

MANNING CURTIS BRADSHAW
& BEDNAR LLC

David C. Castleberry [11531]

dcastleberry@mc2b.com

Aaron C. Garrett [12519]

agarrett@mc2b.com

136 East South Temple, Suite 1300

Salt Lake City, UT 84111

Telephone (801) 363-5678

Facsimile (801) 364-5678

Attorneys for 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.

**RECEIVER'S TWELFTH MOTION
AND MEMORANDUM SEEKING
APPROVAL TO FINALIZE
SETTLEMENT AGREEMENTS**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver¹ in this matter (the "Receiver"), by and
through his counsel of record, notifies the Court that he has entered into three additional

¹ The Receiver has been appointed over 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 Defendants.")

preliminary settlement agreements of lawsuits he has filed and moves for approval to finalize those settlements.

BACKGROUND

On January 25, 2011, the Court entered an Order Granting Plaintiff's Ex Parte Motion for Statutory Restraining Order, Expedited Discovery, Accounting, Order to Show Cause re Preliminary Injunction and Other Equitable Relief (the "Receivership Order"). (Doc. #15) With the Receivership Order, the Court placed U.S. Ventures, Winsome, and all the assets of Andres and Holloway under the control of the Receiver. (*See generally id.*) In the Receivership Order, the Court directed and authorized the Receiver to investigate the activities of the Receivership Defendants. (Doc. #15) In carrying out his responsibilities, the Receiver was authorized to: "Initiate, defend, compromise, [or] adjust . . . any actions . . . necessary to preserve or increase the assets of the Defendants . . . or to recover payments made improperly by the Defendants." (*Id.* ¶ 27(i)).

As a result of the financial analysis and investigation conducted to date, the Receiver has made demand on numerous parties for the return of payments improperly paid by Receivership Defendants. The Receiver has filed suit against many parties, seeking the recovery of payments made improperly. The following three settlements will resolve lawsuits the Receiver has already filed and bring substantial funds into the Receivership Estate. The Receiver seeks confirmation of the following settlements (collectively defined as the "Settlement Agreements"):

1. James and Loraine Crouse. The Crouses were investors who were paid \$11,000.00 more in distributions than the amounts of their investments. The Receiver sued the Crouses on December 13, 2011, seeking repayment of the amounts paid to them. On April 30,

2013, a settlement agreement was reached between the Receiver and the Crouses whereby the Crouses will pay \$7,500.00 to the Receivership Estate. The Crouses have given verified financial information to the Receiver demonstrating financial hardships, making them unable to repay the full amount sought by the Receiver. \$5,000.00 of this amount has already been paid, with the remainder to be paid by December 31, 2013. Upon approval of this settlement by the Court, the Receiver will dismiss the lawsuit against the Crouses.

2. Lauren Bateman. Bateman was an investor who received \$17,200.00 from the Receivership Defendants. The Receiver sued Bateman on January 17, 2012, seeking repayment of this amount. On May 21, 2013, a settlement agreement was reached between the Receiver and Bateman whereby Bateman has paid \$7,500.00 to the Receivership Estate. Bateman provided documents to the Receiver demonstrating that she had invested money into the Receivership and that a substantial portion of the proceeds she received were paid on to another investor. Upon approval of this settlement by the Court, the Receiver will dismiss the lawsuit against Bateman.

3. Lewis Scogin. The Receiver sued Scogin on August 24, 2011 seeking the recovery of payments made to Scogin and Covenant Family Trust, an entity controlled by Scogin. Most of these payments related to Scogin's role as a marketer for Winsome, soliciting investors and promising profits to investors. Scogin provided verified financial information to the Receiver showing that he and Covenant have no assets, lack the financial ability to pay the amounts sought by the Receiver, and that Scogin's home was in foreclosure. On April 26, 2013, the Receiver reached a settlement agreement with Scogin in which Scogin will consent to a judgment against him in the amount of \$1,116,317.78. This represents the full amount paid to

Scogin and Covenant. The judgment requires Scogin to make payments to the Receiver each year that his income exceeds \$50,000.00 and to provide copies of tax returns to the Receiver each year.

