

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No.: 8:09-cv-87-T-26TBM

ARTHUR NADEL; SCOOP CAPITAL, LLC;  
and SCOOP MANAGEMENT, INC.,

Defendants,

SCOOP REAL ESTATE, L.P.; VALHALLA  
INVESTMENT PARTNERS, L.P.; VALHALLA  
MANAGEMENT, INC.; VICTORY IRA FUND,  
LTD.; VICTORY FUND, LTD.; VIKING IRA  
FUND, LLC; VIKING FUND, LLC; and  
VIKING MANAGEMENT, LLC,

Relief Defendants.

---

**JOINT STATEMENT OF UNDISPUTED FACTS RELATING TO  
OBJECTION TO DETERMINATION OF CLAIM NUMBER 445**

Pursuant to an agreement between Fulcrum Distressed Opportunities Fund I, LP (“**Fulcrum Fund**”) and Burton W. Wiand, as court-appointed Receiver (the “**Receiver**”) for Valhalla Investment Partners, L.P.; Viking Fund, LLC; Viking IRA Fund, LLC; Victory Fund, Ltd.; Victory, IRA Fund, Ltd.; and Scoop Real Estate, L.P. (collectively, the “**Hedge Funds**”) and all other entities placed in receivership (the Hedge Funds and all other entities placed in receivership are collectively referred to as the “**Receivership Entities**”), the Fulcrum Fund and the Receiver hereby submit their Joint Statement of Undisputed Facts in

connection with proceedings needed to adjudicate the Fulcrum Fund's objection to the determination of Claim Number 445 ("**Claim 445**").

**A. BACKGROUND**

1. Genium AI Fund Series 1 Ltd. Standard Portfolio and (b) Genium Trading Company Ltd. (together, the "**Genium Entities**"), through Canrol Finance Ltd. ("**Canrol**"), invested \$1,195,000 in Hedge Fund Valhalla Investment Partners, L.P. ("**Valhalla**"), in July 2008. In October 2008, Canrol requested a full redemption of that investment.

2. In connection with the Genium Entities' investment in Valhalla, Canrol was acting as nominee for Union Bancaire Privée, a Swiss bank and 100% owner of Canrol.

3. Before investing in Valhalla, Canrol received and executed a document entitled "Subscription Agreement." (A true and correct copy of the executed "Subscription Agreement" is attached as **Exhibit A.**)

4. Also before investing in Valhalla, Roland Priborsky, on behalf of Genium Advisors AG, the Genium Entities' manager, completed a Confidential Purchaser Questionnaire. (A true and correct copy of the executed questionnaire is attached as **Exhibit B.**)

5. On January 21, 2009, the Securities and Exchange Commission ("**Commission**") initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. (*See generally* Compl. (Doc. 1).) That same day, the Court entered an order appointing Burton W. Wiand as Receiver for various entities, including Defendants Scoop Capital, LLC and Scoop Management, Inc. and the Hedge

Funds as Relief Defendants (the “**Order Appointing Receiver**”). (*See generally* Order Appointing Receiver (Doc. 8).)

6. The Court subsequently granted several motions to expand the scope of the receivership to include other entities owned or controlled by Defendant Arthur Nadel (“**Nadel**”) or otherwise funded with proceeds of the fraudulent scheme underlying this case (the “**scheme**”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 911, 916.)

7. On April 20, 2010, the Receiver filed his Unopposed Motion to (1) Approve Procedure to Administer Claims and Proof of Claim Form, (2) Establish Deadline for Filing Proofs of Claim, and (3) Permit Notice By Mail and Publication and Incorporated Memorandum of Law (the “**Claims Form Motion**”) (Doc. 390). The following day, the Court entered an Order approving the Claims Form Motion in its entirety. (Doc. 391.)

8. Under the Claims Form Motion and Order, to be considered timely, the completed Proof of Claim Form (the “**Form**”) approved by the Court was “to be received on or before the later of 120 days from the entry of this Order or 90 days from the mailing of the Proof Claim Form to known possible Claimants” (the “**Claim Bar Date**”) (Doc. 391). The Claims Bar Date was September 2, 2010.

