

MANNING CURTIS BRADSHAW  
& BEDNAR LLC

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Court-Appointed Receiver

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

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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.

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

**FOR THE PERIOD  
MAY 1, 2011 TO JANUARY 31, 2012**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

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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 Third Fee Application, seeking payment for the fees and expenses of the Receiver and his firm, Klein & Associates, for the period of May 1, 2011 through January 31, 2012 (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 USV, 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 the entry 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, 2011 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. Since the filing of the Second Fee Application, the Receiver has recovered sufficient monies to fund the fees and expenses of the Receiver for the nine-month period from May 2011 to January 2012 and now requests payment for work performed and expenses advanced during that period. This request includes reimbursement of expenses of \$7,044.50, fees of \$187,950.00 for the work of the Receiver, and fees of \$167,250.00 for the forensic accounting and investigative work of employees of Klein & Associates.

### **SERVICES PERFORMED**

1. Since May 1, 2011, the Receiver has filed four additional status reports with the Court. These were dated June 15, 2011 (Dkt. # 66), September 15, 2011 (Dkt. # 74), December 15, 2011 (Dkt. # 94), and March 23, 2012 (Dkt. #124).

2. During the Fee Application Period, the Receiver, the Receiver's professionals, and counsel for the Receiver have focused their efforts in three primary areas: identifying the recipients of funds paid out by the Receivership Entities, investigating the purposes of those payments, and seeking the return of those funds.

3. The recovery efforts have included the following:

a. The Receiver and his counsel have filed 86 lawsuits to date. These lawsuits seek the recovery of millions paid out improperly from the Receivership Entities.

b. Over 15 settlement agreements had been reached as of March 6, with additional settlements reached since that time. When all the payments required by these settlement agreements have been paid to the Receiver, the Receivership will have over \$1 million in the Receivership bank account.

### **STATUS OF THE RECEIVERSHIP BANK ACCOUNT**

4. As of April 30, 2012, the Receivership bank account had \$821,586.76, after paying ongoing operating expenses of the Receivership and the fees and expenses of the First and Second Fee Application. The amount of this bank balance will allow payment of the Third Fee Application while still leaving a large balance in the Receivership account.

### **REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES**

5. 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.

Appointment Order at p. 14, ¶ 33. (Dkt. #15.)

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

**Summary of Fees and Expenses Incurred**

7. Through this Application, the Receiver and Klein & Associates are requesting approval of compensation for services provided to and reimbursement of expenses incurred by the Receiver for operation of the Receivership Estate between May 1, 2011 and January 31, 2012 in the amounts described below.

8. During this nine-month period, the Receiver and Klein & Associates provided investigative, analytical, and receivership services totaling \$355,200.00 and advanced expenses of \$7,044.50. The following categories of expenses were incurred in connection with this litigation:

- a. Travel expenses: \$4,083.93
- b. Company research: \$521.62
- c. Outside copying: \$509.28
- d. Shipping \$608.28
- e. Computer forensics: \$1,321.39

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 pursuant to the Order Granting Receiver's Motion for Leave to File Documents Under Seal. (Dkt. #69.) 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 Third 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 B.

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 31st day of May, 2012.

MANNING CURTIS BRADSHAW  
& BEDNAR, LLC

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

  
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WAYNE KLEIN, Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of May, 2012, I caused to be served in the manner indicated below a true and correct copy of the attached and foregoing **THIRD APPLICATION FOR FEES AND EXPENSES OF THE RECEIVER FOR THE PERIOD MAY 1, 2011 TO JANUARY 31, 2012** upon the following:

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