

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CASE NO. 8:09-CV-87-T-26ATBM

ARTHUR NADEL,
SCOOP CAPTIAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants,

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

Relief Defendants.

**RECEIVER'S AND SEC'S JOINT RESPONSE
TO MOTION TO ALTER OR AMEND JUDGMENT OR ORDER, AND
ALTERNATIVELY FOR RELIEF FROM JUDGMENT OR ORDER AND
MEMORANDUM OF LAW IN SUPPORT OF MOTION (DOC. 1387)**

Burton W. Wiand, as receiver (the “**Receiver**”) for Quest Energy Management Group, Inc. (“**Quest**”), and the Securities and Exchange Commission (“**SEC**”) hereby jointly respond to the motion (Doc. 1387) filed by claimant First National Bank of Albany (the “**Bank of Albany**” or the “**Bank**”) and, as requested by the Court, specifically address (1) “the right of those with secured claims like First National Bank of Albany to respond/object to the Receiver’s motion” regarding claim determinations; (2) “why the

[Local Rule 3.01(g)] certification in the Receiver’s previous motion only included information regarding the SEC;” and (3) the other “arguments raised in First National Bank of Albany’s Motion to Alter Judgment.” Doc. 1388.

This case involves two matters that the Receiver is administering independently – the “**Nadel Receivership**” and the “**Quest Receivership**.” The Bank’s motion represents its third attempt to circumvent equitable procedures applicable to all claimants in the Quest Receivership – specifically, in this instance, the procedures governing objections to the Receiver’s claim determinations. As explained below, the Receiver used these same procedures to successfully process and, if necessary, adjudicate more than 500 claims in the Nadel Receivership. The procedures allowed the Receiver and the Court to avoid piecemeal litigation and to conserve both receivership and judicial resources. Unlike the Nadel Receivership (where investor claimants with approved claims have recovered more than 50% of their losses), Quest’s assets are extremely limited, and the avoidance of piecemeal litigation is necessary to afford any meaningful distribution to creditors.

The Bank’s contention that the objection procedure deprives it of due process and even an opportunity to present its arguments to the Court is false. As explained in Section II below, the Eleventh Circuit and numerous other courts supervising equity receiverships or otherwise considering these matters have consistently approved the use of summary proceedings to adjudicate claim determinations. If the Receiver and the Bank (or any other claimant) are unable to resolve their differences through the objection procedure, the Bank will have an opportunity to present its arguments to the Court in a manner that satisfies notions of due process and fundamental fairness. Specifically, the Receiver will file a motion

to overrule the Bank's objection, and the Bank will have an opportunity to oppose that motion. The Bank can also request a hearing, which the Court has discretion to grant. As such, the Receiver and the SEC urge to Court to require the Bank and other claimants to comply with the procedures set forth in the Quest Determination Motion (as defined below) to avoid piecemeal litigation and the further depletion of Quest's limited assets.

BACKGROUND

All of the issues raised by Bank of Albany have been considered and rejected either in the Nadel Receivership, previously in the Quest Receivership, or by other courts administering federal equity receiverships.

The Nadel Claims Process

In the Nadel Receivership, on April 20, 2010, the Receiver filed his Unopposed Motion to (1) Approve Procedure to Administer Claims and Proof of Claim Form, (2) Establish Deadline for Filing Proofs of Claim, and (3) Permit Notice by Mail and Publication, which contained a Local Rule 3.01(g) certification substantively identical to the one at issue here. *See* Doc. 390 (the "**Nadel Claims Motion**") at 14 ("Counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed."). The Court granted the Nadel Claims Motion the next day – April 21, 2010. Doc. 391. Investors and other creditors then submitted 504 claims, which the Receiver reviewed and evaluated.

On December 7, 2011, the Receiver filed his Unopposed Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution, and (4) Establish Objection Procedure, which also

contained a substantively identical Local Rule 3.01(g) certification. *See* Doc. 675 (the “**Nadel Determination Motion**”) at 85 (“The undersigned counsel for the Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that the Commission has no objection to the relief sought herein.”). In the Nadel Determination Motion, the Receiver recommended that claims be allowed, allowed in part, or denied. He also explained the rationale underlying the proposed objection procedure:

Importantly, the Proposed Objection Procedure eliminates the need for any objections to be filed with the Court in direct response to this Motion. In turn, that will preclude inefficient piecemeal presentation and adjudication of objections by the Court. Such a piecemeal process would result in an inefficient claims process for both the Court and the Receivership. As such, the Proposed Objection Procedure promotes judicial efficiency; reduces litigation costs for the Receivership; is logical, fair, and reasonable; and meets due process requirements.

