Securities and Exchange Commission v. Nadel et al Doc. 1403

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants. CASE NO.: 8:09-cv-0087-T-33CPT

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

Relief Defendants.
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RECEIVER'S VERIFIED MOTION FOR APPROVAL OF PRIVATE SALE OF ASSETS OF QUEST ENERGY MANAGEMENT GROUP, INC.

Burton W. Wiand, as receiver (the "**Receiver**") for Quest Energy Management Group, Inc. ("**Quest**"), moves the Court for an order, in substantially the form attached as **Exhibit 1**, authorizing him to sell certain Quest assets to Archer Petroleum, Ltd. ("**Archer**" or the "**Purchaser**"), free and clear of all claims, liens, and encumbrances. As explained in Section III below, any existing claims, liens, or encumbrances on Quest or its assets will transfer to the proceeds of the sale and be resolved through the claims process established in

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this action. The Court has previously utilized this procedure in connection with other asset sales. *See* Docs. 842, 1151 (granting motion to approve sale and transferring lien to sale proceeds). As in those matters, the Court's utilization of a similar procedure here will protect the interests of all claimants while also allowing the proposed sale to close in a timely manner.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission ("**SEC**") initiated this action to prevent the defendants from further defrauding investors in hedge funds the defendants operated. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for defendants Scoop Capital, LLC, 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. Doc. 8. The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel ("**Nadel**"). *See generally* Docs. 17, 44, 68, 81, 153, 172, 454, 911, 916, 1024. All of the entities in receivership are collectively referred to as the "**Receivership Entities**." The Court directed the Receiver to, among other things, administer and manage the business affairs, funds, assets, and any other property of the Receivership Entities. *See, e.g.,* Doc. 8.

Quest And Its Assets

Quest is an oil and gas exploration and production company based in Texas. Paul Downey was its Chief Executive Officer, and his son Jeff Downey was its Chief Operating

Officer (collectively, the "**Downeys**"). Viking Oil & Gas, LLC ("**Viking Oil**") is a Florida limited liability company formed in January 2006 by Neil and Christopher Moody (the "**Moodys**") to make investments in Quest. The Moodys funded Viking Oil with proceeds from Nadel's scheme, and as a result, the Court expanded the Receivership to include Viking Oil on July 15, 2009. Doc. 153. Between February 2006 and April 2007, through Viking Oil, the Moodys invested at least $4 million in Quest. As a result, the Receiver filed a motion to expand the Receivership to include Quest (Doc. 993), and the Court granted that motion on May 24, 2013 (Doc. 1024). Although Quest is one of the Receivership Entities, the Receiver has administrated Quest independently, as directed by the Hon. Richard A. Lazzara (the "**Quest Receivership**" and the "**Quest Estate**").

Since the inception of the Quest Receivership in May 2013, the Receiver has managed and operated Quest, including its oil and gas leases. The company generates revenue by selling its production, but that revenue has varied sharply with oil and gas prices, and it has not historically exceeded Quest's operating costs by a material margin. As such and as explained in more detail below, the Receiver has long sought to sell Quest to monetize its assets for the Quest Estate and eventual distribution to creditors. The Receiver's efforts, however, have been complicated by the fraudulent manner in which the Downeys operated Quest. *See, e.g., S.E.C. v. P. Downey et al.*, Case No. 1:14-cv-185 (N.D. Tex.).[1]

[1] 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 July 25, 2016, the court presiding over the enforcement action entered an order granting summary judgment in favor of the SEC on its claims against the Downeys. On September 29, 2016, the court granted the SEC's motion for remedies and entered final judgments as to all defendants. In addition to entering final judgments, the court also made specific findings as to the defendants, including that Jeff and Paul Downey (1) "raised $4.9 million from 17

The Receiver's Marketing Efforts

The Receiver's marketing efforts for Quest began with communications with various individuals with ties to the oil and gas exploration industry to generate referrals of interested buyers and through communications with potential buyers familiar with Quest. Those communications, however, resulted in no meaningful offers. The Receiver sought advice from various individuals with knowledge of the oil and gas exploration industry to determine the best way to market Quest for sale. As a result of those efforts, two marketing firms submitted proposals to the Receiver. After careful consideration, the Receiver determined that selling Quest through a private sale with the assistance of WhiteHorse Partners, LLC ("**WhiteHorse**") was in the best interests of the Quest Estate, as he believed it would provide the best opportunity to market Quest to the widest audience for the most value.

