

FILED by <u>RAL</u> D.C. INTAKE DEC 17 2009 STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. MIAMI

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**CROSSBOW VENTURE
PARTNERS LP,**

Defendant.

Civil Case No **09 - 82430**

CIV-MARRA **MAGISTRATE
JOHNSON**

COMPLAINT FOR RECEIVERSHIP AND INJUNCTION

COMES NOW Plaintiff, the United States of America, on behalf of its agency, the Small Business Administration, and for its cause of action states as follows:

PARTIES, JURISDICTION AND VENUE

1. This is a civil action brought by the United States on behalf of its agency, the Small Business Administration (hereinafter, "SBA," "Agency" or "Plaintiff"), whose central office is located at 409 Third Street, S.W., Washington, DC 20416.

2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311, and 316; 15 U.S.C. §§687(d), 687c, 687h; the Small Business Act, 15 U.S.C. §634(b)(1); and 28 U.S.C. §1345.

3. Defendant, Crossbow Venture Partners, L.P. (hereinafter “Crossbow” or “Licensee”), is a Delaware limited partnership that maintains its principal place of business at One North Clematis, Suite 510, West Palm Beach, Florida 33401. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. §1391(b).

Statutory and Regulatory Framework

4. Crossbow was licensed by SBA as a Small Business Investment Company (“SBIC”) pursuant to Section 301(c) of the Act, 15 U.S.C. §681(c) on or about June 29, 2000, SBA License No. 04/74-0281, solely to do business under the provisions of the Act and the regulations promulgated thereunder.

5. Crossbow’s general partner is Crossbow Venture Partners Corporation, and its manager is Crossbow Ventures, Inc.

6. Crossbow’s License Application contains an acknowledgement by Crossbow that it would be operated in accordance with the Regulations and the Act at all times.

7. Section 308(c) of the Act, 15 U.S.C. §687(c), empowers SBA to prescribe regulations to carry out the provisions of the Act and to govern the operations of SBICs. SBA has duly promulgated such regulations, which are codified at Title 13 of the Code of Federal Regulations, Part 107 (the “Regulations”).

8. Section 303 of the Act, 15 U.S.C. §683, authorizes SBA to provide leverage to licensed SBICs.

9. Pursuant to Section 303 of the Act, 15 U.S.C. §683, SBA provided Leverage to Crossbow through the purchase and/or guaranty of Participating Securities,

a form of Leverage, as those terms are defined under the Regulations, in the total principal amount of \$62,850,000 of which \$43,421,712 is currently outstanding.

10. The Participating Securities referenced in paragraph 9, above, are subject to and incorporated by reference in the Regulations, including but not limited to the provision of 13 C.F.R. §§107.1820-1850 and §107.507.

11. Section 308(d) of the Act, 15 U.S.C. §687(d), provides that upon determination and adjudication of noncompliance or violation of the Act or the Regulations, all of the rights, privileges and franchises of a Licensee such as Crossbow be forfeited and the company may be declared dissolved.

12. Section 311 of the Act, 15 U.S.C. §687c, provides that if a determination by SBA that a Licensee such as Crossbow, or any other person, has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or of any Rule or Regulation promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application for an injunction, and such Court shall have jurisdiction of such action and grant a permanent or temporary injunction, or other relief without bond, upon a showing that such Licensee has engaged in or is about to engage in any such acts or practices. The Court is authorized to appoint SBA to act as receiver for such Licensee.

COUNT ONE

CAPITAL IMPAIRMENT

13. Paragraphs 1 through 12 are incorporated herein by reference.

14. Section §107.1830(c) of the Regulations requires that Crossbow not have a condition of Capital Impairment of greater than 60% (sixty percent) as defined under the Regulations.

15. Based on the SBA Form 468 submitted by Crossbow for the period ending June 30, 2009 SBA determined that Crossbow had a condition of Capital Impairment percentage, as Crossbow's capital impairment percentage was 127.19%, greater than the 60.0% allowed under the Regulations.