Id. at 80-84.

On March 2, 2012, the Court granted the Nadel Determination Motion and found that “[t]he Receiver’s determination of claims and claim priorities as set forth in the motion and in Exhibits B - J attached to the motion is fair and equitable and is approved.”¹ Doc. 776 ¶ 3. The Court also approved the proposed objection procedure for claimants who disagreed with the Receiver’s determinations:

The Proposed Objection Procedure as set forth in Section V of the motion for objections to the plan of distribution and the Receiver’s claim determinations and claim priorities is logical, fair, and reasonable and is approved, and any and all objections to claim determinations, claim priorities, or the plan of distribution shall be presented to the Receiver in accordance with the

¹ The Court reserved ruling on a claim and on several motions and objections filed by Wells Fargo Bank and, in some instances, its affiliate TRSTE, Inc., relating to that claim and other purported interests in Nadel Receivership assets. *See* Docs. 689, 690, 718, 719, 740. These matters were ultimately resolved in connection with extensive litigation between the Receiver and Wells Fargo.

Proposed Objection Procedure as set forth in Section V of the motion. After any unresolved objections are filed with the Court by the Receiver, the Court shall determine whether a hearing is necessary and set the date and time of any such hearing...

Id. ¶ 7. Twelve investors and other creditors then submitted objections relating to 23 claims, which the Receiver reviewed and evaluated. The Receiver was able to resolve the objections submitted by 6 of the 12 claimants without Court intervention. The Receiver then moved the Court to overrule the remaining objections. Each claimant had the opportunity to oppose the Receiver's motion through the submission of evidence, legal argument, or whatever else the claimant deemed appropriate. The Court ultimately overruled all of the objections. *See* Docs. 928, 1061, 1121, 1194 (two claimants), 1204.

The objection procedure in the Nadel Claims Process worked as intended. Investors and other claimants accepted the Receiver's determinations in connection with 95% of all claims. The Receiver was subsequently able to resolve 50% of the submitted objections without Court intervention, and the remaining objectors then received their day in Court, including notice and an opportunity to be heard, which as explained in Section II below, is the essence of due process. Using these procedures, the Receiver was able to distribute approximately \$62 million to claimants in an equitable yet cost-efficient manner.

The Quest Claims Process

On June 15, 2016, the Receiver filed his Unopposed Motion to (1) Approve Procedure to Administer Claims and Proof of Claim Form, (2) Establish Deadline for Filing Proofs of Claim, and (3) Permit Notice by Mail and Publication, which contained a Local Rule 3.01(g) certification identical to the certification in the Nadel Claims Motion. *See* Doc. 1240 (the "**Quest Claims Motion**") at 14 ("Counsel for the Receiver has conferred with

counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.”). The Court granted the motion on June 17, 2016. Doc. 1241. Investors and other creditors then submitted 92 claims, which the Receiver reviewed and evaluated.

On March 7, 2019, 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, which again contained a Local Rule 3.01(g) certification identical to the certification in the Nadel Determination Motion. *See* Doc. 1383 (the “**Quest Determination Motion**”) at 46 (“The undersigned counsel for the Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that the Commission has no objection to the relief sought herein.”). In the Quest Determination Motion, the Receiver recommended that claims be allowed, allowed in part, or denied. He also explained the rationale underlying the proposed objection procedure:

Importantly, the Proposed Objection Procedure eliminates the need for any objections to be filed with the Court in direct response to this motion. In turn, that will preclude inefficient piecemeal presentation and adjudication of objections by the Court. Such a piecemeal process would result in an inefficient claims process for both the Court and the Receivership. As such, the Proposed Objection Procedure promotes judicial efficiency and reduces litigation costs.

Id. at 41-45. On March 12, 2019, the Receiver mailed all claimants a letter notifying them that he filed the Quest Determination Motion, a copy of which is attached as **Exhibit A**.

On March 15, 2019, the Court granted the Quest Determination Motion and found that “[t]he Receiver’s determinations of claims and claim priorities as set forth in the motion and in Exhibits B through H attached to the motion appear fair and equitable and are approved.” Doc. 1384 ¶ 2. Consistent with the procedures set forth in the Quest

Determination Motion, the Court again established an objection procedure for claimants who disagree with the Receiver's determinations:

The Proposed Objection Procedure as set forth in the motion for objections to the plan of distribution and the Receiver's claim determinations and claim priorities is logical, fair, and reasonable, and is approved, and any and all objections to claim determinations, claim priorities, or the plan of distribution shall be presented to the Receiver in accordance with the Proposed Objection Procedure as set forth in the motion...

