

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**

David C. Castleberry [11531]

dcastleberry@mc2b.com

Christopher M. Glauser [12101]

cglouser@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 of U.S. Ventures, LC,
Winsome Investment Trust, and the assets of Robert
J. Andres and Robert L. Holloway*

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

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

Defendants.

**FEE APPLICATION FOR RECEIVER
AND RECEIVER'S COUNSEL FOR
SERVICES RENDERED FROM
OCTOBER 1, 2013 THROUGH MARCH
31, 2014**

Case No. 2:11CV00099 BSJ

District 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 Fee Application, seeking payment for the fees and expenses of Receiver and Receiver’s Legal Counsel for the period of October 1, 2013 through March 31, 2014.

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 Receiver and his counsel have expended much time and energy (1) investigating the affairs of US Ventures, Winsome, Holloway, and Andres, (2) pursuing recoveries on behalf of the investors in US Ventures and Winsome, and (3) responding to claims made on the receivership estate through the claims process.

4. The Receiver and his counsel have moved the Court for their fees and expenses on December 15, 2011 (doc. no. 90), March 6, 2012 (doc. no. 112.), May 31, 2012 (doc. no. 161), August 14, 2012 (doc. no. 188), December 17, 2012 (doc. no. 230), April 3, 2013 (doc. no. 254), May 31, 2013 (doc. no. 272), and October 9, 2013 (doc. no. 300).

5. At the time the Receiver took over the affairs of US Ventures and Winsome, they had no assets. Along the same lines, Holloway and Andres claimed to have no income or assets.

6. During this fee application period, from October 1, 2013 until March 31, 2014,

the Receiver has recovered \$130,517.45.

7. The Receiver now requests that he and his legal counsel, Manning Curtis Bradshaw & Bednar, LLC, receive payment for work performed during the six-month period from October 1, 2013 to March 31, 2014.

SERVICES PERFORMED

8. The Receiver has filed 12 status reports with the Court. These reports were filed on March 25, 2011 (doc. no. 47), June 21, 2011 (doc. no. 66), September 26, 2011 (doc. no. 74), December 29, 2011 (doc. no. 94), March 23, 2012 (doc. no. 124), June 22, 2012 (doc. no. 169), September 26, 2012 (doc. no. 216), December 26, 2012 (doc. no. 235), April 29, 2013 (doc. no. 261), August 9, 2013 (doc. no. 292), October 22, 2013 (doc. no. 303), and February 10, 2014 (doc. no. 327). In these status reports, the Receiver has outlined the efforts he and his counsel have expended in various matters relating to the Receivership Defendants.

9. During the Fee Application Period, the Receiver, the Receiver's professionals, and counsel for the Receiver have focused their efforts in three areas: seeking the return of funds transferred from the Receivership Defendants, responding to claims on the receivership estate, and seeking Court approval to make an initial distribution of funds recovered by the Receiver.

10. With respect to the motion to permit an initial distribution of assets to claimants of the receivership, the Receiver and his counsel have expended time preparing and recommending to the Court a methodology for the distribution of assets of the receivership to claimants, and have responded to an objection to the proposed distribution plan. The Receiver and his counsel have also responded to a claimant who recently moved for allowance of a claim that was untimely filed.

11. With respect to claims on the receivership estate, the Receiver has also received from the Court orders on two claims made on the receivership estate. As a result, the Receiver and his counsel have expended time reviewing and preparing supplemental information and documents submitted to the Court. The Receiver and his counsel have also spent time reviewing a trial transcript and exhibits, and have spent time preparing proposed findings of facts and conclusions of law with respect to a claim in the amount of \$4,400,000 on the receivership estate that was denied by the Court.