WhiteHorse is a boutique advisory firm based in Nashville, Tennessee familiar with the oil and gas industry. It has marketed and sold (or is currently marketing and in the process of selling) companies similar to Quest. WhiteHorse presented the Receiver with a proposed Marketing Engagement Agreement that sought a non-refundable $5,000 retainer and a 6% commission of the sale price of Quest. The $5,000 retainer will be credited at the time of closing. On October 28, 2014, the Receiver filed a renewed motion for leave to

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investors in a fraudulent offering of securities"; (2) "acted with a high level of scienter, knowingly deceiving investors about virtually every aspect of the investment"; (3) concealed the Receiver's appointment from Quest's investors; and (4) exhibited "misconduct [that] was extremely egregious." *S.E.C. v. P. Downey et al.*, Case No. 1:14-cv-185, order granting SEC's motion for summary judgment, Doc. 117 at 2-3 (N.D. Tex. Sept. 29, 1996). The court ordered the Downeys to disgorge $4.9 million plus $1.1 million in interest and to pay a civil penalty of $178,156 each. As far as the Receiver is aware, the Downeys have not paid anything toward the disgorgement or penalty.

retain WhiteHorse. Doc. 1144. On November 12, 2014, the Court granted the Receiver's motion. Doc. 1148. WhiteHorse's marketing strategy for Quest included:

- A complete review of the documentation related to Quest's current and past operations including its current and past accounting databases so consolidated financial statements could be prepared;
- A determination of Quest's market value;
- The development of a marketing plan aimed at locating qualified purchasers;
- The preparation of a marketing memorandum which outlined relevant details about Quest;
- The execution of a marketing initiative;
- The qualification of potential buyers to ensure their financial ability to conclude a transaction to buy Quest and a review of their prior transactions and experience with entities such as Quest;
- Conducting tours of Quest's properties and speaking with personnel;
- The analysis of all offers;
- Assisting with the negotiation of a letter of intent or purchase offer; and
- Working on closing the sale transaction, including due diligence.

Efforts by WhiteHorse and the Receiver led to multiple inquiries and offers from potential purchasers, but for various reasons (due diligence, market conditions, the potential purchaser's inability to obtain financing, *etc.*), none of those inquiries resulted in a transaction – until now.

The Agreement To Sell The Assets To Archer Petroleum, Ltd.

The Receiver has reached an agreement to sell almost all of Quest's assets, including its oil and gas leases, to Archer for $1,000,000.[2] The transaction is documented by the Asset Purchase Agreement attached hereto as **Exhibit 2** (the "**APA**"), but it is expressly contingent upon the Court's approval of the proposed sale. Archer has already paid a $100,000 earnest money deposit to the Receiver, and that money will become nonrefundable once the Court enters an order approving the sale. *See* APA § 4.a. & Ex. B. The assets subject to the agreement are set forth in Sections 1 and 2 of Exhibit A to the APA (the "**Assets**"). Section 3, on the other hand, excludes certain assets from the transaction, including (1) bank accounts and financial instruments; (2) the real property located at 64 South Jacobs Street in Albany, Texas; and (3) any leases not specified in Section 1. *See* APA Ex. A. The Receiver seeks the Court's approval of the APA and the sale generally pursuant to 28 U.S.C. § 2001(b).