Id. ¶ 6.

On March 20, 2019, the Receiver mailed all claimants a letter notifying them that the Court granted the Quest Determination Motion, a copy of which is attached as **Exhibit B**.

The letter expressly instructed claimants how to object to the Receiver's determinations:

If you wish to dispute my determination of the above claim, its priority, or the plan of distribution, you **MUST** serve me with a written objection **no later than April 19, 2019**. All objections must be served on me at Burton W. Wiand, as Receiver c/o Maya M. Lockwood, Esq., Wiand Guerra King P.A., 5505 West Gray Street, Tampa, FL 33609, and should not be filed with the Court. Proper service may be accomplished by sending your objection by one of the following means: (1) U.S. mail to the above address; (2) hand delivery to the above individual at the above address; (3) facsimile to the above address at (813) 347-5198; or (4) overnight or other express delivery to the above address. Service by mail is completed upon mailing, service by facsimile is completed upon transmission, and service by hand delivery is completed upon receipt of delivery.

Your objection must clearly state the nature and basis of the objection, and provide all supporting statements and documentation that you wish me and, if we are unable to resolve your objection, the Court to consider. Please also include your claim number, name, email address, and telephone number with your objection. **Failure to properly and timely serve an objection to the determination of your claim, its priority, or plan of distribution shall permanently waive your right to object to or contest the determination of your claim, its priority, and plan of distribution and your final claim amount shall be set as the Allowed Amount determined by me and approved by the Court as set forth in the Exhibits attached to the Motion.**

Ex. B at 1 (original emphasis). The letter also expressly informed claimants they will receive an opportunity to make arguments to the Court should they be unable to resolve their differences with the Receiver:

I may attempt to settle and compromise any claim or objection subject to the Court's final approval. At such times as I deem appropriate, I will file with the Court any settlements or compromises that I wish the Court to rule upon. If an objecting claimant and I are unable to resolve an objection, I will file with the Court: (1) my further determination of the claim with any supporting documents or statements I consider are appropriate, if any; and (2) the unresolved objection, with supporting statements and documentation, as served on me by the claimant. The Court may make a final determination based on the submissions identified above or may set the matter for hearing and, following the hearing, make a final determination. If you dispute my determination of your claim, you will have the burden to prove that your position should prevail. I will provide you notice of the hearing if the Court sets a hearing on your particular objection.

Ex. B at 2. As noted above in connection with the Nadel Receivership, such litigation was only necessary with 6 claimants out of 504 submitted claims. Given Quest's extremely limited assets, the Receiver is hopeful that objections will also be limited. The deadline for claimants to submit objections to the Receiver is April 19, 2019.

Claimant First National Bank of Albany

Bank of Albany's motion represents its third attempt to circumvent the Quest Receivership or the Quest Claim Process. It initially moved to intervene in this case on September 5, 2013 (Doc. 1065), but the Receiver opposed that motion, arguing the Bank failed to establish its right to intervene under relevant procedural rules (Doc. 1070). On September 27, 2013, the Court denied the Bank's motion, consistent with its treatment of other creditors that have sought similar relief:

At the very least, some seven individuals and entities [citing Docs. 45, 88, 169, 207, 224, 231, 1040, and 1064], including secured creditors in this

receivership estate, have unsuccessfully attempted to intervene in these proceedings to protect an asset to which they lay claim....

Much earlier in this receivership proceeding, this Court found that section 21(g) of the Securities Exchange Act of 1934 precludes intervention [citing Doc. 207]. Apart from this prior determination, the intervenors have nevertheless failed to establish that they qualify for intervention either as a matter of right or permissively under Rule 24 of the Federal Rules of Civil Procedure.

Doc. 1073 at 3-4.

