

**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 procedure to administer claims set forth herein and the Proof of Claim Form attached hereto as Exhibit A, (2) establishing a deadline for filing proofs of claim against the Receivership, and (3) permitting notice of the deadline by mail and by publication in The Wall Street Journal, in

The Sarasota Herald-Tribune, and on the Receiver's website in the form attached hereto as Exhibit B (the "Notice").

Background

On January 21, 2009, the Securities and Exchange Commission ("Commission") initiated this action to prevent the defendants from further defrauding investors of hedge funds managed by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC ("Scoop Capital") and Scoop Management, Inc. ("Scoop Management") 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).)

The Court subsequently granted six motions to expand the scope of the Receivership and appointed the Receiver as receiver over the following:

- Venice Jet Center, LLC, and Tradewind, LLC (Order, Jan. 27, 2009 (Doc. 17));
- Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; and the Laurel Mountain Preserve Homeowners Association, Inc. (Order, Feb. 11, 2009 (Doc. 44));
- The Guy-Nadel Foundation, Inc. (Order, Mar. 9, 2009 (Doc. 68));
- Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Amended Order, Mar. 17, 2009 (Doc. 81));
- Viking Oil & Gas, LLC (Order, July 15, 2009 (Doc. 153)); and
- Home Front Homes, LLC (Order, Aug. 10, 2009 (Doc. 172)).

All of the entities and the trust in receivership are hereinafter referred to collectively as the “Receivership Entities” and Receivership Entities Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Victory IRA Fund, Ltd.; Victory Fund, Ltd.; Viking IRA Fund, LLC; and Viking Fund LLC are referred to collectively as the “Hedge Funds.” The Receiver was reappointed as Receiver for the Receivership Entities by Orders dated June 3, 2009 and January 19, 2010. (Order, June 3, 2009 (Doc. 140); Order, Jan. 19, 2010 (Doc. 316) (all Orders appointing and reappointing Receiver are collectively referred to as “Order Appointing Receiver”).)

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

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 and conditions of the Order Appointing Receiver, the Receiver, among other things, took possession of the Receivership Entities’ assets and is currently in the process of administering those assets, working to recover additional assets, and

determining the extent of liabilities the Receiver believes to be the Receivership Entities' legal obligations.

The Defendants and Relief Defendants were involved in the purported offer and sale of interests in hedge funds to investors throughout the United States. In reality, the purported investment opportunity was a fraudulent scheme in which money raised from new investors and additional money raised from existing investors was used to (1) pay fictitious returns and purported principal redemptions to existing investors; (2) pay substantial "management, advisory, incentive and/or referral" fees; and (3) purchase and/or fund additional businesses controlled by Nadel. While some investors received funds from the Receivership Entities, others did not.

The Receiver is substantially underway in the process of determining the legal obligations of the Receivership Entities. However, for the Receiver to confirm the extent of the Receivership Entities' legal obligations, and to allow investors, creditors, and any other interested parties to advise the Receiver of any possible claims against the Receivership Entities, the Receiver proposes that the Court approve the Proof of Claim Form (Exhibit A) and the procedures to administer claims set forth below.

Relief Requested

Pursuant to the Order Appointing Receiver, the Receiver is obligated to take possession of the Receivership Entities' assets for the benefit of their defrauded 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 investors with allowed claims (the "Distributions") in a fair and equitable manner.

A. Claim Bar Date.

The Receiver seeks entry of an order establishing a filing deadline for all claimants holding claims against the Receivership Entities (including investors), arising in any way out of the activities of the Receivership Entities (the “Claimants”), to assert a claim (the “Claim Bar Date”).¹ The Receiver proposes that the Claim Bar Date be set as the later of either 120 days from the entry of the Order requested herein or 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 in order to participate in any distribution of Receivership assets. The Receiver proposes that any claim received by the Receiver after the Claim Bar Date should be disallowed.