The Proposed Private Sale Of The Assets

In receivership actions, private sales of real property or interests therein are governed by 28 U.S.C. § 2001(b) ("**Section 2001(b)**"):

> After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court

[2] As noted above, pursuant to their Court-approved engagement agreement, WhiteHorse is entitled to a 6% commission on this amount. The Quest Estate will thus net $940,000.

> directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b).[3] In other words, Section 2001(b) has three primary components: (1) publishing the proposed sale in a newspaper of general circulation at least ten days before confirmation of the sale; (2) obtaining three appraisals of the Assets to be sold; and (3) setting a hearing to approve the sale. *Id.*

To comply with the first prong of Section 2001(b), the Receiver will publish a notice of the proposed sale for one day in the Abilene Reporter-News, which is regularly issued and of general circulation in the district where Quest is located. A copy of the notice is attached as **Exhibit 3**. The Receiver will also publish this motion and the notice on his website – www.nadelreceivership.com. No less than 10 days after publication of the notice, the Receiver will inform the Court whether any potential purchaser submitted a "bona fide offer," as contemplated by Section 2001(b).

As explained below in Section II, the Receiver asks the Court to grant this motion without requiring him to obtain three formal appraisals. To ensure the fairness of the sale to the Quest Estate, the Receiver has obtained an asset valuation from Jordan Taylor Buckingham, a petroleum engineer – a copy of which is attached hereto as **Exhibit 4** (the "**Valuation**"). As documented in the Valuation, Mr. Buckingham performed a "decline

[3] Section 2001(b) governs because Quest's most valuable assets are its oil and gas leases, which are interests in real property. Certain other assets subject to the APA constitute personal property, but personal property is also sold in accordance with Section 2001(b). *See* 28 U.S.C. § 2004 ("Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.").

curve analysis on producing leases using historical production data from the TX Railroad Commission (RRC), historical WTI oil and gas pricing, operations expense data from Quest EMG, Inc., and known standard operation well costs in RRC District 7B." *Id.* at 3. Based on this analysis, Mr. Buckingham valued the Assets at $964,457.54. The Valuation demonstrates that the APA's purchase price is fair to the Quest Estate, even after accounting for WhiteHorse's commission.

As also explained below in Section II, the Receiver asks the Court to dispense with the need for a hearing and to grant this motion on the papers, assuming no party files an opposition necessitating a hearing and no potential purchaser submits a "bona fide offer" necessitating a hearing.[4] This will conserve the sale price for the benefit of creditors as opposed to eroding it through administrative expenses. The Receiver will inform the Court whether any party has submitted a "bona fide offer" promptly after completing the publication and notice requirements of Section 2001(b). The Receiver asks that the Court defer ruling on this motion until the Receiver has filed that notice.

The Quest Claims Process And Claims Against The Assets

In addition to the Court's approval, the APA is also expressly conditioned on the transfer of the Assets to Archer free and clear of all claims, liens, and encumbrances. *See* APA §§ 2, 9(f). 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. *See* Doc. 1240 (the "**Quest Claims Motion**"). The Court granted the motion on June 17, 2016, thus establishing the

[4] The Receiver will serve a copy of this motion on counsel for the secured creditors identified on pages 9-13 and in the certificate of service.

"**Quest Claims Process**." Doc. 1241. Investors and other creditors then submitted 93 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. *See* Doc. 1383 (the "**Quest Determination Motion**"). In the Quest Determination Motion, the Receiver recommended that claims be allowed in full, allowed in part, or denied. As explained below, certain claims are secured by or otherwise constitute encumbrances on the Assets.