On September 9, 2016, Bank of Albany filed a renewed motion to intervene and to enforce its security interest (Doc. 1244), which the Receiver and the SEC opposed, arguing that the Bank submitted a proof of claim form in the Quest Claims Process, and as such, its entitlement to property or money from the Quest Receivership should be adjudicated through that process (Doc. 1246; *see also* Doc. 1247). The Court again denied the Bank's motion:

First National Bank filed a proof of claim in these receivership proceedings which covers its secured collateral [citing Doc. 1246, Ex. 1]. The purpose of the claims process exists to consolidate all claims, avoid piecemeal litigation, and provide an efficient and orderly administration of the estate. Consequently, the Court agrees with the Receiver's contention "that First National submitted to the exclusive jurisdiction of this Court regarding all of its claims against Quest and its assets, including Quest's office building and oil and gas leases, by filing a proof of claim form in the claims process."

Doc. 1248.

Now – for the third time – Bank of Albany seeks to circumvent equitable procedures applicable to all claimants, which were designed to conserve extremely limited receivership and judicial resources, by ignoring the objection procedure. For the reasons discussed below, the Bank's arguments are without merit.

ARGUMENT

I. LOCAL RULE 3.01(G) DOES NOT ENCOMPASS CLAIMANTS

The Court directed the Receiver and the SEC to “clarify why the certification in the Receiver’s previous motion [*i.e.*, the Quest Determination Motion] only included information regarding the SEC.” Doc. 1388. In relevant part, Local Rule 3.01(g) provides that a “moving party shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion, and shall file with the motion a statement: (1) certifying that the moving counsel has conferred with opposing counsel; and (2) stating whether counsel agree on the resolution of the motion.” The only parties to this action are listed in the caption. Aside from the SEC, Arthur Nadel is deceased (*see* Doc. 820), and the Receiver stands in the shoes of the defendants and relief defendants, pursuant to the order appointing him (*see* Doc. 8).

As noted above, investors and other creditors filed 504 claims in the Nadel Receivership and 92 claims in the Quest Receivership. Any interpretation of Local Rule 3.01(g) that would require the Receiver to confer individually with dozens or hundreds of claimants before filing a determination motion (or any other type of motion) would be extremely expensive and would thus undermine the reasons for filing such motions and establishing objection procedures. No objections were made in connection with 95% of the claims submitted in the Nadel Receivership, and the Receiver was able to resolve half of the objections that were served on him without Court intervention. The detailed objection procedures set forth in the Quest Determination Motion thus operate as a more fulsome version of Local Rule 3.01(g) and adequately protect claimants’ interests. The certification

the Receiver used for that motion is substantively identical to those used in the Quest Claims Motion, the Nadel Claims Motion, the Nadel Determination Motion, and dozens of other filings since the inception of this matter. As this stage of the case, the Receiver was under no obligation to confer with Bank of Albany or any other creditor before making his claim determinations. The Receiver will, however, confer with any claimant that objects to a determination through the established procedures in an attempt to resolve the objection without Court intervention.

II. CLAIMANTS SHOULD NOT RESPOND DIRECTLY TO THE QUEST DETERMINATION MOTION; RATHER, THEY SHOULD COMPLY WITH THE OBJECTION PROCEDURE

The Court also directed the Receiver and the SEC to “address the right of those with secured claims like First National Bank of Albany to respond/object to the Receiver’s motion.” Doc. 1388. As the Receiver explained in the Quest Determination Motion,

the Proposed Objection Procedure eliminates the need for any objections to be filed with the Court in direct response to this motion. In turn, that will preclude inefficient piecemeal presentation and adjudication of objections by the Court. Such a piecemeal process would result in an inefficient claims process for both the Court and the Receivership. As such, the Proposed Objection Procedure promotes judicial efficiency and reduces litigation costs.

Doc. 1383 at 41-45; *see also* Ex. B.

Bank of Albany argues it should not have to participate in the objection procedure because the procedure purportedly “makes the Receiver the prosecutor and judge, without any guidance or oversight by this Court” (Mot. ¶ 12) and does not afford “due process or fundamental fairness,” including the “benefit of discovery” (*id.* ¶ 12.A.) or a “jury trial” (*id.* ¶ 13). The Bank’s argument is without merit because the Eleventh Circuit has expressly approved the use of summary proceedings in federal equity receiverships. District courts

have “broad powers and wide discretion to determine relief in an equity receivership.” *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). Using this wide discretion, the Court has the authority to “classify claims sensibly in receivership proceedings.” *S.E.C. v. Enter. Trust. Co.*, 559 F.3d 649, 652 (7th Cir. 2009); *S.E.C. v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 670 (6th Cir. 2001). The primary purpose of an equity receivership is to promote the orderly and efficient administration of the estate for the benefit of creditors. *S.E.C. v. Hardy*, 803 F.3d 1034, 1040 (9th Cir. 1986).