The Receiver submits that it is appropriate to establish a Claim Bar Date to permit the Receiver to allow as many Claimants as possible to participate in these proceedings. Furthermore, a Claim Bar Date will allow the Receiver to obtain certainty in a reasonably prompt fashion as to the total amount of potential claims against the Receivership Estate. Such certainty will facilitate a timely claims resolution and Distribution process.

B. Notice by Mail and Publication.

The Receiver and his professionals have spent considerable time, effort, and resources examining documents and other data relating to the Receivership Entities. Based on the review

¹ The Receiver will calculate and insert the specific date for the Claim Bar Date in the Notice and Proof of Claim Form. The proposed Notice and Proof of Claim Form currently contain blanks where the Receiver intends to insert this date.

of these voluminous documents, the Receiver believes he has identified substantially all of the Receivership Entities' investors. As to these known potential Claimants, the Receiver possesses last known mailing addresses. However, the Receiver believes the Receivership Entities' 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 the Receivership Entities, financial institutions, and investors and (2) the other information he has gathered. It is possible that some potential Claimants may be currently unknown. 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 50 states and/or provinces within eight countries and five territories, with a concentration of investors in the Sarasota, Florida area. Given the geographically broad area in which investors are located and significant expense associated with publication of the Notice in each of the states and provinces 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 Wall Street Journal for *global* publication and in The Sarasota Herald-Tribune on one day at least 45 days prior to the Claim Bar Date.²

² The cost of global publication for one day in The Wall Street Journal for an advertisement the size of the Receiver's proposed Notice is approximately \$26,624.00 and the cost of a one-day advertisement for the same size Notice in The Sarasota Herald-Tribune is approximately \$803.00.

The Sarasota Herald-Tribune has been providing extensive coverage of the Nadel scheme and the Receivership. Considering the concentration of investors in the Sarasota area and The Sarasota Herald-Tribune's coverage of the Nadel scheme and the Receivership, the Receiver believes that potential Claimants located in the Sarasota area and those located outside the area may be following the Herald-Tribune's coverage and would benefit from such publication. 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 Wall Street Journal and The Sarasota Herald-Tribune, and on the Receiver's website. The Notice of the Claim Bar Date will be in the form attached hereto as Exhibit B.

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, equitably, and promptly 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 the Receivership Estate and thus allow for an equitable distribution among Claimants. The Receiver's proposed procedure also will serve to lessen the burden on many known Claimants. This proposed procedure is as follows.

The Receiver and his professionals have spent considerable time and resources examining voluminous documents relating to the Receivership Entities, including their financial

information. With respect to the Hedge Funds, based on this examination and to the extent possible, the Receiver has determined a Net Investment Amount for investor “accounts.”³

The Net Investment Amount for an account is calculated by adding all amounts contributed by the pertinent investor(s) to an account and subtracting all payments made to that account holder(s) and/or in connection with that account, regardless of whether those payments were characterized as interest, earnings, profits, returns or redemptions of principal, incentive fees, management fees, or by any other terminology. For example, an account that had a total investment of \$100,000 and in connection with which \$50,000 was distributed to the related investors would have a Net Investment Amount of \$50,000.

To make the process of submitting a claim less burdensome for investors, the Receiver proposes that he mail a Proof of Claim Form for each account to each investor who, according to the Receiver’s records, is associated with each pertinent account. Further, to the extent possible, the Receiver proposes to include with such Proof of Claim Form the Net Investment Amount the Receiver has calculated for the pertinent account. If the investor agrees with the provided Net Investment Amount, then the investor does not need to provide any further documentation supporting his or her claim. However, the investor must still complete and sign the Proof of Claim Form under penalty of perjury, and return it to the Receiver before the Claim Bar Date as specified below.

If the investor disagrees with the Net Investment Amount or if there is not sufficient

³ Although the Receivership Entities did not maintain separate investor accounts, they referred to fictitious accounts. For ease of reference, the Receiver will use the term “account” in this motion and the attached exhibits although as noted these accounts did not exist.

information to include a Net Investment Amount, then the investor must provide the amount he or she contends is correct and legible copies of all documents on which this claim is based or, if any such documents are not available, an explanation as to why the documents are not available.

