

**MANNING CURTIS BRADSHAW
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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 APRIL 1,
2014 THROUGH AUGUST 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 submit this Fee Application, seeking payment for the fees and expenses of Receiver and Receiver's Legal Counsel for the period of April 1, 2014 through August 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 investigating the affairs of US Ventures, Winsome, Holloway, and Andres, pursuing recoveries on behalf of the investors in US Ventures and Winsome, and 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), October 9, 2013 (doc. no. 300), and April 4, 2013 (doc. No. 227).

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 April 1, 2014 until August 31, 2014, the

Receiver has recovered \$52,831.02.

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

SERVICES PERFORMED

8. The Receiver has filed 14 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), February 10, 2014 (doc. no. 327), April 29, 2014 (doc. No. 347), and August 12, 2014 (doc. No. 382). 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 four areas: seeking the return of funds transferred from the Receivership Defendants, responding to claims on the receivership estate, seeking and obtaining Court approval to make an initial distribution of funds recovered by the Receiver, and assisting prosecutors in the criminal trial of Robert Holloway.

10. On June 30, 2014, the Court signed an order allowing an initial distribution to investors who submitted claims. The Court approved the hybrid distribution methodology recommended by the Receiver, by which all valid claimants would receive some money in a distribution. The Receiver has made the initial distribution, which also entailed follow up, after

the checks were sent to claimants.

11. During the Fee Application Period, the Receiver continued to oppose the claim filed by Susan Johnson in the amount of \$301,642.00, arguing that Johnson's claim was filed almost a year after the Claims deadline, she was a marketer for Winsome, and her claim form contained false information. The Court held several hearings on Johnson's motion and ordered Johnson to supply copies of her bank records and other information needed by the Receiver to fully evaluate her claim. Johnson supplied the information ordered by the Court on June 9, 2014, and the Receiver filed his response on July 10, 2014. The Court decided this claim in favor of the Receiver. The Receiver prepared and submitted Findings of Fact and Conclusions of Law dealing with this claim during the Fee Application Period, which were entered by the Court after the Fee Application Period.

12. During the Fee Application Period, the Court also entered an order denying the claim filed by Zaman Ali. The Receiver's counsel prepared Findings of Fact and Conclusions of Law denying this claim, which have been entered by the Court.

13. On June 2, 2014, two investors filed a motion with the Court seeking to intervene in the Receivership litigation, apparently so their late-filed claim would be recognized. The Commodity Futures Trading Commission filed an opposition to the investors' motion to intervene and the Receiver also filed a brief opposing their motion. At a hearing on July 11, 2014, the Court denied their motion. Counsel for the Receiver prepared an order denying the motion to intervene, which was entered by the Court.

14. 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. The Receiver has obtained 29 judgments totaling \$10,799,702.35. Eight judgments in the amount of \$3,156,708.25 have been awarded to the Receiver on summary judgment. Three judgments have been entered in favor of the Receiver as sanctions in the amount of \$2,821,678.18. Seventeen judgments have been entered by default in the amount of \$3,127,405.57. Two consent judgments have also been entered in the amount of \$1,693,910.35. 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.

15. 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. Nine 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 (twice). 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 ruled 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.

16. During the Fee Application Period, two rulings were issued on motions for summary judgment. In *Klein v. McGraw*, Case No. 2:12-cv-00102, Judge Jenkins entered a decision granting the Receiver's motion for summary judgment and awarding the Receiver a judgment in the amount of \$123,598.00. The Receiver prepared Findings of Facts and Conclusions of Law, which were adopted by the Court. Following the entry of judgment, the defendant moved the Court to vacate the judgment, and this motion was denied by the Court. In *Klein v. Ravkind*, Case No. 2:11-cv-00022, Magistrate Judge Furse entered an order granting the plaintiff's Motion for Summary Judgment in the amount of \$50,000.00.

17. In the case *Klein v. Wings Over the World Ministries et al.*, Case No. 2:12-cv-00023, the magistrate 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. The defendant has appealed the

decision entering a default judgment against him.

18. During the Fee Application Period, the Receiver received a favorable ruling from the Tenth Circuit Court of Appeals on the *Klein v. King, King, and Jones*, Case No. 13-4131 appeal, wherein the Tenth Circuit affirmed the decision of the trial court to grant summary judgment in favor of the Receiver. The Receiver and his counsel also expended efforts in preparing briefs related to the appeal in *Klein v. Cornelius*, Case No. 4-4024.

19. During the Fee Application Period, the Receiver filed a Motion for Summary Judgment in the case *Klein v. Georges*, Case No. 2:12-cv-00076. Discovery is also continuing in a number of lawsuits where the Receiver is pursuing his claims. Counsel for the Receiver continued to conduct discovery by defending and taking depositions and engaging in written discovery in different cases ancillary to this action. Counsel for the Receiver has also expended time in engaging local counsel and assisting local counsel with collecting on the judgments obtained by the Receiver.

20. During the Fee Application Period, the Receiver and his counsel have also expended time in settlement negotiations, which has brought assets into the receivership estate.

STATUS OF THE RECEIVERSHIP BANK ACCOUNT

21. As of August 31, 2014, the Receivership bank account had \$995,527.05,¹ 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

¹ As of August 31, 2014, there was a total of \$33,443.58 in distribution checks that had not yet been cashed.

Receivership account for a subsequent distribution.

REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

22. 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).

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

Summary of Legal Fees and Expenses Incurred

24. 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 April 1, 2014 and August 31, 2014 in the amounts described below.

25. During these five months, Manning Curtis Bradshaw & Bednar LLC is seeking payment for legal services provided to the Receiver in the amount of \$86,010.00, and advanced expenses of \$3,163.37. The legal fees and expenses related to 13 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: \$1,096.80
- b. Photocopies: \$216.80
- c. Facsimile: \$252.00
- d. Messenger services: \$18.00
- e. Miscellaneous: \$68.70
- f. Travel: \$1,511.07

26. 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 \$1,285.00 for work performed in relation to the *Cornelius* appeal.

27. The Receiver is also seeking reimbursement for his fees and the work of his staff for the period from April 1, 2014 to August 31, 2014. During this time period, the Receiver is seeking payment for fees in the amount of \$42,322.00; the Receiver is not seeking reimbursement of any expenses. The Receiver's fee invoices are outlined in Exhibit A. The Receiver has discounted the amount he is seeking for repayment in the amount of \$40,016.00, and this discount largely represents work related to the reviewing and indexing of documents the

that the Department of Justice recovered from a warehouse owned by Robert Andres and sent to the Receiver. 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 23rd day of September, 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 APRIL 1, 2014 THROUGH AUGUST 31, 2014** to be served in the method indicated below to the Defendant in this action this 23rd day of September, 2014.

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

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/s/ Melissa Aguilar

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