Class 1 Claims From Taxing Authorities

Five taxing authorities in Texas (the "**Taxing Authorities**") submitted claims in the Quest Claims Process:

- The Brown County Appraisal District filed a proof of claim form with the Receiver on behalf of Brown County, Texas for unpaid property taxes from 2012 through 2016 in the amount of $34,602.72;
- The Callahan County Appraisal District filed a proof of claim form with the Receiver on behalf of the County of Callahan, Texas for unpaid property taxes from 2012 through 2016 in the amount of $9,136.84;
- The Guadalupe County Appraisal District filed a proof of claim form with the Receiver on behalf of the County of Guadalupe, Texas for unpaid property taxes from 2012 through 2016 in the amount of $96.54;
- The Shackleford County Appraisal District filed a proof of claim form with the Receiver on behalf of the County of Shackelford, Texas for unpaid property taxes from 2012 through 2016 in the amount of $284,893.80; and
- The Denton County Appraisal District filed a proof of claim form with the Receiver on behalf of the County of Denton, Texas for unpaid property taxes from 2012 through 2016 in the amount of $12,633.36;

The Receiver denied the claim from Denton County because it appeared to be related to a non-Receivership entity, but he assigned the other claims to Class 1 – *i.e.*, the highest priority. Given the limited assets available to all creditors, the Receiver also recommended the claims be allowed only in part – *i.e.*, without any entitlement to late fees or penalty interest. The Taxing Authorities objected to the Receiver's determination, and the parties began working through the objection procedure set forth in the Quest Determination Motion. Counsel for the Taxing Authorities informed the Receiver that the foregoing claim amounts increased between 2016 and the present to a total of approximately $379,852 due to the accrual of additional taxes, penalties, and interest. The Receiver has recently agreed to allow the claims submitted by the Taxing Authorities as Class 1 claims in the total amount of $300,000, and he has separately moved the Court to approve that agreement. Through this motion, the Receiver asks the Court to transfer the Taxing Authorities' liens from Quest's Assets to the proceeds of this proposed sale so that the Assets can be sold to the Purchaser free and clear of all claims, liens, and encumbrances.

Class 2 Claims From Secured Creditors

a. Van Operating Ltd. ("Van Operating")

Van Operating submitted a claim for $795,201.59 based on a loan Quest assumed in 2007. *See* Claim No. 6. Specifically, Van Operating loaned Musselman Petroleum and Land Company and John. E. Musselman (collectively, "**Musselman**") $832,000 in 1998, which loan was secured by certain oil and gas leases and related equipment (the "**Musselman Loan**"). On January 1, 2007, Quest assumed the Musselman Loan along with Musselman's interests in the secured property. As part of that transaction, Quest entered into an

"assumption, modification and renewal agreement" with Van Operating (the "**Renewal Note**"), pursuant to which the parties stipulated that, as of January 1, 2007, the outstanding principal balance of the Renewal Note was $832,000, which amount "shall bear interest at ten percent (10%) per annum."

On December 29, 2011, Quest and Van Operating entered into a modification and renewal agreement, pursuant to which the parties stipulated that the outstanding principal balance of the Renewal Note was $652,005.86. The parties also extended the maturity date of the Renewal Note to March 31, 2012, and provided that Quest would cause the companies that purchased its oil and gas production to pay 50% of any future purchase amounts directly to Van Operating. Paul Downey guaranteed all indebtedness under the Renewal Note.

Between the issuance of the Renewal Note on January 1, 2007, and Quest's inclusion in this Receivership on May 24, 2013, Quest paid Van Operating $719,072.60, which includes total principal payments of $335,385.48 and total interest payments of $383,687.12. Van Operating thus has already received nearly 87% of the original loan amount. The Renewal Note's outstanding principal balance on or shortly before Quest's inclusion in this Receivership was $496,614.52. Van Operating arrived at its claim amount by adding $89,011.85 in legal fees and $207,157.50 in interest, the recovery of which would not be equitable under these circumstances. In Exhibit C to the Quest Determination Motion, the Receiver recommended that Van Operating's claim be allowed but only in the amount of the outstanding principal balance of the Renewal Note at the time of the Receiver's appointment – *i.e.*, $496,614.52. Van Operating did not object to the Receiver's determination.

