

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants,

Case No: 8:09-cv-0087-T-26TBM

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.

**RECEIVER'S UNOPPOSED MOTION TO (1) APPROVE PROCEDURE TO
ADMINISTER CLAIMS AND PROOF OF CLAIM FORM, (2) ESTABLISH
DEADLINE FOR FILING PROOFS OF CLAIM, AND (3) PERMIT NOTICE BY
MAIL AND PUBLICATION AND INCORPORATED MEMORANDUM OF LAW**

Burton W. Wiand, as Receiver, respectfully moves this Court for an Order (1) approving the Proof of Claim Form attached as **Exhibit A** and the procedure to administer claims set forth in this motion, including the Claims Process Instructions attached as **Exhibit B**; (2) establishing a deadline for filing proofs of claim against Quest Energy Management Group, Inc. ("**Quest**" or "**Receivership Entity**"); and (3) permitting notice of the deadline by mail and by publication in

the national edition of The USA Today, in The Abilene Reporter-News, and on the Receiver's website in the form attached as **Exhibit C** (the "**Notice**").

Background

On January 21, 2009, the Securities and Exchange Commission ("**SEC**") instituted this enforcement action following the collapse of a massive Ponzi scheme (the "**scheme**") perpetrated by Arthur Nadel ("**Nadel**") through various hedge funds (the "**Hedge Funds**") from 1999 until January 2009. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital and Scoop Management, Inc., and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the "**Order Appointing Receiver**"). (*See generally* Order Appointing Receiver (Doc. 8).) As part of the scheme, Nadel and his purported business partners, Neil and Christopher Moody (the "**Moody's**"), paid themselves more than \$90 million in bogus management and performance fees which were based on fabricated asset values and performance data. As a result of that conduct, Nadel was charged and pled guilty to securities, mail, and wire fraud, and died in prison while serving a 14-year sentence.

During the course of the ten-year scheme, Nadel and the Moody's used scheme proceeds – money stolen from the Hedge Funds' investors – to found or otherwise fund numerous businesses. Since the inception of this Receivership and in accordance with his mandate to marshal assets for the benefit of defrauded investors, the Receiver has successfully sought

expansion of the Receivership to include those businesses.¹ Quest is one such entity that was funded in large part with scheme proceeds.

Quest is an oil and gas exploration and production company based in Albany, Texas. Paul Downey was its Chief Executive Officer, and his son Jeffrey Downey was its Chief Operating Officer (collectively the “**Downeys**”). The Moodys, through Receivership Entity Viking Oil & Gas, LLC (“**Viking Oil**”), used scheme proceeds of \$4 million to fund Quest. Through Hedge Fund 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. In February 2009, the Receiver began communications with the Downeys for recovery of the scheme proceeds provided to Quest. After considerable time and effort, the Receiver reached a conditional agreement to resolve his claims against Quest dependent upon receipt of \$2.3 million from Quest. Quest failed to make this payment and ignored the Receiver’s repeated demands for payment. In February 2013, Quest informed the Receiver it was having cash flow problems. Because of Quest’s failings and 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). On May 24, 2013, the Court granted the Receiver’s motion and added Quest to this Receivership (Doc. 1024).

¹ Those businesses include 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.

Pursuant to the Order Appointing Receiver, the Receiver has certain duties and powers, including:

1. Take immediate possession of all property, assets and estates of every kind of the Defendants and Relief Defendants, whatsoever and wheresoever located belonging to or in the possession of the Defendants and Relief Defendants, including but not limited to all offices maintained by the Defendants and Relief Defendants (including all buildings, structures and other property), rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Defendants and Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court
3. Present to this Court a report reflecting the existence and value of the assets of the Defendants and Relief Defendants and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Defendants and Relief Defendants.

In accordance with the terms of the Order Appointing Receiver, on April 20, 2010, the Receiver instituted a claims process for all claimants holding claims against the other entities in this Receivership arising in any way out of the activities of those entities, to assert a claim (the “**Hedge Funds Claims Process**”).² The Receiver has determined that a separate claims process is appropriate for Quest because (1) the Hedge Funds Claims Process did not provide an

² The claims process proposed below for Quest is substantially similar to the Hedge Funds Claims Process approved by the Court with the exception that the Receiver does not propose to include a Net Investment Amount or any other information on the Proof of Claim Forms sent to known investors in Quest or other potential claimants. The Receiver does not believe that the expense that would be required to provide this information is warranted given the limited amount of funds he anticipates will be available to distribute to claimants with allowed claims in the claims process conducted for Quest. As a result, all claimants will have the burden of submitting documentation supporting their claims.

opportunity for claims arising from the Quest scheme because the bar date for the Hedge Funds Claims Process was nearly three years before the Receivership was expanded to include Quest; (2) Quest was funded with scheme proceeds, but was not used as part of the underlying scheme in the same manner as the Hedge Funds; and (3) since the expansion of the Receivership to include Quest, the Receiver has maintained a separate accounting of revenues and expenses for Quest from the rest of the Receivership.

