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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.

**THE RECEIVER’S MOTION FOR
PERMISSION TO FINALIZE
SETTLEMENT AGREEMENT WITH
PETER AND LAURIE WIDMARK AND
MEMORANDUM IN SUPPORT**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver¹ (the “Receiver”), by and through his
counsel of record, hereby notifies the Court that he has entered into a preliminary settlement
agreement with Peter and Laurie Widmark (“Widmark”) settling the final litigation matter of the

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”).

Receivership and moves for Court approval to finalize this settlement.

The Receiver believes the Widmark settlement is fair, reasonable, and in the best interests of the investors who provided money to US Ventures and Winsome.

MEMORANDUM IN SUPPORT

Background

The Receiver filed suit against the Widmarks on December 2, 2011, seeking recovery of \$191,000.00 in payments made by Winsome to the Widmarks in excess of the Widmark's principal investment amount. The Widmarks contested the litigation vigorously, filing an unsuccessful motion to dismiss, engaging in discovery (including deposing the Receiver), filing an unsuccessful motion for summary judgment, and opposing the Receiver's request for pre-judgment interest.

On August 26, 2015, Judge Waddoups granted the Receiver's motion for summary judgment. On March 2, 2016, Judge Waddoups entered an order granting the Receiver's motion for prejudgment interest, and on March 9, 2016 final judgment was entered for the Receiver in the amount of \$191,000.00, plus \$66,633.83 in prejudgment interest.

The Widmarks filed a notice of appeal on April 7, 2016. That appeal is pending.

On May 6, 2016, the Receiver entered into an Agreement and Release with the Widmarks, subject to Court approval, agreeing to settle the litigation. Under the Agreement, the Widmarks will pay \$191,000.00 to the Receivership Estate. \$7,500 must be paid within three days of approval of this Agreement and Release by the Court. The balance must be paid by September 30, 2016. The Widmarks have granted a mortgage to the Receiver on property in New Hampshire owned by the Widmarks as security for the promised payment by the Widmarks. The

Agreement allows for two possible extensions of the payment deadline upon payment of an additional \$5,000.00 for each extension.

If the Agreement is approved by the Court, the Widmarks will dismiss their appeal and upon payment of the full settlement amount, the parties will release all claims against each other.

ANALYSIS

The Receiver requests that the Court approve the above-described Settlement Agreements and Releases. In support hereof, the Receiver provides the following analysis. 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.”² “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.”³ The Tenth Circuit has 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.⁴

² *Sec. & Exch. Comm’n v. Credit Bankcorp, Ltd.*, No. 99 CIV. 11395, 2001 WL 1658200, at *2 (S.D.N.Y. Dec. 27, 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959)).

³ *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984).

⁴ *Jones*, 741 F.2d at 324.

Here, the Agreement and Release is fair, reasonable and adequate for at least the following reasons: (a) it was fairly and honestly negotiated at arm's length and in good faith by the parties; and (b) the terms of the respective proposed settlements are fair and reasonable. While the Receivership will be foregoing \$66,633.83 in prejudgment interest that was ordered by the court, this settlement assures that the full \$191,000.00 in overpaid funds will be returned to the Receivership Estate, avoids further litigation and appeal costs, and facilitates an earlier termination of the Receivership Estate.

In light of these factors, the Receiver believes the Agreement and Release is just, fair, and beneficial to the Receivership Estate. Accordingly, the Receiver requests that the Court enter the attached proposed order approving the Agreement and Release.

DATED this 31st day of May, 2016.

MANNING CURTIS BRADSHAW
& BEDNAR PLLC

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

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May, 2016, I caused to be served in the manner indicated below a true and correct copy of the attached foregoing **THE RECEIVER'S MOTION FOR PERMISSION TO FINALIZE SETTLEMENT AGREEMENT WITH PETER AND LAURIE WIDMARK AND MEMORANDUM IN SUPPORT** upon the following:

VIA HAND DELIVERY
 VIA U.S. MAIL
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 VIA EMAIL
 VIA ECF

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/s/ David C. Castleberry