

**MANNING CURTIS BRADSHAW  
& BEDNAR LLC**

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Winsome Investment Trust, and the assets of Robert  
J. Andres and Robert L. Holloway*

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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

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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.

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

Case No. 2:11CV00099 BSJ

District Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver<sup>1</sup> in this matter (the “Receiver”), by and through his counsel of record, notifies the Court that he has entered into four additional preliminary settlement agreements of lawsuits he has filed and moves for approval to finalize those settlements.

### **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 filed suit against many parties, seeking the recovery of payments made improperly. The following four settlements will resolve lawsuits the Receiver has already

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<sup>1</sup> 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.”)

filed and bring substantial funds into the Receivership Estate. The Receiver seeks confirmation of the following settlements (collectively defined as the "Settlement Agreements"):

1. Daniel Behles. Behles is a New Mexico attorney who was counsel for Winsome in connection with Winsome's efforts to purchase Aerospace Consulting Company. The Receiver sued Behles on January 11, 2012 seeking \$155,000.00 for fraudulent transfer, and also asserted claims for breach of contract and malpractice. On April 18, 2013, a settlement agreement was reached between the Receiver and Behles whereby Behles has paid \$62,500.00 to the Receivership Estate. Behles has provided verified financial information to the Receiver demonstrating that this settlement amount is substantially equivalent to all of Behles' assets that would not be exempt from execution by the Receiver. Upon approval of this settlement by the Court, the Receiver will dismiss the lawsuit against Behles.

2. Clayton and Carol Ballard. The Receiver sued the Ballards on August 24, 2011 seeking the recovery of payments made to the Ballards and to RIO Systems, Inc., a company controlled by Ballard. Most of these payments related to plans by RIO Systems to build a refinery in Guatemala and for roads and development infrastructure in Mexico. The Receiver previously obtained a default judgment against RIO Systems. The Ballards provided verified financial information to the Receiver showing that both they and RIO Systems have no assets and lack the financial ability to pay the amounts sought by the Receiver. On April 9, 2013, the Receiver reached a settlement agreement with the Ballards in which the Ballards will consent to a judgment against them in the amount of \$577,592.57. This represents the full amount paid to the Ballards. The judgment requires the Ballards to make payments to the Receiver each year that their combined assets and income exceed \$100,000.00 and to provide copies of tax returns to

the Receiver each year. The Ballards also agree to provide assistance to the Receiver and any law enforcement agencies in their investigations of Winsome and Andres.

3. Roxanne Johnson Tsakas. The Receiver filed a lawsuit against Tsakas on January 18, 2012 seeking the return of \$12,500.00 paid to her by Winsome. Substantial litigation has taken place since that time. In a settlement agreement dated April 17, 2013, Tsakas has agreed to pay \$10,000.00 to the Receiver in settlement of this lawsuit. Tsakas will make four payments of \$2,500.00 each, with the last payment due by December 31, 2013. In return, the Receiver will dismiss his lawsuit against her.

4. Halo TV. The Receiver filed a lawsuit against Halo TV on December 13, 2011, seeking return of \$185,241.31 paid to it by US Ventures. Halo TV is a non-profit 501(c)(3) organization that received charitable contributions from US Ventures, although Halo TV claims that it thought these payments were from Holloway. Halo TV has provided the Receiver with financial information demonstrating that it currently possesses limited assets. Halo TV has also provided the Receiver with information demonstrating that it has had limited assets for a number of years. Halo TV has agreed to pay the Receiver \$15,000 by October 2014, and has made a first payment of \$2,000 in light of the agreement between the parties.

#### **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." The Settlement Agreement with the Ballards is reasonable primarily because there is no realistic prospect of a financial recovery from them at present. The judgment will ensure that if their business ventures do succeed or they acquire significant assets, the Receivership Estate will recover funds. The annual reporting requirement is designed to enable to Receiver to track changes in their financial condition. At the same time, the settlement is designed to avoid the Receivership having to expend more time and expenses in pursuing this lawsuit.

The Settlement Agreements with Behles, Halo TV, and Tsakas are reasonable because of the funds they will bring into the receivership estate. These three settlements will bring \$87,500.00 into the Receivership Estate. In addition, these settlements will avoid additional litigation costs that otherwise would be incurred in pursuing these lawsuits. Further, each of these defendants have given the Receiver information concerning their current financial state, and it would be unlikely that the Receiver would be able to recover more money if he obtains a

judgment and takes steps to collect on any such judgment.

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.

**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 23rd day of April, 2013.

MANNING CURTIS BRADSHAW  
& BEDNAR, LLC

/s/ David C. Castleberry  
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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 ELEVENTH MOTION AND MEMORANDUM SEEKING APPROVAL TO FINALIZE SETTLEMENT AGREEMENTS** to be served in the method indicated below to the Defendant in this action this 23rd day of April, 2013.

- VIA FACSIMILE
- VIA HAND DELIVERY
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