At the time the Receiver was appointed as Receiver of Quest, the Court inquired about Quest's assets and operations. The Receiver represented to the Court that it was his intention to operate Quest as a separate entity from other Receivership activities. The Receiver assured the Court that other Receivership funds would not be used to support Quest. To date, while Quest's operations have been limited, its cash flow has been sufficient to support Quest's activities. The Receiver is currently engaging in activities to sell the primary property of Quest and believes that such a transaction likely will materialize in the coming months. Therefore, it is appropriate to establish a claims process for Quest at this time to determine the amount of investor claims and any other creditor claims which may be in existence in anticipation of a possible distribution.

For the foregoing reasons, to determine the full extent of Quest's legal obligations, and to allow investors in and creditors of Quest and any other interested parties to advise the Receiver of any possible claims against Quest, the Receiver proposes that the Court approve the Proof of Claim Form attached as Exhibit A and the procedures to administer claims set forth below, including the Claims Process Instructions attached as Exhibit B.

Relief Requested

Pursuant to Quest's Order Appointing Receiver, the Receiver was obligated to take

possession of Quest’s assets for the benefit of its investors and to take whatever other steps are necessary for the investors’ protection. The Receiver’s goal is to ultimately marshal and distribute liquidated assets to Quest investors with allowed claims (the “**Distributions**”) in a fair and equitable manner. The Receiver will proceed with the Quest claims process as though claims have been submitted on behalf of Receivership Entities Viking Oil and Valhalla Investment Partners, and any monies recovered as a result would be deposited into the Receivership accounts. The details about this plan will be submitted for approval by the Court in a subsequent motion for approval of claim determinations.

A. Claim Bar Date.

The Receiver seeks entry of an order establishing a filing deadline for all claimants holding claims against Quest (including Quest Investors)³ or anyone previously or currently associated with Quest (the “**Claimants**”), to assert a claim (the “**Claim Bar Date**”).⁴ The Receiver proposes that the Claim Bar Date be set as 90 days from the mailing of the Proof of Claim Form to known possible Claimants. This date will allow the Receiver sufficient time to arrange for and publish the proposed Notice and give investors and other potential Claimants sufficient time to file a claim with the Receiver. Claimants must file claims to participate in any distribution of Quest assets. The Receiver proposes that any claim received by the Receiver

³ In many instances, investors loaned money and/or invested in Quest projects rather than Quest itself. For ease of reference in this motion and all Quest claims process documents, the Receiver refers to individuals and entities who invested in Quest and individuals and entities who invested in or loaned money to Quest’s projects collectively as “**Quest Investors.**”

⁴ The Receiver will calculate and insert the specific date for the Claim Bar Date in the Notice, Claims Process Instructions, and Proof of Claim Form. The proposed Notice, Claims Process

after the Claim Bar Date should be disallowed.

A Claim Bar date is necessary to allow as many Claimants as possible to participate in the claims process while also allowing the Receiver to obtain certainty in a reasonably prompt fashion of the total amount of potential claims relating to Quest. Such certainty is necessary to be able to determine the amount of money each Claimant with an allowed claim is entitled to receive and to facilitate a timely claims resolution and distribution process.

B. Notice by Mail and Publication.

The Receiver and his professionals have spent time gathering and examining documents and other data relating to Quest. Based on the review of these documents, the Receiver believes he has identified substantially all of Quest's investors. As to these known potential Claimants, the Receiver possesses last known mailing addresses. However, the Receiver believes Quest's records may lack last known mailing addresses of all potential Claimants. In addition, some known Claimants may have moved or otherwise changed addresses.

The Receiver's knowledge is limited to (1) the documents he has been able to obtain from Quest, financial institutions, and investors and (2) other information he has gathered. It is possible that some potential Claimants may be currently unknown and the identity of these possible Claimants is not reasonably ascertainable. As such, providing notice of the Claim Bar Date to all potential Claimants by direct mail alone is not possible.