16. By letter dated July 7, 2005, SBA notified Crossbow that it would be placed into SBA into Restricted Operations, pursuant to 13 C.F.R. § 107.1820(e)(3) and would have Restricted Operation Remedies imposed upon it pursuant to 13 C.F.R. § 107.1820(f), unless the condition of capital impairment was cured within fifteen (15) days of the date of the letter.

17. Crossbow failed to cure its condition of capital impairment. Consequently, by letter dated April 11, 2006, Crossbow was notified that it had been placed into liquidation status by SBA.

18. To date, Crossbow has failed to cure its condition of Capital Impairment and \$43,421,712 in Participating Securities Leverage purchased by SBA remains outstanding.

19. Crossbow's failure to cure its condition of Capital Impairment is a violation of §107.1830(b) of the Regulations.

20. Crossbow's non-compliance with its terms of Leverage under 13 C.F.R. §107.1830(b) is also a violation of Section 13 C.F.R. §107.507(a) of the Regulations for nonperformance of the terms of its Participating Securities and

nonperformance of its Application for SBIC License, which is a written agreement with SBA.

21. SBA has determined that Crossbow is not in compliance with its terms of Leverage due to its uncured condition of Capital Impairment and is in violation of the Regulations, 13 C.F.R. §§107.1830(b) and 507(a).

22 As a consequence of Crossbow's violation of 13 C.F.R. §§107.1830(b) and 507(a) of the Regulations, SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §687(d) and 687c, including the appointment of SBA as Receiver of Crossbow.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. That injunctive relief, both preliminary and permanent in nature, be granted restraining Crossbow, its managers, general partners, directors, officers, agents, employees, and other persons acting in concert or participation therewith from: (1) making any disbursements of any Crossbow assets of the Fund; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any Crossbow or assets of the Fund, wherever located; and (3) further violating the Act or the Regulations promulgated thereunder.

B. That this Court determine and adjudicate Crossbow's noncompliance with and violation of the Act and the Regulations promulgated thereunder.

C. That this Court, pursuant to 15 U.S.C. §687c enter the proposed Consent Order, which Order is effective as of January 7, 2010, and (1) take exclusive jurisdiction of Crossbow and all of its assets, wherever located, (2) appoint SBA as receiver of

Crossbow for the purpose of marshaling and liquidating the assets of Crossbow, satisfying the claims of creditors as determined by the Court and authorize SBA as Receiver to sell or transfer the interest of SBA and/or other limited partners in Crossbow provided the express written consent of the affected parties whose interest is to be sold or transferred is obtained; and (3) grant such other relief as contained in the Consent Order filed simultaneously herewith.

D. That this Court grant such other relief it deems just and proper.

Respectfully submitted this 17th day of December, 2009.

JEFFREY H. SLOMAN
ACTING UNITED STATES ATTORNEY



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/s/
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JS 44 (Rev. 11/04)

CIVIL COVER SHEET **09-82430**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS UNITED STATES OF AMERICA</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) CIV-MARRA Linda S. Cook, SAUSA 100 S. Biscayne Blvd, Suite 1005 Miami, FL 33131 (305) 530-7699, X-2</p>	<p>DEFENDANTS CROSSBOW VENTURE PARTNERS LP</p> <p>County of Residence of First Listed Defendant <u>Palm Beach, FL</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED FILED by <u>RAL</u> D.C. INTAKE</p> <p>Attorneys (If Known)</p> <p style="text-align: center; font-size: 1.2em;">DEC 17 2009</p> <p style="text-align: center; font-size: 0.8em;">STEVEN M. LARIMORE CLERK U.S. DIST. CT. MIDDLESEX COUNTY</p>
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(d) Check County Where Action Arose: DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER POLK VOLUPTA WASHINGTON FLORIDA HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

09 cv 82430 Marra/Johnson

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

15 USC 687c - Federal receivership due to violations of the Small Business Investment Act

LENGTH OF TRIAL via 1/2 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/17/2009 SIGNATURE OF ATTORNEY OF RECORD *Linda S. Cook*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT WAIVED APPLYING IFP _____