013** to be served in the method indicated below to the Defendant in this action this 3rd day of April, 2013.

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

Kevin S. Webb
James H. Holl, III
Gretchen L. Lowe
Alan I. Edelman
U.S. Commodity Futures Trading
Commission
1155 21st Street, NW
Washington, DC 20581
kwebb@cftc.gov
jholl@cftc.gov
glowe@cftc.gov
aedelman@cftc.gov

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

Jeannette Swent
US Attorney's Office
185 South State Street, Suite 300
Salt Lake City, UT 84111
Jeannette.Swent@usdoj.gov
Attorneys for Plaintiff

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

Robert J. Andres
10802 Archmont Dr.
Houston, TX 77070

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

R. Wayne Klein
Klein & Associates
10 Exchange Place, Suite 502
Salt Lake City, UT 84111

VIA FACSIMILE
 VIA HAND DELIVERY
 VIA U.S. MAIL
 VIA FEDERAL EXPRESS
 VIA EMAIL
 VIA ECF

Robert L. Holloway
31878 Del Obispo Suite 118-477
San Juan Capistrano, CA 92675

/s/ David C. Castleberry