Based upon the documents reviewed and information gathered to date, investors and other potential creditors are located throughout at least 23 states, with a slight concentration in

Instructions, and Proof of Claim Form currently contain blanks where the Receiver intends to insert this date.

the West Central Texas area, which is where Quest is located. Given the geographically broad area in which the potential Claimants are located and the significant expense associated with publication of the Notice in each of the states where claimants may reside and the relatively few (if any) interested parties who might benefit from such publication, the Receiver proposes publishing the Notice in the national edition of The USA Today and in the The Abilene Reporter-News, a newspaper which services the West Central Texas area where Quest is located, on one day at least 45 days prior to the Claim Bar Date.⁵ The Receiver further proposes to publish the Proof of Claim Form and Notice on his website at www.nadelreceivership.com.

Therefore, the Receiver seeks permission to provide notice of the Claim Bar Date to known potential Claimants by mail to their last known address and to unknown Claimants by publication in the national edition of The USA Today and in The Abilene Reporter-News and on the Receiver's website. The Notice of the Claim Bar Date will be in the form attached as Exhibit C. The Receiver believes that such Notice is reasonably calculated to inform all known and unknown Claimants of the Claim Bar Date.

C. Procedures to Be Applied to the Administration of Claims.

The Receiver has developed a proposed procedure and Proof of Claim Form to efficiently and equitably identify potential Claimants and the amount and validity of any claim. The Receiver's proposed procedure will ensure certainty as to the total number and amount of claims against Quest and thus allow for an equitable distribution among Claimants. This proposed procedure is as follows.

⁵ The cost of a one-day advertisement for the same size Notice in the national edition of The USA Today is approximately \$3,180.00 and the same advertisement in The Abilene Reporter-

The Receiver proposes that he mail a Proof of Claim Form to each known potential Claimant, including Quest Investors. The Receiver will include the Claims Process Instructions in the form attached as Exhibit B. The Receiver also will post a blank Proof of Claim Form and the Claims Process Instructions on the Receivership website. The Claimant must complete and sign the Proof of Claim Form under penalty of perjury, provide all documents relating to the claim, and return it to the Receiver before the Claim Bar Date as specified below.

Each submitted Proof of Claim must conform substantially to and must contain all of the information sought in the Proof of Claim Form approved by the Court. The Receiver reserves the right to reject any altered Proof of Claim Form. Each Proof of Claim must be signed by the Claimant or, if the Claimant is not an individual, by an authorized agent of the Claimant. The Claimant must attest under penalty of perjury that the information provided on the Proof of Claim Form is true and correct. Each Proof of Claim must be legible, written in English, and denominated in United States currency. The submission of a Proof of Claim will subject the Claimant to the jurisdiction of the United States District Court for the Middle District of Florida.

All Proofs of Claim must be sent so as to be received on or before the Claim Bar Date at the following address:

Burton W. Wiand, Receiver
c/o Maya M. Lockwood, Esq.
WIAND GUERRA KING P.A.
5505 West Gray Street
Tampa, FL 33609

Facsimile and email copies of Proof of Claim Forms will be accepted only if received by the Receiver on or before the Claim Bar Date and the original executed Proof of Claim is received

News is approximately \$350.00.

by the Receiver no later than three (3) days after transmission of the facsimile and/or email. Failure to provide an original executed Proof of Claim Form within the time specified may result in the denial of the claim. Facsimile copies must be sent to (813) 347-5198 to the attention of Burton W. Wiand, Receiver c/o Maya Lockwood, and email copies must be sent to mgura@wiandlaw.com. Proof of Claim Forms will be considered submitted only if actually received by the Receiver, so it will be the Claimants' responsibility to ensure the Receiver's receipt.

The Receiver will recommend to the Court that any properly completed and timely filed Proof of Claim be considered allowed if it is established that: (1) the Claim arises out of any of Quest's activities; (2) losses recognized by law resulted from such activities; (3) any alleged claim and losses are supported by appropriate documentation and not inconsistent with the books and records available to the Receiver; and (4) no ground exists for denying the Claim.

After the Claim Bar Date and the Receiver has evaluated all submitted claims, he will seek approval from this Court regarding: (1) allowed claim amounts; (2) priority of claims; (3) a process for the determination of objections to claim determinations and priorities reached by the Receiver; and (4) if needed, the establishment of reserves for administration of the Receivership, for litigation, and for disputed claims and priorities (until such time as such disputes are resolved).

After all claims and priority objections are resolved, the Receiver will prepare a motion for a proposed distribution. The motion will identify Quest's total assets at the pertinent time and the total allowed claims amount. After Court approval, any Distribution to the Claimants will be made in an equitable manner and in accordance with the appropriate priority, and no

Claimant shall receive more than its respective allowed amount. Any Distributions of amounts less than the Claimants' total allowed amounts will be made on a pro rata basis based on the Claimants' allowed claim amounts. The Receiver may seek court approval to make interim distributions.

