

**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 MARCH  
1, 2015 TO AUGUST 31, 2015**

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 ("US Ventures"), Winsome Investment Trust ("Winsome"), and all the assets of Robert J. Andres ("Andres") and Robert L. Holloway ("Holloway"), (collectively, the "Receivership Defendants") hereby submits this Fee Application, seeking payment for the fees and expenses of Receiver and

Receiver's Legal Counsel for the period of March 1, 2015 through August 31, 2015 (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. (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), April 4, 2013 (doc. no. 227), September 23, 2014 (doc. no. 389), and March 12, 2015 (doc. no. 407).

5. At the time the Receiver took over the affairs of US Ventures and Winsome, those entities had negligible assets. Along the same lines, Holloway and Andres claimed to have no income or assets.

6. During the Fee Application Period, from March 1, 2015 until August 31, 2015, the Receiver has recovered \$48,158.73, consisting of \$48,000.00 in settlement payments and \$158.73 in interest.

7. The Receiver now requests that he and his legal counsel, Manning Curtis Bradshaw & Bednar, PLLC, receive payment for work performed during the six-month period from March 1, 2015 through August 31, 2015.

### **SERVICES PERFORMED**

8. The Receiver has filed 18 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), January 29, 2015 (doc. no. 405), April 30, 2015 (doc. no. 418), and July 28, 2015 (doc. no. 419). 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 three areas: litigation seeking the recovery of funds improperly transferred by the Receivership Defendants (including appeals work), follow-up on the initial distribution of funds approved by the Court (including working with the U.S. Department of Justice to release forfeited funds, and collecting on judgments obtained (including taking possession of the home of Robert and Ursula Andres and working

with the mortgage company to sell the home). 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 few remaining ancillary cases initiated by the Receiver.

10. The Receiver was granted summary judgment in the last case pending in district court (*Klein v. Widmark*, Case No. 2:11-cv-01097-CW), and the cross motion for summary judgment filed by the Widmarks was denied. The Receiver has prevailed on summary judgment in nine separate cases, obtaining judgments against the defendants in each case.

11. Much of the recent litigation activity involves appeals in the Tenth Circuit Court of Appeals on cases initiated by the Receiver and on a claim made against assets of the Receivership Estate. During the Fee Application Period, the Receiver has prepared briefs for the Tenth Circuit on an appeal related to a claim made by Roberto Penedo in this case. This appeal is fully briefed, and is still pending before the Tenth Circuit.

12. 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.

13. The recovery efforts have included the following:

a. The Receiver and his counsel 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 31 judgments totaling \$11,070,463.20. Nine judgments in the amount of \$3,427,468.85 have been awarded to the Receiver on summary judgment. Three judgments have been entered in favor of the Receiver as sanctions against defendants 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 collection of these judgments, which the Receiver and his counsel hope will add assets to the receivership bank account.

14. This case has involved a large 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.

15. 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 sought an en banc review of this ruling, which was denied during the Fee Application Period.

16. During the Fee Application Period, on May 27, 2015, the Tenth Circuit Court of Appeals affirmed the decision of the trial court to grant summary judgment in favor of the Receiver against William Cornelius. In particular, the *Cornelius* court held that the Receiver was entitled to sue the defendants in Utah and that no federal jurisdictional impediments prevented the district court from ruling on the fraudulent transfer claim. Further, the *Cornelius* court held that the district court correctly concluded that the payments to the defendants violated Utah's fraudulent transfer statute and that the four-year statute of limitations did not bar the Receiver's claim.

17. During the Fee Application Period, counsel for the Receiver has expended time in engaging local counsel and assisting local counsel with attempts to collect on multiple judgments obtained by the Receiver and filing a motion seeking to enforce a settlement agreement with a defendant and related follow up regarding this motion.

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

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

19. As of August 31, 2015, the Receivership bank account had \$753,513.50<sup>1</sup> after paying expenses of the Receivership and after making payments pursuant to previous fee

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<sup>1</sup> This includes \$9,060.00 from one distribution check that has not yet been cashed because the claimant is deceased. The Receiver has communicated with the claimant's relatives and attorney to identify who can receive these proceeds. This bank account total does not include \$400.00 received from the U.S. Department of Justice in criminal restitution from Robert Holloway, which is being held for inclusion in the next distribution.

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 Receivership account for a subsequent distribution.

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

20. 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).

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

**Summary of Legal Fees and Expenses Incurred**

22. 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 from March 1, 2015 through August 31, 2015 in the amounts described below.

23. During these six months, Manning Curtis Bradshaw & Bednar PLLC is seeking payment for legal services provided to the Receiver in the amount of \$38,416.25, and advanced expenses of \$1,145.44. The legal fees and expenses related to 12 different billing matters. All of

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

- a. Computer research: \$290.12
- b. Photocopies: \$637.98
- c. Messenger services: \$9.00
- d. Facsimile: \$6.00
- e. Postage: \$202.34

24. 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 being provided to the CFTC and filed with the Court as Exhibit B. Portions of a small number of entries have been redacted inasmuch as they contain attorney-client privilege or work product privilege material. Manning Curtis Bradshaw & Bednar PLLC performed 21.75 hours of work on this case which was not billed, which work is valued at \$3,697.50.

25. The Receiver is also seeking reimbursement for his fees and the work of his staff for the period from March 1, 2015 through August 31, 2015. During this time period, the Receiver is seeking payment for fees in the amount of \$10,755.00. The Receiver's fee invoices are outlined in Exhibit A. A detailed summary of the Receiver's work has been submitted with Exhibit B.<sup>2</sup>

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<sup>2</sup> The amounts to be 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



**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. If the Court wishes, Manning Curtis can provide an unredacted copy of Exhibit B to Court chambers.

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 11th day of September, 2015.

/s/ Wayne Klein  
WAYNE KLEIN, Receiver  
*(Signed by Filing Attorney with Permission of Receiver)*

MANNING CURTIS BRADSHAW  
& BEDNAR, PLLC

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

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and his staff as the billed amounts also cover operating expenses, overhead, non-billable work, and employee-related expenses.

**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 MARCH 1, 2015 TO AUGUST 31, 2015** to be served in the method indicated below to the Defendant in this action this 11th day of September, 2015.

- 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
- C Proposed Order