

**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
SEPTEMBER 1, 2014 THROUGH
FEBRUARY 28, 2015**

Case No. 2:11CV00099 BSJ

District Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of U.S. Ventures LC ("US Ventures"), 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 September 1, 2014 through February 28, 2015.

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. (Doc. No. 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) and September 23, 2014 (doc. no. 389).

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 September 1, 2014 until February 28,

2015, the Receiver has recovered \$188.59, consisting of \$150.00 in settlement payments and \$38.59 in interest.

7. The Receiver now requests that he and his legal counsel, Manning Curtis Bradshaw & Bednar, LLC, receive payment for work performed during the six-month period from September 1, 2014 to February 28, 2015.

SERVICES PERFORMED

8. The Receiver has filed 16 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), August 12, 2014 (doc. No. 382), October 27, 2014 (doc. no. 402), and January 29, 2015 (doc. no. 405). 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 (including appeals work), follow-up on the initial distribution of funds approved by the Court, assisting prosecutors in the criminal trial of Robert Holloway, and evaluating claims to be satisfied with criminal restitution proceeds. The Receivership case is experiencing a reduced level of activity as the number and types of actions needing to be taken diminishes with this case and in the many ancillary cases initiated by the

Receiver.

10. All of the outstanding claims made on the Receivership Estate have been resolved by the Court during the fee application period. The Receiver was granted summary judgment in one of the last two pending litigation cases, and cross motions for summary judgment are pending in the remaining case. Much of the most recent activity relating to the actions initiated by the Receiver involves appeals in the Tenth Circuit Court of Appeals on cases initiated by the Receiver and on claims made in this action on the Receivership Estate.

11. 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.

12. 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.

13. 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 became moot when the defendants agreed to pay monetary settlements 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.

14. In the case of *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 appealed the decision entering a default judgment against him. After briefing by the parties, the Tenth Circuit Court of Appeals affirmed the default judgment against the defendants in this case in the amount of \$336,470.07. The defendant is currently seeking en banc review of this ruling.

15. The Receiver and his counsel also expended efforts in preparing a brief and a supplemental appendix related to the appeal in *Klein v. Cornelius*, Case No. 4-4024. The Receiver's counsel argued the case in front of the Tenth Circuit Court of Appeals on January 22, 2015. A ruling has not yet been issued on this appeal.

16. In February 2015, counsel for the Receiver prepared for and argued at a hearing on cross motions for summary judgment in a case involving a claim for a fraudulent transfer to the Widmarks.

17. During the Fee Application Period, counsel for the Receiver has expended time in engaging local counsel and assisting local counsel with collecting on multiple judgments obtained by the Receiver and filing a motion seeking to enforce a settlement agreement with Michele Petty.

18. During the Fee Application Period, the Receiver and his counsel have also expended time in settlement negotiations.

19. In connection with the criminal convictions and sentencing of Robert Andres and Robert Holloway, the U.S. Department of Justice plans to distribute funds that it recovered in 2011 as part of a forfeiture action involving one of the homes owned by Robert Holloway and funds that it hopes to recover pursuant to criminal restitution orders entered at the time of sentencing. The Receiver has expended time conducting a claims process in his effort to distribute any forfeited funds that the Department of Justice makes available to investors. The Receiver created a claim form, which was approved by the Department of Justice. With the availability of these new funds, a new claims process was created to allow investors who had missed the July 2012 claims deadline to submit claims.

20. Notice of this additional claims process was posted on the Receivership website on December 17, 2014 and also mailed or sent by email to all persons who had contacted the Receiver after the July 31, 2012 claims deadline about submitting a claim.

21. The claims deadline for these new claims was February 28, 2015. Investors submitting newly-filed claims will be able to participate in distributions of funds being provided by the Department of Justice.

STATUS OF THE RECEIVERSHIP BANK ACCOUNT

22. As of February 28, 2015, the Receivership bank account had \$817,794.36,¹ 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 February 28, 2015, there was a total of \$10,070.00 from two distribution checks that had not yet been cashed.

Receivership account for a subsequent distribution.

REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

23. 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 (Doc. No. 15).

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

Summary of Legal Fees and Expenses Incurred

25. 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 September 1, 2014 and February 28, 2015 in the amounts described below.

26. During these six months, Manning Curtis Bradshaw & Bednar LLC is seeking payment for legal services provided to the Receiver in the amount of \$67,540.00, and advanced expenses of \$3,168.67. 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: \$2,368.57
- b. Photocopies: \$257.38
- c. Messenger services: \$18.00
- d. Filing Fees: \$11.00
- e. Miscellaneous: \$276.52
- f. Travel: \$237.20

27. 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 \$1,181.25 for work he and his associates have performed.

28. The Receiver is also seeking reimbursement for his fees and the work of his staff for the period from September 1, 2014 to February 28, 2015. During this time period, the Receiver is seeking payment for fees in the amount of \$23,201.00. The Receiver performed 9.6 hours of work on this case which was not billed, which work is valued at \$2,356.50. The Receiver's 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 12th day of March, 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
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 SEPTEMBER 1, 2014 THROUGH FEBRUARY 28, 2015** to be served in the method indicated below to the Defendant in this action this 12th day of March, 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