b. First National Bank of Albany ("Bank of Albany")

Bank of Albany submitted a claim for $198,250.14 plus unspecified "interest from 9/12/2013" based on two loans it made to Quest and the Downeys. *See* Claim No. 5. On October 13, 2010, Bank of Albany loaned Quest $700,000 (the "**2010 Loan**"), which was secured by certain oil and gas leases, personal property, and equipment. The Downeys also personally guaranteed the 2010 Loan. On February 26, 2013, Bank of Albany and Quest entered into a "modification, renewal and extension" of the 2010 Loan, pursuant to which the parties acknowledged that the outstanding principal balance of the loan at the time of the modification was $213,057.30. The Court expanded this Receivership to include Quest shortly thereafter – on May 24, 2013, at which time the outstanding principal balance of the 2010 Loan was approximately $151,728. During the life of the 2010 Loan, Quest paid Bank of Albany approximately $555,739, which includes total principal payments of approximately $492,247 and total interest payments of approximately $63,492. As explained in the Quest Determination Motion, the Receiver concluded that the portion of Bank of Albany's claim related to the 2010 Loan should be denied. *See* Doc. 1383 at 16-18.

On April 17, 2006, Bank of Albany loaned $76,000 to Quest, "by and through Jeff Downey, Vice-President," for the purchase of certain real property in Shackelford County, Texas, from which the Downeys operated Quest (the "**Office**" and the "**Office Loan**"). *See* Claim No. 5. As set forth in Exhibit C to the Quest Determination Motion, the Receiver concluded that Bank of Albany's claim with respect to the Office Loan should be allowed in the amount of $46,522.00, which is the approximate outstanding principal balance of that loan at the time of the Receiver's appointment.

Bank of Albany filed a motion with the Court regarding the Receiver's determination (Doc. 1387), which the Receiver construed as an objection. Pursuant to the Court's order on the motion (Doc. 1397), the Receiver began attempts to resolve the objection through the Quest Claims Process. Based on those negotiations, the Receiver has agreed to transfer the Office to Bank of Albany in full satisfaction of its claim with respect to both the 2010 Loan and the Office Loan. To accomplish this, the Receiver has separately moved the Court to abandon the Office and to lift the stay restraining interference with Receivership assets as to the bank, so it can foreclose on the Office. Through this motion, the Receiver asks the Court to transfer Bank of Albany's liens from Quest's Assets to the Office so that the Assets can be sold to the Purchaser free and clear of all claims, liens, and encumbrances.[5]

Class 3 and Other Unsecured Creditors

Although the Downeys fraudulently represented to investors in Quest that their investments were "secured," "senior," or "preferred," the Receiver has not been able to identify any such valid security interests. Claimants with unsecured claims submitted five objections to the Receiver's determination of their claims. *See* Doc. 1395. The Receiver resolved one of those objections (Claim No. 72). Claimants abandoned three other objections during the Court-approved resolution process set forth on the Quest Determination Motion (Claim Nos. 73, 75, 79). As such, only one claim objection remains for resolution (Claim No. 17). The Receiver will separately move the Court to overrule that objection, but this issue does not need to be resolved before the Court grants this motion.

[5] Archer is not purchasing the Office, but the Receiver's settlement of Bank of Albany's claim and objection resolves its liens against both the Office and the oil and gas leases.

It is possible and perhaps likely that the Receiver will not have sufficient funds to make a distribution to Class 3 and other unsecured creditors after the payment of administrative expenses and Class 1 and 2 claims. If the Court grants this motion and the sale of the Assets to Archer closes successfully, the Receiver will calculate and propose a plan of distribution once he is in possession of all available funds.