To effectuate that purpose, district courts have authority to use summary proceedings to adjudicate claims in a receivership, provided that due process is afforded to the parties involved. See *S.E.C. v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) (“[S]ummary proceeding is the preferred course of action in a federal receivership because it reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets.”); *Hardy*, 803 F.3d at 1040 (“[R]eivership courts have the general power to use summary procedure in allowing, disallowing, and subordinating claims of creditors.”); *F.D.I.C. v. Bernstein*, 786 F. Supp. 170, 178 (E.D.N.Y. 1992) (court authorized to “determine in a summary proceeding the rights and obligations of the parties”).

A “district court’s use of summary proceedings complies with due process if the parties are permitted to present evidence when the facts are in dispute and to make arguments regarding those facts.” *S.E.C. v. Pension Fund of Am. L.C.*, 377 Fed. Appx. 957, 961-62 (11th Cir. 2010); see *F.T.C. v. Crittenden*, 823 F. Supp. 699, 702 (C.D. Cal. 1993) (“[U]se of summary proceedings in equity receiverships is appropriate so long as creditors and potential

creditors receive adequate notice and a reasonable opportunity to respond.”) “Summary proceedings may be conducted without formal pleadings, on short notice, without summons and complaints, generally on affidavits, and sometimes even ex parte.” *See, e.g., S.E.C. v. Abbondante*, 2012 WL 2339704, *2 (D.N.J. 2012); *S.E.C. v. Wencke*, 783 F.2d 829, 835-36 (9th Cir. 1986) (affirming use of summary procedures and rejecting argument Receiver was required to file “a formal complaint” and serve “summons”); *In re San Vicente Medical Partners Ltd.*, 962 F.2d 1402, 1408 (9th Cir. 1992) (“In sum, a district court has the power to include the property of a non-party ... in an SEC receivership order as long as the non-party ... receives actual notice and an opportunity for a hearing.”); *Warfield v. Alaniz*, 453 F. Supp. 2d 1118, 1133 (D. Ariz. 2006) (A “summary proceeding satisfies the requirements of procedural due process so long as the non-party is provided with adequate notice and opportunity to be heard.” (citation omitted)).

The Bank is thus not entitled to formal discovery or a jury trial, but its contention that the objection procedure does not afford it notice or an opportunity to be heard is false. The procedure expressly contemplates the submission to the Court of any dispute the Receiver is not able to resolve with the objecting claimant. Doc. 1383 at 43 ¶ (i). As noted above, the Receiver was able to resolve approximately 50% of the objections submitted in the Nadel Claims Process without Court intervention. The Receiver then presented the unresolved objections to the Court, typically through a motion to overrule the objection. *See, e.g., Docs. 1190, 1199.* Objecting claimants then had an opportunity to oppose the motion and to request a hearing. In one instance, the Receiver and the objecting claimant negotiated a briefing schedule, which the Court approved. *See Docs. 1033, 1034, 1048, 1051, 1061.* The

Receiver intends to employ similar procedures for the Quest Claims Process. As explained above, those procedures afford claimants notice and an opportunity to be heard and have been expressly approved by the Eleventh Circuit.

III. BANK OF ALBANY'S OTHER ARGUMENTS ARE WITHOUT MERIT

Bank of Albany also objected to the Receiver's determination of its claim for at least four reasons. First, the Bank argues that the Receiver's determinations "are the equivalent of a Final Judgment Order, forcing an unwanted appeal" because paragraph 2 of the Court's order granting the Quest Determination Motion provides that "[t]he Receiver's determinations of claims and claim priorities as set forth in the motion and in Exhibits B through H attached to the motion appear fair and equitable and are approved." See Mot. ¶ 1-2; Doc. 1384 ¶ 2. "A final order is an order that concludes the litigation on the merits of the case and 'leaves nothing for the court to do but execute the judgment.'" *In re Sunstate Dairy & Food Products Co., L.P.*, 1992 WL 161138, at *1 (M.D. Fla. June 29, 1992) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). "An order that is final with regard to a particular issue, but does not end the litigation on the merits, is not a final order under *Catlin* and is not immediately appealable." *Id.* Because claimants are allowed to object to the Receiver's determinations and to litigate their objections before the Court if the claimants and the Receiver are unable to resolve them, the Court's order is clearly neither final nor appealable. The order only arguably becomes final as to a particular claimant if and when the claimant fails to object to the Receiver's determination of its claim. Paragraph 2 of the Court's order is nevertheless important because most claimants will likely not object to the Receiver's determinations – indeed, claimants only submitted objections in connection with

5% of the Receiver's determinations in the Nadel Receivership. If the Bank or any other claimant here wishes to dispute the determination of its claim, it need only comply with the objection procedure to preserve its rights.

