

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 SEVENTH 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 the 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 three 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. Elgin Clemons and Tracy Hollingsworth. The Receiver filed suit against Clemons and Hollingsworth, his wife, on November 1, 2011 seeking the return of \$4,990,405.72 paid to Clemons and Hollingsworth, or to others on their behalf. Over \$1.2 million of this amount was paid directly to Clemons and Hollingsworth, and approximately half of this amount

was used as a down payment on the purchase of the home in which Clemons and Hollingsworth currently reside. After filing the lawsuit, the Receiver filed a notice of lis pendens in New Jersey, asserting an interest in the home. After protracted and difficult negotiations, a settlement was reached. Under the proposed settlement, the home will be sold. In fact, an offer already has been received on the home. After the costs of sale and other accrued expenses relating to the home are paid, the mortgage lender will be paid. The remaining net proceeds will be divided between the Receiver and the defendants. Clemons and Hollingsworth together will receive 12.5% of the net proceeds and the remaining 87.5% will be paid to the Receiver. This settlement includes a release of all claims the Receiver might otherwise assert against Clemons and Hollingsworth and the lawsuit against them will be dismissed.

2. John and Annette Bassett. The Receiver sued the Bassetts on January 20, 2012, seeking a return of \$73,000.00 paid to them by US Ventures from monies provided by Winsome investors. The Bassetts have provided documentation showing that they sent \$50,000.00 to US Ventures before the time that US Ventures and Winsome began their joint investment program. The Bassetts also demonstrated that they did not receive all the payments shown on the bank records of US Ventures. Finally, the Bassetts provided an affidavit showing regarding their financial condition, justifying a reduction in the amount to be paid to the Receiver. The Receiver and the Bassetts have entered into a settlement agreement under which the Bassetts will pay \$13,000.00 to the Receiver in settlement of the Receiver's lawsuit. \$3,000.00 of this amount will be paid now, with the balance to be paid monthly and the full amount paid by December 31, 2013. The parties will release each other from any other claims and the Receiver will dismiss the lawsuit against the Bassetts.

3. Kenneth Bussa. The Receiver sued Kenneth Bussa on December 2, 2011, seeking the return of \$404,851.38 paid to him by Winsome. The Receiver and Bussa have entered into a settlement agreement pursuant to which Bussa has agreed to provide documents and assistance to the Receiver. Bussa has already provided copies of communications he had with representatives of Winsome and other documents. Bussa further provided a hardship affidavit demonstrating a financial inability to repay amounts owed to the Receivership Entities. As part of the agreement, the Receiver will dismiss the lawsuit and has released claims against Bussa. In return, Bussa has waived any claims he might assert against receivership assets.

#### 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 settlement with Clemons and Hollingsworth will result in a significant infusion of funds into the Receivership Estate. The settlement with the Bassetss will result in the return of a significant majority of overpayments sent to the Bassetts. The settlement with Bussa is reasonable in light of the financial condition of Bussa and the valuable information Bussa has provided.

All of these settlements avoid the expenditure of any further attorneys fees and receiver time that otherwise would be required in actions against these persons. They involve the recovery of an amount expected to exceed \$400,000.00. In light of these factors, the Receiver believes 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 13th day of September, 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 SEVENTH MOTION FOR PERMISSION TO FINALIZE SETTLEMENT AGREEMENTS** to be served in the method indicated below to the Defendant in this action this 13th day of September, 2012.

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