MEMORANDUM OF LAW

I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP'S ADMINISTRATION

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. 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; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). The goal of a receiver charged with liquidating assets is to obtain the best value available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996) (citations omitted). Further,

the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

II. THE COURT HAS THE AUTHORITY TO WAIVE THE PORTIONS OF SECTION 2001(b) REGARDING THREE APPRAISALS AND A HEARING

A. The Court Should Approve The Sale Based On The Valuation

Section 2001(b) contemplates that a Receiver will obtain three appraisals in connection with a private sale of real property or interests therein, but the Court has the equitable authority under the principles discussed above to waive strict compliance with that provision. The Receiver asks the Court to do so here for six independent reasons. First, the Valuation attached as Exhibit 4 is detailed, comprehensive, and more than adequate to support the reasonableness of the purchase price set forth in the APA. Second, valuations of operating businesses are expensive and obtaining two more would only increase administrative costs and fees. Third, Quest's assets are extremely limited and could be insufficient to afford any distribution to Class 3 investor claimants. Fourth, the Receiver and WhiteHorse have marketed Quest and/or its assets for several years, and the Receiver has not

been able to consummate a transaction at a higher price. Fifth, the Receiver was negotiating with other potential purchasers earlier this year, and their offers were substantially lower than the purchase price set forth in the APA. And sixth, Section 2001(b) contains a mechanism for interested parties to submit a higher bid following the Receiver's publication of the terms of this sale, and the use of the Valuation in place of three appraisals will not materially impair the purpose of that mechanism.

The Court has previously either waived or determined the Receiver substantially complied with the appraisal provisions in Section 2001(b) under similar circumstances. *See, e.g.,* Docs 1368 & 1370 (finding substantial compliance based on "an opinion of value letter" from a land specialist); 1300 & 1301 (same based on a single appraisal); 1229 & 1230 (same); 1150 & 1151 (same); 1109 & 1110 (finding substantial compliance regarding the Receiver's sale of the assets of Tradewind, LLC – an operating business – based on a single valuation); 1074 & 1075 (waiving requirements of Section 2001(b) and requiring no appraisals of assets belonging to Respiro, Inc. – a medical device company – due to limited value). The Court's waiver or modification of Section 2001(b) is also consistent with decisions from other courts considering these issues. *See, e.g., S.E.C. v. Kirkland,* 2009 WL 1439087, at *3 (M.D. Fla. May 22, 2009) (recommending approval of sale based on one appraisal); *S.E.C. v. Billion Coupons, Inc.*, 2009 WL 2143531, *3 (D. Hawaii 2009) (authorizing sale without obtaining any appraisals given sufficient safeguards).

B. If No Other Purchaser Submits A Bona Fide Offer, The Court Should Approve The Sale Without A Hearing

The Receiver also asks the Court to dispense with the need for a hearing and to grant this motion on the papers, assuming no party files an opposition necessitating a hearing and

no potential purchaser submits a "bona fide offer" necessitating a hearing. This will conserve the sale price for the benefit of creditors as opposed to eroding it through administrative expenses. The Receiver will inform the Court whether any party has submitted a "bona fide offer" promptly after completing the publication and notice requirements of Section 2001(b). All (or almost all) of the Receiver's motions to approve the private sale of personal or real property in this action have been decided on the papers. For example, when the Receiver sold the assets of Tradewind, LLC, the Court found that the Receiver "had not received any bona fide offer as described in 28 U.S.C. § 2001(b) [and] … in lieu of a hearing on the [m]otion, the filing of the [m]otion in the Court's public docket and its publication on the Receivership's website and in the Newnan Times Herald provided sufficient notice and opportunity for any party to be heard in accordance with 28 U.S.C. § 2001(b)." Doc. 1110. The Receiver asks that the Court defer ruling on this motion until the Receiver has filed the notice of receipt (or not) of any bona fide offer pursuant to Section 2001(b).

