

# EXHIBIT G



WIAND GUERRA KING P.L.L. | 5506 W. GRAY STREET | TAMPA, FL 33609 | PHONE: 813.347.5100

Gianluca Morello  
Direct Dial: 813.347.5105  
Direct Fax: 813.347.5155  
Email: [gmorello@wiandlaw.com](mailto:gmorello@wiandlaw.com)

November 6, 2013

**VIA U.S. MAIL AND EMAIL**

John R. Hightower, Esq.  
McIntyre, Panzarella, Thanasides, P.L.  
6943 East Fowler Avenue  
Tampa, FL 33617

Re: *Securities and Exchange Commission v. Arthur Nadel, et al.*  
United States District Court, Middle District of Florida  
Case No. 8:09-cv-87-T-26TBM

Claim Numbers: 462, 463, 464, 465, 466, and 467

Dear Mr. Hightower:

Enclosed please find the Receiver's Response to your Objections to the Determinations regarding Claim Numbers 462, 463, 464, 465, 466, and 467. Once you have had an opportunity to review the Response, please contact my associate Jordan Maglich at (813) 347-5115 to set up a time to discuss this matter further. If we do not hear from you within fourteen (14) days from the date of this letter, your objections will be deemed abandoned.

Sincerely,

Gianluca Morello

GM/car

Enclosures

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;  
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.

\_\_\_\_\_/

**THE RECEIVER'S RESPONSE TO OBJECTION RELATING TO  
DETERMINATION OF CLAIM NUMBERS 462, 463, 464, 465, 466 AND 467**

On March 28, 2012, 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 along with all other entities placed in receivership, the "**Receivership Entities**"), among other entities, received an objection (the "**Objection**") from Vernon M. Lee (the "**Claimant**"), to the determination for Claim Numbers 462, 463, 464, 465, 466 and

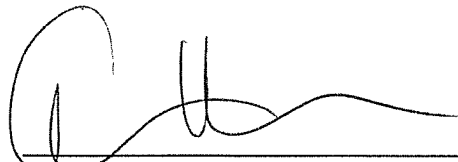
467 (the “**Claims**”) (a copy of the Objection is attached as **Exhibit A**). The Objection was based on the contention that the Receiver had failed to prove that Arthur Nadel had operated a Ponzi scheme through Traders and the Hedge Funds during the time that the Claimant was invested with these entities or received transfers from them. After the submission of the Objection, this exact issue was litigated in *Wiand, as Receiver v. Vernon M. Lee, et al.*, Case No. 8:10-CV-210-T-17MAP (M.D. Fla.). In that case, the Claimant had a full and fair opportunity to present all evidence, including an expert, relating to whether or not Nadel operated a Ponzi scheme. The Magistrate Judge presiding over the Claimant’s case issued a Report and Recommendation concluding that Nadel operated the Hedge Funds and Traders as a Ponzi scheme at the time of the transfers to the Claimant, which the District Court Judge adopted. In light of that proceeding and outcome, the Objection lacks merit, is moot or, alternatively, has been effectively overruled.

For the foregoing reasons, the Objection should be overruled, and the Claims should remain denied.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of The Receiver's Response to Objection Relating to Determination of Claim Numbers 462, 463, 464, 465, 466, and 467 is being furnished to the following on this 6<sup>th</sup> day of November, 2013, in the manner reflected below:

John R. Hightower, Esq.  
McIntyre, Panzarella, Thanasides, P.L.  
6943 East Fowler Avenue  
Tampa, FL 33617  
*Via U.S. Mail and Email*



Gianluca Morello, FBN 034997  
Email: gmorello@wiandlaw.com  
Michael S. Lamont FBN 0527122  
Email: mlamont@wiandlaw.com  
Jared J. Perez, FBN 0085192  
Email: jperez@wiandlaw.com  
Wiand Guerra King P.L.  
5505 W. Gray Street  
Tampa, FL 33609  
Tel: (813) 347-5100  
Fax: (813) 347-5198

*Attorneys for the Receiver, Burton W. Wiand*

# EXHIBIT A

MCINTYRE | PANZARELLA | THANASIDES  
ATTORNEYS AT LAW

March 28, 2012

Reply to:  
6943 E. Fowler Avenue  
Tampa, Florida 33617  
hightower@mcintyrefirm.com

Via Facsimile 813.347.5198

Burton W. Wiand, as Receiver  
c/o Maya M. Lockwood, Esq.  
Wiand Guerra King, P.L.  
3000 Bayport Drive, Suite 600  
Tampa, FL 33607



Re: SEC v. Arthur Nadel, et al.  
United States District Court, Middle District of Florida  
Case No.: 8:09-cv-87-T-26TBM

Dear Mr. Wiand:

I am writing to you on behalf of Vernon M. Lee to object to your denial of Mr. Lee's claims No. 462, 463, 464, 465, 466 and 467 (the "Claims") in accordance with your letters dated March 8, 2012 corresponding to each of the Claims. Based on your representations in your Motion<sup>1</sup> the basis upon which you deny Mr. Lee's claims is as follows: all the Receivership Entities at all times were operated as a Ponzi scheme, therefore all gains received by Mr. Lee were "False Profits," those alleged False Profits would serve as set-offs against Mr. Lee's losses, because those alleged False Profits allegedly exceed Mr. Lee's actual losses Mr. Lee's claims should be denied. This reasoning is fundamentally flawed and unfair because it erroneously presumes the existence of a Ponzi scheme that includes all the Receivership Entities at all times from the beginning of their creation. You have not proven, or even attempted to prove with any persuasive evidence, the central and critical basis of your denial: that each Receivership Entity was part of a Ponzi scheme at every point in time from their inception. If this essential fact is not proven then your denial simply lacks factual support and defies the very fairness you purport to promote in your Motion.

You have not identified how each of the Receivership Entities qualified as part of a Ponzi scheme at all times relevant to the Claims. Courts have found that the following four factors must be established to prove a Ponzi scheme existed: (1) that deposits were made by investors; (2) the Debtor conducted little or no legitimate business operations as represented to investors; (3) the purported business operations of the Debtor produced little or no profits or earnings; and (4) the source of payments to investors was from cash infused by new investors.<sup>2</sup> To date you

<sup>1</sup> Receiver's 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. Doc. 675. (the "Motion").

<sup>2</sup> *Wiand v. Waxenberg*, 611 F. Supp. 2d 1299, 1312 (M.D. Fla. 2009).

have only demonstrated the first of the four necessary factors existed at all times relevant to the Claims. As you are well aware, you initiated a supplemental proceeding against Mr. Lee which is currently before the Honorable Judge Kovachevich and Magistrate Judge Pizzo.<sup>3</sup> In that case you are faced with the same issue of proving the existence of a Ponzi scheme at all relevant times and including all Receivership Entities. In that case, and many others similarly situated, you have attempted to prove the existence of a Ponzi scheme to the same extent but have so far been unsuccessful. In your initial Motion for Partial Summary Judgment you relied primarily upon the plea agreement in the criminal case against Arthur Nadel.<sup>4</sup> However, the court in that case found this evidence was insufficient to prove the existence of a Ponzi scheme, especially to the extent you have alleged.<sup>5</sup> In this case you have not provided anything more to prove the existence of a Ponzi scheme that included all the Receivership Entities at all times relevant to the claims. It is inappropriate to expect the same evidence that has failed to prove a Ponzi scheme in another case to suffice in this case. Furthermore, any evidence of the existence of a Ponzi scheme is simply that, evidence. As an accomplished attorney you know that evidence is not proof but merely "something that tends to prove or disprove the existence of an alleged fact." Because you have not proven this allegation to the extent necessary to substantiate your characterizations of False Profits, your denial of Mr. Lee's Claims is wrong.

Likewise, the remaining three factors are not proven for all the Receivership Entities for all times relevant to the Claims. The second factor, that the Debtor conducted little or no legitimate business operations as represented to investors, has not even been addressed for all times relevant to the Claims. You must prove that the entities relevant to Mr. Lee's Claims were engaged in little or no legitimate business operations as represented to the investors. However, you have done nothing and presented no evidence to support this necessary element of your allegations. You have not analyzed, or presented evidence of, each Receivership Entities' legitimate trades and gains. You have not demonstrated at what point in time each of the Receivership Entities no longer engaged in legitimate business, or insubstantial business, to qualify as part of a Ponzi scheme. The third factor, that the purported business operations of the Debtor produced little or no profits or earnings, is completely without analysis. You have not presented any evidence to identify the amount of earnings each Receivership Entity made at all relevant points in time. Without this analysis it is impossible to presume every Receivership Entity was part of a Ponzi scheme at all times relevant to the Claims. Finally, the fourth factor, that the source of payments to investors was from cash infused by new investors, is also never supported by any evidence from you. You have not traced how money from new investors was the only source of distributions to old investors. You have not differentiated between legitimate gains from investments paid to other accounts as distinct from merely using new investment principal to pay old investment distributions. To apply a Ponzi scheme analysis you must prove that the source of distributions for each False Profit was never legitimate gains but only new investor's principal deposits. You failed to prove, or even attempt to prove, each of these requisite factors were present in each Receivership Entity for each distribution. This failure to prove a Ponzi scheme dissolves your entire basis for denying Mr. Lee's claims and to do so simply deprives Mr. Lee of due process.

Denial of Mr. Lee's claims before proving he received the alleged False Profits is

---

<sup>3</sup> *Wiand v. Vernon M. Lee, et al.*, Case No.: 8:10-cv-210-T-17MAP.

<sup>4</sup> The Receiver's Omnibus Motion for Partial Summary Judgment, *Wiand v. Vernon M. Lee, et al.*, Case No.: 8:10-cv-210-T-17MAP. Doc. 49.

<sup>5</sup> Omnibus Order, *Wiand v. Vernon M. Lee, et al.*, Case No.: 8:10-cv-210-T-17MAP. Doc. 74.



procedurally premature and unfair. Your basis for denial of his claims is comparable to a bankruptcy trustee denying a claim due the claimant's receipt of a preferential transfer before adjudication of the preferential transfer. In these situations the U.S. Supreme Court noted that "the claim can neither be allowed nor disallowed until the preference matter is adjudicated."<sup>6</sup> Similarly, it is patently wrong for you to deny Mr. Lee's claims based upon a legal determination that has not been adjudicated, proven or even argued by you in this case.

To deny Mr. Lee's claims without proving a fundamental element of your basis for the denial deprives Mr. Lee of his fundamental due process rights protected by the Fifth and Fourteenth Amendments to the U.S. Constitution. Your summary deprivation of Mr. Lee's significant property rights and a factual dispute as to the basis for such deprivation invokes Mr. Lee's constitutional protections of due process. At the very least, Mr. Lee is entitled to a fair and impartial hearing on the factual dispute as to whether all the Receivership Entities at all times relevant to his claims were in fact part of a Ponzi scheme. A similar situation was addressed by the Eleventh Circuit Court of Appeals in *S.E.C. v. Elliot*.<sup>7</sup> In that case a Receiver's fraudulent transfer claim was summarily adjudicated against the defendant. The deprivation of the defendant's opportunity to a fact hearing was a violation of the defendant's constitutionally protected right to due process. Identically, you are summarily determining the disposition of a substantial property interest in this case. Likewise, you must afford Mr. Lee an opportunity to have the factual issues of this determination heard and decided by a fair and impartial tribunal to avoid violating constitutional due process.

