

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.

**MOTION TO APPOINT CONFLICTS
COUNSEL**

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

The Honorable David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC (“RaPower”), International Automated Systems Inc. (“IAS”), LTB1 LLC (“LTB1”), their subsidiaries and affiliates,¹ (collectively, the “Receivership Entities”) and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”),² respectfully requests that the Court

¹ Collectively, unless stated otherwise, RaPower, IAS, LTB1, and all subsidiaries and affiliated entities are referred to herein as “Receivership Entities.” The subsidiaries and affiliated entities are: Solco I, LLC (“Solco”); XSun Energy, LLC (“XSun”); Cobblestone Centre, LC (“Cobblestone”); LTB O&M, LLC; U-Check, Inc.; DCL16BLT, Inc.; DCL-16A, Inc.; N.P. Johnson Family Limited Partnership (“NPJFLP”); Solstice Enterprises, Inc. (“Solstice”); Black Night Enterprises, Inc. (“Black Night”); Starlite Holdings, Inc. (“Starlite”); Shepard Energy; and Shepard Global, Inc.

² Collectively, RaPower, IAS, LTB1, Shepard, and Johnson are referred to herein as “Receivership Defendants.”

appoint David Castleberry and his law firm Manning Curtis Bradshaw and Bednar as conflicts counsel for the limited purpose of acting as counsel for the Receiver regarding any claims the Receiver may bring against the law firm Snell & Wilmer, L.L.P. and for any other claims of the Receivership Estate against other persons with whom the law firm of Parr Brown Gee & Loveless P.C. (“Parr Brown”) may have a conflict.

1. On October 31, 2018, the Court entered its Receivership Order, appointing Mr. Klein as Receiver for the Receivership Entities and the assets of Johnson and Shepard.³
2. The Order requires the Receiver to obtain court approval before retaining counsel for the receivership estate.⁴
3. On November 6, 2018, the Court entered an order authorizing the Receiver to employ Parr Brown to act as counsel for the receivership estate.⁵
4. Paragraphs 13(l) and 59 of the Order authorize the Receiver to bring legal actions deemed necessary and appropriate, including commencing litigation.⁶
5. In May 2019, the Court granted the Receiver’s motion to commence legal proceedings.⁷ This approval included specific authorization to commence litigation against “law firms and others” and against persons “who received monies or assets from Receivership Defendants . . . for little or no consideration.”⁸

³ [Docket No. 490](#), filed Oct. 31, 2018. A Corrected Receivership Order was entered the following day (“Order”). [Docket No 491](#), filed Nov. 1, 2018. The Receivership Estate was expanded to include subsidiaries and affiliates on May 3, 2019. Docket No. 636, filed May 3, 2019.

⁴ Order at ¶ 67.

⁵ [Docket No. 500](#), filed Nov. 6, 2018.

⁶ The Receiver was authorized to consult with counsel for the United States in making decisions on which recovery actions to pursue. Order at ¶ 13(l).

⁷ [Docket No. 673](#), filed May 24, 2019.

⁸ *Id.* at ¶ 1(b), (c).

6. The Order imposed “a continuing duty” on the Receiver to ensure there are no conflicts of interest involving the Receiver, Retained Personnel, and the receivership estate.⁹

7. Prior orders of this Court in a related matter identified funds held by the law firm Snell & Wilmer that are in dispute in the Receivership matter.¹⁰ Indeed, the court registry is holding \$97,430.00 in funds from Snell & Wilmer that are in dispute, “so that the receiver . . . may determine the appropriate disposition of the Retainer.”¹¹

8. Good faith settlement talks between the Receiver and Snell & Wilmer have been substantial and diligent but, ultimately, unsuccessful. The impasse requires resolution of certain legal issues by the court.

9. Because a close family member of one of the key attorneys at Parr Brown is an attorney at Snell & Wilmer, an appearance of a conflict of interest exists.

10. Accordingly, the Receiver respectfully requests that the Court appoint Manning Curtis Bradshaw & Bednar as conflicts counsel for the limited purpose of acting as counsel for the Receivership Estate in pursuing claims against Snell and Wilmer and against any other litigation defendants where a conflict is discovered to exist that would prevent Parr Brown from acting as counsel to the Receivership Estate.

11. Based on his analysis thus far, the Receiver is not aware of any other conflicts that will exist.

12. David Castleberry and his firm, Manning Curtis, are experienced attorneys who have served as counsel for receivers on numerous other occasions, including as conflict counsel

⁹ Order at ¶ 62.

¹⁰ *Amended and Restated Order Denying Application for Compensation and Reimbursement of Expenses*, Civ. No. 2:18-cv-608, Docket No. 19, Nov. 6, 2018.

¹¹ *Id.* at 1-2.

in another receivership administered by Mr. Klein. Manning Curtis has indicated its willingness to act as conflicts counsel in this limited capacity. In addition, the Receiver has requested, and Manning Curtis has agreed, that Manning Curtis will be as efficient as possible and will perform no unnecessary tasks so that the costs to the Receivership remain as low as possible. In fact, the Receiver believes that the legal issues that are expected to arise in the litigation against Snell & Wilmer are sufficiently limited and unique that a very small degree of “learning curve” will be necessary for Manning Curtis to serve as counsel in this matter.

13. Manning Curtis has indicated it has no conflicts of interest preventing his representation of the Receiver in an action against Snell & Wilmer. David Castleberry has informed the Receiver that he was employed by a Snell & Wilmer office in another state early in his career. Mr. Castleberry does not believe serving as a conflicts counsel in this matter creates any conflict of interest in light of that prior association but discloses this information for the Court’s benefit in making its decision.

14. Mr. Castleberry has agreed to bill at a reduced rate of \$350 per hour and the primary associate assisting him will bill his time at \$220 per hour. Others in his firm will also bill their time at similarly discounted rates, which rates are below or equal to the rates being charged by Parr Brown. Manning Curtis understands that its compensation will be overseen by the Court pursuant to Paragraphs 72 through 75 of the Order.

15. Counsel for the United States has authorized the Receiver to indicate that the United States does not oppose this motion.

Accordingly, the Receiver respectfully requests that the Court appoint David Castleberry and Manning Curtis as conflicts counsel, as described above.

A proposed Order is submitted herewith.

DATED this 26th day of September, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

Jonathan O. Hafen

Michael S. Lehr

Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing was electronically filed with the Clerk of the Court through the CM/ECF system on September 26, 2019, which sent notice of the electronic filing to all counsel of record.

IT IS FURTHER CERTIFIED that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

R. Gregory Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

Pro se Defendant

/s/ Michael S. Lehr