

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Jeffery A. Balls (12437) (jballs@parrbrown.com)
Michael S. Lehr (16496) (mlehr@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532 7750

Attorneys for Court-Appointed Receiver Wayne Klein

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**NINTH INTERIM FEE APPLICATION
FOR RECEIVER AND RECEIVER'S
PROFESSIONALS FOR SERVICES
RENDERED FROM OCTOBER 1, 2020
THROUGH DECEMBER 31, 2020**

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer
Magistrate Judge Daphne A. Oberg

In accordance with the Corrected Receivership Order (the “Receivership Order”),¹ R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC (“RaPower”), International Automated Systems, Inc. (“IAS”), and LTB1, LLC (“LTB1”) and thirteen subsidiaries and affiliates (collectively, the “Receivership Entities”), and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership”

¹ [Docket No. 491](#), filed Nov. 1, 2018.

Defendants”), hereby submits this ninth interim “Fee Application,” seeking approval by the Court of fees and expenses incurred by the Receiver and his staff at Klein and Associates, PLLC (“Klein and Associates”), the Receiver’s forensic accountants, Lone Peak Valuation Group (“Lone Peak”), the Receiver’s legal counsel, Parr Brown Gee & Loveless, P.C. (“Parr Brown”), and the Receiver’s conflict counsel, Manning Curtis Bradshaw & Bednar (“Manning Curtis”), for the period of October 1, 2020 through December 31, 2020 (the “Application Period”), and authorization to pay all authorized fees and expenses from unencumbered funds of the Receivership Estate. This Fee Application was provided to counsel for the United States (“Plaintiff”) for review, comment, and objection prior to filing. The Receiver understands that there is no objection by the United States to relief sought herein.

In support hereof, the Receiver states as follows.

I. BACKGROUND

1. The United States commenced this case on November 23, 2015 against Defendants RaPower-3, IAS, LTB1, Johnson, Shepard, and Roger Freeborn.² The United States alleged, and the Court found, among other things, that Defendants operated a massive tax fraud.³

2. On October 31, 2018, the Court entered its *Receivership Order* (“Order”),⁴ which, among other things, appointed the Receiver and continued a previously entered asset freeze.⁵

3. Upon his appointment, and in accordance with the Receivership Order, the Receiver

² *Complaint*, [Docket No. 2](#), filed Nov. 23, 2015.

³ *Amended and Restated Judgment*, [Docket No. 507](#), filed Nov. 13, 2018; *Findings of Fact and Conclusions of Law*, [Docket No. 467](#), filed Oct. 4, 2018.

⁴ [Docket No. 490](#). A *Corrected Receivership Order*, which corrected formatting errors, was entered the following day. [Docket No. 491](#), filed Nov. 1, 2018.

⁵ *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed Aug. 22, 2018.

employed Parr Brown as his legal counsel and Lone Peak Valuation Group as his forensic accountants (“Retained Professionals”), and such retention was approved by the Court.⁶ The Court approved appointment of Manning Curtis as conflict counsel, to handle three instances of litigation where Parr Brown has conflicts.⁷

4. During the present Application Period, the Receiver and his professionals have provided actual and necessary services for the benefit of the Receivership Estate which are set forth in greater detail below. The Receiver respectfully submits that the fees and expenses requested in the Fee Application are reasonable and should be approved.

II. SERVICES PERFORMED

5. The actions of the Receiver and his retained professionals during the Application Period are summarized in the *Receiver’s Ninth Quarterly Status Report* (“Ninth Status Report”), filed January 28, 2021.⁸ Below is a brief summary of actions described in the Ninth Status Report.

6. The Receiver closed on the sale of the Elk Ridge, Utah property. The Receiver received \$417,833.24 from this sale. The Receiver marketed 14 additional properties that were transferred to him by Glenda Johnson pursuant to a turnover order. Appraisals were obtained on these properties. The homes and condominiums on these real properties were repaired and, in some cases, remodeled, to improve their marketability. As of the end of the Reporting Period, the Receiver had accepted offers on eleven of these and had filed motions for approval to sell ten of these properties. These sales are expected to close in the first quarter of 2021. He is working to resolve issues relating disposition of potentially hazardous waste located on one of these

⁶ [Docket No. 500](#), filed Nov. 6, 2018.

⁷ [Docket No. 785](#), filed Oct. 11, 2019.

