

MANNING CURTIS BRADSHAW
& BEDNAR LLC

David C. Castleberry [11531]

dcastleberry@mc2b.com

Aaron C. Garrett [12519]

agarrett@mc2b.com

170 South Main, Suite 900

Salt Lake City, UT 84101-1655

Telephone (801) 363-5678

Facsimile (801) 364-5678

Attorneys for Plaintiff R. WAYNE KLEIN, the
Court-Appointed Receiver

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

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.

Case No. 2:11CV00099 BSJ

**FEE APPLICATION
FOR RECEIVER'S COUNSEL FOR
SERVICES RENDERED FROM
AUGUST 1, 2012 THROUGH
NOVEMBER 30, 2012**

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's Legal Counsel for the period of August 1, 2012 through November 30, 2012.

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 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 second fee application sought recovery for fees and expenses of Manning Curtis Bradshaw & Bednar LLC, counsel for the Receiver, for the period of May 2, 2011 to January 2012. The second fee application also sought authorization to pay the Receiver the balance of the first fee application. The Court granted the second fee application on April 11, 2012. (Dkt. # 131.)

5. A third fee application was filed on May 31, 2012. (Dkt. # 161.) This third fee application sought recovery for fees and expenses of the Receiver and also for Klein & Associates for the period from May 1, 2011 to January 31, 2012. The Court granted the third fee application on July 9, 2012. (Dkt. # 171.)

6. A fourth fee application was filed on August 14, 2012. (Dkt. # 188.) This fourth fee application sought recovery for fees and expenses of Manning Curtis Bradshaw & Bednar,

LLC, counsel for the Receiver. The fourth fee application was for work performed between February 1, 2012 and July 31, 2012. The Court granted the fourth fee application on September 13, 2012. (Dkt. # 208.)

7. The Receiver now requests that his legal counsel, Manning Curtis Bradshaw & Bednar, LLC, receive payment for its work during the four-month period from August 1, 2012 to November 30, 2012.

SERVICES PERFORMED

1. The Receiver has filed seven status reports with the Court. These reports were filed on March 25, 2011 (dkt. # 47), June 21, 2011 (dkt. # 66), September 26, 2011 (dkt. # 74), December 29, 2011 (dkt.# 94), March 23, 2012 (dkt. # 124), June 22, 2012 (dkt. # 169), and September 26, 2012 (dkt. #216). In these status reports, the Receiver has outlined the efforts he and his counsel have expended in various matters relating to the Receivership Defendants.

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 87 lawsuits to date. These lawsuits seek the recovery of millions paid out improperly from the Receivership Entities.

b. Thirty-six settlement agreements have been reached. When all the payments required by these settlement agreements have been paid to the Receiver, the Receivership will have recovered over \$1.4 million for the Receivership Estate.

c. Eleven default judgments have been entered totaling over \$2 million. If these amounts are recovered, they will be paid to the Receivership Estate.

d. The Receiver and his counsel continue to pursue the recovery of money in many other separate matters, which they hope will add significant assets to the receivership bank account.

4. This case has involved an unusually high amount of legal work by counsel. Thirteen different groups of defendants have filed motions to dismiss, asserting, *inter alia*, jurisdictional defects in the Receiver's lawsuits. Other defendants have filed motions to intervene, requiring the counsel to prepare and file oppositions to these motions. Also, the Receiver's counsel has been the primary one dealing with counsel for Defendant Andres. The Receiver's counsel is seeking to overcome claims of privilege asserted by Andres in an effort to keep the Receiver from reviewing records on the Winsome computer. These legal efforts have been largely successful.

5. On June 15, 2012 and June 18, 2012, United States District Court Judge Dale A. Kimball issued two memorandum decisions addressing the arguments raised by defendants in two separate motions to dismiss in cases that are ancillary to this action. *See Klein v. Cornelius*, Case No. 2:11-cv-01159 (D. Utah, June 15, 2012) and *Klein v. Abdulbaki*, Case No. 2:11-cv-00953 (D. Utah, June 18, 2012). On October 10, 2012, Magistrate Judge Dustin Pead issued a report and recommendation that was later adopted by the court addressing the arguments raised by defendant in another motion to dismiss. *See Klein v. Scogin*, Case No. 2:12-cv-00121 (D. Utah, October 10, 2012). On November 19, 2012, United States District Court Judge David Nuffer entered a memorandum decision and order in another case ancillary to this action. *See Klein v. Georges*, Case No. 2:12-cv-00076 (D. Utah, November 19, 2012). In all of these

decisions, the Court denied the motions to dismiss, and has allowed the Receiver to pursue claims against these defendants in this forum. Following these decisions, counsel has persuaded other defendants to withdraw their dismissal motions. Counsel for Andres has agreed to release to the Receiver the vast majority of computerized documents being sought by the Receiver. The Receiver's counsel is continuing his efforts to gain access to all relevant documents not the subject of valid claims of privilege.

6. Counsel has filed with the Court an opposition to a motion to intervene in the CFTC Action, and after briefing and oral argument, the motion to intervene was denied by the Court.

STATUS OF THE RECEIVERSHIP BANK ACCOUNT

7. As of December 12, 2012, the Receivership bank account had \$728,400.87, 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 remainder of the current application for counsel fees while still leaving a large balance in the Receivership account.

REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

8. 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).

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

Summary of Legal Fees and Expenses Incurred

10. 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 August 1, 2012 and November 30, 2012 in the amounts described below.

11. During these four months, Manning Curtis Bradshaw & Bednar LLC provided legal services to the Receiver totaling \$119,368.75, and advanced expenses of \$2,512.36. The legal fees and expenses related to 89 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. | Filing Fees | \$350.00 |
| b. | Computer research: | \$1,858.39 |
| c. | Service of process: | \$145.00 |
| d. | Photocopies: | \$72.60 |
| e. | Facsimile: | \$9.00 |
| f. | Messenger services: | \$62.37 |
| g. | Miscellaneous | \$15.00 |

12. 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.

CONCLUSION

The Receiver respectfully submits this Fee Application for payment of fees and expenses incurred by 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 17th day of December, 2012.

/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

Aaron C. Garrett

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'S COUNSEL FOR SERVICES RENDERED FROM AUGUST 1, 2012 THROUGH NOVEMBER 30, 2012** to be served in the method indicated below to the Defendant in this action this 17th day of December, 2012.

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

Kevin S. Webb
James H. Holl, III
Gretchen L. Lowe
U.S. Commodity Futures Trading
Commission
1155 21st Street, NW
Washington, DC 20581
kwebb@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

Kathryn N. Nester,
Benjamin C. McMurray
Robert K. Hunt
Federal Public Defender, District of Utah
46 West Broadway, Suite 110
Salt Lake City, UT 84101
Attorneys for Robert Andres

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

R. Wayne Klein
299 South Main, Suite 1300
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