Second, the Bank argues "the Receiver's determination is based on speculation, making it impossible to supply details to refute the speculations and conclusions" (Mot. ¶ 12.A), but that argument is without merit because the facts underlying the Receiver's recommended denial of a portion of the Bank's claim are detailed at pages 16 through 18 of the Quest Determination Motion. The Court has denied claims under similar circumstances in the Nadel Receivership. *See* Doc. 1061 at 11-13. While the Receiver is prepared to defend his determination if he and the Bank are unable to resolve their dispute through the objection procedure, any further litigation of these matters at this time is both premature and wasteful.²

Third, Bank of Albany claims the Receiver "should not be allowed to surcharge against the assets secured by the bank lien" (Mot. ¶ 17) – *i.e.*, to recover fees and costs as an administrative priority – but that remedy is both common and appropriate in federal equity receiverships. *See, e.g., Elliott*, 953 F.2d at 1576-77.

Fourth, the Bank argues the Court should "not condition payment of the bank's claim to a sale of the assets which are liened by the bank loan" and that it is entitled to a deficiency judgment. Mot at ¶ 19.A.-C. Again, limiting secured creditors to their collateral is both common and appropriate in federal equity receiverships. *See, e.g., Clark on Receivers*

² In addition, the Court ordered the Receiver and the SEC to jointly respond to the Bank's motion, but under pertinent law, the Receiver is not an agent of the SEC, and he thus made his claim determinations independent of the SEC – although, for purposes of Local Rule 3.01(g), the SEC did not oppose the Quest Determination Motion.

§ 660(a) at 1155, *Elliott*, 953 F.2d at 1576-78 (considering rights of secured creditors with respect to receivership distribution plan); *SEC v. Byers*, 637 F. Supp. 2d 166, 183 (S.D.N.Y. 2009) (adopting distribution plan which “only permit[ted] secured creditors to recover out of their collateral” and “prohibit[ed] them from recovering under the [p]lan for their deficiency claims”); *United States v. Petters*, 2011 WL 281031, *3 (D. Minn. 2011) (establishing separate group of creditors, including banks holding secured loans, each of which received specific assets assigned to it). This rule exists because secured creditors typically enjoy a greater recovery, on a percentage basis, than defrauded investors and general creditors. *Byers*, 637 F. Supp. 2d at 183 (citing *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 84 (2d Cir. 2006) (“[I]t is fair and reasonable that the limited funds available for distribution not be directed to those who have already recovered more than ... general creditors, and rather be used to increase the still-considerably smaller recovery of those covered by the proposed [d]istribution [p]lan.”)).

The Receiver has been warning for some time that Quest’s operations barely cover its day-to-day expenses, and Quest currently does not have sufficient cash-on-hand to make a distribution to any creditors. Even if the Receiver is ultimately able to sell Quest or its assets, there will likely be insufficient funds to afford a recovery to Class 3 claimants, and Class 1 and 2 claimants will likely only receive limited recoveries:

While it is necessary to resolve all submitted claims, it is important to note that the Receiver anticipates that any distribution of Receivership funds will be modest at best. Given the state of the oil and gas industry, coupled with lower than expected oil and gas production, the Receiver believes that after payment of Receivership fees and expenses, secured property tax liens, and other secured claims, there will be few, if any, funds remaining to distribute to Quest’s investors.

Doc. 1383 at 1. To be sure, every claimant would like to be receive payment of its principal investment or loan amount, contractual interest, penalty interest, legal fees, and compensation for opportunity costs, but that is rarely possible following the collapse of fraudulent investment schemes. *See Byers*, 637 F. Supp. 2d at 176 (“[W]hen funds are limited, hard choices must be made.”). Because Quest’s assets are so limited, it is vital that all claimants follow established procedures and avoid piecemeal litigation, which only serves to deplete receivership resources and thus decrease potential recoveries.

CONCLUSION

For the reasons stated above, the Court should deny the Bank’s motion and require it to comply with the objection procedure.

/s Jared J. Perez

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 3, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/ Jared J. Perez
Attorney