ANALYSIS

The Receiver requests that the Court allow him to finalize these Settlement Agreements. Courts recognize that a "receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit." SEC v. Bancorp, Case No. 99 CIV 11395, 2001 WL 1658200, at *2 (S.D.N.Y. 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959)). "In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find that the settlement is fair, adequate and reasonable and is not the product of collusion between the parties." Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 325 (10th Cir. 1984). The *Jones* court explained:

In assessing whether the settlement is fair, reasonable and adequate the trial court should consider: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.

Id.

Here, each of the Settlement Agreements is "fair, adequate, and reasonable." The Settlement Agreement with Scogin is reasonable primarily because there is no realistic prospect of a financial recovery from him at present. The judgment will ensure that if his business ventures do succeed or he begins receiving significant income, the Receivership Estate will

recover funds. The annual reporting requirement is designed to enable to Receiver to track changes in his financial condition. At the same time, the settlement is designed to avoid the Receivership having to expend more time and expenses in pursuing this lawsuit.

The Settlement Agreements with the Crouses and Bateman are reasonable because of the funds they will bring into the receivership estate. These two settlements will bring \$15,000.00 into the Receivership Estate. In addition, these settlements will avoid additional litigation costs that otherwise would be incurred in pursuing these lawsuits.

Each of the Settlement Agreements was negotiated fairly and honestly, and is the result of an arm's length transaction. In light of these factors, the Receiver believes these settlement agreements are just and fair and should be approved.

CONCLUSION

For the foregoing reasons, the Receiver asks the Court to authorize the Receiver to finalize the Settlement Agreements described in this memorandum.

A proposed Order is attached hereto as Exhibit 1.

DATED this 19th day of June, 2013.

MANNING CURTIS BRADSHAW
& BEDNAR, LLC

/s/ Aaron C. Garrett
David C. Castleberry
Aaron C. Garrett
*Attorneys for R. Wayne Klein,
Court-Appointed Receiver*

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **RECEIVER'S TWELFTH MOTION AND MEMORANDUM SEEKING APPROVAL TO FINALIZE SETTLEMENT AGREEMENTS** to be served in the method indicated below to the Defendant in this action this 19th day of June, 2013.

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
Alan I. Edelman
U.S. Commodity Futures Trading
Commission
1155 21st Street, NW
Washington, DC 20581
kwebb@cftc.gov
jholl@cftc.gov
glowe@cftc.gov
aedelman@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

Benjamin C. McMurray
Robert K. Hunt
Utah Federal Defender Office
46 W. Broadway, Suite 110
Salt Lake City, Utah 84101
benji_mcmurray@fd.org
robert_hunt@fd.org
Attorneys for Robert J. Andres

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

Zaman Ali
125 Riverglen Dr. SE
Calgary, Alberta T2C 3X1
Canada

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

R. Wayne Klein
Klein & Associates
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

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

Jeffery J. Owens
Strong & Hanni
3 Triad Center, Suite 500
Salt Lake City, Utah 84180
jowens@strongandhanni.com
Attorneys for Roberto E. Penedo

/s/ Aaron C. Garrett

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**

David C. Castleberry [11531]

dcastleberry@mc2b.com

Aaron C. Garrett [12519]

agarrett@mc2b.com

136 East South Temple, Suite 1300

Salt Lake City, UT 84111

Telephone (801) 363-5678

Facsimile (801) 364-5678

*Attorneys for 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.

**[PROPOSED] ORDER APPROVING
SETTLEMENT AGREEMENTS**

Case No. 2:11CV00099 BSJ

District Judge Bruce S. Jenkins

EXHIBIT

1

The matter before the Court is the Receiver's Twelfth Motion Seeking Approval to Finalize Settlement Agreements, filed by R. Wayne Klein, the Court-Appointed Receiver in this matter.

Based on the Motion, the Memorandum in Support, and the lack of objections, and for good cause shown,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED;
2. The Receiver is authorized to finalize the settlement agreements with James and Loraine Crouse, Lauren Bateman, and Lewis Scogin, as summarized in his Motion and Memorandum.

DATED this ____ day of _____, 2013.

BY THE COURT:

Judge Bruce S. Jenkins
United States District Judge