

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.

**SIXTH INTERIM FEE APPLICATION
FOR RECEIVER AND RECEIVER'S
PROFESSIONALS FOR SERVICES
RENDERED FROM JANUARY 1, 2020
THROUGH MARCH 31, 2020**

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

District Judge David Nuffer

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 sixth 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 January 1, 2020 through March 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 and 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, Shepard, Johnson, and Roger Freeborn.² The United States alleged, and the Court found, among other things, that Defendants operated a massive tax fraud.³

2. Defendants filed two *Notices of Appeal* relating to the original judgment:⁴ appeal of the Court’s April 2019 denial of Neldon Johnson’s motion to dismiss⁵ and appeal of the Court’s

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. 445](#), filed Aug. 27, 2018 and [Docket No. 472](#), filed Oct. 10, 2018. These appeals are pending.

⁵ Johnson’s pro se appeal was filed April 30, 2019. His Notice of Appeal is [Docket No. 626](#). Johnson appealed the Court’s minute order dated April 26, 2019 (Docket No. 619) and the Court’s denial of Johnson’s *Motion to Dismiss Receiver and Case*, [[Docket No. 617](#)]. The Court’s denial order, entered April 29, 2019, is at [Docket No. 624](#). The Tenth Circuit dismissed these appeals [No. 19-4066].

order expanding the Receivership Estate to include subsidiaries and affiliates.⁶

3. On October 31, 2018, the Court entered its *Receivership Order* (“Order”),⁷ which, among other things, appointed the Receiver and continued a previously-entered asset freeze.⁸

4. Upon his appointment, and in accordance with the Receivership Order, the Receiver 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.⁹ The Court approved appointment of Manning Curtis as conflict counsel, to handle litigation where Parr Brown has conflicts.¹⁰

5. 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.

6. As noted above, the Receiver submitted the Fee Application to Plaintiff for review, comment and objection prior to filing. The Plaintiff has informed the Receiver that it has no objection to the fees and expenses as requested herein.

⁶ [Docket No. 698](#), filed on June 24, 2019. USCA Case Number 19-4089.

⁷ [Docket No. 490](#). A *Corrected Receivership Order*, which corrected formatting errors, was entered the following day. [Docket No. 491](#), filed Nov. 1, 2018.

⁸ *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed Aug. 22, 2018.

⁹ [Docket No. 500](#), filed Nov. 6, 2018.

¹⁰ [Docket No. 785](#), filed Oct. 11, 2019.

II. SERVICES PERFORMED

7. The actions of the Receiver and his retained professionals during the Application Period are summarized in the *Receiver's Sixth Quarterly Status Report* ("Sixth Status Report"), filed April 24, 2020.¹¹ Below is a brief summary of actions described in the Sixth Status Report.

8. The Receiver recovered and began reviewing documents that previously had been withheld from the Receiver, including:

- a. Documents that Neldon and Glenda Johnson had discarded in the Millard County landfill at Oasis, Utah, but which were recovered and turned over to the Receiver;
- b. Thirteen 13 boxes of documents from the law firm Nelson Snuffer;
- c. Accounting records for IAS created by Peregrine Financial; and
- d. IAS bookkeeping records that had been stored at Peregrine Financial.

9. The Receiver filed additional lawsuits seeking to recover that RaPower paid to salespersons. Documents were produced in discovery and with initial disclosures. Documents received in discovery were reviewed. The Receiver opposed a motion to dismiss, which motion was denied. Seventeen motions to stay litigation, that were filed by defendants, were denied.

10. Counsel for the Receiver argued in support of the affiliates order in the Tenth Circuit.

11. The Receiver's second and third motions to approve settlements were approved. These settlements will bring \$1.8 million into the Receivership Estate. Motions to approve fourth and fifth groups of settlements were filed, which will bring over \$500,000 into the Receivership.

12. A stipulation with the Nelson Snuffer law firm resulted in \$735,202.22 being

¹¹ [Docket No. 918.](#)

delivered to the Receiver pending a ruling by the Court on whether those funds are receivership assets.

13. The Receiver identified over 40 vehicles that are titled in the names of Neldon and Glenda Johnson, asking the Court to require turnover of those vehicles.

14. Appraisals and a survey were obtained on the Texas real estate. The Court approved the sale of the property at auction, which auction occurred in early April 2020.