All administrative expenses, including attorneys' fees and costs, litigation expenses, experts, and other administrative costs, will be paid from Quest's assets and revenues. These administrative expenses will be paid or reserved before any Distribution is made. Administrative expenses may also include, but are not limited to, (1) expenses for publishing notice and (2) the retention of one or more consultants to assist in analyzing the validity of filed claims. No previous request for the relief sought herein has been made to this or any other Court.

The Receiver requests that this Court (1) approve the Proof of Claim Form attached as Exhibit A and the claims administration procedures set forth in this motion, including the Claims Process Instructions attached as Exhibit B; (2) establish a deadline for receipt of Proofs of Claim that is 90 days from the mailing of the Proof of Claim Form to known possible claimants (the Claim Bar Date); and (3) permit notice of such deadline in the form attached as Exhibit C by (a) first class U.S. mail to the last known addresses of all known potential claimants, (b) publication in the national edition of The USA Today and in The Abilene Reporter-News and (c) publication on the Receiver's website as described above. For the Court's convenience, a proposed Order granting this Motion is attached as Exhibit D.

MEMORANDUM IN SUPPORT

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in its administration is extremely broad. *Securities Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *Securities Exch. Comm'n v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *Securities Exch. Comm'n v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers and is substantially similar to the relief sought for the Hedge Funds Claims Process which previously was approved by the Court (*see* Order dated March 2, 2012, Doc. 776).

In receivership proceedings such as this, “[e]very person who has any claim or demand against the estate or property in the custody of the court through the receiver, . . . must assert such claim or demand in the court in which such receiver was appointed.” Ralph E. Clark, Clark on Receivers § 646, at 1132 (3rd ed. 1992). Although there are many ways in which a claimant can assert a claim, one such way is for claimants to be authorized “under a general order of the appointing court [to file their] claim with the receiver.” *Id.* The receiver may agree or disagree with the claim, which claim is ultimately approved or disapproved by the court. *Id.* “The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any.” *Id.* § 651, at 1142.

In addition to approving the proof of claim form, it is not unusual for a court overseeing a receivership to enter an order limiting the time within which claims must be presented. *Id.* § 652, at 1142 (*citing Chicago Title & Trust Co. v. Fox Theatres Corp.*, 91 F.2d 907 (2d Cir.

1937); *People of New York v. Hopkins*, 18 F.2d 731 (2d Cir. 1927)). Such an order limiting the time within which claims must be submitted has been deemed to be necessary to “lay the foundation for the court to order payments to creditors and distribution to those entitled to receive.” *Id.* § 651, at 1142. Furthermore, a court with jurisdiction over a receivership, by advertisement and by proper notices by mail, by publication and otherwise should take measures to notify interested parties affected by the receivership. *Id.* § 652, at 1143.

Under the terms and conditions of the Order Appointing Receiver, the Receiver, among other things, is authorized, empowered, and directed to (a) administer the assets of the Receivership Entity and (b) determine the extent of liabilities the Receiver believes to be the legal obligations of the Receivership Entity. (*See* Order Appointing Receiver at 1-3.) In exercising his duties, the Receiver has determined that it is reasonable, necessary, advisable, and in the best interest of Quest (and the other Receivership Entities) that the claims administration procedure, Notice, Claim Bar Date, Proof of Claim Form, and Claims Process Instructions set forth in this motion and in the attached exhibits be approved by this Court.

WHEREFORE, Burton W. Wiand as Receiver, respectfully requests that this Court enter an Order (1) approving the Proof of Claim Form attached as Exhibit A and the claims administration procedure as set forth in this motion, including the Claims Process Instructions attached as Exhibit B, (2) establishing the Claim Bar Date requested herein, (3) permitting notice of such deadline in the form attached as Exhibit C and as described above, and (4) allowing all such further relief as this Court deems just and proper.

LOCAL RULE 3.01(G) CERTIFICATION OF COMPLIANCE

Counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that on June 15, 2016, a copy of this motion was served on the following by U.S. Mail:

Paul R. Downey
5718 Lago Villaggio Way
Naples, FL 34104
pauldowney43@gmail.com

Jeffrey Downey
3525 Cerromar Street
Abilene, TX 79606
jpdowney@gmail.com

s/Gianluca Morello

Gianluca Morello, FBN 034997
gmorello@wiandlaw.com
Michael S. Lamont, FBN 0527122
mlamont@wiandlaw.com
Maya M. Lockwood, FBN 0175481
mlockwood@wiandlaw.com
WIAND GUERRA KING P.A.
5505 West Gray Street
Tampa, Florida 33609
Tel.: (813) 347-5100
Fax: (813) 347-5198

Attorneys for Burton W. Wiand, Receiver