

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

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

Defendants,

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

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION FOR APPROVAL TO SERVE PROPOSALS
FOR SETTLEMENT IN CONNECTION WITH ANCILLARY ACTIONS**

Burton W. Wiand, as Receiver, moves the Court for an order authorizing him to serve proposals for settlement, pursuant to Fla. Stat. § 768.79 (the "Proposals"), and to resolve pending ancillary actions brought by him as part of this Receivership (the "Ancillary Actions") through those Proposals. A template of a Proposal is attached hereto as Exhibit A. The Receiver seeks approval to serve Proposals to: (1) encourage settlement of Ancillary Actions, which would preserve the Court's and the Receivership's assets while increasing the

assets available for distribution to defrauded investors with claims; and (2) avoid the need to seek Court approval of settlement in the event a Proposal is accepted. The Receiver is only authorized to “settle legal actions . . . in which the Receivership Entities or the Receiver is a party . . . with authorization of this Court.” (*see* Order Reappointing Receiver (Doc. 493) (emphasis added)), and the Court’s granting of this motion would prospectively approve settlements reached through Proposals and allow the Receiver to settle those Ancillary Actions without the “condition” of re-seeking court approval following acceptance of a Proposal.

ARGUMENT

The purpose of Florida Statutes Section 768.79 (“Section 768.79”) is to encourage settlement of lawsuits. *See New York Life Ins. Co. v. Waxenberg et al.*, 2009 WL 632896, *4 (M.D. Fla. 2009). Here, of the 151 Ancillary Actions filed by the Receiver seeking to recover monies transferred from one or more Receivership Entities, there are currently 63 cases pending (although seven of those have settled in principal, three others are in default stage, and two more are in the process of being resolved). In an effort to encourage settlement of pending Ancillary Actions, the Receiver intends to serve Proposals in most, if not all, of those cases which are not in the process of being resolved in some manner. It is the Receiver’s hope that defendants will accept the Proposals, which in turn would increase the amount of money in the Receivership Estate for distribution to defrauded investors with claims and reduce the amount of litigation.

Without the approval sought in this motion, if a Proposal served by the Receiver was accepted, a settlement could not be properly concluded without first seeking approval from

this Court. Under that scenario, in an effort to avoid the effects of Proposals, defendants could attack the validity of proposals for settlement that “condition” settlement on court approval as inconsistent with Section 768.79. By seeking approval through this motion, settlements would be pre-approved, so upon acceptance of a Proposal the pertinent case would be resolved in accordance with Section 768.79 like any typical non-receivership related case pending in Florida. Simply put, the relief sought in this motion is intended to curtail challenges to the validity of Proposals and thus conserve judicial and receivership resources. Although as part of the Waxenberg Receivership previously pending in this Court, the Honorable James D. Whittemore held that Section 768.79 applies in receivership cases and that proposals for settlement are valid despite settlement being conditioned on court approval, (*see New York Life Insurance Company*, 2009 WL 632896 at *4), the Receiver seeks pre-approval to serve Proposals and to settle Ancillary Actions through those Proposals out of an abundance of caution.

It is anticipated that through the Proposals the Receiver will offer to settle Ancillary Actions for the amount of “false profits” received by defendants in the respective Ancillary Actions and thus give defendants the benefit of not paying pre-judgment interest, which in most instances is a very significant sum (as defined in those complaints, “false profits” represent the amount of funds defendants received from the fraudulent scheme underlying this case in excess of the amount they invested). However, depending on the factual circumstances of each case, the Proposals may offer a lower amount, but in no event will that amount be lower than 90% of “false profits.” These settlement percentages are consistent with the settlements previously approved by this Court. *See e.g.*, Docs. 187 and 598.

WHEREFORE, the Receiver moves the Court for an order authorizing the Receiver to serve proposals for settlement under Florida Statutes Section 768.79 to defendants in Ancillary Actions, proposing to settle those actions for no less than 90% of “false profits,” subject to the Receiver’s discretion based upon the factual circumstances of each case, and to conclude settlements based upon those proposals. To keep the Court apprised of settlements reached through Proposals, when a Proposal is accepted, the Receiver will file in this case a Notice of Settlement and the relevant parties’ settlement papers.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

The undersigned counsel for the Receiver is authorized to represent to the Court that the Securities and Exchange Commission has no objection to the Court’s granting this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 20, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on April 20, 2011, I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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