15. Again during the quarter, the Receiver expended enormous effort assisting in gathering evidence for and presenting evidence in support of the United States' motion for additional contempt sanctions. The Receiver took testimony from Neldon, Glenda, LaGrand, and Randale Johnson at an initial evidentiary hearing in January. At the hearing on February 25, 2020, the Receiver testified and assisted in showing the extent of contempt by the Johnsons relating to discarded documents, withheld and falsified documents, improper assertions of control over real estate, unauthorized actions on behalf of Receivership Entities, failure to recover documents held by others, using Receivership funds to build (and secrete) a prototype turbine, and additional failures to comply with prior orders of the Court.

16. Analysis of newly-obtained records led to investigations by the Receiver of prior stock sales by Johnson family members, false statements by Neldon Johnson in a prior bankruptcy proceeding, and misuse of IAS funds.

17. The Receiver managed financial operations of the Receivership Estate, including receiving proceeds from settlements, paying ordinary operating expenses of the Receivership Estate, and paying living expenses to Greg Shepard.

III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE

18. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a March 31, 2020 balance in the total amount of \$3,826,645.81.¹²

19. 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

20. 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 Receivers 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. . .

¹³

21. 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 January 1, 2020 through

¹² This includes amounts received from Nelson Snuffer, which disputes that the funds are Receivership Property.

¹³ [Receivership Order ¶¶ 72-74.](#)

March 31, 2020. The total fees and expenses requested for the Receiver and his Retained Professionals is \$161,540.17, which is summarized as follows:¹⁴

	RECEIVER AND KLEIN AND ASSOCIATES	PARR BROWN	MANNING CURTIS	LONE PEAK
Fees	\$90,279.00 (\$ 7,400.00) unbilled <u>(\$10,000.00) waived</u> \$72,879.00	\$78,148.00 <u>(\$7,814.80) voluntary</u> reduction \$70,333.20	\$7,795.00	\$5,718.67
Expenses	\$0.00	\$4,800.90	\$5.40	\$8.00
TOTAL	\$72,879.00	\$75,134.10	\$7,800.40	\$5,726.67

22. The amounts requested include voluntary reductions made by the respective 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 363.3 hours during the Application Period, which includes 29.6 hours of time which are not being billed, amounting to \$7,400.00 in fees in unbilled time. The Receiver is also waiving an additional \$10,000.00 in earned fees. See **Exhibit A-1**.

B. Parr Brown has voluntarily reduced its actual billed fees in the total amount of \$7,814.80. See **Exhibit A-2**. This reduction does not include the unbilled time of Mr. Hafen, which in many instances, has not been billed to oversee aspects of this case. Parr

¹⁴ 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).

Brown's fees for the Application Period are categorized into three separate matter numbers: (a) Matter 1 – Administration of Receivership Estate; (b) Matter 2 – Asset Analysis and Recovery; (c) Matter 3 – Appeal; (d) Matter 4 – Litigation. In this regard the following should be noted:

A. Matter 1 – Administration of Receivership Estate, includes legal services rendered in assisting the Receiver with his administration of the Receivership Estate.

B. Matter 2 – Asset Analysis and Recovery, includes legal services rendered to assist the Receiver with the evaluation and, when appropriate, recovery of property of the Receivership Estate, including advising the Receiver on issues related to the Receivership Estate's interests in real property.

C. Matter 3 – Appeal, includes legal services rendered regarding appeal pending before the United States Court of Appeals for the Tenth Circuit, case no. 19-4089.

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

23. Manning Curtis was appointed as conflict counsel for lawsuits against three law firms. Manning Curtis's fees for the Application Period 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**.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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

29. The Receiver respectfully submits this Fee Application and requests that the Court

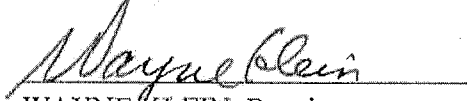
enter an Order approving the actual and necessary fees and expenses incurred on behalf of and for the benefit of the Receivership Estate. For all the reasons stated, the Receiver submits that he and his Retained Professionals have provided a significant benefit to the Receivership Estate. There are sufficient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

30. 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 18th day of May, 2020.

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 (with permission)
David Castleberry
Conflict Attorneys for R. Wayne Klein, Receiver

LONE PEAK VALUATION GROUP


Jeffrey Pickett

CERTIFICATE OF SERVICE

I hereby certify that the above **SIXTH INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM JANUARY 1, 2020 THROUGH MARCH 31, 2020** was filed with the Court on this 18th day of May, 2020, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr