

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-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 NINETEENTH INTERIM REPORT

Receivership Information and Activity from May 1, 2015 through October 31, 2015.

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INTRODUCTION

Burton W. Wiand, the Court-appointed Receiver for the Receivership Entities as defined herein, hereby files this Nineteenth Interim Report (the “**Report**”) to inform the Court, the investors, and others interested in this Receivership, of activities from May 1, 2015 through October 31, 2015 as well as the proposed course of action.¹ As of the date of filing this Report, the Court has appointed Burton W. Wiand as Receiver over the following entities and trust:

- a) Defendants Scoop Capital, LLC (“**Scoop Capital**”) and Scoop Management, Inc. (“**Scoop Management**”) (which, along with Arthur Nadel, are collectively referred to as “**Defendants**”);
- b) Relief Defendants Scoop Real Estate, L.P. (“**Scoop Real Estate**”); Valhalla Investment Partners, L.P. (“**Valhalla Investment Partners**”); Victory IRA Fund, Ltd. (“**Victory IRA Fund**”); Victory Fund, Ltd. (“**Victory Fund**”); Viking IRA Fund, LLC (“**Viking IRA Fund**”); and Viking Fund LLC (“**Viking Fund**”) (collectively referred to as the “**Hedge Funds**”);
- c) Relief Defendants Valhalla Management, Inc. (“**Valhalla Management**”), and Viking Management, LLC (“**Viking Management**”) (which, along with Scoop Capital and Scoop Management, are collectively referred to as the “**Investment Managers**”); and
- d) Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners Association, Inc.; Marguerite J. Nadel Revocable Trust UAD 8/2/07; Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; Traders Investment Club; Summer Place Development Corporation; Respiro, Inc.; and Quest Energy Management Group, Inc.

The foregoing entities and trust are collectively referred to as the “**Receivership Entities**.”

¹ Although this Interim Report covers the period from May 1, 2015 through October 31, 2015, where practicable, the Receiver has included information in his possession through the date of the filing of this Report.

The Receiver was appointed on January 21, 2009. By January 26, 2009, the Receiver established an informational website, www.nadelreceivership.com. The Receiver has updated this website periodically and continues to update it with the Receiver's most significant actions to date; important court filings in this proceeding; and other items that might be of interest to the public. This Report, as well as all previous and subsequent reports, will be posted on the Receiver's website.

Overview of Significant Activities During this Reporting Period

During the time covered by this Interim Report, the Receiver and his Professionals engaged in the following significant activities:

- Continued to pursue litigation for the recovery of false profits (and in some cases, all transfers) from investors (i.e., from “**Profiteers**”) and engaged in efforts to collect on judgments obtained in connection with litigation;
- As of December 1, 2015, the Receiver has reached 159 agreements to settle with Profiteers and non-profit organizations in the amount of \$25,674,831.09 and obtained 19 judgments against Profiteers in the amount of \$6,382,396.02, for a total combined amount of **\$32,057,227.11** (plus additional non-cash assets);²
- Engaged in activities to collect on the Rowe Judgment in the amount of \$4,028,385.00, which has resulted in the recovery of **\$2,895,907.72** on this judgment as of December 1, 2015;
- Reached and obtained approval of a settlement agreement with Branch Banking and Trust Company (“**BB&T**”) which provides that the Receiver pay BB&T \$10,000 to resolve an appeal it filed and its claim to any portion of the sale

² This amount does not include a judgment in the amount of \$4,028,385.00 the Receiver obtained against Don and Joyce Rowe and certain of their affiliated entities (the “**Rowe Judgment**”). However, this amount does include a judgment for prejudgment interest in favor of the Receiver in the amount of \$17,724.12 which the Receiver has appealed because he believes the Receivership is entitled to a greater amount. See Section IV.E.1 below for more information regarding this judgment and the appeal.

proceeds of property located in Fairview, North Carolina with the remainder of the sale proceeds – \$257,720.59 – going to the Receivership;

- Redeemed 36,000 shares of First America Bank Corp. (“**First America**”) pursuant to the terms of merger between First America and HCFB Holding Company for the total amount of **\$288,000.00**;
- Obtained \$13,610.94 in funds from three bank accounts which previously had been frozen;
- Pursued an appeal of the court’s adverse summary judgment ruling in litigation against Wells Fargo to recover damages and fraudulent transfers relating to the bank’s activities in connection with the Ponzi scheme underlying this case, oral argument was set for January 26, 2016, but it was canceled by the Court and the order said it would be rescheduled, but to date it has not been;
- Maintained Receivership funds in appropriate accounts. As of December 1, 2015, the total funds in all Receivership accounts are approximately \$13,293,498.10, which includes \$2,803,646.58 being held in reserves for objections in the claims process and \$4,377,456.84 being held in separate accounts until a claim to these funds is resolved;
- Substantially prepared a motion seeking the approval of a fifth interim distribution in the amount of \$3,000,000 on a *pro rata* basis which the Receiver intends to file with the Court in the near future;
- Continued to operate ongoing businesses, and where possible, enhance the value of those businesses resulting in the generation of \$308,048.10 in gross business income; and
- Generated \$32,850.98 in interest/dividend income; \$287,500 in business asset liquidation income; \$294,765.88 in third-party litigation income; and \$301,610.94 in other income.

The above activities are discussed in more detail in the pertinent sections of this Interim Report.

BACKGROUND

I. Procedure and Chronology.

Defendant Arthur Nadel (“**Nadel**”) was the Hedge Funds’ principal investment advisor and an officer and director of Scoop Management and sole managing member of

Scoop Capital. On January 21, 2009, the Commission filed a complaint in this Court charging the Defendants with violations of federal securities laws. In this proceeding, the Commission alleged that Nadel used the Investment Managers to defraud investors in the Hedge Funds from at least January 2008 forward by “massively” overstating investment returns and the value of fund assets to investors in these funds and issuing false account statements to investors. The Commission also asserted that Nadel misappropriated investor funds by transferring \$1.25 million from Viking IRA Fund and Valhalla Investment Partners to secret bank accounts. The Court found the Commission demonstrated a *prima facie* case that the Defendants committed multiple violations of federal securities laws. On August 18, 2010, the Court entered a consent Judgment of Permanent Injunction and Other Relief against Nadel which permanently enjoined Nadel from further violations of the antifraud provisions of the federal securities laws and ordered Nadel to disgorge ill-gotten gains and pay prejudgment interest (Doc. 460).

On January 21, 2009, the same day the Commission filed its complaint, the Court entered an order appointing Burton W. Wiand as Receiver for the Investment Managers and Hedge Funds (the “**Order Appointing Receiver**”). (*See generally* Order Appointing Receiver (Doc. 8).) Between January 27, 2009, and May 24, 2013, the Receiver sought and successfully obtained the expansion of the Receivership to include: Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners Association, Inc.; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; Summer Place

Development Corporation; Traders Investment Club; Respiro, Inc.; and Quest Energy Management Group, Inc. These entities will hereinafter be referred to collectively as the “**Additional Entities.**” (Docs. 17, 44, 68, 81, 153, 172, 454, 911, 916, and 1024.)

On April 28, 2009, Nadel was indicted on six counts of securities fraud, one count of mail fraud, and eight counts of wire fraud. On February 24, 2010, Nadel pled guilty to all counts in the indictment. On October 21, 2010, Nadel was sentenced to 14 years in prison. Nadel died in prison on April 16, 2012.

II. Overview of Findings.

The Receiver discovered that from 1999 through 2008, approximately \$330 million was raised in connection with over 700 investor accounts on behalf of one or more of the Hedge Funds by Nadel and his entities, Scoop Management and Scoop Capital; by the rest of the Fund Managers; and by Neil and Christopher Moody (the “**Moody’s**”) through the offer and sale of securities in the form of interests in Hedge Funds as part of a single, continuous Ponzi scheme. As discussed in prior Interim Reports, Nadel grossly overstated the trading results of the Hedge Funds. Despite significantly lower, and typically negative yields (*i.e.*, trading losses), Nadel, the Moody’s, and the Fund Managers falsely communicated to investors and potential investors, through monthly “statements,” Hedge Funds’ “Executive Summaries,” and other methods, that investments were generating positive returns and yielding between 10.97% and 55.12% per year. For most years, they falsely represented the investments were generating returns between 20% and 30%.

To perpetrate and perpetuate this scheme, Nadel caused the Hedge Funds to pay investors “trading gains” as reflected on their false monthly statements. The funds used to

pay these trading gains were not generated from trading activities; rather they came from new or existing investors. Nadel further caused the Hedge Funds to pay tens of millions of dollars in fees. Those fees were based on grossly inflated returns, and thus, were improperly and wrongfully paid. The negative cash flow of the Hedge Funds made the eventual collapse of Nadel's scheme inevitable.

As mentioned above, on February 24, 2010, Nadel pled guilty to all counts in the indictment relating to this scheme and on October 21, 2010, was sentenced to 14 years in prison. For a more detailed overview of the Receiver's findings, please refer to the Ninth Interim Report.

ACTIONS TAKEN BY THE RECEIVER

Since his appointment on January 21, 2009, the Receiver has taken a number of steps to fulfill his mandates under the Order Appointing Receiver. For additional efforts of the Receiver, please refer to prior Interim Reports.

III. Securing the Receivership Estate.

A. Securing and Recovering Receivership Funds.

During the time covered by this Interim Report, Receivership funds were held at Centennial Bank (formerly known as Bay Cities Bank) in a non-interest bearing operating account and two variable interest rate money market accounts. As of December 1, 2015, the total funds in all Receivership accounts are approximately **\$13,293,498.10**, which includes \$2,803,646.58 being held in reserves for objections in the claims process and \$4,377,456.84 being held in separate accounts until a claim to these funds is resolved. The Receiver continues to review the appropriate action to take with respect to Receivership funds in light

of the current state of the economy. If appropriate and in the best interests of the Receivership, he will move the funds into other interest-bearing accounts and/or revenue-generating investments.

On August 4, 2015, the Receiver filed a motion for possession of certain bank accounts controlled by Arthur Nadel and partial modification of asset freeze (Doc. 1188). The Receiver sought this relief to close three bank accounts in the names of Arthur Nadel and the Clark-Nadel Revocable Trust held with Wells Fargo Bank which were frozen by the Court after the collapse of Nadel's scheme. These accounts held a combined balance of \$13,610.94. Because the accounts were frozen and not titled in the name of a Receivership Entity, Wells Fargo informed the Receiver that it required an order from the Court modifying the asset freeze to permit it to release the money in the accounts to the Receiver and close the accounts. The Court granted the Receiver's motion on August 4, 2015 (Doc. 1189). The Receiver received the full amount of the funds on August 19, 2015.

1. Recovery of Tax Refunds.

The Receiver has sought to obtain tax refunds owed to certain insiders based upon taxes paid in prior years on nonexistent trading profits, periodic taxes paid on anticipated income that was never earned, and/or overpayment of taxes as a result of loss of investment. As a result of these efforts, the Receiver has recovered a total sum of **\$3,777,343.60** in tax refunds from Form 1045 Applications for Tentative Refund ("**Form 1045**") for carryback losses on behalf Marguerite Nadel, Chris Moody, Neil Moody, and Sharon Moody. The Receiver also submitted amended tax returns for Arthur Nadel seeking the return of approximately \$2,393,250.00. The Receiver sought and received authorization from the

Court to execute and submit these returns and receive any tax refund payable to Nadel (Docs. 1097, 1100 and 1105). The Receiver has been informed that the IRS has completed its audit review of these returns and that questions it had were resolved in favor of the Receiver. It is the Receiver's understanding that the IRS is continuing to review the matter to determine the final amount of the refund. Because of various issues regarding the amended returns, the precise amount of recovery is unknown, however, the Receiver believes it will exceed \$1,400,000.00 and may exceed \$2,500,000.00.

The Receiver also recovered two tax refund checks totaling \$1,261,359.33 from Mrs. Nadel as a result of improperly filed documents with the IRS on behalf of a Receivership Entity. Including these two refund checks, the total amount the Receiver has recovered from federal tax refunds to insiders is **\$5,038,702.93**. For more detailed information regarding the Receiver's efforts to recover tax refunds, please refer to the Ninth Interim Report.

B. Receivership Accounting Report.

Attached as **Exhibit A** to this Interim Report is a cash accounting report showing the amount of money on hand as of May 1, 2015 less operating expenses plus revenue through October 31, 2015. This cash accounting report does not reflect non-cash or cash-equivalent assets. Thus, the value of all property discussed in Section IV below is not included in the accounting reports. From May 1, 2015 through October 31, 2015, the Receiver received \$308,048.10 in business income from ongoing operations of Receivership Entities;³

³ The income numbers provided in this and the following paragraph are gross figures and do not include any offset for business operations costs or any other expenses.

\$32,850.98 in interest/dividend income; \$287,500.00 in business asset liquidation income; \$294,765.88 in third-party litigation income; and \$301,610.94 in other income.⁴ (Ex. A.)

Since the inception of the Receivership through October 31, 2015, the Receiver received \$7,433,625.08 in business income from ongoing operations of some Receivership Entities; \$2,066,501.32 in cash and securities; \$1,039,207.23 in interest/dividend income; \$7,433,643.58 in business asset liquidation; \$120,000.00 in personal asset liquidation; \$68,168,498.89 in third-party litigation income; and \$7,494,567.73 in other income.

IV. Asset Analysis and Recovery.

A. Expansion of Receivership to Include Additional Entities.

As noted above, the Receiver sought and successfully obtained the expansion of the Receivership to include the Additional Entities. The Receiver's investigation revealed that the Additional Entities were purchased and/or funded with money derived from Nadel's fraudulent investment scheme. The following discussion of the Additional Entities includes a description of assets the Receiver has acquired as a result of the businesses' inclusion in the Receivership. Assets, including Additional Entities, which have been sold or otherwise disposed of are identified on the attached **Exhibit B**. Exhibit B includes a description of the asset, any known encumbrances related to the asset, the disposition of the asset, and the amount received from the sale of the asset, and/or the amount of debt waived in connection with the disposition of the asset. For more information regarding assets identified on Exhibit

⁴ The "other income" includes: \$288,000.00 for the redemption of 36,000 shares of First American Holdings Corp. and \$13,610.94 obtained in funds which were previously frozen.

B, please refer to prior Interim Reports. Assets which have not been sold or otherwise disposed of are discussed below.

1. Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; and Laurel Mountain Preserve Homeowners Association, Inc.

Laurel Preserve, LLC (“**Laurel Preserve**”), holds title to approximately 420 acres near Asheville, North Carolina intended for the development of home-sites (the “**Laurel Mountain Property**”). On February 11, 2009, the Court expanded the Receivership to include Laurel Mountain Preserve, LLC, Laurel Preserve, and the Laurel Mountain Preserve Homeowners Association, Inc. Since the Receiver’s appointment as Receiver of these entities, he has taken control of them and is working on marketing for sale the Laurel Mountain Property. This property currently does not generate any income. The Laurel Mountain Property encompasses 29 lots, including 23 estate-sized and 6 cottage-sized lots. There is also a cabin home on this property that, according to the Buncombe County Property Appraiser, is valued at \$294,000 (as of August 22, 2014). The Laurel Mountain Property’s infrastructure is fully developed: infrastructure and utilities are in place and are fully functional. The Laurel Mountain Property has two known encumbrances. The first encumbrance is a \$360,157.37 loan from BB&T Bank. The second encumbrance is a \$1,900,000 interest only loan from Wells Fargo.

For more information regarding the Laurel Mountain Property, please visit <http://www.laurelmountainpreserve.com>. Parties interested in purchasing this property should contact the Receiver directly.

2. **Guy-Nadel Foundation, Inc.**

The Guy-Nadel Foundation, Inc. (the “**Foundation**”), is a Florida non-profit corporation Nadel formed in December 2003 for “charitable, educational and scientific purposes.” The Foundation was funded with proceeds of Nadel’s scheme. On March 9, 2009, the Court expanded the Receivership to include the Foundation. Since the Receiver’s appointment as Receiver of the Foundation, he has taken control of it and has been marketing the real property owned by the Foundation.

North Carolina Parcels

The Receiver has possession and control of approximately eight lots that are essentially adjacent to each other and to the Laurel Mountain Property. The Receiver is currently marketing this property with the Laurel Mountain Property. Parties interested in purchasing this property should contact the Receiver directly.

Thomasville, Georgia Parcels

Additionally, the Receiver has possession and control of two small undeveloped lots in Thomasville, Georgia (collectively referred to as the “**Lots**”). The first lot is a .12 acre parcel located at 211 Church Street (the “**Church Street Lot**”) that was purchased by the Foundation in December 2006 for \$4,000. In 2014, the Thomas County Board of Tax Assessors assigned the Church Street Lot a taxing value of \$2,224. The second lot is a 1.17 acre parcel located on North Stevens Street (the “**North Stevens Street Lot**”) that was purchased by the Foundation in January 2008 for \$24,000. In 2014, the Thomas County Board of Tax Assessors assigned the North Stevens Street Lot a taxing value of \$10,342. Parties interested in purchasing the Lots should contact the Receiver directly.

3. Viking Oil & Gas, LLC.

Viking Oil & Gas, LLC (“**Viking Oil**”) is a Florida limited liability company formed in January 2006 by the Moodys to make personal investments in an oil and gas venture. Viking Oil was funded with proceeds from Nadel’s scheme. On July 15, 2009, the Court expanded the Receivership to include Viking Oil. (Order, Doc. 153.) The funds invested in Viking Oil were used to purchase an investment interest in Quest. Between February 2006 and April 2007, through Viking Oil, the Moodys invested \$4 million to fund a working interest in Quest. As discussed in Section IV.A.5, below, the Receiver has expanded the Receivership to include Quest.

4. Summer Place Development Corporation.

Summer Place is a Florida company that was purchased by Clyde Connell in December 2005 and from whom Nadel, through Scoop Capital, purchased a fifty-percent ownership stake with total payments of \$63,204.99 to Mr. Connell. In April 2009, the Receiver replaced Nadel as Director, Secretary, and Treasurer of Summer Place and Scoop Capital’s shares in Summer Place were transferred to the Receiver. The Receiver attempted to sell his fifty-percent ownership with no success. In April 2012, Mr. Connell and Juanita Connell, the only other Summer Place shareholders, relinquished their interest in Summer Place and transferred their membership units to the Receiver in exchange for the Receiver’s agreement to pay them one-half of the net proceeds from the sale of assets owned by Summer Place.

Summer Place owns a six-acre parcel in Bradenton, Florida, which has no known liens or encumbrances. Summer Place was originally created to build thirty affordable home

sites on this property. However, due to the decline in the market for affordable housing, no development ever occurred. Summer Place has had no operations for several years and currently generates no income. Taxes on the property are approximately \$3,000 a year. On September 11, 2012, the Receiver filed a motion asking the Court to expand the Receivership to include Summer Place (Doc. 909). The Court granted this motion on September 12, 2012 (Doc. 911). The Receiver sought the expansion of the Receivership to include Summer Place so that he could market and sell the six-acre parcel of land. Parties interested in purchasing this property should contact:

Ben Bakker
Michael Saunders & Company
100 South Washington Blvd.
Sarasota, Florida 34236
Phone: (941) 724-8009

5. Quest Energy Management Group, Inc.

Quest is an oil and gas exploration and production company based in Texas. Paul Downey was its Chief Executive Office, and his son Jeff Downey was its Chief Operating Officer (collectively the “**Downeys**”). The Moodys, through Viking Oil, used scheme proceeds of \$4 million to fund Quest. Through Valhalla Investment Partners, L.P., the Moodys funneled an additional \$1.1 million to Quest in exchange for a promissory note from Quest and the Downeys to Valhalla Investment Partners. To try to preserve Quest’s value for the benefit of the Receivership estate and, ultimately, for defrauded investors in Nadel’s scheme, on March 21, 2013, the Receiver moved to expand the Receivership to include Quest (Doc. 993). The Court granted this motion on May 24, 2013 (Doc. 1024). The

Receiver has filed three Interim Reports on Quest (Docs. 1054, 1117, and 1145) (all three Interim Reports are collectively referred to as the “**Quest Reports**”).

On November 20, 2014, the SEC filed an enforcement action in the U.S. District Court for the Northern District of Texas against the Downeys and John M. Leonard, and individual who helped the Downeys raise money. *See S.E.C. v. P. Downey et al.*, Case No. 1:14-cv-185 (N.D. Tex.). The SEC asserted claims against the Downeys for their violations of the anti-fraud provisions of the federal securities laws in connection with their activities on behalf of Quest.

On November 12, 2014, the Court granted the Receiver’s motion for leave to retain WhiteHorse Partners, LLC (“**WhiteHorse**”), a boutique advisory firm based in Nashville, Tennessee, to market and assist the Receiver with the sale of Quest. WhiteHorse is familiar with the oil and gas industry and has marketed and sold companies (or is currently marketing and in the process of selling) similar to Quest. For more information regarding WhiteHorse, please refer to the Receiver’s Third Interim Report on Quest. WhiteHorse has been marketing Quest for sale and has not yet received any viable offers which reflect the reasonable market value of Quest.

Since the expansion of the Receivership to include Quest, the Receiver has and will continue to maintain a separate accounting of revenues and expenses for Quest. The Receiver has been able to grow Quest’s revenues since that time and therefore, he believes Quest will likely generate sufficient revenues to cover its expenses. The Receiver currently believes that the assets and potential value of Quest is significantly less than the outstanding balance of investors’ investment amount in Quest.

For more information regarding Quest, the Receiver's investigation of it, and the Receiver's proposed course of action, please refer to the Receiver's Quest Reports, which are available on the Receiver's website.

B. Recovery of Real Property.

In addition to the assets discussed in conjunction with the expansion of the Receivership in Section IV.A, the Receiver has also recovered a number of other assets, some of which continue to be valued, assessed, and otherwise analyzed for liquidation, disposition, or other action. Again, assets which have been sold or otherwise disposed of are identified on the attached **Exhibit B**.

1. Fairview, North Carolina.

On March 30, 2009, the Court granted the Receiver's motion for possession of property located in Fairview, North Carolina (the "**Fairview Property**") (Doc. 100). The Fairview Property had one known encumbrance: a loan with BB&T on which there was a remaining principal balance of approximately \$248,941.73. BB&T, however, failed to submit a timely proof of claim form for the loan, despite receiving notice of the claims process and filing a claim related to another encumbered Receivership property. On November 17, 2014, the Receiver filed a verified motion to approve the sale of the Fairview Property (Doc. 1150). On November 18, 2014, the Court granted the motion in its entirety (Doc. 1151). In pertinent part, the Order approved the sale of the Fairview Property for \$287,500.00 and approved the Receiver's request to allow him to hold the proceeds in trust until the dispute between the Receiver and BB&T was resolved. On November 21, 2014, the

Receiver received the net amount of \$267,720.59 from the sale of the property after payment of commission and normal closing costs.

On March 5, 2015, BB&T filed a motion for turnover of the sale proceeds of the Fairview Property (Doc. 1159). In part, BB&T contended that it was not required to submit a Proof of Claim Form to protect its lien because it was a secured creditor and the Receiver was on notice of the lien. The Receiver filed an opposition to this motion on March 23, 2015 (Doc. 1163). On April 15, 2015, the Court entered an order denying BB&T's motion and directing the release of the sale proceeds to the Receiver (Doc. 1174). On May 12, 2015, BB&T filed a notice of appeal of this decision (Doc. 1178). On July 28, 2015, the Receiver filed a motion to approve a settlement agreement reached between him and BB&T (Doc. 1186). In pertinent part, the settlement agreement provides that the Receiver agrees to pay \$10,000 to BB&T to resolve BB&T's pending appeal and its claim to any portion of the sale proceeds for the Fairview Property. The Court approved the settlement agreement on July 28, 2015 (Doc. 1187). The Receiver has deposited the remainder of the sale proceeds – \$257,720.59 – into the Receivership accounts.

2. Sarasota, Florida (La Bellasara).

On January 28, 2010, the Court granted the Receiver's motion (Doc. 324) for possession of property located at 464 Golden Gate Point, Unit 703, Sarasota, Florida (the "**Bellasara Property**") (Doc. 327). The Bellasara Property is a residential condominium unit in a building called La Bellasara. On or about May 23, 2006, Neil Moody as Trustee of the Neil V. Moody Revocable Trust purchased the Bellasara Property for \$2,160,000. The Bellasara Property has two known encumbrances: a primary mortgage loan in the amount of

\$956,000 and a home equity line of credit from Wells Fargo with an initial balance of \$880,000. The primary mortgage loan from MSC Mortgage, LLC was assigned to Wells Fargo soon after Moody's purchase of the Bellasara Property and subsequently assigned in 2009 to Bank of America. The primary loan is currently serviced by Wells Fargo.⁵ Neither bank ever filed a claim in the Receivership relating to either of the two loans. The Receiver is also aware that La Bellasara Condominium Association, Inc. has asserted that it is owed approximately \$154,626.30 in unpaid condominium assessments. The condominium association also did not file a claim in the Receivership.

On April 15, 2015, the Receiver filed a verified motion to approve the sale of the Bellasara Property (Doc. 1174). On April 29, 2015, the Court granted the motion in its entirety (Doc. 1177). In pertinent part, the Order approved the sale of the Bellasara Property for \$2,300,000 and approved the Receiver's request to allow him to hold the proceeds in trust until the disputes between the Receiver and the banks and the condominium association are resolved. On June 1, 2015, the Receiver received the net amount of \$2,147,993.69 from the sale of the property after payment of commissions and normal costs associated with the sale. As noted above, the Receiver presently is holding these proceeds in a separate account.

3. Marshfield, Vermont.

The Receiver obtained two adjacent parcels of real property located in Marshfield, Vermont at 3343 U.S. Route 2 and 3353 U.S. Route 2 (collectively the "**Vermont Properties**") in connection with the settlement of litigation against Nadel's daughter-in-law,

⁵ Counsel for Wells Fargo represented that, as of April 8, 2014, the amount due on the primary loan was \$1,325,431.52 and the amount due on the second loan was \$936,358.60.

Anne Nadel. Nadel purchased the 3343 Property on September 3, 2004 for \$122,000 and purchased the 3353 Property on July 29, 2005 for approximately \$56,884. There is a tax lien on the properties in the amount of approximately \$49,710, which the Receiver intends to satisfy upon the sale of the properties. Parties interested in purchasing the Vermont Properties should contact:

Beth Harrington-McCullough
Harrington Realty
P.O. Box 96
Cabot, VT 05647
Phone: (802) 563-6000
Email: <http://www.harringtonvt.com>

C. Recovery of Other Items.

The Receiver has recovered various other items, including vehicles, jewelry, promissory notes, and stock. Any of these items which have been sold or otherwise disposed of are identified on the attached Exhibit B. For more information regarding these items and their disposition, please refer to prior Interim Reports.

1. Deficiency Judgment and Promissory Note.

The Receiver has a deficiency judgment against the former owner of a condominium who had executed a promissory note payable to Mrs. Nadel. The Receiver foreclosed on the condominium and obtained a deficiency judgment in the amount of \$99,963.37. The Receiver recorded this judgment and is attempting to collect on it. (See Exhibit B for information regarding the disposition of the condominium.)

As mentioned above in Section IV.A.5, the Receiver also has a promissory note from Quest and the Downeys to Valhalla Investment Partners in the amount of \$1,100,000. Quest made monthly interest payments on this note through January 2013.

2. Other Securities.

The Receiver obtained 36,000 shares of First America from Neil Moody in connection with his turnover of assets discussed in Section IV.D below. On May 5, 2015, First America Bank Corp. was acquired by HCFB Holding Company. The plan of merger provided for approximately \$33 million for all outstanding shares of First America. The consideration per share was \$8.00. This was an all cash tender with no other options. On June 5, 2015, the Receiver redeemed the shares held by the Receivership for the total amount of \$288,000.

3. Miscellaneous Items.

The Receiver recovered a myriad of other items that he may be able to sell, including a variety of furniture, artwork, sculptures, fixtures, computers, and miscellaneous supplies. The Receiver will make reasonable efforts to maximize the amount he is able to recover from the possible sale of these items.

D. Recovery of Assets from the Moodys.

The Receiver's investigation revealed that a significant portion of activities of certain Hedge Funds should have been managed and directed by the Moodys. Together, the Moodys received approximately \$42 million in fees from certain Receivership Entities.⁶

⁶ For information regarding the enforcement action instituted against the Moodys, please refer to the Fourteenth Interim Report and prior Interim Reports.

Chris Moody cooperated with the Receiver in connection with the turnover of all of his assets. On January 19, 2010, Chris Moody gave the Receiver a power of attorney which allowed the Receiver to effectuate the transfer of most of his assets without any direct participation from Chris Moody. The Receiver met with Chris Moody, confirmed the assets he owned, and reviewed in detail Chris Moody's interests and liabilities in those assets.

Neil Moody initially did not cooperate with the Receiver. Accordingly, the Receiver instituted an action against him individually and in his capacity as Trustee of the Neil Moody Revocable Trust and the Neil Moody Charitable Foundation. On January 6, 2011, the Receiver reached an agreement with Neil Moody to settle claims brought by the Receiver against him and his related entities. The Court approved this settlement on February 23, 2012 (Doc. 754). For more information regarding this settlement, please refer to the Twelfth Interim Report.

Meaningful assets the Receiver has identified for Chris Moody are delineated on the attached **Exhibit C**. Neil Moody's meaningful assets are identified on the attached **Exhibit D**. Where possible, Exhibits C and D provide the percentage of interest acquired or purchase price and the status or disposition of the asset. The Receiver is continuing to evaluate these assets and will take appropriate actions as he determines are in the best interests of the Receivership. Entities in which the Receiver believes he may have a viable interest or potential for meaningful recovery have been put on notice of the Receiver's interests and rights.

E. Litigation.

In January 2010, the Receiver filed **134** lawsuits seeking approximately **\$71,096,326.43**. The lawsuits sought (1) the recovery of false profits from investors; (2) the recovery of transfers from Receivership Entities to Neil and Sharon Moody, Donald and Joyce Rowe, and certain of their affiliated entities;⁷ (3) the recovery of other transfers, such as commissions, from other individuals and/or entities;⁸ and (4) the recovery of certain charitable contributions made with scheme proceeds.⁹ The Receiver also initiated litigation against Holland & Knight,¹⁰ Wells Fargo Bank, and Anne Nadel.

1. Recovery of “Investment” – Related Transfers from Investors.

As discussed in Section III.C above, the Receiver determined that some purported investor accounts received monies in an amount that exceeded their investments. These purported profits were false because they were not based on any trading or investment gain, but rather were fruits of a Ponzi scheme that consisted of commingled funds of new and

⁷ The Receiver has resolved the action against Neil and Sharon Moody and related entities through settlement. For more information regarding these settlements, please refer to the Tenth and Twelfth Interim Reports.

⁸ In January 2010, the Receiver initiated lawsuits against three individuals to recover transfers received as commissions or “compensation.” The Receiver resolved these matters for the total amount of \$152,121.09.

⁹ All actions the Receiver brought against non-profit organizations have been amicably resolved by settlement agreements. For more information regarding these actions and their resolution, please refer to the Twelfth Interim Report and prior Interim Reports.

¹⁰ The Receiver settled this matter for the payment of \$25,000,000 to the Receiver in exchange for a broad release of claims and a bar order. After deducting fees and costs attributable to counsel, on November 8, 2012, the Receiver collected \$18,232,983.59 from this settlement.

existing investors. The Receiver discovered approximately \$35 million in such “false profits.” In consultation with the Commission, the Receiver concluded that, in the best interests of the Receivership Entities and the investors as a whole, these inequitable distributions should be recovered and distributed in an equitable manner among Claimants holding legitimate and allowed claims (as determined by the claims process).

As of November 30, 2015, the Receiver has reached 159 agreements to settle with Profiteers and non-profit organizations in the amount of **\$25,674,831.09** and obtained 19 judgments against Profiteers in the amount of **\$6,382,396.02** for a total combined amount of **\$32,057,227.11** (plus additional non-cash assets).¹¹ The Court has approved all of the settlements. The only actions which remain pending are those in which the defendants appealed the Court’s decisions in favor of the Receiver and the appellate court remanded for a determination of prejudgment interest. These actions are discussed below.

In January 2010, the Receiver initiated **121** lawsuits against Profiteers seeking to recover total false profits of approximately **\$32,755,269.13** (“**January 2010 Cases**”).¹² The

¹¹ This includes \$127,114.23 which was awarded to the Receiver in an arbitration proceeding encompassing two clawback cases. The defendants paid the Receiver the entire amount awarded while the Receiver’s motion to confirm the award was pending before the Court. This also includes a judgment in the amount of \$6,477.30 for attorneys’ fees and costs which the Receiver obtained against a profiteer in connection with his frivolous objections to the Receiver’s determination of claims he submitted in the claims process and a judgment for prejudgment interest in favor of the Receiver in the amount of \$17,724.12 which, as discussed below, the Receiver has appealed because he believes the Receivership is entitled to a greater amount.

¹² In September 2010, the Receiver filed 12 additional actions against Profiteers who invested with Traders’ “accounts.” All of these cases have been resolved. For more information regarding these matters, please refer to prior Interim Reports.

complaints set forth claims for unjust enrichment and fraudulent transfers pursuant to Florida's Uniform Fraudulent Transfer Act (“**FUFTA**”). From May 25, 2011 through September 28, 2012, the Receiver filed Omnibus Motions for Summary Judgment (“**Summary Judgment Motions**”) in all January 2010 Cases then pending. Beginning on November 29, 2012 and continuing through January 11, 2013, the Honorable Magistrate Judge Mark A. Pizzo entered Reports and Recommendations on the Summary Judgment Motions in the January 2010 cases (collectively the “**Report and Recommendation**”). *See, e.g., Wiand v. Dancing \$, LLC*, Case No. 8:10-cv-0092-EAK-MAP (M.D. Fla.), Doc. 121. The Magistrate Judge recommended the Summary Judgment Motions be granted and found that (1) Nadel operated the Hedge Funds and Traders as a Ponzi scheme at the time he made the transfers to the defendants, and (2) the transfers to the defendants were made with the actual intent to hinder, delay, or defraud any creditor of Nadel as required by FUFTA. The Magistrate Judge further recommended that judgments be entered in favor of the Receiver. *See, e.g., id.*

The Receiver filed limited objections to the Report and Recommendation only to the portion which declined to award prejudgment interest. *See, e.g., Wiand v. Diana Cloud*, Case No. 8:10-cv-150-T-17MAP (M.D. Fla.), Doc. 72.¹³ The defendants also filed objections to

¹³ Diana Cloud filed a petition for relief under Chapter 7 of the Bankruptcy Code on April 11, 2014. The Receiver filed a proof of claim for the full amount of the judgment, \$763,539.83, plus post-judgment interest. On May 3, 2015, the bankruptcy court disallowed priority status for the claim but allowed the claim as a general unsecured claim in the amount of \$764,834.30. On October 13, 2015, the Receiver received a distribution check in the amount of \$79,399.31 representing 10.38% of the Receiver's claim in this bankruptcy. On November 9, 2015, the Receiver received an additional and final distribution of \$1,444.21 on this claim.

the Report and Recommendation, to which the Receiver responded. On January 23, 2013 and March 7, 2013, the District Court Judge entered orders adopting the Report and Recommendation in its entirety. The Court directed that the clerk enter judgments against the defendants in these matters for a total combined amount of \$2,832,354.12.¹⁴ Judgments have been entered and the Receiver is proceeding with collection efforts as appropriate.

Defendants in three matters where judgments were entered against them appealed the entry of the judgments: *Lee*; *Dancing \$*; and *Meeker*. (See *Lee*, Doc. 171; *Dancing \$*, Doc. 131; and *Meeker*, Doc. 150). The Eleventh Circuit issued decisions in all three of these matters. In each case, the Eleventh Circuit affirmed the District Court's grant of summary judgment in favor of the Receiver and reversed its denial of the Receiver's request for prejudgment interest for abuse of discretion. The Eleventh Circuit remanded the decisions to the District Court to determine whether equitable considerations as set forth in *Blasland, Bouck & Lee, Inc. v. City of N. Miami*, 283 F.3d 1286 (11th Cir. 2002), justify denying or reducing a prejudgment interest award in light of Florida's general rule that prejudgment interest is an element of pecuniary damages.

In *Dancing \$*, the trial court entered an order on October 2, 2014 directing the parties to submit memoranda and supporting materials addressing the *Blasland* factors and whether any equitable considerations justify denying or reducing the award of prejudgment interest.

¹⁴ See *Cloud*, Case No. 8:10-cv-150-T-17MAP, Doc. 76 (awarding \$763,539.83); *Dancing \$*, Case No. 8:10-cv-0092-EAK-MAP, Doc. 128 (awarding \$107,172.11); *Wiand v. Lee*, Case No. 8:10-cv-210-T-17MAP (M.D. Fla.), Doc. 169 (awarding \$935,631.51); *Wiand v. Morgan*, Case No. 8:10-cv-205-T-17MAP (M.D. Fla.), Doc. 130 (awarding \$380,369.00); *Wiand v. Meeker*, Case No. 8:10-cv-166-T-17MAP (M.D. Fla.), Doc. 145 (awarding \$645,641.67).

On March 27, 2015, the Magistrate Judge issued a Report and Recommendation awarding the Receiver prejudgment interest from the date the Receiver filed his action against Dancing \$ in the amount of \$17,724.12. On April 10, 2015, the Receiver filed an objection to the Report and Recommendation because the Receiver believes he is entitled to prejudgment interest on his successful claims from the date of each fraudulent transfer – not the date of the complaint as the Report and Recommendation concluded. On June 23, 2015, the District Court Judge entered an order adopting the Report and Recommendation. The Receiver filed a motion for permission to prosecute an appeal of this order *pro bono* because the dollar amount at issue is relatively small, but the Receiver believes the partially unfavorable precedent set by the order is significant and warrants appellate review (Doc. 1202). The Court granted the Receiver permission to prosecute the appeal (Doc. 1203). On July 28, 2015, the Receiver filed a notice of appeal. The Receiver's initial brief was filed on September 15, 2015.

The defendant in *Meeker* filed a petition for rehearing en banc in the Eleventh Circuit on October 6, 2014. The appellate court issued an order denying this petition on November 13, 2014 and entered the opinion as the judgment of the court on November 24, 2014. A status conference was held on April 16, 2015 before the Magistrate Judge regarding the appellate court's mandate on the issue of prejudgment interest. The status conference was adjourned to allow the parties to discuss the possibility of reaching a settlement. On June 12, 2015, the Receiver filed a motion to approve a settlement agreement between him and the defendant (Doc. 1182). The settlement agreement provides that the defendant will pay a total amount of \$25,000.00, which will be paid in accordance with a set payment schedule, to

satisfy the judgment and all pending issues. In reaching this agreement, the Receiver's primary consideration involved the financial circumstances of the defendant. The Receiver's discovery revealed that the defendant has few, if any, assets with which to satisfy the Judgment. The Court entered an order approving this settlement agreement on June 12, 2015 (Doc. 1183).

In *Lee*, the parties participated in a mediation conference before Magistrate Judge Porcelli aimed at resolving the prejudgment issue as well as an impleader action brought against Ms. Manon Sommers-Lee. The impleader action seeks to recover a residence which was funded with proceeds Mr. Lee obtained as a result of Nadel's scheme and is now in the possession of Ms. Sommers-Lee (the "**Lee Property**"). The parties were unable to reach a resolution at this mediation. The parties mediated this matter again on December 1, 2014 and again were unable to reach an accord. On November 14, 2014, the Court entered an order directing the parties to submit memoranda on prejudgment interest and file any motions for summary judgment regarding the impleader action dispute by December 12, 2014. On February 2, 2015, Vernon Lee filed a petition for relief under Chapter 7 of the Bankruptcy Code. On March 20, 2015, the Magistrate Judge for the District Court held a status conference to discuss the effect of Vernon Lee's bankruptcy on the Vernon Lee Trust and Manon Sommers-Lee. The Court determined to administratively close the case due to the bankruptcy. The Receiver is proceeding with this matter before the bankruptcy court. On March 18, 2015, the Receiver filed a motion to dismiss the bankruptcy. This motion was denied on May 1, 2015. On May 5, 2015, the Receiver filed a proof of claim for \$1,391,269.41 representing the full amount of the judgment plus interest. On April 10, 2015,

the Receiver filed an objection to Vernon Lee's claim of exemption. On May 8, 2015, the Receiver filed a complaint objecting to the discharge and seeking an equitable lien or a constructive trust on the Lee Property. On November 20, 2015, the Receiver filed a motion for summary judgment with respect to entitlement to the Lee Property. No ruling has been issued on this motion.

2. Litigation Against Anne Nadel.

An investigation by the Receiver revealed that Nadel purchased the Vermont Properties entirely with investor funds unlawfully obtained through his fraudulent scheme and transferred title to them to his now deceased son and his wife, Anne Nadel. (*See* Section IV.B.3 *infra* for a description of these properties.) Ms. Nadel refused to voluntarily transfer title to the Receiver. On November 7, 2012, the Receiver sued Ms. Nadel for the recovery of these properties. *Wiand v. Anne Nadel*, Case No. 8:12-cv-2532-SDM-TGW (M.D. Fla.). On July 9, 2013, the Receiver filed a motion to approve a settlement agreement between him and Ms. Nadel (Doc. 1035). The settlement agreement provided, in pertinent part, the Receiver would pay Ms. Nadel \$10,000.00 according to a set payment schedule and an additional \$1,500 for payment of outstanding real property taxes on the Vermont Properties and in return for these payments, Ms. Nadel will transfer title to the properties to the Receiver. The Court approved the Receiver's motion on July 9, 2013 (Doc. 1036). Ms. Nadel has vacated the properties and the Receiver is in possession of them.

3. Receiver's Litigation Against Wells Fargo.

The Receiver retained the law firm of James, Hoyer, Newcomer, & Smiljanich ("**James Hoyer**") to pursue litigation against Wells Fargo and Timothy Ryan Best, Nadel's

relationship manager with the bank. On February 13, 2012, James Hoyer, on behalf of the Receiver, instituted an action against Wells Fargo and Timothy Best seeking to recover damages in excess of \$168 million relating to the bank's close and extensive relationship with the Ponzi scheme underlying this Receivership.¹⁵ The parties engaged in extensive motion practice. For more information regarding motions and other procedural history, please refer to the Receiver's Seventeenth Interim Report and prior Interim Reports.

On June 10, 2014, the defendant filed a motion for summary judgment seeking judgment in its favor on all claims remaining against it. The Receiver opposed this motion and also filed a renewed motion for partial summary judgment on June 10, 2014. The Receiver's motion sought summary judgment on the following: (1) Nadel operated a Ponzi scheme through the Hedge Funds from 1999 through January 2009; (2) every transfer of an asset Nadel made was made with the actual intent to hinder, delay, or defraud creditors as required by FUFTA; (3) because Nadel operated the Hedge Funds as a Ponzi scheme, each of the Hedge Funds and Nadel were insolvent; (4) the *in pari delicto* defense is not available to the defendant because individuals who invested in the Hedge Funds were innocent

¹⁵ Wells Fargo is pursuing a claim and other purported interests it believes it has to Receivership property. As part of those efforts, Wells Fargo has aggressively interfered with the Receivership. For example, it has sought to bypass the claims process, alter it, take property away from the Receivership, petition another court for relief without informing this Court or the Receiver, and delay the Receiver's interim distribution. It also sought to disqualify the Receiver and his counsel from this Receivership. The Court denied the disqualification efforts in their entirety after concluding that the Receiver and his counsel acted appropriately. On January 17, 2013, the Court entered an order stating that it would defer ruling on Wells Fargo's motion for determination that it did not have to file claims regarding its purported interest in Receivership property, or alternatively, for permission to file late claims, pending the outcome of the Receiver's case against Wells Fargo and Timothy Ryan Best (Doc. 955).

stakeholders; and (5) the remaining affirmative defenses should be decided in the Receiver's favor because the defendant failed to plead any facts in support of the defenses. On February 9, 2015, the District Court granted summary judgment in favor of Wells Fargo on all counts. This unexpected ruling has a significant impact in limiting the Receiver's claims against Wells Fargo. On March 10, 2015, the Receiver filed a motion to prosecute an appeal of this decision due to the nature of the ruling and the impact it would have on the Receivership to the detriment of innocent victims (Doc. 1162). On March 27, 2015, the Court granted the Receiver's motion to appeal this decision (Doc. 1167). The Receiver filed the initial brief on April 27, 2015. Wells Fargo filed its response brief and the Receiver filed a reply brief. Oral argument was scheduled for January 26, 2016. On October 29, 2015, the appellate court canceled the oral argument and stated that it would be rescheduled at a later date. It has not been rescheduled yet.

4. Receiver's Litigation Against Rowe

The Receiver sued Donald Rowe, individually ("**Rowe**") and as Trustee of the Wall Street Digest Defined Benefit Pension Plan ("**Plan**"), Joyce Rowe, and Carnegie Asset Management, Inc. ("**CAM**") (collectively "**Rowe Defendants**") to recover sums received from the Receivership Entities. The Receiver and the Rowe Defendants entered into a settlement agreement, which was approved by the court on February 5, 2013 (Doc. 963). As part of that settlement, the Rowe Defendants consented to entry of a joint and several

judgment in the amount of \$4,028,385.00, the Rowe Judgment, which was entered by the Court on February 25, 2013 (*Rowe*, Doc. 124).¹⁶

After entry of the Rowe Judgment, the Receiver conducted discovery in aid of execution and learned that the Rowe Defendants made blatant efforts to shed their assets by transferring them to third parties with the intent to hinder the Receiver's collection efforts. To recover those fraudulently transferred assets, the Receiver filed a motion to commence proceedings supplementary and to implead the third parties who received these assets. As a result of these efforts, through various settlements the Receiver recovered \$2,284,063.11, and personal property with an approximate value of \$10,000,¹⁷ and an annuity with a value of \$285,309.66 (as of September 30, 2015). The Receiver also obtained final judgments of garnishment in the total amount of \$60,778.70, which have been paid in full. For more information regarding these settlements and judgments, please refer to the Receiver's Fifteenth and Sixteenth Interim Reports.

On October 15, 2013, the Receiver also directed a writ to MetLife Investors USA Insurance Company ("**MetLife**") to garnish an annuity the Rowes purchased from MetLife. The Receiver and Joyce Rowe filed cross motions for summary judgment in March 2014. On July 11, 2014, the court granted summary judgment in favor of Mrs. Rowe. On July 16, 2014, the Receiver filed an emergency motion to stay dissolution of the writ pending an

¹⁶ For more information regarding the Rowe litigation and settlement please refer to the Thirteenth Interim Report and prior Reports.

¹⁷ The Receiver sold this property through auction and received the net amount of \$1,146.00 from these sales.

appeal of the July 11, 2014 Order, which the court granted. With approval from this Court, on July 24, 2014, the Receiver timely filed a notice of appeal of the denial of his summary judgment motion to the Court of Appeals for the Eleventh Circuit. Oral argument was set to take place on July 29, 2015. On July 27, 2015, the Receiver filed a motion to approve a settlement agreement between the parties to this matter (Doc. 1184). In pertinent part, the settlement agreement provides, that the Rowe Defendants will pay \$200,000 from either the proceeds of a mortgage on their homestead or from the MetLife Annuity to resolve the dispute over the MetLife Annuity and the Defendants' remaining obligations under the Rowe Judgment. In reaching this agreement, the Receiver's primary considerations involved the financial circumstances of the Defendants, the risk of litigation, and additional expenses to the Receivership Estate. The Rowe Defendants represented and warranted that they do not have sufficient non-exempt assets to satisfy the remaining amount owed under the Judgment. The Court entered an order approving the settlement agreement on July 27, 2015 (Doc. 1185). On July 28, 2015, the parties filed a joint motion to dismiss the appeal, which was granted. On September 1, 2015, the Receiver received payment of \$200,000 from the MetLife Annuity.

The Receiver also seized a 2007 Lexus LS from Donald Rowe and recovered \$24,605.25 from the sale of the Lexus. As of December 1, 2015, the Receiver has recovered a total of \$2,895,907.72 on the Rowe Judgment.¹⁸

¹⁸ This amount includes the value of the annuity obtained in connection with the Receiver's settlement with the Hardin Trust. The value of the annuity is \$285,309.66 as of September 30, 2015. The Receiver took \$40,000 as a distribution from this annuity on April
(footnote cont'd)

V. Claims Process.

On April 20, 2010, the Receiver filed his 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 (Doc. 390) (“**Claims Motion**”), which the Court granted on April 21, 2010 (Doc. 391). Pursuant to the Court’s Order, any person or entity who failed to submit a proof of claim to the Receiver so that it was actually received by the Receiver on or before September 2, 2010, the Claim Bar Date, is barred and precluded from asserting any claim against the Receivership or any Receivership Entity.

The Receiver received 504 claims, of which 478 claims were submitted in connection with 473 investor “accounts”¹⁹ (“**Investor Claimants**”). The Receiver also received 26 claims from other purported creditors (“**Non-Investor Claimants**”) (Investor Claimants and Non-Investor Claimants are collectively referred to as “**Claimants**”), including two claims from taxing authorities. On December 7, 2011, the Receiver filed his 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 (“**Claims Determination Motion**”) (Doc. 675). The Receiver recommended that \$131,308,943.50 in Investor Claims and two tax lien claims be allowed. On March 2, 2012, the Court granted the Claims

24, 2014, and an additional \$40,000 on April 13, 2015 and will continue to take the maximum distribution allowed without incurring a penalty.

¹⁹ In reality, Nadel and the Receivership Entities did not maintain separate investor accounts. Nevertheless, for ease of reference they are referred to as “**Investor Accounts.**”

Determination Motion except with respect to a claim submitted by Wells Fargo (the “**March 2 Order**”) (Doc. 776).²⁰

The objection procedure proposed by the Receiver in the Claims Determination Motion and adopted by the Court allowed each Claimant twenty days from receipt of notice of the March 2 Order to serve the Receiver with a written objection to the determination of the Claimant’s claim and/or claim priority and to object to the plan of distribution. The deadline to serve any objections was March 28, 2012. The Receiver received objections relating to 23 claims. These objections were raised by twelve Claimants, four of whom have multiple claims. The Receiver has been working on the resolution of these objections. As of the filing of this Interim Report, objections relating to all 23 claims have been resolved. (*See* Claim Nos. 157, 403, 404, 405, 406, 407, 408, 444, 445, 449, 450, 462, 463, 464, 465, 466, 467, 469, 471, 476, 477, 483, and 504).

During the time covered by this Interim Report, the Receiver resolved objections to seven claims which were made by a husband and wife (Claim Nos. 403-408 and 477) and one objection made on behalf of a sophisticated institutional investment firm (Claim No. 469). On August 12, 2015, the Receiver filed a motion to overrule the objections to Claim Numbers 403 through 408 and 477 (Doc. 1190). The Claimants holding these claims sought the recovery of the principal amount of their investments plus the purported investment

²⁰ The Court reserved ruling on that claim and on several motions and objections filed by Wells Fargo and, in some instances, its affiliate TRSTE, Inc., relating to that claim and other purported interests in Receivership assets. (*See* Docs. 689, 690, 718, 719, 740.) As noted above, on January 17, 2013, the Court entered an order deferring ruling on Wells Fargo’s motions pending the outcome of the Receiver’s case against Wells Fargo. (*See* Section IV.E.3 above and Doc. 955.)

profits attributed to them in statements they received from the Hedge Funds and Traders. The Receiver determined that these claims should be allowed in part such that the Claimants' recoveries were limited to their Net Investment Amounts (the amounts they invested in the scheme minus the amounts they received back) and would not include any false paper profits from Traders or the Hedge Funds. The Court granted the Receiver's motion and overruled the Claimants' objections (Docs. 1194 and 1198).

On September 15, 2015, the Receiver filed a motion to overrule the objection to Claim Number 469 (Doc. 1199). On the Receiver's recommendation, Claim Number 469 had been denied by the Court. The Claimant filed an objection to this determination. On September 15, 2015, the Court entered an Order overruling the objection and affirming the denial of the claim (Doc. 1204). The Court found that the Claimant (1) failed to comply with the claims procedures and deadlines promulgated by this Court, and the information belatedly supplied in its objection did not cure the deficiency, and (2) the investor was a sophisticated investment firm and thus either had inquiry or actual notice of Nadel's fraud.

On April 27, 2012, the Receiver filed a motion seeking the approval of (1) a first interim distribution of \$25,994,012.73 on a *pro rata* basis; (2) establishment of reserves of \$1,789,268.46 for claims for which timely objections were received and for Wells Fargo's and TRSTE, Inc.'s purported interests in Receivership assets and the Receivership estate; and (3) approval of revisions to certain claim determinations previously submitted by the Receiver and approved by the Court in the Claims Determination Motion (Doc. 825). The Court overruled a limited objection filed by Wells Fargo and granted the Receiver's motion in its entirety on May 7, 2012 (Doc. 839).

On November 14, 2012, the Receiver filed a motion seeking the approval of (1) a second interim distribution in the amount of approximately \$22 million on a *pro rata* basis; (2) revisions to certain claim determinations previously submitted by the Receiver and approved by the Court; (3) an increase in reserves of \$1,327,793.22; and (4) the release of reserves in the amount of \$197,951.10 (Doc. 945). The Court granted the Receiver's motion in its entirety on November 16, 2012 (Doc. 946).

On November 6, 2013, the Receiver filed a motion seeking the approval of (1) a third interim distribution of \$5,000,000.00 on a *pro rata* basis; (2) an increase in reserves of \$246,488.43; and (3) the release of reserves in the amount of \$615,746.25 (Doc. 1085). The Court granted the Receiver's motion on November 22, 2013 (Doc. 1087).

On April 10, 2014, the Receiver filed a motion seeking the approval of (1) a fourth interim distribution of \$5,000,000.00 on a *pro rata* basis, representing an additional recovery of 3.81% of the Allowed Amount of claims receiving a distribution at that time, bringing the total recovery to 44.37% of the Allowed Amount of these claims and (2) an increase in reserves of \$253,793.83 (Doc. 1113). The Court granted the Receiver's motion on April 24, 2014 (Doc. 1114). All interim distribution checks have been mailed to Claimants holding claims which were determined to be entitled to participate in the interim distributions and have been negotiated.²¹

²¹ Claim Number 391 is not allowed to participate in any distributions of Receivership assets until and if all Class 1 Claims receive 50% of their Allowed Amounts. Because the interim distributions have provided a combined recovery of 44.37% to such Class 1 Claims, this claim was not entitled to participate in the interim distributions. Accordingly, the amounts apportioned to Claim Number 391 were not distributed and reverted to the Receivership.

Within a short time from the date of this Interim Report, the Receiver intends to file a motion seeking the approval of a fifth interim distribution of \$3,000,000.00 on a *pro rata* basis, representing an additional recovery of 2.28% of the Allowed Amount of claims receiving a distribution at that time, which would bring the total recovery to 46.65% of the Allowed Amount of these claims.

VI. Overview of Remaining Assets.

As of December 1, 2015, the total funds in all Receivership accounts are approximately **\$13,293,498.10**, which includes \$2,803,646.58 being held in reserves for objections in the claims process and \$4,377,456.84 being held in separate accounts until a claim to these funds is resolved. The Receiver has submitted a tax return on behalf of Art Nadel seeking a refund in the amount of approximately \$2,393,250.00.

As discussed above, the Receiver has already distributed a total of approximately **\$57 million** to Claimants with Allowed Claims which were entitled to receive distributions, representing a total recovery of 44.37% of the Allowed Amounts for those claims and intends to seek approval of an additional distribution of **\$3 million**, which will bring the total recovery for these claims to 46.65% of the Allowed Amount for those claims. The Receiver is diligently working on recovering more funds in the hopes to make additional distributions to these Claimants. To accomplish this, the Receiver is (1) managing and attempting to sell the remaining properties and other miscellaneous assets currently held by the Receivership; (2) pursuing pending litigation against clawback defendants; (3) continuing to collect on outstanding settlement agreements and engaging in collection efforts on judgments obtained in connection with litigation; and (4) continuing to pursue litigation against Wells Fargo.

A. Remaining Properties and Other Assets.

The Receiver is in possession of essentially five properties which remain to be sold. Of these five properties, one of them is heavily encumbered by liens from two institutions in the combined amount of approximately \$2,260,157.00. Given the decline in property values in recent years, the amount the Receiver anticipates he will be able to recover from sale of this property may not greatly exceed the amount of the encumbrances. As mentioned above, the Receiver is contesting Wells Fargo's claim to properties and may contest other asserted liens. The ultimate recovery obtained from the sales of these properties will be contingent upon the outcome of these asserted liens.

The Receiver also has possession of various miscellaneous assets which include artwork, furniture, and the like. While the Receiver is attempting to maximize the recovery from the sale of these assets, he does not anticipate any significant recovery (i.e., in excess of \$20,000). The Receiver is also diligently working on evaluating, managing, and selling various assets obtained from the Moodys. The Receiver expanded the Receivership to include Quest, a Texas oil and gas company. As stated in Section IV.A.5 above, the Receiver believes that the oil well leases held by Quest have potential value and may be sold for the benefit of investors and other creditors (*see also* Doc. 1145). The Receiver is marketing Quest and will continue to operate it in an effort to preserve and maximize its value until it is sold. The Receiver acquired the Moodys' interests in various other companies. However, from the Receiver's research it appears that many of these companies are no longer in business and thus, the interests in these companies have little to no value. For more information regarding these interests, please refer to Exhibits C and D.

B. Remaining Clawback Litigation.

The Receiver has resolved the vast majority of the clawback cases brought against Profiteers and non-profit organizations. All clawback cases which were pending in district court and arbitration have been resolved. As previously mentioned, three Profiteers in cases before the district court filed appeals of the judgments awarded against them. The judgments against these three Profiteers total \$1,688,445.29. As discussed above, in all three of these appeals the appellate court affirmed the Court's granting of summary judgment in favor of the Receiver and reversed and remanded the Court's denial of prejudgment interest. The Receiver reached a settlement agreement in one matter which has been approved by the Court. In one of the other matters, the District Court Judge entered an order adopting a Report and Recommendation which only awarded prejudgment interest from the date of the filing of the complaint. The Receiver believes that the Receivership is entitled to more prejudgment interest than that awarded and filed an appeal of this decision on a *pro bono* basis. This appeal is pending. In the final matter, the defendant filed for protection under the bankruptcy laws. The Receiver is proceeding with this matter before the bankruptcy court. Please refer to Section IV.E.1 for a detailed discussion of these three matters.

C. Settlements and Outstanding Judgments.

As noted above, as of December 1, 2015, the Receiver has settled 159 cases brought against Profiteers and non-profit organizations for the total amount of \$25,674,831.09. The Receiver has collected \$25,722,333.35 on these settlements and no amounts remain to be

paid.²² The Receiver also has obtained 19 judgments against Profiteers and non-profit organizations for the total amount of \$6,382,396.02. The Receiver has collected \$3,004,380.22 of the total judgment amount. The Receiver is proceeding with collection efforts on the outstanding judgments as appropriate. While the Receiver is hopeful that he will recover funds on the majority of these judgments, the Receiver anticipates that it will be difficult to fully satisfy them.

The Receiver also has a judgment against the Rowe Defendants in the amount of \$4,028,385.00. To date, the Receiver has recovered \$2,895,907.72 on this judgment including the value of an annuity the Receiver obtained in connection with a settlement with a third party who received funds fraudulently transferred by the Rowes. (*See* Section IV.E.4 above.) The value of this annuity is \$285,309.66 as of September 30, 2015. As discussed in Section IV.E.4 above, the Receiver reached a settlement agreement with the Rowe Defendants wherein the Rowe Defendants agreed to pay \$200,000 to resolve the dispute over a MetLife Annuity and their remaining obligations under the Judgment. In reaching this agreement, the Receiver's primary considerations involved the financial circumstances of the Rowe Defendants, the risk of litigation, and additional expenses to the Receivership Estate. The Defendants represented and warranted that they do not have sufficient non-exempt assets to satisfy the remaining amount owed under the Rowe Judgment. Other than continuing to collect on the outstanding annuity, the Receiver does not anticipate that he will be able to collect any further funds in connection with this Judgment.

²² The total amount collected includes \$47,502.26 in interest which was paid in connection with settlement payments which were paid over time.

D. Litigation involving Wells Fargo.

The Receiver instituted an action against Wells Fargo and Timothy Best seeking to recover damages and fraudulent transfers in excess of \$168 million relating to the bank's close and extensive relationship with the Ponzi scheme underlying this case. As noted above, Wells Fargo is pursuing a claim and other purported interests it has to Receivership property. To that end, Wells Fargo filed several motions and objections in connection with the claims process. The Court has deferred ruling on Wells Fargo's claims motions pending the outcome of the Receiver's litigation against Wells Fargo. On June 10, 2014, the parties filed motions for summary judgment. On February 9, 2015, the District Court granted summary judgment in favor of Wells Fargo on all counts. This unexpected ruling has a significant impact in limiting the Receiver's claims against Wells Fargo. On March 10, 2015, the Receiver filed a motion to prosecute an appeal of this decision due to the nature of the ruling and the impact it would have on the Receivership to the detriment of innocent victims (Doc. 1162). On March 27, 2015, the Court granted the Receiver's motion to appeal this decision (Doc. 1167). The appeal has been fully briefed. The oral argument was scheduled for January 26, 2016, but the appellate court canceled it. The appellate court stated that the oral argument would be rescheduled, but to date it has not been.

VII. The Next Ninety Days.

The Receiver will file a motion seeking the approval of a fifth interim distribution and if approved, will make the distribution as soon as reasonably possible.

The Receiver will proceed with pending litigation and collection efforts. He will continue to thoroughly consider and review any settlement offers and engage in settlement

negotiations. The Receiver will make every effort to reach compromises that are in the best interests of the Receivership Entities and the investors.

The Receiver will continue to pursue the recovery of tax refunds where possible, and will continue to attempt to locate additional funds and other assets. If appropriate, the Receiver will institute proceedings to recover assets on behalf of the Receivership Entities.

The Receiver will also continue the operations of ongoing businesses of the Receivership Entities to maintain and, if possible, enhance their value. The Receiver will continue to market properties for sale and entertain offers for purchase.

CONCLUSION

Creditors and investors in the Receivership Entities are encouraged to periodically check the informational website (www.nadelreceivership.com) for current information concerning this Receivership. The Receiver and his counsel have received an enormous amount of emails and telephone inquiries and have had to expend significant resources to address them. To minimize those expenses, creditors and investors are strongly encouraged to consult the Receiver's website before contacting the Receiver or his counsel. However, the Receiver continues to encourage individuals or attorneys representing investors who may have information that may be helpful in securing further assets for the Receivership estate or identifying other potential parties who may have liability to either the Receivership estate or investors directly either to email jrizzo@wiandlaw.com or call Jeffrey Rizzo at 813-347-5100.

Dated this 4th day of December, 2015.

Respectfully submitted,

s/Burton W. Wiand

Burton W. Wiand, Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 4, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

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