

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**

David C. Castleberry [11531]

dcastleberry@mc2b.com

Christopher M. Glauser [12101]

cglouser@mc2b.com

136 East South Temple, Suite 1300

Salt Lake City, UT 84111

Telephone (801) 363-5678

Facsimile (801) 364-5678

*Attorneys for Plaintiff R. Wayne Klein, the
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 MAY 1,
2013 THROUGH SEPTEMBER 30, 2013**

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 submits this Fee Application, seeking payment for the fees and expenses of Receiver and Receiver’s Legal Counsel for the period of May 1, 2013 through September 30, 2013.

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 (1) investigating the affairs of US Ventures, Winsome, Holloway, and Andres, (2) pursuing recoveries on behalf of the investors in US Ventures and Winsome, and (3) 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), and May 31, 2013 (doc. no. 272).

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 May 1, 2013 until September 30, 2013,

the Receiver has recovered \$1,892,343.85.

7. The Receiver now requests that he and his legal counsel, Manning Curtis Bradshaw & Bednar, LLC, receive payment for counsel's work during the five-month period from May 1, 2013 to September 30, 2013.

SERVICES PERFORMED

8. The Receiver has filed ten 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), and August 9, 2013 (doc. No. 292). 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 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.

10. The recovery efforts have included the following:

a. The Receiver and his counsel have filed 88 lawsuits to date. These lawsuits seek the recovery of millions paid out improperly from the Receivership Entities.

b. Fifty-five settlement agreements have been reached. The Receiver expects to receive additional money from these settlements.

c. Twenty-three judgments have been entered totaling \$8,782,825.99. To date, 18 judgments have been entered by default. Three judgments have been awarded to the Receiver on summary judgment. Two judgments have been entered on consent of the defendants. If these amounts are recovered, they will be deposited into the Receivership Estate; however, the Receiver cannot presently be sure if he will receive any money from these judgments.

d. 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.

11. This case has involved an unusually high amount of legal work by counsel. At least 14 motions to dismiss the Receiver's similar 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. Eight of those motions have been denied. *See Klein v. Abdalbaki*, 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. 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 has had a chance to rule 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.

12. During the Fee Application Period, three rulings were issued on motions for summary judgment. In *Klein v. King & King & Jones*, Case No. 2:12-cv-00051, Magistrate Judge Dustin B. Pead entered a memorandum decision denying the defendant's motion for summary judgment and granting the plaintiff's motion for summary judgment. In *Klein v. Patterson*, Case No. 2:11-cv-00723, Judge Clark Waddoups entered an order granting the plaintiff's motion for summary judgment. In *Klein v. Ursula Andres*, Case No. 2:11-cv-00656, Judge Stewart entered an order granting plaintiff's motion for summary judgment.

13. During the Fee Application Period, the Receiver and his counsel spent time preparing pleadings and evidence recommending denial of three claims on the receivership estate recovery fund. On two of the claims, the Receiver and his counsel conducted discovery, and on all of the claims, the Receiver prepared for and participated in hearings involving the claims at issue. The Receiver and his counsel also spent time in preparation and participation in an evidentiary hearing on a matter for one of the claimants whose claim was denied by the Receiver.

14. During the Fee Application Period, the Receiver has also filed five motions for summary judgment, and has responded to three motions for summary judgment. The Receiver is in the process of preparing and responding to other motions for summary judgment in other cases

as well.

15. Discovery is also continuing in 12 lawsuits where the Receiver is pursuing his claims. Because of defendants' failures to respond timely and completely to discovery requests, the Receiver has been forced to file motions to compel in three different cases. In one case, the defendants' failure to respond to discovery requests and a court order requiring discovery responses has resulted in default judgments against the defendants. During the Fee Application Period, the Receiver's counsel also travelled to Dallas, Texas to depose a defendant in one of the ancillary cases pending to this matter.

16. During the Fee Application Period, the Receiver and his counsel have also expended significant amount of time in settlement negotiations, which have resulted in significant assets for the receivership estate.

STATUS OF THE RECEIVERSHIP BANK ACCOUNT

17. As of September 30, 2013, the Receivership bank account had \$2,773,384.69, 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 Receivership account.

REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

18. 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).

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

Summary of Legal Fees and Expenses Incurred

20. 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 May 1, 2013 and September 30, 2013 in the amounts described below.

21. During these five months, Manning Curtis Bradshaw & Bednar LLC is seeking payment for legal services provided to the Receiver in the amount of \$140,485.00, and advanced expenses of \$4,619.30. The legal fees and expenses related to 36 different billing matters. All but one of these billing matters applies 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: \$2,488.04
- b. Photocopies: \$164.44
- c. Facsimile: \$37.00
- d. Messenger services: \$116.36
- e. Travel: \$1,538.46

22. 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.

23. The Receiver is also seeking reimbursement for his fees for the period from May 1, 2013 to September 30, 2013. During this time period, the Receiver has incurred expenses in the amount of \$41,109.50, and fees in the amount of \$1,671.93. The Receiver's expenses and fee invoices are outlined in Exhibit A. 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 9th day of October, 2013.

/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 MAY 1, 2013 THROUGH SEPTEMBER 30, 2013** to be served in the method indicated below to the Defendant in this action this 9th of October, 2013.

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

Alan Edelman
James H. Holl, III
Gretchen L. Lowe
U.S. Commodity Futures Trading
Commission
1155 21st Street, NW
Washington, DC 20581
Aedelman@cftc.gov
jholl@cftc.gov
glowe@cftc.gov

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

Jeannette Swent
US Attorney's Office
185 South State Street, Suite 300
Salt Lake City, UT 84111
Jeannette.Swent@usdoj.gov
Attorneys for Plaintiff

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

Robert J. Andres
10802 Archmont Dr.
Houston, TX 77070

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

R. Wayne Klein
10 Exchange Place
Suite 502
Salt Lake City, UT 84111

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

Robert L. Holloway
31878 Del Obispo Suite 118-477
San Juan Capistrano, CA 92675

/s/ David C. Castleberry

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