

MANNING CURTIS BRADSHAW

& BEDNAR PLLC

David C. Castleberry [11531]

dcastleberry@mc2b.com

136 East South Temple, Suite 1300

Salt Lake City, UT 84111

Telephone (801) 363-5678

Facsimile (801) 364-5678

*Attorneys for Plaintiff 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.

**FEE APPLICATION FOR RECEIVER
AND RECEIVER'S COUNSEL FOR
SERVICES RENDERED FROM
JULY 1, 2017 THROUGH
JUNE 30, 2018**

Case No. 2:11CV00099 BSJ

District Judge Bruce S. Jenkins

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, 2017 through June 30, 2018.

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), July 13, 2016 (Doc. No. 436), and July 27, 2017 (Doc. No. 473).

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, 2017 until June 30, 2018, the Receiver has recovered \$26,696.58, consisting of \$22.75 in bank interest and \$26,673.83 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, 2017 through June 30, 2018.

SERVICES PERFORMED

8. The Receiver has filed 28 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), on September 16, 2016 (Docket No. 443), December 9, 2016 (Docket No. 447), March 15, 2017 (Docket No. 467), June 22, 2017 (Docket No. 469), September 29, 2017 (Docket No. 479); December 26, 2017 (Docket No. 487), and April 16, 2018 (Docket No. 492). 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 four areas:

a. Litigation and Collection on Judgments. The Receiver collected funds on prior judgments against Warren Chiu, Nicole Adams, Lisa Pham, and Kathryn Payton. In an effort to collect on the judgment against David Jones and his law firm, King, King & Jones, the receiver obtained a partial summary judgment against Jones—declaring that Jones is personally liable for payment of the judgment. The Receiver participated in two mediations in Atlanta, Georgia, the second of which resulted in a settlement agreement with Jones by which he will obtain a second mortgage on his home and pay \$16,500 in settlement of the judgment. In addition, the Receiver obtained real estate in Texas as part of a settlement with Forres McGraw.

b. Obtaining, Selling Real Estate. After receiving title to lake property in Texas from Forres McGraw, the Receiver discovered that there was a boat slip permit associated with the property. The Court granted the Receiver's motion requiring McGraw to deliver the boat slip permit. The Receiver paid past-due fees owed to the owners' association relating to the boat slip permit, clearing liens on the permit. The Receiver marketed the properties, obtained an offer, and obtained three appraisals of the property. A hearing is scheduled for July 16 regarding the sale of the property.

c. Criminal Restitution by DOJ. In January 2018, the U.S. Department of Justice distributed approximately \$110,000 in forfeited funds it had obtained from Robert Holloway's former spouse. The Receiver provided notice to the victims and responded to questions regarding the distribution.

d. Distribution. On August 21, 2017, the Receiver sent \$200,822.43 in distribution payments to 92 claimants. Four of those checks, totaling \$2,497.50, remain uncashed and may need to be paid into the Court registry.

STATUS OF THE RECEIVERSHIP BANK ACCOUNT

10. As of June 30, 2018, the Receivership bank account had \$4,875.64. After the sale of the Texas lake property closes and David Jones makes the settlement payment he has agreed to make, the Receivership bank account is expected to have sufficient funds to allow payment of the current application for Receiver fees and counsel fees.

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 \$7,710.00, and advanced expenses of \$11.28. The legal fees and expenses related to four 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: \$10.68
- b. Photocopies: \$.60

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, 2017 through June 30, 2018. During this time period, the Receiver is seeking payment for fees in the amount of \$12,976.00 for 47.2 hours of his work and 9.8 hours of work by employees of Klein & Associates.¹ The Receiver also performed an additional 37.5

¹ 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.

hours of work on this case which was not billed, which work is valued at \$9,375.00. 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.

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 10th day of July, 2018.

/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

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, 2017 THROUGH JUNE 30, 2018** to be served in the method indicated below to the Defendant in this action this 10th day of July, 2018.

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

Alan Edelman
James H. Holl, III
Gretchen L. Lowe
U.S. Commodity Futures Trading
Commission
1155 21st Street, NW
Washington, DC 20581
Aedelman@cftc.gov
jholl@cftc.gov
glowe@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

/s/ David C. Castleberry