⁸ [Docket No. 1070](#), filed January 28, 2021.

properties. Near the end of Reporting Period, the Court ordered Diana Shepard to turn over to the Receiver one half interest in the home held in her trust. The Court has approved an agreement between the Shepards and the Receiver regarding the home.

7. Furniture in the homes was sold. Equipment, tools, and construction materials on the properties were sold. These asset sales resulted in \$188,452.00 in gross proceeds to the Receivership Estate. The Receiver identified and took possession of additional vehicles that he believes were owned by Receivership Defendants. He continues to work with the Utah Division of Motor Vehicles to obtain titles for vehicles that were sold in prior reporting periods.

8. Five new settlements were approved by the Court, having expected recoveries of \$60,800. A total of \$26,587 in settlement payments were received in the quarter.

9. Significant additional investigation was conducted relating to Anstram Energy and property liens recorded by Glenda Johnson against Receivership Property. At the end of the Reporting Period, the Receiver filed a report and recommendation detailing his findings and filed a motion for an order to show cause whether Glenda Johnson, Roger Hamblin, and Preston Olsen should be held in contempt.

10. Records of financial accounts from LaGrand and Randale Johnson were delivered to and analyzed by the Receiver. Those accounts have been ordered frozen. The Receiver identified deficiencies in the compliance of Randale Johnson and those deficiencies are in the process of being resolved.

11. Litigation continues in the Receiver's lawsuits against insiders and commission recipients. Deadlines for fact discovery have been passed in many of these cases and the Receiver has filed summary judgment motions and motions for default in numerous of these cases.

12. The Receiver managed financial operations of the Receivership Estate, including receiving proceeds from settlements, paying ordinary operating expenses of the Receivership Estate, and providing information requested by other agencies.

III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE

13. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a December 31, 2020 balance in the total amount of \$6,451,926.72.

14. If the Court approves this Fee Application, the Receiver will pay the approved fees and expenses from the Receivership account. Given the amount requested, the Receivership account has sufficient funds to pay these fees and expenses.

IV. REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

15. The Receivership Order provides, in relevant part, that:

72. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement which shall be paid from the receivership estate upon approval of a filed motion for the payment of fees and expenses. The parties shall have 14 days to file a response to any such motion.

73. Unless otherwise ordered, within 45 days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply by motion to the Court for compensation and expense reimbursement from the receivership estate (the “Quarterly Fee Motions”). At least 30 days prior to the filing of each Quarterly Fee Motion with the Court, the Receiver shall serve upon counsel for the United States a complete copy of the proposed motion, together with all exhibits and relevant billing information.

74. All Quarterly Fee Motions will be interim and will be subject to cost benefit and final reviews at the close of the receivership. . .⁹

⁹ [Receivership Order ¶¶ 72-74](#)

16. The Receiver now respectfully requests that the Court enter an Order approving on an interim basis and authorizing payment from the Receivership Estate of the reasonable compensation and expenses outlined herein for the Application Period of October 1, 2020 through December 31, 2020. The total fees and expenses requested for the Receiver and his Retained Professionals is \$140,733.86 which is summarized as follows:¹⁰

	RECEIVER AND KLEIN AND ASSOCIATES	PARR BROWN	MANNING CURTIS	LONE PEAK
Fees	\$73,887.00 (\$7,000.00) waived (\$2,200.00) unbilled \$64,687.00	\$65,621.00 (\$6,562.10) voluntary reduction \$59,058.90	\$15,357.00	\$1,035.00
Expenses	\$0.00	\$265.00	\$330.96	\$0.00
TOTAL	\$64,687.00	\$59,323.90	\$15,687.96	\$1,035.00

17. The amounts requested include voluntary reductions made by two of the professionals in an exercise of their billing judgments. Reductions are summarized as follows:

A. The Receiver and the staff of Klein & Associates actually worked a total of 295.6 hours during the Application Period, which includes 8.8 hours of time which are not being billed and \$7,000.00 being waived, amounting to \$9,200.00 in fees in unbilled and waived time. See **Exhibit A-1**.

B. Parr Brown has voluntarily reduced its actual billed fees in the total amount of \$6,562.10. See **Exhibit A-2**. This reduction does not include the unbilled time of Mr.