12. The recovery efforts have included the following:

a. The Receiver and his counsel have filed 88 lawsuits. These lawsuits seek the recovery of millions paid out improperly from the Receivership Entities. The Receiver has successfully recovered millions of dollars for the Receivership estate as a result of his efforts in these lawsuits.

b. Twenty-six judgments have been entered in favor of the Receiver totaling \$9,272,724.38. Six judgments have been awarded to the Receiver on summary judgment, 18 judgments have been entered by default, and two judgments have been entered on consent of the defendants. If these amounts are recovered, they will be deposited into the Receivership Estate; however, the Receiver cannot presently be sure of the amount of money he will recover from these judgments.

c. The Receiver and his counsel continue to pursue the recovery of money in many other separate matters, which the Receiver and his counsel hope will add assets to the receivership bank account.

13. This case has involved a high amount of legal work by counsel. At least 14

motions to dismiss the Receiver's claims have been filed in related lawsuits ancillary to the case in which the Receiver was appointed, *U.S. Commodity Futures Trading Commission v. U.S. Ventures, et al.*, Case No. 2:11CV00099 BSJ. In each of the instances where the motions have been ruled on, the Receiver has prevailed. In those motions, defendants have challenged personal jurisdiction, subject matter jurisdiction, standing, the sufficiency of the Receiver's allegations, and other issues. Eight of those motions have been denied. See *Klein v. Abdulbaki*, Case No. 2:11-cv-00953; *Klein v. Cornelius*, Case No. 2:12-cv-01159; *Klein v. Ravkind & Associates*, Case No. 2:12-cv-00022; *Klein v. Georges*, Case No. 2:12-cv-00076; *Klein v. Scogin*, Case No. 2:12-cv-00121; *Klein v. Harper*, Case No. 2:12-cv-00023; *Klein v. Widmark*, Case No. 2:11-cv-01097; and *Klein v. Petty*, Case No. 2:11-cv-01099. Four motions to dismiss were withdrawn after the defendants were informed of adverse rulings on similar motions in other cases. See *Klein v. Behles*, Case No. 2:12-cv-00033; *Klein v. McGraw*, Case No. 2:12-cv-00102; *Klein v. Sarmiento*, Case No. 2:12-cv-00118; and *Klein v. Penedo*, Case No. 2:12-cv-00049. Two motions to dismiss were mooted when the defendants agreed to pay a monetary settlement to the Receiver before the Court has had a chance to rule on the motions. *Klein v. Wright, Lindsey, & Jennings, LLP*, Case No. 2:12-cv-01012; and *Klein v. Barrington Capital Portfolio Management, LLC*, Case No. 2:12-cv-00115.

14. During the Fee Application Period, a defendant has filed a second motion to dismiss in *Klein v. Petty*, Case No. 2:11-cv-01099, and the Receiver has opposed this motion, and has also moved to strike certain pleadings and other filings with the court.

15. During the Fee Application Period, three rulings were issued on motions for summary judgment. In *Klein v. Bruno*, Case No. 2:12-cv-00051, Judge Jenkins entered a

memorandum decision denying the defendant's motion for summary judgment and granting the plaintiff's motion for summary judgment in the amount of \$203,052.66. In *Klein v. Cornelius*, Case No. 2:11-cv-00723, Judge Kimball entered an order granting the plaintiff's motion for summary judgment in the amount of \$89,845.73. In *Klein v. Penedo et al.*, Case No. 2:11-cv-00656, Judge Nuffer entered an order granting plaintiff's motion for summary judgment in the amount of \$197,000. In the *Penedo* case, counsel for the Receiver expended time preparing a memorandum decision at the request of the court after the court entered a minute order granting summary judgment in favor of the Receiver.

16. During the Fee Application Period, the Receiver and his counsel have spent a significant amount of time dealing with a defendant who has made a prolific number of frivolous filings and who has disregarded numerous court orders in the case *Klein v. Wings Over the World Ministries et al.*, Case No. 2:12-cv-00023. The magistrate in that case entered a Report & Recommendation wherein the magistrate judge recommended default sanctions against the defendant, and the district court judge accepted the magistrate's report and entered a default against the defendant.

17. During the Fee Application Period, three appeals have been filed: *Klein v. King, King, and Jones*, Case No. 13-4131, *Klein v. Cornelius*, Case No. 14-4024, and *Klein v. Penedo et al.*, Case No. 14-4039. The appeals in the *Cornelius* and *Penedo* matters have been recently filed, but the appeal in the *King, King, and Jones* matter has been fully briefed by the parties during the Fee Application Period.