9. On June 4, 2010, the Receiver mailed Proof of Claim forms to all known claimants, including Canrol. In those packages, the Receiver included his calculation for the applicable investor’s “**Net Investment Amount**” where sufficient information was available.

10. On September 1, 2010, the Receiver received a Proof of Claim Form from representatives of Canrol, claiming total losses of \$1,195,000.00 (the “**Canrol Proof of Claim**”). (A true and correct copy of the Canrol Proof of Claim is attached as **Exhibit C**.)

11. After reviewing the Canrol Proof of Claim, the Receiver sent correspondence to Canrol dated February 8, 2011 (a true and correct copy of that correspondence is attached as **Exhibit D.**) In that correspondence, among other things the Receiver stated that the investment underlying Canrol's claim appeared to be a custodial arrangement, and as a result he needed disclosure of the identity of the beneficial owner(s) of that investment and an original signature of an authorized beneficial owner certifying under penalty of perjury that the information provided on the Canrol Proof of Claim was true and correct. The correspondence also advised "that you have **thirty days** from the date of this letter for the supplemented Proof of Claim to be received by my office for it to be considered timely" (emphasis in original). That 30-day deadline was March 10, 2011.

12. On or about March 11, 2011, the Receiver received a revised Proof of Claim Form from Canrol which stated that Canrol was acting as nominee for the Genium Entities (the "**Revised Canrol Proof of Claim**") (a true and correct copy of the Canrol Revised Proof of Claim is attached as **Exhibit E.**) However, in response to the Receiver's request to identify the persons or entities with an interest in the Genium Entities, Canrol stated in the revised Proof of Claim Form that the Genium Entities did "not intend to provide/disclose the requested information." (*Id.*)

13. On or about May 27, 2011, the Receiver's counsel was contacted by counsel for the Fulcrum Fund seeking the Receiver's consent to the transfer of rights and title to Claim 445 from the Genium Entities to the Fulcrum Fund.

14. On June 10, 2011, the Receiver sent correspondence to counsel for the Fulcrum Fund indicating that he declined to authorize or participate in the transfer of Claim

445 from the Genium Entities to the Fulcrum Fund (a true and correct copy of that letter is attached as **Exhibit F**). In that letter, the Receiver also stated that while the Revised Canrol Proof of Claim identified the Genium Entities as the beneficial owners, it did not identify any individuals with a legal interest in the beneficial owners and, in fact, stated that the Genium Entities “do not intend to provide/divulge the requested information.” The Receiver’s letter further stated that should this requested information continue to be withheld, he intended to deny Claim 445. (*Id.*)

15. On June 13, 2011, counsel for the Fulcrum Fund contacted Receiver’s counsel and indicated that “under certain conditions” the Fulcrum Fund may be able to produce the information requested by the Receiver in the Proof of Claim Form, in the February 8, 2011, letter from the Receiver, and again in the Receiver’s June 10, 2011 letter. Counsel for the Fulcrum Fund wrote: “Specifically, we will require a confidentiality agreement or protective order before providing that information.” (A true and correct copy of counsel for the Fulcrum Fund’s June 13, 2011 email to Receiver’s counsel is attached as **Exhibit G**.)

16. Counsel for the Fulcrum Fund followed up with the Receiver on June 14, 2011, June 21, 2011, and June 28, 2011 regarding provisions for providing the information requested by the Receiver. (True and correct copies of counsel for the Fulcrum Fund’s June 14, 2011, June 21, 2011, and June 28, 2011 emails to Receiver’s counsel are attached as **Exhibits H, I, and J**, respectively.) The Receiver or his counsel responded to those communications. (True and correct copies of those responses are attached as Exhibits **K, L, and M**.)

17. On June 28, 2011, the Receiver responded to the Fulcrum Fund’s request, and

stated that “[d]uring the course of the claims process, Canrol Finance Ltd. has not complied with the requirements for Proofs of Claim that were specified by the United States District Court. The time for submission of additional information has long since passed. I will make a determination with respect to this claim based upon the information in hand at this time.” (A true and correct copy of this letter is attached as **Exhibit M**.) The Receiver’s letter also stated, “[t]he Receivership will not provide guidance with respect to any intended transfers,” and that “[a]ny further submissions or objections with respect to the processing of claims by the Receivership should be made in the claims process before the United States District Court.” (*Id.*)

18. On December 7, 2011, the Receiver filed his Unopposed Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution, and (4) Establish Objection Procedure (the “**Claims Determination Motion**”) (Doc. 675). In relevant part, that motion recommended denial of Claim 445, explaining that Canrol “provided some information but wrote on the Proof of Claim Form that the beneficial owners, which appear to be investment funds, ‘do not intend to provide/divulge the requested information. (See Claim No. 445.) This answer was given in response to Question 3 on the Proof of Claim Form (*see* Exhibit A) which states: ‘If this form is being completed on behalf of an entity, please provide the full name of the entity and all of its trustees, officers, directors, managing agents, shareholders, partners, beneficiaries, and any other party with an interest in the entity’.” (*See* Claims Determination Mot. at 23 & Ex. G.)

19. Exhibit G to the Claims Determination Motion further stated:

The director of an investment fund returned an Amended Proof of Claim indentifying two investment funds as entities with an interest in this account, but stated that he would not provide the names of the trustees, officers, directors, managing agents, shareholders, partners, beneficiaries, or any other party with an interest in the entities. The Claimant's failure and refusal to provide the requested information has impeded the Receiver from assessing whether the Claimant has submitted an allowable claim. Because the Receiver cannot be sure that the beneficial owners of this account did not hold other Investor Accounts, receive False Profits in connection with such other accounts, otherwise receive additional money from Receivership Entities, or were not "insiders," this claim should be denied.

20. On December 30, 2011, counsel for the Fulcrum Fund provided to Receiver's counsel by email an Evidence of Transfer reflecting a May 2011 agreement by the Genium Entities to transfer all rights to and title in Claim 445 to the Fulcrum Fund. (A true and correct copy of the email is attached as **Exhibit N** and a true and correct copy of the Evidence of Transfer is attached as **Exhibit O**.) Under that earlier agreement, the Fulcrum Fund purchased the rights and title to Claim 445 from the Genium Entities.

21. Also on December 30, 2011, counsel for the Fulcrum Fund provided to Receiver's counsel by email lists of shareholders for: Genium AI Fund Leveraged Portfolio Class C1, Genium AI Fund Leveraged Portfolio Class D1, Genium AI Fund Standard Portfolio Class B, Genium AI Fund Leveraged Portfolio Class B1, and Genium AI Fund Standard Portfolio Class (true and correct copies of these lists are attached as **Exhibit P**).

22. That same day, Receiver's counsel replied:

[T]he Receiver finalized his claim review and determinations, submitted those determinations to the Court, and proposed a procedure for the submission of claimants' objections. The Receiver's claim determinations, including with respect to the claims underlying your email, were complete as of prior to the filing of that motion.

Once the Court issues an order on that motion and institutes an objection procedure, your client will have the opportunity to submit its objection in

accordance with the terms of the objection procedure ultimately established by the Court. At this time, however, no objection procedure is in place and the Receiver is not engaging in any discussions relating to the objections. Again, the Receiver's claim determinations are complete, and at the appropriate time objections may be submitted in accordance with the procedure ultimately adopted by the Court.

(A true and correct copy of Receiver's counsel's December 30, 2011, email is attached as **Exhibit Q.**)

23. On March 2, 2012, the Court entered an Order granting the Claims Determination Motion as it relates to Claim 445 (Doc. 776). Further, the Order directed any claimant wishing to object to the determination of a claim to submit a written objection to the Receiver by March 27, 2012.