III. THE COURT HAS THE AUTHORITY TO TRANSFER THE ASSETS TO ARCHER FREE AND CLEAR OF ALL CLAIMS, LIENS, AND ENCUMBRANCES

The APA is contingent upon the Receiver's ability to transfer the Assets to the Purchaser free and clear of all claims, liens, and encumbrances, including those filed in the Quest Claims Process. *See* APA §§ 2, 9(f). That contingency is necessary because the value of the claims against Quest is far greater than the value of Quest's assets due to the Downey's fraud. No commercially-reasonable purchaser would agree to acquire Quest or its assets subject to its extensive liabilities. Under similar circumstances, the Court has

previously transferred the pertinent claims, liens, and encumbrances from the assets the Receiver sought to sell to the proceeds of the sale for subsequent resolution through additional proceedings. *See, e.g.,* Docs. 823 & 842 (regarding a lien by a secured creditor against property in North Carolina), 1229 & 1230 (transferring title free and clear despite federal tax lien); 1150 & 1151 (same regarding a different secured creditor and North Carolina property). These orders involved secured (or purportedly secured) encumbrances on the subject assets by lenders and a taxing authority, and as a result, they are substantively identical to this matter and the encumbrances described above in the background section.

The relief sought in this motion falls squarely within the Court's powers and is in the best interests of Quest and its creditors. That relief is also consistent with precedent, which establishes that a court of equity – like this one in these proceedings – may authorize the sale of property free and clear of all claims, liens, and encumbrances. *See, e.g.*, *Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (3d Cir. 1933); *People's-Pittsburgh Trust Co. v. Hirsch*, 65 F.2d 972, 973 (3d Cir. 1933). In part, a court has this authority because when a court of competent jurisdiction takes possession of property through its officers – like this Court has done with Quest through the Receiver – it has jurisdiction and authority to determine all questions about title, possession, and control of the property. *Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737-38 (1931).

Importantly, the Receiver is not asking the Court to extinguish, overrule, or otherwise impair any creditor's claim. He is only asking the Court to shift the creditors' claims from the Assets to the sale proceeds. This will allow the Receiver to sell the Assets and eliminate

ongoing maintenance costs and market risk. The creditors' claims can then be addressed through the Quest Claims Process, if necessary.

CONCLUSION

The Receiver moves the Court for entry of an order (in substantially the form of the proposed order attached as **Exhibit 1**) to sell the Quest Assets to Archer, free and clear of all claims, liens, and encumbrances in accordance with the terms and conditions set forth above and in the APA.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

Undersigned counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that the SEC does not oppose the relief requested in this motion. Counsel for the Receiver has not conferred with any of the 93 claimants that submitted claims in the Quest Claims Process, including the Class 1 and Class 2 creditors described in this motion, but as explained in footnote 4, the Receiver is serving this motion on counsel for those Class 1 and Class 2 creditors.

VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter, hereby certify that the information contained in this motion is true and correct to the best of my knowledge and belief.

s/ Burton W. Wiand
Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 2019, I filed the foregoing with the Clerk of the Court by using the CM/ECF system. I also served a copy of the foregoing via email and U.S. Mail on the following counsel for Class 1 and Class 2 creditors:

Tara LeDay
McCreary Veselka Bragg & Allen P.C.
700 Jeffrey Way, #100
Round Rock, TX 78665
Counsel for the Taxing Authorities

Raymond J. Rotella
Kosto & Rotella P.A.
619 E Washington Street
Orlando, FL 32802
Counsel for Bank of Albany

Gregory M. Wilkes
Norton Rose Fulbright US LLP
2200 Ross Avenue
Suite 3600
Dallas, TX 75201-7932
Counsel for Van Operating

Stephanie C. Lieb
Trenam, Kemker
101 E. Kennedy Blvd.
Suite 2700
Tampa, FL 33602
Counsel for Van Operating

s/Jared J. Perez
Jared J. Perez, FBN 0085192
jperez@wiandlaw.com
WIAND GUERRA KING P.A.
5505 W. Gray Street
Tampa, FL 33609
Tel: 813-347-5100
Fax: 813-347-5198

Attorney for the Receiver