¹⁰ See Exhibit A-1 (Receiver and Klein and Associates Summary of Fees); Exhibit A-2 (Parr Brown Summary of Fees); Exhibit A-3 (Manning Curtis Summary of Fees); Exhibit B-1 (Invoices for Services of Receiver and Klein and Associates); Exhibit B-2 (Invoices and Expenses for Services of Parr Brown); Exhibit B-3 (Invoices and Expenses for Manning Curtis) and Exhibit B-4 (Invoices and Expenses for Services of Lone Peak).

Hafen, which in many instances, has not been billed to oversee aspects of this case. Parr Brown's fees for the Application Period are categorized into two separate matter numbers: (a) Matter 1 – Administration of Receivership Estate; (b) Matter 4 – Litigation. In this regard the following should be noted:

A. Matter 1 – Administration of Receivership Estate, which includes legal services rendered in assisting the Receiver with his administration of the Receivership Estate including advising the Receiver on issues related to the Receivership Estate's interests in real property.

B. Matter 4 – Litigation, which includes legal services rendered filing and prosecuting claims to recover Receivership Property.

18. The fees of Manning Curtis, appointed as conflict counsel for lawsuits against three law firms, are categorized into three separate matter numbers: (a) Matter 1 – Litigation against Snell & Wilmer; (b) Matter 2 – Litigation against Heideman and Associates; and (c) Matter 3 – Litigation against Donald Reay. *See* **Exhibit A-3**.

19. This Fee Application is supported by the following documents. **Exhibit A** contains a summary of the fees incurred for the Receiver and his counsel, with **Exhibit A-1** containing a summary for the Receiver and Klein & Associates, **Exhibit A-2** containing a summary for Parr Brown, and **Exhibit A-3** containing a summary for Manning Curtis. Detailed invoices which describe the work performed by the Receiver, Parr Brown, Manning Curtis, and Lone Peak on a daily basis are attached hereto as **Exhibit B**, with **Exhibit B-1** containing an invoice for the Receiver and his firm's work, **Exhibit B-2** containing Parr Brown's invoices, **Exhibit B-3** containing Manning Curtis's invoices, and **Exhibit B-4** containing Lone Peak's invoices.

Summaries of the expenses incurred are included in the invoices.

20. In compliance with ¶ 73 of the Receivership Order, the Fee Application, including the invoices in **Exhibit B**, were provided to Plaintiff and after review and comment, the United States has informed the Receiver it has no objection to the fees and expenses requested.

21. The Receiver and his professionals understand that the authorization and payment of fees and expenses is interim in nature. All fees and expenses allowed on an interim basis will be subject to final review at the close of the case and the discharge of the Receiver when the Receiver files a final accounting and final fee application.

22. The Receiver and his Retained Professionals each certify that they have read the Fee Application and that the best of their knowledge, information, and belief formed after reasonable inquiry, the Fee Application and all fees and expenses therein are true and accurate.

23. The Receiver and his Retained Professionals affirm that the fees and expenses included herein were incurred in the best interests of the Receivership Estate and that neither the Receiver nor any of his Retained Professionals have entered into an any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

V. **CONCLUSION**

24. The Receiver respectfully submits this Fee Application and requests that the Court enter an Order approving the actual and necessary fees and expenses incurred on behalf of and for the benefit of the Receivership Estate. For all the reasons stated, the Receiver submits that he and his Retained Professionals have provided a significant benefit to the Receivership Estate. There are sufficient funds in the Operating Account to pay the fees and expenses requested herein.

25. A proposed Order is attached hereto as **Exhibit C**.

The Receiver, Klein and Associates, Parr Brown, Manning Curtis, and Lone Peak verify under penalty of perjury that the foregoing is true and correct.

DATED this 2nd day of March 2021.

RECEIVER



WAYNE KLEIN, Receiver

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jonathan O. Hafen _____
Jonathan O. Hafen
Michael Lehr
Attorneys for R. Wayne Klein, Receiver

MANNING CURTIS BRADSHAW & BEDNAR

/s/ David Castleberry _____
David Castleberry (signed with permission)
Conflict Attorneys for R. Wayne Klein, Receiver

LONE PEAK VALUATION GROUP



Jeffrey Pickett

CERTIFICATE OF SERVICE

I hereby certify that the above **NINTH INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM OCTOBER 1, 2020 THROUGH DECEMBER 31, 2020** was filed with the Court on this 2nd day of March 2021, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr