

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,  
Plaintiff,

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

v.  
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.

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**MOTION TO INTERVENE FOR LIMITED PURPOSE  
AND/OR MOTION TO FILE AMICUS CURIAE MEMORANDUM**

COME NOW Paul Downey and Jeff Downey, by and through their undersigned counsel and move to intervene and/or to file amicus curiae memorandum and in support of this Motion state as follows:

1. On May 24, 2013, this Court approved the Receiver's Motion to Expand the Scope of Receivership to include Quest Energy Management Group, Inc. The company opposed the Motion due to variety of factors, including the Receiver's lack of experience in the industry.

2. On August 26, 2013, the Receiver filed and Interim Report on Quest Energy Management Group, Inc., in which several allegations are made concerning the conduct of Jeff Downey and Paul Downey.

3. Jeff Downey and Paul Downey are requesting the opportunity to respond to these factual allegations in the form of a memorandum, which is attached hereto as Exhibit A.

4. In the alternative, Jeff Downey and Paul Downey move for the right to file an amicus curiae memorandum.

### **MEMORANDUM OF LEGAL AUTHORITY AND ARGUMENT**

#### **A. Motion to Intervene**

Rule 24, F.R.C.P. permits intervention either as a matter of right or on a permissive basis:

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Jeff Downey and Paul Downey assert that, because of their ownership interest and investment in the company, they are entitled to intervene for this limited purpose because the assets of the investors are more at risk today than when the Receiver was appointed by this Court. The SEC commonly raises 15 USC 78u(g) relating to consolidating or coordinating actions for equitable relief as a defense in similar matters. That provision states:

Notwithstanding the provisions of section 1407(a) of Title 28, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the

securities laws shall be consolidated or coordinated with other actions not brought by the Commission, (emphasis added) even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.”

This action is brought to protect the interests of the investors, which is consistent with the objectives of the SEC. Other than this Court, there is not a defense to mismanagement by a Receiver.

Additionally, Jeff Downey and Paul Downey argue that their right to intervene in the form of the attached Memorandum is appropriate because there are factual allegation made in the Receiver’s Interim Report that attack the conduct of Jeff Downy and Paul Downey. Without receipt of the attached Memorandum, the Court will have no input from Jeff Downey and Paul Downey regarding their conduct. It should also be noted that the Receiver’s Interim Report also references no complaints by any investor regarding the conduct of Jeff Downey and Paul Downey.

**B. Motion to Allow Filing of Amicus Curiae Brief**

The Eleventh Circuit has recognized that “District courts possess the inherent authority to appoint ‘friends of the court’ to assist in their proceedings.” *In Re: Ford Motor Company v. Ford Motor Company*, 471 Fed.3d 1233 (11th Cir. 2006). “An amicus curiae does not become a party to the case and thus is not subject to the personal jurisdiction of the court.” *Id.* Thus, any prior concerns from this Court regarding jurisdiction due to the pending appeal would not preclude the filing of this amicus curiae memorandum.

WHEREFORE, Jeff Downey and Paul Downey respectfully request this Court to allow the filing and consideration of the attached memorandum either through their right to intervene or through the Court's inherent power to allow the filing of an amicus curiae memorandum and request such other and further relief as is deemed appropriate.

Respectfully submitted,  
LEWIS BRISBOIS BISGAARD & SMITH LLP

**s/John A. Rine**

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Attorneys for Quest Management Group, Inc.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of September, 2013, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

**s/John A. Rine**

Attorney