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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

**SECOND FEE APPLICATION
FOR RECEIVER'S COUNSEL AND
REQUEST FOR PERMISSION TO
INCREASE COUNSEL'S RATE**

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 Second Fee Application, seeking payment for the fees and expenses of Receiver's Counsel for the period of May 1, 2011 through January 31, 2012 (the "Fee Application Period").

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 (dtk. 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. The Court indicated it would consider an application to pay the remainder of the first fee application and subsequent fee applications when additional funds had been recovered by the Receivership.

4. Because the Receiver has recovered significant additional funds since December, the Receiver is now requesting approval to withdraw the \$26,818.66 not yet paid from the first fee application and to pay amounts incurred by his law firm, Manning Curtis Bradshaw & Bednar, for legal fees and expenses for work performed between May 1, 2011 and January 31, 2012. These fees and expenses total \$140,203.20. When additional funds have been recovered by the Receivership, the Receiver will submit a separate application for his fees and expenses.

SERVICES PERFORMED

1. Since May 1, 2011, the Receiver has filed three additional status reports with the Court. These were dated June 15, 2011 (dkt. 66), September 15, 2011 (dkt. 74), and December

15, 2011 (dkt. 94).

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

b. Over 15 settlement agreements have been reached. When all the payments required by these settlement agreements have been paid to the Receiver, the Receivership will have over \$1 million in the Receivership bank account.

STATUS OF THE RECEIVERSHIP BANK ACCOUNT

4. To date, the Receiver has recovered \$625,492.78. As of January 31, 2012, the Receivership bank account had \$459,727.27, after paying expenses of the Receivership and the interim payment from the first fee application. This bank balance will allow payment of the remainder of the first fee application and this current application for counsel fees while still leaving a large balance in the Receivership account.

REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

5. The Order Granting the Statutory Restraining Order [Dkt. 15] 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.

Appointment Order at p. 14, ¶ 33.

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

Summary of Legal Fees and Expenses Incurred

7. 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, 2011 and January 31, 2012 in the amounts described below.

8. During this nine-month period, Manning Curtis provided legal services totaling \$111,087.50 and advanced expenses of \$29,115.70. 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. The following categories of expenses were incurred in connection with this litigation:

- a. Court filing fees: \$21,434.00
- b. Computer research: \$2,830.84
- c. Service of process: \$2,527.50
- d. Photocopies: \$1,359.00
- e. Facsimile: \$62.00
- f. Messenger services: \$33.00

g. Overnight courier: \$869.36

9. 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 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 noted by Exhibit B attached hereto and as allowed by Order Granting Receiver's Motion for Leave to File Documents Under Seal granted by the Court on June 30, 2011. (dkt. 69) 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.

Request for Permission to Increase Attorney Billing Rate

10. Paragraph 32 of the Order Appointing Receiver (dkt. 15) provides that the Receiver may not increase his hourly rate without prior approval of the Court. The Receiver is not seeking to raise his rates. Because it is not clear whether this restriction also applies to counsel for the Receiver, Manning Curtis is seeking Court approval to increase the hourly billing rate for his legal counsel, David Castleberry.

11. Mr. Castleberry's billing rate is currently \$195.00 per hour. This rate was set while he was working on another Receivership case three years ago, and does not reflect his significant experience in providing counsel to the Receiver and litigating receivership matters. The Receiver requests permission to increase Mr. Castleberry's future billing rate to \$225.00 per hour, which is still below the going rate in this market for attorneys with his level of experience.

CONCLUSION

The Receiver respectfully submits this Second Fee Application for fees and expenses

incurred by Manning Curtis in providing to the Receiver the services that are summarized in Exhibit A. The Receiver also requests that the Court allow the Receiver to withdraw the remaining \$26,818.66 from the first fee application that has already been approved by the Court. Finally, Manning Curtis requests that the hourly billing rate for David Castleberry be increased to \$225.00 per hour.

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

DATED this 6th day of March, 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 on this 6th day of March, 2012, I caused to be served **SECOND FEE APPLICATION FOR RECEIVER'S COUNSEL AND REQUEST FOR PERMISSION TO INCREASE COUNSEL'S RATE** in the manner indicated below a true and correct copy of the attached and foregoing upon the following:

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

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