24. On March 6, 2012, the Receiver received an objection from the Fulcrum Fund objecting to the determination of Claim 445 (the "**Objection**"). (A true and correct copy of the Objection is attached as **Exhibit R.**) The Objection stated that it was the Fulcrum Fund's understanding that Claim 445 had been denied "on the grounds that the Genium funds have failed to provide a full list of beneficial holders as required." (*Id.*) The Objection included the lists of shareholders referenced above in paragraph 21 and "request[ed] that the Receiver deem any objections to these claims cured." *Id.*

25. On August 15, 2012, the Receiver served on the Fulcrum Fund a copy of the Receiver's Response to Objection Relating to Determination of Claim Number 445 (the "**Receiver's Response**"). (A true and correct copy of the Receiver's Response is attached as **Exhibit S.**)

26. According to the website of Genium Advisor AG ("**Genium Advisor**"), the Genium Entities' manager, the Genium Entities - Genium AI Fund Series 1 Ltd. and Genium



Trading Company – were institutional investment funds based in Switzerland. According to

Genium Advisor’s website, Genium Advisor:

is a company formed in 2007 by financial market experts with long standing experience in investment banking and brokerage (former UBS, Dresdner Bank, Man Financial). The company is regulated by the Swiss anti money laundering organization VOF.

Genium Advisors ... is a niche investment management firm with a consistent and unique value proposition within the management of managed futures, macro trading strategies and FX trading. The success and sustainable performance of these strategies is tightly linked to talent, but at the same time to a deep knowledge of brokerage services, trading systems, risk set-ups, money flows and, additionally, to the capabilities of product engineering.

[www.genium-advisors.com](http://www.genium-advisors.com). Also according to Genium Advisor’s website, the Genium Entities’ Director, Roland Priborsky, is an investment professional who Genium Advisor holds out as having experience with hedge fund and other alternative investments. *See id.*

27. Nadel was disbarred from the practice of law in New York in 1982, and the disbarment Order was publicly available. *See In The Matter of Arthur G. Nadel*, 447. N.Y.S. 2d 12 (N.Y. App. Div. 1982)

28. By the time the Genium Entities invested in Valhalla, at least eight money judgments had been entered against Nadel in cases pending in Sarasota County for failure to pay amounts owed.

29. In 1995, Nadel filed in a divorce proceeding pending in a court in Sarasota County an affidavit stating that he was a self-employed “musician,” had monthly gross income of \$889.00, had monthly expenses of \$2,894.00, had total assets of \$1,650.00, and had total liabilities of \$129,075.00. (A true and correct copy of that affidavit is attached as **Exhibit T.**)

30. Also in 1995, Nadel subsequently filed an “amended” affidavit stating that he was unemployed, had no monthly gross income, and had total assets of \$1,000. At that time, Nadel also filed a Motion to Terminate Temporary Alimony which stated that he had “no assets, no liquidity, no money in the bank, and no resources of any kind.” (A true and correct copy of the amended affidavit and motion are attached as **Exhibit U**.) The motion added that Nadel “is financially impoverished.”

31. In May 1999, the person disclosed in Valhalla’s Confidential Private Placement Memorandum as Valhalla’s “Accountant,” Michael Zucker, was the subject of a cease and desist notice from Florida regulators for improperly identifying himself as a Certified Public Accountant, and this information was publicly available at the time the Genium Entities invested in Valhalla. (A true and correct copy of the cease and desist notice from Florida Regulators is attached as **Exhibit V**.)

**s/Gianluca Morello**

Gianluca Morello, FBN 034997  
Email: [gmorello@wiandlaw.com](mailto:gmorello@wiandlaw.com)  
Michael S. Lamont, FBN 0527122  
Email: [mlamont@wiandlaw.com](mailto:mlamont@wiandlaw.com)  
Jared J. Perez, FBN 0085192  
Email [jperez@wiandlaw.com](mailto:jperez@wiandlaw.com)  
WIAND GUERRA KING P.L.  
5505 West Gray Street  
Tampa, FL 33609  
Tel: (813) 347-5100  
Fax: (813) 347-5198

*Attorneys for Burton W. Wiand, as Receiver*

**s/Kevin M. Eckhardt**

Kevin M. Eckhardt, FBN 412902  
Email: [keckhardt@hunton.com](mailto:keckhardt@hunton.com)  
Matthew Mannering, FBN 39300  
Email: [mmannering@hunton.com](mailto:mmannering@hunton.com)  
HUNTON & WILLIAMS, LLP  
1111 Brickell Avenue  
Suite 2500  
Miami, FL 33131  
Tel: (305) 810-2500  
Fax: (305) 810-2460

*Attorneys for Fulcrum Distressed  
Opportunities Fund I, LP*