Mr. Lee will be supplementing this objection with an expert analysis of the documentary evidence related to the Receivership Entities. You have only recently provided any real documentary support and analysis for your allegations regarding the existence of a Ponzi scheme. However, these filings were not made in this case but in the supplemental proceeding against Mr. Lee.<sup>8</sup> Due to the recent receipt of this evidence and the shared identity of the factual allegations of a Ponzi scheme in that case and this one, Mr. Lee should be allowed additional time to submit an expert analysis of this evidence in response. Because Mr. Lee disputes that all the relevant Receivership Entities were involved in a Ponzi scheme at all times relevant to his claims, he should be afforded an opportunity to have the Court hear his arguments and consider his evidence on this matter.

Additionally, from your limited analysis of Mr. Lee's Claims it appears you have erroneously included Mr. Lee's gains from Traders Investment Club ("Traders") as False Profits. Again, this presumes without the requisite proof that Traders was part of a Ponzi scheme. Even if Traders was included in a Ponzi scheme, you have provided no evidence to support it began as early as 2003 to include the last withdrawals by Mr. Lee. The alleged False Profits from Traders cannot be fairly subtracted from Mr. Lee's losses if a Ponzi scheme during the relevant time remains unproven. To assist you with your analysis Mr. Lee has prepared a preliminary breakdown of the investment gains as derived from documents cited to or prepared by you in this case. This evidence will be supplemented further with the expert analysis mentioned above.

To promote the fairness you claim to seek in these proceedings it is only proper to submit these Claims to the Court for a full hearing on their determination. I look forward to working with you to promote a fair and equitable resolution of these Claims. Please do not hesitate to

---

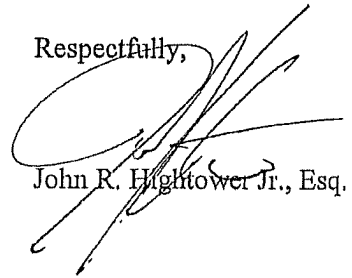
<sup>6</sup> *Katchen v. Landy*, 86 S. Ct. 467, 473 (1966).

<sup>7</sup> *S.E.C. v. Elliot*, 953 F.2d 1560 (11th Cir. 1992).

<sup>8</sup> The Receiver's Renewed Omnibus Motion for Partial Summary Judgment, *Wland v. Vernon M. Lee, et al.*, Case No.: 8:10-cv-210-T-17MAP. Doc. 61.

contact our office regarding this matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'John R. Hightower Jr.', is written over the printed name. The signature is stylized with a large, sweeping initial 'J' and 'H'.

John R. Hightower Jr., Esq.

464 VAL Vernon M.Lee (RA-Valhalla Investment Partners, L.P.)																																															
Year	Actual Gains: Actual gains as % of Reported*		K-1 Reported Begin Value	K-1 EOY Reported Value		K-1 Contribution	K-1 Withdrawal	K-1 Reported Gain	Adjusted Actual		RFG Actual Gain % ***	Adjusted Actual Gain Calculated RFG***																																			
	Reported**	as % of Reported*		Reported	Value				Actual	Gain**																																					
1999	nr	3.72%	na	na	na	na	na	na	na	na	2.46%																																				
2000	nr	neg	\$0.00	\$56,010.00	\$50,000.00	\$0.00	\$6,010.00	unk	unk	unk	-91.24%	\$6,010.00																																			
2001	nr	neg	\$56,010.00	\$408,802.00	\$300,000.00	\$0.00	\$52,792.00	unk	unk	unk	-98.79%	\$52,792.00																																			
2002	nr	neg	\$408,802.00	\$0.00	\$0.00	\$443,262.00	\$34,460.00	unk	unk	unk	-80.82%	\$34,460.00																																			
2003	73.00%	83.67%	na								110.84%																																				
2004	10.00%	10.97%	na								9.39%																																				
2005	9.00%	9.91%	na								3.85%																																				
2006	neg	neg	na								-0.64%																																				
2007	neg	neg	na								7.3% ?																																				
2008	neg	neg	na								-42.31%																																				
Vernon M.Lee out of Valhalla in 2002																																															
receiver declares it Ponzi from 1999 therefore no gains. Receiver has not verified Ponzi.																																															
<table border="1"> <thead> <tr> <th colspan="4">Claimed</th> <th>Claim</th> </tr> <tr> <th>Summary</th> <th>Per Receiver</th> <th>Per IRS K-1's</th> <th>Provided</th> <th>Per RFG ***</th> </tr> </thead> <tbody> <tr> <td>Total Contribution</td> <td>\$350,000.00</td> <td>\$350,000.00</td> <td></td> <td>\$350,000.00</td> </tr> <tr> <td>Total Gains</td> <td>\$0.00 Per Ponzi</td> <td>\$93,262.00</td> <td></td> <td>\$93,262.00</td> </tr> <tr> <td>Total Investment Basis</td> <td>\$350,000.00</td> <td>\$443,262.00</td> <td></td> <td>\$443,262.00</td> </tr> <tr> <td>Total Withdrawal</td> <td>\$443,262.00</td> <td>\$443,262.00</td> <td></td> <td>\$443,262.00</td> </tr> <tr> <td>Net Investment Basis</td> <td>\$93,262.00</td> <td>\$0.00</td> <td></td> <td>\$0.00</td> </tr> </tbody> </table>													Claimed				Claim	Summary	Per Receiver	Per IRS K-1's	Provided	Per RFG ***	Total Contribution	\$350,000.00	\$350,000.00		\$350,000.00	Total Gains	\$0.00 Per Ponzi	\$93,262.00		\$93,262.00	Total Investment Basis	\$350,000.00	\$443,262.00		\$443,262.00	Total Withdrawal	\$443,262.00	\$443,262.00		\$443,262.00	Net Investment Basis	\$93,262.00	\$0.00		\$0.00
Claimed				Claim																																											
Summary	Per Receiver	Per IRS K-1's	Provided	Per RFG ***																																											
Total Contribution	\$350,000.00	\$350,000.00		\$350,000.00																																											
Total Gains	\$0.00 Per Ponzi	\$93,262.00		\$93,262.00																																											
Total Investment Basis	\$350,000.00	\$443,262.00		\$443,262.00																																											
Total Withdrawal	\$443,262.00	\$443,262.00		\$443,262.00																																											
Net Investment Basis	\$93,262.00	\$0.00		\$0.00																																											
Notes																																															
* From Receivers 1st -5th Reports Page 15, Table 1 (Note 2000, 2001, 2002 are omitted) FMV of Moody Investments omitted																																															
**From Receivers 6th Report Page 15, Table 1 ( note 1999 -2003 added) FMV of Moody Investments omitted.																																															
*** RFG data omits FMV of Moody Investments estimated for \$1-6 million per year resulting in inaccurate unmeaningful negative data.																																															

\* From Receivers 1st-5th Reports Page 15, Table 1 (Note 2000, 2001, 2002 are omitted) FMV of Moody Investments omitted

\*\*\*From Receivers 6th Report Page 15, Table 1 (note 1999 -2003 added) FMV of Moody Investments omitted.

\*\*\* RFG data omits FMV of Moody Investments estimated for \$1-6 million per year resulting in inaccurate unmeaningful negative data.

RFG data from 9/24/10 submittal from Lamont





\* From Receivers 1st-5th Reports, Page 15, Table 1, (note 2001, and 2002 blank in report) FMV of moody Investments omitted

\* From Receivers 6th Report, Page 15, Table 1, (note 1999 to 2003 added) Negative data is due to Valhalla and it omits EMV of Moody Investments reported as £0.15 million; note 2001 and 2002 plain in report.) EMV of Moody Investments omitted.

\*\*\*RFG data submitted 9/24/10 from Lamont.