If the investor maintained multiple accounts, the Receiver will send the investor a Proof of Claim Form for each account. The investor must complete and return the Proof of Claim Form for each account to preserve all claims.

If the Receiver discovers additional information which would require amendment to the Net Investment Amount provided, the Receiver will provide notice of such amendment to the investor. The investor will then have the later of either the Claim Bar Date or thirty (30) days from the date the amendment was sent to return an amended Proof of Claim Form to preserve his or her claims. Similarly, subject to the Receiver's discretion to be exercised in an equitable manner and in the best interests of the Receivership, the Receiver may send notice of a deficiency in a submitted Proof of Claim Form to the submitting Claimant. The Claimant will then have the later of either the Claim Bar Date or thirty (30) days from the date the notice of deficiency was sent to return an amended Proof of Claim Form to preserve his or her claims.

To the extent the Receivership Entities do not have sufficient funds to pay all valid claims, the Net Investment Amount will serve as the basis for determining the recipients and amounts of Distributions with respect to investors.⁴ The identification of a Net Investment Amount does not mean that the investor account has a valid claim; the Receiver reserves the

⁴ To the extent any non-investor claims are submitted, the Receiver will recommend and seek the Court's approval of a method for addressing and resolving such claims consistent with the goals of the Receivership.

right to object to the validity of any claim notwithstanding the identification of any such amount.

Each filed 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. Such rejection will be treated as a deficiency and the Claimant will have the time indicated above within which to submit an acceptable 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, including the information provided by the Receiver, 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.L.
3000 Bayport Drive, Suite 600
Tampa, FL 33607

Any properly completed and timely filed Proof of Claim will be considered allowed if it is established that: (1) the Claim arises out of any of the Receivership Entities' activities; (2) losses recognized by law resulted from such activities; (3) any alleged claim and losses are consistent 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; (4) the timing and amount of Distributions; and (5) 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 the total assets in the Receivership Estate 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 the allowed amounts. 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 the Receivership Estate. 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 Claims Administration Procedure as set forth herein and the Proof of Claim Form as attached hereto as Exhibit A; (2) establish a

deadline for receipt of Proofs of Claim that is the later of either 120 days from the date of entry of the Order requested herein or 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 hereto as Exhibit B by (a) first class U.S. mail to the last known addresses of all known potential claimants, (b) publication in The Wall Street Journal global edition and in The Sarasota Herald-Tribune, and (c) on the Receiver’s website as described above.

Undersigned counsel for the Receiver has discussed the relief sought herein with counsel for the Commission and is authorized to represent to this Court that the Commission does not oppose the granting of the relief sought in this Motion. For the Court’s convenience, a proposed Order granting this Motion is attached as Exhibit C.

MEMORANDUM IN SUPPORT

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. *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.

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 presented 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 Entities and (b) determine the extent of liabilities the Receiver believes to be the legal obligations of the Receivership Entities. *See* Order Appointing Receiver. In exercising his duties, the Receiver has determined that it is reasonable, necessary, advisable, and in the best interest of the Receivership Entities that the Claims Administration Procedures, Notice, Claim

Bar Date, and Proof of Claim Form as set forth herein 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 Claims Administration Procedure as set forth herein and the Proof of Claim Form attached as Exhibit A, (2) establishing the Claim Bar Date requested herein, (3) permitting notice of such deadline in the form attached as Exhibit B and as described above, and (4) allowing all such further relief as this Court deems just and proper.

s/Gianluca Morello

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Attorneys for Burton W. Wiand, Receiver

LOCAL RULE 3.01(G) CERTIFICATION OF COMPLIANCE

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

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant:

Arthur G. Nadel
Register No. 50690-018
MCC New York
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

s/ Gianluca Morello

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