

**MANNING CURTIS BRADSHAW  
& BEDNAR PLLC**

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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*

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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

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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  
JULY 1, 2016 THROUGH  
JUNE 30, 2017**

Case No. 2:11CV00099 BSJ

District Judge Bruce S. Jenkins

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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 July 1, 2016 through June 30, 2017.

### **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. (Docket 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 (Docket No. 90), March 6, 2012 (Docket No. 112), May 31, 2012 (Docket No. 161), August 14, 2012 (Docket No. 188), December 17, 2012 (Docket No. 230), April 3, 2013 (Docket No. 254), May 31, 2013 (Docket No. 272), October 9, 2013 (Docket No. 300), April 4, 2013 (Docket No. 227), September 23, 2014 (Docket No. 389), March 12, 2015 (Docket No. 407), September 11, 2015 (Docket No. 420), and July 13, 2016 (Doc. No. 436).

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 one-year fee application period, from July 1, 2016 until June 30, 2017, the Receiver has recovered \$203,677.98, consisting of \$120.97 in bank interest, \$50.00 in criminal restitution, and \$203,506.98 in settlement payments and collections on judgments.

7. The Receiver now requests that he and his legal counsel, Manning Curtis Bradshaw & Bednar, PLLC, receive payment for work performed during the one-year period from July 1, 2016 through June 30, 2017.

#### **SERVICES PERFORMED**

8. The Receiver has filed 21 status reports with the Court. These reports were filed on March 25, 2011 (Docket No. 47), June 21, 2011 (Docket No. 66), September 26, 2011 (Docket No. 74), December 29, 2011 (Docket No. 94), March 23, 2012 (Docket No. 124), June 22, 2012 (Docket No. 169), September 26, 2012 (Docket No. 216), December 26, 2012 (Docket No. 235), April 29, 2013 (Docket No. 261), August 9, 2013 (Docket No. 292), October 22, 2013 (Docket No. 303), February 10, 2014 (Docket No. 327), April 29, 2014 (Docket No. 347), August 12, 2014 (Docket No. 382), October 27, 2014 (Docket No. 402), January 29, 2015 (Docket No. 405), April 30, 2015 (Docket No. 418), July 28, 2015 (Docket No. 419); November 2, 2015 (Docket No. 424), February 9, 2016 (Docket No. 432), June 3, 2016 (Docket No. 435), September 16, 2016 (Docket No. 443), December 9, 2016 (Docket No. 447), March 15, 2017 (Docket No. 467), and June 22, 2017 (Docket No. 469). 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 five areas:

a. Litigation and Civil Appeals. The Receiver obtained final judgment in his lawsuit against the final fraudulent transfer defendant (Widmarks). The Widmarks initially filed an appeal, and then reached a settlement with the Receiver, which was approved by the Court. The Receiver recorded a mortgage against real estate owned by the Widmarks as security for their agreement to pay the settlement amount. The Widmarks satisfied their obligations under the settlement, and paid the agreed upon amount to the Receiver in exchange for a release, and the Receiver released its lien against the real estate and filed a satisfaction of judgment.

b. Collection on Judgments. In addition to funds received from the Widmarks, the Receiver collected funds on prior judgments against Ravkind Associates, Warren Chiu, Nguyen, McGraw, and Howe. As explained in the Status Report filed on June 22, 2017, the settlement with McGraw has required follow up with respect to obtaining a boat slip permit in connection with property deeded to the Receiver by McGraw. On October 16, 2016, the Receiver moved the Court to sell judgments held by the Receiver by means of public auction. The Court requested supplemental information in support of the motion, which the Receiver supplied to the Court. After a hearing held on February 27, 2017, the Receiver withdrew the motion and explained that he will continue collection efforts on the judgments obtained.

c. Criminal Restitution, Appeal. The Receiver has received a small amount in criminal restitution from Robert Holloway. During the Fee Application Period, the Receiver worked with the Department of Justice to determine the distribution of civil forfeiture funds the agency is holding, a method for distribution, and, on October 4, 2016, U.S. District Judge Robert

Shelby signed an order in the Holloway and Andres criminal cases wherein he amended the judgments against the defendants to identify victims entitled to restitution and clarified that future distributions would be distributed by the Department of Justice.

d. Response to Multiple Motions Filed by Robert Andres. On January 17, 2017, Robert Andres filed a motion with the Court entitled "Motion to Correct/Clarify Actions of Receivership." The motion, filed by Andres from prison, asked the Court to require that he be given credit against his restitution obligation for the net proceeds from the foreclosure sale of his home. On February 2, 2017, both the Receiver and the CFTC filed papers opposing Andres' motion. The Receiver and CFTC argued that Andres lacks grounds to seek the relief he requests since he is no longer a party to the case and the time to seek reconsideration of the judgment against him has long since expired. The Receiver and CFTC also pointed out that it is not unusual or improper for criminal cases and civil cases to have different restitution amounts since each case might rely on proof relating to different victims. The Receiver also provided information on questions posed by Andres. Andres filed a reply to his motion. The motion filed by Andres was denied by the Court on June 26, 2017 (Docket No. 470).

e. Distribution. The Receiver moved for approval of a third distribution on July 12, 2017, and the motion was granted the same day. The Receiver will distribute \$200,822.43 to 92 allowed claimants as outlined in the motion.

#### **STATUS OF THE RECEIVERSHIP BANK ACCOUNT**

10. As of June 30, 2017, the Receivership bank account had \$246,349.78. After the third distribution is made, which was recently approved by the Court, the Receivership bank account will have \$44,527.35, and this bank balance will allow payment of the current

application for Receiver fees and counsel fees while still leaving sufficient funds in the Receivership account to operate the Receivership Estate while final recoveries are collected and plans are made for a final distribution and termination of the Receivership Estate.

**REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES**

11. 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).

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

**Summary of Legal Fees and Expenses Incurred**

13. Through this Application, Manning Curtis Bradshaw & Bednar PLLC, 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 July 1, 2016 through June 30, 2017 in the amounts described below.

14. During this one year, Manning Curtis Bradshaw & Bednar PLLC is seeking payment for legal services provided to the Receiver in the amount of \$20,718.75, and advanced expenses of \$150.49. The legal fees and expenses related to five different billing matters. All of

these billing matters except for one apply to particular lawsuits prepared or filed by Manning Curtis Bradshaw & Bednar PLLC. The following categories of expenses were incurred in connection with this litigation:

- a. Computer research: \$124.78
- b. Photocopies: \$13.28
- c. Messenger services: \$12.43

15. 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 PLLC on a daily basis, as well as detailed lists of expenses incurred, are attached as Exhibit B. The work performed by Manning Curtis Bradshaw & Bednar PLLC is charged at a significantly reduced hourly rate.

16. The Receiver is also seeking reimbursement for his fees and the work of his staff for the period from July 1, 2016 through June 30, 2017. During this time period, the Receiver is seeking payment for fees in the amount of \$17,718.00 for 69 hours of his work and 3.9 hours of work by employees of Klein & Associates.<sup>1</sup> The Receiver and his staff also performed an additional 12.9 hours of work on this case which was not billed, which work is valued at \$2,991.00. The Receiver's fee invoices are summarized in Exhibit A. A detailed time summary of the work of the Receiver and his staff is in Exhibit B.

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<sup>1</sup> The amounts paid to Klein and Associates, PLLC for the work of the Receiver and his staff are not the rates actually paid to the Receiver and his staff. The billed rates are higher than the amounts actually paid to the Receiver and his staff as the billed rates also cover operating expenses, overhead, non-billed work, and employee-related expenses.

**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.

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 PLLC verify under penalty of perjury that the foregoing is true and correct.

DATED this 27th day of July, 2017.

/s/ R. Wayne Klein

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R. WAYNE KLEIN, Receiver  
*(Signed by Filing Attorney with Permission of Receiver)*

MANNING CURTIS BRADSHAW  
& BEDNAR, PLLC

/s/ David C. Castleberry

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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 JULY 1, 2016 THROUGH JUNE 30, 2017** to be served in the method indicated below to the Defendant in this action this 27th day of July, 2017.

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

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/s/ David C. Castleberry

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