

MANNING CURTIS BRADSHAW  
& BEDNAR LLC

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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.

**MEMORANDUM IN SUPPORT  
OF RECEIVER'S SIXTH MOTION  
FOR PERMISSION TO FINALIZE  
SETTLEMENT AGREEMENTS**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

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R. Wayne Klein, the Court-Appointed Receiver<sup>1</sup> in this matter (the "Receiver"), by and  
through his counsel of record, submits his memorandum in support of his motion for permission

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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.")

to finalize settlement agreements described below.

### **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 payments made improperly. In the following seven instances, the settlements will resolve lawsuits the Receiver has already filed. The Receiver now seeks confirmation of the following settlements (collectively defined as the "Settlement Agreements"):

1. Mazen Abdalbaki. The Receiver filed suit against Mazen Abdalbaki ("Mazen") on October 13, 2011 seeking the return of \$50,000.00 paid to Mazen. An attorney contacted the Receiver to discuss possible settlement, but without Mazen agreeing to accept service. The Receiver continued trying to effect service on Mazen up to the date of the settlement agreement,

but was unsuccessful. The attorney provided information showing that \$25,000.00 of the amount paid to Mazen was a return of an investment made by Mazen's father, Ramzi Abdalbaki. The Receiver and Mazen reached a settlement agreement pursuant to which Mazen will pay \$20,000.00 to the Receiver. The Receiver will dismiss the lawsuit against Abdalbaki and agreed not to pursue further claims against Mazen or Ramzi Abdalbaki. Both Mazen and Ramzi Abdalbaki have waived any claims they might assert against assets recovered by the Receiver.

2. William H. Smith. The Receiver sued William Smith, an attorney, on January 18, 2012, seeking the return of \$7,500.00 paid to him by Winsome. On June 27, 2012, the Receiver and Smith entered in to a settlement agreement pursuant to which Smith has repaid the \$7,500.00 to the Receiver. As part of the agreement, the Receiver will dismiss the lawsuit and has released claims against William Smith, Justin D. Smith (his son), and Landis Management (a company controlled by Justin Smith). The Smiths and Landis have waived any claims they might assert against assets recovered by the Receiver.

3. Summa Stelly. The Receiver sued Summa and Jennifer Stelly on January 20, 2012 seeking recovery of overpayments they received from Winsome. The Stellys provided financial information under oath, demonstrating that they have a negative net worth and an inability to repay the entire \$35,000.00 they were overpaid. The parties have entered into a settlement agreement pursuant to which the Stellys will pay \$7,500.00 to the Receiver by December 31, 2012, and waive any claims for further recovery against assets recovered by the Receiver. An initial payment has already been made. The Receiver will dismiss the lawsuit against the Stellys upon approval of this settlement by the Court.

4. Stephen Stelly. On January 18, 2012, the Receiver filed suit against investor

Stephen Stelly, seeking recovery of the \$37,500.00 he was overpaid by Winsome. Stelly provided sworn financial information to the Receiver demonstrating that he lacks the financial ability to repay the full amount sought by the Receiver. Stelly and the Receiver have reached a settlement agreement pursuant to which Stelly will pay \$7,500.00 to the Receiver before December 31, 2012 and waive any claims for recovery against assets recovered by the Receiver. In return, the Receiver will dismiss the lawsuit against him.

5. Suttman/Total Health. The Receiver filed suit on October 13, 2012 against Total Health and Wellness Center, Inc., Georgette Suttman (its owner), and Robert and Jenny Suttman (parents of Georgette). The Receiver's lawsuit sought the recovery of \$60,000.00 paid to the defendants by Winsome. The defendants provided information to the Receiver demonstrating that the \$10,000.00 paid to Total Health was to pay for personal healthcare services provided to Andres and that \$50,000.00 were donations by Andres to Robert and Jenny for assisted living care. Robert and Jenny have provided financial records to the Receiver demonstrating that they are unable to repay the amounts given to them. The defendants have reached a settlement with the Receiver pursuant to which Georgette Suttman will repay the \$10,000.00 paid to Total Health. Robert and Jenny Suttman will borrow \$12,000.00 and pay that to the Receiver by August 1, 2012.

6. Steven K. Hoskins. On January 20, 2012, the Receiver filed suit against Hoskins seeking the recovery of \$82,633.12 that he was overpaid on his investment. Hoskins has provided verified financial information demonstrating that he filed for bankruptcy in 2010 and received a discharge of that bankruptcy and that he lacks the financial ability to repay any of the amount sought by the Receiver. Hoskins also provided information that the overpayments he

received from Winsome were lost in a separate investment fraud. Hoskins and the Receiver have entered into a settlement agreement pursuant to which Hoskins agrees to provide documents and assistance to the Receiver and will waive any claims he may have against assets recovered by the Receiver. The Receiver will dismiss the lawsuit against Hoskins.

7. Pat Winans. The Receiver filed suit against Winans on January 20, 2012, seeking the recovery of \$100,000.00 she received from C2G Strategies as repayment of loans she made to Elgin Clemons, and \$390,452.27 sent to companies in London by Winsome containing references to Magna PinPoint, a company controlled by Winans and Al Abbar. Winans provided information demonstrating that her company, Magna Securities, closed in March 2010 with over \$1 million in debt still owed by Winans. Winans also provided sworn financial records to the Receiver demonstrating she has a personal negative net worth of over \$800,000.00, that she is losing a home to foreclosure, and that her income is insufficient to meet her living expenses. Under the terms of settlement agreement between Winans and the Receiver, Winans provided substantial financial information to the Receiver regarding transactions involving Magna PinPoint and Clemons. In light of her financial condition and in exchange for her assistance in the Receiver's efforts to recover funds from Clemons and others, the Receiver will dismiss the lawsuit against her.

#### ANALYSIS

The Receiver requests that the Court allow him to finalize the 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." Each of the Settlement Agreements was negotiated fairly and honestly, and is the result of an arm's length transaction. The Receiver's settlements with Smith and Total Health will result in a return of the full amount of payments they received from US Ventures and Winsome. The settlements with Abdulbaki, Stephen Stelly, Summa Stelly, and Robert and Jenny Suttman will provide a return of a portion of the amounts they received. In all but one of these cases, the defendants have demonstrated a financial ability to repay more. In the case of Mazen Abdulbaki, the Receiver risked spending more than the settlement discount in expenses of trying to serve him or in litigation. The remaining settlements with Hoskins and Winans are reasonable in light of their inability to pay the bankruptcy discharge of Hoskins, and the valuable information Winans has provided.

All these settlements avoid the expenditure of any further attorneys fees and Receiver

time that otherwise would be required in actions against these persons. The settlements involve the recovery of \$64,500.00. In light of these factors, the Receiver believes all these settlement agreements are just and fair and should be approved.

Therefore, the Court should allow the Receiver to finalize the Settlement Agreements.

**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 26th day of July, 2012.

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 **MEMORANDUM IN SUPPORT OF RECEIVER'S SIXTH MOTION FOR PERMISSION TO FINALIZE SETTLEMENT AGREEMENTS** to be served in the method indicated below to the Defendant in this action this 26th day of July, 2012.

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