18. Discovery is also continuing in a number of lawsuits where the Receiver is pursuing his claims. In these cases, the Receiver is in the process of preparing other motions for

summary judgment. During the Fee Application Period, the Receiver has filed a motion for summary judgment in the case *Klein v. McGraw*, Case No. 2:12-cv-00102.

19. During the Fee Application Period, the Receiver and his counsel have also expended time in settlement negotiations, which the Receiver hopes will bring assets for the receivership estate.

STATUS OF THE RECEIVERSHIP BANK ACCOUNT

20. As of February 28, 2014, the Receivership bank account had \$2,713,024.85, after paying expenses of the Receivership and after making payments pursuant to previous fee applications to the Receiver and to his counsel. This bank balance will allow payment of the current application for Receiver fees and counsel fees while still leaving a large balance in the Receivership account and sufficient monies to fund the initial distribution that has been recommended by the Receiver.

REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

21. The Order Granting the Statutory Restraining Order 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.

Order at p. 14, ¶ 33 (dkt. # 15).

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

Summary of Legal Fees and Expenses Incurred

23. Through this Application, Manning Curtis Bradshaw & Bednar LLC, the Receiver's counsel, is requesting approval of compensation for services provided to and reimbursement of expenses incurred for operation of the Receivership Estate between October 1, 2013 and March 31, 2014 in the amounts described below.

24. During these six months, Manning Curtis Bradshaw & Bednar LLC is seeking payment for legal services provided to the Receiver in the amount of \$119,548.75, and advanced expenses of \$2,098.76. The legal fees and expenses related to 23 different billing matters. All of these billing matters except for one apply to particular lawsuits prepared or filed by Manning Curtis Bradshaw & Bednar LLC. The following categories of expenses were incurred in connection with this litigation:

- a. Computer research: \$1,578.64
- b. Photocopies: \$279.04
- c. Facsimile: \$58.00
- d. Messenger services: \$135.38
- d. Miscellaneous: \$47.70

25. Exhibit A contains a summary of the fees and expenses incurred for each of the billing matters. Detailed invoices describing the work performed by Manning Curtis Bradshaw & Bednar LLC on a daily basis, as well as detailed lists of expenses incurred, 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. Counsel for the Receiver has also discounted the amount he is seeking for repayment in the amount of \$2,687.50 for work performed relating to the *King, King, and Jones* appeal.

26. The Receiver is also seeking reimbursement for his fees and the work of his staff for the period from October 1, 2013 to March 31, 2014. During this time period, the Receiver has incurred fees in the amount of \$36,408.50; the Receiver is not seeking reimbursement of any expenses. The Receiver's fee invoices are outlined in Exhibit A. A detailed summary of the Receiver's work has been submitted under seal with Exhibit B.

CONCLUSION

The Receiver respectfully submits this Fee Application for payment of fees and expenses incurred by the Receiver and Manning Curtis in providing to the Receiver the services that are summarized in Exhibit A, and that are more fully detailed in Exhibit B, which is submitted under seal.

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 and Manning Curtis Bradshaw & Bednar LLC verify under penalty of perjury that the foregoing is true and correct.

DATED this 4th day of April, 2014.

/s/ Wayne Klein
WAYNE KLEIN, Receiver
(Signed by Filing Attorney with Permission of Receiver)

MANNING CURTIS BRADSHAW
& BEDNAR, LLC

/s/ David C. Castleberry
David C. Castleberry
Christopher M. Glauser
Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **FEE APPLICATION FOR RECEIVER AND RECEIVER'S COUNSEL FOR SERVICES RENDERED FROM OCTOBER 1, 2013 THROUGH MARCH 31, 2014** to be served in the method indicated below to the Defendant in this action this 4th of April, 2014.

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

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

INDEX OF EXHIBITS

- A Summary of Legal Services Rendered
- B Detailed Legal Invoices of Manning Curtis Bradshaw & Bednar and Wayne Klein (to be filed under seal)
- C Proposed Order